NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 6, 2002

11:26 a.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 bow our heads in a moment of silence, please.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 5, the Senate met pursuant to adjournment. The Journal of Monday, March 4, 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.

The Secretary will read.

THE SECRETARY: Senator Maltese, from the Committee on Elections, reports:

Senate Print 2682, by Senator Maltese, an act to amend the Election Law;

2904A, by Senator Maltese, an act to amend the Election Law;

3065A, by Senator McGee, an act to amend the Election Law;

3670, by Senator Maltese, an act to amend the Election Law;

And 3684, by Senator Larkin, an act to amend the Election Law.

Senator LaValle, from the Committee on Higher Education, reports:

Senate Print 1103A, by Senator LaValle, an act to amend the Education Law;

2340A, by Senator LaValle, an act to amend the Education Law;

3073, by Senator Lack, an act to authorize;

4145, by Senator LaValle, an act to amend the Education Law;

4156, by Senator LaValle, an act to amend the Education Law;

And 4748, by Senator Padavan, an act to amend the Education 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 Wright.

SENATOR WRIGHT: Thank you, Madam President.

On behalf of Senator Stafford, I wish to call up Calendar Number 230, Assembly Print Number 871E.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 230, by Member of the Assembly Morelle, Assembly Print Number 871E, an act to amend the Executive Law.

SENATOR WRIGHT: I now move to reconsider the vote by which this Assembly bill was substituted for Senator Stafford's bill, Senate Print Number 5611C, on March 4th.

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

SENATOR WRIGHT: I now move the Assembly Bill Number 871E be recommitted to the Committee on Finance, and the Senate bill be restored to the order of third reading on the calendar.

THE PRESIDENT: So ordered, Senator.

SENATOR WRIGHT: Madam President, I now offer the following amendments.

THE PRESIDENT: The amendments are received, Senator.

SENATOR WRIGHT: Madam President, on page 21 I offer the following amendments to Calendar Number 269, Senate Print Number 5574A, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendments

are received, Senator Wright, and the bill will retain its place on the Third Reading Calendar.

SENATOR WRIGHT: Thank you, Madam President.

THE PRESIDENT: You're welcome.

Senator Velella.

SENATOR VELELLA: Madam President, are there any substitutions at the desk?

THE PRESIDENT: Yes, there are, Senator.

SENATOR VELELLA: Can we take them up now.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 19, Senator Lack moves to discharge, from the Committee on Judiciary, Assembly Bill Number 7298 and substitute it for the identical Senate Bill Number 2934, Third Reading Calendar 243.

On page 19, Senator Nozzolio moves to discharge, from the Committee on Investigations, Taxation and Government

Operations, Assembly Bill Number 2916 and substitute it for the identical Senate Bill Number 3839, Third Reading Calendar 247.

On page 20, Senator Kuhl moves to discharge, from the Committee on Transportation, Assembly Bill Number 906A and substitute it for the identical Senate Bill Number 706A, Third Reading Calendar 251.

And on page 22, Senator Spano moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 5657 and substitute it for the identical Senate Bill Number 2137, Third Reading Calendar 276.

THE PRESIDENT: The substitutions are ordered.

Senator Velella.

SENATOR VELELLA: May we please have the reading of the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 118, by Senator Wright, Senate Print 4029, an act to amend the Public Service Law, in

relation to unauthorized charges.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect 120 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 143, by Senator Morahan, Senate Print 1158, an act to amend the Military Law, in relation to extending certain benefits.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 146, by Senator Marcellino, Senate Print 106,

an act to amend the Vehicle and Traffic Law, in relation to the enforcement of the offense of operating a motor vehicle with a suspended license.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 148, by Senator Trunzo, Senate Print 4673, an act to amend the Highway Law and the Public Authorities Law, in relation to transportation facility emergency work.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

157, by the Assembly Committee on Rules, Assembly Print Number 9289, an act to amend the Insurance Law, in relation to including references.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 165, by Member of the Assembly Galef, Assembly Print Number 3509, an act to amend the Vehicle and Traffic Law, in relation to the displaying of blue lights.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 168, by Senator Leibell, Senate Print 5083, an act to amend the Highway Law, in relation to the designation of the "AMVETS Memorial Bridge."

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 184, by Senator Volker, Senate Print 216, an act to amend the Criminal Procedure Law, in relation to sealing.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

216, by Senator LaValle, Senate Print 3266, an act to amend the Town Law, in relation to exemptions from the speed limits of fire districts.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 220, by Senator Rath, Senate Print 6051, an act to amend the Town Law, in relation to the establishment.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

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

SENATOR VELELLA: Thank you, Madam President. May we now proceed to the reading of the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 146, by Senator Marcellino, Senate Print 106, an act to amend the Vehicle and Traffic Law, in relation to the enforcement.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

184, by Senator Volker, Senate Print 216, an act to amend the Criminal Procedure Law, in relation to sealing and other dispositions of records.

SENATOR PATERSON: Explanation.

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

SENATOR VOLKER: Thank you.

Madam President, this is a bill that actually came from the City of New York. And we had held it off until we could get communication from the city, the new administration. And the new administration apparently still thinks this is a good idea.

Actually, it came from the New York City Police Department, that has a real problem in regards to sealing of records. There's a huge volume of sealing of records.

What this bill basically says is that the sealing of records continues just as it has in the past, except that if a person has been convicted of a violent felony offense. They found that, for instance, that one person apparently that was getting his records sealed had been arrested 87 times, and

actually had several violent felony offenses. And because, of course, he was arrested for a minor offense, his records were sealed.

And as they pointed out, the problem with all that is when someone is involved in such a serious offense as a violent felony offense, it really doesn't seem appropriate that that person should be treated in the same way as a person, for instance, who has had a driving while intoxicated or some comparatively -- I don't want to use "comparatively" -- minor offense.

So that's really about all this bill does. There is a process, even despite this, for getting the records sealed. But it would not be automatic, as it is now. The records wouldn't be sealed where somebody has a previous violent felony offense.

And, by the way, it's convicted. Not charged, convicted.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Volker would yield for a few questions.

SENATOR VOLKER: Sure.

THE PRESIDENT: Senator Volker does yield.

You may proceed, Senator.

SENATOR PATERSON: Senator, I agree with your description of the situation where a person who had 87 previous offenses actually was going to have their records sealed.

It's not only, in my view, inappropriate, it's just that whenever someone has such a long history of criminality, any information that would be available to give law enforcement authorities or judicial authorities an opportunity to further determine what this individual's sentence should be or what their protocol should be after being sentenced is quite valuable.

My problem with the sealing of records issue in the first place is that it's institutionalized where it didn't really start out that way.

SENATOR VOLKER: That's right.

SENATOR PATERSON: And what I think is happening now is that we're almost putting two additional processes into the law

where we need none, if you understand what I'm saying.

First we're sealing the documents, and then we're unsealing them. Don't you think it would be better if we found a better procedure to determine, you know, those situations where a person has no criminal record and they get involved in something rather minor and we don't want to blemish their record through life or cause them any kind of problem. This could be an issue if it was ever known at someone's place of business or something like that.

So obviously there is a good reason to seal records. But to me, it's spiralled out of control. And I don't know that passing this law is the best remedy.

SENATOR VOLKER: I don't think it is either, Senator. I happen to agree with you.

I think the problem is that this is one of those issues like definite sentencing. And I hate to say it, but I remember we did hearings on definite sentencing. Both the liberal people and the more conservative

people were all in favor of definite sentencing, but the problem was you had to find a middle ground as to what they meant by definite sentencing.

And I'll never forget those hearings. I mean, they went all across the state, and people were saying we ought to have definite sentencing. But in the end, the problem was we could never agree as to exactly what definite sentencing meant. And of course some more liberal people said, "Yeah, we'll have a definite sentence of one year instead of ten." And I mean, it -- I think that's the problem.

I agree with you. I think the sealing situation has sort of spiralled out of control. The New York City Police Department here I think is almost doing a stopgap measure here, sort of. They have so many sealing orders that what they want to do is take sort of the worst of the problems, which is obviously people that have violent felony offenses -- remember, these are pretty serious crimes, as you know -- and exclude them.

But it is an area I think that

should be looked at and should be revised. The difficulty, I think, is there again we will be faced with some people who want to seal just about everything, and the other people who say, "Well, there's a rational process for sealing that should be done, but in the case of where just minor offenses or comparatively minor offenses are involved."

So I happen to agree with you. I don't think this is the way necessarily to do it. But I think this is almost a stopgap measure, because there aren't -- admittedly, the number of sealing records for violent felony offenders probably is not a great many.

Because if you're a violent felony offender, you're probably going to go to jail for a long time. And it's not -- I mean, since you're in jail so long, the likelihood that you're going to get a record sealed later on is much less likely unless you're about 85 years old.

But, I mean -- and I think that's the strange part of it, in a way. The police department, if some guy or woman is in for about 30 years, for instance, and comes out,

they probably wouldn't -- if he gets a minor offense, they probably would agree to let his record be sealed.

But I think what they're talking about here is some of the really serious cases. They just don't want to be challenged on these things, because it's really a waste of time, when you come down to it.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if the Senator would continue to yield.

SENATOR VOLKER: Sure.

THE PRESIDENT: You may proceed, Senator.

SENATOR PATERSON: Madam President, Senator Volker has been very helpful in this regard. And I wondered if perhaps he would share with the other members what his understanding is relating to the discretion that judges or prosecutors have with respect to the sealing of documents as it is right now.

SENATOR VOLKER: Well, as it is right now, in some of these -- most of the

minor cases, many of them are automatically sealed. The judge actually -- the attorney can go in and just ask the judge for sealing. In some cases, it's right in the law, if I'm not mistaken, that -- obviously, you're talking about young people and things of that nature. It depends on really what it is.

And we have an interesting situation, when you think about it, where we have some people who are under 18 years old who have been convicted of violent felony offenses, so that they were eligible for sealing of all records at the time that this happened. Now they get in trouble, maybe go to jail for a long period of time, and now they come back and, if they get arrested after that, they can have their records sealed.

So it's -- the process generally is if there's any question, obviously, you can go in and get an order and have it virtually automatically sealed.

SENATOR PATERSON: Madam President, on the bill.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: I want to thank Senator Volker for illuminating this chamber, as he always does, with his understanding on knowledge on these particular issues.

And I respectfully would like to vote against this bill, even though I'm firmly in concurrence with the things that Senator Volker is saying. I want my no vote just to reflect an admonition about the process that I think needs to be changed.

Now, we had a sealing vote in here last week. That's going to be our thing for the next few weeks, sealings, I guess. And we go through these -- we did this last year with licensures for drivers and when they should be suspended, when I think there's an overall process that needs to be changed.

What we're going to do, by passing this law today, is we're going to unseal the documents we shouldn't have sealed in the first place. So we're going to add two points to the turn in justice that tries to determine whether or not we should give what really is a privilege to many citizens who are involved in

some type of altercation or circumstance whereby they technically broke the law, but it was such a violation that was so minimal that we're saying it's all the same to us, if the person does not violate the law again or there's no further action in a prescribed period of time, that we'd just as soon forget the whole thing.

And that's what sealing really is. We do it in the case of young people sometimes who we don't want these records to trail individuals and harm them through their lives.

But because it became institutionalized -- and I think it's Section 381.3 of the Criminal Procedure Law that defines the way in which a person or their lawyer can go to court and get the documents sealed -- we're now sealing cases where we need this information.

Last week we had a case about doctors and lawyers and other professionals where we'd like to know this information. My point simply is, in voting no, not that I disagree with the process, but that why don't we just do it the right way.

Which is if we feel there's information that needs to be known, let's give the judges the discretion to not allow the documents to be sealed and give the prosecutors the right to oppose it, rather than adding steps in a criminal justice system that is already wrought with complications.

THE PRESIDENT: Senator Duane.

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

THE PRESIDENT: You may proceed on the bill, Senator.

SENATOR DUANE: Thank you.

This bill says that all violent felony offenses, the records can be unsealed, even for juveniles who have been tried as adults. Which is problematic anyway; I don't think that that's appropriate. But it does mean that young people who have been tried as adults will have their records unsealed.

The other problem with this bill -- well, there's a few problems with it. This would make it so that not just law enforcement can get a look at these records but also, you know, Jane or John Smith could go and get

these -- could get information on this. Or Malcolm Smith. Or Ada Smith. Or any of the Smith family.

And I believe that this possibly could be -- the unsealing could be done on a case-by-case basis. But I think that's where the burden should be, that you have to do something special to get it unsealed, as opposed to it being unsealed across the board.

You know, someone that commits a violent crime is likely to spend a long time in prison. And someone that's committed more than one can be treated as a predicate felon and stay in prison for a very, very long time.

Now, I don't think that this -- this bill can't really be defined as a crime-fighting bill, because what it really is is an employment prevention bill. I mean, I understand if there was -- in the bill that there was a way to make it so that -- and someone that's been in prison, actually, already for any length of time can't drive a bus, can't work with children in childcare, can't work with older people, can't carry a gun. So there's a lot of things that they're

already prohibited from having.

But if a guy wants to be -- or a woman wants to be -- you know, work in an office, in a real estate firm, or is going to work in a factory, well, the employer can now look and see all this stuff, and chances are they won't get the job.

So I do think there's a bill here, and a good bill and a helpful bill in terms of making sure that bad people are put away and punished appropriately. But this is just too broad. So I'm going to vote no on it.

Thank you, Madam President.

SENATOR VOLKER: Madam President.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Very quickly, I hate it when David is right.

Seriously, he's right that we should make some much more substantial changes.

I don't agree with you on one thing, though, Tom, that, first of all, I think if the police gave the information to Malcolm Smith, it would be all right. But you've got to be careful, because it's not

legal for a police department to release information without some reason for doing it; that is, some authorization. Just because the police department has the information doesn't mean, you know, that they can release it.

But I think, you know, responsible people that have some reason could fight it out, that's true.

But what Senator Paterson says is true, that we should really -- this area has been patchworked. We know that. I mean, the problem is, though, it will probably take us a couple of years to unpatchwork it.

But what the idea of this is, and I guess where I would disagree with you, if a young person, a youth is convicted of a violent felony offense, whether they're young or not, I still think that is a reason not to automatically -- what it amounts to is automatically seal their records later on.

If for some reason -- as I say, there is a process in here by which you could actually get the records sealed anyways in certain cases. But I happen to agree that there's changes needed in this area, and we're

going to try to look into that and try to come up with some overall changes in the whole sealing process.

But I think this bill, to me, is a reasonable bill at this point.

THE PRESIDENT: Does any other member wish to be heard on this bill?

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 184 are Senators Andrews, Duane, Hassell-Thompson, and Paterson. Ayes, 50. Nays, 4.

THE PRESIDENT: The bill is passed.

Senator Velella, that completes the controversial calendar reading.

SENATOR VELELLA: Madam President, is there any housekeeping at the desk?

THE PRESIDENT: No, there isn't, Senator.

SENATOR VELELLA: Madam President, there being no further business, I move we adjourn until Monday, March 11th, at 3:00 p.m., intervening days to be legislative days.

THE PRESIDENT: On motion, Senator Velella, the Senate stands adjourned until Monday, March 11th, 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:52 a.m., the Senate adjourned.)