NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 4, 2002

3:50 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: We are privileged once again to have with us the Reverend Peter G. Young, from Blessed Sacrament Church in Bolton Landing, New York.

REVEREND YOUNG: Let us pray.

It's not always easy to be gentle. And in the political world, we're taught to be tough, competitive, and assertive. But there are times when we need and like to be soothed and treated gently. We treat packages with gentleness when they are labeled "Fragile; Handle with Care."

So we ask You, our compassionate God, to give us the sensitivity and courage to be gentle with other people, to help us to hear the anguish and the hurt in other people that attempt to approach our offices, and

treat them with kindly care.

We ask You this now and forever. Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, February 3, the Senate met pursuant to adjournment. The Journal of Saturday, February 2, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Governor.

Messages from the Assembly.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Wright, from the Committee on Energy and Telecommunications, reports:

Senate Print 482, by Senator Alesi, an act to amend the General Obligations Law;

3931, by Senator Wright, an act to amend the Executive Law and others;

4029, by Senator Wright, an act to amend the Public Service Law; and

4069, by Senator Wright, an act to amend the State Technology Law.

Senator Volker, from the Committee on Codes, reports:

Senate Print 100, by Senator Marcellino, an act to amend the Penal Law;

123, by Senator Skelos, an act to amend the Penal Law;

126, by Senator Skelos, an act to amend the Civil Practice Law and Rules;

209, by Senator Volker, an act to amend the Penal Law;

388, by Senator Skelos, an act to amend the Penal Law;

430, by Senator DeFrancisco, an act to amend the Criminal Procedure Law;

435, by Senator DeFrancisco, an act to amend the Criminal Procedure Law;

854, by Senator Balboni, an act to amend the Penal Law;

2015, by Senator Lack, an act to amend the Penal Law;

2592, by Senator Trunzo, an act to

amend the Criminal Procedure Law;

3094, by Senator Bruno, an act to amend the Penal Law and the Highway Law;

3781, by Senator Volker, an act to amend the Civil Rights Law; and

5640, by Senator Skelos, an act to amend the Criminal Procedure Law.

All bills ordered direct to third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: If you could recognize Senator Fuschillo.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Velella, on page number 12, I offer the following

amendments to Calendar Number 108, Senate Print Number 67, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: Amendments received, Senator, and the bill will retain its place on the Third Reading Calendar.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Alesi, on page number 11 I offer the following amendments to Calendar Number 99, Senate Print Number 2218A, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: Amendments received, and the bill will retain its place on the Third Reading Calendar.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Volker, on page number 5 I offer the following amendments to Calendar Number 21, Senate Print Number 1094, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: Amendments received. The bill will retain its place on

the Third Reading Calendar.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Volker, on page number 4 I offer the following amendments to Calendar Number 13, Senate Print Number 5793, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: The amendments are received, and the bill will retain its place on the Third Reading Calendar.

Senator Nozzolio.

SENATOR NOZZOLIO: Yes, Madam President. I have a privileged resolution at the desk. I ask that it be read in its entirety.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Nozzolio, Legislative Resolution Number 3940, congratulating the Webster High School Football Team and Coach Anthony Bianchi upon the occasion of capturing the New York State Class AA Championship.

"WHEREAS, Excellence and success in

competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, The Webster High School Football Team are the New York State Class AA champions.

"The Webster Warriors captured the championship by defeating North Rockland by a score of 32 to 14 on December 2, 2001, at the Carrier Dome, Syracuse, New York.

"This is the second time in three years the Warriors won the Class AA state title. They also won in 1999. And

"WHEREAS, The New York State Public High School Athletic Association 2001 Championship Game Awards for Class AA include:

Jeff Krieger, Most Valuable Player; Corey Hamel, Most Valuable Defensive Lineman; Chris Beh, Most Valuable Defensive Back; and Carl Garritano, Most Valuable Offensive Back; and

"WHEREAS, The athletic talent displayed by this team is due in part to the great efforts of Coach Anthony Bianchi, a skilled and inspirational tutor respected for his ability to develop potential into excellence.

"The team's overall record is outstanding, and the team members were loyally and enthusiastically supported by family, fans, friends, and the community at large; and

"WHEREAS, the hallmarks of the Webster High School Football Team, from the opening game of the season to participation in the championship, were a brotherhood of athletic ability, of good sportsmanship, of honor and of scholarship, demonstrating that these team players are second to none; and

"WHEREAS, Athletically and academically, the team members have proven themselves to be an unbeatable combination of talents reflecting favorably on their school.

"Coach Anthony Bianchi has done a superb job in guiding, molding, and inspiring the team members toward their goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and Coach Anthony Bianchi and 46 outstanding athletes have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Webster High School Football Team; its members -- David Greenfield, Will Dalton, Justin Costanza, Matt Schlegel, Andy Coffaro, Dave Serinis, Jeff Krieger, Ryan Chase, Mike Kaplun, Mike Mahoney, Thomas Moore, Dave Dodge, Lee Williams, Mike Stenclik, Carl Garritano, Mitch Pawluk, Rob Meyers, Steve Caezza, Mike MacMahon, Joe Nacca, Jim Mikolajko, Travis Anderson, Corey Hamel, Chris Beh, Craig Avalone, Jimmy Johnson, Rich Franco, Rob Herman, Melood Abugasea, Mike Yokopovich, Chris Massaro, Gerald Weissinger, Dave Burgess, Mark Steele,

Eben Blanchard, Jeff Bowen, Justin Schifano, Russ Carona, Dave Horning, Jeff Bucciarelli, Evan McConnell, Chris McClurg, Brandon Mack, Chris Chavoustie, Tony Pagen, Shea D'Ambrosio -- and Coach Anthony Bianchi on their outstanding season and overall team record; and be it further

"RESOLVED, That copies of this Resolution, suitably engrossed, be transmitted to the Webster High School Football Team and to Coach Anthony Bianchi."

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Madam President, on the resolution.

It is with great pride that I stand before this body endorsing this resolution recognizing the accomplishments of not only great athletes but great citizens of this state.

Seated with us in the gallery today are members of the faculty, administration, coaching staff, and the team of the Webster Warriors that put together such a remarkable record, as distinguished and chronicled by this resolution.

Madam President and my colleagues, I'd also like to recognize the principal of Webster High School, Joe Pustulka; Head Coach Anthony Bianchi and all the coaching staff; as well as the number-one fan of the Webster Warriors, and their chaperone, Donna Rickard, who's here today.

This group of individuals is a culmination -- as we debate in this chamber, time and time again, education policy and what we need to do to make our schools better, frankly, the young men of Webster have taken the lessons that we are trying to instill in young people all across this state to heart.

They are genuine champions. I cannot say enough about their poise, their grace under pressure. They know what it's like to pull together, to come from behind. They are true winners in every sense of the word. Their coaches are truly inspirational and influential teachers of character. And there's no better coach of character and molder of young men than Coach Bianchi.

These fine gentlemen are, in the true sense, gentlemen. They're being

recognized here because of their athletic successes. But they are going to be successes in every endeavor that they choose to participate in.

It's a great honor to represent the Webster community, which is very proud of these fine young men. And congratulations for now the second state championship in three years.

They are true champions, Madam President, and I thank you for acknowledgment of this resolution.

THE PRESIDENT: Senator Morahan.

SENATOR MORAHAN: Yes, thank you, Madam President.

These young champions, to become champions, they beat another very great team, and that's a team from North Rockland, in my senatorial district.

And as matter of record, Senator Nozzolio and myself had a little side bet on you guys. And I think I owe him a bushel of apples about now.

But I want to tell you a little bit about the caliber of these young champions.

Because the team they beat has had a tremendous record under a tremendous coach for year after year after year of taking championships. It really is a first-class team that they defeated. And I believe both teams are champions, in my book.

But I congratulate the winners on their great accomplishment in beating North Rockland High School.

Thank you.

THE PRESIDENT: Senator Alesi.

SENATOR ALESI: Thank you, Madam President.

I rise not only to support this resolution with my vote and to welcome the team, the coach, the faculty, but also to say that if Senator Morahan had had the foresight to bet me a bushel of apples, he'd now be paying two bushels of apples.

This team is an outstanding representation of people living in Monroe County, and especially the east side, including the Penfield area as well, where some of our residents actually go to Webster schools.

We all know that in order to be great athletes and be here today that academic achievement is one of the prerequisites for being on the team. And that combined excellence factor is what we're looking at here today.

So in congratulating this team, welcoming them here to the Senate, I would also like to say, as we look up to you today, that we know as we go into the future that you will be the young adults we will be looking up to as time goes on. I have no doubt that you will take your champion attributes into life as you go forward.

I wish you the best of luck. Thank you for joining us.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I don't represent the Webster community. I know Senator Nozzolio does. And I don't even represent much of the east side of this county. But I do have to remark that the Webster High School football team has

raised a bar for Section 5. You have set a new standard for every school in our county.

I represent most of the city of Rochester, two of its suburbs, Brighton and Greece. But you certainly have created the new measuring stick by which we will judge not only scholastic achievement but athletic achievement in our county and throughout Section 5.

Those who follow you, the other schools that will compete with you, will be looking to your record of achievement when they think about getting to the very top. So I congratulate you for raising that bar. You've done a service to all of us in Section 5 by making your achievement the new standard for all those schools to follow.

Thank you.

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.

And on behalf of the Senate, I would like to congratulate you on this outstanding achievement. Many of the qualities that went into your winning this recognition are qualities that will serve you well in all your endeavors in life.

We're very proud to have you with us here this afternoon. Best wishes for continued success.

(Applause.)

THE PRESIDENT: Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 8, by Senator Johnson, Senate Print 1534, an act to amend the Penal Law, in relation to criminal use of public records.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 60, by Senator Marchi, Senate Print 4004, an act to amend the Public Authorities Law, in relation to increasing the procurement contract threshold.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 73, by Senator Volker, Senate Print 205, an act to amend the Criminal Procedure Law, in relation to appeals.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 87, by Senator Trunzo, Senate Print 763, an act to amend the Vehicle and Traffic Law and the Public Authorities Law, in relation to authorizing.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect in 30 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 88, by Senator Balboni, Senate Print 860, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 91, by Senator Kuhl, Senate Print 4388, an act to amend the Vehicle and Traffic Law, in relation to exempting.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 115, by the Senate Committee on Rules, Senate Print 5630A, an act to amend the Retirement and Social Security Law, in relation to death benefits.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Maziarz, that concludes the noncontroversial reading of the calendar.

SENATOR MAZIARZ: Thank you, Mr. President. Could we now have the controversial reading of the calendar, please.

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

THE SECRETARY: Calendar Number 8, by Senator Johnson, Senate Print 1534, an act to amend the Penal Law, in relation to criminal use of public records.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT MEIER: Senator Johnson, an explanation has been requested of Calendar Number 8 by Senator Montgomery.

SENATOR JOHNSON: Mr. President, someone requested an explanation?

ACTING PRESIDENT MEIER: Yes, Senator Montgomery requested an explanation, Senator Johnson.

SENATOR JOHNSON: Oh, yes.

Senator, this bill we've had on the floor two years running. And this essentially says if you use the FOIL system to get

information on the person for the purpose of committing a crime, use that information to commit a crime, that is an additional crime.

That's essentially what this bill says.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, I had a question, but I wanted to -- if I may yield to Senator Duane, who also has a question, I want to yield to him.

ACTING PRESIDENT MEIER: Senator Duane.

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

ACTING PRESIDENT MEIER: Senator Johnson, do you yield if a question from Senator Duane?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you.

Is it already a crime to, for instance, use documents for forgery or fraud?

SENATOR JOHNSON: The question is, is it a crime to use a document you receive from FOIL in committing a crime? Is that what you asked me, Senator?

No, it isn't. That's why we have this bill before us. The crime that might be committed as a result of getting the information is already punishable under some part of the statute. But using FOIL to get information to commit this crime would be an additional crime for the penalty involved.

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

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: So would the penalty be concurrent, or would it be consecutive?

SENATOR JOHNSON: Isn't that a question for the judge to decide, if indeed a

crime was committed as a result of this information?

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

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: It's my understanding that generally that's spelled out in the statute. And it's not here.

So does that mean it would be consecutive or concurrent?

SENATOR JOHNSON: Senator Duane, it's not spelled out in the bill.

SENATOR DUANE: So through you, Mr. President, does that mean it's neither? I'm afraid I don't understand the answer.

SENATOR JOHNSON: Actually, it's very fascinating, Senator Duane, to realize that -- and I mentioned when we debated this last time about a lady who was raped and the

fellow who was getting out of jail wanted to get her address so he could find out where she was, perhaps visit her again or something like that. And that is outside of this picture. There was no law at that time.

But what I'm saying is if he wants to get out and go stalk this person, stalking is a misdemeanor. And this would be a felony, if you get this information and use it for the purpose of stalking.

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

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I was under the impression that we passed stalking legislation. Is this a gaping loophole in that legislation?

SENATOR JOHNSON: This does not affect the stalking bill, Senator. This is a

separate bill giving law enforcement an additional tool to apprehend somebody if they're intent on committing a crime.

And if they do indeed commit a crime, this is an additional penalty for getting information through the FOIL system.

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

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

SENATOR JOHNSON: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Then is the sponsor now saying that this has nothing to do with the stalking law?

SENATOR JOHNSON: There's nothing in this bill about stalking, Senator. There's no reference to stalking in this bill.

SENATOR DUANE: Well, through you, Mr. President, just to clarify, I wasn't the one --

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

SENATOR JOHNSON: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: With all due respect, I wasn't the one that raised stalking.

So then I guess I'm trying to find out when this law would be applicable still.

SENATOR JOHNSON: Senator, I'd like to just read the law. It's very brief.

"A person is guilty of criminal use of public records when he or she uses any record or information derived from any record in the course of or in the furtherance of the commission of a crime."

And criminal use of public records is a Class E felony.

SENATOR DUANE: So, Mr. President, is the sponsor reading the bill? Or the --

ACTING PRESIDENT MEIER: Are you asking the sponsor to yield for a question?

SENATOR DUANE: Yes. Would the sponsor yield for a question?

ACTING PRESIDENT MEIER: Senator

Johnson, do you yield for a question?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Was the sponsor reading that from the bill?

SENATOR JOHNSON: Senator, did you ask me if I was reading the bill? Because I was.

SENATOR DUANE: Mr. President, I'm not sure what he just read.

SENATOR JOHNSON: The bill on the floor is the one which I just read that part of for you, yes.

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

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I am still -- I

am unable to think of a scenario by which there's not already a law in place for what this bill seems to be seeking to address. And therefore I'm trying to find out under what circumstances this bill -- this law would be of any use.

SENATOR JOHNSON: Senator, we passed this bill two years running. There's a sponsor in the other house. And there's a feeling that the FOIL system was set up for legitimate people getting legitimate information, and not for the purpose of looking up people's records.

It could be other things besides their addresses. It could be -- take place in identity theft, for example. They could use the FOIL records to get some information on a person's Social Security, et cetera, and commit that crime.

We're telling them, don't go to the FOIL and get that information or you'll be committing another crime.

And I think people are entitled to their privacy, such as it is. And they certainly shouldn't use the FOIL system in

order to create problems for other people or commit a crime of their own volition.

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

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

SENATOR JOHNSON: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I thought that we had already passed a law dealing with identity theft. Is there a glaring omission in that law that needs to be addressed with this law?

SENATOR JOHNSON: Senator, this bill is what it is. I read what it says. It's only dealing with getting public records and using that information to commit a crime.

You can postulate any crime which you desire where public records could be used, and it applies to that.

SENATOR DUANE: Well, okay. On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: Actually, I can't think of anything that this bill would cover that's not already covered in law. And that's why I was trying to find out why this bill is necessary at all.

I really -- you know, I've been thinking about this bill. I voted against it two years ago, and my mind has not changed. I don't think that there is anything -- and clearly the sponsor has been unable to give me a scenario by which this law would actually be used.

So we're making a law for something that is not a problem and, beyond that, for which there's plenty of laws already in place to deal with any possible scenario that anyone has been able to come up with.

So I just don't believe that we should be here passing laws just for the heck of it. I think that the people's work is far too expensive to spend time on bills for which there doesn't seem to be a purpose.

I'm open to finding out if there is a reason why we need this bill. But, save that, I just don't see the point of it. So

I'll be voting no.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Would Senator Johnson yield to a question, Mr. President?

ACTING PRESIDENT MEIER: Senator Johnson, do you yield for a question from Senator Dollinger?

SENATOR DOLLINGER: Senator Johnson, what happens if the person who's using the public record is using it for their own benefit? That is, manipulating the record for their own benefit; like, for example, a 19-year-old who creates a false ID for purposes of getting into a bar.

I wouldn't suggest that anybody in this room has ever done that before. But what if they did? Would they be guilty of a Class E felony?

SENATOR JOHNSON: I believe it would apply. But whether prosecution takes place is up to the district attorney.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Johnson will

continue to yield.

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Clearly, Senator Johnson, this says that if you happen to be 19 years old or 20 years old and you changed the date on your license and had it photocopied in a color copier and then you had had it laminated so you could go to a bar at age 20, you would no longer be guilty of just illegally attempting to drink underage, but you'd now be guilty of a Class E felony subject to go to jail for one to four years.

Isn't that correct, Senator?

SENATOR JOHNSON: I don't know -- you know, we're all reaching pretty far to make an example which may seem outlandish. And I guess that is, because I don't think altering your birth certificate or your driver's license has anything to do with FOILing public records.

So I think it's really irrelevant, your question, to this bill at hand.

SENATOR DOLLINGER: Through you, Mr. President, I would suggest to Senator Johnson that when he makes a statute as broad as to say any public record -- which clearly a birth certificate or a driver's license or a draft card qualifies as a public record -- and he further includes language that says if you use any information derived from any record in the course of the furtherance of the commission of a crime, that is so broad, Senator Johnson, as to sweep all kinds of activity, including the manufacture or creation of a fake ID, as they're called by some people -- I have children who are in that age group. They don't have fake IDs, or so they tell me.

But I would assume that there's some people, maybe between the age of 18 and 21, who might be doing this occasionally to somehow sneak their way into a bar and maybe have something to drink, which is a violation of law, commission of a crime. It's a violation or a misdemeanor in this state.

We're going to make them all felons in this broad, new, wide-open statute? Is that correct, Senator Johnson?

SENATOR JOHNSON: My counsel reminds me that this refers only to, as you may have read, Section 240.77 of the Public Officers Law, and not to every record in the world. Only FOILable records.

SENATOR DOLLINGER: Well, through you, Mr. President, so we can get to the bottom of this, would Senator Johnson yield?

ACTING PRESIDENT MEIER: Senator Johnson, do you yield?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Could you tell me what the definition of "record" is in that Section 240.77 of the Penal Law of the State of New York, so we could figure out whether it applies?

SENATOR JOHNSON: I don't know if you want me to read the McKinney's to you, Senator, but --

SENATOR DOLLINGER: Through you, Mr. President, I'm not sure. Maybe Senator Johnson could just tell me whether a driver's license or a birth certificate or other governmental proof of age would be considered a record within the statute, if I could amend my question, Mr. President.

SENATOR JOHNSON: Senator, I could read you the book. It tells you all the different kind of papers, records, memorandums, forms, designs, drawings, microfilms, computer tapes. Everything is in here.

But it's got nothing to do with ways somebody might alter their license and try to get a drink. It's nothing to do with that at all. So, really, you have to find another example. Maybe we could get a reasonable example which might covered by this law. But that certainly wouldn't be.

SENATOR DOLLINGER: But through you, Mr. President, if Senator Johnson will continue to yield.

ACTING PRESIDENT MEIER: Senator Johnson --

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: But a driver's license or a birth certificate or a draft card is clearly a public record under that very broad definition in 240.77, is it not?

SENATOR JOHNSON: Well, I wouldn't say a false identification was a public record, would you, Senator?

SENATOR DOLLINGER: No. I think, through you, Mr. President, I was simply asking whether the original -- because this says if you alter the original document or use any information off that document to produce a false document, then you're guilty of criminal use of a public record.

And if you're using it in furtherance of a commission of a crime, which we broadly defined to include just about anything -- and attempting to buy alcohol underage, I think under Section 65 of the Alcohol and Beverage Control Law, is still a

crime, is it not?

SENATOR JOHNSON: Well, I don't see anything in this bill which says what you say about altering records. It has nothing to do with altering records at all. It's simply acquiring the records and using them in the commission of a crime. And I don't think it's a crime to have an altered driver's license.

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

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Senator Johnson, I'm only reading your bill and trying to figure out how broad the application would be.

And there's no question in my mind that every 18-, 19-, 20-year-old that currently now uses their birth certificate or their driver's license or some other public record -- and I would suggest, Senator Johnson, that 240.77 is probably the broadest written, public-record-inclusive definition in probably any state in the union. Clearly, a driver's license, a birth certificate qualify.

Almost any other record that could be issued. A transcript by a public college, I'm sure that's a public record. I'm sure that an ID issued by a public college is a public record.

And the manipulation of any one of those documents in any way, using that information to manipulate them for the purposes of creating a crime, is going to constitute a felony. We've now made people, every 17-, 18-, 19-, 20-year-old who goes out and changes in any way a public document so that they can qualify is now guilty of a felony.

With all due respect, Senator Johnson, I can see a very aggressive prosecutor at some point walking in and saying, Oh, this child was -- this 17-, 18-, 19-, 20-year-old was interested in drinking underage. You know something? We'll teach him a lesson. Let's make him into a felon. Let's charge him with a felony.

Senator Johnson, I'm not sure that's what you want to do. But I think that's what this statute does. And the danger that we have when we create a penal statute

with that broad a reach is that we're going to sweep in all kinds of activity that we don't think is a felony.

I agree with you, Senator Johnson, that there's a very good chance that in those instances it would not be charged. But it could be. And I think it's broad enough to do that.

I favor the concept that you've proposed, which is the alteration of public records in the commission of a felony should also be a felony. But I think to include just a crime, to include that broad a definition, and to include the broad phrase "any information in the public record," is far too broad.

I'm going to change my vote on this. I'm going to vote no.

SENATOR HEVESI: Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Mr. President, I voted for this legislation in the past. But listening to the debate now, it seems to me that Senator Dollinger's arguments here are quite valid.

And whereas in its practical application it is unlikely that in the current form that some prosecutor is going to prosecute an individual who is underage and doctored an ID or a driver's license or passport, it's possible.

And if it's possible, it's bad public policy, knowing that, to go ahead and support a bill like this, when it seems to me that redrafting the legislation to do possibly -- as Senator Dollinger suggested, that you would only have an E felony in the case of using a doctored public record in the commission of another felony offense, that may be one way out of this.

But as it stands right now, this is not a good bill in terms of its drafting. And I'm going to switch my vote from a "yes" vote last time to a "no" vote this time.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard?

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR DUANE: Thank you, Mr. President.

You know, I remain convinced that there is no justification for this legislation. Although I do have to say that I think it's unlikely that anybody would ever FOIL their own driver's license, and this bill is about FOILing.

However, be that as it may -- I also don't think that reading the bill particularly sheds any light on anything in answer to a question.

But the thing that disturbs me the most is that I debated this bill with Senator

Johnson last year, and I remember it. It was a very important moment in my life. And I am shocked that Senator Johnson doesn't remember the questions that I raised last year. But my hurt feelings notwithstanding, I'm just going to have to continue with my "no" vote, in the hope that this memory will glimmer as brightly to Senator Johnson as it has for me.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane will be recorded in the negative.

Senator Paterson, to explain his vote.

SENATOR PATERSON: Mr. President, I'm of the same mind as Senator Hevesi.

I voted for the bill last year. But clearly, under subdivision 4 of Section 86 of the Public Officers Law -- and there's nothing in here that says anything about FOILing documents -- the use of those public records as Senator Dollinger described could be used just as timidly as in some kind of a situation where some young people who shouldn't but would commit a fraud to try to get into a public establishment or something

like that; but something far less offensive, in my opinion, than a felony as it's described in this bill.

I vote no, Mr. President.

ACTING PRESIDENT MEIER: Senator Paterson will be recorded in the negative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 8 are Senators Connor, Dollinger, Duane, Hassell-Thompson, Hevesi, Montgomery, Onorato, Paterson, Schneiderman, A. Smith, and Senator Stavisky.

Ayes, 47. Nays, 11.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Maziarz.

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

Mr. President, could we lay aside for the day Calendar Number 88 and 91.

ACTING PRESIDENT MEIER: Calendars 88 and 91 will be laid aside for the day.

SENATOR MAZIARZ: Is there any

housekeeping at the desk, Mr. President?

ACTING PRESIDENT MEIER: No, the desk is clean, Senator.

SENATOR MAZIARZ: Okay, Mr. President, then there would be a motion to adjourn the Senate until February the 5th at 11:00 a.m.

But I'd also like to note that there will be a Majority conference immediately in Room 332. A Majority conference immediately in Room 332.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until February 5th at 11:00 a.m.

Majority conference in the Majority Conference Room.

(Whereupon, at 4:32 p.m., the Senate adjourned.)