NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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11:02 a.m.

REGULAR SESSION

SENATOR MICHAEL A.L. BALBONI, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT BALBONI: The Senate will come to order.

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

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

ACTING PRESIDENT BALBONI: (To gallery.) Thank you for the help, boys and girls.

In the absence of clergy, may we all bow our heads in a moment of silence.

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

ACTING PRESIDENT BALBONI: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 20th, the Senate met pursuant to adjournment. The Journal of Monday, March 19, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's substitutions at the desk. If we could make them at this time.

ACTING PRESIDENT BALBONI: The substitutions will be read.

THE SECRETARY: On page 4, Senator Goodman moves to discharge, from the Committee on Investigations, Taxation and Government Operations, Assembly Bill Number 1971 and substitute it for the identical Senate Bill Number 720, First Report Calendar 272.

And on page 4, Senator Goodman moves to discharge, from the Committee on Investigations, Taxation and Government Operations Assembly Bill Number 5798 and

substitute it for the identical Senate Bill Number 3218, First Report Calendar 275.

ACTING PRESIDENT BALBONI: The substitutions are so ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Higher Education Committee in the Majority Conference Room.

ACTING PRESIDENT BALBONI: There will be an immediate meeting of the Committee on Higher Education in the Majority Conference Room.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's a privileged resolution at the desk, by myself. Could we have the title read and move for its immediate adoption.

ACTING PRESIDENT BALBONI: The Secretary will read.

THE SECRETARY: By Senator Skelos, Legislative Resolution Number 952, memorializing Governor George E. Pataki to proclaim March 25, 2001, as Greek Independence Day in the State of New York, and honoring the

Federation of Hellenic-American Societies of Greater New York.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: Move the resolution, please.

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

(Response of "Aye.")

ACTING PRESIDENT BALBONI: Opposed, nay.

(No response.)

ACTING PRESIDENT BALBONI: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: With the consent of the Minority, if we could put all the members on the resolution. If somebody does not wish to be on the resolution, they should indicate to the desk.

ACTING PRESIDENT BALBONI: On behalf of Senator Skelos, all members who wish to not be on the resolution please notify the desk.

Senator Skelos.

SENATOR SKELOS: Could we go to the noncontroversial calendar.

ACTING PRESIDENT BALBONI: The Secretary will read.

THE SECRETARY: Calendar Number 201, by Senator Marchi, Senate Print 2953, an act authorizing the New York State -

SENATOR MARCHI: Lay it aside for the day.

ACTING PRESIDENT BALBONI: Lay that bill aside for the day.

THE SECRETARY: Calendar Number 222, by Senator Kuhl, Senate Print 3063, an act to amend the Education Law, in relation to procedures.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT BALBONI: Lay it aside.

THE SECRETARY: Calendar Number 228, by Senator Volker, Senate Print 204, an act to amend the Penal Law, in relation to loitering.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT BALBONI: Lay

that bill aside.

THE SECRETARY: Calendar Number 230, by Senator Bonacic, Senate Print 2270, an act to amend the Penal Law, in relation to the aggravated harassment of an employee.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT BALBONI: Lay it aside.

THE SECRETARY: Calendar Number 236, by Senator Padavan, Senate Print 2710, an act to amend the Penal Law, in relation to making unlawful immigration a Class C felony.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT BALBONI: Lay it aside.

THE SECRETARY: Calendar Number 237, by Senator Johnson, Senate Print 2732, an act to amend the Penal Law, in relation to criminal contempt.

SENATOR PATERSON: Lay it aside for the day.

ACTING PRESIDENT BALBONI: Senator, we're only able to entertain the lay it aside motion. You're not able to lay it

aside for the day.

Lay that bill aside.

Nice try, though.

THE SECRETARY: Calendar Number 261, by Senator Meier, Senate Print 1445, an act to amend the Social Services Law, in relation to eligibility.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT BALBONI: Lay it aside.

THE SECRETARY: Calendar Number 264, by Senator Alesi, Senate Print 3631, an act in relation to redistributing.

ACTING PRESIDENT BALBONI: Read the last section.

THE SECRETARY: Section 17. This act shall take effect immediately.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 265, by Senator Leibell, Senate Print 3711, an

act to amend the Executive Law and the State Finance Law, in relation to terms and conditions.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: Mr. President, is there a message of necessity and appropriation at the desk?

ACTING PRESIDENT BALBONI: Yes, there is, Senator.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT BALBONI: All those in favor of accepting the message of necessity and appropriation please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BALBONI: All those naying.

(No response.)

ACTING PRESIDENT BALBONI: The message is so accepted.

Last section.

THE SECRETARY: Section 20. This act shall take effect immediately.

ACTING PRESIDENT BALBONI: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 266, by Senator Leibell, Senate Print 3712, an act to amend the Executive Law and the State Finance Law, in relation to terms and conditions of employment.

Senator Skelos.

SENATOR SKELOS: Mr. President, is there a message of necessity and appropriation at the desk?

ACTING PRESIDENT BALBONI: Yes, there is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT BALBONI: The motion is to accept the message of necessity and appropriation. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BALBONI: All those naying.

(No response.)

ACTING PRESIDENT BALBONI: The message is so accepted.

Read the last section.

THE SECRETARY: Section 23. This act shall take effect immediately.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 41.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 267, by Senator Leibell, Senate Print 3713, an act to amend the Executive Law, in relation to terms and conditions of employment.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: Mr. President, is there a message of necessity and appropriation at the desk?

ACTING PRESIDENT BALBONI: Yes, there is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT BALBONI: The motion is to accept the message of necessity.

All those in agreement signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BALBONI: Those naying.

(No response.)

ACTING PRESIDENT BALBONI: The message is so accepted.

Read the last section.

THE SECRETARY: Section 23. This act shall take effect immediately.

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

ACTING PRESIDENT BALBONI: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe that completes the noncontroversial calendar. If we could go to the controversial calendar, beginning with Calendar Number 261, by Senator Meier.

ACTING PRESIDENT BALBONI: The Clerk will call 261, by Senator Meier.

SENATOR ADA SMITH: Explanation.

ACTING PRESIDENT BALBONI: An explanation has been asked for.

THE SECRETARY: Calendar Number 261, by Senator Meier, Senate Print 1445, an act to amend the Social Services Law, in relation to eligibility.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT BALBONI: Senator Meier.

SENATOR MEIER: Thank you, Mr. President.

Mr. President, this legislation extends some provisions in the Social Services Law dealing with a program known as the Child Assistance Program. And just briefly, what the Child Assistance Program is, it is a rather innovative approach to providing family assistance that began back in the 1990s and attempts to transition people -- and most of these people are single, working mothers - from welfare to work.

And it rests on the proposition that those eligible for the program must have some degree of employment and that they must have an effective child support order

involving the absent parent of the involved children.

The program then rests on the principles of the ability to keep earnings above those normally provided for under the Social Services Law. And one of the most critical elements is that it permits the participant in the CAP program to continue receiving Medicaid benefits for themselves and for the children who may be involved.

This started as a demonstration project in 1993. As a result of welfare reform in 1997, Medicaid eligibility was decoupled from eligibility for family assistance. So what this legislation would do, then, is continue to make the Medicaid eligibility available to these families, and it extends that out to the year 2003.

ACTING PRESIDENT BALBONI: Thank you, Senator Meier.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. If the Senator will yield for some questions.

ACTING PRESIDENT BALBONI:

Senator Meier, do you yield?

SENATOR MEIER: Certainly, Mr. President.

ACTING PRESIDENT BALBONI: The Senator yields.

SENATOR HASSELL-THOMPSON: Thank you.

Listening to the history and having read a little bit of the background of the bill, Senator, through you, Mr. President, since the program has been made permanent, why is Section 131-z being renewed every two years and not being made permanent along with the program?

SENATOR MEIER: I think, Mr. President, we do this with a number of social services programs. And the hope, of course, is that we'll -- eventually most of these programs will eventually work themselves out the need for their existence.

So we've done these on some extensions so that we can monitor the programs, determine their cost-effectiveness. And in the past, extension has never really been a problem.

I might add also that one of the things that's happened with this program, it was once a pilot program where counties had to get involved in them on a waivered basis. Now this is available to any county that wishes to run the program.

Part of the reason, Mr. President, I think extending this for a few years at a time may very well have to do with the requirement to secure federal waivers from the Health Care Finance Administration in Washington, which I think are never on a permanent basis but only on an experimental.

ACTING PRESIDENT BALBONI: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. If the Senator would continue to yield.

ACTING PRESIDENT BALBONI: Senator, do you continue to yield?

SENATOR MEIER: I'd be pleased to.

SENATOR HASSELL-THOMPSON: Thank you. Through you, Mr. President. One of the things that I found in doing that research is

that over $50 million have been saved as a result of the pilot in those three counties. And it also is a clear indication that it works much, much better than AFDC or any other of the other public assistance programs.

So why, then, aren't we making it mandatory for all counties to participate as opposed to leaving it to their discretion?

SENATOR MEIER: Well, Mr. President, as a former county executive, I was one of the first counties to -- Oneida County was, to do this. We looked at the program, we determined that it worked for my county.

With all due respect, however, to the question and to my distinguished colleague, the questioner, I find on Monday morning when I drive down here I don't get smarter the closer I get to Albany. And I think we really need to let counties take a look at this to see if it works for their situation and to let them make that decision on a local basis.

ACTING PRESIDENT BALBONI: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Mr.

President, if the Senator would continue to yield.

ACTING PRESIDENT BALBONI: Senator, do you continue to yield?

SENATOR MEIER: Yes, I will, Mr. President.

ACTING PRESIDENT BALBONI: The Senator yields.

SENATOR HASSELL-THOMPSON: Thank you. Thank you, Senator.

Through you, Mr. President, the evaluation results demonstrate that it is possible to construct programs that not only encourage work and responsibility but are fiscally sound. And it is a help-not-hurt.

It would seem, then, that we should be trying to construct this as we look at other welfare programs. Has there been any thought on how we could use this model for other entitlement programs?

ACTING PRESIDENT BALBONI: Senator Meier.

SENATOR MEIER: Well, Mr. President, I would say that this really builds on the model, I think, of welfare reform

itself overall, in terms of the elements of it that I think are most useful.

That involves the notion that we need to take the benefits that are provided for under public assistance programs and use them to subsidize and to encourage work. I think that's one of sort of the guiding principles that we find throughout welfare reform.

I think, if I can point to some other legislation, Mr. President, where we have tried to do the same thing, take the same resources that we put in the programs and use them to directly subsidize and assist work, I could point to, for example, legislation which this house passed last year and which the Governor signed into law so that someone who may be on public assistance and is attempting to complete college work can use a work-study experience or an internship that's part of their curriculum to count towards their workfare requirement.

Again, using the same resources, not spending additional money, but using the same resources that we're applying to the

particular public assistance recipient, but helping them to expand their possibilities.

So I think the broad, guiding public policy of this bill can be found in a number of things we have done.

ACTING PRESIDENT BALBONI: Thank you, Senator Meier.

Senator Hassell-Thompson.

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

ACTING PRESIDENT BALBONI: On the bill.

SENATOR HASSELL-THOMPSON: I know that with the stroke of the pen it only puts a line under "three," as opposed to "one."

However, I want to commend Senator Meier on this piece and also in terms of the conscientiousness with which he understands this bill and is looking at those things that will help, not hurt persons who really have had some serious circumstances, in many cases, and are making an attempt to rebuild their lives.

And so that I can and will support this bill, and I commend the Senator.

Thank you.

ACTING PRESIDENT BALBONI: Thank you, Senator Hassell-Thompson.

Read the last section.

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

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

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

ACTING PRESIDENT BALBONI: Senator Meier, do you yield?

SENATOR MEIER: Certainly, Mr. President.

ACTING PRESIDENT BALBONI: Please proceed, Senator Paterson.

SENATOR PATERSON: Senator, do you think that the CAP program as we have set it up now actually works better than things would have worked had we never actually had the federal Welfare Reform Act of 1996 in the first place?

SENATOR MEIER: Well, Mr. President, that's a philosophical question. And one of the things I do enjoy about my job

as a Senator is that we get the chance as a deliberative body to discuss these ideas.

I think that the CAP program embodied a number of principles that were missing in the old welfare system. And by that I mean the CAP program understands that the old welfare system penalized work, that it penalized people who made the effort to secure support from the absent parent of their child, because indeed even if they went to work, even if they cooperated to secure a child support order, not only were they no better off, they were frequently worse off, because the old welfare system required us to take away virtually a dollar for every dollar they earned.

And so, under the old welfare system, before welfare reform, the highest rate of taxation in this country was not on millionaires, it was on working, single women who were receiving public assistance benefits.

So I would think that the approach under CAP rests on some of the principles that we find in welfare reform, most notably - most notably the emphasis on work.

One of the things, Mr. President, that welfare reform did in the 1997 act was it opened up CAP so that under the old system you had to ask for permission from Albany and from Washington to try CAP. Now, counties are free to implement this on their own.

ACTING PRESIDENT BALBONI: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT BALBONI: On the bill.

SENATOR PATERSON: That was pretty much what I was hoping that Senator Meier would say. The CAP program, as you may know, started in 1987. It was expanded in 1993. We made it permanent -- I hesitate to use the word "permanentized," because it bothers my counsel, words like "concretize," "permanentize."

But when we did that in 1997, the results have really been that the people are working, are making more money, they're paying more money back in taxes. And although the program is actually permanent, what I'm hoping

we'll do in the future is to find more ways to encourage more people who are eligible to become involved, even though this was a forerunner to the inevitable federal legislation that we passed in 1996 with respect to welfare.

This is one of those programs that I think both sides of the aisle agree has been outstanding for those who have been able to become involved. And my suggestion is that we try to expand the boundaries of the program, the perimeters involved, and try to extend it to more people around the state.

ACTING PRESIDENT BALBONI: Any other member wishing to be heard?

If not, read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT BALBONI: The bill is passed.

SENATOR SKELOS: Mr. President,

if we could now continue with the controversial calendar, regular order.

ACTING PRESIDENT BALBONI: The Secretary will read.

THE SECRETARY: Calendar Number 222, by Senator Kuhl, Senate Print 3063, an act to amend the Education Law, in relation to procedures.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT BALBONI: Senator Kuhl, an explanation has been requested.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. An explanation has been asked for?

ACTING PRESIDENT BALBONI: Yes, it has, Senator.

SENATOR KUHL: Might I inquire as to who made the explanation request?

ACTING PRESIDENT BALBONI: Senator Dollinger, Senator Kuhl.

SENATOR KUHL: Okay. Senator Dollinger, last year you may remember that we passed in this house a bill that we called

SAVE. It was a monumental piece of legislation that really was meant to address violence in schools.

One of the pieces of that legislation authorized a removal by a classroom teacher of a student for a period not to exceed 10 days. And the student obviously would have to be provided with an alternative education.

Part of that particular piece of legislation required that the school superintendent, principal, whatever, notify the parents within 24 hours of the removal from the classroom and that within 48 hours of that removal there also be a hearing.

Well, it's come to our attention that schools don't really operate on an hourly basis. Certainly they start at a certain hour and they end at a certain hour, but they don't work on Saturdays and Sundays. So if you had a student who unfortunately was removed from a classroom on a Friday afternoon at 2 o'clock, the law would require that the parents be notified by 2 o'clock the next afternoon and that a hearing be held by 2 o'clock on Sunday.

That really presented a tremendous burden to those situations on school districts. And we've had recommendations coming from superintendents and other people in the school system that the law be modified to make the changes to allow those notifications to occur in the realm of school days.

And so if you have a student now who is removed, say, at 2 o'clock on a Friday afternoon from the classroom, this law would allow that school to notify the parents by 2 o'clock on Monday and to have a hearing by 2 o'clock on Tuesday. The essence of the change is to move -- and you can see from the language that there's a provision dealing with the definition of when that time actually would expire.

I think if you look at lines 6 and 7 and also at lines 16 through 20 of the proposed bill that you'll see that there are definitions as to how that time period is modified.

ACTING PRESIDENT BALBONI: Thank you, Senator Kuhl.

Senator Dollinger.

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

ACTING PRESIDENT BALBONI: Senator Kuhl, do you yield?

SENATOR KUHL: Yes, be happy to.

ACTING PRESIDENT BALBONI: The Senator yields.

SENATOR DOLLINGER: Through you, Mr. President, this is the first opportunity, at least to my knowledge, that we've had to look at the implications of Chapter 181 of the Laws of 2000 in which, as you properly point out, we created a power to remove a child from the classroom on behalf of the teacher presiding in that classroom.

And my question, my first question is, what has been the impact? You talked about being contacted by superintendents and others. Has this whole notion of a teacher having the ability to remove the student from a classroom, has there been any demonstration of success that SAVE has reached the goal that it was designed to achieve?

SENATOR KUHL: I don't believe that the law has had enough time for implementation, Senator, to actually see an experience. There's only two areas of concern that we have heard from at this point, one dealing with the time periods and the other dealing with -- there's a requirement, a separate -- actually, well, not a separate piece of the bill, a separate piece of the same concept of legislation that dealt with fingerprinting and not being able to hire a teacher until the fingerprints had actually been cleared. And there's a bill being proposed by Senator Saland that will modify that.

Every other piece of the legislation that we've seen, because there are some points of the legislation that will not really become effective until July 1st of this coming year, is that it's meeting with a great deal of success.

As a matter of fact, Senator, in my district, you may have seen it on a national news story just a couple of weeks ago, there was a student who walked into school with a

loaded pistol and a loaded shotgun, also was carrying 18 homemade bombs. And I'm told by a group of professionals that visited me just yesterday that had it not been for the SAVE legislation, they would not have already put the procedures in place that would have stopped that, as it did, without injury to the students.

So it appears as though the wisdom of this body has been tremendously successful in getting people acclimated, the school districts acclimated to deal with the violence. And so this is one of the few occasions where we've seen any suggestions where there should be some modification.

SENATOR DOLLINGER: Again, through you, Mr. President, if Senator Kuhl will continue to yield.

ACTING PRESIDENT BALBONI: Senator, do you yield?

SENATOR KUHL: I'll be happy to.

SENATOR DOLLINGER: Senator Kuhl, I understand and I know of that incident that you've described, the enormously disturbing actions of that student and the potential

threat to his peers as well as everybody in the building.

But based on my recollection, Senator, this bill was designed not only to deal with students who were involved in, as you describe it, the potentially dangerous-to-everyone kind of action of bringing loaded weapons and bombs into school, but it was also designed to deal with students who were unruly and exceedingly disruptive or continuously disruptive.

My question, through you, Mr. President, is do you have a sense, based on that criteria -- not something as outrageous as the conduct that you described, but nonetheless the kind of disruptive conduct which has extracted a toll in our schools and prevented quality education from occurring, is it being used for that purpose as well?

SENATOR KUHL: I don't have a concept. No reports back yet, Senator.

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

ACTING PRESIDENT BALBONI:

Senator Kuhl, do you continue to yield?

SENATOR KUHL: Be happy to.

ACTING PRESIDENT BALBONI: Thank you. Please proceed.

SENATOR DOLLINGER: Through you, Mr. President. Senator Kuhl, do you have any idea how many times statewide we've actually exercised this authority given under the SAVE?

SENATOR KUHL: No.

SENATOR DOLLINGER: Are we dealing with a dozen cases or hundreds or -

SENATOR KUHL: No idea.

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

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

SENATOR KUHL: Yes.

ACTING PRESIDENT BALBONI: Please proceed.

SENATOR DOLLINGER: As I understand this, the provision here is to change the hours-based period to a number of school days. My question is, if we change it to school days and we have a vacation period

in between -- let's say it happens on a Friday before vacation and there's a week-long vacation period, a break period. Is my understanding correct that the notices and the requirements wouldn't go out until the next consecutive school day, which could be as many as ten days later?

SENATOR KUHL: That's not my understanding, Senator. My understanding is the requirement would be that it wouldn't have to. The school would not be, under the law - or it would be a violation of the law if it didn't. But every indication we had is that when there is a removal from school, the school authorities take immediate action.

By merely placing a 24-hour time limit that they have to comply doesn't necessarily mean that they wait till the last minute of that 24 hours.

So given your hypothetical, I can't say that that in fact would happen. It's just that what we are told is that when in fact you had a removal on your circumstances -- say, at 2 o'clock on a Friday afternoon before a vacation period were to set in -- I don't see

physically how it would be possible for the school district to have a hearing within 48 hours. They wouldn't be able to get teachers, it would be disruptive to everybody.

So the requirement here would be, if this bill is passed -- and I firmly believe it will be, because the chairman of the Assembly Education Committee is carrying this bill in the Assembly, and that we have a virtual agreement on this bill that it will move forward because of the inconvenience it's causing the school districts. But anyway, that hearing would not have to occur until the second day when -- which would be a Tuesday when that school district came back from that vacation.

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

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

SENATOR KUHL: Yes.

SENATOR DOLLINGER: My question, through you, Mr. President, is if that we run out of that period of time where there's a

vacation period or something of that nature, what does the family do in the position of not knowing, or will they not know sort of when the hearing is going to be scheduled and what's going to happen to their child in that ten-day period when they're on vacation? Is it a possibility that they end up with a family not sure of what's going to happen for a significant period of time?

SENATOR KUHL: I don't see that there's any inconvenience at all, Senator.

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

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

SENATOR KUHL: Yes.

SENATOR DOLLINGER: But again, Senator, if the definition of school days and there's a long period of time in between, doesn't this say, in essence, that the school district can postpone the hearing for as much as a couple of weeks over Christmas vacation and they wouldn't have to act during the period when the schools are on vacation?

Isn't that what the technical reading of the bill says?

SENATOR KUHL: No, I don't believe it says that at all, Senator. It just simply changes the definition as to when a school district has to comply. It doesn't mean that they won't comply.

I can think of the other side of the coin, Senator. It would seem to me if you were a concerned parent that you might want additional time, more than 48 hours from when this hearing is to be scheduled, to go out and hire an appropriate representative so your student, if you thought they were inappropriately removed from school, to actually be represented.

So, I mean, it's not looked at as a delay, it's just a mechanism within which to -- certainly if you were the aggrieved parent of this student and you were trying to hire a lawyer on a Saturday afternoon or a Sunday morning, I don't know that you hold hours, Senator, on Saturday afternoons or Sunday mornings. So I would think that this might be more appropriately an advantage to

actually the aggrieved student if they felt aggrieved.

It's simply meant to be a mechanical change that in fact makes it convenient for everybody concerned. And I don't see any downside either to the student, to the student's parents, or to the administration.

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

ACTING PRESIDENT BALBONI: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Senator Kuhl, I never had Sunday hours until I got this job, and then trying to do my legal work requires me to work Sunday mornings.

Mr. President, I'll be very brief on this bill. I think I was among those who commended the Senate Majority last year for the SAVE legislation.

SENATOR DUANE: Mr. President.

ACTING PRESIDENT BALBONI: Senator, why do you rise?

SENATOR DUANE: If the Senator would yield, please.

SENATOR DOLLINGER: Yes, Mr. President, I'd be glad to yield.

ACTING PRESIDENT BALBONI: Senator Dollinger yields.

SENATOR DUANE: Thank you.

Senator Dollinger, I believe that you are a cosponsor of a piece of legislation called the Dignity for All Students Act.

SENATOR DOLLINGER: That's correct, Senator.

SENATOR DUANE: And I'm wondering if you think that the Dignity for All Students Act might be helpful in lessening the tensions and potential for violence in the New York State school system.

SENATOR DOLLINGER: Well, through you, Mr. President, I think that bill, which I think is sponsored by Senator Duane, would be an important addition to our public policy with respect to the schools and the importance of educating students about avoiding violence, about explaining the consequences of violence to students and educating them about the consequences of school violence to a whole range of people who have historically been

victimized in our school systems.

So I do agree with that. I think that the notion of what we did with the SAVE program last year, with Senator Kuhl's leadership and others, was a good first step. But we're not taking the necessary second step if we don't do the Dignity in Schools Act.

SENATOR DUANE: Thank you. If the Senator would continue to yield.

ACTING PRESIDENT BALBONI: Senator Dollinger, do you continue to yield?

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

SENATOR DUANE: I'm wondering if the Senator is aware that the Dignity for All Students Act passed out of committee yesterday in the Assembly.

SENATOR DOLLINGER: I was unaware of that, Mr. President.

SENATOR DUANE: And through you, Mr. President, if the Senator would continue to yield.

ACTING PRESIDENT BALBONI: Senator Dollinger, do you continue to yield?

SENATOR DOLLINGER: Yes, Mr.

President, I will.

SENATOR DUANE: I'm wondering if the Senator thinks that, in that this is the first we've been addressing the Project SAVE, that it might be a very good time to make sure that all of our colleagues were aware of the Dignity for All Students Act and how, with the proper supervision and regulation by the Regents and the Education Commissioner, we could actually make the Dignity Act something that would benefit all of the school personnel and students.

SENATOR DOLLINGER: I agree with the questioner, Mr. President. I think that, much as the experience today of dealing with the bill that Senator Kuhl has brought forward -- which is a correction of a calculation made by this Legislature that the 24- or 48-hour period, that we could use those terms to describe the school district's obligation to deal with or provide a hearing for and notice to parents, provide them notice of a suspension, to give them the opportunity to respond -- much as the bill we're talking about today is an attempt to build on the

experience of SAVE.

In other words, to take what we had defined and we had put into place and to improve it so that it corresponds with the reality of what's going on in our schools from an administrative point of view.

I would suggest that the Dignity for Students Act is another step in that process, that as we deal with the problems of conflicts between students and schools, students and teachers in schools, that it's critically important that we not simply take the same tools that we used last year and assume that they're going to work this year.

And it seems to me that the Dignity for All Students Act is a good step, the next step, the essential next step to make that happen.

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

ACTING PRESIDENT BALBONI: Senator Dollinger, do you continue to yield?

SENATOR DOLLINGER: I do, Mr. President.

SENATOR DUANE: I'm sure that the Senator is aware of the statistics and the studies that show that bullying and harassment is often the trigger for making a student act out.

Sometimes, as most recently in California, the student who caused that terrible tragedy to happen had been bullied and made fun of for being of small stature. He was -- his sexual orientation was questioned. All of those things seemed to have led him to become angry enough to commit the violent acts which he committed.

And I'm wondering if the Senator believes that if the Dignity for All Students Act had been implemented there, if that would have lessened the tensions and actually been able to stop this tragedy before it happened.

SENATOR DOLLINGER: Mr. President, through you, there's never any guarantee, Senator Duane, that violence won't occur. And there's never any guarantee that we in government or in this chamber or in this Capitol, in conjunction with our Governor, that we could guarantee to any student who's

victimized by a bully that we're going to establish a set of laws that will either present that bullying from happening at all or to prevent a vengeful student who's the victim of bullying from trying to extract revenge. We cannot completely eliminate that possibility.

But I think I -- I know I -

ACTING PRESIDENT BALBONI: Senator Kuhl, why do you rise?

SENATOR KUHL: Senator Bonacic, I rise on a point of order. I question - excuse me, Balboni.

ACTING PRESIDENT BALBONI: I look like Bonacic.

SENATOR KUHL: No, no, Bonacic never looked that good.

(Laughter.)

ACTING PRESIDENT BALBONI: Oh, thank you, Senator.

SENATOR KUHL: But in any case, Mr. President, you know, I've been trying to be attentive to responding questions on a bill that I have before the house. And I for the last three, four, five minutes haven't heard

anything about that bill, it's about some other proposal that I've been reading about in the papers.

And I don't think it's really germane to the issue of this bill, which deals solely with changing time limits on a bill that we passed last year. And I would seriously challenge the germaneness of this debate that seems to be totally oblivious to the bill at hand and is before the house, and object to it continuing.

ACTING PRESIDENT BALBONI: Thank you, Senator Kuhl.

SENATOR DUANE: Mr. President, if I may respond.

ACTING PRESIDENT BALBONI: No, Senator Duane, actually there's no debate on this point of order. There's a question as to whether or not the chair believes that the point of order is well-taken, and I do believe it is well-taken.

Would you please do your best to continue this discussion in regards to the bill that's currently before the house.

SENATOR DUANE: Yes, Mr.

President. If the Senator would continue to yield.

SENATOR DOLLINGER: I will, Mr. President.

ACTING PRESIDENT BALBONI: Senator Dollinger, do you continue to yield?

SENATOR DOLLINGER: I do.

SENATOR DUANE: Senator - through you, Mr. President. Senator, would you agree that this is the first time that we've had an opportunity on this floor to discuss any part of the Project SAVE legislation since it was passed?

SENATOR DOLLINGER: I believe that's the case, Senator.

SENATOR DUANE: And through you, Mr. President, if the Senator would continue to yield.

SENATOR DOLLINGER: I do.

ACTING PRESIDENT BALBONI: As long as the question relates to the bill before us and you're able to keep your questions in regard to that, Senator Duane.

SENATOR DUANE: Would you also agree -- through you, Mr. President -- that in

all likelihood Project SAVE was not a 100 percent perfect piece of legislation?

ACTING PRESIDENT BALBONI: Senator Dollinger, from the chair, the -- your line of inquiry is about a bill that's not currently before the house.

So I would ask that you keep your questions in regard to that bill, since we're here ready to debate that bill.

SENATOR DUANE: Mr. President, I'm afraid I'm going to have to challenge your ruling -- to appeal the ruling.

May I be recognized to speak on the appeal, Mr. President?

ACTING PRESIDENT BALBONI: The chair recognizes Senator Duane.

SENATOR DUANE: Thank you.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT BALBONI: The chair recognizes Senator Paterson.

SENATOR PATERSON: Before Senator Duane challenges your ruling, Mr. President, have you actually ruled?

ACTING PRESIDENT BALBONI: That's a very good point. That's a very good point.

And your point is well-taken, Senator Paterson.

I have not, in fact, ruled on anything. And therefore it would be hard to vote on that. I have merely requested that the Senator continue his remarks in the spirit of this debate on this particular measure.

And therefore, I would ask that you would do that. You've been resistant, but - we may have to get to a ruling, but let's see if you could take your comments and make them in regard to the bill that's currently before the house.

SENATOR DUANE: Thank you, Mr. President.

Let me just preface my next question by saying this feels like a canvass kind of ruling that we've had, which is not really a ruling, it's more of a suggestion, like a suggestion of a discharge or whatever.

But anyway -

ACTING PRESIDENT BALBONI: Senator Duane, if you want me to rule you out of order, I'd be happy to do that. Is that where you want this to go?

SENATOR DUANE: Well, Mr. President, it's not my job to ensure your happiness here as the -

ACTING PRESIDENT BALBONI: No, but it is my job to ensure the deliberation of this particular bill. And surely you don't want to upset that, do you, Senator Duane?

SENATOR DUANE: Mr. President, what I would like to do is to continue to debate this slight change to the Project SAVE legislation which -

ACTING PRESIDENT BALBONI: In that case, Senator, I will rule you out of order. If you'd like to take an appeal at this time, that would be appropriate.

SENATOR DUANE: But, Mr. President, this is -- this bill does deal a slight change to what happened last year with the Project SAVE and how an appeal can be made, is that not correct?

ACTING PRESIDENT BALBONI: Senator, Senator Kuhl, who is the sponsor of the particular measure that is before the house, has indicated that your discussion and the discussion of this particular project is

not in this particular bill.

Therefore, it is not germane to this discussion. You've been given lots of latitude and lots of leeway.

SENATOR DUANE: Then, Mr. President, I'm going to appeal your ruling.

ACTING PRESIDENT BALBONI: The question is should the ruling of the chair be upheld or overruled.

SENATOR DUANE: And I'd like to be heard on the appeal, Mr. President.

ACTING PRESIDENT BALBONI: Senator Duane, to be heard on the appeal.

SENATOR DUANE: Thank you.

I am very sure that the whole issue of pupil removal and why that takes place and how it's adjudicated is very much part of the legislation on the floor today. I can't imagine that we wouldn't want to discuss and debate here on the floor how to avoid pupil removal. Pupil removal is a very, very serious issue.

And I think our responsibility as legislators is to work as hard as we possibly can to make it so that pupils are not removed.

I know that -- it certainly seems to me that it's an important enough issue to try to make it so that we could resolve this issue.

And for that and many more reasons, I absolutely think that the questions and the discussion that we were having is absolutely germane to Senator Kuhl's legislation which is on the floor before us today.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT BALBONI: Senator Paterson.

SENATOR PATERSON: I just wanted to say that the last question that I heard Senator Duane ask Senator Dollinger was -- if I'm correct, he asked him did he think that the legislation was either 100 percent successful or that it was particularly successful in its formation.

And since this bill before us today is an addendum to the legislation, and Senator Duane -- I don't know how he voted on the legislation. I know that when the original legislation came here, I had concerns about pupil removal. And I'm going to take them up with Senator Kuhl, so I'm not going to have

that discussion with you. This is a discussion on the point of order.

But I thought that that was germane to whether or not -- not only the discussion, but to whether or not Senator Duane would choose to vote for or against this particular bill.

So I did think that in the context of this bill, on that last question, that Senator Duane was properly germane. That's my feeling on it.

ACTING PRESIDENT BALBONI: Senator Paterson, I've ruled. So the question remains before the house, shall the germaneness ruling of the chair be overruled. A majority of the members elected will overrule the chair.

The Secretary will call the roll.

Senator Dollinger.

SENATOR DOLLINGER: Can I just be heard, Mr. President, on the issue of germaneness?

Briefly, Mr. President, as I understand it, the section of the Students with Dignity Act that Senator Duane has

proposed and carries in this house amends a corresponding if not the same portion of the Education Law. And it seems to me that since this issue of what happens and what are the procedural rights upon removal from a classroom, the substantive issue of the basis for that removal is intertwined with it.

With all due respect to the chair, this is a bill that raises the issue of how school districts respond to student violence, student bullying, student disrespect, and what are the procedural requirements that we set forth for school districts to comply with in order to remove students from classrooms.

I think Senator Duane is suggesting that before we analyze those procedural steps, we ought to look at the substantive steps under which people could be removed as well.

ACTING PRESIDENT BALBONI: Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: If I may be heard on the appeal, Mr. President. And I know you like hearing that.

ACTING PRESIDENT BALBONI: Senator Schneiderman.

SENATOR SCHNEIDERMAN: My concern with this is that this is an area of the law that I must say, sitting and looking at Section 3214 as we sit here, this is an extremely complicated area. There is a lot encompassed within this.

And I'm concerned that it -- I don't think we should cut off discussion of the substantive provisions of the law when we're discussing changing the procedure. I think that, you know, there's issues in here relating to violent students, students who are defined as disruptive, students who are defined as insubordinate, disorderly. I mean, it's a very complicated thing. There are different kinds of student conflict encompassed within this.

And I think this is the kind of situation in which, were we not under the strict time limits set forth by the new rules, that I think we very well might have an amendment to offer up to today to address some of these issues. And I think part of the reason we're engaging in more discussion of the substance of the bills now is that our

ability to do that has been severely curtailed.

But the substantive issues underlying the legislation that we vote on should not be curtailed, and we are trying to fully carry out our duties as Senators. And I therefore think that Senator Duane should be allowed to continue his questions.

Thank you, Mr. President.

ACTING PRESIDENT BALBONI: The Secretary will call the roll.

THE SECRETARY: Senator Alesi.

SENATOR SKELOS: Party vote in the negative.

SENATOR PATERSON: Party vote in the affirmative.

ACTING PRESIDENT BALBONI: The Secretary will announce the party vote.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 25. Nays, 32. Party vote.

ACTING PRESIDENT BALBONI: The ruling of the chair is upheld.

Senator Dollinger.

SENATOR DOLLINGER: Mr.

President, I still believe I had the floor when Senator Duane was questioning me.

ACTING PRESIDENT BALBONI: That is correct, Senator Dollinger.

SENATOR DOLLINGER: Mr. President, just to finish up on this bill.

I'm going to vote in favor of this bill. But I do think that Senator Kuhl, in his discussions with Assemblyman Sanders, needs to look at the question of what happens during a school vacation.

As we all know, the schools have consistent, periodic vacation periods where the school is closed for a significant period of time and we don't have a school day. At Christmas vacation, it could be two weeks before another school day occurs. Thanksgiving, it's three or four days. Spring break, it's another week.

All of those implications to this statutory change I think should be explored before we end up in a position where a school district can take as much as two weeks before the hearing occurs because there's no actual school going on.

Senator Kuhl, I'm going to vote in favor of this bill, but I would suggest that there has to be some provision to allow those hearings and notice to occur during a period of time when school isn't in session but nonetheless the administration and all the other people in the school are working, it's just that it's not a teaching day and not a school day.

Under those circumstances, Mr. President, I'm going to vote in favor. But it should take another look with Assemblyman Sanders.

ACTING PRESIDENT BALBONI: Senator Onorato.

SENATOR ONORATO: Mr. President, will the sponsor yield to a question?

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

SENATOR KUHL: Certainly, Mr. President.

SENATOR ONORATO: Senator Kuhl, I know in part of the legislation it allows a teacher to remove disruptive students from the classroom consistent with the discipline

measures contained in the school's code.

Now, I've heard from some teachers in my district that have difficulty in getting the principal to agree with their policy. What is in here that guarantees that the teacher will be allowed to follow through with it? I mean, what is there -- is there any penalties in here for a principal refusing to allow the teacher to remove what she considers to be a disruptive or violent student from her classroom or his classroom? Because in many instances the principals of the same school don't want to make any waves and they just pooh-pah them off the subject.

Now, how can we -- what is in this bill that guarantees that that teacher has that right?

SENATOR KUHL: Your question, Senator, doesn't have anything to do with this bill. This bill solely changes the time period within which a notification to a parent of a student removal or a hearing is actually conducted.

So your question has nothing to do with the legislation before this body.

SENATOR ONORATO: Wasn't it in the original bill?

SENATOR KUHL: Well, the original bill was passed and debated in this house last year, Senator. But it has nothing to do with this bill.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT BALBONI: Thank you, Senator Onorato.

Senator Paterson, why do you rise?

SENATOR PATERSON: If Senator Kuhl would yield for some very germane questions.

ACTING PRESIDENT BALBONI: Senator Kuhl, do you yield?

SENATOR KUHL: I'll yield to Senator Paterson.

ACTING PRESIDENT BALBONI: Senator Paterson, please proceed.

SENATOR PATERSON: Under Section 3214 of the law, how would a snow day be classified? Would that be a holiday, or is that a school day?

SENATOR KUHL: A snow day meaning a day that -

SENATOR PATERSON: That the school is closed.

SENATOR KUHL: Okay. Now, notification before the school day actually - before the day actually started, Senator?

SENATOR PATERSON: Right.

SENATOR KUHL: Then this would be a -- not a school day.

SENATOR PATERSON: Mr. President, if Senator Kuhl would continue to yield.

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

SENATOR KUHL: Yes.

ACTING PRESIDENT BALBONI: Thank you.

SENATOR PATERSON: Senator, there's a story in today's paper involving a Long Island school district. And this particular student was removed from the school last year because he listed the names of students and teachers on the Internet who he planned on attacking. And it was actually a story in the news last year. It's again a story in the news today because the student apparently has threatened to blow up the

school. So again, the student has been removed.

Now, the issue that I'm raising with you is that in this particular case, the student was removed last year by the teacher. And one of the reasons that -- I voted for the legislation to implement SAVE last year, but one of the problems I had with it, and I think that Senator Montgomery and Duane and some others had this problem as well, is this issue of removing the student by the teacher.

And the reason it relates to this bill is because what we often have is a situation that's so serious that, unlike, you know, the classic disruptive student that just gets removed by the teacher, we feel that there has to be some involvement of the administration. So if you're removing a student even for notification 24 hours later -- and I can see about the 48-hour hearing. I understand that part of the bill. But for the 24 hours, why would we not want this to occur on a Saturday, being that the seriousness of what removing a student from a classroom could entail now?

In other words, do we want to leave to the teacher to get all the way to Monday when exactly what the student is up to, tragically, these days, could be a little more important than a student that cuts up in class or fights in class and needs to be removed for some period of time?

SENATOR KUHL: Senator, I think that your understanding of the situation and mine are a little bit different. And I think that you're kind of mixing apples with oranges, so to speak. That's part of my agricultural background, as you may remember.

The situation that you alluded to as in the paper, I haven't had -- don't know what paper you're talking about and haven't had the opportunity to see the story. But that really wouldn't apply in this particular situation, because what you're taking about here is the ability of a teacher to remove a student from that teacher's classroom. A student still has and will be given a classroom to attend, but it won't be in that teacher's classroom that actually is initiating the 10-day removal.

So I'm trying to smile at the same time of answering your question. And it's not particularly difficult, Senator, but -- but I think that there's some confusion. If you'd like to present that a little closer to me, I'd be happy to -

(Laughter.)

SENATOR KUHL: Thank you for providing the article to me.

So I don't know that it particularly pertains to this particular proposal, Senator.

ACTING PRESIDENT BALBONI: Senator Paterson.

SENATOR PATERSON: Mr. President, just on the bill.

ACTING PRESIDENT BALBONI: Senator Paterson, on the bill.

SENATOR PATERSON: I don't want to mix apples with oranges, as Senator Kuhl's agricultural background explains to him, rather than apples and potato chips, which I believe you, Mr. President, referred to a couple of weeks ago.

I'm sorry, that was another

Senator, Mr. President. My mistake. Senator Marcellino did that.

But on the bill, I'm just pointing out that the removal of a student is a very, very serious issue, even if it is just a student that's fighting or, you know, what - or the classic removals I recall before the last decade and the tragedies that have occurred and have happened all too frequently in our society.

But as was said in a hearing in the 1970s by Deputy Chancellor Neil Shapiro, of New York City, children don't relive a day. And so at any point that we would remove them from the school, when you think of the custodial issues involved and also the absence of the student from the information that we are trying to impart to the young person through our educational system, I think that we have to be scrupulously dedicated to providing the right environment for the appeal of the removal and also the procedure of the removal.

I don't think that it is that difficult, if you remove a student on a

Friday, to notify the parents on Saturday of what is going to be the outcome of this removal. I agree with Senator Kuhl, I like the part about the 48-hour hearing. I think that, you know, it goes into the weekend, it doesn't give both sides really the type of opportunity that they would have in a week.

But just the mere 24-hour rule of creating a notification in my opinion should stay the same as it is. I don't see any reason to actually change that.

Yes, the administrators might have to go into the weekend from time to time. Hopefully this doesn't happen many times, it's an extraordinary circumstance. But because it is an extraordinary circumstance, I think perhaps the use of the weekend day reminds everybody that it has to occur as quickly as possible. That's my feeling.

What I did share with Senator Kuhl was that this incident yesterday took place in Bethpage, Long Island, at the John F. Kennedy Middle School, where a 13-year-old posted on his website his intention to blow up the school. This following another incident last

year for which a student was removed by a teacher after threatening on his website other students in the particular class, and there was somewhat of a concern about how long it took the information to get to the administration in that particular case.

ACTING PRESIDENT BALBONI: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. If the sponsor would yield for a couple of very brief questions.

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

SENATOR KUHL: I'll be happy to yield to a question.

ACTING PRESIDENT BALBONI: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Mr. President. I gather that the main intention of this is to make -- to enable the principal and the school administration to have enough time to really deal with this sort of situation of student suspension; is that not correct?

SENATOR KUHL: It's essentially

to put a law into effect that will be usable, Senator.

SENATOR SCHNEIDERMAN: Through you, Mr. President, I wonder if a better approach might not be -- and I don't claim any great expertise other than being the parent of a child in public school -- to perhaps allow someone other than the principal in some situations to be the person who conducts the hearing.

I think in my daughter's school, for example, the elementary grades are completely under the authority of an assistant principal. There are a lot of other people in the system who can provide these hearings.

And the reason for my concern about this is that there seems to be something of a disincentive for already overburdened principals to really want to go through this process.

And I understand extending the time a little bit may be a little bit helpful. But isn't the real crux of the problem the fact that if you are a principal, working as hard as principals work in a large school, the fact

that the law, as I read it, requires the principal personally to deal with this, I think isn't that really something we should be addressing?

SENATOR KUHL: Senator, the bill addresses just simply the time limits. It doesn't deal with administrative responsibilities in one shape or another. That was all dealt with in the initial bill.

This bill only deals with changing the time limits for notification of the hearing, notification of actually the removal from the classroom. It doesn't deal with who's going to do it or anything else. So your question really doesn't pertain to the essence and the drive of this particular proposal.

The proposal just is meant to really cure a problem that we essentially created when we created this bill last year - that we had some discussions about, as a matter of fact, but at that time there was no agreement to deal with school days. But now the problem has been voiced to both houses and to the Governor from the people who have had

to administrate this bill.

And so what we're trying to do is just deal with that simple, difficult problem that we've created, and that is timely notification.

SENATOR SCHNEIDERMAN: Okay. Thank you. Through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR KUHL: Yes.

ACTING PRESIDENT BALBONI: Please proceed.

SENATOR SCHNEIDERMAN: In these discussions about how to modify the bill - and I'm just trying to get clarification - has there been any discussion of the issue that I raised of expanding the number of people who may be able to provide this hearing as an alternative mechanism or a supplemental mechanism to dealing with this problem of too much time pressure?

SENATOR KUHL: No.

SENATOR SCHNEIDERMAN: No? Thank you, Mr. President. Thank the sponsor.

On the bill.

ACTING PRESIDENT BALBONI: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I mean, in my view, I appreciate this is an extremely difficult area of the law, and I know Senator Kuhl and Assemblyman Sanders labor mightily in trying to resolve issues like this. And there often are not clear answers.

I do think that -- my concern really, and the reason I raise the issue about broadening the number of people is that, you know, we talk about unfunded mandates here. And usually we're referring to money. But when you're talking about a principal in a public school, unfunded mandates may also really -- not unfunded mandates, but unassisted mandates may also relate to time.

And currently a major, major problem in the New York City school system and I believe elsewhere in the state is the fact that principals are so overburdened they can't take the steps that they would like to take to make sure their school operates at top efficiency.

In fact, one of the findings of a group of management consultants from McKinsey & Company that went into the New York public school system was that it is possible for principals to discipline teachers who are not performing, but most principals do not do it because they don't have the time to follow the procedural steps necessary to get it done in accordance with the current law.

So I think the time that it takes for the principals to adequately perform all of the obligations that we set forth under Section 3214 I think really requires us to look at the issue of perhaps easing that burden. And I'm not saying there's a clear answer, but in a school where an assistant principal has authority over a large number of students, I think that may be an option we could look at.

Thank you, Mr. President.

ACTING PRESIDENT BALBONI: Senator Lack.

SENATOR LACK: Thank you, Mr. President. I've listened carefully to the last two sets of questions that have been

presented by Senator Schneiderman and Senator Paterson. And I realize that of course they're asking with respect to practices they think go on in schools.

For the benefit of all my colleagues, I just thought I'd just spend a minute so no one is left with the impression, particularly when it concerns suburban school systems on Long Island, that there are not already practices in place to handle the types of situations that Senator Paterson referred to in a newspaper article that referenced the Bethpage school system -- which is not in my Senate district, but of course is no different than the other 126 school systems on Long Island.

All of them, including the one in which my wife happens to be an assistant superintendent in charge of such areas, have already had and continue to have extant rules and regulations, regardless of the statute that we passed last year, that requires all employees of the school district, teachers included, to report any types of threats that would have the intent to cause the type of

situation that unfortunately you've read about in the papers all too often. And that requires immediate notification.

And it has nothing whatsoever to do with the statute we passed last year, but it has to do with the relationship between employee and employer in a school district.

The same with respect to Senator Schneiderman's comments, which I happen to agree with. But as in superintendent's hearings, the same is true of the principal hearings that we passed. Designees are often used who act in the superintendent's name and conduct a superintendent's hearing or a principal's hearing, the final decision of which, after the hearing has been made, is adjudicated by the main person with the responsibility, the principal or the superintendent, as the case might be.

But that of course is not what is before us on the floor of the Senate today. We should be mindful that Senator Kuhl is talking about a small amendment, with finite terms, with respect to the statute that passed last year. This is not an open discussion on

extant school practices that are well in place, have not been questioned, and indeed are not causing any problems, such as superintendent's hearings or the manner by which any school employee shall notify school administration of any attempt by anybody to cause the potential of property damage or damage to person on school grounds.

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

SENATOR MONTGOMERY: Yes, thank you, Mr. President. I would ask if Senator Kuhl would yield for a question.

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

SENATOR KUHL: I'll be happy to answer a question from Senator Montgomery.

ACTING PRESIDENT BALBONI: The Senator yields.

SENATOR MONTGOMERY: Yes. Senator Kuhl, I understand that you want to give more time, which you consider to be logical, as it relates to the possibility of a school contacting the parents or the 24-hour period falling within a reasonable time.

But I just would like to ask you, the school day ends at 3 o'clock and -- well, I won't try to say that my day ends at any logical time. But certainly most parents who work, their day ends at 5 o'clock or somewhere around there, I would imagine. So my question is, why is it that the school is not required to contact a parent immediately when there is a question that a child is being summarily dismissed from a class for disciplinary reasons?

I would like to know immediately that my son is being dismissed from his class. Why don't we require that the school contact that parent immediately?

SENATOR KUHL: Well, your question really doesn't deal with this specific proposal, but I'll answer it in hopes that you'll understand.

The discussion and thought was that oftentimes parents aren't immediately available. And sometimes, for instance, if your son were -- if you had a son and he were removed from a teacher's classroom, say, in about ten minutes and you happened to leave

this august body, it having adjourned and not having been needlessly continued for a number of hours later but was adjourning and you were on the road heading home, that it would be difficult for a school superintendent, principal, or teacher to get hold of you. They might not have your cell number, they might not have some type of interim number.

So it was thought that in the hopes of there being a second or a third or a fourth or a fifth attempt to get to you, that it was reasonable to expect a school district, under extreme circumstances or normal circumstances, to contact a parent within 24 hours. Because this is not a life-threatening situation. This is just a simple removal from a classroom where a student may be disruptive, and 24 hours is normally thought to be a sufficient amount of time. That was a reasonable amount of time that was agreed to between both houses and the Governor.

SENATOR MONTGOMERY: Mr. President, if I can continue to ask -

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

SENATOR KUHL: Yes.

ACTING PRESIDENT BALBONI: Please proceed, Senator Montgomery.

SENATOR MONTGOMERY: Thank you.

Senator Kuhl, the bill talks about disciplinary -- disruptive students. We are talking about disruptive students. And as far as I recall from the original legislation, "disruptive" was relatively loosely defined.

So my question is, under what circumstances would a student be considered disruptive to be removed from the classroom? Is there a level of seriousness that is required before a teacher can make that decision?

SENATOR KUHL: Senator, the bill doesn't talk about disruptive students in any way, shape or form. If you look at the bill, it quotes the sections of the law and the period that the bill -- the proposal simply deals with that underlying portion. And I can read the language to you if you wish. And it starts out in Section B and says the principal shall inform, and it talks about within 24 hours of the pupil's removal. Then this

proposal, the underlying language says "provided that if such period shall not end on a school day, it shall be extended to the corresponding time on the next school day." Simple. Talks about time changes.

The next area of change is continued in that same paragraph where it talks about removal hearings and those being within 48 hours of the pupil's removal. Then the new proposal talks about "provided that if such period shall not end on a school day, it shall be extended to the corresponding time on the second school day next following the pupil's removal. For purposes of this subdivision, school day shall mean a school day as defined pursuant to Clause 5 of subparagraph 3 of paragraph G of subdivision 3 of this section."

And there's one continuing thing where it talks about the insertion of a "school" before "day" and "next," and then two words, "of the."

That's the total proposal. It deals with the time period, doesn't talk about disruptive. For your benefit, there is a

definition of a disruptive student in the Education Law. That's not included in this bill proposal. And I don't want really to get into a discussion about that. That would have been more appropriate when we adopted the SAVE legislation last year. It's not what's before this house today.

SENATOR MONTGOMERY: All right. Thank you, Senator Kuhl.

Briefly on the bill.

ACTING PRESIDENT BALBONI: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes. Mr. President, I believe that I was in fact absent on the day that we passed the agreed-upon final version of the SAVE bill, SAVE law. However, I did have one recorded no vote on that legislation. And had I been present, I would have voted no on the final version.

One of the main reasons was the whole question around the fact that we would allow teachers to remove and suspend young people from the classroom.

Now, obviously we don't have enough support for teachers in the classroom. In

other words, when there is a student who is disruptive, we don't generally have a safe haven for those students.

Certainly in my son's school, if a teacher dismisses him from his class because of disruptive behavior, that -- he is traumatized and instantly needs a support from his parents, from me, his father, someone in the school, someone that he knows. Someone needs to be there for that young person. And we don't have that in place.

So this really needs to be -- we need to think this through very carefully. And I do not personally accept nor understand why it is not important enough, if there is a problem with a child and that young person is disruptive, is disturbed to the point where he or she becomes disruptive, I do not understand why parents cannot be contacted.

I can be contacted. There are -- I fill out tons of papers every year. When it's time for my son to enroll, every single year I fill out papers, and there must be ten or more telephone numbers, names of people -- I have neighbors, I have friends, I have relatives, I

have myself, I have everyone who knows that child, they're listed on those forms. So there is no excuse for a school not to contact someone on all of those lists when there is a problem with a child.

And I must say that we do not have in our school system a strong enough support system for young people, and this shows up in many different ways, one of them being that very often kids act out. It also shows up very often in teachers becoming so overwhelmed that they lose the capacity to really deal with young people and their issues and problems.

So I'm going to vote no on this, not because I don't care about safety in the school, but because I think that we need to be much more careful about how we punish young people. And for a young person who is having any problem in a school, dismissing that young person is a punishment.

Thank you, Mr. President. I'll be voting no on this legislation.

ACTING PRESIDENT BALBONI: Thank you, Senator Montgomery.

Senator Sampson.

SENATOR SAMPSON: Mr. President, would the sponsor yield for one question.

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

SENATOR KUHL: Yes.

SENATOR SAMPSON: Through you, Mr. President. I wanted to ask the sponsor if in fact there's notification by the police if the student is arrested within the classroom, does notification by the police count within the time frame of this statute?

SENATOR KUHL: Senator, I'm not sure I understand your question.

The police aren't involved in this concept at all. This is solely an administrative process that's dealt with within the school. If a student is removed, for whatever reason it happens to be, there's a time limit placed on that student's parents being notified. And then there's a time limit placed within which you have to have a removal hearing. One is 24 hours, one is 48 hours.

It has nothing to do with criminal enforcement agents or anything -- anybody

outside the school. It has only -- it only deals with control by a teacher of their classroom.

Senator Montgomery dealt with the issue of disruptive students and then talked about that. That is the underlying basis for what bring this legislation here. If a teacher in fact decides, under the law that we passed last year, to remove a student, that student's parents have to be notified within 24 hours. Okay?

And the concept here is that if that 24-hour period does not end on a normal school day, then it will be extended to the next school day. Or if the hearing does not -- that 48-hour period does not end on a school day -- which would occur if you had a normal school week where there's classes Monday, Tuesday, Wednesday, Thursday, Friday; the removal on Monday, Tuesday, Wednesday, that would be fine. But when you get in toward the end of the week and then that 48 hours runs into a Saturday or a Sunday when normally people are not there and the whole notification, administration process is -

kind of comes to a standstill, like most daily or weekly businesses, the thought is, well, continue that over. In other words, don't require them to put everything else aside and make this, which would be disruptive to the administration.

So it really doesn't apply to the criminal aspect that you're talking about. Really no association whatsoever.

SENATOR SAMPSON: Through you, Mr. President, if the sponsor would yield for one last question.

ACTING PRESIDENT BALBONI: Senator Kuhl, do you yield to a further question?

SENATOR KUHL: I'd be happy to.

SENATOR SAMPSON: What if that 24-hour deadline is not reached, the principal or the administrator does not do it within that 24-hour notification period? What would be the next step?

SENATOR KUHL: Well, this bill doesn't really address that, Senator. We don't get into enforcement applications and policies.

It just really deals with saying that if it doesn't happen on a school day, the end of the 24-hour period, then it gets extended to the next school day. Okay?

SENATOR SAMPSON: Thank you.

ACTING PRESIDENT BALBONI: Senator Oppenheimer.

SENATOR OPPENHEIMER: I guess I do have a question, if the Senator would yield.

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

SENATOR KUHL: I'd be happy to yield to a question from Senator Oppenheimer.

SENATOR OPPENHEIMER: I think I'm just looking for a clarification, because, I'm sorry, I wasn't in the chamber. And already in committee I mentioned that the parents should be notified immediately and not wait the time period.

But this bill just says that if the 24-hour notification for a parent having a child removed from a class or notification of when the parent conference occurs, in 48 hours, that if it occurs on a weekend it gets

folded over to Monday?

SENATOR KUHL: Well, the hearing, it depends on when it happens. It says the - the way the amendment reads -- and I'll read it to you, because that's perhaps the best way to do it. The language very specifically is relative to the notification proposal.

It simply says that provided if such period shall not end on a school day - such period being the 24 hours of the pupil's removal -- shall not end on a school day, it shall be extended to the corresponding time on the next school day. That's the notification proposal.

Relative to the hearing proposal, it reads "Provided that if such period shall not end on a school day, it shall be extended to the corresponding time on the second school day next following the student's removal."

So if you had a removal on a Friday afternoon, the hearing would have to be held on a Tuesday, the following Tuesday, if the school were in session the next Monday, Tuesday. The notification, if removal was on Friday afternoon, then the parents would have

to be notified by Monday afternoon.

SENATOR OPPENHEIMER: Okay. Thank you, Senator Kuhl. I was just getting a little tied up in some of this language.

Just on the bill.

ACTING PRESIDENT BALBONI: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: And it is on the bill and it isn't on the bill.

I mean, the things that have been said by Senator Montgomery I feel very strongly also. And the fact that I feel that parents should be notified immediately. And very often, I can recall, I left the phone number of my sister, I left the phone number of my neighbor on either side of me that had children. There is -- you know, there was ample opportunity were any one of my children to act out, for a variety of people to have been notified immediately.

And the concern, as mentioned by Senator Montgomery, is that we really have to have a support system for these children. If they are acting out, there can be a whole variety of reasons why they're acting out.

And some of them may have great disturbances within the home. And some of them may be experiencing parents who are divorcing or they may be going through the death of a grandparent. There's just a lot of needs out there by these children, and they ought to have some kind of support system available to them right away.

And while that isn't on the bill, I feel it's something I did want to say and get on the record. We just have to do more for our children.

Thank you.

ACTING PRESIDENT BALBONI: Senator Lachman.

SENATOR LACHMAN: Yes, Mr. President, would the sponsor of the bill, Senator Kuhl, yield for a question.

ACTING PRESIDENT BALBONI: Senator Kuhl, do you yield?

SENATOR KUHL: I'd be happy to yield to Senator Lachman.

ACTING PRESIDENT BALBONI: Please proceed, Senator Lachman.

SENATOR LACHMAN: Thank you, Mr.

President.

First, I have to apologize. I was out of the chamber for an hour because of the Higher Education Committee meeting and didn't get the beginning of the discussion. So if you have answered this, let me know and I'll sit down.

Is it true that this is only the minimum standard for the state in terms of the Education Law? If a school system, an LEA, a local education authority, desires to improve upon this, that they can?

SENATOR KUHL: Senator, I really kind of, I think, maybe addressed that earlier, your question, but not necessarily specifically in response to your question language.

These guidelines really are guidelines that are on the maximum limit. We know from discussions with school superintendents that they want to notify the parents immediately, and they take every step to do that. So a local school board could set a policy that in fact would say, We demand that there be notification in this particular

instance within one hour, rather than 24 hours. So that's entirely possible.

But, you know, we recognize that sometimes parents aren't immediately available. So while there may be an attempt, the question is, is it successful. I mean, we have parents who maybe are, say -- I don't know whether this would occur in Senator Oppenheimer's district, whether they have any lakes there, but in my district they could be out sailing in a race and going for the windward mark and not have their cell phone on, or they could be just rounding the windward mark and throwing a parachute or a reacher and not have the time to reach down to grab that cell phone, and they might not necessarily be notified until they got off the boat, hit the shore, that in fact their child was there. So there are going to be time limits.

It could be some other recreational activities. Some parents go and gamble in casinos, and they don't like to be notified. Some are playing golf, you know. Some actually are traveling on airplanes and things

like that, and they tell you don't put your cell phone on.

So there are maximum limits, and that's what we tried to build into the initial law. But certainly school districts, we recognize from a practical experience, try to notify immediately.

SENATOR LACHMAN: Mr. President, on the bill.

ACTING PRESIDENT BALBONI: Senator Lachman, on the bill.

SENATOR LACHMAN: Right. There has been precedent in terms of the local education authority building upon a particular piece of legislation and increasing or decreasing the penalty.

For example, after the U.S. Supreme Court ruled that paddling of students was permissible, the local education authority of the City of New York said it was impermissible. Even though the State of New York, under the Education Law, permitted paddling of students, the New York City Board of Education said it was impermissible.

Now, the New York City Board of

Education has developed procedures under a pupil suspension law that, in answer to -- if I may, Mr. President, respond to a question that was raised by Senator Montgomery and echoed by Senator Oppenheimer, the New York City Board of Education has a booklet dealing with pupil suspension. I know it has it, because I was one of the authors of it. In fact, it's been updated. It also deals with rights and responsibilities of students. And it mandates school authorities to contact not only parents but next of kin, foster home leaders, et cetera.

So what I'm basically saying is that the local education authority could use Senator Kuhl's bill and build upon it and improve it and reflect the school system's desires. I therefore will be in favor of the bill.

Thank you.

ACTING PRESIDENT BALBONI: Thank you, Senator Lachman.

Any other member wishing to be heard on this bill?

Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Mr. President.

ACTING PRESIDENT BALBONI: Excuse me. Senator Duane, why do you rise?

SENATOR DUANE: I'd like to put a motion to substitute on the floor, please, for -- S1628 for this bill.

ACTING PRESIDENT BALBONI: I'm sorry, Senator Duane, we need to finish the debate on this particular bill, then we can take up that substitution. Would you please -

SENATOR DUANE: I didn't know there was anyone else that was speaking on the bill.

ACTING PRESIDENT BALBONI: Senator Brown.

SENATOR BROWN: I wanted to ask a question of the sponsor, Mr. President, but I would yield to Senator Duane. If that is in order.

SENATOR DOLLINGER: Mr. President, may I just have a point of order?

ACTING PRESIDENT BALBONI: Senator Dollinger, please state your point of

order.

SENATOR DOLLINGER: I thought I heard Senator Duane say that he was moving to substitute one bill for another. Isn't that motion in order, Mr. President?

ACTING PRESIDENT BALBONI: Senator Dollinger, at this time that motion for substitution is out of order.

SENATOR DOLLINGER: Through you, Mr. President, could you tell just me where in the rules that's the case?

ACTING PRESIDENT BALBONI: Senator Dollinger -- Senator Dollinger, there is no capacity within the current rules for a hostile substitution of a bill that is currently under consideration. So the question is not whether or not there is a rule that would prohibit such a procedure; rather, whether or not there is a rule in this house to permit such a procedure.

There is not. The relevant discussion underway right now is this particular bill. That's how we are going to proceed.

Any other Senator wishing to be

heard on this particular measure?

SENATOR DUANE: Mr. President.

SENATOR DOLLINGER: Then I believe -

ACTING PRESIDENT BALBONI: Senator Dollinger, do you have a point of order?

SENATOR DOLLINGER: Yes.

ACTING PRESIDENT BALBONI: Please state your point of order.

SENATOR DOLLINGER: My point of order is, isn't the appropriate order then to declare Senator Duane's motion for a substitution out of order? Isn't that what the house should do? And then that would be subject to a right of appeal.

ACTING PRESIDENT BALBONI: Senator Dollinger, if you wish me to proceed in that manner, I will do so.

SENATOR DOLLINGER: I'm not asking you to proceed in that manner, I'm just saying don't the rules require it.

ACTING PRESIDENT BALBONI: Senator Skelos.

SENATOR SKELOS: Mr. President, I

believe that in this chamber you substitute an Assembly bill perhaps for a Senate bill, or vice versa in the other house. You do not substitute Senate bills for Senate bills.

ACTING PRESIDENT BALBONI: Senator Skelos, you are absolutely correct.

Senator Duane's motion is more of a motion to discharge, which is not germane at this point in time. And therefore I do not recognize it at this particular point in time.

SENATOR DUANE: Mr. President, point of order.

ACTING PRESIDENT BALBONI: Senator Duane, please state your point of order.

SENATOR DUANE: Could you tell me where in the rules it says that you can't substitute -

ACTING PRESIDENT BALBONI: Senator Duane, that is not a point of order. It is not recognized.

SENATOR DUANE: Mr. President, asking where something is in the rules is, I'm afraid, a correct -- an appropriate question.

ACTING PRESIDENT BALBONI:

Senator Duane, you're incorrect, that is not a point of order -

SENATOR DUANE: A correct point of order.

ACTING PRESIDENT BALBONI: It is not a point of order. But thank you for your inquiry.

SENATOR DUANE: Well, I'll challenge that.

ACTING PRESIDENT BALBONI: You challenge that that constitutes a point of order?

SENATOR DUANE: That it's not appropriate for you to say where in the rules it says.

I'm just challenging the rule of the chair, Mr. President.

ACTING PRESIDENT BALBONI: There's no current ruling before the house.

Senator Brown, do you wish to proceed?

SENATOR BROWN: Yes, Mr. President. Through you, if the sponsor would yield for a question.

ACTING PRESIDENT BALBONI:

Senator Kuhl, do you yield to a further question?

SENATOR KUHL: I'd be happy to.

ACTING PRESIDENT BALBONI: Thank you, Senator Kuhl. Please proceed.

SENATOR BROWN: Thank you, Senator.

Mr. President, I understand that this piece of legislation is simply designed to make technical amendments to the pupil-removal provisions of the Project SAVE legislation, and that these amendments clarify the time periods within which parental notification and informal hearings must take place.

I think my level of unreadiness, though, that everybody is speaking to is the parental notification provision. And, Senator Kuhl, is there other legislation that you're contemplating to make sure that parents are notified timely separate from this piece of legislation?

SENATOR KUHL: Senator, I was just talking to my chief of staff in an effort, in part, to assure me that in fact my

recollection was correct -- and he assured me that it is -- that there is no other piece of legislation dealing with the SAVE bill that we passed last year other than the fingerprinting aspect, that we had no other discussions about or no -- received no complaints from any parents that -- who have been through this process, this procedure that in fact they were not notified in a timely fashion.

So the answer to your question in a long answer is no, there's nothing else that I'm aware of, nor are we planning to introduce anything.

SENATOR BROWN: Thank you, Senator.

Mr. President, on the bill.

ACTING PRESIDENT BALBONI: Senator Brown, on the bill.

SENATOR BROWN: I understand what the bill is designed to do, and have read it and am a little bit concerned about the prompt notification of parents. I understand that the notification can take place within a 24-hour period of time. Which doesn't mean that it will take 24 hours for a parent to be

notified.

But certainly when a child has to be removed from school, I think we as lawmakers want to make sure that if a child is in fact removed from the classroom and subsequently removed from school as a result of being removed from the classroom, that the parent knows about that as early as possible.

I think, with respect to this legislation, it just clarifies the time frame. And I think based on that, I am going to be supportive of it. I have heard Senator Kuhl say that from their research so far, from the information and feedback they've gotten back, they have not heard parents complaining about the notification and how the notification has taken place.

But I do want to state for the record that I am concerned about notification and would like Senator Kuhl to monitor how the notification is taking place in school districts, so that if something additional is needed legislatively in the future we can be prepared to move in that direction.

ACTING PRESIDENT BALBONI: Thank

you, Senator Brown.

Any other member wishing to speak on this particular bill?

Read the last section.

Oh, I'm sorry.

SENATOR OPPENHEIMER: I just want to say a word on the bill.

ACTING PRESIDENT BALBONI: Senator Oppenheimer, as you know, under the rules we're allowed to discuss any matter once during the debate. You cannot speak twice.

Perhaps you might consider explaining your vote.

SENATOR OPPENHEIMER: Okay, I'll do that.

ACTING PRESIDENT BALBONI: Terrific.

Senator Stavisky, why do you rise?

SENATOR STAVISKY: I have a couple of questions for the sponsor, if he will yield.

ACTING PRESIDENT BALBONI: Senator Kuhl, do you yield?

SENATOR KUHL: Certainly.

SENATOR STAVISKY: I see a

memorandum, Mr. President, from the School Administrators Association. Have the parents or any other organization expressed an opinion on this legislation?

SENATOR KUHL: Senator, yes, we've received two memorandums, both in support of the legislation. One, the one you referred to, from the School Administrators Association of New York -

SENATOR STAVISKY: Could you repeat that? I'm sorry, I can't hear you.

SENATOR KUHL: Senator, I'll say it again. We've received two memorandums, both in support of this piece of legislation. One, the one that you mentioned, came from the School Administrators Association of New York State. The other one came from the Council of School Superintendents, New York State Council of School Superintendents. And they both have filed memorandums in support.

SENATOR STAVISKY: But the parents of the children who might be affected have not -

SENATOR KUHL: There's no other memorandum that's been filed, either in

support or opposition.

SENATOR STAVISKY: Thank you.

ACTING PRESIDENT BALBONI: Any other member wishing to be heard?

Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BALBONI: Senator Oppenheimer, do you wish to explain your vote?

SENATOR OPPENHEIMER: Yes, thank you.

I just wanted to say that this is a good bill and this is something that the teachers in our state -- not this specific bill, but the right to be able to take a very disruptive student out of their classroom, this is something that has been important to them.

It used to be that only the principal -- you had to first go to the principal, and the teachers felt that they

were living with this very disruptive child in their classroom and that they really were the ones that ought to be making that kind of decision.

So I think, in light of the fact that I do support that, I think this is a good bill, and this is -- just clarifies an omission. So I'll be voting yes.

ACTING PRESIDENT BALBONI: Senator Stachowski, to explain his vote.

SENATOR STACHOWSKI: Briefly to explain my vote.

I'm going to vote for this bill, but there are some concerns I have. And they were just -- actually, as this bill was being debated, I had a group of principals outside explaining to me how they now are hearing officers. That concerns them.

There's teachers that know how to push students' buttons, and if they push their buttons and the student acts up because of it, the student is still suspended. That may be a problem, and they got to deal with that.

And thirdly, one of the things we may have to look at in the future is that

we're mainstreaming a lot of emotionally challenged students, and the fact is that some teachers aren't trained to handle those kind of students. They're trained to be good teachers, but they're not necessarily trained to identify an emotionally challenged student and how they behave.

So although I'm supporting this bill, I just wish that we would make a recognition that hopefully in the future we'll look at those possibilities in case we have to deal with them, as brought up to my attention, at least, by some Buffalo principals.

I vote aye.

ACTING PRESIDENT BALBONI: Thank you, Senator Stachowski.

Senator Duane.

SENATOR DUANE: Thank you, Mr. President. To explain my vote.

It just seems to me that apparently this bill isn't about students, and it's not about safety, and it's not about education, it's not about ending harassment, it's not about trying to stop harassment or bullying in the schools. It seems to be about making sure

that people can go to their barbeques on Sunday, and that it doesn't matter that a student has been suspended.

Actually, I now see as a result of this week that there's been a distressing trend towards protecting people's right to have a barbeque. We did that yesterday with a bill put forward by Senator Saland. That people are more concerned about the sanctity of their weekends and three-day weekends than about the well-being of students and fairness and what happens in our schools I think is pretty tragic.

We're paid pretty good money to come up here and debate these bills, but it seems like there's a fear of actually debating the real issues facing our schools, like safety in schools, like why it is that students are harassed, why students bully, what happens to those students who are bullied and harassed.

It seems to me those are the more important issues than whether or not someone gets to have their whole Sunday free to, you know, have a barbeque or go to a football game

or whatever it is they want to do, instead of addressing a very important issue like what happens to the students in our schools.

I'm almost embarrassed that we're not permitted to debate the real issues here impacting safety in our schools. I thought that's what one of our most important jobs are. I don't know how it is that we get to have those debates on the floor here of the Senate. Certainly I'm not afraid of that -- I haven't gone to two minutes yet.

I'm not afraid of having that debate. I hope others here aren't afraid of having that debate either. I'm going to vote no on this, and I hope that it will save an opportunity for us to debate the real issues here in the Senate.

Thank you.

ACTING PRESIDENT BALBONI: Announce the results.

Oh, no, sorry. Senator Paterson, to explain his vote.

SENATOR PATERSON: Mr. President, I'm also going to vote no on the bill. And for simplicity, because I think that the

notification should occur on a Saturday.

I think these issues are serious. I don't want to impinge upon anybody's time away from work, but there come times when extraordinary situations command that you do a little work on the weekend. We work every weekend. And maybe it will allow others to understand how difficult our jobs are, rather than pillorying us in the public all the time.

But the reality is that sometimes things have to get done on the weekend. I don't want to do it all the time, but there are rare times when I do feel that way, and I think this is just one of them.

I think that to alleviate confusion -- and if I caused any confusion in this discussion, I think it was certainly remedied by Senator Lack's comments. I didn't think they'd done anything wrong in Bethpage or anywhere else. I just thought that sometimes the exceptions that we make on rules just happen to create just a little bit of confusion with professionals who are doing the best that they can do. A uniform standard is preferable.

The 48-hour rule made plenty of sense with respect to the hearing. The 24 hours to notify the parent, I agree with Senator Montgomery that it really should be done as immediately as possibly.

I vote no.

ACTING PRESIDENT BALBONI: Senator Hassell-Thompson, to explain her vote.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. In listening to Senator Kuhl describe the intent of the bill and what he hopes to do, it has merit, it has distinct merit. And I know that what it does is to allow the school system to be better covered if in fact more time is needed in order to notify parents.

But it does disturb me somewhat that there doesn't seem to be the concern about children who are dismissed from school. The notification process and the ability for parents to return their children to school, I think that what tends to happen, as we sit here, each of us represents very different school districts. And within that context, we represent very different economically placed

parents. And so that there are times when the least of us who can afford to be out of the classroom for any time at all are those who end up and tend to be most penalized.

Our children cannot afford to be out of school, not for any time at all. And none of that is to say that we are excusing the behavior that occurs in classrooms. Because any of us who have been in schools for any reasons know that children do act up, act out, and some behave extremely badly.

Listening to Senator Oppenheimer talk about the kinds of things that disturb children and why children act out certainly is not part of today's discussion, but it does need -- and it does need to have some discussion at a later time. That's not what I'm concerned about.

What I am concerned about is whatever the base cause of children misbehaving, causing them to miss class time, causing them to miss school time is a very important issue. And so that it's important from the perspective of how much time the child is actually out of the classroom. And

how much time parents are given in terms of notification, so that they can, as quickly as possible, deal with those issues and have children be returned to the classroom.

So that anytime we make the time frame longer doesn't give the same sense of urgency. We don't send the message to our school districts, the sense of urgency that they need to have to ensure that whatever the situation is that it is quickly dealt with and that the child then is returned to the classroom.

So from that perspective, I have some real concerns about this bill.

ACTING PRESIDENT BALBONI: Senator, how do you vote?

SENATOR HASSELL-THOMPSON: No.

ACTING PRESIDENT BALBONI: Thank you.

Senator Dollinger, to explain his vote.

SENATOR DOLLINGER: Briefly, Mr. President, I'm going to vote in favor of this bill.

When we struck a balance last year

between the rights of students and families and the administrative convenience for our administrators in the public schools, the balance that we struck was clearly in favor of immediate notice of a student suspension. That if we were going to give an individual teacher the right to remove a student from the classroom and prevent him from going to other classes, we were going to give that immediate right to a teacher, we said that the school district, in order to justify that interference with the child's education, there had to be immediate notice to the parents within 24 hours. Not a school day, not a day, 24 hours.

We struck that balance because we concluded that administrative convenience was not as important as immediate notification of the parents and remedy. This bill moves us back, tilts that balance in favor of administrative convenience.

I'm going to vote in favor of it because I think Senator Kuhl's bill is not moving us too far along that line. It's giving the school district a little more

guidance. At the same time, I think it restrikes that balance.

I would just point out that if this bill reminds us of anything, it's the danger of using the word "shall." We write all these bills, we say the school district shall, the principal shall, they shall, they shall, they shall. They shall do it within a certain time frame. When they don't do it, they're left perplexed as to what the consequence is if they don't do it within that time frame.

Does it void the suspension? Does it eliminate the ability to remove the student? Does the student have an absolute right to get back in the classroom? It's never quite clear.

If anything, Mr. President, I think this is an important exercise in draftsmanship. I think the amendment is better drafted than the bill. And I would suggest we're going to be back here looking at this thing time and time again because, although we had the right intention, we didn't use the right language and we have hopelessly confused our school districts. We may be

tilting the balance in favor, too far in favor of administrative convenience and not protecting the important rights of students.

I'm going to vote in favor, but I can't wait to see the next amendment coming.

ACTING PRESIDENT BALBONI: Announce the results.

Senator Breslin, to explain his vote.

SENATOR BRESLIN: Thank you, Mr. President.

I share with Senator Dollinger his concern about this bill, and I share his concern that the emphasis might be to protect the school administrations and not to protect the student. And I feel quite strongly that we should make every attempt to notify the parents immediately in any situation that might arise under this legislation.

And I think the legislation should have, if not directed it be mandatory, that at least it contain language that would have suggested immediate notification.

But even with all those concerns, I think there are going to be situations that

are going to be covered by this bill, and I will vote in favor of it.

Thank you, Mr. President.

ACTING PRESIDENT BALBONI: Senator Breslin will be recorded in the affirmative.

Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I just want to say briefly I share the same concerns of my colleagues. I am also going to vote in favor of the bill, largely on the principle that this does set, as Senator Stachowski pointed out, the outside parameters for notice. And in the hope that we will work to create incentives and provide the resources so that principals can take prompt action, can take immediate action.

Once again, as Senator Dollinger pointed out, we impose all these requirements. We have to provide the resources, we have to insure that these people have the time. There probably is no more important job in this state than the principal of a school, because

principals make the school.

I also want to say, with reference to the sponsor, I appreciate his patience on -- in answering all these questions. I think that part of the difficulty we have now is that because of the curtailment of our ability to raise issues through motions to discharge and amendments, when a piece of legislation addressing a section we have concerns about comes to the floor, some of us feel that may be the only time to address issues of concern to our constituents regarding that.

I vote yes.

ACTING PRESIDENT BALBONI: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 222 are Senators Duane, Hassell-Thompson, Montgomery, and Paterson.

Ayes, 55. Nays, 4.

ACTING PRESIDENT BALBONI: The bill is passed.

THE SECRETARY: Calendar Number 228, by Senator Volker, Senate Print 204, an

act to amend the Penal Law, in relation to loitering.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT BALBONI: I'm sorry, Senator, has there been an explanation requested?

SENATOR VOLKER: Yes. Senator Paterson.

ACTING PRESIDENT BALBONI: Senator Paterson has requested an explanation.

SENATOR VOLKER: This bill, that's been around for a few years, has been changed a couple of times. And what it pertains to is the question of someone improperly boarding and being a presence on a school bus.

This has become quite a problem for several reasons, one reason being that it was thought to be covered under disorderly conduct. And the courts have -- I believe several courts have thrown that out and questioned whether the present law would pertain to that.

In all honesty, we started out with a Class E felony and went to a misdemeanor.

And for the same reason that Senator Dollinger said to me yesterday and asked a question, Why are we in a violation, well, we do believe this bill will pass the Assembly.

The problem, I think, is pretty obvious. We have amended it to -- the definitions of public place and transportation of facility to accommodate this sort of thing, because of several of the objections that have been made.

And I think it's a pretty simple bill. It passed this house last year with one vote in the negative. And we are very hopeful that this bill this year will get passed. It's supported by the School Board Association, the transportation people, school board transportation people, and we actually have no real objections to it.

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

SENATOR PATERSON: Mr. President, I would seek permission if Senator Volker is willing to yield for a few questions.

ACTING PRESIDENT BALBONI: Senator Volker, do you yield?

SENATOR VOLKER: Yes, I do.

SENATOR PATERSON: Senator, how does a private school bus qualify as a public place? And the only reason I bring it up is because it kind of points it out in the legislation. And I wouldn't have thought it was a big issue, because obviously a private school bus can be like any other private property, it can be eligible to be the site of trespass, harassment, disorderly conduct.

But since it puts it in that fashion in the legislation, I was just wondering why that's the case.

SENATOR VOLKER: The answer is that we've decided, because the courts say since it doesn't specifically say that a school bus is a public place, that we specifically say it is. And I think that's the -- that, I think, is the problem.

It reminds me of many years ago when one of my historic cases, one of the few historic cases I had, I arrested somebody in -- when I was a police officer, in the - at one of the busiest intersections in all of upstate New York, at 5 o'clock in the

afternoon. His car was right in the middle of the intersection with the motor on, and he was frankly stone drunk. And I arrested him for public intoxication, because actually I probably could have arrested him for DWI, whatever I -- but we got his car out of the road. He caused a huge traffic jam.

And the case went to court, and the decision was -- that was one of the decisions that said despite the fact that it was 5 o'clock in the afternoon in the middle of one of the busiest intersections in the entire part of the state, he was inside his car, and it wasn't a public place. And therefore, he could not be convicted of public intoxication.

So that was one of my stellar arrests. But the point I'm trying to make is that -- and he certainly wasn't disorderly. He practically hardly moved.

(Laughter.)

SENATOR VOLKER: But the -- I guess the point I'm trying to make is that what we've done here is to say that a vehicle such as a school bus is sufficiently public to be declared to be sufficiently public in order

to deal with this kind of issue.

Which is a very serious issue. I mean, there have been a number of incidents involving people who have -- one involved a disabled student where a guy jumped on the school bus and tried to go after the disabled student. And another one where the bus driver was grabbed.

And even more, although this problem here I -- we just picked this one off the Internet. This problem here, we'll have to amend the bill. It says "Monkey attacks girl in school bus." A 6-year-old girl was bitten in the head by a monkey on a school bus when the monkey dashed on the school bus.

SENATOR PATERSON: Where was that?

SENATOR VOLKER: That was in Burma.

But I just thought I'd -- we were trying to find anything on the Internet that would -- referring to this. But, you know, it -- I would read the rest of it, but it's -

UNIDENTIFIED SPEAKER: Sounds like monkey business.

SENATOR VOLKER: Yes, it sure does. But when we found it . . .

At any rate, we think this is a way of solving -- the truth is that you must have some way that when a person and sometimes even a parent, for one reason or another, comes charging onto a school bus, that you have to have some sort of way in effect of getting them off with a charge -- it's only a violation, as I say -- to in effect get them off the bus and then have some sort of penalty for doing that.

Because right now, in a number of cases, there has been -- the way the cases have gone, there's no penalty.

SENATOR PATERSON: Mr. President, first I want to suggest that even Ne Win, the ruthless Burmese dictator, never had a six-year-old girl bitten by a monkey on a school bus.

But if Senator Volker would yield for some more questions.

ACTING PRESIDENT BALBONI: Senator Volker, do you continue to yield?

SENATOR VOLKER: Why, sure.

SENATOR PATERSON: Then, Senator, based on the answer to your question, are we going to then treat the school bus as a public entity for the purposes of the criminality of the violation?

In other words, you don't anticipate -- I would assume you wouldn't anticipate that we're not going down a little bit of a slippery slope here if we start treating the school bus as a public place for other types of civil actions or other issues that could come up in the law.

SENATOR VOLKER: No. But I think probably, ironically, I think for civil cases that has been considered virtually a public place in some cases. We don't have to do that.

What we're doing here is in effect setting up a very limited -- obviously, a very limited standard. As you know, it says that entering a school bus, remaining on a school bus with no reason or authority to do so shall constitute the offense of loitering, which is a violation. And it's simply an attempt to prescribe something as succinctly as you can.

Which clearly is a major problem in certain areas, and unfortunately has become a problem that's been all too frequent.

SENATOR PATERSON: Mr. President, if Senator Volker would continue to yield.

SENATOR VOLKER: Yes.

ACTING PRESIDENT BALBONI: Senator Volker, do you continue to yield?

SENATOR VOLKER: Yes.

SENATOR PATERSON: Senator, I don't want to minimize the gravity of concern that you have for this issue, because I have it as well.

As a matter of fact, in School District 3, which is correlatively represented by Senator Schneiderman and myself, there was an incident I believe last year where the parent of one of the students was riding on the school bus with the student, and the student got into a fight with another child. The parent then ordered the school bus driver to throw the other student off the bus. The other student was thrown off the bus and didn't have any money, and was wandering around lost for a good part of the day.

And this became an issue because technically the parent was allowed on the bus as a courtesy but then interfered with the school bus driver's desire to try to bring peace between two students that had gotten into a fight. And although there was no end of the situation that was harmful, it still raised the question about other personnel being on the school bus.

Now, that's a minor application of it. But the ones you described are far more serious. So I just want you to know that I take this very seriously.

But my question is, don't we have, under trespass and disorderly conduct and harassment, Section 240 of the Penal Law -- I remember that law. I used to work with it years ago. And don't we already have means of punishing people who do this?

SENATOR VOLKER: We thought we did, Senator. But what's happened is, and I think that a person in -- I think it was in Western New York was charged with trespass, if I'm not mistaken. And in fact, they were convicted of trespass. And it was appealed.

And the decision was that under the law, under a literal reading of the law, the school bus would be considered to be a public place, except the law didn't so state and therefore it could be considered a private place, but it's really not a private place. So the judge dismissed the case on the grounds that it was not a trespass, it was not disorderly conduct because the person wasn't technically disorderly, just got on the bus and wouldn't get off.

And the school bus people got really upset, and said, You'd better find a way, in a sense find a way to obviously make this a crime. And they of course wanted it as an E felony, naturally. They wanted a more serious crime.

I will tell you this. I mean, there are crimes that are committed. My law partner, who happens to be the chief of police in my town, arrested a fellow who had tried to kidnap a bus, in effect, with a gun, and actually arrested the fellow. Obviously, there you've got a clear crime, so there's no problem.

But the ironic twist is if he had got on that bus with a gun but didn't get to do anything, technically you could argue they couldn't charge him with anything. Because even though he intended to, you know, he could have gotten off without anything being done.

Once he raised the gun and put it to the head of the driver and that, obviously it was a different kind of a thing. But that's one of the things I think that brought it up, was that issue.

SENATOR PATERSON: Mr. President, if Senator Volker would continue to yield.

ACTING PRESIDENT BALBONI: Senator Volker, do you continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT BALBONI: Please proceed, Senator Paterson.

SENATOR PATERSON: Mr. President, I want to thank Senator Volker for his answers to these questions.

So to summarize, Senator Volker, the sanctions that are now expanded by this bill take us from -- see, I don't want to use the example of a gun to the head, because

that's a crime any place.

SENATOR VOLKER: No, that's what I just saying. It's obvious.

SENATOR PATERSON: But certainly I agree with you that some of these things that people do when they get on school buses, that let's say they just did it on a regular bus, regular public bus, it might be a little bit different. Because we want to graduate the value of concern for children.

What is the expansion of the sanction now that this bill brings us?

SENATOR VOLKER: What we're really doing here is saying that if a person invades a school bus, in effect, without any authority or without any justification, that that person -- and we assume that the person doesn't commit an overt crime, obviously, assault or something of that nature -- that that person could be charged under this section of the law with what amounts to a loitering offense and is charged with a violation -- which is what? Which could, the maximum penalty, I think, is 15 days.

Normally speaking, if nothing

ensued, it would probably be a penalty, a fiscal penalty, unless there was something more serious. But the maximum penalty would be 15 days in jail.

SENATOR PATERSON: I want to address one final area, if Senator Volker is willing to yield, Mr. President.

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: My question relates to the responsibilities of the bus driver. Do we in any way protect the bus driver? Should the bus driver physically remove the unauthorized passenger from the vehicle? Does the bus driver have a right to detain the unauthorized person until law enforcement has arrived?

Does the legislation address in any fashion what the roles and duties are of the driver of the bus should there be any kind of attack or invasion of the bus by an outside person?

SENATOR VOLKER: Well, we don't deal with that.

But one of the ways we protect the bus driver, when you come right down to it, is to have some sort of penalty should this kind of an action happen. In other words, if - what is really a serious problem for a bus driver, for instance, is if you have somebody that does this sort of action, comes on the bus and then the kinds of things that we've talked about where you can't charge him with disorderly conduct and you can't get him for trespassing and you don't have this statute to at least charge him with a violation, you potentially have a civil problem for the driver. Who would then be in a situation where he can get a law enforcement person there, but if there was -- if it turns out there was no violation, actually he could be in some jeopardy.

Although I would argue that if he acted reasonably under the circumstances, he couldn't do it anyways.

But there's nothing technically here which protects him except the very fact that we're doing this kind of a statute would help protect him.

And by the way, I think if -- the union in New York City has come to me, and I've had a bill for years relating to assaults on people that -- bus drivers and traffic employees that would raise the penalty to, in some cases to an E felony, which is another issue. That's an actual assault, of course.

And -- but this relates just to the entering of the bus, whether it's gesturing, acting improperly. And just to have some sort of charge to make sure that that person is acting illegally under the law.

SENATOR PATERSON: Thank you, Senator Volker.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: I really was educated by this discussion, because I would have thought that the applications of a number of laws that can be misdemeanors and are also violations would have covered this issue.

But what I think Senator Volker pointed out that persuades me -- because I'm generally against the addition of new laws, or

sometimes I think that we just have a shrill way in this chamber of upgrading what we've already worked on in the past, just to have something to do or something to explain what we're doing this year to our constituents.

But here is a clear case where it may very well be in order, because some of the seriousness of the circumstances of a bus driver trying to transport children from one place to another to get them to school and to bring them home are exacerbated by the interference from individuals from the outside.

And here you have a person that's trying to operate a vehicle and to some degree be the disciplinarian. It's hard to then also make them the law enforcement officer. And so to what extent we can create a public policy which sends a message to would-be perpetrators of this type of situation that this conduct is going to be not only not tolerated but will be at a threshold involving greater criminality, it's probably important to send that message and to protect young people from these types of violations, misdemeanors and, if it gets to

that point, felonies that are occurring in and around the school buses that transport our children back and forth to the school premises.

The issue of the relationship to the public or privateness of the school bus itself is one where I do have a little bit of concern. But I suppose that since we already treat the school bus as a quasi-public entity already, it really doesn't enter within the parameters of this type of legislation, as Senator Volker pointed out.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, thank you, Mr. President. If the Senator will yield to a question.

ACTING PRESIDENT MEIER: Senator Volker, do you yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: Thank you.

Senator Volker, my understanding of

the bill, and please correct me if I'm wrong, is that this expands the definition of loitering to include the unauthorized boarding or presence on a school bus by an individual not authorized by the school district or assigned bus driver. Is that correct?

SENATOR VOLKER: Exactly.

SENATOR HASSELL-THOMPSON: Hypothetically, then, two school buses, youngsters, a basketball team going to a game, you're not authorized to be on this bus, but you're one of the players. You come on the bus to talk to somebody. That's an unauthorized presence on the bus. Would that student then be in violation?

SENATOR VOLKER: The only way that student would be -- would truly be in violation would be -- if the student needs to be transported somewhere, would be, of course, obviously, I guess, if he didn't belong on the bus and he became a danger of some kind or disorderly. Then he -- his unauthorized nature would become a problem for the bus.

Because, quite obviously, if he's simply on a different bus or on the wrong bus,

he's authorized to be on a bus. And there's going to be no complaint against him unless he does something that would make him unauthorized.

And by the way, when you're talking about a student, clearly a student probably would be authorized on virtually any bus. And -- and, by the way, we're talking about the assigned bus driver.

And, I mean, the thing about this is that when you're trying to do a statute like this, you've got to use the reasonable man's and woman's standard. And, you know, otherwise, obviously no court is ever going to -- that was part of the problem with disorderly conduct and some of the other things there, is that judges said, Well, you know, is this strictly under the law?

And so I think that that would never become an issue in cases of this nature.

SENATOR HASSELL-THOMPSON: Through you, Mr. President, if the Senator would continue to yield.

ACTING PRESIDENT MEIER: Senator Volker, do you yield?

SENATOR VOLKER: Sure. Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: I would like to believe, Senator Volker, that I would put this to the reasonable test, and I would like to be considered as a reasonable person.

But I think that that's what I consider to be a weakness. I don't think that in the language there is the clear definition of the behavior or the sanction that would contribute. And I was not being facetious when I said that. But it seemed to me to be so loose that, under a basic interpretation, the theoretical situation that I just cited could possibly be construed.

SENATOR VOLKER: Except that the -- no court in this state would entertain that. And unless -- there has to be a prosecution for something in order to do something.

Any law we pass here, you could come up with a theoretical situation that probably would not totally fit within the

statute. And very honestly, that's why we try to be as careful as possible. But we all know that situations occur that are not totally covered.

And by the way, if you try to get too fine with these kinds of statutes -- and that's what happened with disorderly connect and with trespass. When you try to get too fine, what happens is you can't cover each situation. And we found that out. We've been trying to work out some sort of way to deal with this for years.

And of course the Assembly, that is very, very concerned, and we understand that, about certain incidents, but -- because that, in all honesty, may be more defense-minded.

You've got to come to grips with the fact that this has become a serious problem, and we have to deal with people who are invading school buses. It's not only in upstate New York, it's also in New York City, as Senator Paterson pointed out.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

On the bill.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON: Senator Volker, I -- and through you, Mr. President, my husband happens to be a bus driver, school bus driver. And so that it would be very difficult for me not to support this bill in that context. Particularly because some of the issues that we have discussed certainly are issues that he and I over the years have discussed about behaviors, the differences in children and different events that he has taken kids on, and situations.

So I was particularly concerned in listening to your answers to Senator Paterson's questions about liabilities for bus drivers and whatever. But also be assured that I understand the seriousness with which your intent is. I always want to be very careful, even though I don't -- I don't believe in making things so narrow that they don't work. But I also don't want them to be so broad that they become the net to catch the whale and yet you catch the dolphin.

So I very clearly support this bill and want to just be sure that I added my five cents in terms of how we go forward and how we see the possible situations that may occur on those bills that we pass here.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Gentile.

SENATOR GENTILE: Yes, Mr. President. If Senator Volker would just yield to a question or two.

ACTING PRESIDENT MEIER: Senator Volker, do you yield?

SENATOR VOLKER: Right.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: Senator, I - through you, Mr. President, I just am confused about the court ruling that you had indicated earlier.

If in fact the court ruled that a school bus was a private place, I'm unclear why that would not be a trespass under the current Penal Law.

SENATOR VOLKER: I don't think

they ruled necessarily that the -- they ruled that the statute didn't clearly define a school bus as a public place that -- for purposes of trespassing in public. Or in fact -- and since it didn't specifically say anything about private, the ruling was that it wasn't technically a trespass, it was sort of neither fish nor fowl, I guess is what they sort of said.

And the disorderly conduct -- as you know, the disorderly conduct statute has been limited on several occasions by the courts. Many law enforcement people have used disorderly conduct as a catchall and all, because, you know, if you didn't know what else to charge somebody with, you charged them with disorderly conduct.

And the courts have limited that quite a bit. And apparently there was a case -- whether it was the same case, I don't remember. But I think there was a case that -- and it -- the trespass case caused the bus driver, transportation people to get all upset. Because they had a guy who was particularly obnoxious, I guess, who was

restrained, and they almost pulled him off the bus. And he went to court and ended up essentially, after quite a bit of proceedings, with being found not guilty. And the trespass charge, which was the prime charge, was the one that was thrown out.

So I -- you know, I mean, it - we've been trying to work out -- we considered at one point using the trespass statute and being more specific. But the decision was really made that this would be the better way to do it, since it appeared to fit better into the area.

And, you know, I personally think it should be a misdemeanor. But that's, you know, something that we're going to go with this as a violation so you at least have something to charge somebody with.

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

ACTING PRESIDENT MEIER: Senator Volker, do you yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR GENTILE: Senator, I assume, then, that the person in this particular court case was charged with trespass as well as, you say, the catchall disorderly conduct?

SENATOR VOLKER: Yup. Mm-hmm.

SENATOR GENTILE: Do you know whether or not the person was found guilty on the disorderly conduct?

SENATOR VOLKER: No. My understanding is that all the charges against him were dismissed. Or overturned, I mean. He was convicted initially, and then they were overturned.

SENATOR GENTILE: And so on appeal they found that not even the disorderly conduct, which is a violation, was -

SENATOR VOLKER: Particularly because the issue was, was he really disorderly. I mean, did he get a chance to be disorderly or whatever or -- you know, the issue of specificity. He was definitely on the bus. He shouldn't have been there. So that that would be, you know, the initial

charge.

As to how much he -- it created a problem, as you know, that was another issue. And the judge just said that it wasn't enough and just threw it out.

SENATOR GENTILE: Through you, Mr. President, if the Senator would just yield for a question or two.

SENATOR VOLKER: Right. Sure.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR GENTILE: Senator, in your opinion, if someone did create that disturbance, was on the bus long enough to create such a disturbance, would that come under the disorderly conduct statute that we have currently?

SENATOR VOLKER: Well, I think the problem is that -- and when you say my opinion, I think it should. But apparently there have been a number of times when it has not or does not.

It seems as if you have to -- in many cases, it seems as if you have to have another way of finding these people in

violation of a statute. In fact, what the bus people say to us is that, as one bus driver said, "I want to be able to throw the guy off the bus and at least have something that I can rely on to say that he's in violation of something. Otherwise, I can probably be sued."

And, you know, he's probably right. And I think what we're trying to do here is - and the transportation people statewide are not totally happy with this. They would like something more stringent. But they feel that under the circumstances, this is about the best that they can get.

SENATOR GENTILE: Senator -- if the Senator would continue to yield, I have just a -

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: Senator, I understand and appreciate what you're saying about the fact that here we are dealing with a

violation. So in fact if someone is being prosecuted under this new section, there necessarily is no arrest here, even, it's just a little note to come into court.

I question at this point the deterrent factor, given the fact that what we're dealing with is the violation.

SENATOR VOLKER: Well, he could still be arrested. I mean, you could still arrest a person for a violation and bring him in, just as you can arrest somebody technically under a traffic violation -- and by the way, we refer in here to the V&T law - you know, if the person is right there. But once he gets off the bus, obviously they'll end up giving him a summons and -- or something of that nature.

That does create somewhat of a problem, and I agree. But on the other hand, for instance, the bus driver can call a law enforcement person, who can come and technically arrest him and take him in and take a few dollars bail, if necessary, you know, under the circumstances. You can still do that.

SENATOR GENTILE: Thank you, Senator Volker.

On the bill.

ACTING PRESIDENT MEIER: Senator Gentile, on the bill.

SENATOR GENTILE: I want to also echo my sentiments in agreement with Senator Volker, that indeed I think at the level of violation that I would be willing to say that disorderly conduct covers a lot of this situation that we speak of, despite the court ruling or the appeal on the court's ruling.

And I believe that given the fact that here we are dealing with a violation, a violation is not -- a violation is not a crime. And this is a serious enough situation. I agree with Senator Volker that we in fact should be considering legislation here in this context to make it a crime, not a violation. And I agree with you, Senator Volker, that at the very least we should have this as a misdemeanor charge, which is a crime, and not the violation.

In any case, given the restrictions that we're under, I will be voting in the

affirmative.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. If the sponsor would yield.

ACTING PRESIDENT MEIER: Senator Volker, do you yield?

SENATOR VOLKER: Yup.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you.

I just want to clarify this point as best as I can. Under current law, what happens now if some unauthorized person gets on a school bus and shouts at the students? Is there no law that covers that now?

SENATOR VOLKER: Well, there's been -- as I say, there was a case -- there were several cases, but one case in particular where the person was charged, I believe, with trespassing and disorderly conduct. And I believe was convicted and I think went to the Fourth Department on appeal, and it was thrown out on the basis of the public-place argument and the argument that there was nothing

specific in the statute, as I understand, relating to whether a school bus was a public or private place.

It's a semipublic place, whatever. That's why we're putting this in the statute in this way, so that it would be covered.

Under the law, you could argue that it is. But there's been -- it's not the only court that's done this. I think other courts have been following it. So that's what this is really all about.

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

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: And just to further clarify, the cases which the sponsor has cited, were they school buses? Were they people on school buses?

SENATOR VOLKER: Oh, yes. Yeah, this is all school buses. If you notice, this

only applies to school buses. It doesn't apply to any other buses.

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

SENATOR VOLKER: Mm-hmm.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I have an easier time understanding certain other offenses against public order on school buses, but I am concerned about loitering. I'm wondering if the sponsor thinks that loitering laws are effective.

SENATOR VOLKER: This is not a loitering law. This is -- all this is is if somebody invades a school bus.

I mean, it's a -- the reason you use that language is that a person -- for instance, if a person starts to get on and the guy says, "Get off," and he doesn't really get on, you're not going to do anything. But if he actually gets on the bus, he or she, and hangs around -- I mean, it's a word of art. I don't -- loitering -- we don't use loitering

laws much anymore. But this is -- you know, you could say the person trespassed on the bus or -- the reason you use the word "loitering" is because, in effect, this is more of a word of art than anything else.

So I think maybe you're sensitive to the loitering issue. That's not it. This is an invasion of a school bus. A person is on there unauthorized. And if you read it, it talks about permission and a lot of other things.

So that the answer is in this specific case, it seems like the best language to use for the act that's being done in -- the acts that are being done.

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

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

SENATOR VOLKER: Right.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Even though I understand that the sponsor believes that

loitering is as close a word as he can get to what it is that -- the offense that he's trying to get at or to stop from happening when a person is told not to get on a bus, but I'm wondering if the sponsor would concede that often loitering laws are targeted against certain groups.

SENATOR VOLKER: I don't -- I think that loitering has been targeted against alcoholics, maybe, you could argue, and so forth. But I don't think it's particularly targeted against certain groups. I think people allege that because, frankly, it's always alleged. You know, if somebody does something that's a problem or, in many cases, for their own protection.

But then again, I guess people don't look at it -- but I don't -- that's another issue. I think, generally speaking, no, it's not targeted against certain groups.

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

ACTING PRESIDENT MEIER: Senator Volker, do you yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I would, you know, respectfully disagree with that. Loitering I think traditionally has been used against some groups more than other groups.

I'm wondering if the sponsor would be open to changing the word "loitering" to something which might be a little bit more specific to the problem that we're trying to address. Including, perhaps, trespassing or something along those lines.

SENATOR VOLKER: No. And the reason is that -- aside from one other small problem, the Assembly wouldn't do trespassing if we did talk about it.

If you read it, it says "or loiters, remains in or enters a school bus, as defined," and so forth. I think it's pretty clear we're specifically dealing with this type of issue.

And the nervousness about using that word "trespass" I guess has to do with what was said in the court case, not that -

this is a different kind of thing. But I just don't think -- I think this explains the action that you're trying to deal with. And I don't see any -- I think the explanation in the bill makes it clear what you're talking about.

I don't know how you could possibly use this against any particular group. The only particular group you could use it against is anybody that comes charging on a school bus and -- unauthorized, charging on a school bus, and creates a problem. And that's -- I just don't see this as a particular problem.

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

SENATOR VOLKER: Sure. Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you. Is there a difference between the word -- on page 2, lines 3 and 4, is there a difference between the word "loiters" and "remains in"?

SENATOR VOLKER: I think probably there is. I think "loiters" is a kind of a

word of art. I think it's pretty clear that using both of those words covers the situation that we're trying to deal with. So I just don't see where that is a particular problem.

SENATOR DUANE: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: I just can't help but to be concerned anytime the word "loitering" or "loiters" is inserted into the Penal Law. It just -- language is a very important thing in our society, and the word "loitering" conjures up a lot of unfair and discriminatory things which have happened to people in New York State through the years.

I don't really -- though I appreciate the sponsor's helping to define "loitering" and "loiters," and why that's in the bill, if you look at other places that the word has been and continues to be used in New York State's Penal Law, "loiter" actually encompasses much more than I think the sponsor intended. I don't really see that it could - that it should be intended to imply any more

than "remains in" or "refuses to leave" or something like that in a school bus.

And so, in the absence of striking the word "loiters," I'm going to have to oppose this bill, though I certainly understand the reasons for the bill. But I am very uncomfortable, and I don't think that my constituents would approve of me voting to add "loiter" to another section of New York States' Penal Law. It's been misused too many times in the past.

If the sponsor at some point could see his way to taking that out and trying to find a better phrase which wouldn't relate to other parts of the state's penal code, then I could see voting for it. But right now, with the word in there, the past definitions and usages of "loiter" in New York State's penal code makes impossible for me to vote for it.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Any other member wishing to speak on the bill?

Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of

November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 230, by Senator Bonacic, Senate Print -

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

SENATOR DUANE: Mr. President, could you check and see if there's a quorum in the chamber, please.

ACTING PRESIDENT MEIER: The Secretary will call the roll. The Secretary will sound the bells.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Here.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Present.

THE SECRETARY: Senator Bonacic.

(No response.)

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Here.

THE SECRETARY: Senator Brown.

SENATOR BROWN: Here.

THE SECRETARY: Senator Bruno.

(Senator Bruno was indicated as present.)

THE SECRETARY: Senator Connor.

(Senator Connor was indicated as present.)

THE SECRETARY: Senator DeFrancisco.

(No response.)

THE SECRETARY: Senator Dollinger.

(No response.)

THE SECRETARY: Senator Duane.

SENATOR DUANE: Here.

THE SECRETARY: Senator Espada.

(No response.)

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Here.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Present.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Present.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: Present.

THE SECRETARY: Senator Goodman.

(No response.)

THE SECRETARY: Senator Hannon.

(No response.)

THE SECRETARY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Here.

THE SECRETARY: Senator Hevesi.

(No response.)

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Present.

THE SECRETARY: Senator Johnson.

(No response.)

THE SECRETARY: Senator Kruger.

(No response.)

THE SECRETARY: 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.

(No response.)

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.

SENATOR MARCHI: Present.

THE SECRETARY: Senator Markowitz.

(No response.)

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Present.

THE SECRETARY: Senator McGee.

(No response.)

THE SECRETARY: Senator Meier.

SENATOR MEIER: Present.

THE SECRETARY: Senator Mendez.

(No response.)

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: Present.

THE SECRETARY: Senator Morahan.

(No response.)

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Here.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Present.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Present.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Present.

THE SECRETARY: Senator Rath.

SENATOR RATH: Here.

THE SECRETARY: Senator Saland.

(No response.)

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

(No response.)

THE SECRETARY: Senator

Schneiderman.

SENATOR SCHNEIDERMAN: Here.

THE SECRETARY: Senator Seward.

(No response.)

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Here.

ACTING PRESIDENT MEIER: I declare that a quorum is present.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, can we continue with Calendar Number 230, please.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 230.

SENATOR PADAVAN: Mr. President.

ACTING PRESIDENT MEIER: Senator Padavan.

SENATOR PADAVAN: Without objection, could we return to the order of motions.

ACTING PRESIDENT MEIER: We can do that.

Without objection, order of motions and resolutions.

SENATOR PADAVAN: I would like a

sponsor's star placed on Calendar Number 236, Senate Bill 2710. Thank you.

ACTING PRESIDENT MEIER: That bill will be starred, Senator Padavan. At the sponsor's request, sponsor's star on Calendar 236.

The Secretary will continue to read in regular order, beginning with Calendar 230.

THE SECRETARY: Calendar Number 230, by Senator Bonacic, Senate Print 2270, an act to amend the Penal Law, in relation to the aggravated harassment of an employee by an inmate.

SENATOR DUANE: Explanation, please.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Bonacic, an explanation has been requested of Calendar 230 by Senator Duane.

SENATOR BONACIC: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Just a moment, please. If we're going to have these bills explained, could we have order in the chamber so we can hear the explanation.

SENATOR BONACIC: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President. This is an act to amend the Penal Law in relation to the aggravated harassment of an employee by an inmate.

We had passed a law in 1995 which was a protection for correction officers, for probation officers, for policemen, for employees in our correction facilities, in our mental health facilities, to prevent the throwing or the expelling of certain substances that could result in transmitted disease.

Our correction officers indicated that there was very violent and dangerous behavior going on, really by the inmates, that they would throw urine and feces on correction officers and employees. And in order to prevent transmitted diseases, we passed the law in 1995. And I'm pleased to report it did in fact cut down on the number of these incidents.

There were many court cases to talk about, well, if an inmate places a substance on a correction officer, it wouldn't be covered by the statute that we've already passed. If they spat upon an officer, it would not be covered. And they also wanted to include saliva as a substance that would be punishable under the statute.

Let me just point out to you that in the year 2000, it was reported by the Department of Correction Services of 1,238 such incidents as I've been describing to you where inmates would throw substances of a dangerous nature -- what could be a dangerous nature upon correction officers, employees, probation officers, and policemen.

And of that number, they categorize 830 of them were considered of a dangerous nature. Which means that person who was - who got the substance upon them, the correction officers, had to do testing to see if they got a transmitted disease.

So what this will do is it will plug up these loopholes and try to prevent this further dangerous and violent conduct

that's been going on in our correction institutions against our correction officers.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Bonacic would yield for some questions.

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

SENATOR BONACIC: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Thank you.

Senator, of the -- you said there were about a thousand cases, I guess, since 1995, if I heard you correctly, and 830 of them were of a serious nature. How many cases involving the material covered in this bill - the seminal fluid, ear wax, or the saliva -

SENATOR BONACIC: Let me correct you, first of all, Senator Paterson. The number that I told you was for the year 2000 alone. So it wasn't since 1995. So there's still quite a bit of this activity going on in the prisons.

SENATOR PATERSON: Right. So it would be about 5,000 if we just estimated.

SENATOR BONACIC: Yeah.

And when you asked me is it broken down, how much was urine, how much was feces, how much was seminal fluid, I don't have those statistics with me. And I wouldn't know the answer to that question.

SENATOR PATERSON: As a result of the incidents, do you have any record of how many charges were actually filed against inmates because of these incidents? In other words, of the 830 in the year 2000, I would assume that there would have been a number of actual cases brought.

SENATOR BONACIC: You mean which resulted in further criminal charges against those inmates?

SENATOR PATERSON: Right.

SENATOR BONACIC: I don't know. But I would say to you that a majority of them were.

Let me point out to you an incident that happened in the Sullivan County Jail, where an inmate took a glass and went to a

bowl and placed that glass and the substance on a correction officer. And the courts held in that case that the language that we passed in 1995 did not cover the placement of a - what could be a dangerous substance on a correction officer.

So that's one of the things we're trying to correct today, as well as spitting. That's not covered on what we did before.

So we're trying to protect our correction officers against dangerous and violent conduct and the spread of potential disease from some inmate that could be infected with a transmittable disease.

SENATOR PATERSON: Thank you, Mr. President. If Senator Bonacic would continue to yield.

SENATOR BONACIC: I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: I actually voted for the legislation in 1995. I certainly have an interest in protecting the correction officers, as I assume we all in this chamber do.

My question relates to, just for further clarification, do you have any record of convictions? Now, maybe not in the year 2000, you wouldn't have that because some of these cases might still be pending. But just to give me an idea.

And to be more specific, I'm trying to find a way to separate out, to find out how many of these cases that are loopholes in the system we're actually going to be able to cure through passing this legislation.

SENATOR BONACIC: Well, I think everything we do here in terms of deterrent legislation sends a message to those that have been convicted of crimes against society, that have a propensity of violence, and that you would suffer more punishment if you engage in acts that could bring physical injury to people in custodial positions. And so it makes sense to plug up these loopholes.

What is your concern, may I ask, Senator Paterson, as to how many were convictions and how many were not, may I ask? What public policy are we protecting if half were convicted and half the correction

officers let it slide?

I'm trying to understand where you're going with your line of questioning.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President. Senator, the reason I'm trying to get an idea is because my understanding -- and it was somewhat supported by your explanation of the bill -- was that these cases were largely reduced as a result of the legislation in 1995. I wanted to make sure that we were not what I might call piling on -- in other words, just finding some areas that we didn't cover in the original legislation and then at that point putting them in, even though we might not have enough cases to actually support them.

So it wasn't necessarily convictions as opposed to cases where there weren't convictions as much -- first of all, I want to know how successful the cases were against the inmates when they were actually brought.

And the second reason I wanted to

know that was to establish that there is a caseload that we might be expecting from the passage of this legislation.

And what somewhat concerns me is, let's say, the act of spitting, while it is certainly not the most dignified action that a human being can take to demonstrate disgust over the conduct or their feelings about another human being, the fact is that sometimes that act is one that is kind of a gesture. And the subjective notion as to whether or not it is affecting the other person or whether or not the saliva made physical contact with the other person can get into an area that's certainly a close call.

And because of the seriousness of transmittable diseases and the new forms of diseases and the way they can be transmitted, I certainly understand what your concern is, and I certainly would understand what anyone working in a facility's concern is.

But we do have, at times, a tendency to take legislation that has already addressed an issue and then find new reasons to revisit the same legislation. I want to

make sure that's not the case.

SENATOR BONACIC: Okay.

SENATOR PATERSON: Okay. And if the Senator would -- well, go ahead.

SENATOR BONACIC: Yes. Senator Paterson, what has happened, when these cases were prosecuted, the judges have looked at the technical language and the manner of the physical act in determining whether or not it was a violation of the statute we passed in 1995.

And I'm quoting now from the Penal Law, Section 240-32, in the practice commentaries. And they say, "Lastly, the objectionable substance must be thrown, tossed, or expelled. That specification arguably excludes other methodologies such as directly placing an objectionable substance on an employee's person."

So right here in the Penal Law, which the courts have determined was a loophole for which an inmate could get away with what we would consider objectionable conduct -- you have to understand that inmates, not all of them are dumb. They read

law books, they get very fine-tuned as to what they can get away with. And they then would engage in the act of placing or spitting, because there are court decisions saying it's not covered.

And that's why we're revisiting this statute that we did in 1995. And the request has come, by the way, by the correction officers and those custodial people that serve in probation and in these positions where, you know, they're supervising dangerous and violent people.

And I may add in conclusion, while I'm up here, I think back in 1999 the vote in Senate was 58 to 1. Last year, it was 54 to 2. So all we're doing is not kicking it a step higher to stick it to the inmates, but just to cover what I think we intended to cover back in 1995, which the courts now have interpreted differently because they're looking at the physical act and the manner in which it was spread to the custodial employee.

Does that answer your question?

SENATOR PATERSON: Yes, it does, Senator.

SENATOR BONACIC: Thank you.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: I was going to ask Senator Bonacic about the use of the word "placing." And he actually answered the question in his explanation, and then he further elaborated when he spoke on the bill just a moment ago.

If the Senator would yield for a question.

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: I will.

Senator Paterson, before you ask me the next question, counsel was good enough to give me some of those statistics you asked for. And in the year 2000, there was a total of 35 arrests. Which was quite miniscule compared to the number of incidents that you had a concern about, or whether there was piling on.

SENATOR PATERSON: Thank you, Senator.

Mr. President, I think Senator Bonacic has gone a long way to clarify some of these issues, because actually that was exactly why I was asking him the question. If you had 830 serious incidents, and now I know that there were 35 arrests, so what we now have is 795 incidents where there were no arrests. Is that right, Senator Bonacic?

ACTING PRESIDENT MEIER: Can I ask both Senators to address the chair, please.

Do you wish Senator Bonacic to yield for a question?

SENATOR BONACIC: I do. I do.

SENATOR PATERSON: I'm sorry, Mr. President, I already asked Senator Bonacic to yield for a question.

SENATOR BONACIC: And we do.

ACTING PRESIDENT MEIER: I said "both Senators." I'm just trying to be equitable here.

SENATOR BONACIC: If your math was right -- I didn't do the actual subtraction, but I would say that's correct.

SENATOR PATERSON: Mr. President,

if the Senator would continue to yield.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: He yields.

SENATOR PATERSON: Mr. President, then the analysis of the number of arrests would probably give us a good idea that in the number of cases where there were no such arrests, perhaps one of the problems was that there were additional fluids -- the contents of the toilet bowl, expectorants and that kind of thing -- that, because they're not in the law, and the fashion of how they are vested upon the corrections officer or whoever is the victim in that particular case, would probably be a lot more than we first would have considered just reading the legislation.

And that's what I'd like to hear Senator Bonacic's response to.

SENATOR BONACIC: Well, when we put this legislation forward, what we're doing is we're sending a message to the correction officers that we're very concerned with their

health, safety, and welfare. And as a result of only 35 arrests, it appears that they're not abusing their discretion when it comes to, you know, initiating a further criminal proceeding under the Penal Law against a particular inmate.

But there are instances where there are clear loopholes, such as the spitting or the placing, and they would like those loopholes plugged.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, I want to thank Senator Bonacic, and I want to address the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: I feel a little more comfortable -- I feel very comfortable with the fact that Senator Bonacic and his counsel have been very specific and are, I think, really clearing up a few areas that we as a Legislature didn't consider when we passed this bill in 1995. And I think we can all commend him for that.

What would make me a little more comfortable is to understand whether or not it was these issues that are being addressed in Senator Bonacic's legislation or the fact that this use of -- in other words, making these charges, since there was enough of a study to distinguish that 830 of a thousand of these charges were actually pretty serious.

But I just want to further investigate to make sure that this is not a device that, in a sense, is utilized to stick it to the prisoners, as was a term that Senator Bonacic used. He didn't mean that he agreed with it, but it was just a term that he used and I'm using here just to demonstrate.

That I tend to think that this was a serious problem at some point. It was addressed substantially in the legislation in 1995. But if there are any loopholes or any areas that are being utilized by prisoners who are -- most of whom understand how to get around the specifics of the legality, then I think Senator Bonacic's point is well-taken.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. If the sponsor would yield, please.

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you very much.

I know that Senator Paterson started to question on the issue of the word "placing." But I'm wondering why that word was chosen more specifically, say, instead of the word "spilling" or something like that.

SENATOR BONACIC: Do I continue to yield? I do yield to his question.

The answer to that is the courts have used that word, that the placing of a substance by an inmate on a correction officer does not apply to the statute that we passed back in 1995. That's why that specific language is in here today.

SENATOR DUANE: And through you, Mr. President, if the sponsor would continue

to yield.

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: We do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I know that the issue of -- I believe, let me just check, toilet water is one of the -- the contents of a toilet bowl, which could just be toilet water. Is there an issue of inmates placing Dixie cups of clean toilet water near correction officers?

SENATOR BONACIC: Senator Duane, I apologize, but I'm not hearing you well because you're looking down. Could you just -- was your question is if they had clean water?

SENATOR DUANE: If it was clean toilet water in a Dixie cup.

SENATOR BONACIC: And they threw it at -- and they placed it on the inmate -- I mean on the correction officer?

SENATOR DUANE: Yes.

SENATOR BONACIC: That would

be -- if this were to become law, that inmate could be prosecuted for that act.

I just want to reverse -- I have a question for you. If you were the correction officer and the water was placed on you, the clean water, you would have to go through a series of testing. You wouldn't know whether it was clean or a transmitted disease. So that's the problem we have.

And we want to discourage that kind of conduct. And I may add, we have done a good job here collectively by passing the 1995 law. Because a lot of this stuff doesn't go on to the extent that it did six years ago. But we have these couple of exceptions where the inmates know about it and they're being cute and they engage in this kind of conduct.

SENATOR DUANE: Mr. President, I'm unsure what just happened.

ACTING PRESIDENT MEIER: Well, actually Senator Bonacic has the floor, and I think he's asking you if you would answer a question even though you didn't have the floor at that time.

So he's in effect yielding the

floor to you sir, and it's up to you whether you choose to answer the question.

SENATOR DUANE: If the Senator would repeat the question part of the question.

SENATOR BONACIC: It's not necessary for you to answer it.

Do you have any other questions which I can yield to?

SENATOR DUANE: Yes, Mr. President, I would. And if the sponsor would yield to them.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Is it true that an inmate who throws anything at a correction officer is in for a pretty rough time and is probably or I should say most definitely facing time in an SHU?

SENATOR BONACIC: Senator, we have a law now that says if an inmate throws a substance at a correction officer or those

that we classify as custodial employees, they could be charged with a crime right now. It has nothing to do with this proposed legislation.

SENATOR DUANE: Then through you, Mr. President, why is this legislation necessary?

ACTING PRESIDENT MEIER: Senator Bonacic, I believe Senator Duane is asking if you would yield for another question.

SENATOR BONACIC: I would yield.

I assumed that you were in the chambers when we started this discussion when I was explaining to Senator Paterson why we needed the legislation. And I don't mind repeating it for you if you didn't hear what I was saying to him. Did you hear what I was saying to Senator Paterson?

SENATOR DUANE: Through you, Mr. President, I did hear the discussion with Senator Paterson.

And let me just repeat my question in a way that gets to the issue that I'd like answered, if the sponsor would continue to yield.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I believe that in all probability, or even most definitely that any inmate that throws anything at anyone in a correctional facility is destined to be sentenced to spend time in an SHU. Is that correct?

SENATOR BONACIC: I wouldn't know the answer to that question.

But I do know the answer that in 2000, of the 1,238 incidents in the year 2000, only 35 resulted in arrests. So I assume that the nature of that activity was very serious. And if they were, you know, convicted of a crime, I don't really know where they ended up, where they were confined after that conviction.

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

ACTING PRESIDENT MEIER: Senator

Bonacic -

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: And prior to that legislation there were a substantial number of inmates who the sponsor believes were guilty of throwing things at correctional officers; is that correct? That he believes that the number went down dramatically because of the law, the previous law.

SENATOR BONACIC: As I explained before, I think the number of incidents prior to when this Legislature passed the law, prior to 1995 there were larger incidents of this offensive conduct committed by inmates against custodial employees.

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

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you.

Does the sponsor believe that most inmates, if not all inmates, are educated at this point on the seriousness of the issue of throwing substances at correctional officers and what can happen to them if they do such a thing?

SENATOR BONACIC: I think every citizen in the state of New York is presumed to have knowledge of the law.

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

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I'm wondering if it has occurred to the sponsor, then, that right-minded people are very understanding of what can happen to them if they commit such an act and so therefore are not doing it, therefore leaving people who are mentally ill and cannot understand the consequences of

their behavior to be the ones captured under the law now.

SENATOR BONACIC: If I understand your question, is it a person that's mentally insane that commits this act, is that -

SENATOR DUANE: Through you, Mr. President, yes, now. Because the ones who are not mentally ill understand the consequences of what happens if they perform these acts. Those who were mentally ill and incapable of understanding are the ones who are captured by this law now.

SENATOR BONACIC: Well, I believe if you're mentally ill and you've been adjudicated as such, you wouldn't have the mental capacity to understand the nature of your actions and therefore couldn't be convicted of the crime in 1995 nor the crime -- nor the legislation which we're trying to pass today.

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

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: We do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I'm wondering if the sponsor would be surprised to hear that upon visiting correctional facilities around the state, correctional personnel have indeed told me that they believe the only people who do this now are those who are mentally ill. Would the sponsor be surprised to hear me say that?

SENATOR BONACIC: I don't know if that's truth or fiction. But normally that kind of conduct and its adjudication would be resolved in a court of law with a judge and a jury. You know, it would be a case-by-case basis.

So I can't answer it in a generic way. You have to look at every individual activity. And there is a legal process that will determine whether or not that person deserves to be punished or has the mental capacity to be convicted of that crime.

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

yield.

ACTING PRESIDENT MEIER: Does the sponsor yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I want to again ask whether the sponsor believes that someone who threw feces or urine in a correctional facility would now, without this law, be sentenced to spend time in an SHU.

SENATOR BONACIC: I don't know how that inmate would be punished if they were convicted of this crime of throwing feces or urine at a correction officer. I don't know where they go once they get convicted.

SENATOR DUANE: Through you, Mr. President, if I could just clarify that.

I'm actually speaking of people who are not convicted in any court of law but only within the internal procedures of a correctional facility are sent to an SHU if they have been accused and possibly found to have thrown feces or urine at someone in the correctional personnel.

SENATOR BONACIC: I'm a little confused by the nature of the question. You referred to a term, you said S -

SENATOR DUANE: S-H-U, special housing units.

SENATOR BONACIC: Solitary confinement, is that what you mean?

SENATOR DUANE: Through you, Mr. President, that's -

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: That's not actually quite accurate. But I don't know how to get on the floor what an SHU is. I'd be more than happy to explain what an SHU is if the sponsor will yield me the time to do that.

SENATOR BONACIC: I would like to answer your question.

SENATOR DUANE: I guess the answer is no.

SENATOR BONACIC: The nature of this legislation that we're proposing has nothing to do with the physical environment of which that inmate is in. It's the act that we're trying to prevent.

So I don't understand the relevancy of your question as to what happens to the inmate after they commit the act, because it's not relevant to the legislation we're proposing.

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

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Could the sponsor acknowledge that at least some percentage of inmates who throw things at correctional officers or correction personnel are indeed sent to an SHU? It doesn't have to be all of them. But if he could just, for the time being, cede that some are sent internally to an SHU.

SENATOR BONACIC: I can't answer that question because I don't know what they do in a correction facility after these acts occur.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: If the sponsor would continue to yield, please.

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

SENATOR BONACIC: I'm sorry. Will I yield to another question? Yeah, sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you.

Although I have to say that I'm very distressed that the sponsor of legislation which has to do with our correctional system is not familiar with SHUs, of which New York State has practically more than any other state, of which people are kept in them four times as long and there is no administrative relief for someone once they're sentenced to it.

But I'm going to preface my question by saying that SHUs are a terrible, dehumanizing place. And I'm wondering if the sponsor could think of a punishment that is worse for an incarcerated person than to be

sent to an SHU.

SENATOR BONACIC: First of all, Senator, the people who commit violent crimes against society, whether they rape or kill other human beings, are sent to a correction facility. The Division of Criminal Justice manages the physical structure and the activities that occur in those facilities.

What we are trying to accomplish here today is to prevent harm on those correctional employees, probation officers, employees, administrative employees that work in dangerous places for people that have already been convicted of violent crimes against society.

So if you're asking me do I have sympathy or compassion that they're being punished too much, I don't know the answer to that question other than to tell you that they're in there for a reason and they're paying a price for the crime that they've committed.

Now -- and we're trying to prevent the good guys, the custodial employees, from not incurring transmitted diseases by certain

acts of inmates. That's the purpose of this legislation.

So if you want to expound on your sympathy for the inmates and why they deserve better attention or more kindness than our correction officers and our custodial employees who have never committed a crime, please feel free to do so.

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

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I understood the sponsor to say that everybody who is in prison is in for violent crimes. But I'm wondering if the sponsor knows that in fact a large percentage of people in our state correctional facilities are in for nonviolent drug offenses.

SENATOR BONACIC: I would say to you, Senator, that what I know about drugs,

when someone takes drugs, I don't know if you could say that they're not capable of a violent act. You're assuming that there is such a thing as a person on drugs that is nonviolent. And I don't necessarily agree with that conclusion.

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

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Does the sponsor think it's possible as well for someone who's not on drugs to commit a violent act?

SENATOR BONACIC: I do. I do.

SENATOR DUANE: And does the sponsor believe that it's possible that someone is in jail for only committing a nonviolent drug offense and not -- and is not sentenced there because potentially they could commit a violent act?

SENATOR BONACIC: I'm not sure I

understand your question. But if I were a seller of drugs and I never used it, I could go to jail and be deemed a nonviolent felon. If that helps you with your analysis.

SENATOR DUANE: Through you, Mr. President. But I believe the sponsor said that a person who used drugs seems to be more capable of committing a violent act, and I'm trying to explore that a little bit more.

SENATOR BONACIC: I don't think it's germane to the bill we're trying to pass.

But if you want to talk about, you know, the psychological profile of inmates, that if someone uses drugs, I think -- I can't say conclusively that they could be classified nonviolent. I think, you know, they lose - they could lose their mental capacity and commit violent acts.

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

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

SENATOR BONACIC: I do.

SENATOR DUANE: Would the sponsor

acknowledge there may be some people who are not incarcerated who may have used drugs and who may be using -

SENATOR BONACIC: Absolutely. Absolutely.

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

SENATOR BONACIC: I do.

SENATOR DUANE: Is the sponsor then also saying that those people who are not incarcerated but who may be using drugs are then also at risk of committing violent acts?

SENATOR BONACIC: At this time, Mr. President, I think that's not germane. Because our bill speaks to inmates that are incarcerated and engaging in certain acts. And the question I've been asked -

SENATOR DUANE: I'll withdraw the question, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane has withdrawn the question.

SENATOR BONACIC: Thank you.

ACTING PRESIDENT MEIER: The chair would suggest that the questions should

be germane to the bill rather than a general philosophical discussion of corrections policy.

Senator Duane, do you wish the sponsor to continue to yield?

SENATOR DUANE: At this point, Mr. President, I think I'll speak on the bill. Thank you.

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR SCHNEIDERMAN: Mr. President, would Senator Duane yield for one brief question.

SENATOR DUANE: Absolutely.

ACTING PRESIDENT MEIER: Senator Duane, do you yield?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane yields.

SENATOR SCHNEIDERMAN: I mean, I share, I must say, in some respects Senator Bonacic's concern about people working in correctional facilities, having been one of those people myself. And you made frequent

references to the different consequences of these actions.

When you're talking about an SHU, what are you talking about? Are you talking about solitary confinement? What are you - could you please explain what you're talking about?

SENATOR DUANE: Well, we call them SHUs. And thank you, Senator, for asking me this question so that I can describe exactly what they are.

SHUs, what we call special housing units, the Department of Corrections calls them special housing units, but those who are incarcerated call it the box. And what it is is a very, very small space, not much larger, not much wider than a couple of these desks put together.

There are oftentimes two people to such a cell. One of them may be a violent offender, the other may be in for a nonviolent drug offense. They are just put in together. They are there for 23 hours a day. They may or may not get an hour outside to exercise. They don't actually enter any place where

there's anyone else. They're put into really a cage outside where they are. As I say, if they're fortunate, they're allowed an hour outside.

They are denied any reading material to begin with. They earn reading material, starting with a Bible and then moving up to other books.

They are sentenced without any kind of administrative review. Even after they've been sentenced, an inmate has been sentenced to an SHU, there is no screening to see if that person is suffering from mental illness. Many of the prisoners who have been sentenced to SHUs start to exhibit symptoms of mental illness after they've been incarcerated in one of these.

Their stay may be extended. There is no administrative review. There is no way to appeal your being kept in an SHU. Right now, for a whole host of -- virtually any infraction in a facility you can be sentenced to an SHU.

SHUs don't actually count towards the population in a prison, so we don't have a

real idea of how many people are incarcerated. And so for the Department of Corrections, it actually pays for them to keep SHUs filled all the time so that -- because those beds don't count towards their sentence at all.

In addition, we've just built a facility in the state of New York called Upstate, which is all SHUs. Whereas in the past, there was no need to have SHUs or there was very limited use to it. Now we find that SHUs are always at full capacity. It can't be that people are doing that many more bad things while they're incarcerated. It seems like this is just a punishment that's being used more often.

New York State keeps people in SHUs four times longer than any other state in the nation. Even the correctional officers and correctional personnel themselves are very concerned about SHUs. They acknowledge that a large number of people who are kept in SHUs are suffering from mental illness.

The only thing worse than being in an SHU is being in a mental health facility in a prison. Because when you're taken out of an

SHU and put into a mental health facility, you're stripped of all your clothes, you're put in a room with no human contact, you're just medicated, you lie on a cement box. So you're better off being in an SHU.

I'm glad that you asked me this question, because there is no other way to discuss this issue on the floor of the Senate. There is no way to talk about how terrible SHUs are. Editorial boards across the state, including this Monday, in the Albany Times Union, have talked about how inhumane SHUs are, how they need to be reformed, how they're a disgrace of the state of New York that we keep people in SHUs.

I'm hoping that we can really have a debate on how terrible SHUs are, because they are really one of the worst things that we have existing in the state of New York, Senator.

SENATOR SCHNEIDERMAN: Thank you for your civil and informative answer.

SENATOR DUANE: Thank you.

On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator

Duane, on the bill.

SENATOR DUANE: I want to reiterate that by far the vast majority of people who at this point would be accused of throwing feces or urine are those people who are incapable of understanding the seriousness of that offense. To a person, they are mentally ill and in need of professional mental health care.

That we would -- it's just beyond -- I mean, it almost makes me speechless that anyone would understand that someone now in a correctional facility, knowing what it's like to be put in the box, to be put in an SHU, would ever risk that unless they were incapable of stopping themselves.

And that we would prosecute people who are mentally ill and prosecute them for being mentally ill is just completely and totally and utterly unacceptable. To punish people for their mental illness is just wrong.

Nobody supports that sort of thing except for people that don't know what's really going on in our correctional facilities

and don't know the appropriate ways to deal with the mental health of people who are in our correctional facilities.

I urge my colleagues to vote no.

ACTING PRESIDENT MEIER: Senator Brown.

SENATOR BROWN: Thank you, Mr. President. Mr. President, through you, would the sponsor yield for a question.

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield for a question from Senator Brown?

SENATOR BONACIC: Certainly. Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: Like Senator Bonacic, I'm concerned about our corrections officers and their safety. My question is going to go to the potential for abuse on the part of a correction officer that perhaps does not like an inmate for a certain reason.

Senator Bonacic, in this kind of situation, if an inmate is charged with placing urine on a corrections officer, what

is the due process that's involved with that kind of charge?

SENATOR BONACIC: Well, they would be -- they would file a complaint, the correction officer, and it would be an accusatory instrument. The district attorney would have to look at it.

And he would be prosecuted just like an individual person not in a correction facility. He's entitled to the same due-process rights and constitutional protections.

SENATOR BROWN: Through you, Mr. President, would the sponsor yield for an additional question?

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: So, Senator Bonacic, there would have to be witnesses to the event to be able to prove that the inmate did in fact engage in this illegal behavior?

SENATOR BONACIC: The burden of

proof is no different than if I were accused for the first time of committing a crime as an inmate would be accused of violation of this statute.

SENATOR BROWN: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Brown, on the bill.

SENATOR BROWN: Like Senator Bonacic, I'm concerned about our corrections officers during the course of them fulfilling their duties working in correctional facilities.

Certainly there are some inmates that are nonviolent offenders, but there are many inmates that are violent offenders. And I think that there have been instances, and I have heard from corrections officers in my district about some of the things that go on inside of correctional facilities and their concerns about them being able to be safe while they pursue the -- their jobs and their livelihoods so that they can safely return home to their families.

It does sound to me like this piece

of legislation does close a loophole in the law where a corrections officer could be spat at, could have excrement placed on them, which would put them in a position where they would have to undergo a variety of medical tests to make sure that they are healthy and that they didn't contract anything from an inmate during the course of the inmate engaging in such behavior.

I was happy to hear the debate, though. Because listening to Senator Duane's comments, I did hear about SHUs. Which, to be very honest, I was not aware of, had not heard of before. And certainly if facilities like this exist across the state, they should be looked at. Because one of the reasons for incarcerating people, particularly inmates that will be returned to society at some point, is the hope that there will be some rehabilitation. So hopefully that is something that can be looked at.

But on this piece of legislation that is being sponsored by Senator Bonacic, I am supportive and will vote in the affirmative.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: I want to speak quickly in favor of the bill.

I also want to say, as part of that, as somebody who was almost a victim of the acts that are being discussed here, this is another bill and another situation where so often incredible untruths are talked about here.

You know, I've been involved with the corrections system for a lot of years - 25, 30 years -- and SHUs are something that has been talked about for a long time. Part of the reason we have SHUs is to protect other inmates.

When I go into the prison system today, the biggest -- when I used to go in, the inmates complained: Listen, there's these people wandering around here, they're dangerous people. They're more afraid of the inmates, many of them, very often, than they are of the correction officers.

Number one, all SHU people are counted just like everybody else. That's

absolutely false. There's so much false information being distributed by the Correction Association.

Number two, you have to do something to get into an SHU unless you're in there for protection. They are checked constantly by the Commission on Corrections. That's what we have a Commission on Corrections for.

Fourthly, when the Times Union did their article here some time ago on SHUs, Commissioner Goord responded and debunked a lot of the things that were said, and the Times Union, in their usual style, absolutely refused to print any of what he said.

I don't -- I mean, you can make an argument on SHUs all you want. And to say that there's more people in our SHUs than any place in the country, well, that may be true. We're not sure what they do in California. California's got four times as many inmates, three or four. They have some cells that are a lot smaller than ours. You want to call them SHUs -- some places have much, much worse than anything in New York.

Maybe you don't realize: as far as I know, we're the only major prison system in the country that is not under federal court order. And if you don't think people watch our prison systems, you are absolutely wrong. Every major prison system in the country is under court order but ours.

The last problem we had -- and I'll finish there -- was hospital and health care. And I can tell you, we have upgraded our hospital and health care enormously. There's one hospital, and I won't tell you where it is because it's pretty close to me, it cost an enormous amount of money to build that hospital. It has one of the best health cares in the country for inmates. I know a lot about it. I've been there.

The reason I mention that is that a lot of this nonsense -- and it is nonsense, and I don't know where this story came out about taking people out of SHUs and stripping them and all that. I believe that's because the guy got so bad that they had to do it because he was a danger to himself. Because many of these people that are in these SHUs

are isolated because they become such a problem. And some of them actually go from the SHUs to mental health places.

And, I mean, it's not what it seems. But they are used very effectively for discipline. Because if a person -- a nonviolent person, by the way, doesn't go to an SHU unless they do something in the prison itself. They absolutely do not go in. And there's a limited number of nonviolent people, and now we're having difficulty finding enough nonviolent people to get into our Shock system.

So I just wanted to point that out. The reason we have this bill is because it's become a serious problem in the system. And I think it's a bill that should be passed. I was in one of the SHU sections here a couple of years ago and the sergeant said to me, "Look out for this guy," and I did. And I pushed the sergeant away, and otherwise we'd have been both splattered with feces.

And I only point that out because it's a problem for everybody. And the inmates that were in that section said, "You ought to

do something with that guy, get him out of here. He's a danger to all of us."

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I wonder if Senator Bonacic would yield for a question or clarification.

SENATOR BONACIC: Yes.

SENATOR MONTGOMERY: Thank you.

Through you, Mr. President, I just want to ask Senator Bonacic, you know, you indicate that these acts that you talk about -- in other words, the current law says that an action shall be taken based on whether or not the bodily fluid is thrown. But if you rub it on, it's not considered aggravated harassment. Is that what it -

SENATOR BONACIC: No, what the courts have held, it's the spitting or the placement on is not covered under existing statute. But throwing would be. That's the law now. We don't need -- this legislation doesn't address that.

SENATOR MONTGOMERY: So in other words, we don't need it for throwing but we

need it for rubbing on.

SENATOR BONACIC: Well, you raise a good point. Is rubbing on placement? If a judge says it is, then we need it.

SENATOR MONTGOMERY: Okay. Mr. President -

ACTING PRESIDENT MEIER: Would you like Senator Bonacic to continue to yield?

SENATOR MONTGOMERY: Would he yield for another question, please.

SENATOR BONACIC: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Thank you.

Now, in the case of an aggravated harassment charge based on an action within the prison, what happens? Is the inmate's term extended, is the sentence extended? Does he or she go to a special housing unit, get into lockdown or whatever administrative - what happens now to that person?

SENATOR BONACIC: Well, first of all, if that inmate is prosecuted and there's a conviction of another crime under the Penal Law, a judge will determine whether it's

concurrent or consecutive sentencing. If the correction officer decides that he's not going to go through the process but this inmate needs discipline, they may take appropriate action to discourage that kind of antisocial behavior.

SENATOR MONTGOMERY: All right. If Senator Bonacic will continue to yield.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: So therefore, Senator Bonacic, the charge that is levied against an inmate based on activities that are in your bill or any other, while they are incarcerated, there is sort of a judicial system, if you will, inside that makes the determination of the consequences of that or -

SENATOR BONACIC: I think that is true.

SENATOR MONTGOMERY: It's all done internally.

SENATOR BONACIC: You know, there's only been 35 arrests in the year 2000 where they took it, that accusatory instrument that had to be -- I assume there had to be an interview with that correction officer, the district attorney's office, to see if this warranted moving forward for criminal prosecution.

And the fact that there's only 35 arrests shows you that they thought, in those minuscule set of cases out of 1,800 reported incidents, it warranted serious charges.

SENATOR MONTGOMERY: Okay. And one last question, if Senator Bonacic would yield.

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Thank you.

Senator Bonacic, when the -- have we already not passed legislation that would require an extended term of sentence based on a criminal action within the department while

you're incarcerated?

SENATOR BONACIC: What we did was in 1995 we passed a statute that was aggravated harassment of an employee by an inmate, which was a Class E felony. So that's on the books since 1995.

SENATOR MONTGOMERY: To be served -

SENATOR BONACIC: Again, a judge would decide whether it was consecutive or concurrently.

So if a judge ruled, you know, it was concurrent, then the length of the prison sentence would be the same, but it might affect that inmate's parole review.

SENATOR MONTGOMERY: Yes. Yes. All right, thank you, Senator Bonacic.

SENATOR BONACIC: You're welcome.

SENATOR MONTGOMERY: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: There was a lot of discussion by my colleagues on the special housing units. And there was a report

in one of the local New York City newspapers about an inmate who was beaten to death in one of the SHU units.

And apparently, I'm assuming that the other 700-and-change incidents that occurred under the existing statute, notwithstanding Senator Bonacic's bill here, were treated, as he indicated, as an administrative issue and probably, more than likely, people ended up in SHUs.

These double-celled units are inhumane. And while we're not, as Senator Volker has indicated, we're not under federal observation and review, we have been cited by human rights watch groups internationally and nationally as one of the worst criminal justice systems in the world. So it is not because we should not be, it's just because they haven't gotten around to us yet.

And this particular legislation simply creates a broader range of charges that corrections people inside have which allow them to sentence a person to the special housing units. It is inhumane, as has been pointed out for many reasons. And there is no

outside review of cases. There is no judicial, fair way of having an inmate seek some appeal to being in a special housing unit. There's no limit, no time limit to people spend years in there. It is cruel and inhumane treatment.

And moreover, in some instances, people are released from special housing back into society. So this really is a very major and serious problem and issue for us to deal with in terms of our criminal justice system.

So I -- while I absolutely understand the danger that corrections staff face every day of their lives, and many - very often they are there longer than the prisoners, because their work goes beyond some of the sentences. However, I think that we have to look at both sides. And certainly I do not want to create more of an opportunity for sentences to be levied on people, especially mentally ill people. But a large percent of the people who are in special housing units are mentally ill. And if they are not mentally ill when they go in, they certainly become mentally ill and destabilized

while they're in.

So we need to look very carefully, very closely at that system, the system that we've created, housing two men in a cell, a very small cell for very long periods of time, one of whom may be violent, both whom may be violent, there may be all kinds of other problems, mental illness and whatever, and we take no account of that.

So I have to vote no on this, because I just think that it is the wrong thing to do in light of the fact that we have not moved to at least create a system where we can evaluate objectively, periodically, and require some measure of accountability for what happens in the special housing units.

I'm voting no on this legislation, Mr. President.

ACTING PRESIDENT MEIER: Senator Schneiderman.

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

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: I do.

SENATOR SCHNEIDERMAN: This is a difficult area to address, for all the reasons that have been stated thus far. Based on my own experience, though, I know that it sometimes almost becomes a part of the culture of an institution that, you know, the flinging of feces becomes something that, you know, lots of people do and then, you know, people count how many times they have done it and things like that.

Something that actually unfortunately was a common practice when I was working in a prison -- and I don't know if it still is today, but I wonder if this legislation would address it -- is when inmates expectorate or otherwise place offensive matter in the food of corrections officers. Would that be covered by this?

SENATOR BONACIC: I would say that it would.

SENATOR SCHNEIDERMAN: Okay, I appreciate that. Is there any distinction -

ACTING PRESIDENT MEIER: You wish Senator Bonacic to yield?

SENATOR SCHNEIDERMAN: Yes, I'm sorry, Mr. President. I was just ingesting his last response.

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: I'm wondering if there is any provision, in this bill or elsewhere in the law, that makes a distinction, because we've got a lot of different product lumped together in one category. And I think certainly there's a big difference between having a large bowl of excrement thrown on you and having someone, you know, spit on your leg.

Is there any sort of distinction that is set forth, or definition of the severity of punishment?

SENATOR BONACIC: You asked about the severity of punishment. Under the existing law, it's an E felony. And again, depending on the nature of the violence and the grossness of the act, a judge would

decide, if it resulted in criminal prosecution, as to what the punishment should be.

You know, many times I think correction officers, when we looked at the statistics, may say -- they let it slide and do nothing. And I'm sure some may go into a special housing to be disciplined.

So to answer your question, it's a case-by-case basis. The statute does not categorize the nature of the act with what exactly different kinds of punishment would be. As no criminal act does, usually.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President. So I do understand, then, that there is the flexibility to make that kind of distinction.

SENATOR BONACIC: Absolutely, yes.

SENATOR SCHNEIDERMAN: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: Thank you. And I appreciate the sponsor's responsiveness.

This is a very difficult area, not so much, I think, because of the details of this particular piece of legislation, which I intend to vote for, but I think because there is a difficulty when -- in correctional institutions, there's almost a sort of a balance of power. It's almost as though there are rules of engagement between prisoners and guards.

And unfortunately -- I think that this is helping the side of the corrections officers a little bit, but unfortunately I think in quite a few institutions in New York State what we're hearing -- and I understand that in the debate between Senator Volker and Senator Duane, or the discussion, there are - we're getting conflicting information. We can only act on the information we get.

But I gather that in some institutions the rules of engagement have degenerated to the point that reprisals by correction officers don't necessarily relate to the severity of conduct. There's a certain amount of arbitrariness.

I know that no one is perfect, it

is extremely stressful working in a prison. I know in my own experience of correction officers who would routinely do something like put drugs in an inmate's food or drink because they were mad at them, they didn't want to go through the procedures. There's a lot of abuse of authority in an atmosphere in which I'm afraid the sense of civility, the sense of regulation and law has really been lost.

And I think that while this particular bill, I think, is commendable and I intend to vote for it, I join with my colleagues in saying that I hope this year we will attempt to address that problem. Because I don't think that all of the stories are false. I think we have some correctional facilities in this state where things are out of control.

And I think it is something that is tremendously important for us to address before the year is out. It appears that we will have time to address this and many other important issues this year. So I suggest that we make good use of that time and try to deal with this and other issues.

Thank you.

ACTING PRESIDENT MEIER: Any other member wishing to speak on the bill?

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.)

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

SENATOR DUANE: Thank you, Mr. President.

I'm going to be voting no on this. I didn't care for the implication of my being soft on crime. Of course I believe that people who murder or rape should be incarcerated, and for long, long periods of time. That's not what is at issue here.

There's a large number of nonviolent offenders who are also incarcerated in our correctional facilities, and we can't make believe that that's not the case.

You know, pardon me if I -- if I

don't feel very compelled that our prison system isn't worse than Louisiana or Alabama. That just doesn't give me that much comfort. Just because ours isn't the worst in the nation doesn't mean that there isn't room for improvement. I don't think there should be anyone in this body who doesn't believe that there's room for reform in our correctional systems.

If the health facilities are so wonderful, I don't know why it is that we don't all sign ourselves in when we need a checkup if they're so great, the prison health system. Because, in fact, that's not what the people in the corrections tell us. In fact, they tell us that it's hard for them to attract doctors and nurses and other people because the wages are so low.

You know, I just -- maybe everybody's lying to me. Maybe the superintendents of the prisons and the correctional officers that I've talked with, ex-offenders and families, maybe they're all lying to me and they only tell a couple of people in this body the truth about what's

been happening. But I can tell you also what they've said to me, including superintendents and officers, correction officers, is: We wish that politicians would stay out of our policy. We wish that they would let us do our jobs and stop trying to micromanage what we're doing here, because they're only making our jobs more difficult.

I'm sorry if I'm the only one that they're saying that to. I have a hard time believing that that's true. But I think we should listen to the people who are the experts in the field and not think that we're better than them.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: How do you vote, sir?

SENATOR DUANE: No.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 57. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Malcolm Smith, why do you rise?

SENATOR MALCOLM SMITH: To request unanimous consent to be recorded in the negative on Calendar Number 222.

Thank you.

ACTING PRESIDENT MEIER: Without objection, Senator Malcolm Smith will be recorded in the negative on Calendar 222.

THE SECRETARY: Calendar Number 237, by Senator Johnson, Senate Print 2732 -

SENATOR MORAHAN: Lay it aside for the day.

ACTING PRESIDENT MEIER: Lay the bill aside for the day.

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

SENATOR MORAHAN: Is there any housekeeping at the desk, Mr. President?

ACTING PRESIDENT MEIER: There is nothing at the desk, Senator.

SENATOR MORAHAN: Okay. Could I ask that you go back to motions and

resolutions.

ACTING PRESIDENT MEIER: Order of motions and resolutions.

SENATOR MORAHAN: I believe there's four privileged resolutions at the desk. If you would read the titles.

ACTING PRESIDENT MEIER: The Secretary will read the titles of the privileged resolutions.

THE SECRETARY: By Senator Gentile, Legislative Resolution Number 970, honoring Lisa Palamara upon the occasion of her selection as Woman of the Year by the Federation of Italian-American Organizations.

By Senator Gentile, Legislative Resolution Number 971, honoring Salvatore J. Cumella, M.D., upon the occasion of his selection as a distinguished Italian-American by the Federation of Italian-American Organizations.

By Senator Gentile, Legislative Resolution Number 972, honoring Jeffrey Basti, M.D., upon the occasion of his selection as a distinguished Italian-American by the Federation of Italian-American Organizations.

And by Senator Gentile, Legislative Resolution Number 973, honoring Rocco Ferraro upon the occasion of his designation as recipient of the Community Service Award by the Federation of Italian-Americans Organizations.

ACTING PRESIDENT MEIER: The question is on the resolutions. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolutions are adopted.

Senator Morahan.

SENATOR MORAHAN: There being no further -

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I just 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 for members,

officers, and employees of the Senate.

ACTING PRESIDENT MEIER: The notice is at the desk and will be entered into the Journal.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT MEIER: Senator Morahan.

SENATOR MORAHAN: Mr. President, there being no further business, I move we adjourn until Monday, March 26, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Monday, March 26, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 2:58 p.m., the Senate adjourned.)