NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 1, 2001

3:08 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, April 30th, the Senate met pursuant to adjournment. The Journal of Friday, April 27, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President. On behalf of Senator Fuschillo, please place a sponsor's star on Calendar Number 173.

THE PRESIDENT: The bill is starred, Senator Marcellino.

SENATOR MARCELLINO: Thank you.

THE PRESIDENT: Senator Skelos.

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

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

Senator Skelos.

SENATOR SKELOS: Madam President, while we're on motions and resolutions, what

would our day be without recognizing Senator Dollinger and his daily motion.

THE PRESIDENT: Senator Dollinger is hereby recognized.

SENATOR DOLLINGER: For the daily Journal, Madam President, I just give notice of our intention to move an amendment, pursuant to Rule XI of the Senate Rules, that we'll add a new rule, XV, to create ethical standards for members, officers, and employees of the Senate.

Today is Tuesday; tomorrow shall be Wednesday.

Thank you, Madam President.

THE PRESIDENT: Senator Dollinger, the notice of amendment is received and will be filed in the Journal.

Senator Skelos.

SENATOR SKELOS: Madam President, may we please adopt the Resolution Calendar, with the exception of Resolutions 1521, 1522, 1523, 1524, 1533, 1560, and 1569.

THE PRESIDENT: All in favor of accepting the Resolution Calendar, with the stated exceptions, please signify by saying

aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is accepted.

Senator Skelos.

SENATOR SKELOS: Madam President, may we please take up Resolution Number 1521, by Senator Maziarz, have the title read, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read Resolution Number 1521.

THE SECRETARY: By Senator Maziarz, Legislative Resolution Number 1521, memorializing the Honorable George E. Pataki to proclaim the week of April 30 through May 4, 2001, as Elder Abuse Awareness Week in New York State.

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Madam President.

Yes, just very briefly -- we have a lot of business to do today -- I wanted to suggest to my colleagues that they stop by

the -- in the lower level of the Legislative Office Building, there are various displays by several organizations from throughout the state dealing with the issue of elder abuse and recognizing that elder abuse is a problem in this state year-round, but that we want to choose this week to spread the knowledge and the fact that there are many agencies out there that are willing to help victims of elder abuse.

Thank you, Madam President.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: If we could take up Resolution Number 1522, by Senator Maziarz, have the title read, and move for its immediate adoption.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: By Senator Maziarz, Legislative Resolution Number 1522, memorializing Governor George E. Pataki to proclaim May 1, 2001, as "Senior Citizen Day" in the State of New York.

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President.

I would also invite all of the colleagues in the Legislature to sign on as cosponsors of the previous resolution and of this particular resolution asking the Governor to proclaim this as Senior Citizen Day.

THE PRESIDENT: Any member who does not wish to be included on this resolution, please notify the desk.

The question is now on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos, would you like to open up Resolution 1521 as well?

SENATOR SKELOS: Anybody who wishes not to be on the resolution should notify the desk.

THE PRESIDENT: Thank you, Senator.

SENATOR SKELOS: If we could take up Resolution Number 1523, by Senator Maziarz, have the title read, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Maziarz, Legislative Resolution Number 1523, memorializing Governor George E. Pataki to proclaim May as "Senior Citizens Month" in the State of New York.

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Move the resolution.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Resolution Number 1524, by Senator Maziarz, have it read in its entirety, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Maziarz, Legislative Resolution Number 1524, honoring Edward Polinski upon the occasion of his designation as recipient of the 2001 New York State "Senior Citizen of the Year" Award by the Tribes Hill Iroquois Senior Citizens.

"WHEREAS, Senior citizens bring a wealth of experience and knowledge to the increasingly active roles they play in today's society. Their past contributions and future participation are a vital part of, and valuable asset to, the fabric of community life and activity; and

"WHEREAS, This Legislative Body is

justly proud to honor Edward Polinski upon the occasion of his designation as recipient of the 2001 New York State 'Senior Citizen of the Year' Award by the Tribes Hill Iroquois Senior Citizens; and

"WHEREAS, Born on July 2, 1922, Edward Polinski grew up and was educated in the local schools, graduating in the class of 1940 from Wilbur Lynch High School, Amsterdam, New York.

"From a young age, Edward Polinski showed a great deal of interest in his community. One early endeavor was his involvement in his school's PTA, in which he later became a lifetime member.

"Edward Polinski is currently serving as Chaplain of the Tribes Hill Iroquois Senior Citizens, and he is also involved with all aspects of the organization. In addition, he is an active member of the Sir William Johnson Senior Citizens in Fort Johnson; and

"WHEREAS, From the beginning, Edward Polinski became involved doing charity work for the Cerebral Palsy Association and

Liberty Enterprises, serving on its human rights committee. While putting family first, he still finds time to volunteer at the Sanford Home for Elderly Women, and the Montgomery Transitional Services, a nonprofit agency offering residential facilities to the mentally challenged, as a Board of Directors member. In addition, he's active at hospice; and

"WHEREAS, An active member in his church, Edward Polinski serves as Lector during Mass and has been named Eucharistic Minister for both St. Stanislaus and St. Mary's churches; he makes visits and administers Holy Communion and is an admirable representative of St. Mary's Hospital.

"Edward Polinski, a very active and industrious man, has inspired and enriched the lives of his family and friends through his love and respect for others, generously sharing the wisdom gained over years of experiencing life to its fullest; and

"WHEREAS, With him throughout is his wife of 50 years, Genevieve, and their son, Lee, both of whom feel privileged to be a

part of his life and rejoice in his achievements; and

"WHEREAS, It is the intent of this Legislative Body to publicly recognize and commend those who have witnessed and contributed to the developments and achievements of our nation, state, and communities over the course of their noteworthy lives; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor Edward Polinski upon the occasion of his designation as recipient of the 2001 New York State 'Senior Citizen of the Year' Award by the Tribes Hill Iroquois Senior Citizens; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Edward Polinski."

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Madam President.

On behalf of Senator Bruno, I want to welcome our Senior Citizen of the Year for 2001, Edward Polinski, his wife, Gen, and son,

Lee, here to the chamber this afternoon.

I also want to recognize my colleagues from the other house, the chair of the Assembly Aging Committee, Assemblyman Steve Englebright, and also the representative of Mr. Polinski's home district in the Assembly, Assemblyman Paul Tonko.

Obviously, the Secretary read all the accomplishments of Ed Polinski. We were very pleased today to visit the Governor's mansion, meet the Governor's mother, have lunch there today.

And at this time I'd like to yield to my colleague, Senator Farley, who represents Mr. Polinski.

Thank you.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you very much, Senator Maziarz.

I notice we have a number of future senior citizens up in the gallery, youngsters.

You know, as the first chairman of the Aging Committee in the New York State Senate -- and Senator Skelos was also a former chairman of this significant committee -- we

have been involved in choosing a lot of Senior Citizens of the Year. I've seen a number of people that have come through with tremendous credentials.

But Edward Polinski is a remarkable man, a remarkable person. A father of a challenged son, Lee -- with his wife of 51 years, I believe, Gen -- Ed Polinski in from Montgomery County. He lives in Fort Johnson, which is a suburb of Amsterdam. And he's very active in the Tribes Hill Iroquois Senior Center and throughout the city of Amsterdam, in organization after organization, such as hospice, and so many helping the less fortunate.

You know, he said something very interesting. He said today, as he was receiving the award, if he could bring a smile to somebody's face that he's working with or trying to help, it's made his whole day complete.

Ed Polinski is truly a model for anybody and everybody to try to follow. He was a farmer and a Polish-American. And Amsterdam, the city of -- I believe of his

birth, at least he went to Wilbur Lynch High School -- really is proud of this man. Everybody that knows him and knew of him said that this is one of the nicest guys you ever want to run across.

We're absolutely delighted -- as I said earlier today, I've seen a lot of Senior Citizens of the Year being nominated. This fellow has to be one of the best that we've ever nominated.

Ed Polinski, we're very proud of you. Congratulations. And we're proud of you and your entire family. Congratulations.

(Applause.)

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the

Social Services Committee in the Majority Conference Room.

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

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Resolution Number 1569, by Senator Balboni, have it read in its entirety, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read Resolution 1569.

THE SECRETARY: By Senator Balboni, Legislative Resolution Number 1569, honoring Warren A. Werner upon the occasion of his designation as recipient of the 2001 "Outstanding Contribution by a Senior Citizen" Award by the Nassau County Department of Senior Citizen Affairs.

"WHEREAS, Senior citizens bring a wealth of experience and knowledge to the increasingly active roles they play in today's society. Their past contributions and future participation are a vital part of, and valuable asset to, the fabric of community

life and activity; and

"WHEREAS, Attendant to such concern and fully in accord with its longstanding traditions, it is the intent of this Assembled Body to honor Warren A. Werner upon the occasion of his designation as recipient of the 2001 'Outstanding Contribution by a Senior Citizen' Award by the Nassau County Department of Senior Citizen Affairs; and

"WHEREAS, Warren A. Werner is the quintessential volunteer. He is dedicated to making life easier for those who are in need.

"Warren A. Werner's volunteer work on the local level includes the North Shore Hospital, where he is in charge of the emergency room volunteers; Temple Emanuel; Grace Plaza Nursing Home; Great Neck Police Force; and the North Shore Animal League.

"At the county level, Warren A. Werner is involved with Meals on Wheels and the Interfaith Nutrition Network, and he transports seniors to and from doctors' offices; and

"WHEREAS, Warren A. Werner is also active on the national level with B'nai B'rith

and with the Veterans Administrations, for which he entertains veterans and brings them treat; and

"WHEREAS, This 84-year-old man sang at the Martin Luther King Interfaith Service, in a beautiful, full voice, a refrain that typifies his life activities.

"Throughout his impressive lifetime, Warren A. Werner, a very active, energetic, and industrious man, has inspired and enriched the lives of his family, friends, and colleagues through his love and respect for others, and through the wisdom which comes from many years of experiencing life to its fullest; and

"WHEREAS, It is the sense of this Assembled Body that those who enhance the vitality and well-being of their community and have shown a long and sustained commitment to excellence certainly deserve to be recognized and applauded by all the citizens of the great State of New York; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor Warren A. Werner upon the occasion of his

designation as recipient of the 2001 'Outstanding Contribution by a Senior Citizen' Award by the Nassau County Department of Senior Citizen Affairs, and be it further

"RESOLVED, that a copy of this resolution, suitably engrossed, be transmitted to Warren A. Werner."

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Yes, Madam President, thank you.

It is an honor to rise today on the Senate floor and to recognize someone who enriches the community as much as Mr. Werner does.

What was not mentioned in the resolution are two key aspects. One is that Mr. Werner is a veteran, having survived the horrific event in World War II. The Lord record meant for you to do great things, Warren. You have done those for the community.

And, secondly, Rabbi Woodham of Temple Emanuel would never have let me leave Albany if I did not stand and proclaim this day as a great day for Great Neck and a great

day for the Werners.

Mr. President, thank you very much for the opportunity. And I invite any of my colleagues, go shake this man's hand. He has done a tremendous amount for the community, a tremendous amount for the state, and is a wonderful United States citizen.

Thank you very much.

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

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could call up Resolution Number 1560, by Senator Maziarz, have the title read, and move for its immediate adoption.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator

Maziarz, Legislative Resolution Number 1560, memorializing Governor George E. Pataki to proclaim the week of May 6 through 12, 2001, as Brain Tumor Awareness Week in the State of New York.

ACTING PRESIDENT MARCELLINO: Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Mr. President.

I promise, Senator Skelos, this is the last resolution that I have today. Today.

Obviously, Brain Tumor Awareness Week is very important for individuals, to encourage individuals to go out to be tested. Brain tumors are the second leading cause of cancer death for children under the age of 19 and the third leading cause of cancer death for young adults ages 20 to 39.

In the United States, the overall incidence of primary brain tumors is 11 to 12 per 100,000 people. And the incidence of brain tumors is increasing, especially among the elderly. Brain tumors are the second fastest growing cause of cancer deaths among those over the age of 65.

I would move the resolution, Mr. Chairman.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Maziarz. The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is carried.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could call up Resolution Number 1533, by Senator Gentile, have the title read, and move for its immediate adoption.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Gentile, Legislative Resolution Number 1533, honoring Kenneth Richter and his colleagues on their safe return following their capture by the People's Republic of China.

ACTING PRESIDENT MARCELLINO:

Senator Gentile.

SENATOR GENTILE: Thank you, Mr. President.

Twenty-four crew members of a U.S. Navy spy plane were forced to make an emergency landing on Sunday, April 1, 2001, off a Chinese island during a routine surveillance mission. As we all know, the U.S. Navy airplane was forced to make that landing after colliding with a Chinese fighter jet that was shadowing it.

On that plane, captured in the line of duty, along with 23 other members of the crew, was U.S. Navy Cryptic Technician Second Class Kenneth Richter, who was held prisoner along with his fellow crew members at the Chinese air base.

Kenneth Richter grew up in the Midland Beach section of Staten Island and is the child of Marjorie and Ken Richter. He is a 32-year-old Staten Island native, a graduate of New Dorp High School, joined the Navy in 1995, was married in 1998 to Jan Richter, and serves today as a U.S. navy cryptic technician, second class.

He, along with his other crew members, for 11 days were held on that Chinese island during 11 days of negotiation between the President and the Chinese officials. In that time his sister, Barbara DeStefano, began a yellow ribbon campaign on Staten Island to remind the Chinese government about the U.S. servicemen and women and their families, their families that were so concerned about them here in this country. Barbara met with Congressmen in Washington, D.C., to increase the country's awareness about this issue.

And as we all know, on April 13th, the crew members, Kenneth Richter included, returned to the United States. And we are certainly grateful to the crew for their service to their country and their steadfast bravery. We welcome back Kenneth Richter.

All of Staten Island and certainly the rest of the country is glad to see them home safely, and we're happy to have them, welcome them to the arms of their families, their friends, and their fellow Americans.

Because this goes beyond Staten Island -- Senator Marchi and I are cosponsors

on this resolution. But obviously, because this goes beyond the confines of Staten Island, Mr. President, I would like to open up this resolution to anyone here in the house.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Skelos, with your permission, we would open the resolution to all those wishing to be on it. And anyone who does not wish to be on it, please notify the chair.

Senator Skelos.

SENATOR SKELOS: Mr. President, did we adopt that last resolution?

ACTING PRESIDENT MARCELLINO: No, we did not, Senator. It's my error. Thank you.

The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is passed.

Senator Skelos.

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

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Lack, Legislative Resolution Number 1580, memorializing Governor George E. Pataki to proclaim May 1, 2001, as Law Day in the State of New York.

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

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could go to the noncontroversial calendar.

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

THE SECRETARY: Calendar Number 313, by Member of the Assembly Carrozza, Assembly Print Number 5259A, an act to amend the Insurance Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 351, by Senator LaValle, Senate Print 1879, an act to amend the General Municipal Law.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 368, by Senator Kuhl, Senate Print 2122, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number

458, by Senator Bonacic, Senate Print 2271, an act to amend the Criminal Procedure Law.

SENATOR PATERSON: Lay that aside, please.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 461, by Senator McGee, Senate Print 3009, an act to amend the Criminal Procedure Law.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 462, by Senator Wright, Senate Print 3059, an act -

SENATOR SKELOS: Lay it aside for the day at the request of the sponsor.

ACTING PRESIDENT MARCELLINO: The bill is laid aside for the day at the request of the sponsor.

THE SECRETARY: Calendar Number 464, by Senator Maziarz, Senate Print 3279, an act to amend the Penal Law.

SENATOR PATERSON: Lay that

aside, please.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 465, by Senator Kuhl, Senate Print 3337, an act to amend Chapter 689.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 556, by the Assembly Committee on Rules, Assembly Print Number 2599, an act to amend the Tax Law.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 560, by Member of the Assembly DelMonte, Assembly Print Number 7221, an act to amend the Alcoholic Beverage Control Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

Senator Skelos, that concludes the

reading of the noncontroversial calendar.

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

ACTING PRESIDENT MARCELLINO: The Secretary will read the controversial calendar in the regular order.

THE SECRETARY: Calendar Number 313, by Member of the Assembly Carrozza, Assembly Print Number 5259A, an act to amend the Insurance Law, in relation to including references.

SENATOR HEVESI: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Seward, an explanation has been requested of your bill.

SENATOR SEWARD: Thank you, Mr. President. Timing is everything.

The bill before us would amend various sections of the Insurance Law to make some technical amendments that were necessitated because of a bill that we passed last year -- in fact, it was Chapter 505 of the Laws of 2000 -- which created a life broker's license.

Now, this bill includes a reference to the term "broker," where appropriate, where there are references to life insurance "agents," to ensure that similar regulations exist for life agents as well as this new category of life brokers.

Just as a means of information, now, the difference is, of course, an agent generally works for a particular company and, markets that company's products. In the course of doing business, does look after the interests, obviously, of their customers. But primarily, they are responsible to and for the interests of the company that they're representing.

We created this broker's license last year so that a broker can represent the interests of the insured and seek a variety of products from a variety of companies, which I think is a very positive thing.

And this bill simply makes some technical changes, because in last year's bill we did not pick up, in all of the sections of law, to inserting "broker" in addition to the word "agent" in various provisions of the

Insurance Law. This bill simply makes those technical corrections.

ACTING PRESIDENT MARCELLINO: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. Would the sponsor please yield.

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

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR HEVESI: Thank you.

Through you, Mr. President, just for clarification's sake, there was no reason why any reference to brokers were left out of Chapter 505 of the Laws of 2000?

SENATOR SEWARD: Mr. President, I would describe it as an inadvertent omission.

SENATOR HEVESI: Okay. Thank you. Mr. President, would the sponsor continue to yield?

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

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: He

continues to yield, Senator.

SENATOR HEVESI: Thank you. I fully appreciate trying to clean up legislation which we haven't been as perfect on the first time around as we'd like. There's no fault or shame in that.

I'm just curious to know, if we were not to take this action, what's the practical implication of the law existing as it was passed last year, as opposed to making these changes?

In other words, did some circumstance occur which has already taken place after that law was enacted, or is there some foreseeable incident that could occur that would give additional cause for us to have to remedy this technical problem today?

SENATOR SEWARD: Well, Mr. President, the -- Chapter 505 of the Laws of 2000 have taken effect on April 1st, one month ago. And because it is a brand-new statute, the Insurance Department has not, shall we say, geared up, and there are none of these new life brokers out there as yet.

So we still have time, by passing

this legislation, which has already passed the Assembly, to make these technical corrections prior to having any practical impact on these prospective new brokers as well as their clients.

If we were not to pass this legislation, the implications could be summarized in this way. The brokers would not clearly be under the same regulations and statutes in the Insurance Department which govern the operation in their practice of their profession out in the marketplace. And I think it is important, as a -- frankly, as a consumer protection to make sure that these new category of brokers are under the same rules and regulations, statutes, as the agents.

SENATOR HEVESI: Thank you. Mr. President, would the sponsor continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: He continues to yield.

SENATOR HEVESI: I just want to be completely clear on this one point. The

additional references to brokers in your legislation who are agents -- not agents, who are individuals who are acting on behalf of the insured, those individuals are indistinguishable from the category of individuals in Chapter 505, the life brokers? Or are there two separate and distinct categories, brokers and life brokers?

SENATOR SEWARD: Mr. President, the legislation that we are considering today would deal with the new category of life broker. They would add -- wherever we see in the Insurance Law a reference to a life agent, it will now say, under this legislation, a life agent, comma, broker.

So we're adding the word "broker" every time the word "agent" appears, specifically in the category in terms of life and health. And the products that these agents and brokers market are life insurance products, annuities, and also health insurance products.

SENATOR HEVESI: Thank you, Mr. President. Thank the sponsor.

ACTING PRESIDENT MARCELLINO: Any

other Senator wishing to be heard on the bill?

Seeing none, the debate is closed.

Read the last section.

THE SECRETARY: Section 18. This act shall take effect on the same date as Chapter 505 of the Laws of 2000.

ACTING PRESIDENT MARCELLINO: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 351, by Senator LaValle, Senate Print 1879, an act to amend the General Municipal Law, in relation to creating.

SENATOR LACHMAN: Explanation, please.

ACTING PRESIDENT MARCELLINO: Senator LaValle, an explanation has been requested by Senator Lachman.

SENATOR LAVALLE: Very simply, Senator Lachman, this establishes and allows for the creation of a community development agency for the township of Southampton. And

there are, within the State of New York, many town community development agencies that have been created by this Legislature over the probably 30 or more years.

That's it.

SENATOR LACHMAN: Mr. President, through you, will the distinguished Senator yield for a question?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields, Senator Lachman.

SENATOR LACHMAN: What is the public involvement that's necessary to establish a community development agency? Is there a public input?

SENATOR LAVALLE: Senator, as you may know -- I'm not sure whether the President, the presiding officer mentioned, but there's a home rule message as part of this. Which means that the locality, before it takes an action to request this legislation of this body of the Legislature, must have its local approval.

So the local elected members, the supervisor and the council members, have held

public meetings in which the public participates, have given their input. As well as, by the way, in a community such as the town of Southampton, where there is a very active local newspaper, the Southampton press attends all of those meetings. And so the proceedings are well publicized. And at some meetings, even Cablevision.

And so the community is really in touch, whether they are directly there participating or through the local media.

SENATOR LACHMAN: Mr. President, will the Senator yield for one final question?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: I believe he yields.

SENATOR LACHMAN: What are the sources of funding for those community development agency projects?

SENATOR LAVALLE: State and federal monies that come in under various acts created both at a state level and a federal level.

SENATOR LACHMAN: Not the county level, but state and federal?

SENATOR LAVALLE: That is correct.

And I'm not aware of whether - there could be county contributions to various projects. But in order for the town to receive this, the conduit is the community development agency.

And the projects can be many. It could be monies that come in for signage. We have just such a project in the town I live in, in the town of Brookhaven, where they are doing some signage in the Hamlet of Rocky Point.

It could be, as in the past, where community development agency -- federal monies came in through the community development agency to put in public water.

It could be for facing of commercial facilities in downtown areas, or to put lighting in to make curb or street improvements.

It's a whole myriad of things that community development agencies do.

SENATOR LACHMAN: Thank you, Senator.

On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Lachman, on the bill.

SENATOR LACHMAN: Very briefly.

I'm delighted to support a good piece of legislation such as this.

Thank you.

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

Senator Onorato.

SENATOR ONORATO: Mr. President, will the Senator yield for one question?

ACTING PRESIDENT MARCELLINO: Senator, will you yield?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR ONORATO: Senator LaValle, how does the community development differ from a business improvement district?

SENATOR LAVALLE: A business improvement district, or a BID, is once again established by this Legislature as a request of a locality. It's a special district, and the businesses within that special district

actually raise monies and expend them according to the wishes of the commercial people within a business improvement district.

It's entirely different. It's a special district and is located within a restricted area. The legislation we're debating here is for an entire township, whereas a business improvement district is in a locality.

Example, in the hamlet of Riverhead, downtown Riverhead, there's a business improvement district. In the village of Port Jefferson, where I live, there's a business improvement district that is created by the businesses that actually vote to create the district, establish a budget, and expend the money on projects that the district participants wish it to be spent on.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT MARCELLINO: Are there any other Senators wishing to be heard?

Again, there is a home rule message at the desk.

The Secretary will read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 368, by Senator Kuhl, Senate Print 2122, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

SENATOR ONORATO: Explanation, please.

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

SENATOR KUHL: This is a very easy bill, Mr. President, to understand this bill.

It would allow the issuance of a second Purple Heart license plate to a Purple Heart recipient, or his spouse, or her spouse, for the sum of $15, normal registration fee.

ACTING PRESIDENT MARCELLINO:

Senator Onorato.

SENATOR ONORATO: Mr. President, will the Senator yield to a couple of quick questions?

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

SENATOR KUHL: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR ONORATO: Senator, what is the demand basically now for the second set of Purple Heart? Has there been a great deal of demands made for it?

SENATOR KUHL: Well, currently, Senator, it's prohibited under law. So there wouldn't be any demand. There would no record of any request for a demand.

SENATOR ONORATO: If you'd continue to yield.

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

SENATOR KUHL: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR ONORATO: One last

question, sir.

We now have numerous types of veterans' plates. Would this be more compatible with Senator Morahan's bill that will make it all uniform prices, Purple Heart, a veteran of Vietnam? Will all these fees have the same charge to them?

SENATOR KUHL: Yes, Senator. Currently there's a $15 charge specifically for this plate, just like there is for your second Senate plate. Which currently Purple Heart recipients are not able to get.

So in this particular case, a Purple Heart recipient would now be granted the same status that you have preferentially, by being able to get a second plate. Except that would just be a Senate 2 on your plate.

SENATOR ONORATO: Through you, Mr. President, that wasn't what I meant. I'm not referring to the second plate of ours.

But is it comparable to the prices that a veteran, a Vietnam veteran -- does that license plate have the same charge as the Purple Heart will have?

SENATOR KUHL: I don't know that,

Senator. All I know is the current charge is for $15. This duplicates that same charge for the second plate.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT MARCELLINO: Any other Senators wishing to be heard?

Seeing none, debate is closed.

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MARCELLINO: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 458, by Senator Bonacic, Senate Print 2271, an act to amend the Criminal Procedure Law, in relation to denial of recognizance.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Bonacic, an explanation has been

requested by Senator Paterson.

SENATOR BONACIC: Thank you, Mr. President.

This legislation is intended to amend the Criminal Procedure Law in relation to a denial of recognizance or bail in certain cases. More specifically, it prevents the pretrial release, on recognizance or bail, of persons charged with crimes of violence -- and there are 11 specific categories, and I'll read them to you shortly -- who have had certain prior felony convictions or who are charged with committing a violent felony crime while at liberty on recognizance or bail for another violent felony crime.

And it would prohibit the release of such individuals charged with violent felony crimes where their prior involvement with the criminal justice system supports the fact that the present charge is not an isolated incident but rather an indication of serious involvement with violent felonious conduct.

And the 11 categories specifically would be murder one or two; aggravated assault

on a police or peace officer; criminal use of a firearm in the first degree; arson one or two; rape one; sodomy one; attempt to commit any of the above; manslaughter one; robbery one; burglary one; robbery two, when a third party is injured or what appears to be the display of a firearm; and, last but not least, burglary two, where the defendant is armed or causes injury to a third party or uses or threatens the immediate use of a dangerous weapon or displays what appears to be a gun.

What we're trying to do with this legislation, there's been a high incidence of recidivism for a violent felon who has been convicted and is charged with a similar violent crime in these 11 categories. We want to get them off the streets, and we want bail to be denied in those specific instances.

There are safeguards to the defendant to make sure that defendant is entitled to a fair and speedy trial. The legislation calls for a trial within 60 days, and that could be extended if the defendant asks for a delay. The time period is tolled, and every 14 days the defendant could make an

application that he does not fall into the category of this legislation and he should be entitled to bail under the laws of the Criminal Procedure Law of the State of New York.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

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

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR BONACIC: I would, yes, Senator Paterson.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: Thank you, Mr. President.

This takes me back a long way, Mr. President, but I believe that over 15 years ago, when I worked in the DA's office, our conviction rate on these types of felonies when we brought these cases to trial was about somewhere between 65 and 70 percent. And when we would come back a second time with a

situation where we'd received a conviction the first time, we were somewhere between 75 and 80 percent.

So then my question to Senator Bonacic is, isn't it reasonable to assume that even on the arrest for a first offense that the defendants in most of these types of cases are going to be found guilty?

SENATOR BONACIC: Well, every individual is presumed to be innocent until convicted of a crime.

But I'd like to point out an incident that happened in Connecticut where an individual was convicted of a violent felony crime and then he got charged with another crime specifically in one of these 11 categories, and while out on bail he killed a 9-year-old boy.

And had this legislation been in effect, he would have been incarcerated, never having an opportunity to inflict injury on any individual while waiting for a disposition of that second violent felony charge.

SENATOR PATERSON: Mr. President, I'd like to go over the facts of that case

with Senator Bonacic. We don't have to do it here. But that case took place in Connecticut, it was actually an 8-year-old boy, and his mother was also killed. And my understanding is that they were killed on order of the defendant.

And it doesn't make the situation any more grave or any less tragic, and in no way diminishes from Senator Bonacic's point. I understand what he's saying.

But the question I'm raising with Senator Bonacic is that if we presume this innocence the first time, even though we receive an overwhelming number of convictions, what I'm saying is that between the first and the second time, based on the percentage of convictions we can receive, how can we turn the notion of the presumption of innocence on its head because we think that we have a pretty good idea that the defendant was guilty?

SENATOR BONACIC: Okay. I'll just take a second with you. We did an analysis of recidivism between that first felony conviction and the charge of the arrest

for the second felony.

And this goes back -- and the statistics I'm going to quote are from the Clinton administration. It was done back in 1994, and it was entitled "Pretrial Release of Felony Defendants." And there was a recidivism rate of approximately 63 percent.

Now, you know, that may be different today, but my presumption is that there's still a high recidivism rate of that same defendant, in all likelihood, that he would have been guilty the second time around.

SENATOR PATERSON: Mr. President, I demur to Senator Bonacic's complaint. I agree with everything he said. Not only - I'll go further than that, Senator Bonacic, I think there's an overwhelming possibility that they were guilty the second time around. I'm suggesting to you there's an overwhelming possibility they were guilty the first time around.

Because in these type of situations, based on the convictions that we receive, that the police and the other law enforcement officials who made these arrests

absolutely got the right woman or the right man. And in these cases I think it's, you know, pretty reasonable to assume that they're going to be found guilty.

But my problem with all of this is that we have decided, starting with the Sixth Amendment to our Constitution and with other codes that we put into our law enforcement procedures, that we're going to give these individuals the benefit of at least getting a trial before we determine that they're actually guilty.

And that although in my heart I am completely with you on the issue of where they've already been convicted, now they get arrested again, we certainly have exacted some further infringements on defendants once they're found guilty. We take away their right to vote. There are certain things that even when they leave the correctional system that we visit upon them. So I can at least understand the first part of the legislation.

But if a person was arrested for a felony, such as one of the 11 that you describe, and while awaiting that trial is

then arrested a second time, they haven't even been convicted on the first complaint and we're now taking that assumption and codifying it into the law and forcing them to be held up to possibly 180 days.

My question is, if they're found not guilty on both charges, what do we give them back for the 180 days?

SENATOR BONACIC: I take it that you're certainly concerned with the presumption of innocence, where one is charged with a violent crime, not yet convicted, then he is charged with a second violent crime but still not convicted of the first. I think that's your concern.

SENATOR PATERSON: Yes.

SENATOR BONACIC: Okay. I think, under our legislation, the district attorney has to make a good-faith application to the court that this is a person who meets the conditions of this legislation, even though they were never convicted of a felony the first time. You know, where there's smoke, there's fire.

And I know we're very protective of

the constitutional rights of the presumption of innocence. That's something that is sacred to all of us. But we tried to build in safeguards to this legislation. I've already talked about the every 14 days they can make an application. There's got to be -- it has to be tried in 60 days.

And the prosecution has to prove, on a motion in this area, with clear and convincing evidence, that this particular defendant meets the requirements of the legislation.

So it's a judgment call of the district attorney, the prosecution, and the judge, giving them the power to deny bail if there are two charges, although not one felony conviction, in these 11 categories that I've described.

Most of the time, though, and the thrust of this legislation, is where there is a prior violent felony conviction and we're dealing with an individual who is charged, you know, with an arrest a second time around in one of these 11 categories.

SENATOR PATERSON: Thank you,

Senator Bonacic.

Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Paterson, on the bill.

SENATOR PATERSON: That is the easiest application the district attorney's office will ever make. You won't even have to have clear and convincing evidence. All you have to show is that the person was arrested the first time, they got arrested the second time. There's nothing more clear and convincing than that. It would be an open-and-shut case every time. And it would detain the defendant for up to 180 days.

Now, Senator Bonacic is very responsible, and he offers this legislation in good faith. But I guarantee you if we pass this legislation, somebody is going to turn up here in the next couple of years and extend this to if we have a reasonable belief that on the first arrest that the defendant is guilty, we'll detain them up to 180 days. And then we will have totally destroyed the concept that our Constitution provided for when it was drafted over 200 years ago.

Even in this legislation, we're saying that -- as Senator Bonacic termed it - that where there's smoke, there's fire. Boy, if we had a criminal justice system that responded to where there's smoke, there's fire, we would really have locked up a lot of people who were appearing to be guilty, were thought to be guilty, were deemed to be guilty by the prosecutor, but were later found not to be guilty.

There's nothing in this evidence that actually demonstrates guilt on the part of the defendant, only that they got arrested before the trial for the first time.

Now, as I said, I'm sympathetic to the notion that where there's been a previous conviction, that we might exact some punishments on the defendant that extend past their stay in the criminal justice system. I understand that.

But it is still possibly in violation of the Constitution, because the Constitution is very clear on what bail is for. It's to guarantee the presence of the defendant at the actual trial. It is not put

there to punish the defendant. That is for the result of the trial, if the defendant is found guilty. That's the punishment stage.

Now, if the prosecutor wants to make a good-faith argument to the judge who is ruling in the bail hearing that there is evidence that this individual is a danger to the community and wants to cite the previous arrest, then in the discretion of the judge, they might want to raise bail to such an extent that they don't think the defendant could meet it or remand the defendant without bail. These are decisions that the judge can make.

And Senator Bonacic is talking about good faith. But there's no good faith when you write a law that bounds the court by what the prosecutor says is the prosecutor's good faith.

What you've got to do at this point is to handle these cases in a case-by-case situation so that if it's really kind of sticking out that you have a predicate felon on your hands, that the judge will take it under his or her discretion to remand the

defendant or set a very high bail.

This legislation doesn't do that. It actually puts into law, it mandates that if there's a previous arrest, you're going to sit in jail for up to possibly 180 days until you get a trial. And should you be found not guilty on both counts, too bad, because we thought that where there was smoke there was fire. But we were wrong, and you will spend that time and might as well have exhausted six months of a sentence waiting for a trial.

That is exactly what our foreparents were intending when they put the amendment in the Constitution in the first place.

I really think that this bill needs to be voted down. It's bill that's a reaction to the frustration that we all feel about what defendants get to do when they're allowed to run loose. But it's the frustration that we all feel when we live in a democracy. We all know what the further anxieties would be if we did not live in a democracy.

I think this vote should be a no vote, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to ask a couple of questions of clarification of Senator Bonacic.

ACTING PRESIDENT MARCELLINO: Senator Bonacic, do you yield for a couple of questions?

SENATOR BONACIC: I will.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR MONTGOMERY: Yes, Senator Bonacic -- through you, Mr. President -- I'm just wondering, the law as it stands now in situations similar to what you're addressing in the legislation, does the judge currently have the authority to set bail or to deny bail or to set bail at a high enough level that it can't be met, possibly?

SENATOR BONACIC: First of all, there is no constitutional right to have bail in our present law.

Under the present law, a Supreme Court judge has the judicial discretion in the interests of justice, after hearing from the

prosecution, the defense attorney, what the extenuating circumstances are, whether to grant bail or not to grant bail. If he grants bail, he can grant it to the level that he thinks is appropriate to protect or to ensure that this defendant will appear again.

SENATOR MONTGOMERY: All right. Then, Mr. President, if Senator Bonacic would continue.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR BONACIC: Yes.

SENATOR MONTGOMERY: All right.

So the current law, as it stands in our state, it says under circumstances prescribed in this article, a court, upon application of a defendant charged with or convicted of an offense, is required or authorized to order bail or recognizance for release.

And so therefore what the bill before us does is removes that authority as it currently stands and, as in your legislation, it says that notwithstanding the provisions of subdivision 1 of this section, when it appears

that the defendant is a person who must be committed to the custody of the sheriff, a Superior Court judge may not order recognizance or bail.

So in other words, you remove the judicial discretion as it relates to setting bail and/or recognizance.

SENATOR BONACIC: That is not exactly correct.

SENATOR MONTGOMERY: No, it's not? I'm not reading this right?

SENATOR BONACIC: And I would point out on page 2 the specific language, 10 to 14. And if I may, if a principal be determined to be a person who must be committed to the custody of the sheriff, the court may nevertheless issue an order providing for recognizance or bail, if it further determines that the interest of justice so demands and his reasons are put on the record.

So we don't mandate on -- the judge still has that judicial discretion even in those set of facts that you've described. It's not taken away from him.

SENATOR MONTGOMERY: So, Mr. President, one last question.

ACTING PRESIDENT MARCELLINO: Senator, do you yield for one last question?

SENATOR BONACIC: I do.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR MONTGOMERY: Thank you, Senator Bonacic.

So the fact of the matter is that unless the situation meets the criteria as you have established in this new legislative language, the judge still has the authority to either deny or give recognizance, deny bail or set bail?

SENATOR BONACIC: That is correct.

SENATOR MONTGOMERY: But once it meets the criteria established in your legislation, then the judge no longer has that.

SENATOR BONACIC: No, no, the judge always has the discretion.

It's just that we as a Legislature are expressing legislative intent that we

want -- we prefer bail be denied if there's been a conviction of a violent felony, in 11 categories that I've described, and there's an arrest for a second one.

So that judge could still put that defendant out on bail, but he'd better state for all of the reasons why he is not following what our legislative intent is.

SENATOR MONTGOMERY: Okay. Thank you, Senator Bonacic.

Just briefly on the bill.

ACTING PRESIDENT MARCELLINO: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes, Mr. President. It just appears that based on the language in -- at least in the -- on page 3 - page 4, that there is the intent. And under Section 530.10, page 3, line 39 -- line 42, actually, it appears to me that the intent of Senator Bonacic's legislation is to essentially establish a pretrial incarceration that will perhaps in some instances, as Senator Bonacic has said, may detain someone who may be inclined to do something else.

But without question, it's

certainly going to mean that people who are charged will not have the ability to adequately defend themselves, essentially, because they have been detained prior to an actual conviction or an opportunity to go to court.

So I'm going to oppose this legislation. I think I have voted no on legislation like this in the past, and I will do so again today.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Schneiderman.

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

ACTING PRESIDENT MARCELLINO: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I appreciate the sponsor's responses to the other questions. And I just want to make two very brief points.

The first is that I think there's a tremendous danger in using the sort of predictive methods of saying, well, the odds of someone who was convicted once doing

something again -- I mean, you know, the social sciences are becoming very sophisticated. And it is true that some people are perhaps more likely than others to have committed crimes.

But it is extraordinarily dangerous to our system of the presumption of innocence to inject that into the process. Those factors are able to be considered by a judge now. The need to make them presumptions that a judge would have to move against in order to grant bail does not seem to me to be overwhelmingly persuasive.

We have to be careful because there are people who do say, you know, look, poor children from broken homes are more likely than others to be criminals. People expelled from school, you know. I mean, the predictive stuff is very, very troublesome.

I appreciate all the information about recidivism. I'm very familiar with it. But the issue before us now is are people going to have an opportunity to enjoy the presumption of innocence, to be out on their own, to help their lawyers prepare their

cases, all the things that go along with this.

And I respectfully submit that there is a very powerful class bias built into this sort of legislation.

One of the most remarkable hearings I ever attended in my career as a lawyer was a hearing on bail in the United States District Court for the Southern District of New York. The defendant was Adnan Khashoggi, a Saudi arms merchant, who had been guilty of various violations of law in the past and had more ability, I think, than anyone I'd ever seen in my life to flee the jurisdiction. He had, however, the best lawyers money could buy, and he was released on bail.

I assure you that this sort of presumption placed in the law will present a severe disadvantage to poor people attempting to wend their way through our criminal justice system. The fact of the matter is we don't provide the resources for adequate defense for poor defendants even at the trial stage and the sentencing stage, much less to do this sort of a bail hearing, to provide the information, to do the analysis, to come up

with the counterarguments. It's not there.

So essentially what we're saying is this would make every poor defendant who comes before the court more likely than not to be denied bail, while the rich defendants who can hire fancy lawyers -- like, you know, I used to be -- can get out on bail. And I think that this is just something that really bears closer scrutiny.

I understand the concern about recidivism and the crime rate. But this is something I think that really expands a class bias in our criminal justice system that has already grown to frightening proportions. And I don't think that is something that is in the intent of the sponsor or any of the supporters of this bill, but I point it out because I do think it is an issue that we are going to have to address.

I will vote no.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Hevesi.

SENATOR HEVESI: Mr. President, I will yield to Senator Duane.

ACTING PRESIDENT MARCELLINO: We have a list, but I think you were first.

SENATOR HEVESI: Oh, was I on it?

ACTING PRESIDENT MARCELLINO: Yes.

SENATOR HEVESI: Thank you. Mr. President, would the sponsor please yield?

ACTING PRESIDENT MARCELLINO: Senator Bonacic, do you yield?

SENATOR BONACIC: I will.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR HEVESI: Thank you. I notice that one of the crime categories that was -

ACTING PRESIDENT MARCELLINO: Senator, before you -- excuse me for a second.

If we could just keep the conversations down, please. There is a rising hum making it difficult for the stenographer.

Proceed, Senator.

SENATOR HEVESI: Thank you, Mr. President.

I notice that in the group of crimes for which this bill would be

applicable, burglary in the first degree is included. And this grouping of crimes is what we often see when we're discussing violent felonies.

My question is -- and this has always troubled me, so maybe you can clarify this -- what does burglary in the first degree entail that justifies it being included with these other crimes as a violent felony?

SENATOR BONACIC: I just want to check with counsel. I want to pull out the Penal Code and read that to you specifically.

SENATOR HEVESI: Sure.

SENATOR BONACIC: I've discussed it with counsel, Senator Hevesi, and they indicate that it's a B felony. It's entering a dwelling at night. And because it's an invasion of one's home at night, it warrants a B felony, and that's why they put it into this category.

I can't say per se that it's the essence of violence, but it's a message that we don't want an individual to be going into one's home at night, in all probability for an act of violence, or not afraid of an act of

violence if there is confrontation.

SENATOR HEVESI: Thank you. Mr. President, would the sponsor continue to yield?

SENATOR BONACIC: I will.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR HEVESI: Thank you.

Perhaps this is a discussion for another day, except that burglary in the first degree is included here. My question to you is the following. And I very much understand our need to protect and deter people from committing burglaries. But if somebody is a burglar and this was their intention, my understanding is their central goal is not to have any contact with an individual.

And in addition, if they do have contact with an individual in the home while they are trying to rob the place, it's no longer burglary, it becomes a robbery. Is that accurate?

SENATOR BONACIC: No. If I may, I'd like to just point out a couple of things to you of burglary, first degree.

He or she goes into the home with intent to commit a crime, armed with explosives or a deadly weapon, or causes physical injury or threatens the immediate use of a dangerous instrument or displays what appears to be a pistol, gun, machine gun.

So there are the ingredients for that burglary in the first degree. And you must prove an intent to commit a crime when you go in there. Okay? That's one of the ingredients, intent.

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

SENATOR BONACIC: I will. I will.

SENATOR HEVESI: According to that definition, it is possible that somebody can be charged with burglary in the first degree if they go into commit that offense, have a weapon on them, but never come into contact with another individual.

So if I go somebody's house with a gun late at night and I steal their stereo, I can get charged with burglary in the first degree; is that correct?

SENATOR BONACIC: That is correct.

SENATOR HEVESI: Okay. Mr. President, would the sponsor continue to yield?

SENATOR BONACIC: I will.

SENATOR HEVESI: And again, maybe this is a discussion for another time. In my estimation, there is a very distinct difference between a violent felony, as all the other crimes laid out here are, which by definition have a face-to-face, one-on-one interaction, violent interaction, threatening interaction with the victim. Burglary in the first degree may have that, but it may not.

And my problem with the inclusion of that in this legislation is that you could have somebody who is a recidivist burglar who has never been convicted of any other violent felony, and this person is now denied bail. And I want you to know I voted for this bill in the past. But I'm concerned about that, as I'm concerned about the inclusion of burglary in the first degree as long as it doesn't require that face-to-face interaction whenever

we include violent felonies.

So my question to you, to phrase this as a question, is do you have a problem with this, or is this something that we may want to specify in your bill that there must be a face-to-face interaction, threatening interaction, with the first-degree burglary conviction?

SENATOR BONACIC: I think we want to make a public policy statement that your home is sacred. It's a place where you live with your spouse and your children. And when someone comes into your home at night with a weapon, stop. You're going to be held accountable, even if you're fortunate never to see anybody in there and you leave without that confrontation of violence. That's the message we're sending.

SENATOR HEVESI: Thank you. Mr. President, would the sponsor continue to yield?

SENATOR BONACIC: I will.

ACTING PRESIDENT MARCELLINO: The sponsor yields.

SENATOR HEVESI: Thank you. I

agree with that. And I probably would not object to leaving that statute as it is for the very reasons that you discuss.

But now we're putting it in the context of whether somebody who committed burglary in the first degree and never had a violent interaction or any interaction with an individual, whether that person now is able to get out on bail or not.

But let me ask you a different question, and I'll just speak on the bill. And again, I voted for this bill last year. I understand the purpose of it. And I'm very much comfortable with preventative detention when there has been a violent felony conviction on the first offense, with the exception that we just discussed, first-degree burglary when there was no interaction.

My question to you is -- and I listened to Senator Paterson in his discussion about an individual who is out on bail on his own recognizance, what have you, and has never been convicted of another crime and now is charged with another violent felony -- it could be burglary in the first degree again,

or both instances -- and now this person is completely denied the opportunity for bail.

My question to you is, why is the second piece necessary? Why do we have to put the second provision in this bill which says that if somebody is out on bail, having been accused but not yet convicted of a violent felony, that that is one of the two triggers, that if you then get charged with another one, you can have preventative detention? Why not just leave it as a first conviction and then the second one we can do preventative detention? What's the purpose of the second one?

SENATOR BONACIC: I understand your concern. But I again come back to a course of repetitive conduct of antisocial or almost criminal behavior that a judge will make a decision on in his discretion.

I happen to think, in that fact pattern that you set, I think most judges would allow bail. In that specific burglary-first-degree arrest, no violence, no confrontation, and then there's a second arrest. Never a violent felony conviction, in

your fact pattern.

That's a judicial discretion call. And we're not saying to the judge: Deny bail. We're saying that we trust your judgment, looking at these kind of cases every day, and you know what antisocial behavior and criminal activity is, and we'll trust you to do the right thing.

That's the only way I can answer it.

SENATOR HEVESI: Thank you. Mr. President, one final question for the sponsor.

ACTING PRESIDENT MARCELLINO: Does the sponsor yield for one final question?

SENATOR BONACIC: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR HEVESI: In the instance where there has been a prior conviction for a violent felony, under your legislation the judge is not mandated to impose preventative detention? It is still, even in that circumstance, fully discretionary?

SENATOR BONACIC: That is correct.

SENATOR HEVESI: Thank you, Senator Bonacic. Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Duane.

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

ACTING PRESIDENT MARCELLINO: Senator Duane, on the bill.

SENATOR DUANE: Thank you.

I was under the impression that refusing bail was only appropriate when there was a flight risk. I think that there are sharp constitutional issues regarding using bail as a preventive detention tool. And it either always is or at least in most cases is unconstitutional.

This bill may be crafted in such a way that that's not the case, but I can't be sure of that. And I would actually be very interested to hear what people in the law enforcement and criminal justice field had to say about it. I'd like to know what DAs had to say, and judges, the Office of Court Administration, Judge Kaye, Katie Lapp, defense attorneys, the New York State Civil

Liberties Union, I would like to see what their take on this bill is.

As I say, I thought that bail was supposed to be used for people who are a flight risk. I'd like to know how many people were -- that this law would capture. It seems to me that judges and DAs tend to know who is a flight risk and who's not a flight risk, and so to tie their hands is not a good idea. I tend to have faith in the criminal justice system, insofar as I think that judges and DAs try to do the right thing.

I think that we also run the risk, although I don't know because there are no statistics, of overfilling our local jails. I have no idea how many people -- I mean, I've heard anecdotes, but I don't have any hard statistics about how many people this law would impact and how many slots in our local jails the people captured under this law would be -- you know, what that would be.

I would have liked to have heard that in some kind of a hearing so that I could hear what the Governor's criminal justice people and judges and DAs and OCA had to say,

but we don't really have that information.

And so, lacking that, I think that it's important that we err on the side of constitutionality and make it so that we do continue to have bail as something that's used regarding flight risk and not as punishment. This feels to me like it's having to do with punishment and not having to do with flight risk. And I just think that that's not the way that we should be going here.

I would be open to other things. I just don't think that those of us here in the chamber have that kind of expertise. I know that I depend on what district attorneys have to say about this and what OCA would have to say about it. I would like to see what the experts have to say about this.

I don't know whether the Governor would sign this bill into law. I don't know whether this is a bill that has a real chance of passing in the Assembly. I mean, I guess -- I mean, there aren't very many people here in the chamber to see, you know, what's going on with this. Maybe that shows what that bill's chances are, that it's getting

such a little bit of attention.

But, you know, whenever we fool around with someone's civil liberties, whenever we tinker with the criminal justice system, I think we run a big risk. And in the absence of a really better direction, I would recommend to my colleagues that we vote no on this.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Are there any other Senators wishing to be heard on this bill?

Seeing none, the debate is closed.

Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the first day of January.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

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

SENATOR PATERSON: Mr. President, I listened in earnest to the discussion

between Senator Hevesi and Senator Bonacic. And Senator Bonacic was saying to Senator Hevesi: What we're saying is that we trust the judge's discretion.

And perhaps we do trust the judge's discretion, but that's not what this bill does. This bill mandates that if an application is made, that if there was a previous arrest for a felony and there's a second arrest for a felony, because of this bill, the judge's hands are tied. The prosecutor has met the threshold, and therefore you have got to deny the bail.

Now, bail is not a right. But one of the reasons that it's not a right is because it doesn't really involve a righteous conduct. It involves ensuring the defendant's presence for trial. And in those types of situations, we have to understand that we are really challenging the presumption that is vested in our Constitution that a person is presumed innocent until proven guilty.

We cannot say that because, as a reasonable set of circumstances or percentages or that kind of thing, that it is -- that we

have to obey it in that particular one case. That particular one case can be discharged by that particular one judge that's sitting on it. And all the information that Senator Bonacic reveals in his bill can be revealed right now, and the judge can reach the same decision on his or her own.

But to -- I vote no, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Paterson. You will be recorded in the negative.

Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I urge that the sponsor of this bill -- whose, you know, sincerity I cannot possibly question on this matter -- and other supporters deal seriously with the implications of this legislation and other things that are coming before us this session for the preexisting class prejudice in our criminal justice system.

The language that's been the subject of a lot of this discussion is the

statement that everyone who comes before the court under these -- meets these criteria is going to be denied bail unless the court determines that the interests of justice so demand, and provided that the reasons therefor be clearly stated upon the record.

I urge that the court is not going to go out on its own and do that work, and unless you have competent counsel representing you to marshal the evidence for the court, to make the case that the interests of justice demand someone get bail, you're not going to get it. So what this is is a preventive detention bill for poor New Yorkers. That's all it is.

And I urge that in the rest of this session every time we look at bills like this, let's take a look at the fact that we are providing woefully inadequate funding for legal representation of the poorest among us in these situations.

I vote no.

ACTING PRESIDENT MARCELLINO: Senator Schneiderman will be recorded in the negative.

Announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 458 are Senators Connor, Duane, Gonzalez, Hassell-Thompson, Brown, Markowitz, Montgomery, Paterson, Santiago, Schneiderman, and Stavisky. Ayes, 48. Nays, 11.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 461, by Senator McGee, Senate Print 3009, an act to amend the Criminal Procedure Law, in relation to eligibility.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator McGee, an explanation has been requested.

SENATOR McGEE: Yes, sir. Thank you, sir.

Under the New York State law, present New York State law, young people 16 to 18 years of age who have been charged with crimes are eligible to be treated as youthful offenders. Youthful offender treatment

provides significant benefits to those youths, since it vacates a criminal conviction and provides a more lenient sentence upon conviction.

Every youth in this age category is eligible for youthful offender treatment unless that youth is convicted of any of the following serious crimes: A Class A-1 or a Class A-2 felony, an armed robbery in which a firearm is used; the following violent B felonies -- first-degree rape or first-degree sodomy, aggravated sexual assault and abuse, previously convicted and sentenced for a felony, previously adjudicated as a youthful offender following a felony conviction.

This legislation expands the exceptions for youthful offenders eligible to include all of Class B violent felonies. The crimes added by this bill frequently are serious and involve a degree of harm to the victim equal to or greater than the crimes already listed as exceptions to youthful offender eligibility.

Among the crimes which this bill would add are attempted second-degree murder;

first-degree manslaughter; first-degree robbery and burglary if no firearm is used, but which may involve the use of a dangerous instrument and may result in serious physical injury to the victim; second-degree arson; and kidnapping.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will yield for a question.

SENATOR McGEE: Certainly.

ACTING PRESIDENT MARCELLINO: She yields, Senator.

SENATOR DOLLINGER: Thank you, Mr. President.

Senator, as I understand this bill, this bill would establish a series of crimes for which youthful offender status could not be granted under any circumstance. Is that correct?

SENATOR McGEE: No, that's not correct. That is not correct.

This bill, there is -- and in fact, in the bill itself it does say there are exceptions, which gives the court discretion to allow youthful offender status, of

mitigating circumstances or because the defendant was a minor participant in the crime.

SENATOR DOLLINGER: Okay. Through you, Mr. President, if the sponsor will continue to yield.

SENATOR McGEE: Certainly.

ACTING PRESIDENT MARCELLINO: She continues to yield.

SENATOR DOLLINGER: As I understand the way youthful offender status occurs, it's that the first critical ingredient in making a determination is the nature of the crime charged by the district attorney. And so what you have is you have a crime has occurred, a charge is filed. If the charge is among the charges that this bill involves, then under those circumstances it would be presumed they're not entitled to be youthful offenders, and they would have the burden of showing that they are qualified for it.

My question is, doesn't that flip the current statutory scheme 180 degrees? Isn't the way it works now that they're

entitled to youthful offender status unless the district attorney can show mitigating circumstances of why they should be treated as an adult?

SENATOR McGEE: That's correct.

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

ACTING PRESIDENT MARCELLINO: Excuse me?

SENATOR DOLLINGER: Will the Senator continue to yield?

ACTING PRESIDENT MARCELLINO: Oh. Madam President?

SENATOR DOLLINGER: Excuse me, you're correct. Mr. President. I apologize.

ACTING PRESIDENT MARCELLINO: I have a good lens doctor for you.

Senator, will you yield?

SENATOR McGEE: Certainly, Mr. President, I will continue to yield.

ACTING PRESIDENT MARCELLINO: Thank you, Senator, for your clarity of vision.

SENATOR DOLLINGER: Thank you,

Mr. President.

Doesn't this bill really vest tremendous discretion in resolving the issue of youthful offender status solely in the hands of the district attorney? Because it's at the time that they're charged, regardless of what they're eventually convicted of, that will dictate whether they're a youthful offender or treated as an adult.

SENATOR McGEE: My learned counsel -- I'm not an attorney. You have an advantage over me.

SENATOR DOLLINGER: I appreciate that, Senator. I'll let you consult with your counsel and -

SENATOR McGEE: Thank you. You're very kind.

But my attorney tells me that the conviction determines whether they're a youthful offender.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will continue to yield.

SENATOR McGEE: I will.

ACTING PRESIDENT MARCELLINO: I

believe she will continue to yield.

SENATOR DOLLINGER: My understanding is, and maybe I'm incorrect on this, that it's the youthful offender adjudication is made before conviction, that the -- and my question is, and the reason why I'm concerned, is does this allow the district attorney, by the level of offense that he charges, to in essence strip away the youthful offender system and get them into the adult system and then that affects the -- what happens in 95 percent of these cases, there's a plea bargain.

And the question is whether it's a plea under youthful offender or whether it's a plea under the criminal justice system for adults. That's really my question.

SENATOR McGEE: My understanding is under Section 720.20 of the Criminal Procedure Law, Section 1: "And at the time of pronouncing sentence, the court must determine whether or not the eligible youth is a youthful offender."

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will continue to

yield.

SENATOR McGEE: Absolutely.

ACTING PRESIDENT MARCELLINO: She continues to yield.

SENATOR DOLLINGER: If the individual between ages 16 and 18 is charged with one of the offenses in your legislation, do they negotiate with the district attorney as a youthful offender or do they negotiate with them as an adult during that process, that period of time after there's an indictment but before there's a trial? As you, I know, Senator McGee, knows, most of us -- everybody knows, 95 percent or so of the cases in this state, criminal cases, are resolved through plea bargaining.

My concern is, does this statute change the dynamics of plea bargaining for those who are between 16 and 18 and charged with these offenses?

SENATOR McGEE: My understanding is it does not do so. And the thought behind and the contention behind this legislation is that young people who commit felony crimes should not enjoy the benefits of youthful

offender status. And that's exactly what this does. It make makes them atone for whatever crime they've committed.

SENATOR DOLLINGER: Okay. Mr. President, just on the bill briefly.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill briefly.

SENATOR DOLLINGER: The concern I have with this bill -- and I appreciate Senator McGee's comments. I think I've voted for this in the past, and I'm going to vote for it again. But I do so with a little more trepidation.

And the reason is because it seems to me that the way this will work in actual effect in the courts of this state is that you will have someone who is eligible for youthful offender status between 16 and 18, they will be charged with a crime, the new brand of crime, the new version of crime that Senator McGee is now including. We are expanding the definition from certain crimes to other crimes as well.

Well, during the initial indictment phase, as oftentimes happens, there will be a

discussion between the district attorney and the defense counsel as to whether they will be treated as a youthful offender or whether they'll be treated in the adult criminal justice system. Because that will become part of the negotiation over the appropriate plea bargain.

And my concern is that what this legislation in essence does is it alters the dynamic of that plea bargaining because it says to the person, the young person between 16 and 18, we're going to presume that if you're convicted of these crimes or found guilty of these crimes, you will be treated as an adult. And as a consequence, we're going to deal with you under the adult criminal justice system.

The effect of those heavier penalties is going to be that more and more juveniles who are between 16 and 18 -- we can have a debate about whether they still constitute juveniles at that age. But nonetheless, we have to be sensitive to altering the plea bargaining process with respect to those people between 16 and 18.

What this bill does is it changes the dynamics of 95 percent of the criminal cases that involve those between 16 and 18.

Senator McGee, I went along with this last year. I'm still willing to go along with it. But I still think that any time we tinker with that process of plea bargaining, we have to be sensitive to the fact that we're putting a greater onus on the defendant during the period of time before their guilt or innocence has been adjudicated, during the plea bargaining phase, which may result in them being more likely to be treated in the adult criminal justice system rather than the youthful offender system.

I understand that's the general point of your bill, to make that more likely. But at the same time, we may be pushing more and more youthful offenders who deserve some youthful offender treatment into the adult criminal justice system.

I'm sensitive to the fact that these are serious crimes and that these are serious behaviors, but I'm not convinced. And I'll withhold judgment until maybe next year,

if this bill comes back, to see what the impact is on altering the dynamics of plea bargaining for criminal justice defendants between 16 and 18.

ACTING PRESIDENT MARCELLINO: Senator Duane.

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

ACTING PRESIDENT MARCELLINO: Senator McGee, will you yield?

SENATOR McGEE: Certainly.

ACTING PRESIDENT MARCELLINO: She yields.

SENATOR DUANE: Thank you.

I was wondering whether the sponsor is aware that in most states in the nation, young people accused of a crime start in family court and the family court judge makes the decision about whether or not that case should go to criminal court or stay within the family court's jurisdiction.

SENATOR McGEE: No, I was not aware.

SENATOR DUANE: And I'm wondering

if the sponsor was aware that in New York State, not so many years ago, the decision was made -- frankly, a decision I disagree with, but so be it -- the legislators in their wisdom decided to have these cases start in the criminal courts and have the criminal court judge decide whether or not to keep them or send them to Family Court.

SENATOR McGEE: Are you speaking of the laws in New York State or other states?

SENATOR DUANE: I'm now, through you, Mr. President, speaking of the law in New York State.

SENATOR McGEE: My understanding, in the laws of New York State, if they're 16 to 18 years of age, they don't go to Family Court.

SENATOR DUANE: That is correct.

ACTING PRESIDENT MARCELLINO: Now that we agree, can we read the last section?

Just trying.

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

ACTING PRESIDENT MARCELLINO:

Does the sponsor continue to yield?

SENATOR McGEE: Certainly, Mr. President.

ACTING PRESIDENT MARCELLINO: She yields.

SENATOR DUANE: Well, in light of the fact that most states have these cases start in family court and have the family court judges make the determination about whether the case should proceed there or in criminal court and New York State, already trying to make their laws against young people harsher, decided to put them in criminal court first, where judges don't have much experience working with youthful offenders, if perhaps the sponsor believes that the intent at that time was to give the New York State criminal justice system a harsher aspect to it for youthful offenders than other states, and if that maybe was an intention which we don't really need to build upon.

SENATOR McGEE: Mr. President, through you, I would say quite honestly that perhaps they are a little more stringent, Senator, but these are very serious crimes

that they're being asked to atone for or to answer to, and these are crimes that whether -- whatever their age is, from 16 to 18 years of age, are serious crimes that have inflicted harm on other people, and at that age they should be responsible.

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

ACTING PRESIDENT MARCELLINO: Will the sponsor continue to yield?

SENATOR McGEE: Absolutely.

ACTING PRESIDENT MARCELLINO: Absolutely.

SENATOR DUANE: Is the sponsor questioning the decision-making by the majority of judges in the state on how to handle these cases?

SENATOR McGEE: I would never question the judges, thank you very much, sir.

SENATOR DUANE: Then through you, Mr. President, is the sponsor questioning district attorneys' work on these cases?

SENATOR McGEE: I don't see anywhere in the bill where that question would

even arise.

What I am saying to you is that there are certain amounts of heinous crimes, if you will, that 16 to 18 years of age people, that there are exceptions for them to seek youthful status. I am merely extending the pool of what those crimes are. That's what I'm asking this bill to do.

There is a discretion they can - in fact, the court has a discretion to allow youthful offender status to those individuals under mitigating circumstances who play a minor role in the crime.

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

ACTING PRESIDENT MARCELLINO: Does the sponsor yield?

SENATOR McGEE: Sure.

ACTING PRESIDENT MARCELLINO: She continues to yield.

SENATOR DUANE: I'm wondering if the sponsor has numbers on young people who have been treated too lightly in the criminal justice system and thereby we need to change

this law to make it so that judges' hands are tied on how to treat these defendants.

SENATOR McGEE: No, sir, I don't have any figures available right now. But I can certainly cite you at least two cases where it would appear within my own district. So I don't have any numbers for you, no, I don't.

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

SENATOR McGEE: Certainly.

ACTING PRESIDENT MARCELLINO: I believe she continues to yield, Senator.

SENATOR DUANE: The sponsor believes that there are two cases in her area of the state where a youthful offender was given youthful offender treatment and the judge made a terrible mistake by allowing that to happen?

ACTING PRESIDENT MARCELLINO: I believe that's what the sponsor said earlier, Senator. The chair heard that.

SENATOR DUANE: I'm just trying to -

SENATOR McGEE: I'm sorry, was there a question involved there? I didn't hear the question.

ACTING PRESIDENT MARCELLINO: I thought you were asking for a repeat of her statement -

SENATOR DUANE: There was a comment, but I didn't hear a question.

ACTING PRESIDENT MARCELLINO: The chair did hear her make that same statement.

I believe she yields for another question.

SENATOR McGEE: Would you care to repeat what you just said?

SENATOR DUANE: Yes. My understanding is that the sponsor said that there were two cases in her area of the state where a judge made an egregious error and granted youthful offender status to two young people and the sponsor believes that the judge should have been forced to treat them in the criminal court as adults.

SENATOR McGEE: I don't believe that's what I said, Senator. What I said was that there were some cases where these

additional crimes would be added to which would then make that a part of the bill.

So I'm not sure that you're understanding what I'm saying. I'm taking those things that already are exceptions to youthful offenders and now I am adding another pool. And so therefore that's what this bill does.

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

ACTING PRESIDENT MARCELLINO: Do you continue to yield, Senator?

SENATOR McGEE: Mm-hmm.

ACTING PRESIDENT MARCELLINO: She does.

SENATOR DUANE: Just to clarify, is the sponsor saying that the judge was not allowed to treat these offenders as adults or the judge chose not to treat them as adults?

SENATOR McGEE: I'm saying that's correct, they were not allowed to treat them as -- well, are you asking me, number one, if -- repeat your question, sir.

SENATOR DUANE: Is the sponsor

maintaining that the judge in these cases was prohibited from treating the offenders as adults in the criminal justice system?

SENATOR McGEE: No, they were given youthful offender status because these are not exceptions to the youthful offender status. If that's what you're saying.

I'm saying to you I want these crimes to be put in a pool that these people, these individuals 16 to 18 years of age, would have not -- could not be granted youthful offender status. I think that's relatively clear in the bill.

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

SENATOR McGEE: I will.

ACTING PRESIDENT MARCELLINO: She yields.

SENATOR DUANE: But just to be as clear as I can about my question, in these cases the judge could have, because he or she was not prohibited from treating these defendants as adults.

SENATOR McGEE: Yes, that is

correct. I'm sorry.

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

ACTING PRESIDENT MARCELLINO: Will you continue to yield, Senator McGee?

SENATOR McGEE: Certainly.

ACTING PRESIDENT MARCELLINO: She will.

SENATOR DUANE: I have no memos in support or in opposition to this piece of legislation. I'm wondering if the State District Attorneys have a position on it.

SENATOR McGEE: We're not aware of anything. This bill has been submitted for several years in a row, I believe.

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

ACTING PRESIDENT MARCELLINO: The sponsor yields.

SENATOR DUANE: In the seven years that this bill has come before the Senate, has it had an Assembly sponsor?

SENATOR McGEE: I'm not aware of

one. I've only carried it, I believe, for, what, three years now? So I'm not aware of any previous Assembly sponsor.

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

ACTING PRESIDENT MARCELLINO: Senator McGee?

SENATOR McGEE: Certainly.

ACTING PRESIDENT MARCELLINO: She continues to yield.

SENATOR DUANE: Has the Governor's office of criminal justice taken a position on this bill yet?

SENATOR McGEE: I don't think so. Not to my knowledge.

SENATOR DUANE: Thank you, Mr. President. Thank you.

SENATOR McGEE: You're welcome.

SENATOR DUANE: On the bill.

ACTING PRESIDENT MARCELLINO: Senator Duane, on the bill.

SENATOR DUANE: Thank you. As many of you know, I often take the position here that we should not tie the hands of

district attorneys and judges. I believe that judicial discretion and leaving district attorneys some leeway on how it is that they want to charge people on crimes, in concert with a judge and, frankly, with defense attorneys, is actually a very good thing.

I'm troubled at the trend that we have of treating more young people as adults. Many experts in the field of juvenile justice would say as it is New York State has made a big mistake by having these cases start in criminal court. Criminal court judges actually don't have very much experience with young people. They are generally not aware of alternatives to incarceration which the Family Courts use to try to dissuade young people from crime.

Young people going into the criminal justice system rather than to the juvenile justice system have a much higher recidivism rate. They tend to graduate not from school, but they tend to graduate to worse and sometimes more violent crime.

Tragically, and I think when you look at who it is that supports this

legislation -- DAs, juvenile justice experts, certainly the entire Assembly, none of these people think that this bill is a particularly good idea. I think that a case could be made in and of itself that it's not a good idea to have these cases start in criminal court to begin with.

My understanding is -- or I shouldn't say my understanding, my opinion is that the reason we have these cases start in criminal court had to do with one particularly heinous crime that happened several years ago in New York State. And the Legislature, in its rush to look like it was doing something on juvenile justice, passed legislation to have these young people go to criminal courts rather than to Family Court. I think we made a grave mistake.

So in and of itself, having these cases go to criminal court is harsh. And to try to harshen them up even more I think is doing all of us a big disservice. As I say, there is not one study that shows anything but there's tremendous harm in making young people go through the adult criminal justice system.

Our Family Court system is far better able to deal with the issue of criminal behavior in young people and in fact to thwart it in the future.

And even though there aren't many people here in the chamber to listen to this, though it's an important issue how we treat our young people who are not old enough for vote for us one way or the other, I think that we would do a big disservice by voting yes on this legislation, and I urge my colleagues, in the interests of making a good criminal justice system and a good juvenile justice system, to vote no on this and let judges and DAs do their jobs.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Are there any other Senators wishing to be heard on this bill?

Seeing none, debate is closed.

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 461 are Senators Brown, Duane, and Montgomery. Ayes, 56. Nays, 3.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 464, by Senator Maziarz, Senate Print 3279, an act to amend the Penal Law, in relation to creating definitions.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Maziarz, an explanation has been requested of your bill.

SENATOR MAZIARZ: I'm sorry, could you tell me what calendar number this was again, please?

ACTING PRESIDENT MARCELLINO: Calendar Number 464, Senator.

SENATOR MAZIARZ: Yes, this legislation was brought to me by the New York State District Attorneys Association, the

elder abuse committee.

This bill amends the sections of the Penal Law to include the crime of financial exploitation of the elderly by amending the larceny section of the Penal Law.

This bill defines the term "mentally disabled" and "mentally incapacitated" within the statute. It also amends the Penal Law, which defines a wrongful taking, to include thefts by defendants who know or have reason to know that the victims suffer from a mental disability or incapacity.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to just one question, Mr. President?

ACTING PRESIDENT MARCELLINO: Senator, would you yield for a question?

SENATOR MAZIARZ: Certainly, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR DOLLINGER: The breach of

trust kind of issues that this bill is designed to get at, do you have any report or any information about the extent to which those problems have cropped up in New York? I know there's a lot of anecdotal evidence, but is there any quantifiable evidence?

SENATOR MAZIARZ: Actually, I'm glad you asked that question, Senator Dollinger. It's one of the few questions you asked that I'm really glad that you can -

SENATOR DOLLINGER: I have others, but you may not want -

SENATOR MAZIARZ: Well, you said one.

But I do have a report from a Eugene R. Kelly, who is the deputy district attorney under Charles Hynes, the District Attorney of Kings County. He is the deputy in charge of their Senior Affairs Bureau, and he does have a report which I will make available to you, Senator.

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

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: This issue of the financial exploitation of the elderly, I'm not familiar with all of the terms of it. I'd simply say this. I think that Senator Maziarz hits on a critical issue.

In my own experience as a private trial lawyer, I find that oftentimes the biggest problem is financial services, brokerage houses and insurance, that elderly people who can understand that they need to keep their money in bank accounts and are familiar with bank accounts and savings accounts, when they get into the sophisticated world of financial investments and the appropriateness of certain investments such as insurance policies, term policies, and life policies, these can be extremely difficult for elderly people to deal with.

And I think any step we take that says we're going to give them a special status under the law and protect them from this egregious form of elderly abuse or taking advantage of their financial circumstances, I think it's a step in the right direction.

So I'll be supporting Senator

Maziarz's bill.

ACTING PRESIDENT MARCELLINO: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. Would the sponsor yield?

ACTING PRESIDENT MARCELLINO: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Certainly, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields, Senator Hevesi.

SENATOR HEVESI: Thank you.

Through you, Mr. President. I just have one question on the language in this legislation. And it may not render sufficient harm to the legislation that I would vote no, but it does beg the question.

If I can just draw your attention to the final section in your bill, which is the affirmative defense section, where you indicate in any prosecution for larceny committed by trespassery, taking or embezzlement from a mentally disabled or mentally incapacitated person, it's an affirmative defense if the defendant

appropriated such property in the course of rendering assistance which benefited such person in the management of his or her affairs and the value is commensurate with the benefit conferred.

My question to you is, why is that section necessary at all? Because if the provisions of the affirmative defense existed, then the individual who is being accused did not in fact commit larceny at all.

ACTING PRESIDENT MARCELLINO: Senator Maziarz, before you answer, can we just have a little order in the house, please.

SENATOR MAZIARZ: I'm told by counsel that the defendant would have to show that he received a benefit, as defined, from a perch who is defined as being mentally incapacitated. And that is the way that the District Attorneys Association actually recommended that the bill be written.

SENATOR HEVESI: Mr. President, would the sponsor yield for an additional question?

SENATOR MAZIARZ: Surely.

ACTING PRESIDENT MARCELLINO: He

yields, Senator.

SENATOR HEVESI: My assessment or my concern of that provision would be that we would seem to be laying out for a defendant the defense that he or she could use to avoid prosecution.

If you're going to assure me that the District Attorneys Association has supported not only this bill but that particular provision of -- that particular section, then I'm satisfied. But maybe you can explain to me why they specifically wanted that language in the legislation. I don't know why it would be in their interest to have that in the law.

SENATOR MAZIARZ: I'm told, again by counsel, that they have to show, the district attorney has to show that the individual knew, in fact, that the victim was or would fall under the definition of mentally disabled or mentally incapacitated.

SENATOR HEVESI: Mr. President, one final question, if the sponsor would yield.

SENATOR MAZIARZ: Surely.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR HEVESI: Just so I'm clear on this point so I have a hundred percent comfort when I vote for this bill, it's the New York State District Attorneys Association that has endorsed this legislation?

SENATOR MAZIARZ: Yes. Yes, it is. And it came, as I said, from District Attorney Charles Hynes through Eugene Kelly, the deputy assistant district attorney of the Senior Affairs Bureau.

SENATOR HEVESI: Thank you, Senator Maziarz.

Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Hevesi, on the bill.

SENATOR HEVESI: Very briefly.

I support this legislation. I think it moves us in a direction that we need to go in. And with the one caveat that I'm not fully understanding why that section is in there. And notwithstanding my concern that a defendant is going to take a look at that

section of the law and try and craft a defense around the affirmative defense that we've then provided for him.

Notwithstanding that, I'm going to support this. But if the District Attorneys Association had not specifically endorsed this bill, I might not support the bill.

But nonetheless, I commend the sponsor for addressing a very important problem that we face, and hopefully this will provide a remedy for those who are mentally incapacitated to reduce the likelihood that they are victimized in the future.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard?

Seeing none, debate is closed.

Please read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 465, by Senator Kuhl, Senate Print 3337, an act to amend Chapter 689 of the Laws of 1993.

SENATOR MORAHAN: Lay it aside for the day, please.

ACTING PRESIDENT MARCELLINO: The bill is laid aside for the day at the request of the sponsor.

THE SECRETARY: Calendar Number 556, by the Assembly Committee on Rules, Assembly Print Number 2599, an act to amend the Tax Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Spano, an explanation has been asked for.

SENATOR SPANO: Yes, Mr. President.

This is the bill that extends the sales tax by the City of White Plains for two years.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: I yield to Senator Paterson, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Mr. President, would Senator Spano yield for a question?

ACTING PRESIDENT MARCELLINO: Senator Spano, do you yield?

SENATOR PATERSON: Senator, could I hear that explanation again?

(Laughter.)

SENATOR SPANO: This is Senator Oppenheimer's bill to increase the sales tax for the people of White Plains for two years.

ACTING PRESIDENT MARCELLINO: The bill was perfectly clear to me.

SENATOR PATERSON: Explanation satisfactory, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I'd like to speak on the bill.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: It sounded

like those tax-and-spend Democrats; right? Which we know how fallacious that is.

This is something that has been a part of the tax mix of White Plains for many, many years. And we have to do this every two years, which I find sort of foolish. We've been doing it every two years, I think, for the 17 years I've been here. And it's something they require, this one-half of 1 percent sales tax.

And in my opinion, it ought to be made permanent so we don't have to go through this every two years. But here it is, and I hope we'll have the support of this body.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Smith.

SENATOR MALCOLM SMITH: Yes, Mr. President, I just rise to have unanimous consent to be recorded in the negative on Calendar Number 461.

ACTING PRESIDENT MARCELLINO: Senator, can you wait until after the roll call, please.

SENATOR MALCOLM SMITH: Oh, roll

hasn't been called yet?

ACTING PRESIDENT MARCELLINO: Not yet. But if you would wait until after we do that, I'd appreciate it.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will Senator Spano yield just to one question.

ACTING PRESIDENT MARCELLINO: Senator Spano, do you yield for a question?

I believe he yields.

SENATOR DOLLINGER: Senator, how much income does the half-penny produce for White Plains?

SENATOR SPANO: 6.8 million.

SENATOR DOLLINGER: Through you, Mr. President, I just didn't hear the answer.

SENATOR SPANO: 6.8 million, Senator Dollinger.

SENATOR DOLLINGER: For the half-penny?

SENATOR SPANO: Yes. If White Plains did not have this property increase, they would have to raise their local property taxes by 18 percent.

SENATOR DOLLINGER: Okay. Through you, Mr. President, just briefly on the bill.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I've voted against these sales tax increases, I think I've voted against them all over the state. I've taken that position for years, and I'm going to continue to take it.

I understand Senator Spano's view that the extra half-penny, the 6 million plus that's raised, probably the local share, I assume this takes it to 8 percent. That means that the local share is generating about $50 million in cash a year.

That's a tax that of course grows with the price of goods. The more expensive goods get, the higher the tax gets.

And in addition, it's not federally deductible. And one of the things about property taxes, although nobody likes to charge them, because you have to pay them in the fall and in the spring, and everybody rails against property taxes, nonetheless

property taxes are hugely subsidized for those who itemize their income taxes. In some cases, to the tune of up to 40 percent of the property tax is subsidized.

So I appreciate Senator Spano's comment, and I understand the reality of sales tax. But I just think that we rely so heavily on those economy-sensitive taxes. Lo and behold, if we find that we enter into a recession, we're going to find shortfalls all over the place with respect to the sales tax decline.

So I'm going to continue to vote against these, Mr. President, and you can cast me in the negative.

ACTING PRESIDENT MARCELLINO: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. Would the sponsor please yield?

ACTING PRESIDENT MARCELLINO: Senator Spano, do you yield for another question?

I believe I yields.

SENATOR HEVESI: Thank you.

Through you, Mr. President, is it

true that this legislation only impacts the City of White Plains?

SENATOR SPANO: Yes.

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

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR SPANO: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR HEVESI: I know that you are the sponsor of this legislation. My question to you is, my understanding is that Senator Oppenheimer represents about 90 percent of White Plains and that you represent the other 10 percent of White Plains.

SENATOR SPANO: Currently.

SENATOR HEVESI: That's correct?

SENATOR SPANO: Currently.

(Laughter.)

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

ACTING PRESIDENT MARCELLINO: Senator Spano, do you continue to yield?

SENATOR SPANO: Yes.

SENATOR HEVESI: Thank you.

Through you, Mr. President, is that current split about to change?

SENATOR SPANO: Excuse me?

SENATOR HEVESI: Is that current split about to change for some reason?

SENATOR SPANO: What current split, the sales tax?

(Laughter.)

SENATOR HEVESI: Mr. President, would the sponsor yield for an additional question?

SENATOR SPANO: Yes.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR HEVESI: Thank you.

Through you, Mr. President. Senator Spano, I appreciate you bringing this legislation, and I believe Senator Oppenheimer appreciates you bringing the legislation. But isn't it a fact that as the individual who represents almost all of White Plains that it really should be Senator Oppenheimer who sponsor this is bill?

SENATOR SPANO: This bill was introduced by the Rules Committee.

SENATOR HEVESI: Thank you.

On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Hevesi, on the bill.

SENATOR HEVESI: I'll take my question and invert it as a statement.

Since Senator Oppenheimer represents 90 percent of White Plains, Senator Oppenheimer should be the sponsor of this legislation. It is one of those circumstances in this house that I find highly objectionable, as I know my colleagues do.

I mean no disrespect to any Majority member who puts a bill in that addresses issues in another member's district, but it continues to happen. It happened two weeks ago with a piece of legislation that affected Senator Duane's district, which he was not even consulted on, let alone being asked to sign on as a sponsor or even a cosponsor.

I would just suggest to everyone in this house that it's disrespectful to the

institution, in addition to being disrespectful to the individual, though it may not be intended that way, to have this circumstance and this situation continue. Senators who represent a particular area should be the sponsors of legislation to change policy in that area.

And so I'm going to support this legislation because I believe that Senator Oppenheimer supports the legislation, but I'd be much happier supporting it were she to be the sponsor of this legislation, as everyone at least on this side of the aisle believes she should be.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard?

Senator Duane.

SENATOR DOLLINGER: Through you, Mr. President, just on the bill briefly.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, Senator Duane has been recognized to be heard.

SENATOR DOLLINGER: My apologies, Mr. President.

SENATOR DUANE: Mr. President, I'll yield.

ACTING PRESIDENT MARCELLINO: No, it's your turn, Senator. He will speak.

SENATOR DOLLINGER: Go ahead.

SENATOR DUANE: Thank you, Mr. President. I also don't understand why it is that bills which really are -

ACTING PRESIDENT MARCELLINO: Senator, are you speaking on the bill?

SENATOR DUANE: I'm speaking on the bill, yes.

ACTING PRESIDENT MARCELLINO: Senator Duane, on the bill.

SENATOR DUANE: - noncontroversial bills that impact our districts are not bills which in fact we carry through this body. I just -- I mean, I don't know what anyone is -- you know, what the point of that is or, you know, what enjoyment people get out of that. It just strikes me as something that really demeans the body and those of us who represent districts and serve in this body.

Really, I would say shame on us for

allowing this kind of thing to happen. It's just really beneath us. And people that participate in it, Senators that participate in it I think should be ashamed of themselves.

I mean, I'm going to vote for it, but I just think it's a real disgrace. I think it's -- frankly, I think it's pathetic. And of course, there aren't many people here to hear me say that, but I really think it's pathetic. And childish. And stupid.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, do you wish to be heard?

SENATOR DOLLINGER: I'll waive my opportunity to speak on the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you. Are there any other Senators wishing to be heard on the bill?

Seeing none, the debate is closed.

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 2. Senators Dollinger and Gentile recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Smith.

SENATOR MALCOLM SMITH: Yes, thank you, Mr. President. I rise to ask unanimous consent to be recorded in the negative on Calendar Number 461.

ACTING PRESIDENT MARCELLINO: Without objection.

SENATOR MALCOLM SMITH: Thank you.

THE SECRETARY: Calendar Number 560, by Member of the Assembly DelMonte, Assembly Print Number 7221, an act to amend the Alcoholic Beverage Control Law, in relation to home vintners.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Maziarz, an explanation has been requested.

SENATOR MAZIARZ: Thank you very much, Mr. President.

Yes, this legislation defines a home vintner, creates a temporary home vintner tasting permit. Current state law does not address the issue of a home vintner and whether he or she can participate in a wine-tasting event.

This bill would allow a home vintner to have a wine-tasting permit for up to a three-day period.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Onorato.

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

ACTING PRESIDENT MARCELLINO: Senator Maziarz, will you yield?

SENATOR MAZIARZ: Absolutely, Mr. President.

SENATOR ONORATO: Senator Maziarz, will the vintner be able to sell the wine also or is it strictly for tasting purposes?

SENATOR MAZIARZ: No, this is

strictly for tasting purposes, Senator.

Now, there may be an admission charged to go to the wine-tasting event by the sponsoring organization.

SENATOR ONORATO: But they will not be selling it?

SENATOR GENTILE: They would not be selling the wine, no.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Yes, Mr. President. I have actually no questions. I had 20 or 30 on -

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I had 20 or 30 on this bill, but if I'd asked them all, I would have been accused of whining, so I will just sit down.

(Groaning.)

SENATOR MORAHAN: Read the last section.

ACTING PRESIDENT MARCELLINO: I'm waiting for the air to clear.

Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar Number 464, please.

ACTING PRESIDENT MARCELLINO: Without objection, so ordered.

Senator Morahan.

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

ACTING PRESIDENT MARCELLINO: I believe the house is squeaky clean.

SENATOR MORAHAN: Okay. There being no further business, I move we adjourn until May 2nd at 11:00 a.m.

ACTING PRESIDENT MARCELLINO: On motion, the Senate stands adjourned until

Wednesday, May 2nd, at 11:00 a.m.

(Whereupon, at 5:19 p.m., the Senate adjourned.)