NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 6, 2001

11:04 a.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order.

Will everyone present please stand and repeat with me the Pledge of Allegiance to the Flag.

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

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

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

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 5th, the Senate met pursuant to adjournment. The Journal of Friday, March 2nd, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MEIER: 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 Dollinger.

SENATOR DOLLINGER: Mr. President, consistent with my practice the last couple of sessions, I give written notice, as required by Rule XI, that I will move to amend the rules to add a new rule, XV, in relation to the ethical standards of members, officers, and employees of the Senate.

Thank you Mr. President.

ACTING PRESIDENT MEIER: The notice has been received, and it will be entered in the Journal.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time adopt the Resolution Calendar in its entirety.

ACTING PRESIDENT MEIER: All in favor of adopting the Resolution Calendar

signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The Resolution Calendar is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time have the noncontroversial reading of the calendar.

ACTING PRESIDENT MEIER: The Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 87, by Senator Seward, Senate Print 1573, an act to amend the Insurance Law, in relation to allowing domestic mutual insurance companies.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 99, by Senator Skelos, Senate Print 401, an

act to amend the General Obligations Law, in relation to exoneration.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 109, by Senator Morahan, Senate Print 1759, an act to amend the Penal Law and the Criminal Procedure Law, in relation to fixing sentences for persons.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 110, by Senator Padavan, Senate Print 1822, an act to amend the Criminal Procedure Law, in relation to the defense of guilty but mentally ill.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 112, by Senator Libous, Senate Print 1990, an act to amend the Penal Law, in relation to authorizing an additional term of

imprisonment.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 115, by Senator Marcellino, Senate Print 106, an act to amend the Vehicle and Traffic Law, in relation to the enforcement of the offense of operating a motor vehicle with a suspended license.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 118, by Senator Maltese, Senate Print 1854, an act to amend the Vehicle and Traffic Law, in relation to increasing the penalty.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 119, by Senator Kuhl, Senate Print 2101, an act to amend the Highway Law, in relation to

the temporary discontinuance of snow and ice removal.

SENATOR PATERSON: Oh, lay that one aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 122, by Senator Velella, Senate Print 1360, an act to amend the Administrative Code of the City of New York, in relation to the investment powers.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 129, by Senator Stafford, Senate Print 1054, an act to amend the Environmental Conservation Law, in relation to nonhazardous municipal landfill closure project costs.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 160, by Senator DeFrancisco, Senate Print 432, an act to amend the Social Services Law, in

relation to the transportation of certain persons.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

SENATOR BRUNO: Mr. President, can we at this time take up the controversial calendar and get on with the business of the Senate on this beautiful, sunshiny day.

ACTING PRESIDENT MEIER: I couldn't agree more, Senator Bruno. The Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 87, by Senator Seward, Senate Print 1573, an act to amend the Insurance Law, in relation to allowing domestic mutual insurance companies.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MEIER: Senator Seward, an explanation has been requested of

Calendar Number 87 by Senator Paterson.

SENATOR SEWARD: Yes, Mr. President. This bill would remove what I would describe as archaic restrictions requiring that domestic mutual insurance companies hold their board of directors meetings in the United States or Canada and only within a jurisdiction where the insurer is authorized to do business.

The provisions requiring the mutual company to have at least four board of directors meetings per year is retained in the bill, as is the requirement that at least one of those meetings be held within the borders of New York State.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If Senator Seward would yield for a few questions.

ACTING PRESIDENT MEIER: Senator Seward, do you yield for some questions?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, would the desire to have these meetings outside of the jurisdiction impact on the consumer? In other words, would this cost large sums of money that might be passed on to the consumer?

SENATOR SEWARD: Well, Mr. President and Senator Paterson, I would say this. The reason for the bill is in this day and age, more and more the mutual insurance companies are involved in a global marketplace. And, well, take -- companies can be doing business in Hong Kong, in Europe, other parts of Asia. And in fact, under those conditions, they actually have policyholders and thus people who would also be entitled to attend these meetings should they choose.

So by removing the restriction, the companies would be able to have a meeting in another -- outside the borders of the United States and Canada, to accommodate the policyholders in another country, and also to help spur business in these other countries.

In terms of the impact on an individual policyholder, I think it's a wash, frankly, because of the fact that by

encouraging the business in other parts of world and in a global marketplace, it helps to spread the exposure of the company and to build the assets of the company. I think these are all very positive aspects for the policyholder.

SENATOR PATERSON: I agree, Mr. President. If Senator Seward would yield for another question.

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: I was happy to hear, Mr. President, that what Senator Seward has done, even by opening up the territories in which the meetings can be held, is to still have a mandatory number of meetings that would be held in New York State -- in this case, one -- which I think is very good. I think the other points that Senator Seward made about the global marketplace are absolutely right.

Which leads to just this final

question. Why, Senator Seward, would there have been this restriction in the law in the first place? In other words, what was the legislative intent that we are now changing through the passage of this bill?

SENATOR SEWARD: Well, Mr. President, Senator Paterson, the original law in this area that required these meetings be held, setting the number of meetings and establishing the location, dates back to 1909. And frankly, I don't know the reason that the Legislature had back in 1909 to implement this, other than to say that obviously it was a whole different world. And, you know, in terms of -- the concept of doing business globally just obviously was the furthest thing from anyone's mind. And it was just put into law in 1909. The reasons, I can only speculate.

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

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: Since I can't find anyone here that voted on the original

bill, Mr. President -- I assume that you didn't -- I would figure that we won't worry about it, it'll just be a matter of history.

And Senator Seward's point is well-taken, and it is a global marketplace and it will call for this type of flexibility in terms of meetings and interactions with people. And so I am convinced by Senator Seward's point.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to a couple of questions, Mr. President.

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

SENATOR SEWARD: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: In considering this bill, Senator Seward, did you examine the impact of having those meetings in New York on service of process against the directors of these mutual insurance companies?

And just through you, Mr. President, service of process for a claim against the directors of a mutual insurance company for malfeasance in office or that kind of claim, they have to be in the State of New York.

One of the logical places that you would go to serve a member of the board of directors of a corporation is at a meeting of directors. And if you want to get jurisdiction over them here in New York and you have to serve them personally, one of the things you would do is show up at a meeting of the board of directors and hand them service of process.

In considering this variation to allow them to hold meetings outside New York, did you consider the impact that it might have on a New York consumer or policyholder who's bringing an action against the mutual insurance company?

SENATOR SEWARD: Mr. President, it would have no -- this legislation, once it becomes law, would not have any impact on that at all.

Because currently the law is that only one of the four meetings are required - this is the current law -- only one of the four meetings are required to be held in the State of New York, and the others could be - the other three could be anywhere in the United States or Canada.

Now, we're not changing the one-meeting requirement in New York. We're going to maintain that.

So the point that you have raised is really moot because of the fact that at least once a year at a board of directors meeting, these directors would be within the boundaries of New York State.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Seward will yield to one other question.

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

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: This bill, as I understand it, says that only one of the

meetings of the board of directors has to be in the State of New York; is that correct?

SENATOR SEWARD: That's correct.

SENATOR DOLLINGER: Again, through you, Mr. President, if you would continue to yield, does this affect the requirement that the annual meeting of the members of the mutual insurance company be held in New York?

I assume that there are annual meetings in which the members participate in the election of the members of the board of directors. Is the requirement that the annual meeting of the members be held in New York, does that remain?

SENATOR SEWARD: The legislation before us would not impact the existing law when it comes to the annual meeting.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Seward will continue to yield.

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR DOLLINGER: Does current law require that the annual meeting be held in the State of New York?

SENATOR SEWARD: The legislation does not impact the annual meeting. And the -- we're just not impacting where the annual meeting is conducted. We're talking about the four board of directors meetings that are held.

SENATOR DOLLINGER: Correct. Through you, Mr. President, if Senator Seward will continue to yield.

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

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: I assume that what happens, Senator Seward is, as common practice with most corporations -- or I assume with most mutual insurance companies, although it's an assumption not based on personal experience -- that there's a meeting of the members of the mutual insurance company at

which the directors are elected and then that's immediately followed by a meeting of the board of directors in which the newly elected members or the reelected members perform their tasks as directors.

My question is, does this legislation require that the annual meeting of the membership be held in New York State, or does it give them the option to hold the annual meeting outside the state?

SENATOR SEWARD: Our legislation does not specify or have anything to do with the annual meeting. We don't alter where the annual meeting is conducted.

SENATOR DOLLINGER: Again through you, Mr. President, just one final question to clarify -

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Does current law permit the annual meeting of the mutual insurance company to be held outside the State

of New York, and would this legislation allow that annual meeting to be held in some other country or some other place?

SENATOR SEWARD: Mr. President, I'm advised by counsel that the existing law does not specify the location of the annual meeting. And our proposed bill does not address the annual meeting provisions in any way. We are talking about the four board of directors meetings.

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

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I understand Senator Seward's interest in allowing mutual insurance companies that are chartered here in New York, or domestic mutual insurance companies -- those are companies that have their original situs and chartering from the State of New York.

And I understand the need to give them the flexibility to go other places and do other things with respect to their board of directors meetings, that they will now be able

to have them outside the United States and Canada.

They can have them in the Caribbean during, perhaps, a snowstorm in March, or similar types of locations which corporate board of directors -- and I'm sure mutual insurance companies follow the same pattern - it's an attractive thing for them to do in recruiting board members in participating in their process.

However, having said that, it seems to me that the original chartering here in New York of mutual insurance companies should still bring some responsibility with respect to the State of New York. And that's why Senator Seward's view that this is an accommodation I think is a good one.

But it seems to me that the original purpose of having a mutual insurance company founded here in New York and chartered here in New York, we should require that the annual meeting not be held in some foreign location. And we shouldn't give this company the ability to move its annual meeting to some other location.

If they're going to remain under the jurisdiction of the State Insurance Department, if they're going to remain subject to service of process, so that if there were a complaint or a summons brought against individual directors for their individual malfeasance in office or other purposes, it seems to me there's a reason to have them here in New York.

And I would suggest -- I'm going to vote against this measure, because I think if we're going to do a bill like this, to provide that additional flexibility, which is not a bad idea, we should also set some kind of requirement that mutual insurance companies that are founded here in New York that are under the jurisdiction of our Insurance Department have their annual meeting here in New York so that that maintains that New York situs of this company, maintains its place here in New York.

Frankly, if there were additional evidence or additional information that they needed relief from that condition, I might even consider that.

But at least at this point, I think it would be a fair trade to say to those mutual insurance companies:

We'll let you go and hold your board of directors meetings other places outside the United States and Canada, but because you're domestically chartered here in New York, you should hold your annual meeting here.

I think that's a fair trade. With that trade in mind, I'd vote in favor of the bill. Without it, I'll vote in the negative, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 87 are Senators Dollinger, Espada, Gonzalez, and Hassell-Thompson. Ayes, 38. Nays, 4.

ACTING PRESIDENT MEIER: The bill

is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we call for an immediate meeting of the Local Government Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: There will be an immediate meeting of the Local Government Committee in the Majority Conference Room.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 99, by Senator Skelos, Senate Print 401, an act to amend the General Obligations Law, in relation to exoneration of certain crime victims.

SENATOR PATERSON: Explanation.

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

SENATOR SKELOS: Mr. President, this bill adds a new section to the General Obligations Law which would allow crime victims and Good Samaritans to be exonerated

in a civil lawsuit initiated by the plaintiff where the defendant shows that the plaintiff's injuries were sustained by the plaintiff during the commission or attempted commission by the plaintiff of certain enumerated crimes and the conduct of the defendant was justified pursuant to Article 35 of the Penal Law.

ACTING PRESIDENT MEIER: Senator Paterson.

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

ACTING PRESIDENT MEIER: Senator Skelos, do you yield?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, I have a concern about this bill. First of all, I want to compliment you. I like the fact that you were very specific about the types of crimes for which -

ACTING PRESIDENT MEIER: Senator Paterson, excuse me a moment.

Can we have some order in the

chamber, please, so we can conduct this debate.

Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

The specific types of crimes for which this law would apply are set forth in the legislation. And I think that if we were to pass this type of legislation, these are the types of crimes where we would want to encourage the intervention of Good Samaritans or encourage the justification of self-defense.

But my concern is that we might be merging the criminal and civil standards in a piece of legislation that could actually be harmful to the plaintiff or actually would be harmful to a defendant in a civil suit. Because, since the justification provision, that action taken by the Good Samaritan or that action taken by the victim, if the defendant, the person who was perceived to be the wrongdoer, is acquitted in a criminal case that established that as a reasonable -- in other words, beyond a reasonable doubt

standard, would it not then be the case that it would be hard to recover civilly from this defendant if the victim sued because of the legislation we're passing now?

SENATOR SKELOS: First of all, I disagree with the Trial Lawyers memo in opposition to this legislation.

I just think it's very simple. If a person commits a crime that involves certain enumerated crimes and the force used against that person is justified under the Article 35, then that individual has assumed the risk and should not be able to recover a judgment for his or her criminal activity. Very simple.

SENATOR PATERSON: Mr. President, if Senator Skelos would be willing to yield for another question.

ACTING PRESIDENT MEIER: Senator Skelos, do you yield?

SENATOR SKELOS: Yes. Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator Skelos is willing to yield for a question.

ACTING PRESIDENT MEIER: That's

the way he pronounces it, so I try to.

(Laughter.)

SENATOR PATERSON: Mr. President, sometimes things are not always as they seem. And certainly there have been cases -- the Cummings case is the one that comes to mind - where it just seems absolutely unfathomable that a person who is committing a crime, was putting other people in danger, somehow got to recover in a civil lawsuit because of the actions that were taken against him by people who were really trying to stop him from committing the crime.

But is it not true, Senator Skelos, that there is a point where any reasonable person would perceive that the perpetrator of a crime is apprehended or subdued and that any action taken after that fact would be beyond the scope reasonably set for what would be apprehension and then goes into what is, in a sense, a new crime, an assault, some type of physical abuse, and that without at least the opportunity to have a court review it we would be opening the door for some real damage or violence to be taken against individuals who

have long since been brought into the control of either law enforcement or individuals who are apprehending them?

SENATOR SKELOS: Mr. President, if I could respond.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: It's my belief that with this legislation, under Article 35, that it would not be justifiable and he would not be exonerated for that type of crime.

Plus, of course, there are also federal civil suits that could be brought. And we saw that in California, for example, with the O.J. Simpson case, where the person was found not guilty of the crime and yet the family was able to sue and recover a judgment.

SENATOR PATERSON: Mr. President, if Senator Skelos would be willing to yield for another question.

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

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR PATERSON: What I am interpreting from your answer, from the answer that I got, Mr. President, is that at a certain point, if there is action taken beyond what would be reasonably necessary to subdue a perpetrator, that at that point there would be action that could be taken against the individual who would commit that violence?

SENATOR SKELOS: Yes. Yeah. I believe that -- I was watching -- during the snowstorm, I was reading the transcript from last year's debate, and I think that was eloquently pointed out by Senator Dollinger, that if it's not one of the enumerated crimes and if the force used is not justified under Article 35, then you could have a suit against this individual, it would proceed.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, with the distinct disadvantage of being put in the position where Senator Skelos is now quoting Senator Dollinger to defeat me in battle, I'm going to -- even with that

standard, I'm going to push forward and ask if Senator Skelos would yield for another question.

ACTING PRESIDENT MEIER: Senator Skelos, do you yield?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: My question relates to the common law as it stands now. And other than the fact that an actual suit could be brought, doesn't the common law really, in many respects, sustain what you're writing in this bill, in that it really does give a great deal of latitude in situations - with the exception of some notable exceptions that you have pointed out that are an affront to you, and are an affront to me, where a couple of times people did go to court and they got away with it.

But in the overwhelming cases that have been brought by people who were injured while they were committing a crime, isn't it true that the law has sustained itself to this

point and that the common law has really borne out what you're now trying to put into our statutory law?

SENATOR SKELOS: If I could respond, Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Listening to your words so carefully as I do, Senator Paterson, you indicated "up to this point." And that's why I don't think it's improper for us to be codifying the law and bringing back the assumption of the risk doctrine in these type of situations.

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

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: I just wish that if Senator Skelos would listen to my words more carefully, as carefully as he listens to the words of Senator Dollinger, I could persuade him that this is probably not a good piece of legislation to codify into law.

The spirit of the legislation is

one that everyone in this room can understand.

Whenever someone goes beyond the call of duty and intervenes in a situation where they're risking their own life to save others, there is no way that they should ever then be sued really by anybody. But of all those who might sue them, the actual perpetrator of the crime, it is absolutely horrendous to even know that there is some - there have been a few examples that Senator Skelos has cited in the past where that's actually happened.

But in terms of our jurisprudence and the way that we allow courts to make these decisions, in the overwhelming number of cases where this has come up, the courts have done the right thing.

I don't think that we need to legislate against the exception, because what we lose is the opportunity to review situations that could come up in the future that the injured party would have absolutely no redress.

I can't support Senator Skelos's bill, but I certainly understand those who do

support it. And I understand the emotional feeling we all get every once in a while when we pick up a newspaper and read the terrible truth about what's happened when one of our fellow citizens risks his or her life to try to save that of another.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. Just on the bill briefly.

This is a bill that I've talked about a number of times on the floor. Part of it is because I litigated a case called Smith against Gooly to the Fourth Department of the Appellate Division, in which I made an argument based on Barker against Kallash. I lost, and my opinion in which I lost gets cited all the time for the proposition that Barker should be somewhat narrowly read.

But, Mr. President, I rise today because, while I appreciate and I'm going to vote in favor of this bill, what I think we may actually be doing through this bill is actually constricting the cases under which the doctrine of assumption of risk would

apply, because the Court of Appeals has interpreted the assumption of risk more broadly than this statute defines it.

This statute says that it's only when you're engaged in the enumerated crimes that you are able to use, as Senator Skelos properly points out, the at one time disfavored notion of assumption of risk as a defense in a civil action.

Currently the New York Court of Appeals has held that the assumption of risk applies in lesser criminal activity than that enumerated in the statute. In Barker against Kallash, the conduct that was the criminal conduct which was the basis for preventing the plaintiff from suing was the crime of making a pipe bomb. It was highly controversial at the time because it involved an 11-or-12-year-old buy who was mixing gunpowder and fireworks in the back yard of his house, which he had obtained from a neighbor. The bomb goes off, he tries to sue the neighbor.

The Court of Appeals held, wait a second, he was really making a pipe bomb. He was engaged in a felony and, as a consequence

of that, he could not sue the person that he had gotten the explosives from.

The thing that makes me concerned about this bill and its impact is a case that came from the Court of Appeals in 1997 called Manning against Brown.

In that case, the person who was the plaintiff in the lawsuit was involved in what most lawyers know as the crime of joyriding. Not automobile theft, a felony, but actually joyriding. She or he had taken the vehicle for the purpose of unauthorized use and was off joyriding with a car. She's involved in an accident, and the Court of Appeals held that because she was engaged in joyriding, which is not a felony, she was precluded from bringing an action against others involved in the accident.

The critical thing to keep in mind there is the Court of Appeals concluded that that conduct of joyriding was sufficiently serious criminal activity to invoke the doctrine that was set in Barker against Kallash.

That is that someone engaged in any

form of criminal activity has no recourse through the civil courts.

The consequence of this legislation, given that common-law backdrop developed by the Court of Appeals, is that what we're doing -- and I support this bill and will vote in favor of it.

But what we're doing is we're jumping into the common law of this state and saying: No, no, it's only in these cases as enumerated here -- that is, murder, robbery, burglary, arson, forceable rape, or kidnapping -- in which that defense of assumption of the risk is going to be available.

And the danger is that the courts of our state, when they're faced with a situation like Manning against Brown, where a lawyer goes in and argues, Wait a second, joyriding was sufficiently serious criminal activity to preclude the plaintiff from litigating, instead, they will walk in and say, Well, wait a second. The New York State Legislature has spoken, and we have decided as a matter of public policy that it's only

available when you're engaged in the crimes that are enumerated in Senator Skelos's statute.

So my point is this. By passing this bill, we may actually be increasing the number of times that those who are engaged in minor criminal activity -- which the Court of Appeals now said if you're engaged in joyriding, you can't sue.

If we pass this bill, we may be in a situation where if you're engaged in joyriding again, someone will cite Manning versus Brown as authority for the notion that they have no claim and a good plaintiff's lawyer will stand up and say: Well, that isn't true anymore, because the New York State Legislature has spoken and said that that defense is only available in cases of serious criminal activity -- murder, burglary, forceable sodomy, and kidnapping, the other ones cited by Senator Skelos.

So it may sound like a law school lecture, Mr. President. I see the perhaps somewhat disenchanted faces that we used to see in law schools about long harangues by

their law school professor. But just understand that the effect of passing this bill may be actually to constrict the use of the defense of affirmative assumption of risk rather than expand it, which is I think what Senator Skelos was trying to do. And if we do this, we may actually end up doing something that we're unintentionally increasing the claims by plaintiffs rather than decreasing them.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 99 are Senators Connor, Duane, Espada, Gonzalez, Hassell-Thompson, Paterson, and Schneiderman. Ayes, 42. Nays, 7.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 109, by Senator Morahan, Senate Print 1759, an act to amend the Penal Law and the Criminal Procedure Law, in relation to fixing sentences.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT MEIER: Senator Morahan, an explanation has been requested of Calendar 109 by Senator Stachowski.

SENATOR MORAHAN: Be happy to do that, Mr. President.

It's an act to amend the Penal Law and the Criminal Procedure Law, in relation to fixing sentences for persons committing crimes when on parole, conditional release, temporary release, participating in a postrelease supervision program, or persons serving on a parole supervision sentence.

ACTING PRESIDENT MEIER: Senator Duane.

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

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

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you. Where will the prisoners be housed to serve out their full terms?

SENATOR MORAHAN: In jail, I guess. Prison.

SENATOR DUANE: In New York State correctional facilities?

SENATOR MORAHAN: Correct.

SENATOR DUANE: I'm wondering if the sponsor will continue to yield.

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

SENATOR MORAHAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Is the sponsor aware that most inmates are not being granted parole?

SENATOR MORAHAN: Maybe most are not granted parole. But those that are granted parole or a work release or whatever, any conditional release would be subject to this bill.

SENATOR DUANE: Through you, Mr. President, I don't understand what the sponsor just referred to.

SENATOR MORAHAN: It applies to those who do receive parole or supervision.

SENATOR DUANE: I'm wondering if the sponsor will continue to yield.

SENATOR MORAHAN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you. Is the sponsor aware that the lack of allowing prisoners to be paroled is causing overcrowding and overflowing of our state correctional facilities?

SENATOR MORAHAN: I don't know if that's any longer true. But however, I still don't think it makes sense to release and allow release of a prisoner who's been released and continues to commit felonies on the general public. I think they belong in jail. If they're a little bit crowded, we'll have to address that.

SENATOR DUANE: Through you, Mr.

President, if the sponsor would continue to yield.

ACTING PRESIDENT MEIER: Senator, do you yield?

SENATOR MORAHAN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Is the sponsor aware that the overcrowding in the state correctional facilities is causing many prisoners to be kept in county and city jails because there's no room for them in the state facilities?

SENATOR MORAHAN: Okay, I don't know if Senator Duane is up-to-date on the latest information, but there are no state-ready prisoners waiting to come into the state system beyond the ten days.

SENATOR DUANE: Through you, Mr. President, if the sponsor would tell me where he got that information.

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

SENATOR MORAHAN: The Department

of Corrections, Senator.

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

ACTING PRESIDENT MEIER: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Does the sponsor know how much this will cost the State Department of Corrections each year?

SENATOR MORAHAN: No, I do not. And I don't know if there would be a financial impact, sir.

SENATOR DUANE: Through you, Mr. President, if the sponsor would clarify what he said.

ACTING PRESIDENT MEIER: Senator Morahan, I think he's asking you to yield.

SENATOR MORAHAN: Yes. Well, if there are empty beds in DOCS, which is the expectation of the Department of Corrections, and we have room for the prisoners, there

would be no financial impact as far as making new prisons.

On their daily board, yes.

SENATOR DUANE: Mr. President, I'm sorry, I just -- I can't hear.

SENATOR MORAHAN: I don't believe there will be any significant impact other than their room and board, which I think we ought to be happy to pay to keep them in prison if they're going to continue to do violence in the public.

SENATOR DUANE: Through you, Mr. President, if the sponsor could tell us how much it costs per year to keep a -

ACTING PRESIDENT MEIER: Just a second. Senator Morahan, do you yield for another question?

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Would the sponsor tell us how much it costs per person per year to have someone incarcerated in the Department of Corrections facilities?

SENATOR MORAHAN: I don't have

that information at the tip of my fingers, Senator.

But let me say this in response to that question, that I believe it's still better for the public to house these violent felons in a prison and let us address their costs. I really don't like to relate the cost versus the safety of the general public.

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

ACTING PRESIDENT MEIER: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Would the sponsor agree that whether or not someone agrees or disagrees with this legislation, that we should be cognizant of what the fiscal impact would be?

SENATOR MORAHAN: I don't know if that can even be determined, sir.

SENATOR DUANE: Through you, Mr.

President, if the sponsor will continue to yield.

ACTING PRESIDENT MEIER: Senator Morahan, do you yield?

SENATOR MORAHAN: I continue to yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: If we knew how much it costs to keep a prisoner incarcerated and multiplied that by the number of anticipated prisoners who would be incarcerated under this law, we would come up with the amount of money this would cost the state; is that not correct?

SENATOR MORAHAN: Assuming if you can come up with the anticipated number, that would give you some guesstimate, if you will, yes.

SENATOR DUANE: And through you, Mr. President, I'm assuming that -

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

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR DUANE: I'm assuming that there was some reason that this legislation was written and put on the agenda that had to do with, I assume, people who had been - committed a crime while they were on parole.

SENATOR MORAHAN: Committed a felony. People committing felonies, it applies to those.

SENATOR DUANE: So through you, Mr. President, that was the reason for the law?

SENATOR MORAHAN: The reason for the law is I believe that if you get parole, if you get work release, if you get some sort of after-prison supervision, that's a bit of a privilege. And I think if people violate that privilege or abuse that privilege by continuing to commit felonies, then I believe they ought to be back in prison. That's the purpose of the law.

SENATOR DUANE: Would the sponsor continue to yield, Mr. President.

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

SENATOR MORAHAN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Is the sponsor aware of some circumstances under which someone on parole did commit a felony?

SENATOR MORAHAN: Oh, I don't have any specific case in mind, Senator. But I would believe anyone who's read the papers over the past year and a half, two years, would have ample evidence of the need for this particular bill.

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

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

SENATOR MORAHAN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Is the sponsor saying that every one of these cases was reported in the papers, or that's just an

example?

SENATOR MORAHAN: I say that's just an example.

SENATOR DUANE: So just to clarify, the sponsor isn't aware of how many people in the past year, say, would fall under this legislation?

SENATOR MORAHAN: I don't have that information at the tip of my fingers as we debate the bill.

SENATOR DUANE: Would the sponsor continue to yield, Mr. President.

ACTING PRESIDENT MEIER: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes, Mr. President, I'll continue to yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Does the sponsor think that parole supervision is where it should be at this time?

SENATOR MORAHAN: I don't know if I understood the question.

SENATOR DUANE: Through you, Mr. President, if I could clarify the question.

ACTING PRESIDENT MEIER: Restate the question, Senator.

SENATOR DUANE: Is it the sponsor's position that parole supervision and caseload ratios are where they should be right now?

SENATOR MORAHAN: Senator, if you want to get into statistics, if you want to get into cost and relate statistics and cost to the welfare and the safety of the public at large, I don't enter into that debate.

If we have to spend more money, if we have to hire more people, if we have to do what we have to do to keep the general public safe, then that's what I'm prepared to do. But I don't put a price on the safety of the general public. I don't do that.

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

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

SENATOR MORAHAN: I'll continue to yield, yes.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR DUANE: What if because of this law we had to build new prisons and raise taxes? Would that be an acceptable result of this law?

SENATOR MORAHAN: Senator, if a person continues on parole to commit violent felonies or felonies, I believe they belong in prison, that's where they should be, and we would have to deal, whatever the aftermath of that is, as a responsible government.

I don't want to assume what may or may not take place. I don't want to assume that all parolees and the whole parole system doesn't work. But for those that it don't work, they ought to be in jail.

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

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

SENATOR MORAHAN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I'm wondering if the sponsor would agree that whether or not someone supports a piece of legislation or not, that it would be in the interests of this body for us to know what the fiscal implications are before we pass it. Not even specifically to this bill, but any bill that we passed that did have a fiscal implication.

SENATOR MORAHAN: Senator, if there was a fiscal note required, there would have been one required. No fiscal note is required.

One can only get into the realm of assumptions, and I think that's why you can't put a figure on this.

But again I repeat, Senator, if you're saying that you're willing to turn loose felons who continually commit felonies, loose because of dollars, then I have a serious question. I believe they belong in prison, not on the streets of this state.

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

ACTING PRESIDENT MEIER: Senator

Morahan, do you yield?

SENATOR MORAHAN: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Does the sponsor know in the past year how many parolees broke parole by committing a violent felony or whether or not he knows if the Department of Parole actually keeps those statistics?

SENATOR MORAHAN: I believe I already answered that question. But the second part of your question, I don't know if the Department of Parole keeps such statistics.

But I think you have to understand, when you talk about cost, while the cost of housing this prisoners may go up, certainly the cost of parole for those people would go down. Another assumption, Senator.

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

ACTING PRESIDENT MEIER: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Does the sponsor believe that transitional planning within the Department of Corrections or the Department of Parole -- I should say Department of Corrections (a), Department of Parole (b), is where it should be, or does he believe it needs more funding and staff members?

SENATOR MORAHAN: I don't know if that's a subject for this particular bill, Senator. But the transition, I don't know. I think more people are going back into prison than are staying out.

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

ACTING PRESIDENT MEIER: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Is the -- in the

sponsor's opinion, is the Department of Parole doing a good job?

SENATOR MORAHAN: I don't think that's a relevant question, Mr. -- Senator.

SENATOR DUANE: Through you, Mr. President, I want to -- I'm wondering why the sponsor thinks it's not relevant.

SENATOR MORAHAN: Well, I don't know if that's just a matter of my opinion or your opinion. I have no facts in front of me to say whether they're doing a good job or a bad job.

I don't know that this bill talks about the relevance of what their job is, what they do and how well they do it. I don't believe the parole officer can prevent a habitual criminal from committing a felony. So I don't think that relates to the quality of the job the Parole Department is doing.

I would assume they're doing a good job.

SENATOR DUANE: Through you, Mr. President, I think I need a clarification from the sponsor on this if he will yield for that.

ACTING PRESIDENT MEIER: Senator

Morahan, do you continue to yield?

SENATOR MORAHAN: Then I need a clarification on his question.

SENATOR DUANE: Through you, Mr. President, I just -- I don't really understand what the sponsor said last, in his last statement. So if he would repeat -

SENATOR MORAHAN: In answer to your question whether I think the Parole Board or the Parole Department is doing a good job or a bad job, I don't know that that's relevant to this bill. I don't believe if they're doing a good job or a bad job that's going to impact on who goes out of prison, who stays out of prison or who comes back.

I would believe and I assume they're doing a good job.

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

ACTING PRESIDENT MEIER: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes, Mr. President, I continue to yield.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR DUANE: Thank you. I'm wondering what the sponsor could then tell me what the purpose of the Department of Parole is if it's not to help to keep people from returning to prison.

SENATOR MORAHAN: Oh, I think it's designed for that, sir. But I think if someone is of a mind not to work with the system and not work in a cooperative fashion with the Parole Board, then those people have to get special treatment, and that's the purpose of this bill.

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

ACTING PRESIDENT MEIER: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Does the sponsor believe that if an inmate received vocational education or higher education they would have

a better chance of staying out of prison in the future?

SENATOR MORAHAN: I don't know if that's the purpose of this bill or if we're getting off-point or if we're becoming irrelevant in the questions or they're not pertinent.

But let me say this. I think a host of elements go into keeping people out of prison once they're released. And I think all the good things that we can do -- education, training, substance abuse programs -- all of those good things will help people succeed in life once they get out of prison.

SENATOR DUANE: Through you -

SENATOR MORAHAN: The issue is - if I may continue. The issue here is every so often, no matter how many good things we do, some people will continue to commit felonies while on parole. I tend to think that's an abuse of the system. And I think they ought to be returned to prison if they abuse the system.

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

yield.

ACTING PRESIDENT MEIER: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I may have misspoken or didn't make my point clear before. I meant does the sponsor believe that having vocational training or higher education in our prison facilities help people when they get out of prison to stay out of prison.

SENATOR MORAHAN: Yeah, I believe that would help. I believe we have those programs in the prison system now.

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

ACTING PRESIDENT MEIER: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Would the sponsor support having college courses paid for by the

state in our state correctional facilities to help keep people from reentering prison when they're released?

SENATOR MORAHAN: No.

SENATOR DUANE: Through you, Mr. President, could the sponsor be more - through you, Mr. President, if the sponsor would continue to yield.

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: If the sponsor could tell us up to what level of education he thinks our prisons should be supplying incarcerated people with.

SENATOR MORAHAN: High school.

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

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

SENATOR MORAHAN: I do, sir. But before we continue to yield, let me just say that I believe the questions are now starting to become irrelevant to the purpose of this

bill. Yes, I continue -- I will yield.

ACTING PRESIDENT MEIER: Are you asking the chair to rule on the germaneness of the questions, Senator Morahan?

SENATOR MORAHAN: Yes, sir.

ACTING PRESIDENT MEIER: Senator Duane, before you ask the sponsor to yield I would just caution you that the rules of the Senate do provide the questions propounded in debate should be germane to the bill at hand. And I'd just caution you to frame your question in that way.

Do you wish the sponsor to continue to yield?

SENATOR DUANE: Yes, please, Mr. President.

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

SENATOR MORAHAN: Yes, I do, sir.

SENATOR DUANE: Just as a clarification of that, does the sponsor believe high school education means a GED or an academic diploma?

SENATOR MORAHAN: I think -

ACTING PRESIDENT MEIER: Senator

Duane, the chair is going to rule on its own motion that that question is not germane to the legislation before the house.

SENATOR DUANE: Then, Mr. President, I'd like to -- what's the word - appeal the ruling of the President.

ACTING PRESIDENT MEIER: The question is on the ruling of the chair, which is that the question last propounded was not germane.

Senator Bruno.

SENATOR BRUNO: Party vote in the negative.

SENATOR DUANE: Mr. President, should we not be heard on this first?

ACTING PRESIDENT MEIER: You wish to be heard on your appeal?

SENATOR DUANE: Through you, Mr. President, I can guarantee that more than one member of our side of the aisle would like to respond.

SENATOR BRUNO: Party vote in the negative.

SENATOR DUANE: But through you, Mr. President, I don't think we're up to the

vote yet. I'm not versed in Robert's Rules, but I think first discussion, then a vote.

ACTING PRESIDENT MEIER: Well, Senator, under the rules, the Majority Leader may call the question at any time during the course of the pendency of the motion.

SENATOR BRUNO: Call the question, Mr. President.

ACTING PRESIDENT MEIER: The question has been called. The question before the house is whether the ruling of the chair should be overruled.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, I do understand that under Section 3.1 of the Rules that you are allowed to rule on this.

However, for the benefit of members such as myself and Senator Dollinger and some of us here in the back, we didn't hear the question.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President, you know, we know we're all getting very informed this morning on all of these very

important issues, and I appreciate that. But we have a lot of work to do today. And I think that we can be here -- our plans were to be here till about 8 o'clock, since the weather outside is so frightful and it's so delightful inside.

So -- but we do have a full calendar, and it's important to progress. And I believe the rules call for the chair here to be able to call the question, which is nondebatable, and we will vote on the issue and go on to the rest of the calendar.

And I'm reluctant to do that, but I think that you're as well informed as you can be on this particular issue. And if you're not as well informed as you can be, then you weren't up late last night, as our Senators were on this side, studying. And I think that's unfortunate.

So, Mr. President, if I am correct, you have a parliamentarian there who is versed in Robert's Rules, and we ought to handle ourselves according to the rules.

ACTING PRESIDENT MEIER: The question has been called, and the vote has

been cast, a party vote in the negative. Does the Minority have a vote to announce?

SENATOR PATERSON: Mr. President, I heard Senator Morahan say that he didn't think that the issue was germane.

ACTING PRESIDENT MEIER: Senator Paterson, the chair ruled on the germaneness of the question that had been propounded. The question before the house now is an appeal of that ruling. A negative vote upholds the ruling of the chair. A vote in the positive votes to overrule the opinion of the chair.

Do you have a vote to state, sir?

SENATOR PATERSON: Thank you, Mr. President. I just didn't hear Senator Duane, so I don't know whether or not I agree with the ruling of the chair. I don't know, I didn't hear him.

I did hear Senator Morahan say that he thought the question was not germane. I'm sure, knowing Senator Duane, that his question was germane. But I didn't hear the question.

ACTING PRESIDENT MEIER: Senator Paterson, the question has been called. How do you vote?

SENATOR PATERSON: Party vote in the affirmative, Mr. President.

ACTING PRESIDENT MEIER: The ruling of the chair is sustained.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: I just rise to explain my vote, Mr. President. I agree with Senator Paterson -

ACTING PRESIDENT MEIER: Senator, Senator, the vote has been completed. The results were -

SENATOR DOLLINGER: Can I explain my vote, Mr. President?

ACTING PRESIDENT MEIER: The Secretary will announce the results.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 20. Nays, 32. Party vote.

SENATOR DOLLINGER: Mr. President, point of order.

ACTING PRESIDENT MEIER: What's your point of order, Senator?

SENATOR DOLLINGER: Do I have an opportunity to explain my vote?

ACTING PRESIDENT MEIER: Just -

just give me a second.

SENATOR DOLLINGER: Fine.

ACTING PRESIDENT MEIER: Yes, you can, Senator. You have two minutes.

SENATOR DOLLINGER: Thank you, Mr. President. I'll be very brief.

I agree with Senator Paterson. What I don't understand -- and I didn't hear. I guess, maybe like other members of the chamber, I wasn't focusing intently on the debate between Senator Morahan and Senator Duane. But it's impossible for me to make a judgment as to whether Senator Duane's question is not germane, which was the issue decided by the house, or decided by the chair and which now has been apparently affirmed by the Majority. It's impossible for me to make a judgment as to whether that's germane or not unless I know what the question was.

And I would just suggest that Senator Paterson's request to simply have the question repeated is not certainly out of the ordinary and would get all the members of the house fully informed before we cut off the debate on this issue and decide these

questions without knowing what they were.

I just -- with all due respect to the chair and to the Majority, if in the future, since this is apparently not going to happen now, we could simply have the question repeated so we can make an independent judgment about germaneness, it would perhaps go a long way to avoiding the vote we just took.

ACTING PRESIDENT MEIER: Senator, the chair recognizes the person stating the vote. Do you have a vote?

SENATOR DOLLINGER: I vote with the Minority.

ACTING PRESIDENT MEIER: Senator Dollinger, you are recorded in the affirmative.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, on my own inquiry I went over and asked Senator Duane what his question was. And -

ACTING PRESIDENT MEIER: Senator Paterson, for what purpose are you asking for the floor?

SENATOR PATERSON: I'm explaining

my vote. I'm explaining my vote.

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

SENATOR PATERSON: And I thought that the question that Senator Duane asked was quite relevant to the discussion. I'm sorry that Senator Morahan didn't feel that it was. But it was, I thought, very much within the ambit of the conversation that they were having.

And I cast the party vote in the affirmative, but I can now honestly tell you that my own personal vote is in the affirmative, because I thought the question was well-taken.

THE PRESIDENT: Senator Paterson, you will be so recorded as voting in the affirmative.

Senator Morahan, to explain your vote.

SENATOR MORAHAN: Yes, I'd like to use this opportunity to have a clarification of what is occurring here. Number one, I did not rule the question to be germane or not to be germane. The chair made

that ruling before I had an opportunity to respond or to say a word. So it's a ruling of the chair.

I stand here ready to go on explaining this bill to any other Senator or to Senator Duane, should he have other questions to ask me.

Thank you very much.

THE PRESIDENT: Senator Bruno.

SENATOR DUANE: Madam President -

THE PRESIDENT: Senator Bruno, did you wish to be recognized?

SENATOR DUANE: -- point of personal privilege, because I couldn't hear what the -

THE PRESIDENT: Senator Bruno has the floor.

SENATOR BRUNO: Madam President, I'd like to call the question on Calendar 109.

THE PRESIDENT: The Secretary will call the roll.

Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the first day of

November.

SENATOR SCHNEIDERMAN: Madam President.

SENATOR DOLLINGER: Madam President, can I have a point of order.

SENATOR PATERSON: Madam President, just a point of order. The time for debate -

THE PRESIDENT: Senator Paterson, your point of order, please.

SENATOR PATERSON: The point of order is that the time for the debate had not elapsed. We -

THE PRESIDENT: Senator, this is not a debatable bill.

SENATOR PATERSON: This is a bill. We're debating it.

SENATOR SCHNEIDERMAN: We're trying to explain our vote.

SENATOR PATERSON: Wait, wait, wait -

THE PRESIDENT: The Secretary will call the roll.

SENATOR PATERSON: Slow roll call, Madam President.

THE PRESIDENT: Slow roll call. Have five members risen?

The Secretary will call the slow roll call on the bill.

THE SECRETARY: Senator Alesi.

(No response.)

THE SECRETARY: Senator Balboni, excused.

Senator Bonacic.

SENATOR BONACIC: Yes.

THE SECRETARY: Senator Breslin.

(No response.)

THE SECRETARY: Senator Brown.

(No response.)

THE SECRETARY: Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Connor.

(Senator Connor was indicated as voting in the negative.)

THE SECRETARY: Senator DeFrancisco.

(No response.)

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: To explain my

vote, Madam President.

THE PRESIDENT: Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: I'm sitting here, Madam President, not quite sure what this vote is all about. I'm assuming that this is a vote on the merits of Calendar Number 109, which Senator Morahan was explaining to Senator Duane, which we then had a -- and I think, Senator Morahan, you're absolutely correct in your earlier pronouncement. The chair had ruled that a question was not germane. We're bound by that ruling, we followed the procedure -

THE PRESIDENT: Senator Dollinger, you have the floor to explain your vote. Please proceed to explain your vote, sir. That's the ruling of the house. Please proceed with an explanation. That's why you have the floor. Go ahead, sir.

SENATOR DOLLINGER: I know, Madam President. I have the floor -

THE PRESIDENT: Then please proceed pursuant to the rules.

SENATOR DOLLINGER: I will, Madam

President.

THE PRESIDENT: Now. Thank you.

SENATOR DOLLINGER: With all due respect, Madam President, I would simply ask that I be allowed to explain my vote. I was doing that, I was in the process of doing that, and I will continue to do that.

THE PRESIDENT: Thank you, Senator.

SENATOR DOLLINGER: Senator Morahan was explaining to Senator Duane this bill. We followed the procedure. The chair ruled that Senator Duane's questions were not germane. I understand that, I accept that ruling.

What I don't understand is why further questions from either Senator Duane, who voted against this bill last year and had valid objections, or Senator Montgomery, who is not here but nonetheless had objections last year, why that process wasn't allowed to continue, Madam President.

And I'm going to vote in favor of this bill. I voted in favor of it in the past. I've supported this measure. But quite

frankly, I don't know where this process is going, and I frankly see it spinning out of control. And if that's the consequence of the rules of this house, I am fearful that this is going to happen more and more frequently.

I would like to go back to debate between Senator Morahan and Senator Duane. That's where we should be.

THE PRESIDENT: Senator Dollinger, you will be recorded as voting in the affirmative on this bill.

SENATOR DOLLINGER: Thank you, Madam President.

THE PRESIDENT: The Secretary will announce the results.

SENATOR PATERSON: Madam President, this is a slow roll call.

THE PRESIDENT: Senator Paterson, to continue the slow roll call. To explain your vote.

SENATOR PATERSON: Well, while I'm here, Madam President -

(Laughter.)

THE PRESIDENT: The Secretary will continue to call the roll.

THE SECRETARY: Senator Duane.

SENATOR DUANE: To explain my vote, Madam President.

THE PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: I'm just disgusted that there's an unwillingness in this body to debate issues of crime and parole and what happens in our correctional facilities. The Governor himself believed that this was important enough to put into his State of the State address. And then for us to shirk our responsibilities and to try to cut each other off when we discuss these very important issues I think is a tragedy for this body.

And I'm voting no, Madam President.

THE PRESIDENT: Senator Duane, you will be so recorded as voting in the negative.

The Secretary will continue to call the slow roll.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Yes.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Aye.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Yes.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: Yes.

THE SECRETARY: Senator Goodman.

(Senator Goodman was recorded as voting in the affirmative.)

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: To explain my vote.

THE PRESIDENT: You may proceed, Senator, to explain your vote.

SENATOR HASSELL-THOMPSON: Thank you, Madam Chair.

THE PRESIDENT: You're welcome.

SENATOR HASSELL-THOMPSON: Coming into the chambers today on this particular issue I had some ambivalence, but I certainly

was prepared to vote for the bill, primarily because I represent portions of a district where there are a tremendous number of the elderly. And part of what continues to happen is that they many times are victimized by these types of criminals that live in our communities. And so on their behalf, I felt obligated at least to listen to the debate and be prepared to vote on this bill.

I have to express, Madam Chair, my disappointment, however, at the inability of us to continue to have this debate. I heard Senator Morahan say that he would continue to entertain questions on this so that we would -

THE PRESIDENT: Excuse me, Senator.

If the members would take their conversations out of the chambers, please.

You may proceed, Senator.

SENATOR HASSELL-THOMPSON: Thank you.

THE PRESIDENT: You're welcome.

SENATOR HASSELL-THOMPSON: My disappointment is only in our failure to

continue to be allowed to debate this issue.

And I felt that the response by Senator Morahan to continue to entertain questions so that we would all have a better comfort level when we came to the portion of our vote, for that I am very disappointed.

So therefore, you have created an ambivalence in me in my inability to support the bill at this point. I vote no.

THE PRESIDENT: Senator, you will be so recorded as voting in the negative.

The Secretary will continue.

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: Madam President, to explain my vote.

THE PRESIDENT: Go ahead, Senator.

SENATOR HEVESI: Thank you, Madam President.

I voted for this legislation last year, and I think it's a good piece of legislation. I too am troubled at the lack of debate that's been permitted on this piece of legislation. And I was listening to Senator Duane, and I found his questions relevant,

germane, and important for those of us hearing the discussion to determine whether or not it's a good bill. So that's regrettable.

Having said that, I would suggest that, Senator Morahan, this is a good piece of legislation and that someone who has committed felony offenses while they're on parole for another felony should at the very minimum be required to serve the maximum sentence on the original felony.

And I'd even go you one further, Senator Morahan, and suggest to you that we might explore the possibility of, in addition to this, not only requiring the minimum sentence be served on the felony that was committed while on parole, but perhaps the maximum sentence. Because someone who abuses the privileges of parole should never be put in a situation where they're going to be released on parole again, have already violated a public trust and confidence on that parole, and then are free to commit another offense against somebody, particularly a felony offense.

So I strongly support this bill

and, ironically, would suggest to you I don't think it goes far enough. So I support this legislation. But again, the lack of permissibility of debate in this house, a trend that we have seen over the past few weeks of this session, unlike my last two sessions here, is exceedingly troubling and I don't think does any justice to this house as an institution.

So I vote aye, over regrets of the process that has brought us to this point.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Aye.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger, excused.

Senator Kuhl.

SENATOR KUHL: Yes.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: Yes.

THE SECRETARY: Senator Lack.

(No response.)

THE SECRETARY: Senator Larkin.

(No response.)

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

(No response.)

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Yes.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz, excused.

Senator Maziarz.

SENATOR MAZIARZ: Aye.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

(No response.)

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: Yes.

THE SECRETARY: Senator Montgomery.

(No response.)

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato, excused.

Senator Oppenheimer.

SENATOR OPPENHEIMER: Aye.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Madam President, to explain my vote.

THE PRESIDENT: Go ahead, Senator.

SENATOR PATERSON: We have rules that operate this house. As a society, we can't live without rules to protect each other from the misfeasances that others may commit on each other.

The chair ruled, using Section 3.1

of our rules, that Senator Duane's question was not germane. Senator Duane didn't feel that way; I didn't feel that way. It was a minor inconvenience that the only way I could find out what Senator Duane's question was was to actually ascertain it by asking him.

But the fact is that this bill began debate at 11:39 a.m. Suddenly, at 12:20, the question was called. Under our rules -

THE PRESIDENT: Senator, you may proceed. I think you can be heard better now.

SENATOR PATERSON: Thank you, Madam President.

Under our rules, there is a two-hour debate period that can elapse before the question can be called. Those are our rules. Only 41 minutes of that two hours had elapsed. I do not understand why we would have to vote on this bill when only Senator Duane was allowed to question Senator Morahan. There were other members from this side of the aisle, and presumably from the other side of the aisle, who had an opportunity to learn more about this legislation and did not

because the rules were not adhered to.

I don't think that we as a Senate, or our leadership, is going to be able to establish any credibility when we don't follow our own rules. If others disagree with the rules and are upset because the Majority can vote on the rules, that's one thing. But these are rules that were set by all of us. We all voted for the rules. And there is no disputing this point: only 41 minutes of this debate elapsed.

I'm going to vote no on the bill, Madam President. But I would like to remind everybody here that if in the future there's any attempt to call the question before the two-hour period has elapsed, I suggest that we are going to have a very difficult time cooperating with each other because we're not going to have a standard that anyone can adhere.

THE PRESIDENT: Senator, you will be recorded as voting in the negative.

Senator Bruno.

SENATOR BRUNO: Madam President, just for clarity and for order, if you will

just grant me the privilege here, I hear Senator Paterson and respect what you have to say.

We have rules that the Senate is abiding by. And to my knowledge, the chair, this chair can call the question at any time on any issue. And that is nondebatable. It is nondebatable. But the Senators to be heard can explain their votes and can indicate what they have on their minds at that time. And that is two minutes, and two minutes only, because the objective is to move the calendar. That's the objective.

And if you take two minutes times 26, I think that's 52 minutes. So we can move a bill an hour if you each want to take your two minutes. And that's the objective here.

So we're going to call the question regularly when it appears that the discussion is not germane, that we're filibustering and we're just showing our peeve at the rules changes that took place.

So I am saying to you, you have the privilege and the prerogative to do anything that is within the rules. But we are going to

abide by the rules of this house. And each individual member doesn't have to like it. But that's the way this chair is going to function.

So, Senator Paterson, what we have done was call the question, because we had enough conversation, we had enough debate, there was enough harassment that had taken place. And that you are free to explain your vote, as you have been doing. And that seems appropriate, and that seems orderly, and I don't understand why that should be disturbing to anyone.

THE PRESIDENT: Senator Paterson, why do you rise, sir?

SENATOR PATERSON: Point of order, Madam President.

THE PRESIDENT: Please state your point.

SENATOR PATERSON: I looked through the rules as Senator Bruno stated them. And I would have to say, upon examination of them, that Senator Bruno is right. I don't see anything in the rules that allows for a standing member to be recognized

by the Temporary President when the question has been called.

I would like to say that on that particular bill, only one member had spoken on the bill. There was some indication that the member who the point was addressed to had raised the issue of germaneness. The chair properly -- and when I say properly, I don't mean that I agreed with it. But in compliance with the rules, the chair ruled on that, and that was the end of the issue of germaneness.

There were other members waiting to speak on the bills. If we are just going to call the question on every bill and, as Senator Bruno pointed out, give everyone two minutes to explain our vote, then I think we need to take the sign down outside that says "deliberative body." And I would suggest that this be better performed in places other than the United States of America.

Under a technical reading of the Rules, I have no quarrel with Senator Bruno's conclusion. I have no quarrel either with Senator Bruno's feeling that there is conduct that goes on in the chamber that at times

reads acrimonious between the two conferences.

THE PRESIDENT: Senator, could you please state your point of order.

SENATOR PATERSON: My point of order is that it has been the tradition of this chamber that all parties be heard within a reasonable limit of time. And I don't think 41 minutes was a reasonable limit of time.

THE PRESIDENT: Senator, your point is not well-taken.

The Secretary will continue.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

(No response.)

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: Aye.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Schneiderman.

THE PRESIDENT: Senator Schneiderman, to explain your vote.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I join with several of my colleagues who have noted that the process of debating this bill has unfortunately had an impact on my consideration of the bill. And I believe that the rule that Senator Bruno just stated was not adhered to in the course of this debate. Senator Duane appealed the ruling of the chair that his question was not germane. We voted on that ruling.

Several of us were standing to explain our votes, which I believe Senator Bruno just said is the right we always have. He called the question then before we had a chance to explain our votes. So if we always have two minutes to explain our votes, as just stated, that was not adhered to in this case.

I realize that we can continue to escalate this and come up with ways to harass each other. I do not think it serves the purposes of this house. But, you know, if that's the game we're playing, that's the game we're playing.

I think this bill is a very significant bill. I think it raises questions about the purposes of incarceration, about

judicial discretion in sentencing. Senator Morahan apparently has thought a great deal about this. He was ready to answer questions. There were others of us who had questions to ask. And I think that the cutting off of this sort of debate does not bring any honor to the house. And the cutting off of our opportunity to explain our votes clearly violates the rules of the house.

I vote yes for the bill, but I strongly object to the procedures.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative on the bill.

The Secretary will continue.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator A. Smith.

SENATOR ADA SMITH: Aye. Yes.

THE SECRETARY: Senator M. Smith.

SENATOR MALCOLM SMITH: Yes.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

THE PRESIDENT: Senator, to explain your vote.

SENATOR STACHOWSKI: Briefly to explain my vote. I'm going to support Senator Morahan's bill.

But just in a continuation and an observation of the things that just took place, I don't have a problem with the chair ruling germane or ungermane. I don't have a problem with calling the vote. I don't even have a problem with the Majority Leader calling the question.

However, it's not the Majority Leader's responsibility to notice that there were members waiting to stand to explain their vote on the challenge of the chair. It's the chair's responsibility. And the chair ignored the members, and that's the chair's problem, not necessarily the Majority Leader's. The Majority Leader is doing his job on calling the question, and the chair just absolutely ignored a group of Senators that were standing.

And to my mind, when we're doing parliamentary procedure, everyone has the same standing in this house. If the chair has a point -- the Majority Leader has a point to make, he can make that. But it would have been the chair's responsibility to inform the Majority Leader that he can call the question as soon as the members that were standing to explain their vote explained their vote.

If you're changing the rules again and saying, Well, if the Majority Leader wants to call the vote after a challenge to the chair and we're just not going to let anybody else explain whether they're for the challenge of the chair or they're not, or they're not entitled to explain their votes, well, that's good. That's just another new rule change we're going to do because we can. Or else it's another interpretation of the chair opposite of any parliamentary procedure anywhere that they chose to do because they can.

I vote yes, but I'm sorry that this took place.

THE PRESIDENT: Senator, you will

be recorded as voting in the affirmative.

And we will continue giving each member, if each member so chooses, the opportunity now to explain your votes.

The Secretary will continue.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Aye.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

THE PRESIDENT: The Secretary will call the absentees.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Breslin.

THE PRESIDENT: Senator Breslin, to explain your vote.

SENATOR BRESLIN: Thank you,

Madam President.

THE PRESIDENT: You're welcome.

SENATOR BRESLIN: I too will vote in the affirmative for this bill, as I did last year.

But I, along with many members on this side, am deeply troubled that the new rules we operate under are an embarrassment to us, an embarrassment to the people of the State of New York, and the interpretation of those rules are a further embarrassment to us and to the people of the State of New York.

It could best be described in one word: totalitarianism. And it's offensive. And we must bring an end to it so there's an open debate, an open debate where the people of the State of New York can be proud of this body again.

Thank you, Madam President.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Brown.

SENATOR BROWN: Yes.

THE SECRETARY: Senator

DeFrancisco.

THE PRESIDENT: Senator DeFrancisco, to explain your vote.

SENATOR DeFRANCISCO: I just want to -- I want to vote yes. It's a good bill.

But as to the procedure, everybody in this room and everyone out there who pays attention to what goes on in this room knows what's happening here. If you look at these bills that were noncontroversial last year, they weren't even debated. And if they were, they were done in five minutes. Now they become 45-minute debates and then have to be cut off.

The reason it's happening -- and it's not totalitarianism. It's not anything about lack of freedom of speech. It's that one side of the aisle doesn't like the rules that were put into place by the other side of the aisle, and they're going to make us pay for it.

So if that's the way the game is going to be played, the only way to get work done is after a reasonable period of time to call the question.

So thou protest too much. And you all know the real reason what's going on here.

And I vote aye.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Aye.

THE SECRETARY: Senator Montgomery.

(No response.)

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 51. Nays, 5.

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 110, by Senator Padavan, Senate Print 1822, an act to amend the Criminal Procedure Law, in relation to the defense of guilty but mentally ill.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, could we at this time ask for an immediate meeting of the Corporations Committee in the Majority Conference Room. Thank you.

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

Senator Paterson.

SENATOR PATERSON: I'm sorry, Madam President. I was just asking for an explanation from Senator Padavan.

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

SENATOR PADAVAN: Thank you, Madam President.

If in a criminal action a defendant asserts a defense of guilty by reason of

insanity or mental disease or defect, in accordance with existing law an alternative verdict can be accomplished called guilty but mentally ill.

However, there are a number of requirements that would preclude -- a number of requirements that must be in place in order for such an alternative verdict to be presented or agreed upon or adjudicated. The conditions are outlined in the bill, beginning on page 12.

THE PRESIDENT: Read the last - Senator Paterson.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Yes.

SENATOR PATERSON: Would Senator Padavan yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR PADAVAN: Madam President, as Senator Paterson is aware, this bill was discussed in this house and passed on seven occasions. In most of those seven occasions, Senator Paterson and I entered into

a lot of Q&A, dialogue. I don't know if much will be served by doing that again.

But however, as a matter of courtesy to you, Senator Paterson, I will be happy to yield to a question. "A" being one.

THE PRESIDENT: Senator, you may proceed with a question. Senator Paterson.

SENATOR CONNOR: Madam President, is there a quorum? I inquire as to a quorum. I'd like to ascertain a quorum.

Could we please ascertain a quorum? The rules say to call the roll forthwith.

THE PRESIDENT: The Secretary will call the roll and ring the bell.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Present.

THE SECRETARY: Senator Balboni, excused.

Senator Bonacic.

SENATOR BONACIC: Here.

THE SECRETARY: Senator Breslin.

(No response.)

THE SECRETARY: Senator Brown.

SENATOR BROWN: Present.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, I would like to ask for a closed call of the house. And that means every member in the chamber. And nobody leaves without an escort if they have to leave.

THE PRESIDENT: The sergeant-at-arms will close the doors to the house and is instructed to bring the members in.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could ask that the sergeant-at-arms go out and escort all the members that are not in the chamber to come into the chamber at this time, and that the doors be locked.

THE PRESIDENT: As I just stated, Senator, the sergeant-at-arms will proceed with doing that, to close the door and to go out and escort the members in.

SENATOR CONNOR: Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Yes, if I may be so humble as to make a suggestion to the Majority. Many of the members here were not here when last a closed call was imposed,

under Senator Anderson, which we did pretty routinely. In those days there were phones in the -- two phones in each of the fireplaces. There wasn't a lounge. There weren't gates on the outer lobby. If I may respectfully suggest -- and you were allowed to eat in the chamber, so you could send pages out to get you sandwiches or whatever.

May I respectfully suggest -- and I think it's a good suggestion. But if the Majority doesn't like it, that's fine -- that since we now have those iron gates, which we didn't have in those days, that the closed call of the house be deemed to embrace the two outer lobbies in the lounge and that the iron gates be locked as well as all the doors that would give someone egress beyond that.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, the closed call of the house will be these doors and these doors and those doors and those doors. And if a member needs to go out, they will have to come to the chair and ask permission to go out.

THE PRESIDENT: So ordered,

Senator Skelos.

The Secretary will continue with the quorum call.

THE SECRETARY: Senator Bruno.

SENATOR BRUNO: Present.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: Present.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Here.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: I'm here.

THE SECRETARY: Senator Duane.

(No response.)

THE SECRETARY: Senator Espada.

(No response.)

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Present.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Present.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Present.

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Goodman.

(No response.)

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Present.

THE SECRETARY: Senator Hassell-Thompson.

(No response.)

THE SECRETARY: Senator Hevesi.

(No response.)

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Present.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Here.

THE SECRETARY: Senator Kruger, excused.

Senator Kuhl.

SENATOR KUHL: Present.

THE SECRETARY: Senator Lachman.

(No response.)

THE SECRETARY: Senator Lack.

SENATOR LACK: Present.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Present.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Present.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Present.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Present.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Present.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Present.

THE SECRETARY: Senator Marchi.

(No response.)

THE SECRETARY: Senator Markowitz, excused.

Senator Maziarz.

SENATOR MAZIARZ: Present.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Present.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Present.

THE SECRETARY: Senator Mendez.

(No response.)

THE SECRETARY: Senator Montgomery.

(No response.)

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Present.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Present.

THE SECRETARY: Senator Onorato, excused.

Senator Oppenheimer.

(No response.)

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Here.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Here.

THE SECRETARY: Senator Rath.

SENATOR RATH: Here.

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: Present.

THE PRESIDENT: The sergeant-at-arms is continuing to bring the members into the chambers.

In the interim, we can continue the debate on the bill. A quorum is present, Senator Skelos.

SENATOR SKELOS: If we could

return to Senator Padavan's bill.

THE PRESIDENT: The bill is before the house if there is any further debate.

Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. Senator Padavan has kindly been willing to answer a question of mine. I had several questions.

THE PRESIDENT: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Okay. Senator Padavan, would you explain for the body the issues that were raised in the case Jackson versus Indiana, United States Supreme Court 408, and how this case may have actually been the precursor to the idea that you have to institute a plea of guilty but mentally ill in criminal proceedings?

SENATOR PADAVAN: Senator, first I should explain that this was not my original idea. I don't take any credit for that.

But I did become aware of the fact that the State of Michigan, many, many years ago, had adopted this law. It's been in effect all that period of time, as are approximately 19 other states since then.

During my tenure as chairman of the Mental Health Committee, we dealt with a number of issues relevant to insanity pleas, as it related to where and how they were being treated, incarcerated or not incarcerated. The pinnacle of that deliberation came about during the so-called Son of Sam case.

So while I cannot give you a definitive answer to your question relevant to the court citation that you referred to, I can explain to you that this was our attempt to deal with a very complex issue in a manner that had proven itself to be successful in other jurisdictions.

THE PRESIDENT: Senator Paterson.

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

THE PRESIDENT: You may proceed, Senator.

SENATOR PATERSON: Madam

President, if I were able to ask Senator Padavan about the "fitness to proceed" hearings -- those are the hearings at which we determine whether a person can assist his or her attorney in their defense or whether they know the nature of the charges that have been presented against them -- I'm sure that Senator Padavan would have answered that under our United States Constitution, without a finding that a person is fit to proceed, that they understand those charges and can assist counsel in their defense, that we cannot try them.

This doesn't speak to the conduct of the individual at the time that they committed the crime, allegedly. This speaks to whether or not at the time of the trial the individual can assist their attorney.

If they cannot, we can't go ahead with the trial. And what we do at that point is to send them for hospitalization and further psychiatric evaluation until such time as they can answer the nature of the charges against them.

So I raise this to point out that

Senator Padavan understands that there is a requisite knowledge that a person has to have, not only to assist counsel in defense but to know the nature of charges against the defendant, to know whether or not the act was right or wrong and to appreciate the sense of the act that the person has actually committed.

Now, we have in our laws now the plea of not responsible by reason of mental disease or defect, the so-called insanity defense, speaking to the fact that at the time that the act was committed the person did not understand the nature of the act and did not fully appreciate the rightness or wrongness of the act.

How we can say that a person is guilty at the time that the act was committed is beyond me. How we can actually say that the person is guilty because they understood, when it's quite possible that they didn't understand, is the reason that we have configured our defense to be not responsible.

When we say "not responsible," we don't mean that the person didn't commit the

act. We mean that the person really lacked the requisite knowledge to understand what they were doing, to put it simply. So the interesting -

THE PRESIDENT: Go ahead, Senator. I think you can be heard better now.

SENATOR PATERSON: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR PATERSON: The interesting aspect of Senator Padavan's bill is that he says that the person is mentally ill but they did understand the nature of the charges and they did actually know the difference between right and wrong.

Well, if that's the case, then the person is just guilty. The mental illness is an ancillary fact that should probably be treated in the correctional institution but doesn't relate to the nature of the crime because the person, according to Senator Padavan, knew what they were doing, so they should be found guilty.

By the way, there are very few instances where the not-responsible plea is

used and even very few times when it's used when it's actually sustained.

So I submit, Madam President, that the law is operating quite successfully as it is now. Senator Padavan actually defeats the nature of his own bill when he puts into the definition of what would be guilty but mentally ill the definition of what would just be guilty.

And if we are now going to track the individual's mental disease or disability through the correctional institution, that's a decision that I think the institution and the Office of Mental Health can actually make without the intervention of the State Legislature in terms of passing laws.

So looking at this legislation, I don't understand why we would need a third plea of guilty but mentally ill when all of the ambits of the actual finding exist in the other two pleas of either guilty or not responsible by reason of mental disease or defect.

What I think Senator Padavan fears is the situation that was addressed in the

court case Jackson versus Indiana, which is where many times, Madam President -- if, for instance, Senator Skelos was upset by the Good Samaritans or people defending themselves being sued by the perpetrator, I suggest he would even be more outraged to find that there were people who were found to be not guilty by reason of insanity in some states, they went to prison, they were converted to civil commitment -- because they weren't guilty of a crime, so it was a civil commitment, not a criminal one -- and when the psychiatrists ruled that they were now able to understand and were now cured of their mental disease, they were then released from hospitalization and went out to commit other crimes.

THE PRESIDENT: If the members would please take your conversations out of the chambers, please.

SENATOR PATERSON: Well, that would be rather difficult, Madam President.

(Laughter.)

THE PRESIDENT: If the members would please have the conversations subside in the chambers. Clarification on that ruling.

Senator Paterson.

SENATOR PATERSON: Thank you. Thank you, Madam President.

My admonition, Madam President, is that Senator Padavan has raised a very valid issue. I don't quarrel with the fact that he has put together this legislation. My issue is that he hasn't cured it and that there are agencies working with law enforcement that I think can.

I don't think a person who is civilly committed should slip into a state where they can leave the jurisdiction, go back out of the jurisdiction and harm others, when -- only because a couple of psychiatrists have now thought that they are able to operate and live peacefully in society. I agree with him.

But I think that our passage of the not-responsible plea, which orders up to a six-month commitment and a hearing regularly to determine whether or not the person has been cured of their mental disease, is really the more apt way to go. This way even law enforcement, through the local district

attorney's office and the Attorney General's office, can monitor these situations, standing in on behalf of the public.

And if it is determined at that hearing that the accused still suffers from that disease, they are ordered to be retained, an order of retention. They cannot for another year leave the custody of the Office of Mental Health until there is a finding that they have been able to fight through this illness.

So I really don't understand any reason to vote for this legislation. I know that, as Senator Padavan says, we've debated it seven times. I've gotten up and debated it with him seven times because I do think it is legitimate enough that we review it every year. But I have not changed my mind.

Senator Padavan has not passed this bill in the Assembly. His objection to me asking questions is noted. But I doubt that anybody in the other house would want to take his questions as to why they can't pass his bill if he's going to take the point of view that he's going to limit me to one question.

But I still appreciate the nature of the legislation and his dedication to an issue that he believes in, and one that 15 years ago I actually agreed with him. Over a period of time I've come to the conclusion this is not the way to go. I suggest a no vote on this legislation. With all due respect to Senator Padavan's effort, I think that the law as it stands now addresses these situations very well.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3 -

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. On the bill.

THE PRESIDENT: You may proceed, Senator.

SENATOR HASSELL-THOMPSON: Just an observation on my part. I don't enjoy the legal expertise of either of the gentlemen who have spoken. But I know that one of our biggest issues is there is no such thing as reform or treatment in incarceration in our

prison system today. And therefore, to tamper with the existing sanity bill and to include this does not do the society nor the person any good.

There is nothing in here that is guaranteeing the treatment that is so necessary in a plea of insanity. Our prisons are not capable nor willing to facilitate the kind of treatment that people who are genuinely mentally ill need to be provided with.

Therefore, I would like to vote no on this bill, Madam President.

THE PRESIDENT: Senator Dollinger.

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

THE PRESIDENT: Senator Padavan, do you yield?

SENATOR PADAVAN: I would yield to a question, Senator Dollinger. A question.

SENATOR DOLLINGER: Thank you.

THE PRESIDENT: Senator Dollinger, you may proceed with a question.

SENATOR DOLLINGER: Thank you, Madam President.

Senator Padavan, I think we've debated this bill a number of times, as has Senator Paterson.

My question, through you, Madam President, this bill was proposed 15 years ago. Nineteen states, as you properly point out, already have it. Could you describe the circumstances, do you know of any cases from those 19 states in which this specific statute has been used? Just to give us an idea of the types of cases that it would be applied in in New York.

SENATOR PADAVAN: Senator, we have statistics on the number of times it was used in a number of the states, specifically Michigan, over a period of years. Senator Paterson is correct, this is not a very common plea, obviously, acquittal by reason of insanity. But when it does come up, it is very significant.

The kinds of cases are very simply those which we describe in the bill, where an individual has sought to be adjudicated on the

basis of acquittal and that acquittal - inherent in that acquittal is a determination that the person did not know the consequences of his act. Which can be legitimate in many cases. And this bill does not eliminate that plea.

However, when it is determined - and contrary to some of the points made earlier, the bill is very specific as to how this determination must be made. It begins on line 12 of page 1 and continues all the way to line 3 of page 2, the specific procedures that must be followed by the court in making a determination that a guilty but mentally ill plea is appropriate.

After that process is competed, and only after that process is completed -- and by the way, again to reflect on something that was said a moment ago, the bill specifically indicates that if a person is found guilty but mentally ill, treatment will be provided, either in a mental hospital or in a state correction facility. And if parole is given, such treatment must continue thereafter and be monitored.

That is one of the positive aspects of this bill. Because currently if someone is found guilty, meaning their acquittal plea is not determined to be appropriate, they will go to a prison and there's no mandate for mental health care, none whatsoever. So we provide, I think, a benefit to the individual here, as well as, I think, a more appropriate way of dealing with the crime.

But to answer your question, in most cases that we're aware of, the person committed a violent act. They initially sought to be acquitted by reason of insanity, not knowing the consequences of their act. It was determined, after hearing psychiatric evaluations -- as you know, there's an arm of the court that does that, advises the court - after that process was completed, it was determined, yes, there is a level of mental illness, but not to the extent that the person did not know the full consequences of his act.

So therefore, an alternative verdict recognizing mental illness -- as well as the fact that the person when he shot the bullet, stabbed the individual, knew that they

were killing them -- did exist.

SENATOR DOLLINGER: Thank you, Madam President.

If Senator Padavan will yield to - I have two other questions on the bill, very specific questions.

SENATOR PADAVAN: No, it was a question. A question.

SENATOR DOLLINGER: Okay, Madam President, I assume that Senator Padavan will not yield then.

THE PRESIDENT: Senator Padavan, do you yield?

SENATOR PADAVAN: Not any longer.

SENATOR DOLLINGER: Madam President, let me announce what I would have asked Senator Padavan, and I'll speak on the bill.

THE PRESIDENT: Senator, you are being heard on the bill.

SENATOR DOLLINGER: The concern I had that I hoped Senator Padavan would answer, and maybe he'll answer if I ask this question rhetorically, is on lines 19 and 20 of the bill it says that the district attorney has to

approve the entry of the plea.

And my question to Senator Padavan would have been, in the experience of other states, how likely is it that the district attorney, who takes the position initially when the indictment comes through that this individual was making conscious choices and therefore could be held criminally liable, how likely is it that the district attorney is going to show up at some other point and say, Oh, we acknowledge that the person was mentally ill all the time?

It seems to me that if we had had the ability to ask Senator Padavan that question, we might find that that provision requiring the approval of the district attorney is something of an illusion, that in most cases these are highly publicized crimes, as was the terrible tragedy in the New York City subway system. Those kinds of cases tend to generate lots of publicity and make it very unlikely that an elected official like a district attorney will suddenly consent to approving the entry of a plea that is contrary to the indictment rendered by the grand jury.

And I was wondering simply how likely is it, or what experience do we have in other states that suggests that the district attorneys suddenly come into the process at the time of the entry of the plea and agree that the grand jury was wrong by indicting someone under a theory of criminal culpability by then agreeing that they were mentally ill. There may be evidence of that, there may be history behind that that shows that that works.

Senator Padavan apparently has - apparently chooses, as is he entitled to, to not answer that question. But it seems to me that's a legitimate one, to try to figure out how likely is it the district attorney will show up and give his approval.

The second question I would have asked, had I had a chance, would have been to simply ask whether the definition of mentally ill which is contained in this statute mirrors the definition of mental illness that's used so many times in the Mental Hygiene Law and elsewhere.

My goal there is if we're going to

create a statute, pass a law that defines mental illness -- and it is not the same definition that we use everyplace else - we're going to confuse our courts that have to interpret this law, and we're not going to be able to find out exactly what it means.

I think we'll lend great confusion to our courts if we don't have consistency, Madam President, in the definition of terms in our criminal statutes that we have in the remainder of our other statutes involving mental illness.

My other thoughts on this bill, Madam President, are well known. But I just was interested in what happened in the 15 years in other states that would give us some guidance about how this statute is going to work, how the definition works, and how this notion of the district attorney's approval, whether it's absolutely needed or not or purely put in here as an illusion for some kind of circumstance that may never arise.

Those were my questions, Madam President. My thoughts on the bill, the rest of the bill, are well known.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I'd ask for a slow roll call, please. If we have could five members join me in that request.

THE PRESIDENT: Five members are standing. The Secretary will call the roll.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Balboni, excused.

Senator Bonacic.

SENATOR BONACIC: Yes.

THE SECRETARY: Senator Breslin.

THE PRESIDENT: Senator Breslin, to explain your vote.

SENATOR BRESLIN: Yes, Madam President, briefly.

This bill would overturn the longstanding rule in New York State of M'Naghten, understanding the nature and

consequences of what you do and understanding the nature -- the differences between right and wrong.

And to make such a monumental change in our law, although I believe that we do need some remedy when we see the likes of the Son of Sam be found all right to go into our regular prison population -- but to limit debate on such an important, important change to me, again, is just another evidence of how this body becomes more stifled and more stifled.

However, based on that limited information, I will vote that change and vote in the affirmative.

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

THE SECRETARY: Senator Brown.

SENATOR BROWN: To explain my vote, Madam President.

THE PRESIDENT: Senator Brown, to explain your vote.

SENATOR BROWN: As a new member of this house, it's been a little distressing

to me today to hear the debate limited on important questions such as this, with members responding that, Well, we have debated this item for the past seven years, the past 10 years.

Well, I haven't been here for the past seven years, for the past 10 years, for the past 15 years, for the past 20 years to hear some of these debates. So as someone who earnestly is here to do a good job on behalf of the citizens that I represent in my district, and certainly to represent citizens across the State of New York, it's really disappointing to hear that members want to limit the debate. Because for me it would be very helpful to hear the debate, to hear what members have to say on this issue.

I'm not here to filibuster, I'm not here to stall, I'm not here to vote against what I think is in the best interests of my constituents or the citizens of the State of New York. And I'm not here simply for some false exercise. I'm here to do the best job that I can. And I think part of being able to do that best job is to be able to hear the

debate that Senators have on these important issues and these important questions.

Like Senator Breslin, I am deeply disturbed that there isn't the kind of debate on this piece of legislation that I think there should be. But I'm also going to vote in the affirmative.

Thank you.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative.

THE SECRETARY: Senator Bruno.

SENATOR BRUNO: Aye.

THE SECRETARY: Senator Connor.

THE PRESIDENT: Senator Connor, to explain your vote.

SENATOR CONNOR: Yes, thank you, Madam President. Thank you very much.

THE PRESIDENT: You're welcome.

SENATOR CONNOR: You know, I've -- Senator Brown just made the point I was going to make, playing good leader, but he made it for himself.

I know those of us who have been here for a lot of years will say, Oh, this bill's been around for a long time. I was

once on the Mental Hygiene Committee with Senator Padavan when -- I think one of the first years he brought this bill forth, and we had some interesting debates.

We actually had hearings in those days. Committees did things like that regularly, hearings with members both from the Minority and the Majority there to ask questions. I remember a professor from SUNY New Paltz -- Professor Schultz, was it, Stultz, something -- who was a big advocate for this, he was a psychologist.

So this is an important, substantive issue. To say, Well, we've debated it before, is simply not fair. Maybe we all -- and I certainly applaud the Majority, they all did a good job of making sure there were no new members coming back in their places, did an excellent job. But we had a couple of new members come in on this side, and it really isn't fair to say we've heard this all before.

You know, I looked back and this bill actually, either last year or the year before, had a very lengthy debate. And I

looked at who participated in that lengthy, substantive debate. And it wasn't when there was any intimation that people were stalling or whatever, but it was in fact that year, I think, Senator Duane, Hevesi, Senator Schneiderman, they were new members.

This is an interesting bill. It's an important bill. In some respects, a different concept for people who have been trained in the criminal law. And they wanted to debate it. They're as entitled to debate it, they were then, as Senator Hassell-Thompson and Senator Brown are now. They haven't been here to hear it before. And it's a sad day when we just close it down and say, Oh, we debated it last year. Well, they weren't here. And their constituents have as much to do -

THE PRESIDENT: Senator Skelos.

SENATOR CONNOR: My position on the bill, if I may.

THE PRESIDENT: Excuse me, Senator Connor.

Senator Skelos.

SENATOR SKELOS: Madam President,

point of information. Are we on a roll call now in explaining our votes?

THE PRESIDENT: Yes, we are, Senator Skelos.

SENATOR SKELOS: We are. And the two-minute limit applies?

THE PRESIDENT: Yes, Senator Skelos, it does.

SENATOR SKELOS: Thanks, Madam President.

SENATOR CONNOR: Thank you, Senator. On the bill.

I was almost convinced a few years -- it has been around a long time. And I was initially against this. There was a time when I was in fact, I think, convinced. There may be a few years where I voted for it, I'm not sure. I've turned around on it -

THE PRESIDENT: Senator. Senator, you are over your two minutes and we'd like you to please wrap up.

SENATOR CONNOR: Thank you. If I can just conclude.

But I'm voting against it now. And the reason I'm voting against it now is I am

not convinced, although I am troubled by the issue. I think juries convict people who are clearly mentally ill because they view them as too dangerous to let go. And I don't think they get the treatment; Senator Padavan is right.

On the other hand, I don't know that this is the way to go. I think civil procedures would work. So I vote no.

THE PRESIDENT: Senator Connor, you will be recorded as voting in the negative.

THE SECRETARY: Senator DeFrancisco.

THE PRESIDENT: Senator DeFrancisco, to explain your vote.

SENATOR DeFRANCISCO: I vote no, and I just want to make it very clear it's on the substance of the vote, not any of the procedural issues that have been raised.

THE PRESIDENT: Senator DeFrancisco, you will be recorded as voting in the negative.

The Secretary will continue.

THE SECRETARY: Senator

Dollinger.

SENATOR DOLLINGER: To explain my vote, Madam President.

THE PRESIDENT: Go ahead, Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: I'll conform to the shot clock.

This bill has a couple of good things in it. One is Senator Padavan's inclusion of the back-end treatment is critically important. I think this is part of a continuing trend, both as we've done in drug courts and other places, to recognize that there are certain disabilities which can influence people in the judgment of what constitutes criminal activity and the mens rea necessary.

Secondly, I think the other critical thing that Senator Padavan has in this bill is it applies to all crimes, that this will not only affect those highly publicized crimes of violence, but it could affect smaller crimes as well. People could be deterred out of the criminal justice system and into treatment, which is perhaps where

they belong.

But I'm going to continue to vote against this bill because the questions that I asked Senator Padavan I think are critical. There are 19 other states that have tried this idea, and we don't know whether it's worked or not. And in the absence, Madam President, of evidence in other states that the statute works, that the district attorneys are actually assisting in the use of this defense rather than resisting, it seems to me that we're not operating on the best possible evidence of success. Until that evidence is forthcoming, I'm going to continue to vote no.

Thank you.

THE PRESIDENT: Senator Dollinger, you will be recorded as voting in the negative.

The Secretary will continue.

THE SECRETARY: Senator Duane.

SENATOR DUANE: No.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Madam Chair, to explain my vote, please.

THE PRESIDENT: Senator Espada,

to explain your vote.

SENATOR ESPADA: Well, clearly this matter, as indicated by its sponsor, has been here at least seven or eight times in and of itself. I would venture to guess that there is still an information gap, there is still a lot to be discussed as it pertains to the merits of this bill.

It's clearly a substantial bill, a substantial matter to really erase any affirmative defense that any defendant, as Senator Dollinger indicated, in any crime - to eviscerate, to take away such a fundamental right would have to take us back to 1980 when the major public hearings on insanity-defense reforms were held.

And to ration out, to ration out this matter in terms of one question at a time or to make it as arbitrary as it has been made here today, is, if I may say, insane as to its procedural matter in and of itself. How could we be asked to -- whether it's Senator Brown or whether it's Senator Espada or whether it's anyone on that side of the aisle that's new to this issue -- to vote without knowing what's

happened in 19 other states, to really fully understand why mental health associations throughout this country have advocated defeat of this bill, to really truly understand what a chance this has of really becoming law in terms of what the other body, the Assembly, would have to say on this? All of this would have to go through severe tests and public hearings.

It's for all those reasons, and more that the two-minute rule does not give me the opportunity to comment on, that I would vote against this bill.

THE PRESIDENT: Senator, you will be recorded as voting in the negative.

The Secretary will continue.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Aye.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Madam President, to explain my vote, please.

THE PRESIDENT: To explain your

vote, Senator Gentile.

SENATOR GENTILE: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR GENTILE: I must say that my experience as a prosecutor, in that experience, one of the most frustrating and potentially damaging verdicts that I've had experience with in the criminal justice system has been the verdict of not guilty by reason of mental disease or defect.

And I say that because I agree with some of my other colleagues who have indicated that if a mens rea can be accomplished -- and I don't think my microphone is on, Madam President.

The light just doesn't work?

THE PRESIDENT: It is on, Senator.

SENATOR GENTILE: Okay. Thank you, Madam President.

As I was saying, I believe that if a mens rea can be established in a prosecution, and a prosecutor can establish a mens rea, then I believe this verdict of

guilty but mentally ill is an appropriate verdict. And the fact that this bill does incorporate the treatment at the rear end of the sentence is certainly something that makes this bill potentially something that will enhance the criminal justice system and the way we deal with these types of cases.

Unfortunately, we didn't have that opportunity to discuss it at full length as professionals on this floor.

Having said that, I believe that the discussion that we have put forth here leads me to vote for this bill, for the reasons I have stated.

Thank you.

THE PRESIDENT: Senator, you will be recorded as voting in the negative -- in the affirmative, excuse me.

The Secretary will continue.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: Madam President, to explain my vote.

THE PRESIDENT: Go ahead, Senator Gonzalez, to explain your vote.

SENATOR GONZALEZ: I think that

the sponsor has indicated that this bill has been around for six or seven years. And being that in terms of even this procedure, I may have been out of the chamber and have been recorded otherwise to what I am voting as of today.

It's an issue that's very complex. I think that the people that deal with mental illness -- and a lot of people are in need of that mental illness assistance. Insofar here as we get crazy going on with what we're doing, I vote in the negative.

THE PRESIDENT: Senator, you will be recorded as voting in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Aye.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Aye.

THE SECRETARY: Senator Hassell-Thompson.

THE PRESIDENT: Senator, to explain your vote.

SENATOR HASSELL-THOMPSON: Thank

you, Madam Chair.

When I spoke earlier on the bill, one of the concerns that I addressed was that I did not feel that our prison system could amply handle these types of cases, because that is not the motivation nor the direction of prison.

And as I have had a very limited opportunity to review the budget, there is nothing that's being allocated in the Department of Correctional Services or Office of Mental Health that would ease my mind that by passing this that there will be a more substantial amount of money being put and made available to treat mental illness within the prison system.

So therefore I continue to vote no.

THE PRESIDENT: Senator Hassell-Thompson, you will be recorded as voting in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Hevesi.

THE PRESIDENT: Senator Hevesi, to explain your vote.

SENATOR HEVESI: Thank you, Madam President. I rise to explain my vote on this legislation.

And I have supported Senator Padavan's bill in the past, and I'm supporting it again today. I'm particularly enamored of the provisions in this legislation that do provide for treatment for individuals, in contrast to the current situation under current law, where somebody may find themselves having committed a crime as a consequence or in association with a mental illness and not have treatment be made available to them.

I probably would feel a little bit more comfortable if there had to be a determination both that the individual knew the consequences of his or her actions and the additional factor that those actions were right or wrong, could make that determination.

But regardless, I do believe that this legislation strikes a middle ground and fills a vacuum in current New York State law, where we're really going to be doing a service to individuals by requiring them to get

treatment that they otherwise would not have had provided. And I do believe that there are adequate safeguards within this legislation to prevent abuses, by extension, which would incarcerate individuals who should not be incarcerated based on their actions.

So I'm going to support this legislation. But I would again be remiss if I did not also echo some of the comments of my colleagues that the lack of debate on this particular bill -- and this is a striking example -- is really damaging, particularly to new members.

My first session here, I listened to this debate intently, really without knowing prior to having come into this chamber how I was going to vote on the bill. And every time I hear this discussion I really weigh it back and forth, because this one's a close call.

So I really feel for my new colleagues here who did not have that opportunity. And it's another reason why we should not be proceeding as we are currently proceeding.

But having said that, I think this is a good bill. I commend Senator Padavan for bringing this to the house. And I support it. I vote aye.

THE PRESIDENT: Senator Hevesi, you will be recorded as voting in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Aye.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger, excused.

Senator Kuhl.

SENATOR KUHL: Yes.

THE SECRETARY: Senator Lachman.

THE PRESIDENT: Senator Lachman, to explain your vote.

SENATOR LACHMAN: Madam Chair, I rise to explain my vote at a time of great distress. I say great distress because at this moment, the National Association of Jewish Legislators, recently constituted, is

meeting. I'm the only one who has the agenda. And there are people from all over the state, lay leaders of the Jewish community as well as elected officials, who will be there. So that is why I'm distressed.

But on the substance of the bill, I vote no this year as I voted no last year and the year before. Thank you.

THE PRESIDENT: Senator, you will be recorded, Senator Lachman, as voting in the -- it was in the negative. And you will be so recorded, sir.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Yes.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Nay.

THE SECRETARY: Senator Markowitz, excused.

Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: No.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

THE PRESIDENT: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Madam President. I have in past years voted no on this legislation, and certainly I'm going to vote no again today.

I believe that based on prior

debates that we've had, we understand that there is not necessarily a pressing need for this. The National Alliance for the Mentally Ill of New York State have said in their memo to us that there is no need to limit the insanity defense, it is rarely used, and less than 1 percent of all felony cases result in a not guilty by reason of insanity finding.

I think there are laws that we already have that cover this, and so I'm going to vote no on this bill.

THE PRESIDENT: Senator Montgomery, you will be recorded as voting in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato, excused.

Senator Oppenheimer.

SENATOR OPPENHEIMER: To explain my vote.

THE PRESIDENT: Senator Oppenheimer, to explain your vote.

SENATOR OPPENHEIMER: I have in the past supported this. And I'm going to continue to support it, because I do feel that since there will be provision within the system for treatment of the mentally ill, I feel it's a positive direction. And perhaps a direction that the prisoner would not have taken, or she taken, on their own very often.

We know people who have mental illness who object strongly to treatment and feel that it is their right to be free of the demands of society that say you should be treated because you are mentally ill. And they deny that they are mentally ill and feel that it is their prerogative, whether they want to be mentally ill or they don't want to be mentally ill.

If I could just say one thing on the process here. For the fact that this was limited in debate by the statement of the sponsor that we have discussed this in the past, I simply call to mind things that I recall from 15 years ago where we discussed

every single year, interminably, the death penalty, the Medicaid funding for abortion. And this went on year after year, at extensive debate. And there were always nuances that were original and that in a sense contributed to that debate.

And this is an issue, just by looking at the vast number of people that do not support this bill -- though I was not one of them -- but certainly something that had this kind of opposition, this bill should have had a very extensive debate. I'll be voting affirmatively.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Aye.

THE SECRETARY: Senator Paterson.

THE PRESIDENT: Senator Paterson, to explain your vote.

SENATOR PATERSON: Madam President, the unfortunate ramification of this bill is that it confuses people into

thinking that it's a remedy against excessive uses of the insanity defense, or what we term in New York State as not responsible by reason of mental disease or defect.

The fact is that this is a bill that addresses people who were already found basically guilty of the crime, who had the requisite knowledge to appreciate that their conduct was wrong, and really is a bill directed more toward the treatment rather than the actual issue that was before the jury at trial.

My recommendation to Senator Padavan is that he write some legislation enabling for there to be a hearing at the end of the trial to determine the mental fitness of the defendant, who is now the convicted party, as we have in the very beginning in the trial. And that if that is the case, then certain mental health procedures supervised by the State Department of Corrections and the Office of Mental Health be triggered at that particular time.

I think that would solve the problem rather than to create the confusion

that I think this bill allows by making us think that it really has anything to do with the insanity defense.

I vote no on the merits of the bill.

THE PRESIDENT: Senator, you will be recorded as voting in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Rath.

SENATOR RATH: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: Madam President, to explain my vote.

THE PRESIDENT: Senator Sampson, to explain your vote.

SENATOR SAMPSON: Well, there's three components to this bill that have troubled me to some extent, because of the lack of ability to question the sponsor, such as how do other states deal with this statute and how does it work. And also the DA's willingness to work with the judge and the

defense attorneys to structure such a defense.

But third, most of all, the resources. We talk about dealing these individuals once they have pled guilty. But the point is, where are these resources going to come from at this point in time?

So those questions have not been answered. For that reason, I vote in the negative.

THE PRESIDENT: Senator, you will be so recorded as voting in the negative.

The Secretary will continue.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Schneiderman.

THE PRESIDENT: Senator Schneiderman, to explain your vote.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR SCHNEIDERMAN: I agree with the statements of my colleagues. This is an extremely difficult area of law. I have serious concerns about this legislation,

although I do think it's an effort to address something that is a problem in our system.

Unfortunately, I think this bill is subject to the rule that hard cases make bad law. And there are some very highly publicized instances where many people perceive that the current affirmative defense on our law books in New York State does not really work properly.

I would urge, though, that less than one-tenth of 1 percent of our cases involve any effort to invoke such an affirmative defense. It is not something that I believe to be a pressing problem. I think the system as it exists now is not improved by this bill.

In particular, I'm very concerned about the fact that this is not limited to felonies. I think that the highly publicized cases are not going to really be where this is going to have an impact. It's going to be in lesser offenses. And I think this opens up a whole Pandora's box which to my mind has not been satisfactorily addressed in the debate, the truncated debate.

I think that the question of what the fiscal impact of this will be, how it's going to affect the Office of Mental Health, how it's going to affect our corrections system has not addressed adequately. And I think that we really need to deal with these issues before we move forward with such a piece of legislation.

There's a fundamental notion in the law that you're either culpable and or you're not culpable. And if you're not culpable and you're culpable, which seems to be what this bill says, I think the law is tying itself in a knot.

So I will vote no. I do think, though, that it's important for us to try and do something about this area, and I welcome further unfettered debate about this once we return to a state of improved civility in this house.

THE PRESIDENT: Senator Schneiderman, you will be recorded as voting in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator A. Smith.

SENATOR ADA SMITH: Madam President, to explain my vote.

THE PRESIDENT: To explain your vote, Senator Smith.

SENATOR ADA SMITH: Thank you.

As a longstanding advocate of the mentally ill, I'm greatly distressed that I have not been allotted the time necessary to get the answers to some of my questions that may allay the fears that I have about what this bill would do to the mentally ill.

In the past we've had a lengthy debate and we've had the opportunity to air what we felt were problems with the bill. And I believe that it is important, especially for the new members, to be able to hear the concerns of others. And from those concerns and the ideas of others, we all learn, and we often change our mind.

But since I have not been allotted

that opportunity, I continue to vote in the negative.

THE PRESIDENT: Senator Smith, you will be so recorded as voting in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator M. Smith.

SENATOR MALCOLM SMITH: Madam President, to explain my vote.

THE PRESIDENT: You may proceed, Senator Smith, to explain your vote.

SENATOR MALCOLM SMITH: The bill at face value has some merit. And even as I was reviewing it initially, I had some -- or did not have some reservations as to whether or not I shouldn't support this bill.

However, there are a few questions that I do still have, obviously relating to the fiscal implication, clearly whether or not in other states this statute, how effective it is. Germane or not, there was some questions I had with regard to whether or not the mental competency should be done prior to or after, as my colleague Senator Paterson raised, or

whether or not the 730 exam process, as some of the attorneys in the room understand, is germane to this particular bill. And I wanted to understand that. And in addition to the fact that I had some questions around treatment.

However, I also didn't have the opportunity to raise the questions, whether they were germane or not, or whether -- or even to find out whether or not my questions had any relevance to it. And because of that, while I initially thought the bill had some merit and I was going to vote in the affirmative, I now have no other choice but to vote in the negative.

THE PRESIDENT: Senator Smith, you will be recorded as voting in the negative.

The Secretary will continue.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: To explain my vote.

THE PRESIDENT: Senator Stachowski, to explain your vote, sir.

SENATOR STACHOWSKI: I previously supported this bill. And mostly because after listening to the debate, it seemed to make sense, seemed to be a rational alternative.

But on reading the memos, there were some questions that arose now that had me a little concerned. And then seeing some of the practicing attorneys that may deal with cases like this opposing this makes me wonder, maybe it's not as good a bill as I thought it was.

And I was kind of sorry to see the fact that the sponsor either didn't feel like or didn't deem it necessary to engage in debate with people that had questions for him this year. And I was a little sad to see that. And I think that maybe I could have continued to support the bill had that exchange freely taken place on the floor.

I've been here quite a while now, and there's tons and tons of bills that I've heard over and over, and it never seems to bother me, because there's always either some

new aspect or some new member -- because somebody left and somebody took their place - that maybe hadn't heard the bill.

And I know in our case we have a few new members this year, and it's really not fair to them at all. And I'm sorry that people carrying legislation don't deem it necessary to at least talk about it, at least to the new members if to nobody else. And it's kind of a sad day here when that attitude takes place. But you can do that, because you can.

And I vote no.

THE PRESIDENT: Senator, you will be so recorded as voting in the negative.

The Secretary will continue.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

THE PRESIDENT: Senator, to explain your vote.

SENATOR STAVISKY: To explain my vote, Madam President.

One of the problems being at the end of the alphabet is that much has been said

that I wanted to say. I'm not going to change my name. However -- what can I change it to? Aardvark?

I am not an attorney. I'm a high school teacher by training. Senator Gentile used a phrase here that I didn't have a clue what he was talking about. Other people, other members of the Senate have used phrases where I would have liked the opportunity to get up and ask what is meant. There are a number of us who are not attorneys, who do not understand some of the technical language. And this is the opportunity for us to ask the questions.

For example, I do not, as well as I read the bill, understand what the definition of mentally ill is. It's not the situation where, you know, if you see it you know what it is. I don't think that's the case here.

This -- there are aspects of this bill which should have been debated far more thoroughly than they were, and they were not. For example, as was mentioned, they talk about crimes. It does not limit the crime to felony crimes. That is an aspect that troubles me.

However, there were parts of the bill that I thought were very good, particularly the aspect of treatment. And I would have liked to have found out what provisions in the mental hygiene budget are going to be included for the treatment of these mentally ill people should this legislation pass.

However, I voted against this bill last year after listening to a full and thorough debate. And unfortunately, we were not afforded the same opportunity this year. But I vote no.

THE PRESIDENT: Senator, you will be so recorded as voting in the negative.

The Secretary will continue.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

THE PRESIDENT: Senator Volker, to explain your vote.

SENATOR VOLKER: Madam President, to explain my vote, quickly.

As Senator Padavan, I believe, said -- but I don't know if he realizes this is, I believe, the oldest bill still left in my Codes Committee. I was just looking at the history of it. It was first introduced in 1983. Well, he just tells me '78, so he's probably -- but I'm looking at my committee. Of course, I've only been chairman since 1988, so I suppose -- but at any rate, this is one of the most debated bills that we have in this house.

I have consistently felt, and in fact, I was -- hard to believe I was with Senator Padavan when he drafted this bill. And I believe it had to do with the Son of Sam and some things that happened about that time.

As the years have gone on, it seems to me, given what's happened, I think there's even more reason to do this. But I think the mental health advocates knee-jerk react against this sort of thing, and I guess I understand.

I think my main point, though, is that this is one of the bills that has probably been debated more in this house than

just about any bill left in my committee. It's a bill that's been around for a long, long time.

I vote in the affirmative.

THE PRESIDENT: Senator Volker, you'll be recorded as voting in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 37. Nays, 20.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 112, by Senator Libous, Senate Print 1990, an act to amend the Penal Law, in relation to authorizing an additional term of imprisonment.

SENATOR CONNOR: Explanation.

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

SENATOR LIBOUS: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR LIBOUS: What this legislation would do is create stiffer penalties for possessing a gun while selling drugs if the individual is convicted of a felony, and it would also prohibit gun ownership by that individual who is convicted of a felony in the future.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. Would Senator Libous -

THE PRESIDENT: Senator Libous, will you yield?

SENATOR MONTGOMERY: -- agree to answer -

SENATOR LIBOUS: Absolutely, Madam President.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Okay, thank you.

Senator Libous, it is my

understanding that it is already a crime - when you use a weapon in committing any crime, that there are already laws on the books that require a certain level of charge against a person who commits crime with a weapon, Madam Chair.

SENATOR LIBOUS: That's correct, Madam President. Senator Montgomery is correct.

SENATOR MONTGOMERY: Okay, thank you. Madam Chair, just one other question.

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

SENATOR LIBOUS: Yes, I certainly do.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Okay. So in that case, since there's already a specified sentencing on the books, this bill would simply add an additional 10 years for the same crime. So this is really not -- you're not - this is not a new crime that you're talking about, this is the same crime, it already has a level of penalty, and this just adds 10 more

years.

SENATOR LIBOUS: Madam President, Senator Montgomery is correct that it would add an additional -- up to an additional 10 years if convicted of a felony, that's correct.

SENATOR MONTGOMERY: That's - thank you, Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Yes, Madam President. If -- rather than perhaps ask the Senator to yield, maybe -- since he's only spoken once on it -- I have some concerns, if I'd just list them, and he if he wishes could address them.

THE PRESIDENT: Senator, do you wish to speak on the bill?

SENATOR CONNOR: Yes, I'd like to speak on the bill.

THE PRESIDENT: Go ahead, Senator.

SENATOR CONNOR: But as I say, Madam President, I look forward to Senator Libous's comments on this, because -- I have a concern because we know our great Governor is

proposing changes in the drug sentencing laws. Long overdue. I applaud our great Majority Leader for last year indicating his willingness to consider those issues.

And they of course deal with the length of sentences that people who are in possession of large amounts of controlled substances -- and I guess there's a presumption, if you have a large amount, that you're going to sell it -- or get caught in an actual sale are, depending on the weights of various substances, subjected to -- under the so-called Rockefeller Laws, to 15 to life.

And I think we've all heard the injustices of that, where, you know, the 17-year-old girlfriend in the car didn't know the drugs were there. Nonetheless, she's deemed to be in possession. And someone with no prior history, no prior record, in fact very little connection other than a technical, legal one to the drug possession, ends up with 15 to life.

We've had members of our judiciary, from the top down to the county court level, who handle these cases in effect saying: I

have to impose this unjust sentence in this case. So I hope we're going to deal with that.

Now, I'm a little concerned with the kind of piecemeal approach. And also we are all concerned about drug dealers who are also armed to the teeth. That's a concern. But as I read this bill, there's a couple of -- I guess my number-one rhetorical question, which I hope someone will address, is isn't it already federal law that if you're convicted of a drug felony or whatever that you can't possess a rifle or shotgun or buy it? This bill, therefore, would at least seem redundant unless you read further.

And it seems to address misdemeanors. And I'm concerned about who exactly is this bill designed to get. If it's designed to take someone who gets 15 to life under the Rockefeller Drug Laws and add 10 years on -- and is also in possession of a machine gun, and gets whatever you can get for that. I defer to Senator Volker on that. I'm sure with possession of a machine gun you can probably get five to 10 years for that, and

then add 10 years on top of that because they also had the drugs.

I mean, I don't know -- how does this make sense? Somebody gets 15 to life, concurrent with an eight-year possession of a machine-gun charge, and now you're adding 10 years onto it, do you add the 10 years onto the life? I think once somebody gets life, they should do the best they can to serve it. I don't know that we ought to add time on top of it.

And, you know, I -- that wasn't original. Once when a judge I knew sentenced someone to 333 years and the person said, "How am I going to do that?" the judge said, "Just do the best you can."

So, I mean, I wish the sponsor would address these concerns. What's the niche we're trying to get here that isn't already covered by all these other laws that have pretty stiff penalties?

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. This act shall take -

THE PRESIDENT: Senator Schneiderman, excuse me.

SENATOR SCHNEIDERMAN: Thank you, Madam President. If the sponsor would yield for a -- the svelte sponsor would yield for a question or two.

THE PRESIDENT: Senator Libous, do you yield?

SENATOR LIBOUS: Sure.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: I must say I find -- I respect the comments of my colleagues, but I do find the notion that someone who commits a felony should not be allowed to possess a firearm is an attractive idea to me, and I think that it's something that we should explore.

My first question is, is this - this is not -- do I understand this is not limited to whether it's an illegal possession of a firearm or not, that if you are legally possessing a firearm and you're convicted of dealing drugs you would still suffer this additional penalty?

SENATOR LIBOUS: That's correct, Madam President.

SENATOR SCHNEIDERMAN: The second question is, is there any other prohibition currently in the law comparable to this? If you're convicted of a particular crime, any other types of crimes, do we revoke your right to possess a firearm?

SENATOR LIBOUS: You know, Madam President, I'm not sure if there is. But this is what the intent of this legislation would do.

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

I think this is a terrific idea in the abstract. I think that we -- in fact, I would urge Senator Libous that that bill doesn't go far enough. I think that we should -- anyone who is convicted of any felony should not be eligible to possess a firearm.

I think, though, that the 10 years is awfully stiff. And I do have concerns about the people who could be swept up in this, people who are in possession and sale of

minor amounts of marijuana, the whole issue that is raised by the Rockefeller Drug Laws.

So I think that the intent is terrific. I would urge that we consider this on a broader basis. I know this would be supported by people in the -

THE PRESIDENT: Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Madam President. I'm wondering if the Senator would yield for a question.

SENATOR SCHNEIDERMAN: Yes, I would yield.

THE PRESIDENT: Senator Schneerman yields for a question.

SENATOR SCHNEIDERMAN: Senator Schneiderman too.

THE PRESIDENT: Schneiderman, excuse me.

Senator Duane, you may proceed with a question.

SENATOR DUANE: Thank you, Madam President, the sponsor, whatever the heck his name is.

I'm wondering, Senator, whether you

have taken a position on the reform of the Rockefeller Drug Laws, since you raised that issue in your comments.

THE PRESIDENT: Senator Duane, I'm going to clarify. The Senator is Senator Libous. And please keep your comments relevant to the bill at hand. Thank you, Senator.

Go ahead, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, thank you. I am -- I know, but she just was cautioning you not to make comments about -

Civility. Civility.

THE PRESIDENT: Thank you.

SENATOR SCHNEIDERMAN: Thank you.

THE PRESIDENT: You may definitely proceed, Senator.

(Laughter.)

SENATOR SCHNEIDERMAN: My position is that the Rockefeller Drug Laws have been in need of reform for many, many years. It's a wholly irrational system. It is a disgrace, quite frankly, that we've not been able to do anything on this, and I think reflects more of a lack of political will than

any conceivable argument on the merits relating to the criminal justice system.

I was encouraged last year when Senator Bruno said he would consider it. Somehow or other the other house chose not to follow his lead, which they do at their peril. This year I'm encouraged that the Governor, perhaps attempting to rectify what some of us perceive as his inadequacies in other areas, is trying to take the issue on. I hope that they will be reformed.

And I would like to see this bill -- and this was really my point earlier -- put in the context of a reform of the Rockefeller Drug Laws. I think that the concept of additional time for possession of a firearm is a great concept. I think that we -- last year in this house we took a tremendous step forward on gun safety and gun control legislation. I commend Senator Libous for staking out this new ground. I think that he's welcome -- he would be feted in my district, or even in Senator Duane's district, for such an aggressive approach to guns. But I do think that it has to be done in the

context of a reform of the Rockefeller Drug Laws, which I do favor.

SENATOR DUANE: Thank you. Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR SCHNEIDERMAN: I'll yield for just another couple of questions. I don't want to get carried away here.

THE PRESIDENT: Thank you, Senator Schneiderman.

Senator Duane, in the context of not getting carried away, you may ask another question.

SENATOR DUANE: Not that it makes it any better, but the "heck" I referred to actually referred to Senator Schneiderman - so I apologize for that -- and not to anyone -

SENATOR SCHNEIDERMAN: Well, I appreciate your apology, and I accept that. Thank you, Senator Duane.

SENATOR DUANE: Thank you.

Now, I know that you're aware that

in addition to the problem of the Rockefeller Drug Laws we also have the issue of determinate sentences for second felony convictions. And I'm wondering if you've considered that as you considered this legislation before us today.

SENATOR SCHNEIDERMAN: Yes. Actually, this points up another aspect of this very difficult issue.

I believe, through the historic trend of being perceived as being soft on crime, we have moved towards determinate sentencing at a very aggressive pace in New York State over the last twenty years. The issue of determinate sentencing is something that will be debated as long as we have trials, juries, and a criminal justice system. I think I wrote a lengthy if not brilliant paper when I was in law school on the issue of determinate sentencing and what should be done about it.

I think that the problem of determinate sentencing for second felonies and the efforts in fact to impose determinate sentences for parole violations, for first

felonies, relates very, very strongly to this issue. When you add a term of up to 10 years, which is -- I note that is not a determinate sentence. That bestows great discretion on the trial court -- the problem is that that's lapped on top of other determinate sentences. That really suggests that in many instances this would provide for a punishment wholly out of proportion to the crime.

SENATOR DUANE: Thank you. Madam President, begging the Senator's indulgence for yet another question, would he yield?

THE PRESIDENT: Senator, do you yield?

SENATOR SCHNEIDERMAN: Yes, I will yield for another question.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you very much.

I'm sure the Senator is aware that one of the things that we've been discussing is the whole issue of parole. And I'm wondering if he believes, in light of what the Governor discussed in regard to eliminating

parole, whether or not he believes that parole should be an important part of someone who is convicted under this law, should it go into effect, if parole in fact would be there for them when they are about to be released and whether or not he believes that's a good thing.

SENATOR SCHNEIDERMAN: Well, I think that that -- again, that does point up the difficulty of adding a 10-year sentence when we have less and less flexibility in our criminal justice system.

I think that from a law enforcement point of view, the elimination of parole is a very bad idea. And I say this as someone who worked for two years as a deputy sheriff in a prison. I do not want to have to work in a prison system where parole is not available for many of the people who are residents of that system. I think parole is a tremendously powerful vehicle for good in the criminal justice system, and a vehicle for law enforcement. I can't emphasize that strongly enough.

If we don't have parole, then once

again this sort of an addition of 10 years - which in a more flexible system of less determinate sentencing, more options for judges, would not perhaps be so offensive -- I think that makes it very difficult to vote for such a measure.

SENATOR DUANE: Thank you. Madam President, if the Senator would continue to yield.

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

SENATOR SCHNEIDERMAN: Yes, Madam President, I will yield.

THE PRESIDENT: Senator Duane, you may continue.

SENATOR DUANE: Thank you, Madam President.

I know that the Senator has heard about the concerns that some of us share about the overuse of the SHUs, the special housing units, in the state correctional system. And in fact, he's also probably aware of the new Five Points facility, which is in fact dedicated only to special housing units.

And I'm wondering whether or not,

under the scenario of this bill being passed, if he could see a time when people who are incarcerated under this law could in fact be sentenced to being in an SHU, and also how he feels about people being permanently or for great lengths of time being put in SHUs without any administrative review of their sentences to the SHUs.

SENATOR SCHNEIDERMAN: Well, in this case -- and I think that as the day wears on, we may be able to relate more closely to those in SHUs -- I don't really think that that issue in and of itself relates to my opposition to this bill.

I think that the concern about the overuse of SHUs is a part of the whole process of trying to appear tough on crime by essentially closing doors down, limiting flexibility, limiting treatment options, limiting our ability to reach in -- and this is something that I've believed in very strongly since I worked in the prison. There are at any given time a significant portion of the prison population who would like to get out of their cycle of crime and violence if we

make that available. Not a majority. But if it's even 15 percent, we should not take that away. That's an important thing to do. And SHUs are the worst example of removing those possibilities from the system.

I don't think that that issue per se relates to my opposition to this bill, since it's not clear where anyone would go. But I think the -- unlike the points raised earlier, because that had to do with the length of sentences, access to parole, and I think those do relate very, very closely to the reasons for opposition to this well-intentioned but somewhat flawed legislation.

I think the problem of SHUs is something, though, that we should certainly address. And I hope that -- I know that you and Senator Montgomery, among others, have participated in hearings on this and related issues, and I hope that we will be able to continue that effort.

SENATOR DUANE: Thank you, Senator. It's always a pleasure to debate on the floor someone that actually has the

courage behind his convictions and is willing to discuss how he feels. Thank you, Senator.

SENATOR SCHNEIDERMAN: Thank you, Senator.

I'm speaking on the bill, if that's okay.

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

SENATOR MONTGOMERY: Madam President.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Would Senator Schneiderman yield for a question from me?

THE PRESIDENT: Senator Schneiderman, will you yield?

SENATOR SCHNEIDERMAN: I would yield to a question from Senator Montgomery.

THE PRESIDENT: You may proceed, Senator Montgomery, with a question.

SENATOR MONTGOMERY: Yes. Senator Schneiderman, I respectfully disagree with you or take issue with you. Are you implying that this chamber is in a lockdown?

Are we in lockdown? Madam President, are we locked down, as an, i.e., SHU? You said that we were somehow in SHU -

SENATOR SCHNEIDERMAN: No, no, no. If I may clarify, Madam President. No, I was just -

SENATOR MONTGOMERY: Is this a lockdown for legislators, for Senators, in this chamber?

SENATOR SCHNEIDERMAN: Well, I guess that -

SENATOR LIBOUS: Madam President.

SENATOR MONTGOMERY: Because I resent -- I do not want to be considered -

SENATOR LIBOUS: Madam President, point of order.

THE PRESIDENT: Senator Libous.

SENATOR MONTGOMERY: -- as an inmate in lockdown.

THE PRESIDENT: Senator Montgomery, Senator Libous has the floor.

Senator Libous.

SENATOR LIBOUS: Madam President, point of order. This discussion is not germane to the bill. As a matter of fact, I

don't even recognize any of the discussion on the floor that pertains to this piece of legislation.

SENATOR SCHNEIDERMAN: Madam President, I can attempt to respond.

No, this is -- I don't think we're in any way, shape or form in a lockdown. I think that -- but, you know, I suppose there is an analogy that could be made.

SENATOR LIBOUS: Point of order, Madam President.

THE PRESIDENT: Senator Libous, your point was well taken.

Senator Libous, do you have another point you'd like to make?

SENATOR LIBOUS: Once again, Madam President, I don't believe that the discussion or the debate on the floor between the two Senators is germane to the subject that should be on the floor at this time.

THE PRESIDENT: Thank you, Senator. As President, I was about to remind Senator Schneiderman to keep your comments germane to the bill at hand.

SENATOR SCHNEIDERMAN: Certainly.

Thank you, Madam President. I'm just trying to respond to questions.

I think that finally the other point that I want to make is that other states have dealt more broadly with the issue of the consequences of possession of a firearm when committing a felony. And I think that as we move forward in this bill we've seen before and perhaps will see again, I would urge the sponsor to take a look at the possibility of making this a broader piece of legislation.

Because really, I don't know why you would say that if you're selling drugs and you're in possession of a firearm, you get an additional penalty, but if you stab someone in the back and you're in possession of a firearm, you wouldn't. I mean, there are crimes where you rob a bank and you're in possession of a firearm as opposed to not being in possession of a firearm.

Now, there are certain other crimes that have within the definition of the crime provisions related to whether you're armed or not, but many do not. And I don't really see any reason why we should restrict this to drug

possession or drug sale. I think it's something that has far broader application.

I'm going to vote no, but I think this is an idea that we have to pursue, and I look forward to us pursuing it together.

Thank you.

THE PRESIDENT: Read the last section.

Senator Brown.

SENATOR BROWN: Madam President, if the sponsor would yield for a question.

THE PRESIDENT: Senator Libous, do you yield?

SENATOR LIBOUS: Yes, Madam President, I yield.

THE PRESIDENT: You may proceed with a question, Senator Brown.

SENATOR BROWN: Thank you, Madam President.

I am concerned, as I'm sure all of us are concerned, with the effects that drug dealing have on our society, and further concerned about the violent elements of drug dealing. Of course, if someone is drug dealing and using a weapon, to me it makes the

situation even worse and potentially more dangerous to society.

Senator Connor, when he rose earlier, Senator Libous, asked the question about does this provide a redundancy in the law. And I didn't hear an answer to that. And I'm just concerned about your response to that question.

SENATOR LIBOUS: Madam President, through you.

Senator, I don't believe it does. And certainly this chamber takes up a number of pieces of legislation over the course of a legislative session. And as far as making legislation tougher, that's something we do all the time. So I don't see it as having an effect as Senator Connor felt it did.

SENATOR BROWN: Madam President, through you, if the sponsor would yield for just two more questions.

THE PRESIDENT: Senator Libous, do you yield?

SENATOR LIBOUS: I'd be happy to, Madam President. Certainly.

THE PRESIDENT: You may proceed,

Senator Brown, with two questions.

SENATOR BROWN: So presently, then -- and I heard Senator Libous's answer to my original question. But presently if a person was in the circumstances where they're dealing drugs and they have a weapon, there are no laws on the books -

SENATOR DUANE: Madam President, please, I'm having trouble hearing. There's a telephone conversation happening here at the dais. And I can't hear from this corner because of the other phone conversation. It's happening right here, Madam President. Is that permitted?

THE PRESIDENT: Yes, it is, Senator. I'm not having any trouble hearing. But if you are, I will gavel and remind everyone to keep their voices up.

SENATOR DUANE: Madam President, are the phones open to all Senators?

THE PRESIDENT: Senator Brown, you may proceed.

SENATOR BROWN: Yes. So there are no laws presently on the books that would provide the same kind of penalty that this law

provides?

SENATOR LIBOUS: I don't believe so, Senator.

SENATOR BROWN: And my final question is, is this piece of legislation designed to be a deterrent to people who are engaging in the dealing of drugs from carrying weapons at the same time?

SENATOR LIBOUS: Senator, I think it does a couple of things. It makes the penalties much more severe for those who are possessing a weapon and committing a drug felony, as you know from the way the bill is stated. It also falls in line with, I think, a number of pieces of legislation that have crossed this body last year that dealt with tougher penalties in taking guns out of the hands of those criminals who should not have those weapons.

And I think this piece of legislation really complements what many members in this chamber voted for last year.

SENATOR BROWN: Thank you.

SENATOR HEVESI: Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thanks. Madam President, would the sponsor yield?

THE PRESIDENT: Senator Libous, will you yield?

SENATOR LIBOUS: I'd be more than happy to, Madam President.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. I was wondering if the sponsor would indicate to the house whether or not there is a requirement in this legislation that the preclusion from possessing a rifle or a firearm was somehow enforced other than in fact.

SENATOR LIBOUS: Madam President, could we hear that question one more time? There was some distraction.

THE PRESIDENT: Senator Hevesi, could you -- we're having difficulty hearing.

Please remind the members to keep your conversation limited in chambers.

Go ahead, Senator Hevesi.

SENATOR HEVESI: If I may, let me elaborate, because my question was really not

clear to the sponsor. And if you'll indulge me.

SENATOR LIBOUS: Do you mind if I sit until you're finished?

SENATOR HEVESI: Not at all.

A few years ago, before I was elected to the Senate, while I was working for another State Senator, I did some research into this issue and found that if you go to buy a rifle or a shotgun in New York State, the only requirement that presented itself from purchasing that weapon was to fill out a form from the Alcohol, Tobacco and Firearms Bureau, Form 4473, where you as the purchaser certify that you were not a fugitive from justice or mentally incompetent or had, you know, been convicted of felonies, what have you. And nobody ever checked those forms, and the owner of the gun store was in no way required to even report that information to ATF unless the store closed down.

So my question to you is, Senator Libous -- and I think this is a good bill - that if we go ahead and do this, is there any component in the law right now, or in this

bill -- and I don't think it's in this bill - that would require someone who is selling a rifle or a shotgun to actually check and see whether or not the individual who is seeking to purchase the weapon is precluded from doing it by this bill that we're about to pass today?

SENATOR SCHNEIDERMAN: Good question.

SENATOR LIBOUS: Yeah, this would require the court to deem someone unsuitable to possess. And that under federal law, counsel tells me that there is a background check to determine whether or not someone is qualified. So the court would issue this. And it would be issued no different than under the legislation that was passed last year in this house.

SENATOR HEVESI: Madam President, would the sponsor continue to yield.

SENATOR LIBOUS: Sure.

THE PRESIDENT: Senator Libous, you do yield?

You may proceed, Senator Hevesi.

SENATOR HEVESI: Just for

clarification, your understanding is that under New York State law, if I go to buy a rifle or a shotgun, a background check is mandated?

SENATOR LIBOUS: A background check is mandated by federal law, Madam President. And if the dealer does not do it, he is violating New York State law. We enacted that last year.

SENATOR HEVESI: Would the sponsor continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR LIBOUS: I'd be happy to.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Senator Libous, I'm unfamiliar with this. If this was a result of the gun legislation that we passed lass year, my understanding was that that legislation did not require any additional background checks or what have you in New York State, it simply made the possession of certain firearms illegal under state law, mirroring the federal legislation in order to

enable state prosecutors to have an additional tool in their arsenal to pursue individuals who are guilty of these crimes.

So just to clarify, is it the case that under the legislation we passed last year that now if an individual goes to purchase a riffle or a shotgun, they are required under New York State law to have a background check performed on them?

SENATOR LIBOUS: Once again, Senator, the dealer is required to do the check under federal law. If that dealer does not do it, it is then in violation of the law that we passed last year.

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

THE PRESIDENT: Go ahead, Senator, on the bill.

SENATOR HEVESI: Thank you. And I thank Senator Libous for bringing this legislation to us. I've supported this legislation the past two sessions.

I would simply suggest that this legislation could be a bit tighter by recognizing the fact that New York State law

should also require a background check. And I'll take Senator Libous's comments at face value, since he has always proven to be knowledgeable and trustworthy, particularly on the floor.

This is a good piece of legislation, particularly in light of the fact that it recognizes, not just with the rifle and shotgun component, but that those who are drug dealers who ply their trade utilizing weaponry should be subject to much more harsh penalties. I'm not sure why these two things are juxtaposed within the same bill, but that doesn't in any way prevent me from supporting it.

So I commend Senator Libous on bringing this legislation. I think it's well intended, and I hope the Assembly passes it and it becomes law. Thank you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, will the sponsor yield just to one question? I want to clarify one thing Senator Hevesi said.

THE PRESIDENT: Senator Libous, do you yield?

SENATOR LIBOUS: Yes.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Am I correct in my understanding that under revised law, because of the law we changed last year, there's now a certification requirement for rifles and shotguns in this state?

SENATOR LIBOUS: Madam President -- and again, Senator Dollinger, it is under the federal, federal law that the dealer -

SENATOR DOLLINGER: But through you, Madam President, I just want to clarify the question. Does that rule apply to purchases of rifle and shotguns? Which in our state, in the past, we've had no prohibition against. My understanding is that that applied to purchase of rifles and shotguns at gun shows, but not to purchase at retail. If you went into Wal-Mart or to K-Mart or to Sears, you could buy a shotgun without a certification.

SENATOR LIBOUS: Madam President, counsel advises me again that licensed dealers must provide a background check before someone purchases a shotgun or a rifle.

SENATOR DOLLINGER: Through you, Madam President, just one other clarification question, if Senator Libous will continue to yield.

SENATOR LIBOUS: I'd be happy to. I'm sorry, Madam President, I'm only sorry I didn't -

SENATOR DOLLINGER: And I appreciate that. We're doing new law. I've voted for this in the past. I'm going to vote for this in the future, because I think the provision that Senator Hevesi referred to about increasing penalties for drug dealers who use weapons is a good idea.

I'm simply trying to figure out, this says that the court, at the time of sentencing for a violation or a misdemeanor, or if the charge is a felony and the plea is down to a misdemeanor or a violation, then the court will issue a certification that says you're not fit to possess a rifle or a

shotgun.

My question is, how does that work to intercept a new purchase of a weapon? Would that be filed in such a way as to show up on the FBI background search when someone applies to buy a rifle or shotgun? Because my understanding, Madam President, is that I could walk into K-Mart and buy a rifle or a shotgun without anyone checking anything. Still.

SENATOR LIBOUS: I'm advised that the FBI would pick up the DCJS records and the court would issue that and it would be in the record.

SENATOR DOLLINGER: Madam President, again, just briefly on the bill.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: I appreciate Senator Libous bringing this to the floor. I voted for this in the past. And I was -- I also appreciate his educating me about the requirement for a preclearance or a background check in the event that someone buys a rifle or a shotgun.

With all due respect to everyone in this chamber, I was a strong advocate for the bills that we passed last year to change the law, ban assault weapons and require background checks. But it was never my understanding that it would apply in an instance in which someone goes in to buy a rifle or a shotgun from K-Mart, Wal-Mart, or any other retail distributor.

My understanding was that the changes we made last year were designed to affect gun shows, which have traditionally been a more unregulated way of buying and selling weapons. And I was further intrigued by the notion that there actually will be some point at which someone will review the DCJS records before they buy a rifle or a shotgun. Those are somewhat new to me. I'm not so sure whether I understood that when we passed the law last year.

But this bill I'm going to vote in favor of because the provision that actually deals with the problems of guns being used by drug dealers, I agree with the increased penalties that Senator Libous proposes.

I'll be voting aye, Madam President.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Yes, Madam President. Would the sponsor yield for, I believe, only one question.

THE PRESIDENT: Senator Libous -

SENATOR LIBOUS: Yes.

THE PRESIDENT: You may proceed, Senator Breslin.

SENATOR BRESLIN: Is it true that the penalty for the possession of a firearm would be the same whether the firearm is legally registered or not?

SENATOR LIBOUS: That's correct.

SENATOR BRESLIN: And further - Madam President, would the sponsor yield to one additional question.

THE PRESIDENT: Senator Libous, will you yield?

SENATOR LIBOUS: Sure.

THE PRESIDENT: You may proceed, Senator Breslin.

SENATOR BRESLIN: Would there be any flexibility with the sentencing judge,

under the statute, to treat someone who is licensed versus someone who is unlicensed?

SENATOR LIBOUS: It's up to the discretion of the judge, Madam President.

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

I commend Senator Libous for this portion of the bill because it (a) takes someone who illegally possesses a firearm in the commission of a drug felony and harshens the penalty. But it also creates a burden on those individuals who are properly licensed to make sure they refrain from criminal behavior, in this instance as it relates to drugs.

It would seem to me, as has been mentioned prior, that we should take this kind of legislation and spread it across to include all illegalities, all illegalities performed or done by those people with weapons, either licensed or unlicensed.

And accordingly, I'll sponsor this bill and I encourage the sponsor to expand it in the future.

Thank you, Madam President.

SENATOR CONNOR: Slow roll call,

please, Madam President.

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

THE PRESIDENT: Five members are standing.

The Secretary will call the slow roll.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Balboni, excused.

Senator Bonacic.

SENATOR BONACIC: Yes.

THE SECRETARY: Senator Breslin.

THE PRESIDENT: Senator Breslin, to explain your vote.

SENATOR BRESLIN: On the bill.

This bill does much to strength the law as relates to gun possession, legal or illegal, when there are drug transactions involved.

In the future, if we continue to penalize those people who possess guns, either legally or illegally, through all forms of

criminal behavior, it will do much to make this state a safer place.

Thank you, Madam President. I vote aye.

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

The Secretary will continue.

THE SECRETARY: Senator Brown.

SENATOR BROWN: Madam President, to explain my vote.

I'm also going to be voting yes to this piece of legislation. And I have been deeply concerned previously, as a city council member, seeing the effects that people who deal drugs have on our communities. And certainly anything that can be done, I think, to deter violent drug dealers from using weapons in the commission of crimes is an important piece of legislation.

I hope that we will be making -- I hope this will pass, I hope we will communicate that this law is on the books. And I hope we will communicate it throughout the state of New York so people that would be engaged in the activity of dealing drugs and

who would think to use weapons during the activity of dealing drugs will think twice about that.

And so I think that this can have a powerful deterrent effect, and I commend Senator Libous for putting forth this piece of legislation.

THE PRESIDENT: The Secretary will continue to call the roll.

THE SECRETARY: Senator Bruno.

SENATOR BRUNO: Aye.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: Madam President, to -

THE PRESIDENT: Senator Connor, to explain your vote, sir.

SENATOR CONNOR: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR CONNOR: I still -- it's not clear to me how this fits into the overall scheme of sentencing. And I do wish I had the benefit of one of those charts we sometimes make up.

But I'm going to give my good

friend, Madam President, and colleague Senator Libous the benefit of the doubt. I'm sure this bill does fit into a scheme. I certainly know what the intent is here, and the intent is a good one. And that is to have enhanced penalties on drug dealers who are apprehended with weapons. And I certainly think just, at the minimum, protecting our law enforcement officers requires that we support this.

Again, I have a concern. I don't know quite how it fits into everything else. But I'll take the shorthand version, Madam President. An extra 10 years for a drug dealer with a TEC-9 sounds good to me. And I'm sure it sounds good to all the constituents I represent.

So that said, I will put aside my concerns and vote in favor of the bill.

Thank you, Madam President.

THE PRESIDENT: Senator Connor, you will be record as voting in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator

DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: To explain my vote, Madam President.

I know it was Senator Volker a couple of years ago who said that sometimes when we take a real close look at these bills, we learn a lot -- some of it may be beneficial, some of it may be detrimental - about how we're going to vote. But we certainly come away much better informed.

And this bill has been, through Senator Libous's good graces, an education for me. As I explained in the debate on the bill, I wasn't aware that we had changed the rules with respect to when a certification would be applied. This bill, which I think has been around for a couple of years now, has new meaning because of what we did last year. I think that's a good thing.

There is one other piece of the bill that raises some question in my mind that no doubt if this becomes law will be the

subject of intense litigation, and that will be the question of whether we can create a judicial presumption or a criminal presumption that if you have the weapon in your possession and you have ammunition that would be used in the weapon in your possession, whether you can combine those two things to come up with the notion that it is a loaded rifle even though it doesn't actually have the bullets in it or the ammunition in it at the time.

But all of those things, I think, are important parts of this bill. I agree with the intent of it. I'm going to vote in favor of it, as I have done in the past. And it will be fascinating to see (a) whether the Assembly actually moves this bill and whether the certification concept with respect to shotguns and rifles actually works and proves to be a deterrent to crime.

I vote aye.

THE PRESIDENT: Senator Dollinger, you will be recorded as voting in the affirmative on this bill.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Duane.

THE PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: Thank you, Madam President.

The thing that I like the most about this legislation is that it preserves judicial discretion in sentencing. As many of you know, I have strong feelings about the determinate sentencing of the Rockefeller Drug Laws and of second felony conviction laws. But in this anticrime legislation, the discretion of both the judge and the district attorney is preserved.

I think that's what we should be doing in general when we pass criminal laws, and so I commend Senator Libous for incorporating that into this legislation.

I hope that this will also help us as we work towards reforming the Rockefeller Drug Laws and the second-felony-offender laws to show that we can trust the judiciary to have discretion in sentencing matters.

Thank you, Madam President.

THE PRESIDENT: Senator Duane,

you will be recorded as voting in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Madam President, to explain my vote.

I'd like to commend Senator Libous for his civility, conduct, courtesies, and actually for the substance of the bill. It's a bill that I will support because it is anticrime, it's antidrug, it's antigun.

I do understand through the debate now, both in terms of the questions on this side and the answers on the other side, that there is obviously a distinction between that which we will do with respect to the Rockefeller Laws and this particular legislation, an understanding that was only developed through lengthy questions and answers.

I vote in the affirmative. Thank you very much.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Aye.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Madam President, to explain my vote, please.

I don't think my microphone is on. There's no light on. But it's on? Okay, fine. Okay, that's great. Okay.

THE PRESIDENT: We hear you, Senator Gentile. We hear everything you're saying.

SENATOR GENTILE: Thank you. Thank you, Madam President.

Madam President, in my previous life I had the opportunity to prosecute many, many drug crimes in the county of Queens. And my experience in prosecuting those types of crimes, particularly, well, low-level crimes as well the high-level-investigation crimes of cartels using the two airports in Queens as

major access points for New York City in bringing in the drugs and the marijuana - each and every one of those cases involved weapons, serious and dangerous weapons.

And in each of those cases that we prosecuted, we and the police in each of those cases had to deal with not only the aspect of the drugs but also the aspect of the weapons.

So certainly I believe that what we are presented here with today is something that we as a state should send a strong message to those who will conduct those types of criminal activities, and always use the weapon as an adjunct to that criminal activity, that we will punish them severely.

So, Senator Libous, you can say this is out of my own experience as a prosecutor, you can say it's out of my conservative way of thinking, or I could say it's out of my respect for law enforcement.

But I think this is a good bill, and I will vote in the affirmative.

THE PRESIDENT: Senator Gentile, you will be recorded as voting in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: Madam President, to explain my vote.

Again, this is a particular piece of legislation that has been around for some time. But in reference to the judicial intervention that this bill adds, and my concerns with the Rockefeller reform, I'm going to continue to vote in the affirmative.

Thank you.

THE PRESIDENT: Senator Gonzalez, you will be recorded as voting in the affirmative on this bill.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Aye.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Madam President, to explain my vote.

I appreciate, Senator Libous, you giving us the opportunity to ask the questions that we need to ask. It is sometimes construed in my community that I belong to somewhat of the liberal factor. But I also, as I have stood here many times and told you, that the people that I also represent talk about law and order. And it has to be balanced. And I think that your attempt in this legislation perhaps goes a long way toward doing that.

One of the mayors that I represent in my district talks very strictly about us pushing legislation that will do everything possible to limit the activities of drugs and weaponry in our communities. So any legislation of this type that is reasonably discussed, thought out, and executed is certainly something that I can support.

So I am voting yes on this legislation. Thank you, Madam President.

THE PRESIDENT: Senator Hassell-Thompson, you will be recorded as voting in the affirmative on this bill.

The Secretary will continue.

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: To explain my vote, Madam President.

Madam President, I am pleased to have the opportunity to vote in the affirmative on this bill.

If the sponsor will allow me, I did have the opportunity to do a little bit of checking on some of the issues that were raised during my discussion with the sponsor. And my understanding is that he must have gotten some misinformation, because in fact if you go to buy a rifle or a shotgun in New York State, you do not have a requirement that a background check be performed, either as a consequence of the law that we passed last year or some federal legislation. There is no such requirement.

And as a consequence, though this is a very well-intended bill, if somebody is precluded from possessing a rife or a shotgun as a consequence of actions that he or she takes as a result of this bill, I'm afraid we have compromised the efficacy of the legislation by not having any mandated

reporting requirement, either from some component of our criminal justice system to the Department of Criminal Justice Services and then on to gun dealers, or by putting the onus perhaps on the gun dealer pursuant to a sale to do some type of a check to see if somebody has forfeited his or her rights under the bill that we have before us.

And so as a result, though it's a good bill, I think the drafting could use a little fine-tuning, because I don't think it's going to do what we'd like it to do. And that's unfortunate. Because I think it should, and I'd like it to.

So I would just suggest to Senator Libous that you may consider amending the bill or starring it or doing something in the future in order to address that. Because I think most of us would agree it's a good piece of legislation.

And one of the things, Madam President, that these debates and discussions do bring to our attention are problems like this, which are a direct consequence of the closer scrutiny that we are providing to these

bills. We're finding some problems with them that the people of the state should benefit from us having found them.

And so as a result, I'm glad to have brought this to your attention. Maybe we can remedy it. In the meantime, I don't think that the flaw is so fatal as to preclude my voting in the affirmative for it. But I hope that this body and I'm sure that Senator Libous will take this information and do what is right by making a better piece of legislation out of this protecting all New Yorkers the way this bill rightfully is designed to do, but doesn't quite accomplish.

So I vote aye.

THE PRESIDENT: Senator Hevesi, you will be recorded as voting in the affirmative on this bill.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Aye.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger,

excused.

Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: To speak on the bill, Madam Chair.

THE PRESIDENT: To explain your vote?

SENATOR LACHMAN: Right, to explain my vote.

THE PRESIDENT: You may proceed.

SENATOR LACHMAN: I strongly believe in the efficacy of this bill and the results that I hope will accrue from it. And I have to commend the distinguished Senator from Binghamton for sponsoring it this year and the past year.

And I hope legislation that increases prison sentences for people who sell drugs and have firearms while doing that will go through both houses of the State Legislature.

Thank you.

THE PRESIDENT: Senator Lachman, you will be recorded as voting in the

affirmative.

The Secretary will continue.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz, excused.

Senator Maziarz.

SENATOR MAZIARZ: Aye.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Aye.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Aye.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: Madam President, to explain my vote.

Oftentimes Senator Libous sits at the side of the angels. This is one such occasion. I think that this bill will do wonderful things, especially in some neighborhoods where there is a hierarchy of drug dealers. The ones who carry the weapons, the firearms, are the ones that if they do not like what an underling is doing, would fire on the kneecaps, something that I learned recently.

So I really congratulate you for this bill, Senator Libous.

I want to say, however, that talking about drugs, all of us do know that whether it is New York State or not, the entire country is the greatest consumer of drugs. So that eventually we will have to deal with that issue. Because if there were no demand for the drugs, we would be in better shape and our prisons would have less number

of inmates, and therefore the taxpayers would be saving much more monies.

So I congratulate you, Senator Libous, and I vote in the affirmative.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I also want to join my colleagues in complimenting particularly Senator Libous for his being open and willing to answer questions.

I will continue to be consistent with the way that I voted in the past. I see that there are two distinct parts to Senator Libous's bill, one which says "any sentence imposed upon a person for a conviction of any misdemeanor or violation which was the result of a plea of guilty, the court shall impose a sentence of judicial certification that such person is not suitable to possess a rifle or shotgun."

So that seems to be a very strict

gun control measure, especially since it deals with misdemeanors and violations.

The second part of the legislation, as I read it, it says "in addition to the penalty prescribed by any other provision of law, be sentenced to an additional term of imprisonment of not more than 10 years."

So in my mind that simply says that whatever laws we already have on the books - which there are many, which have very long sentences for possession or sale of narcotics or drugs, illegal drugs, with or without a weapon, longer sentence with a weapon -- any crime committed where there's a weapon involved, there are laws on the books.

The District Attorney of Kings explained to us that even if a car is stopped and a weapon is found in that vehicle, every person in that vehicle can be sentenced to prison.

So we have, I believe, adequate coverage of what Senator Libous is intending to do. We have not, even with all of these laws, been able to deal with the problems, especially, of street-level drug dealing. The

best solution in New York City has been community street policing. That seems to help. But these laws that provide long sentences, longer and longer sentences, have not really helped to clean up the streets of drug dealing, because it is an economic venture.

So I am voting no on this legislation. I do not believe it is necessary. I do not believe that it will make any difference in my community. I see the drug dealers, I talk to them, I see the gang members, I talk to them, I know that police officers in my district talk to gang members, recruit them to get off the streets, to stop doing what they're doing. They're doing a lot of this drug dealing by those small drug dealers on the street corners in Brooklyn, New York. They are just making their money. And they will not -- longer sentences will not convince them that they should not engage in some economic activity.

So I would hope that we could put as much emphasis and time and energy and attention on creating jobs for young people in

the inner city so that they don't have to deal theses, and take the violence out of drugs by legalizing them, perhaps. That's what some of the advocates in our state are advocating. Because it's gone too far, we're locking up too many people -

THE PRESIDENT: Senator, at this point I have to interrupt you. You -

SENATOR MONTGOMERY: I apologize for taking my time.

THE PRESIDENT: You're well over your two minutes.

SENATOR MONTGOMERY: But I just want you to know that I'm voting against this, and I have a very specific reason for doing that. There's too many young men and women of color sitting in our prisons right now, and this is only going to put more of them in there.

I vote no.

THE PRESIDENT: Senator Montgomery, you will be recorded as voting in the negative.

The Secretary will continue.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato, excused.

Senator Oppenheimer.

SENATOR OPPENHEIMER: To explain my vote.

I have to say that I empathize with what Senator Montgomery just said, that too many people of color are serving extremely long sentences for minor drug charges. But that is precisely why I do support this bill. Because this bill says that people who are selling the controlled substances and also have the firearms should serve additional time.

Those people, more than likely, the ones that own these guns, they are probably not the folks who are addicted and are selling some of this substance in order to feed their addiction. I think those people very likely are not the people with the guns. I think it is the big dealers who have arsenals.

And I can see that there's another

feeling abroad among some of the Senators.

But I think certainly having the additional time for those that do have the guns is appropriate and something I certainly can support. And I hope my theory -- or I wish my theory were not wrong. But I'll be voting in the affirmative.

THE PRESIDENT: Senator Oppenheimer, you will be recorded as voting in the affirmative. The Secretary will continue to call the roll.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Aye.

THE SECRETARY: Senator Paterson.

THE PRESIDENT: Senator Paterson, to explain your vote.

SENATOR PATERSON: Mr. President -- Madam President, I'm sorry, to explain my vote.

I'm very moved by the comments that Senator Montgomery made. There are ways to address the issue of addiction and drugs in our communities. There are also ways to address the issue of sentencing.

I'd remind you, Madam President, of

the Supreme Court case from the '70s, the State versus Cirro, that demonstrated exactly what Senator Montgomery was saying, that we are not rehabilitating anyone in our penal system, we're only keeping them further away from their homes and their families, we're only incarcerating them. And when they come out they have less community roots, less desire to change their lives, less information that they would have needed to change their lives, and they go back right into whatever it was, the antisocial behavior that probably landed them in prison in the first place.

But in this particular piece of legislation, the use of weaponry -- and as Senator Connor said: "Ten years for someone that sells drugs with a TEC-9, that's good enough for me." Well, it's good enough for me as well, Senator Connor.

I think that it is incumbent upon us to recognize what Senator Oppenheimer just said, which is that really when it comes to this use of force and this use of firepower, we're really talking about not the kind of penny-ante drug dealing you see on the corners

of some of our inner-city streets, but really what is what is the extension of a multi-million-dollar business being forced by individuals who will kill people in order to make profit, even if it is on the backs of young people in our communities.

Some of those young people have been enveloped in this process and have carried those weapons, and we try to do all we can for them. The inclination to vote against this bill is there. But really, the mammoth consequences of firearms and the way they're used in this fashion as well as many other fashions, as we heard from Senator Duane and Senator Schneiderman's exchange, is something that we need to address. And I think that addressing it in this form of legislation such as proposed to us by Senator Libous is exactly what we need to do.

I would just caution us that some of the discussion led by Senator Hevesi made us recognize that there may be some applications of this legislation that need to be touched up before we can really get it passed in the Assembly.

But I do support the legislation. I vote aye, Madam President.

THE PRESIDENT: Senator Paterson, you will be recorded as voting in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: Madam President, to explain my vote.

I want to commend the sponsor on this piece of legislation. And sometimes, as a defense attorney, I'm torn when I look at legislation such as this, and also with the comments Senator Montgomery has stated. But it comes to a point in time that we have to do something in our urban areas. And guns and drugs are a bad mixture, and it leads to them preying upon innocent young children in our communities, it leads to innocent people being killed and sometimes put into perpetual disability for the rest of their lives.

So at this point, it's a starting point. And hopefully, as we say, we can deal with the issues of the Rockefeller Drug Laws and also deal with the issue of unemployment that's going on, especially among our youth in the urban areas.

But this is a starting point. And I want to once again commend the Senator for this piece of legislation. Thank you.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative, Senator Sampson. Thank you.

The Secretary will continue.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: Yes.

THE SECRETARY: Senator Schneiderman.

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

I would very much welcome the opportunity to work on this legislation, as I expect that we will have a chance to see it again. I think it makes a very important statement. I think it is an important effort to get the issue of the proliferation of guns

and the use of guns in crimes -- particularly drug crimes, but in other crimes as well - onto the books.

I don't think that this particular formulation makes sense, though, for a variety of reasons, some of which have been discussed. I think this really exemplifies the difficulty with our current sentencing laws in the criminal justice system. Someone who is convicted of the sale of a controlled substance in the fifth degree, a relatively low-level crime, and is in possession of a legally owned shotgun -- say, some person dealing drugs from his truck with a shotgun in the back -- is subject to the same ten-year possible sentence as someone who is in possession of an unlawful gun and is convicted of the most serious type of drug dealing.

I think that the difficulty with this bill is that it is combining too many things in one piece of legislation. I think the first part of it is outstanding. And we have a similar bill that was introduced last year, I believe, that essentially said if you're convicted of any felony in New York

State, you are not eligible to possess a firearm. And also we introduced a bill that if you're caught with a firearm intoxicated, under drugs or drinking, you're not eligible. I think that is one component of this that we should address separately, and I would strongly support that.

I think that the second component, additional sentencing, has to be dealt with in the overall context of the reform of our sentencing laws. We have to see how this would have an impact, what types of crimes we're talking about.

I do not accept the distinction between drug crimes and every other crime. I think if you commit a crime in the possession of a firearm, it should be -- I favor an additional punishment for that. But I don't think that this bill really addresses all of the problem, and I think it unfairly penalizes some people who are not as culpable as others.

However, I do think that this is a great step forward. I urge that -- I hope that -- I'm sure that the sponsor and others who have spoken in support of this I hope will

join us in the current battle, which is to ensure that the budget contains funding for the enforcement -

THE PRESIDENT: Senator Schneiderman, I want to remind you you're well over your two minutes. If you would wrap up, please.

SENATOR SCHNEIDERMAN: Yes, Madam President, thank you.

-- for the enforcement of the laws we passed last year.

I will vote no.

THE PRESIDENT: Senator Schneiderman, you will be so recorded as voting in the negative.

The Secretary will continue.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator A. Smith.

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

It's well known that the sale of any kind of illegal substance in our community

is contributing to the death of our children. And the proliferation and use of guns is certainly killing our children. But the combination of the two makes it even a more profound reason for us to vote for this bill.

But it's not for these reasons that I vote for the bill. It's certainly Senator Libous's boyish charm and Aries persuasiveness that compels me to vote for this bill.

(Laughter.)

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative on this bill.

The Secretary will continue.

THE SECRETARY: Senator M. Smith.

SENATOR MALCOLM SMITH: Yes, Madam President, to explain my vote.

I would hope that Senator Libous and other colleagues around this room would use the same vigor and interest to take this bill even a step forward, and that is to control the sales of the weapons that we find some of these drug dealers to possess.

I did have some reservations about the bill, but through the debate and

explanation as it relates to the judicial discretion that's offered in here, as well as allowing the DA to have the same, I'm persuaded to do otherwise. But I do have some reservations, as my leader, Marty Connor, had, as it relates to the sentencing and some of the duplication thereof. I don't believe it was explained.

However, I do support the bill, and I just hope that we will allow Senator Libous to perhaps star the bill and take it a step forward and deal perhaps with the sale of these illegal weapons as well.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: To explain my vote, Madam President.

I rise with the rest of my colleagues to support Senator Libous's legislation. I think that any bill that

strengthens the penalties and eliminates maybe another loophole with which a drug dealer could get a lesser penalty for the selling of drugs just because maybe he didn't use the gun or wasn't caught in the act of violence, by having the gun and having this legislation we can assure that that particular person will be put off the street for a longer period.

If Senator Hevesi is right on some defects in the bill, I'm sure that in the near future we'll see another bill by Senator Libous or someone else that will close those down also, hopefully, and that we can get the final answer we want out of this particular legislation.

So it's with that in mind that I'm glad to support Senator Libous's bill, even though I didn't support it for the same reasons as Senator Ada Smith.

(Laughter.)

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Madam President, to explain my vote.

I too commend Senator Libous for this legislation. However, I have two problems. One is my wish that this were part of a comprehensive gun control measure. It seems to me that it's time that we have background checks for the issuance of rifles and shotguns and even machine guns. Unfortunately, in my community, we recently had people arrested with AK-47s. And it seems to me that nobody needs an AK-47 in their living room.

However, there's one aspect of this legislation, Madam President, that I find troubling and that nobody else has mentioned. And if you will turn to the second page of the bill, it talks about criminal possession of a weapon in the second degree, and it talks about a person. But further down, the next line, it says "he." In fact, the word "he" is repeated four or five more times.

And it seems to me, Madam

President, that our legislation ought to be gender-neutral and that this is something that we should all strive for. That I'm sure there are women in this position, and yet I will question whether the legislation would apply to women, since it says specifically men.

So despite that inequity, Madam President, I support the legislation.

THE PRESIDENT: Senator, you will be recorded in the affirmative on this bill.

The Secretary will continue.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 55. Nays, 2.

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 115, by Senator Marcellino -

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, I'm sorry. Can we at this time take up Calendar Number 160.

THE PRESIDENT: The Secretary will read Calendar 160.

SENATOR BRUNO: Thank you.

THE SECRETARY: Calendar Number 160, by Senator DeFrancisco, Senate Print 432, an act to amend the Social Services Law, in relation to the transportation of certain persons.

SENATOR PATERSON: Explanation.

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

SENATOR DeFRANCISCO: Yes, this bill provides that with respect to transportation for individuals taking advantage of Medicaid payments of their medical condition would be by public transportation if the person is both

physically and mentally capable of doing so.

Senator Paterson, I believe you rose first.

SENATOR PATERSON: Madam President, would the sponsor yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: Senator, given the subjectivity of determining what transportation is, based on geographic location around the state, don't you think that this legislation is overbroad and restrictive in the sense that it's really on a case-by-case basis that we can only determine whether or not to assess individuals for transportation in the manner that you are in this legislation?

SENATOR DeFRANCISCO: That's correct. And that's the way it would be done, by -- the county Department of Social Services would determine whether or not the person is

physically and mentally capable.

And if they are, using public transportation, they would be required to take it. Just like if they were not on Medicaid and they didn't have the luxury of receiving a personal vehicle coming to their home, they would have to take public transportation under that situation as well.

And the benefit is some savings to the taxpayers and also some more funds being used and spent on public transportation, which will also help us not to have to subsidize public transportation as much.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: If Senator DeFrancisco would yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR DeFRANCISCO: Yes.

THE PRESIDENT: Go ahead, Senator.

SENATOR OPPENHEIMER: I'm trying to understand the genesis for the bill. And is it before us because you feel there's been

an overutilization by Medicaid patients taking advantage of more private transportation?

SENATOR DeFRANCISCO: The genesis of the bill is that in 1999, Central, which is our public transportation bus service, indicated that they had a concept that -- and they indicated that this concept would save the county approximately -- over half a million dollars in transportation that is normally done by cab or some other -- mostly by cab, quite frankly.

And that it would also enhance - well, at that point we were subsidizing in a great amount Central for it, because they didn't have the ridership they had before. So the state has and continues to subsidize them.

So the concept came from that organization. And quite frankly, I thought it made sense. As long as it was required of only those who are mentally capable and physically able to use the public transportation.

SENATOR OPPENHEIMER: Another question to the Senator, through you, Madam President.

We have something in our county which are like minibuses. And if a Medicaid patient needs to be transported to a particular place, they can call the -- this Bee Line. Do you have something similar to that in your county?

SENATOR DeFRANCISCO: Yes.

SENATOR OPPENHEIMER: That would be sort of the in-between, between the public system and the private taxi.

SENATOR DeFRANCISCO: That's correct. But obviously the public system is much less costly than the private system. And if an individual is capable of using public transportation, there's no logical reason why there should be more expense to the taxpayer and a reduction in ridership of public transportation.

Obviously, if the person needs it -- and I've said this every year we've discussed this -- then they would be entitled to the higher-cost type of transportation.

Just like if it was your mother who needed to go to the hospital, if she's on a bus line and the hospital is on the bus line

and it's convenient, you might not choose to call a higher-cost service to provide that transportation if you couldn't do it yourself.

The concept is it's no different than what someone would have to do in the event that there was no Medicaid eligibility.

SENATOR OPPENHEIMER: Okay. One last question, through you, Madam President.

Would the person have to get permission to get a private vehicle, or would they get reimbursed if their need was there?

SENATOR DeFRANCISCO: There would be -- right now there is a -- there would have to be, under this bill, a determination, depending upon the illness or the incapacity, if any, by the Department of Social Services. If the Department of Social Services says that they are capable based upon the medical situation as they see it, they'd have to use public transportation.

If they think that that's a wrong determination, like any Medicaid case, there's a right to a fair hearing. Or I'm sure that individuals will be given the opportunity to get medical opinions from their own

physicians. And if it turns out that they are not capable, then they would not be required to take public transportation.

SENATOR OPPENHEIMER: Thank you, Senator.

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Thank you, Madam President.

I would move to withdraw the closed call of the Senate. And I would also move that we recess this session until 4:30, and that I would ask for an immediate conference of the Majority in Room 332.

THE PRESIDENT: Without objection -

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Pursuant to the request of Senator Mendez, who is chair of the Minority Conference, we would like to have an immediate conference of the Minority in Room 314. Immediately.

THE PRESIDENT: Without objection, the closed call is withdrawn and

the Senate is in recess until 4:30.

The Majority will be meeting in Room 332; the Minority in Room 314.

(Whereupon, the Senate recessed at 3:03 p.m.)

(Whereupon, the Senate reconvened at 4:50 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order.

I ask the members to find their places, staff to find their places.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to Calendar 160. I believe there was an explanation underway when we recessed.

ACTING PRESIDENT KUHL: Calendar 160, by Senator DeFrancisco. The bill is before the house, and so we'll continue debate at this time.

SENATOR DeFRANCISCO: I believe I answered the last question asked.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr.

President, could I just identify who the last questioner was so I can make sure that they're here? It would be in the transcript as to who the last questioner was.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you remember who the last questioner was?

SENATOR DeFRANCISCO: Senator Oppenheimer.

SENATOR PATERSON: It was Senator Oppenheimer.

SENATOR DOLLINGER: Mr. President, I believe Senator Lachman has a -

ACTING PRESIDENT KUHL: Senator Lachman, why do you rise?

SENATOR LACHMAN: I rise, Mr. Chairman, to ask permission to ask the distinguished Senator a question or two, with his permission.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you yield to a question from Senator Lachman?

SENATOR DeFRANCISCO: Yes, I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LACHMAN: The bill is a very interesting one, Senator DeFrancisco, but it raises certain questions. One question that it raises is when does one decide, if one is under Medicaid, whether a medical problem is serious enough to warrant taking an ambulance immediately or not?

SENATOR DeFRANCISCO: The way the bill reads is that it sets out the authority for the county Department of Social Services to require that the least expensive appropriate transportation be granted. It would be up to the county as to how to administer that program. And it would be logical to assume in any case that if it's an emergency, someone would be permitted to call a special type of transportation in order to get the individual to the hospital or to a doctor.

I think where this would arise, I believe, is where the county would say that, after seeing the use of a more expensive vehicle, it would indicate to the individual who's using the transportation that a less expensive alternative is what you're going to

have until further notified.

ACTING PRESIDENT KUHL: Senator Lachman.

SENATOR LACHMAN: Mr. Chairman, through you, I'd like to ask Senator DeFrancisco another question, with his permission.

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LACHMAN: When does one decide that something is serious enough to warrant an emergency situation? Because there are many medical problems that fall into that gray area where you know you have an emergency, like Vice President Cheney rushing to the hospital because he had chest pains.

What if someone isn't sure what to do, whether he or she has an emergency or not? And then he or she has to go through this process, which I assume at the very least will take several hours, if not several days.

SENATOR DeFRANCISCO: He or she would not have to go through this process if it's an emergency situation. What this bill

does -- let me finish my answer.

What this bill does is that there are individuals -- more than in emergency situations, there are many individuals who have a specific illness or problem that's reoccurring for which Medicaid services are provided, including Medicaid transportation. The purpose of this is to allow the counties to require those individuals with these types of continuing medical problems that are not emergency situations, that are problems that we can determine whether or not the individual can go on public transportation.

If somebody had an emergency situation, that obviously is not something that you would be required to have public transportation, because the bill specifically says when physically and mentally capable of doing so.

SENATOR LACHMAN: Mr. Chair, through you, I have another question, if the Senator would yield.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you continue to yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LACHMAN: The problem that I have, Senator DeFrancisco -- and this is an honest-to-goodness problem -

SENATOR DeFRANCISCO: I understand.

SENATOR LACHMAN: -- is who is to decide, and when do we decide that an emergency situation occurs. Because people who don't have means and who can't afford to take an ambulance might not want to immediately.

Now, this bill can give the impression of a division between the haves and have-nots. Those who can afford an ambulance, they think they have an emergency, they're not sure, they immediately go. Then there are people who are not sure they're in an emergency situation, they won't be evaluated for two or three days, it is an emergency situation, but they're afraid they won't be reimbursed through the Medicaid, and they won't go.

SENATOR DeFRANCISCO: This bill

tries to correct a problem between the haves and have-nots.

If you're not on Medicaid, you have to make those decisions all the time. And there's a lot of people that are not on Medicaid that don't have much income at all. They have to make a decision based on good judgment whether it's an emergency situation and will have to pay or risk not -- or have to pay, as opposed to someone on Medicaid presently can take the more expensive vehicle at any time they choose to.

And if a person who doesn't have the wherewithal understands that they're going to have to pay and they have public transportation available and they're capable of taking it, they're going to take the least expensive alternative.

So my point is it's not anything to punish anyone, it's to put a situation in where, since we're providing the transportation, those that are capable of using the least expensive would have to use it, just like lower-income people who are not on Medicaid.

SENATOR LACHMAN: Thank you, Senator.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: On the bill, Mr. Chairman.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON: In committee, when I was first looking at this, I had some serious issues with it.

But it seems to me that, Senator DeFrancisco, perhaps in your county the kinds of things that you think that this bill will do don't currently happen. The reason I say that is because in the County of Westchester, when a person is on Department of Social Services, they are authorized within a specific -- within the medical department of the social services agency, they are authorized to use a cab. And it's called "medical transportation provider."

You have to be preauthorized in order to use that cab's services. You also have a specific number of times of ridership

during a given period in order to use that taxi service.

So in the County of Westchester - and I'm not clear about that portion of the Bronx that I support, whether or not this is enforced. But perhaps the County of Westchester is very avant-garde because they already do this. The authorization is predetermined. And so that the person on Medicaid who has a chronic condition or who has to attend clinics, medical transportation is provided for them because of the need for 24-hour access, so that it does reduce the numbers of ambulance calls and services that are provided.

And so that if that is what this bill will do in a universality way throughout the state of New York, then I can certainly support it. If that is not what happens, then I would suggest that your county take a page out of the book of Westchester County.

ACTING PRESIDENT KUHL: Senator Stachowski, why do you rise?

SENATOR STACHOWSKI: If the sponsor would yield, I have a couple of

questions.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you yield to a question from Senator Stachowski?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR STACHOWSKI: If I heard you correct back when you first described the bill -- and I'm not all that familiar with it, even though I remember it being here before and I kind of support the idea -- part of the reason for this bill is to get the public transit authority also a larger ridership.

And I think most counties have a cab service already available to Medicare, Medicaid patients. But if they're able to take public transportation, this would get the county to put that system -- would they be working cooperatively with the public transit authority to set this up?

SENATOR DeFRANCISCO: Yes, they would. And that's a secondary reason for the bill. The main reason is to save money. But the second -- the natural benefit from it

would be public transportation would get more resources.

SENATOR STACHOWSKI: And where - if the sponsor would continue to yield.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you continue to yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR STACHOWSKI: One of the interesting things I thought of while you were talking is that in a lot of close suburban areas there's really not a bus route for a lot of people that may be more than willing to take the buses that are in this situation. And we do have those other vehicles, but in most counties they don't have enough of those where they can make arrangements for that vehicle to pick them up and get them to the doctor, et cetera.

If we pass this, would this be maybe a stepping stone to get the county Social Services to work with the public authority to maybe make more of that available, in that it would be another revenue

source for the public authority but also save money for the Social Services people also?

SENATOR DeFRANCISCO: I would hope that it would. In fact, when this thing, this bill -- the idea was first proposed by Central, they were in the mode of closing lines to more rural areas, closing some of the lines because they were in financial trouble and they weren't providing services in some rural areas where they were. So that could, in fact, be a benefit.

SENATOR STACHOWSKI: And one last question, and it's -- if you would.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you continue to yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR STACHOWSKI: Now, this one is a little on the edge of this bill, but I -- it's a suggestion and a question at once.

Social Services also spends a lot of money bringing daycare mothers with their children to daycare. And part of the thing, one of the problems we have with people going

back to work is daycare and getting their children to daycare, yet the rules prohibit daycare centers from having bus service - their own bus, for example, that they could send maybe if they have a density of population in a certain community.

Say they service the inner city, for example, in a certain part of it, and they could send a bus out and bring 25 kids, and then all these parents would only have to worry about getting themselves to work.

Could we maybe look in the future for a bill that will get the public authority to maybe set up some kind of system with - working with some of the daycare centers where we could be saving money that way and getting another extended ridership for the transit authorities?

SENATOR DeFRANCISCO: I would assume that if there's an economically feasible route, that all the public transportation groups would want to gain revenue. So I don't see why that would prohibit anything, such -- I think that's a good idea.

SENATOR STACHOWSKI: Thank you, Senator.

Mr. President, briefly on the bill.

I'd just like to say that I like the idea that if people are in a serious condition, which I think is covered, or at least hopefully, the condition that Senator Lachman was talking about where if you really think it's an emergency and you need an ambulance, you take it. Ambulance service is pretty expensive now. And if you don't have insurance coverage or your insurance coverage is kind of -- you may not have it long if you're taking ambulances for no reason, because it hits them like, at the minimum, $500 and in some places $700 for an ambulance ride. And higher.

This is my area. Well, it is in my area. So -- I'm not talking about Medicaid, I'm talking about ambulances, period.

So that I think it's a commonsense thing. And I only mention that cost of ambulances for people with insurance or those that don't have it if they're not Medicaid-covered. So that answers Senator

Smith's question to me as I'm speaking.

I think it's not a bad idea. I think that if they can take a bus and it just gets them to the doctor and it's not an inconvenience to the patient because of some part of the problem that they have, and it helps both to lower the cost to the county and the state -- because we pay part of that - and it helps the transit authorities gain ridership, and it helps us to maybe send them less money, because we pay that also, that it's not a bad idea and it's something I'm willing to support at this time.

ACTING PRESIDENT KUHL: Senator Espada, why do you rise?

SENATOR ESPADA: Mr. President, on the bill, please.

ACTING PRESIDENT KUHL: Senator Espada, on the bill.

SENATOR ESPADA: I have heard the debate very closely. I'd like to apply some direct and very personal knowledge to this matter. I run a network of medical centers that provide close to 100,000 visits a year. And so this hits directly at home.

And just to embellish, if I could, what my colleague from Mount Vernon and the Bronx indicated, we too in the Bronx and New York City have an adequate system of accountability and protection against overuse and overutilization. The fact of the matter is that what we've heard here in this debate is that for those patients that have recurring medical problems -- translation, chronic disease ailments -- that these are the patients, a very small core of the overall population that utilize ambulatory care facilities, are the ones that avail themselves of this service.

I don't quite know what the problem is that we're trying to resolve. As articulated by the sponsor, we're supposed to have a problem with the haves and the have-nots. We see a reality that deals with people who have too little and people who nothing at all.

The problem is not to take from the people that have too little and strip them of the medically necessary services, the scope of services that are available to them, to give

it to a population that has no service at all -- a population that, through measures chiefly advocated by this body and the Governor and, for that matter, the former president of the United States as well, through welfare reform, have left many, many people without insurance, many former welfare recipients without any assistance whatsoever.

While on the surface it may seem as though we're cutting costs or saving money, the reality, should we choose to visit this, is the fact that only people that need this service usually avail themselves of the services. If they would not avail themselves of the services, then they would not avail themselves of medically necessary services, which would end up being delivered in the emergency room via some kind of ambulance. Which indeed, as Senator Stachowski pointed out, would be far more expensive a mode of transportation.

I don't see where the problem is. I see where it could be certainly counterproductive. The bureaucratic maze that this would create in terms of obtaining

approval is of utmost concern, particularly for people in my district that don't even - can't always avail themselves of a phone.

So for all those reasons and more, I think this requires much more thought. Certainly the sponsor usually proffers up very thoughtful legislation. I would encourage a rethinking of this, particularly in the context of New York City and the realities we face with our patients.

Thank you.

ACTING PRESIDENT KUHL: Senator Stavisky, why do you rise?

SENATOR STAVISKY: On the bill.

ACTING PRESIDENT KUHL: Senator Stavisky, on the bill.

SENATOR STAVISKY: I wonder if the sponsor would yield for a couple of questions.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you yield for a question?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR STAVISKY: Thank you.

You're saying in the legislation, Mr. President, that prior authorization is required. Through you, Mr. President, if I can be informed as to the criteria for the authorization being issued. On what basis does the Department of Social Services make the determination that a person would be eligible to have an exemption from this?

SENATOR DeFRANCISCO: The last clause of the change in law: "When such means of transportation are available to the recipient and the nature and severity of the recipient's illness does not necessitate a mode of transportation other than by such means."

SENATOR STAVISKY: Following up, then, since -

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you continue to yield?

SENATOR STAVISKY: -- I read that section also.

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR STAVISKY: Do you

continue to yield?

SENATOR DeFRANCISCO: Yes.

SENATOR STAVISKY: I mean, you'll answer another couple of questions?

Presumably buses and subways are included, Mr. President, as a mode of transportation. What happens, Mr. President, when the buses are not equipped with the access lift that is required for lifting a wheelchair-bound individual?

SENATOR DeFRANCISCO: Well, then, one of two things might happen. If the transportation authority wants the additional ridership, it may end up in them providing more lifts in buses, which is another benefit. If they don't want to do that, then the public transportation is not appropriate.

SENATOR STAVISKY: Would you yield for another question?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR STAVISKY: What about the subways, Mr. President? I represent an area of Queens which includes an elevated subway

line, the No. 7 subway. Most of the stations are not wheelchair or even handicapped -- I hate to use the word "handicapped" - wheelchair-accessible or accessible to the disabled.

SENATOR DeFRANCISCO: Same answer.

SENATOR STAVISKY: They could not use it.

SENATOR DeFRANCISCO: They wouldn't be required to use them, because they're not appropriate.

SENATOR STAVISKY: Mr. President, I have a couple of other questions, then. Will he yield for another question?

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you yield to another question?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR STAVISKY: What I'm leading up to, Mr. President, is the additional cost in this legislation. Will the sponsor explain to me how we're going to get travel vouchers to the individuals who would

be eligible under this program?

SENATOR DeFRANCISCO: I missed the question, I'm sorry.

SENATOR STAVISKY: Well, the - I'm looking at the sponsor's memo. And, Mr. President, it says under fiscal implications they anticipate cost savings to the state, to the counties, and to the federal government. But since much of the transportation in Queens County -- and I suspect in the City of New York, as there are other elevated subways, and subways underground without elevator access - how can we anticipate a savings when it would not be available to the disabled?

SENATOR DeFRANCISCO: Well, I find it hard to believe that your county only has disabled users of Medicaid, people that are disabled that are using Medicaid. There are many, many more individuals, and I'm sure you could come up with a thousand different examples. And those people that are unable to use the public transportation are not going to be faced with that possibility.

The people that are capable of using them are the ones where the savings

would come from. And the only numbers that I have are from my county. And the estimates are about half a million dollars by our public transportation company.

And apparently, as far as some of these administrative nightmares, Westchester County apparently is already doing it and the world hasn't come to an end.

SENATOR STAVISKY: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Sampson, why do you rise?

SENATOR SAMPSON: Mr. President, would the sponsor yield for just a couple of questions.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you yield to a question from Senator Sampson?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SAMPSON: Through you, Mr. President, I want to ask the sponsor if in fact the prior authorization is denied and the recipient appeals that decision, do they still

receive those benefits during that period of time?

SENATOR DeFRANCISCO: I don't know all -- it would follow the same fair hearing procedures as for any other Medicaid issue. And I quite frankly do not know the answer to that.

SENATOR SAMPSON: So we don't know exactly if during that period of time they would receive Medicaid benefits to -

SENATOR DeFRANCISCO: I don't know how that works. I really don't know the answer.

SENATOR SAMPSON: Okay.

ACTING PRESIDENT KUHL: Senator Smith, why do you rise?

SENATOR ADA SMITH: Would the sponsor yield for a few questions.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you yield?

SENATOR DeFRANCISCO: Only if she doesn't call me any names this year.

ACTING PRESIDENT KUHL: He yields.

SENATOR ADA SMITH: Well, would

you admit that that was an accurate -

SENATOR DeFRANCISCO: Absolutely not.

(Laughter.)

SENATOR ADA SMITH: Would the sponsor tell me if I'm correct in the process that I'm about to outline.

Currently when a person goes to the doctor, the doctor makes a call to the provider, which is usually an ambulance service, indicating that this person is to be picked up to be brought to their facility, and the Social Services component provides a number or whatever to -- that this is acceptable.

SENATOR DeFRANCISCO: I think the patient has got to get to the doctor first. And I think it depends on, I guess, the county as to whether there's preapproval or you may use any type of transportation you want.

SENATOR ADA SMITH: Well, the doctor is the one who -- would the sponsor yield, please.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you yield to another question?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ADA SMITH: Currently the doctor would be the one to make the assessment that the person is in need of having this type of transportation, and the Social Services would concur.

SENATOR DeFRANCISCO: They could concur.

But in many counties, at least in our county, there's no authority -- at least they don't think they have authority to order a lesser mode of transportation.

SENATOR ADA SMITH: Will the sponsor yield for a -

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you continue to yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The senator continues to yield.

SENATOR ADA SMITH: Wouldn't you think that a doctor would be more likely to know the ability of an individual to access public transportation than Social Services,

who may not have ever seen this individual in life?

SENATOR DeFRANCISCO: Well, from what I learned about Westchester County today, there's preapprovals before a doctor gets involved in the process. If they agree, if the county agrees with the doctor, then under those circumstances, the more advanced type of transportation, the cost of their transportation is granted.

What I'm suggesting by this bill is that where there's a determination by Social Services that it's not necessary, then it does not have to be provided. If they want to appeal that and a doctor gives a contrary opinion, that's where the fair hearing comes.

SENATOR ADA SMITH: Would the sponsor be kind enough to yield to one more question.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you continue to yield?

SENATOR DeFRANCISCO: Sure. Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ADA SMITH: Will there be written guidelines that every county must follow that will be exactly the same?

SENATOR DeFRANCISCO: The guideline is in the bill. Basically, the objective standard, as I read before, is whether or not the person is capable of using the public transportation or not.

SENATOR ADA SMITH: One last question.

ACTING PRESIDENT KUHL: Senator DeFrancisco, you continue to yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ADA SMITH: Wouldn't you -- wouldn't it be fair to say that the - you say that it is in the bill. But it would be also subjective to the individuals at Social Services who were making this decision. Each person could look at -- you may look at something and say it's green, and I may look at it and say it's purple.

SENATOR DeFRANCISCO: And that's exactly why there's a fair hearing component

to any Medicaid situation.

You know, when we talk about -- I just want to add one thing. When we're talking about the haves and the have-nots, there's only a finite number of dollars that are provided to Medicaid. And it's not just the haves against the have-nots. By providing a higher-cost transportation when it's not necessary, there's less dollars to pay for those other individuals who are truly in need of some other Medicaid service. And that's another advantage of this bill.

SENATOR ADA SMITH: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Smith, on the bill.

SENATOR ADA SMITH: Having knowledge that the -- at least the transportation of the sick by ambulette, that their fees have not increased in many years, and that the majority of the individuals that are being transmitted by ambulette are clearly in need of this type of transportation, and also having knowledge in the City of New York that there is not adequate transportation, I

don't see how this bill would assist us in any manner in saving.

I believe that it would incur further costs, because we would have to make additional kinds of repairs to the transportation system.

ACTING PRESIDENT KUHL: Senator Connor, did you wish to be recognized? You started to stand.

SENATOR CONNOR: If no one else wishes to -

ACTING PRESIDENT KUHL: Well, there is one other Senator.

SENATOR CONNOR: I'll wait.

ACTING PRESIDENT KUHL: Senator Brown.

SENATOR BROWN: Thank you, Mr. President. Through you, Mr. President, if the sponsor would yield for a question.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you yield to a question from Senator Brown?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR BROWN: I'm wondering, Mr. President, if the sponsor has done an analysis of how many people use alternate modes of transportation other than the public transit system now.

SENATOR DeFRANCISCO: I don't have a study. Other than the savings that were referred to in my county by the public transportation system were basically savings from cabs that were taken to doctors.

SENATOR BROWN: Through you, if the sponsor would continue to yield.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you continue to yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR BROWN: So in your county -- in the sponsor's county, many people were taking cabs. What was the savings?

SENATOR DeFRANCISCO: Over $500,000. I think it was 600 something.

SENATOR BROWN: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator

Dollinger, why do you rise?

SENATOR DOLLINGER: Just if the sponsor would yield to a question, Mr. President.

ACTING PRESIDENT KUHL: Senator DeFrancisco, do you yield to a question from Senator Dollinger?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Just again for my purposes, when this was implemented in Onondaga County, how many additional fair hearings, if any, did they have when the program went into effect?

SENATOR DeFRANCISCO: I don't know.

SENATOR DOLLINGER: Just on the bill briefly, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I voted in favor of this bill. I'm going to vote in favor of it again, although I do with a little more skepticism because of the comments from

my colleagues.

It seems to me that what this does is this erects a barricade to Medicaid. People using the right form of the transportation will get them to the doctor appointment quickest, or to the health care appointment quickest, or wherever they need to go.

I voted for this in the past because I think putting a reasonable restriction is not a bad idea. Based on the discussion today, it may go too far. I'm willing to let it try in certainly upstate counties like Onondaga, where it's worked. It may work in Monroe.

But if anything, with respect to one of the things that Senator DeFrancisco said, which was it was tried in his county and the world didn't come to an end, that shouldn't necessarily be the standard under which we would extrapolate the experience in Onondaga County to the rest of the state.

With some added skepticism, Mr. President, I'll be voting in the affirmative.

ACTING PRESIDENT KUHL: Senator

Connor.

SENATOR CONNOR: Thank you, Mr. President.

I'm going to vote against this. And it's not because I don't appreciate what I think Senator DeFrancisco's point is in advancing this bill. But as he quite candidly noted, this arose out of a problem they experienced in his area. And I think it's a real problem in trying to apply a statewide standard.

I don't know that the word "public transportation" meets what we ought to do. I would support a bill that says in the most appropriate and efficient and cheapest, or least expensive, mode of transportation.

In New York City, in my experience, there are many of the type services, Access-A-Ride and other kinds of services that are available for disabled patients and so on, that are really quite reasonable and that the patients are entitled to avail themselves of. I'm not talking about limousines or taxicabs or things that would be expensive. They're not. And in most parts of the city, public

transportation, unlike other parts of the state, doesn't mean buses.

I mean, we have bus service, obviously. And in fact, at great, great expense the transit authority acquired a number of years ago buses with the kneelers on them, the lifts, and got a lot of them. They don't work. They take forever to operate. It makes all the buses late.

But by and large, mass transit in the city means subways, elevated or below ground. And with very, very few exceptions, it means a lot of stairs up or a lot of stairs down. And even if a patient isn't in a wheelchair, it can be quite a hurdle for an infirm person. You know, I'm talking about subway stations sometimes where you have to go down or up 30 or 40 or 50 steps. That's quite a -- you know, at both ends of the trip. At both ends of the trip.

And I would most respectfully suggest, Mr. President, that Senator DeFrancisco take a fresh look at his bill and maybe use language that's embracing enough to cover some of the other alternative

transportation means that have been developed in New York City, and apparently in Westchester, to address the need to transport the patients in the cheapest possible way. I mean, these services were in fact developed and sponsored to eliminate the cab rides and whatever that were quite expensive.

So I just think in addressing this problem, in addressing a legitimate efficiency concern, perhaps Senator DeFrancisco has taken something that would work in parts of the state and be well-defined and, in applying it throughout the state, it kind of misses the mark.

These alternative means aren't public transit. But public transit is just not a good alternative for these patients. Had it been a good alternative, none of these alternative rides -- and they're not quite to the level of ambulettes, many of them. Ambulettes, I guess, have to provide certain services or medical attention. These are simply handicapped or handicapped-accessible kind of vans and whatever, with an attendant, with whatever, that give these patients in

many cases door-to-door rides very inexpensively.

So that's why I'm against this bill. But I would support a measure that addressed these concerns and that would work. I mean, maybe more discussion to the counties involved, or a recognition of different transportation conditions in different parts of the state would serve that.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR CONNOR: Slow roll call.

ACTING PRESIDENT KUHL: A slow roll call has been requested. There are five Senators standing.

The Secretary will read the roll call slowly.

THE SECRETARY: Senator Alesi.

(No response.)

THE SECRETARY: Senator Balboni,

excused.

Senator Bonacic.

SENATOR BONACIC: Yes.

THE SECRETARY: Senator Breslin.

ACTING PRESIDENT KUHL: Senator Breslin, to explain his vote.

SENATOR BRESLIN: Thank you, Mr. President.

As Albany County is not dissimilar from Onondaga in many ways, and our public transit has entered into agreements with our Social Services Department, I commend Senator DeFrancisco. It's a bill that will save millions and millions of dollars across the state.

If anybody is unsure of the transportation costs as related to Medicaid, they represent a tremendous hidden cost that we must work to correct because there are so many other vital services that Medicaid must and should provide.

So I think each of us in our own respective constituencies should look at this legislation and look how it applies to the different counties, and to avail themselves of

its import.

Thank you very much, Mr. President.

ACTING PRESIDENT KUHL: Senator Breslin will be recorded in the affirmative.

THE SECRETARY: Senator Brown.

SENATOR BROWN: To explain my vote.

ACTING PRESIDENT KUHL: Senator Brown, to explain his vote.

SENATOR BROWN: I appreciate Senator DeFrancisco answering the questions and explaining the bill.

I did read the bill and did read the bill summary. Yet I still have a little unreadiness. I understand the intent of Senator DeFrancisco's bill and certainly do believe that it would save many counties across our state money.

One of my concerns, though, as the parent of a 10-year-old son, sometimes when a young child gets ill, that child, even though it might not be what would be described as an emergency situation, nevertheless that child is in a great deal of discomfort. And during a time when a child is ill and is in

discomfort, a parent wants to get their child to a doctor as quickly as possible. And for some families who are low-income and on Medicaid, the way that that family might get a child to the doctor in the quickest fashion might be by cab.

And it sounds that, through this bill, the parent being able to make that decision -- not a frivolous decision to transport themself and their child to the doctor in the most expensive way, but a decision to transport their child to the doctor in the quickest way, to ease the discomfort of that child, that might not be considered an emergency -- is now stripped away from that parent.

So because of that concern, I'm going to vote in the negative on this bill.

ACTING PRESIDENT KUHL: Senator Brown will be recorded in the negative.

THE SECRETARY: Senator Bruno.

SENATOR BRUNO: Yes.

THE SECRETARY: Senator Connor.

ACTING PRESIDENT KUHL: Senator Connor, to explain his vote.

SENATOR CONNOR: Yes, thank you, Mr. President.

I think -- I'm going to vote no, and I don't want my vote to be misconstrued. I am concerned about the cost savings that may be had in an appropriate bill.

We hear about the costs of people who unnecessarily avail themselves of cabs or car services or whatever. I just -- you know, I guess we operate in this area so differently in the city, where generally people avail themselves of these vans, particularly the elderly and really infirm. I don't think a Medicaid patient who is not what you would describe as infirm has any problem taking the subway. I'm sure they do it all the time. And depending from whence one is going to where one is going, it's a better ride than you're going to get out of a cab, or a more pleasant ride, frankly.

So my no vote is just that I don't think this bill hits the nail on the head for our part of the state. I would like to see something similar that addressed the differences. It may be some broader principle

set down, or some set of guidelines to county agencies that relate to, you know, what you do when you have -- for example, your public transit system is a train system or an elevated system or whatever.

So for that reason, Mr. President, I am going to vote no at this time.

ACTING PRESIDENT KUHL: Senator Connor will be recorded in the negative.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Dollinger.

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

SENATOR DOLLINGER: Thank you, Mr. President.

This is a close call for me, certainly much closer than it has been in the past when I've voted in the affirmative, with Senator Breslin, for much the same reason that he voted, cast a ballot in the affirmative.

And that is that cost of transportation in the Medicaid program is of

enormous concern to people in the -- certainly taxpayers throughout the state and, I think, the public officials who are looking for innovative ways to try to figure out if we can put a curb on that cost.

I think I stand here with this bill in front of me and say this is not a bad idea. It's not a bad idea to try to look for another way to encourage those who are on public assistance to use alternative transportation. And my affirmative vote on this bill should be, I hope, encouragement to Senator DeFrancisco, if this bill passes, to find an Assembly sponsor, to get the bill through the Assembly, and let's have a conference committee, a Transportation conference committee with our ranker on Transportation and the chairman of the Transportation Committee, I believe Senator Trunzo. Let's get them together and talk about how we can deal with this transportation Medicaid problem.

But I would suggest that Senator DeFrancisco's notion that there haven't been a lot of fair hearings about this, there's a

very good explanation for that. When they need transportation and it looks like Medicaid may not pay for it, they're going to find some other way to get it. Most often they're going to dig into a pocket that has very meager resources in it and come up with a way, as Senator Brown said, to find that transportation.

And frankly, if we get the government in the business of trying to figure out whether if someone's medical condition changes overnight and their weak legs become unable to transport them, and they say, Well, I could walk to a bus stop yesterday, but I can't walk there now -- do we really want to have the government refereeing that dispute every single time?

I would suggest, Senator DeFrancisco, this is a good idea, but it needs lots of work. My affirmative vote should say take this good idea to a conference committee, iron out a bill that really does the job, meets the concerns about controlling the cost, and at the same time doesn't end up with the government acting -

ACTING PRESIDENT KUHL: Senator Dollinger, your -

SENATOR DOLLINGER: -- as an endless referee in fair hearings near and far.

I vote aye, Mr. President.

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

THE SECRETARY: Senator Duane.

ACTING PRESIDENT KUHL: Senator Duane, to explain his vote.

SENATOR DUANE: Yes, thank you, Mr. President.

I think that most people who are sick or infirm or who have a disability would do anything to be able to use public transportation. I think for most of them, that would be a welcome relief and they would get down on their hands and knees, if they are able to, and thank God that they were again able to use public transportation.

The idea that people who are disadvantaged by health or disability or age would be cheating taxpayers is really, I guess, just the difference in how some people look at the world. I think that most people

want to do the right thing. And someone that hasn't been able to use public transportation, for them to be able to use it would be a terrific thing.

Maybe instead of this 24-hour whatever it is, you know, that if you needed to go someplace within 24 hours, maybe what should happen is that Senators that think that people should have to use public transportation could give out their home phone numbers and we could help carry their wheelchairs up and down subway stairs. Maybe we could all volunteer to do that. I know I, for one, would love to be able to carry someone in a wheelchair up and down some of the subway steps that we have in the city of New York.

Anyway, just, you know, that we focus on doing this sort of what I consider to be pretty mean pieces of legislation here instead of actually trying to solve real problems for New Yorkers is the tragedy of this body.

So I would -- I know that we're on roll call, but those that come after the

letter D, I would encourage them to vote no on this and to really think better of our disabled and ill and older sisters and brothers. Thank you.

ACTING PRESIDENT KUHL: Senator Duane, how do you vote?

Senator Duane will be recorded in the negative.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Mr. President, to explain my vote.

ACTING PRESIDENT KUHL: Senator Espada, to explain his vote.

SENATOR ESPADA: Some of us in the next couple of weeks will be symbolically trying to empathize with the people on a food stamp budget by actually living on a food stamp budget. In fact, most of our conference here started that over lunch.

But the fact of the matter is that this bill is bad, it's bad legislation, it's bad medicine for a problem that doesn't exist. It adversely impacts on the availability and accessibility of medically necessary care.

There are no cost savings, because

the reality is that while we're stripping our Medicaid patients on the front end, the back end -- that is, the hospital ER room and ambulance services -- will transport those very same patients that were denied this free ride, this mode of transportation, visit to the doctor, they'll make their way via ambulance on an emergency basis to the hospital.

There is no documented problem of overutilization in this matter. And the worst part about it is that we are taking medical judgment and supplanting it with a bureaucratic process that will not know what problems exist but is going to render a judgment on the justification to treat them.

So for all of those reasons, I would vote no.

ACTING PRESIDENT KUHL: Senator Espada will be recorded in the negative.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Aye.

THE SECRETARY: Senator Gentile.

ACTING PRESIDENT KUHL: Senator Gentile, to explain his vote.

SENATOR GENTILE: To explain my vote. And I think my microphone is on this time, so that's good to hear.

Anyway, Mr. President, certainly I think I'm joining the members of this conference and certainly those members from New York City in saying that I think this is the wrong approach to whatever the perceived problem is. Given these circumstances within the city of New York and the type of transportation available to those in the city of New York, I would agree with my colleagues Senator Duane and Senator Espada and I'm sure many others in this conference that it is practically impossible and creates an additional burden for those who legitimately, legitimately need to use transportation services to get to their medical facility.

So certainly, certainly in this case, while not an expert in this area, and cognizant of what Senator DeFrancisco is attempting to do in this legislation, I

believe particularly within the city of New York that this is impractical, unworkable, and probably unnecessary.

So for those reasons I join my colleagues in voting no.

ACTING PRESIDENT KUHL: Senator Gentile is in the negative.

THE SECRETARY: Senator Gonzalez.

ACTING PRESIDENT KUHL: Senator Gonzalez, to explain his vote.

SENATOR GONZALEZ: To explain my vote, Mr. President.

I think that the problem of Onondaga County is not the same as Bronx County or the City of New York, although one county's problem trying to put it all together for the state is the same as when we take HMOs and we try to do the magic wand and take medical decisions away from the medical personnel that knows what to do, as opposed to someone that wants to save dollars. We want to save dollars, but we don't want to hurt those medically impaired.

And so I think that this bill has been -- again, in the past -- and is a bill

that I will vote no because it does not help my community.

ACTING PRESIDENT KUHL: Senator Gonzalez will be recorded in the negative.

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Aye.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Aye.

THE SECRETARY: Senator Hassell-Thompson.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson, to explain his her vote.

SENATOR HASSELL-THOMPSON: Thank you, Mr. Chairman. To explain my vote.

Earlier I talked a little bit about Westchester County, and I was appreciative that my colleague who is helping me to learn the Bronx and its resources has supported the fact that this kind of service also exists in the Bronx.

None of that is to say that this is a bad ruling for me. But what it does say is that not all communities within the State of New York have need of this kind of service.

It also asks me to harken back to

yesterday when we talked about how do we deal with those mandated services that come down to our counties. And I would think that this legislation does not exempt any county that is already dealing appropriately and satisfactorily with this issue.

And so that if you would extend the legislation to include that this would be one of those mandated services that alternative measures by those municipalities who already are using a formula that is a better alternative to what is being proposed, then perhaps I could in fact support it.

But I have to vote no. Thank you, Mr. Chairman.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson is in the negative.

THE SECRETARY: Senator Hevesi.

ACTING PRESIDENT KUHL: Senator Hevesi, to explain his vote.

SENATOR HEVESI: Thank you, Mr. President. I rise to explain my vote in opposition to this legislation.

This is a well-intended piece of legislation. I think most of us agree on that

point. The problem is as you're sitting here doing your cost-benefit analysis, it becomes pretty obvious that though we are going to save some money and though it is very likely that there are some people out there who are taking advantage of this free benefit where they could be using public transportation, the fact is that when you have a sweeping policy change, you are almost certainly going to incorporate and catch people who need the free services -

Mr. President. Mr. President, can we have some order.

ACTING PRESIDENT KUHL: Quiet.

SENATOR HEVESI: Thank you.

It's almost certain we are going to have some people who are caught up in a situation where they're going to be denied the free transportation that they absolutely need.

And I know, because in my Senate district I've got subways running through my Senate district. And I'll give you a striking example. Since 1993, 73 people have been killed crossing Queens Boulevard, under which the subway runs. And we know from statistics

that since 1995, 60 percent of all the deaths have been senior citizens. And we know that there are seven subway underpasses through which the senior citizens can walk and not subject themselves to the dangers of this roadway. And they don't, many of them. And they don't because it's very difficult for many of them to navigate those stairs, flat out. And we have the statistics to prove it.

So when you have a piece of legislation like this that's well-intended, what you're going to find is a situation where people are going to be denied the right to have free transportation, a decision made not necessarily by a healthcare practitioner but by somebody whose incentive probably will be or whose motivation will be to deny. That will be the first -

ACTING PRESIDENT KUHL: Senator Hevesi. Senator Hevesi, how do you vote?

SENATOR HEVESI: I'll wrap up, Mr. President.

That will be the first response, the first instinct.

So this is a bad piece of

legislation. People need to have available to them free transportation, particularly when the decision to make this -- to deny the coverage for these individuals is something that is highly subjective and is certainly going to leave some people out in the cold.

I vote no, Mr. President.

ACTING PRESIDENT KUHL: Senator Hevesi in the negative.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Aye.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger, excused.

Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

ACTING PRESIDENT KUHL: Senator Lachman, to explain his vote.

SENATOR LACHMAN: You took the words of my mouth, Mr. President. Thank you.

First of all, behind his back -- if he were here, I would dimension it -- I appreciate the graciousness of Senator

DeFrancisco in responding to my questions and the questions of my colleagues.

Secondly, unfortunately, I will have to vote against this bill, as I did last year. And Senator DeFrancisco has a noble objective in saving monies, especially Medicaid funding. But I think it's the wrong way to go about it.

I have in my district, as many people have, senior citizens. Many of these seniors take medication. And sometimes they take medication according to the color of the pill -- green, blue, yellow, red, white, purple, you name it.

We had a neighbor that my wife every week would fill up her pillbox and write notes to her what to take and what not to take. Now, she took the wrong color -- this is a true story -- she took the wrong-color pills for a week. She didn't realize she was in an emergency situation. When my wife found out that she was, we rushed her to the hospital. Unfortunately, by that time she had water in her lung and did not live much longer.

From this personal reason, I come to the conclusion that it is very difficult to ascertain when an emergency situation occurs in many people's lives, especially the seniors in our midst.

Thank you. I vote no.

ACTING PRESIDENT KUHL: Senator Lachman in the negative.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

(No response.)

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Yes.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz, excused.

Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Yes.

THE SECRETARY: Senator Mendez.

ACTING PRESIDENT KUHL: Senator Mendez, to explain her vote.

SENATOR MENDEZ: Mr. President, I'm going to vote no on this bill. I am very much aware of the good points of this bill. I'm also aware that Senator DeFrancisco do want to save some monies.

I don't care for the perception that people who are on Medicaid are necessarily out there expending more money than they ought to and for us to be defining what their emergency is all about.

I think that what we should do, if we really want to have the different counties, the different municipalities in the state have more money and don't be, you know, at times

practically in bankruptcy because of the mandates that we throw to them, what we should do is to work politically to see if we are able to get the state and the federal government to pick up some of those expenses of Medicaid.

So for that and other reasons explained by my colleagues here, I really have to vote no.

ACTING PRESIDENT KUHL: Senator Mendez in the negative.

THE SECRETARY: Senator Montgomery.

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

SENATOR MONTGOMERY: Yes, Mr. President. I've listened to the debate, and I'm certainly impressed. I hear Senator Hevesi and I hear Senator Brown, and they make such excellent points. And I too think that this bill would not serve particularly the constituents of New York City, as Senator Connor has pointed out.

So I'm going to vote no even though I certainly agree with the fact that we need

to try and control the cost under Medicaid as much as possible so as to maintain availability to as many constituents as possible.

But I'm going to vote no on this.

ACTING PRESIDENT KUHL: Senator Montgomery in the negative.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato, excused.

Senator Oppenheimer.

ACTING PRESIDENT KUHL: Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: Thank you, Mr. President.

I'm going to be voting for the bill, though I must say that I can recognize that there's a real upstate/downstate kind of problem here. And I can empathize with the downstaters.

But let me speak from the perspective of a county that does not have the

same kind of mass transit and that has tried -- and the reason that I'm supporting this -- has tried to use smaller public vehicles, sort of quasi-public vehicles, smaller, smaller sort of jitneys, minivans, to try and accommodate to those folks so they will not take the private taxis.

The counties have been experiencing enormous pressure due to the costs of Medicaid. And I don't know about your counties upstate, but I can only speak for my county. If they were asked what could the state do to help the counties, the first thing they would come up with is the state should relieve the counties of the 25 percent payment that counties now make in the State of New York but it is not made in other states in our country.

And so as someone who came out of running the Municipal Officials Association of Westchester, I really have to ask us as a body to take a close look at removing the burden on the counties of these Medicaid costs.

I'll be voting in the affirmative.

ACTING PRESIDENT KUHL: Senator

Oppenheimer in the affirmative.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Aye.

THE SECRETARY: Senator Paterson.

ACTING PRESIDENT KUHL: Senator Paterson, to explain his vote.

SENATOR PATERSON: Mr. President, I will not minimize the gravity of concern that Senator DeFrancisco has for cost savings, particularly in the area of Medicaid.

With Medicaid costs rising at an average of 10 percent a year, with healthcare costs in general rising as a matter of 11 percent per year, with prescription drugs in this country going up 15 percent a year - right here in New York State we have ten distressed hospitals losing more than $15 million a year. We have two hospitals in this state losing more than $25 million a year.

There is a grave concern about the amount of money that we're losing and the cost savings that our state coffers could realize from cutting corners where we can.

But when you listen to Senator

Hevesi and he talks about the injuries and the deaths that have been received when seniors are crossing Queens Boulevard when they actually had another option, and when we talk about the number of people who, because of the transportation issue, may not even seek medical care -- that we have a number of individuals in this state who sorely need medical care under Medicaid but are in denial and actually don't even want to go to the doctor, so the easiest way that we could send them is the best way for their survival and their livelihood -- when we look at the values of cost and we look at the values of human life, I don't think on this particular issue we can compare them.

I didn't even hear what the loss was to our annual budget because we are financing, through Medicaid, the transportation to the doctor of the recipients.

ACTING PRESIDENT KUHL: How do you vote, Senator Paterson?

SENATOR PATERSON: I vote no.

ACTING PRESIDENT KUHL: Senator

Paterson in the negative.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: To explain my vote.

ACTING PRESIDENT KUHL: Senator Sampson, to explain his vote.

SENATOR SAMPSON: I rise in opposition to this legislation.

Of course we need to curb the Medicaid costs, and also to the point of curbing Medicaid fraud. But in this instance I believe that we're taking the decisions from those individuals and giving them to bureaucrats, such as what's going on with the HMOs. And we have people who are going to have to decide whether or not their problem is severe enough where they have to call the Department of Health or the Department of Social Services to make a decision.

I think we don't need to put them in that position. Therefore, I vote in

opposition to the bill.

ACTING PRESIDENT KUHL: Senator Sampson in the negative.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Schneiderman.

ACTING PRESIDENT KUHL: Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I am voting against this bill. I also agree that saving money is important. But the definitions in this legislation make it virtually impossible that it will not have the undesired result, and I'm sure undesired by the sponsor, of unfairly penalizing people -- forcing people, essentially, to dip into their meager resources to take other forms of transportation.

Because the definition here is simply to require the use of common carriers when such means of transportation are available to the recipient. It doesn't say available and of comparable speed, it doesn't

say available and of comparable convenience. None of these things are factored into this.

And I can tell you from my own experience that people with meager resources are going to be forced to pay out of their own pockets for transportation. Because when you have a sick relative, a loved one, a child, a parent, you are not there calculating, well, are they really sick enough that we should try and get there 10 minutes, 15 minutes sooner.

I mean, the second issue which this raises -- and I think it really is something we have to address I think a little more honestly in this house -- is the fact that this -- you know, obviously we favor mass transit. We have in last year's budget allocated less state dollars for the buses and subways of the City of New York than were allocated a decade ago. In spite of inflation, in spite of massive increases under the supposedly conservative Pataki regime in the size of the state budget. New York City buses and subways are being punished. Our service is worse now.

If we're going to try and force

people into buses and subways, let's take an honest look at what we are doing with our buses and subways. There is no transit system in the United States that is funded as poorly by the state as the New York City transit system.

ACTING PRESIDENT KUHL: Senator, how do you -- Senator Schneiderman, how do you vote?

SENATOR SCHNEIDERMAN: I vote no. Thank you.

ACTING PRESIDENT KUHL: Senator Schneiderman in the negative.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Aye.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Aye.

THE SECRETARY: Senator A. Smith.

ACTING PRESIDENT KUHL: Senator Smith, to explain her vote.

SENATOR ADA SMITH: Thank you very much, Mr. President.

My conservative bent naturally leads me to be in favor of any cost-saving methods. However, as has been said here

today, I do not believe that this would be cost-saving, and it would be cost-producing.

Taking away the doctors' and the medical personnel's decision-making power and giving it to a clerk certainly does not benefit any of our constituents and may lead to even more serious illnesses on the part of these Medicaid recipients.

Also, in areas that I represent, and others in this room, there is virtually no public transportation that they can avail themselves of. There is transportation that is franchised which may come at any time of the day on no regular schedules. And many of us have battles with them on a regular basis. So they clearly would not serve our constituency.

Furthermore, I will admit that the Senator who is the sponsor of this legislation may have some smart body parts. However, in reference to this particular bill, it wasn't there. And I vote no.

ACTING PRESIDENT KUHL: Senator Smith in the negative.

THE SECRETARY: Senator M. Smith.

ACTING PRESIDENT KUHL: Senator Smith, to explain his vote.

SENATOR MALCOLM SMITH: Yes, Mr. President. Thank you.

While I can appreciate Senator DeFrancisco's intent to apply some fiscal prudency to a difficult and probably very expensive situation, I think he missed the opportunity by not conducting hearings, as my learned colleague Senator Dollinger pointed out.

I think had he had the opportunity to do so and had done so, he would have recognized that while there are some that believe this is a problem that exists from downstate to upstate, it also has sort of a socioeconomic problem as well in terms of if you just deal with the neighborhoods in which this will obviously have an impact on.

I think Senator Ada Smith, my adjacent colleague in the district, pointed out well that there are parts of our district that do not have public transportation.

And it's because of this that while I think his intent is honorable, but I think

he missed the mark, I'm going to be voting no.

ACTING PRESIDENT KUHL: Senator Smith will be recorded in the negative.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

ACTING PRESIDENT KUHL: Senator Stachowski, to explain his vote.

SENATOR STACHOWSKI: Mr. President, to explain my vote. As I said earlier, I support Senator DeFrancisco's bill. I think that -- I like to think the positives. I try not to focus on the negatives on this.

I think that the bill is not trying to take anything away from anybody, it's just saying that if you're able and it's not an inconvenience that, when possible, you could taken the public transportation system. I think it's an idea to try to help both the taxpayers and the public transportation systems without hurting the people receiving the service. I know that by allowing the cabs, we save money by not having people in ambulances.

And I also understand the concern of the people from the New York City area, because it's a whole different system. And my dear friend Senator Brown, who's thinking like a New York City resident.

SENATOR ADA SMITH: He's thinking about his parents.

SENATOR STACHOWSKI: He's thinking about his parents in Queens. Thank you.

But the fact is that I like to think the positive. And I think that I tend to agree with Senator Dollinger's analogy on this bill, that by voting for it we're voting for the good parts in this bill.

And if there's as many problems as some of my colleagues have pointed out with this bill, that the Assembly version will be different, that it may come together and cause a conference committee on this piece of legislation, something that will come out win-win, that all the people receiving the services will receive them, that the transit system will get more ridership because they'll work out some kind of system where people who

can use it will use it -- not in an inconvenience, but just because it's easy for them -- and that people who still need to use cabs, for example, will use cabs. And that in some way we'll end up with a win-win or we'll have more of these little minibuses running around, instead of cabs, provided by the transit system, to help people like this get to their physicians or doctors or health clinics or outreach clinics or whatever they use.

But in no way do I see this bill as a bill that's trying to take services away from people, trying to force sick people onto -

ACTING PRESIDENT KUHL: Senator Stachowski, how do you vote?

SENATOR STACHOWSKI: -- buses and subways.

I vote yes.

ACTING PRESIDENT KUHL: Senator Stachowski is recorded in the affirmative.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

ACTING PRESIDENT KUHL: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: To explain my vote, Mr. President.

I rise because I am disappointed that the buses and subways are not accessible for the disabled in many respects. While it's true that the buses are required to have the lift mechanisms, the so-called kneeling buses, many of them do not work, unfortunately. At Flushing Main Street, we have a new escalator and elevator system, and it often does not work. In many parts of the city we have nonfunctioning accessibility for the disabled.

And I rise also, Mr. President, for those people who were killed on Queens Boulevard, the people alluded to by Senator Hevesi. Seventy-three people, Mr. President, have lost their lives on Queens Boulevard. They have the option of using the stairs to go underneath Queens Boulevard and avoid the traffic. Instead, they chose to cross a very, very dangerous intersection.

And, Mr. President, it becomes incumbent upon us, I think, to provide bus

transportation -

ACTING PRESIDENT KUHL: Senator Stavisky, how do you vote?

SENATOR STAVISKY: -- subway transportation.

And I vote no.

ACTING PRESIDENT KUHL: Senator Stavisky in the negative.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT KUHL: Call the absentees.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes, 39. Nays,

18.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR BRUNO: Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Can we at this time call up Calendar Number 122.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 122, by Senator Velella, Senate Print 1360, an act to amend the Administrative Code of the City of New York, in relation to the investment powers.

SENATOR CONNOR: Explanation.

ACTING PRESIDENT KUHL: Senator Velella, an explanation has been asked for by Senator Connor.

SENATOR VELELLA: Mr. President, this bill would amend the Administrative Code of the City of New York and would allow the New York City Fire Department Life Insurance Fund the same investment powers that the board of trustees of the Fire Department Pension

Fund have, so that they would be able to get the same return on the investments that the pension fund has had, because the pension fund has far exceeded that which the insurance company has.

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

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

ACTING PRESIDENT KUHL: Senator Velella, do you yield to a question from Senator Paterson?

SENATOR PATERSON: How do you know, Senator Velella, that the pension fund -

ACTING PRESIDENT KUHL: Senator Paterson, excuse me just a minute. Senator Velella has not yielded at this moment.

Senator Bruno.

SENATOR BRUNO: Excuse me. Can we lay this bill aside for the day.

ACTING PRESIDENT KUHL: Lay the bill aside for the day.

SENATOR BRUNO: Thank you.

Is there any housekeeping at the

desk, Mr. President?

ACTING PRESIDENT KUHL: No, there is none at the desk.

SENATOR BRUNO: I'd like to announce a meeting of the Veterans Committee in Room 808 in the LOB tomorrow morning at 9:30 a.m.

I'd like to announce a Majority conference at 10:00.

And there being no further business to come before the Senate, I would move that we stand adjourned until 11:00 a.m. tomorrow.

ACTING PRESIDENT KUHL: The Senate stands adjourned until tomorrow at 11:00 a.m. -

SENATOR PATERSON: Mr. President.

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

SENATOR PATERSON: Mr. President, on behalf of Senator Olga Mendez, the chair of the Minority Conference, we would like to announce a 10:30 meeting, because we get business done quicker, in the Minority Conference Room.

ACTING PRESIDENT KUHL: The

Senate stands adjourned.

(Whereupon, at 6:05 p.m., the Senate adjourned.)