NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:05 p.m.

REGULAR SESSION

SENATOR SERPHIN R. MALTESE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MALTESE: The Senate will come to order.

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

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

ACTING PRESIDENT MALTESE: The invocation today will be given by His Eminence, Edward Cardinal Egan, the Archbishop of the Roman Catholic Archdiocese of New York.

On behalf of the Senate, the Lieutenant Governor, and all of us here, we wish to bid you welcome to our chamber and to our Capitol, Your Eminence.

ARCHBISHOP EGAN: Thank you very much for this opportunity and this honor. Especially, I want to thank Senator Farley. All of you have been so very kind.

I'm going to say it again, I want to thank you most sincerely for this honor. I'm delighted to be here.

Almighty and Eternal Father, we place ourselves in Your presence. We seek

Your benediction. This is a time of concern, of unrest, of insecurity here in our state and in our nation. We sense a great need of You and of Your care.

We need You to make the men and women of the great State of New York trust ever more in Your providence, be ever more courageous and ever more willing to sacrifice self for the community.

We are a nation on a mountaintop, and we are giving an example to the whole world. To be this, we must be women and men of goodwill, women and men led by political leaders whose commitment is justice and compassion.

In this time we commend to Your loving care, to Your loving embrace, the police officers, the firefighters, the emergency workers, the health care professionals who lost their lives in the crime of September 11th, and as well the citizens -- young, enthusiastic, full of hope -- who lost their lives as well.

We commend to Your care those whom they left behind and the injured as well. Let

there be no vengeance in our hearts, Lord. Let us desire justice, let us yearn for understanding and peace.

And, Lord, guide our legislators, our leaders, those who have positions of authority here in the Empire State. Give them the grace and wisdom to lead us well.

All of this we beg as we ask a very special blessing upon each of the Senators, upon their families, upon all whom they love and all who love them.

Amen.

ACTING PRESIDENT MALTESE: In view of the unique situation today, the chair recognizes Senator Hugh Farley.

SENATOR FARLEY: Thank you, Mr. President.

We're very honored to have with us not only the cardinal, but a number of distinguished bishops and clergy, who I'd like to just acknowledge quickly, in the gallery.

The bishop from the largest diocese in the United States, Bishop Daily of Brooklyn. Bishop Daily, welcome.

Bishop Barbarito, the bishop of

Ogdensburg. Welcome, Bishop.

And our beloved bishop from Albany, Howard Hubbard, who is with us.

Bishop Sullivan, the auxiliary bishop of Brooklyn. And Bishop Lagonegro, auxiliary bishop of New York.

We're delighted to have you here with us today. Thank you.

(Applause.)

ACTING PRESIDENT MALTESE: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 11, the Senate met pursuant to adjournment. The Journal of Sunday, March 10, was read and approved. On motion, Senate adjourned.

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

Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

ACTING PRESIDENT MALTESE:

There's an immediate meeting of the Civil Service Committee in the Majority Conference Room.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Padavan, from the Committee on Cities, reports:

Senate Print 3227, by Senator Maziarz, an act to amend the Real Property Tax Law;

And Senate Print 6275, by Senator Maltese, an act to authorize.

Senator Rath, from the Committee on Local Government, reports:

Senate Print 477, by Senator Alesi, an act to amend the Real Property Tax Law;

807, by Senator Wright, an act to amend the Real Property Tax Law;

1226, by Senator Maziarz, an act to amend the General Municipal Law;

1455A, by Senator Rath, an act to amend the Real Property Tax Law;

1457A, by Senator Rath, an act to amend the General Municipal Law;

2083, by Senator LaValle, an act authorizing;

2457, by Senator Morahan, an act to amend the Real Property Tax Law;

2533B, by Senator Libous, an act to amend the Real Property Tax Law;

3093A, by Senator Volker, an act to amend the Real Property Tax Law;

3210A, by Senator Volker, an act to amend the Real Property Tax Law;

3325B, by Senator Kuhl, an act to amend the Real Property Tax Law;

3951, by Senator Morahan, an act to amend Chapter 415 of the Laws of 1998;

5042A, by Senator Saland, an act to amend the Real Property Tax Law;

5326, by Senator Rath, an act to amend the General Municipal Law;

5444, by Senator Rath, an act to amend the County Law;

5840, by Senator Marcellino, an act to amend the Real Property Tax Law;

6048, by Senator Rath, an act to

amend the General Municipal Law;

6162, by Senator Rath, an act to amend the Local Finance Law;

6212, by Senator Meier, an act to amend the Real Property Tax Law;

6281, by Senator Johnson, an act to amend the Local Finance Law;

And 6300, by Senator Leibell, an act to amend the Town Law.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 1039, by Senator Larkin, an act to amend the Vehicle and Traffic Law;

2147A, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

2721, with amendments, by Senator Padavan, an act to amend the Vehicle and Traffic Law;

5027, by Senator Trunzo, an act to amend the Public Authorities Law;

6319, by Senator Bonacic, an act to amend the Highway Law.

Senator Morahan, from the Committee on Veterans and Military Affairs, reports:

Senate Print 197A, with amendments, by Senator Morahan, an act to amend the Tax Law;

370A, by Senator Morahan, an act to amend the Military Law;

499, by Senator Morahan, an act to amend the Real Property Tax Law;

4023B, by Senator Morahan, an act to amend the Public Health Law;

And 4736A, by Senator Morahan, an act to amend the Public Officers Law.

Senator Saland, from the Committee on Children and Families, reports:

Senate Print 395, by Senator Saland, an act to amend the Family Court Act;

399, by Senator Skelos, an act to amend the Family Court Act;

850A, by Senator Balboni, an act to amend the Family Court Act;

3433, by Senator Saland, an act to amend the Family Court Act;

3778, by Senator Saland, an act to amend the Family Court Act;

4874, by Senator McGee, an act to amend the Executive Law;

And 4893, by Senator Saland, an act to amend the Domestic Relations Law.

All bills ordered direct to third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Wright, on page 9 I offer the following amendments to Calendar 105, Senate Print 4030, and I ask that that bill retain its place on the Third Reading Calendar.

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

Senator Padavan, we have substitutions.

SENATOR PADAVAN: Please make them.

ACTING PRESIDENT MALTESE: The Secretary will read.

THE SECRETARY: On page 6, Senator Larkin moves to discharge, from the Committee on Aging, Assembly Bill Number 6527 and substitute it for the identical Senate Bill Number 3405, Third Reading Calendar 50.

On page 16, Senator Stafford moves to discharge, from the Committee on Finance, Assembly Bill Number 871F and substitute it for the identical Senate Bill Number 5611D, Third Reading Calendar 230.

On page 18, Senator Seward moves to discharge, from the Committee on Transportation, Assembly Bill Number 9181 and substitute it for the identical Senate Bill Number 5583, Third Reading Calendar 254.

And on page 22, Senator LaValle moves to discharge, from the Committee on Finance, Assembly Bill Number 6603 and substitute it for the identical Senate Bill Number 3291, Third Reading Calendar 297.

ACTING PRESIDENT MALTESE:

Substitutions ordered.

Senator Padavan.

SENATOR PADAVAN: Yes. May we please adopt the Resolution Calendar, with the exception of Resolutions 4317 and 4357.

ACTING PRESIDENT MALTESE: All in favor of adopting the Resolution Calendar, with the exception of Resolutions 4317 and 4357, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MALTESE: Opposed, nay.

(No response.)

ACTING PRESIDENT MALTESE: The Resolution Calendar is adopted.

Senator Padavan.

SENATOR PADAVAN: Yes, may we please have the title read on Resolution 4317 and move for its immediate adoption.

ACTING PRESIDENT MALTESE: The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 4317, memorializing Governor George E. Pataki to proclaim Wednesday, May 16, 2002, as

Amyotrophic Lateral Sclerosis Awareness Day in New York State.

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

(Response of "Aye.")

ACTING PRESIDENT MALTESE: Opposed, nay.

(No response.)

ACTING PRESIDENT MALTESE: The resolution is adopted.

Senator Padavan.

SENATOR PADAVAN: Senator Leibell would like this resolution opened up for sponsorship by the body. Those who are not interested, please indicate so by notifying the desk.

ACTING PRESIDENT MALTESE: The resolution is open for cosponsorship. If you do not wish to be a cosponsor, please notify the desk.

Senator Padavan.

SENATOR PADAVAN: May we please have the title read on Resolution 4357 and move for its immediate adoption.

ACTING PRESIDENT MALTESE: The Secretary will read.

THE SECRETARY: By Senator Maziarz, Legislative Resolution Number 4357, commemorating the 30th anniversary of the Elderly Nutrition Program.

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

(Response of "Aye.")

ACTING PRESIDENT MALTESE: Opposed, nay.

(No response.)

ACTING PRESIDENT MALTESE: The resolution is adopted.

Senator Padavan.

SENATOR PADAVAN: Senator Maziarz would offer this resolution to be cosponsored by all those in attendance. And if you do not wish to do so, please notify the desk.

ACTING PRESIDENT MALTESE: The resolution is open for cosponsorship. As Senator Padavan has said, if you do not wish to be a cosponsor, please notify the desk.

Senator Padavan.

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

ACTING PRESIDENT MALTESE: The Secretary will read.

THE SECRETARY: Calendar Number 9, by Senator Wright, Senate Print 2198, an act to amend the Penal Law, in relation to assault with a noxious material.

ACTING PRESIDENT MALTESE: Read the last section.

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

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MALTESE: The bill is passed.

THE SECRETARY: Calendar Number 153, by Senator Saland -

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT MALTESE: The bill is laid aside.

THE SECRETARY: Calendar Number 158, by Senator Skelos, Senate Print 425, an act to amend the Agriculture and Markets Law, in relation to detection dogs.

ACTING PRESIDENT MALTESE: Read the last section.

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

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MALTESE: The bill is passed.

THE SECRETARY: Calendar Number 166, by Senator Velella, Senate Print 4280, an act to amend the Vehicle and Traffic Law, in relation to the reporting of accidents.

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT MALTESE: The bill is laid aside.

THE SECRETARY: Calendar Number 189, by Senator Libous, Senate Print 1989A, an act to amend the Penal Law -

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT MALTESE: The bill is laid aside.

THE SECRETARY: Calendar Number 191, by Senator Kuhl, Senate Print 2215, an act to amend the Penal Law, in relation to criminal possession.

ACTING PRESIDENT MALTESE: Read the last section.

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

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MALTESE: The bill is passed.

THE SECRETARY: Calendar Number 193, by Senator McGee, Senate Print 3520A -

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT MALTESE: The bill is laid aside.

THE SECRETARY: Calendar Number 230, substituted earlier today by Member of the Assembly Morelle, Assembly Print Number

871F, an act to amend the Executive Law and the Estates, Powers and Trusts Law.

ACTING PRESIDENT MALTESE: Read the last section.

THE SECRETARY: Section 18. This act shall take effect on the first day of the first month next succeeding the 90th day.

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MALTESE: The bill is passed.

THE SECRETARY: Calendar Number 242, by Senator DeFrancisco, Senate Print 438, an act to amend the Surrogate's Court Procedure Act, in relation to computation.

ACTING PRESIDENT MALTESE: Read the last section.

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

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MALTESE: The bill is passed.

THE SECRETARY: Calendar Number 250, by Senator Nozzolio, Senate Print 6180, an act to amend Chapter -

SENATOR CONNOR: Lay it aside.

ACTING PRESIDENT MALTESE: The bill is laid aside.

THE SECRETARY: Calendar Number 252, by Senator Padavan, Senate Print 1219A, an act to amend the Vehicle and Traffic Law and the Administrative Code of the City of New York, in relation to the conversion.

ACTING PRESIDENT MALTESE: Read the last section.

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

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MALTESE: The bill is passed.

THE SECRETARY: Calendar Number

254, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 9181, an act to amend the Vehicle and Traffic Law, in relation to indemnity.

ACTING PRESIDENT MALTESE: Read the last section.

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

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MALTESE: The bill is passed.

THE SECRETARY: Calendar Number 255, by Senator Trunzo, Senate Print 6239, an act to amend the Vehicle and Traffic Law, in relation to the issuance.

ACTING PRESIDENT MALTESE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 180th day.

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MALTESE: Recognize Senator Trunzo.

SENATOR TRUNZO: Mr. President, I'd like to open up this particular bill to all members of the Senate if they wish to join in on it.

ACTING PRESIDENT MALTESE: As was the case previously, if you don't want to be on the bill, please indicate it to the desk. Everyone will be added.

Thank you, Senator Trunzo.

The Secretary will announce the results.

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MALTESE: The bill is passed.

THE SECRETARY: Calendar Number 259, by Senator Kuhl, Senate Print 2651, an act to amend the Education Law, in relation to the terms of members.

ACTING PRESIDENT MALTESE: Read the last section.

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

ACTING PRESIDENT MALTESE: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MALTESE: The bill is passed.

THE SECRETARY: Calendar Number 279, by Senator Leibell, Senate Print 6243, an act authorizing extended retirement benefits.

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

Read the last section.

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

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MALTESE: The bill is passed.

Senator Skelos, that completes the reading of the noncontroversial section.

SENATOR SKELOS: Thank you, Mr. President. If we could go to the controversial calendar.

ACTING PRESIDENT MALTESE: The

Secretary will read.

THE SECRETARY: Calendar Number 153, by Senator Saland, Senate Print 2200, an act to amend the Insurance Law and the General Obligations Law.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MALTESE: Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill is a bill which we've had prior occasion to debate in this house. And what the bill does, it amends the Insurance Law and the General Obligations Law.

And that portion that amends the Insurance Law provides that the Superintendent of Insurance is to study ways to control the cost of property and liability insurance for landowners who permit the use of their lands for recreational purposes.

And the other provision is the more extensive provision, and that provision is the one that amends the current 9-103 of the

General Obligations Law which, as it stands today, enumerates about 15 different types of recreational activities from which, if you permit somebody upon your premises, your liability is limited except as otherwise enumerated in that section.

And what we do is to provide that in addition to those enumerated sections, we changed the language to provide that any recreational use including but not limited to those enumerated sections would have that similar protection.

The bill also provides that the permission of someone to come upon your property as created in this bill, or the recognition of the right of someone to come upon your property, does not in fact create public access to any and all upon your property.

This in large part is a response to the realization that there are people who wish to avail themselves of recreational opportunities in any number of venues, that the state does not have the ability to provide by way of set-asides for all of the

recreational and land uses that people would hope to have. The intent section, which is the new section that's added to this bill, reads as follows:

"The Legislature reaffirms the purpose of this section, which is to encourage property owners to make land and water areas available to the public for recreational or conservation purposes by limiting their potential liability exposure toward persons entering thereon for such purposes. That provision should be construed to accomplish those objectives."

And that certainly shortly and succinctly explains what the intent of this legislation is.

ACTING PRESIDENT MALTESE: Senator Paterson.

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

ACTING PRESIDENT MALTESE: Will you yield for a question, Senator Saland?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MALTESE: The

Senator yields.

SENATOR PATERSON: I'm a little unclear, Mr. President. Aren't there a number of recreational activities that are actually restricted now? In other words, aren't we adding to protections that already exist?

In other words, the legislation says "all recreational activities." And my question is, don't we protect some recreational activities right now for the landowner?

SENATOR SALAND: I believe what I mentioned in my opening remarks, Senator, was that there are approximately 15 categories of uses. And if you look at page 2 of the bill, they're enumerated: Canoeing, boating, trapping, hiking, cross-country skiing, et cetera.

But what we're doing here is to say, by prefacing those enumerated items, by saying "any recreational use, including but not limited to," we are permitting other recreational uses for which a landowner could open his or her property without being concerned -- assuming they gave permission,

didn't provide for a fee, were not willful or malicious in any way -- that they would be liability-free for opening their premises in that fashion.

SENATOR PATERSON: Mr. President, if Senator Saland would yield for another question.

ACTING PRESIDENT MALTESE: Senator Saland, will you yield for another question?

SENATOR SALAND: Yes, Mr. President.

SENATOR PATERSON: Senator, thank you. You've covered that first question quite extensively.

What I was really getting at was the possibility that the legislation is a little overbroad, in the sense that, for instance, right now we have a requirement about swimming pools, for instance, that we have to have a fence there.

But could the landlord assert that by putting "all recreational activities," and then a sign, that the landlord could actually have a reduced standard of care, in that the

landlord wouldn't have to build a fence around the swimming pool now? Because we have made it very clear, very concise, all recreational activities, and the landlord did give notice to any trespasser or anyone that would be crossing through the premises that this was not allowed.

SENATOR SALAND: Well, number one, I do believe that by way of building codes -- and I'm unaware of any situation to the contrary -- that if you build a swimming pool, it has to be fenced.

That fence basically is a statement, I would assume, that without permission you're not to enter. So if somebody gives you permission to enter and you enter, whatever the current law is would not be in any way, shape, or form, I believe, influenced by this.

And if for some reason or other you choose to scale that fence in the absence of permission, whatever the law is today is what the law would be under those circumstances as well.

ACTING PRESIDENT MALTESE:

Senator Paterson.

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

ACTING PRESIDENT MALTESE: Senator Saland?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MALTESE: The Senator yields.

SENATOR PATERSON: Mr. President, my understanding is the same as Senator Saland's. And I guess I gave an example that was somewhat exaggerated. Because Senator Saland is right, we already have a code for swimming pools.

But I guess I gave it as an example for something that I don't quite fathom, but something that might actually exist where there is an obviously dangerous -

SENATOR SALAND: Excuse me. Mr. President, can we have some quiet? I'm having a difficult time hearing Senator Paterson, and there's quite a bit of noise in the chamber.

ACTING PRESIDENT MALTESE: While

I appreciate the opportunity to bang the gavel, I would advise you to keep the noise down.

SENATOR PATERSON: I don't know, Mr. President. I don't get listened to in conference, in my office. I don't know why this place should be any exception.

But what I was saying is that there is a standard of care that I thought in many respects we want, as a matter of public policy, to influence on the owners of property. And if you have a dangerous, obviously -- a slippery slope or something, a ravine or something on someone's property that is somewhat hazardous, that in many respects some of the standards that we have now are there really to compel the owner to act on them.

And aren't we taking a risk by passing this legislation of putting -- of reducing that general standard of care for property owners? And even if there is trespassing or some sort of violation, we would not want for an obvious hazard to go unattended to by a property owner. And I'm

wondering how this legislation might not facilitate that.

SENATOR SALAND: Well, in the first instance, what's one of the triggers here is that there is a requirement of permission. So again, whatever the law might be vis-a-vis trespass, there would be no change in that law, Senator Paterson.

And I won't pretend to expound upon what that might be. But whatever the law would be today with regard to a trespasser would remain the law under this as well.

If your concern is that by expanding the categories through this general "any recreational use" that there will be more opportunities and more opportunities creates the possibility that there will be perhaps more incidents, potential for more incidents in which somebody may slip or trip or in some fashion run the risk of injury, I would say that probably statistically you are correct.

But the purpose of using this general language is to say that there are a variety of sporting endeavors that people engage in. All of them are not mentioned in

these 15 or so enumerated items. And as time passes, there are always new sporting activities that people wish to participate in. And we would like to encourage recreational use of property. I believe this is a means by which to do it.

Yes, there is a certain degree of assumption of risk that is involved when you go upon somebody else's property. But again, there is an element of permission required. Assumedly that there would be some degree of thought process that gets someone to that point where they want to do whatever it is they want to do on somebody else's property.

There are some provisions under which that liability protection is waived. If you accept money to let somebody come on your property, it's waived. If you do something wilfully or maliciously or some act that could be construed as such, which is obviously a higher standard than mere negligence, you similarly run the risking of having liability imposed upon you.

So there is an effort to try and recognize that people should not use the

access to their property in a fashion as to place people at risk by doing something that is so clearly and wantonly inappropriate that they should be subject to liability, and the balance of the desire to permit people to come on property and give them the opportunity to recreate -- be it in my region, along the Greenway Trails, be it anywhere in this state where people might like to get out and enjoy the vast outdoors.

ACTING PRESIDENT MALTESE: Senator Paterson.

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

ACTING PRESIDENT MALTESE: Will you continue to yield, Senator Saland?

SENATOR SALAND: Yes, Mr. President.

SENATOR PATERSON: There's been some very informative answers, Senator. I appreciate them.

On the subject of trying to encourage recreational activity, let's talk about the landowner that does, the landowner that welcomes others onto their property and

tries to keep the property in condition such that it accommodates visitors.

The question is, have we increased the standard of care for those who would invite their neighbors onto the property because they don't have a sign up, and therefore would assume all of the responsibilities that exist for all landowners at the present?

SENATOR SALAND: I don't think we've increased nor decreased the standard of care.

I think what we have done is to say that under the existing 9-103, which encourages people to avail themselves of -- or permit others to use their property, and those others to avail themselves of those opportunities, we're saying that we would like to broaden that.

Under the existing template, as it's set forth in 9-103, we're doing nothing to increase or decrease whatever the liability standards may currently be in 9-103. What we are saying is we just want more people to have the opportunity to take advantage of that.

And as I mentioned to you in my earlier remarks, if that does increase the numbers, that does increase possibilities. But assumedly, people who would avail themselves of that would be conscious of that and that would be part of the decision-making process that they would go through.

ACTING PRESIDENT MALTESE: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT MALTESE: On the bill.

SENATOR PATERSON: I'm going to eschew the opportunity to be convinced by Senator Saland today, but to comment that I thought he was quite informative and really in many respects quite persuasive and would know a lot more about the situations that are experienced by landowners than I would.

I just have a problem with a person that owns property being able to make a sign, which takes a few minutes, and protect themselves against liability seemingly forever.

And that the standard of what might have been deliberate or reckless in terms of hazardous conditions on a property, and what might be accidental, caused by a trespasser or someone that just happens to be on the property, I think is one better determined through a judicial process, as was suggested in some of the memorandums that we received from the Trial Lawyers Association, than for us to have a uniform standard that we would try to place and to in a sense broaden the meanings of Section 9-103, more so than we have at the actual present.

I really think that these are the types of situation that compel us to look at the details and the specific facts toward every case. Certainly these types of cases all would be similar, but they are all, at the same time, distinguishable.

I really would urge my colleagues that this is not exactly the way to go. I think what we could do is something that Senator Saland has been instrumental in already, which is to specify some of the recreational activities that can be forbid and

be very specific about what people can and cannot do with respect to other people's property.

ACTING PRESIDENT MALTESE: Senator Dollinger.

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

I've debated this bill previously, and I just had one other thought. I think the colloquy between Senator Saland and Senator Paterson was illuminative of the issues that this bill raises: the fundamental problems of trying to open land and the question of whether you can limit liability when people come on the land.

The only caution I have -- and I think there are -- those who have weighed in against this bill talk about the limitation of liability, which I don't generally favor. But there's one other difficulty. And that is that if someone gets hurt on the land that's posted for recreational use, the question becomes who pays the cost of their injuries and who picks up the cost of any disability that they sustain.

And I would suggest in the absence of liability insurance on the part of the landowner, or the ability to claim against the landowner and claim against the land, it seems to me that those costs get passed on to our health insurance system. And in essence what we do is we add another dimension of risk to the health insurance system that we're not willing to accord to our civil justice system.

So we in essence socialize the cost of those health insurance payments. Or, quite frankly, if there's a long-term disability, we shift the cost of long-term disability to the government, which means we're socializing the risk of someone going onto a piece of property that's posted for recreational use.

It seems to me, if you believe in personal accountability, what you should do, instead of socializing the risk and passing it on to taxpayers and to ratepayers in the health insurance system, is you should demand personal accountability, which is that the landowner whose property the person enters into should be held to a standard that says if there's a defect or a risk, they should buy

liability insurance, pay for liability insurance themselves in order to cover that risk.

We can talk about the limitation on liability from the point of view of its impact on civil litigation. But it seems to me that the consequence of this bill is that if we take the responsibility off of the individual landowner and don't hold him personally accountable, what we end up with is all being accountable through higher health insurance premiums, higher long-term disability payments through the Social Security system, and the potential risk, if there were a very severe injury, of long-term costs to our Medicaid system because someone who experienced a difficult injury may have the need for long-term care and not have the funds to support this.

This bill socializes that risk. I like the personal accountability that landowners have under current law. I'd rather keep it that way, Mr. President. I'll be voting in the negative.

ACTING PRESIDENT MALTESE: Any

other Senator wishing to be heard?

Read the last section.

THE SECRETARY: Section 3. This act shall take effect 180 days.

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MALTESE: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, I'm going to vote in the negative, and to explain my vote.

You know, there seems to be a movement nowadays to try to limit liability in many, many different sections, chipping away at the tort law concept of negligence.

And, you know, it sounds good when we are eliminating responsibility in various cases and we're supposedly cutting back on the cost of doing business or the cost of insurance. But the fact of the matter is, we are changing a system, chipping away at a system that has worked for over centuries. And the concept is that if you're negligent, you should be responsible.

And if it's recreational land or whatever kind of land, if a child goes on the land and slips and falls, hurts him or herself, and the landowner was at fault, they were negligent, it makes no sense that the negligent party not pay.

And like Senator Dollinger just mentioned, by doing this it doesn't mean someone is not going to pay, it's going to be someone else paying -- whether it be the injured party, who did nothing wrong, or whether it be society in general.

So it may sound good to chip away at the negligence system, but all the factors as to what happened would be decided by a jury in determining who should pay. And that's the system that's worked, and that's the system that should continue. And I'm against all of these bills that chip away at the very core of our tort system.

ACTING PRESIDENT MALTESE: Senator DeFrancisco will be recorded in the negative.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you,

Mr. President.

I just want to echo the sentiments echoed by Senator DeFrancisco. I think we hear this attack that, oh, the tort system is a drain on our economy, it's causing us all these problems. Well, in the last decade I think the United States economy has outperformed any economy in the history of the world. We're doing very well, we're just zipping through our latest recession. And the tort system is a part of our system of regulating our economy.

Corporate conduct -- and I say this as -- I was a defense lawyer. But I understand that, you know, corporate conduct is dictated in no small part by the awareness of potential liability. Individuals perform the way they perform, and our country is functioning pretty well.

So I really don't understand the attack on the tort system that we keep hearing about. I think the system is working pretty well in this area of law. And I vote no. And I urge everyone to take seriously these remarks as we proceed forward, because we will

see more so-called tort reform bills as the session progresses.

Thank you.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 153 are Senators Andrews, Brown, Connor, DeFrancisco, Dollinger, Duane, Hassell-Thompson, Ms. Krueger, Lachman, Morahan, Onorato, Paterson, Sampson, Schneiderman, M. Smith, and Senator Stavisky. Also Senator Santiago. Ayes, 41. Nays, 17.

ACTING PRESIDENT MALTESE: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 166, by Senator Velella, Senate Print 4280, an act to amend the Vehicle and Traffic Law, in relation to the reporting of accidents.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MALTESE: Senator Velella, an explanation has been

requested.

SENATOR VELELLA: Thank you, Mr. President.

This bill provides police officers with the same level of protection as firefighters regarding their personal driving abstracts when responding to emergency calls.

ACTING PRESIDENT MALTESE: Senator Dollinger.

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

I voted against this bill last year, I think at the end of a debate with Senator Velella about why the police were - frankly, why firemen were singled out for this treatment under the Vehicle and Traffic Law. Which I understand, if it occurs during the operation of a vehicle or, in the case of the police, where such accident occurred during the emergency operation as defined by Section 114.

My concern is with the definition of emergency and the conduct of police who are driving motor vehicles in response to, quote, emergencies. I think that the -- frankly, the

police, irrespective unless there's a danger of personal harm, should be subjected to the same rules as everyone else, which is that they must exercise reasonable conduct under the circumstances.

And if they fail to exercise reasonable conduct under the circumstances, whether they're going to an emergency or not -- and an emergency, I would concede, changes the reasonableness of the conduct, in the sense that the greater the emergency, the more or less reasonable they have to be because of the importance of the police arriving on time.

But quite frankly, I think that decision ought to be left to a case-by-case basis rather than making a categorical exclusion, such as this bill does.

So for that reason, Mr. President, I believe I voted against the bill last year. I'm going to vote against this bill again this year, even though I may be the only member of the Senate that does.

ACTING PRESIDENT MALTESE: Any other Senator wishing to speak on the bill?

Then the debate is closed.

Read the last section.

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

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT MALTESE: The bill is passed.

THE SECRETARY: Calendar Number 189, by Senator Libous, Senate Print 1989A, an act to amend the Penal Law, in relation to the provision.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MALTESE: Senator Libous, an explanation has been requested.

SENATOR LIBOUS: Thank you.

Mr. President, this bill, which I believe Senator Dollinger and I discussed a year ago -- and, Senator Dollinger, if you would indulge me just to get my paperwork

together here -- is what we refer to as the keg bill. And what it does is it creates the crime of unlawfully providing a child with a large quantity of alcohol, to a Class E felony.

The bill has been one that has come before this house on a number of occasions in the past. It has been in response to a number of alcohol-related situations over the years, both in upstate New York, New York City, and on Long Island, where adults who were not responsible, over the age of 21, were purchasing large quantities of alcohol at parties for minors. And in a couple of cases that were highlighted by the New York Times, both on Long Island and in the city and upstate, unfortunately, young people were killed after those parties.

It seems to be somewhat of an epidemic that occurs particularly around prom time, in the summertime. It is an issue that has caused us a lot of concern and problem. This house has passed the bill on a number of occasions.

And I know that, Senator Dollinger,

last year you were very concerned about a particular point, about the immunity provision. And I shared with you that we eliminated that last year on a couple of key factors.

The good news this year, I believe, that after this house passes it -- I have a letter of support from the New York State Trial Lawyers, which I am thrilled about, because that opposition in the past has caused some concern in the other house. And I believe now, with the support of the New York State Trial Lawyers, that this bill will actually see the light of day and be put into law.

SENATOR DOLLINGER: Mr. President, I'll withdraw my objection and vote for the bill.

ACTING PRESIDENT MALTESE: Thank you, Senator Dollinger.

Any other Senator wishing to be heard on the bill?

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first day of November.

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MALTESE: The bill is passed.

THE SECRETARY: Calendar Number 193, by Senator McGee, Senate Print 3520A, an act to amend the Penal Law, in relation to the minimum sentence.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT MALTESE: Senator McGee.

SENATOR McGEE: Yes, sir. This bill amends the Penal Law to eliminate sentencing distinctions between juveniles and adults convicted of murder in the second degree.

The Penal Law increases the minimal sentence that must be served by a juvenile offender convicted of murder in the second degree from 5 to 9 years to 15 to 25 years.

ACTING PRESIDENT MALTESE:

Senator Duane, why do you rise?

SENATOR DUANE: I'm wondering if the sponsor would yield.

ACTING PRESIDENT MALTESE:

Senator McGee, will you yield for a question?

SENATOR McGEE: Yes, I will.

ACTING PRESIDENT MALTESE:

Senator McGee will yield.

SENATOR DUANE: Thank you.

Where would the juveniles go when sentenced under this bill? To a DOCS facility or a juvenile facility?

SENATOR McGEE: I assume that place would be determined by the judge.

SENATOR DUANE: I'm sorry, Mr. President, I couldn't hear the answer.

ACTING PRESIDENT MALTESE: It would be determined by a judge.

Would you speak -

SENATOR McGEE: I said I assume that determination would be made by the judge. I assume it would be a DOCS, Department of Corrections, facility.

ACTING PRESIDENT MALTESE:

Senator Duane, were you able to hear that?

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

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

SENATOR McGEE: Certainly. Absolutely.

ACTING PRESIDENT MALTESE: Senator Duane, Senator McGee will continue to yield.

SENATOR DUANE: I'm wondering whether DOCS has taken a position on this bill.

SENATOR McGEE: I'm truly not aware of whether DOCS has been asked to take a position on the bill.

May I give you a background on the bill, Senator Duane? I'd just like to give you a background.

On Mother's Day of 1999, Penny Brown, who was a wife, a mother, and a nurse, went for a jog with her two dogs along a recreational trail near her home in Salamanca. She never came home. It was on Mother's Day;

she never came home. The police found her body the next day, buried under leaves and debris. Penny had been raped and strangled with a dog leash.

Police questioned a 15-year-old with a cut hand who had been lingering around the crime scene. He made a statement that he had committed the crime, and later DNA and fiber evidence confirmed that he was the killer.

The juvenile offender, who showed no remorse during the entire process, was tried as an adult. During the sentencing the judge called the perpetrator a sexual predator and lamented that even though the murderer was tried as an adult, he could not be sentenced as an adult under current law.

The judge gave the perpetrator the maximum sentence, nine years to life. And with time served, it's possible the killer could be released in as early, as few years as eight years.

This bill changes it so a juvenile who commits an adult, vicious crime will serve the adult time.

ACTING PRESIDENT MALTESE: Senator Duane.

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

ACTING PRESIDENT MALTESE: Senator McGee, will you continue to yield?

SENATOR McGEE: Yes, I will.

ACTING PRESIDENT MALTESE: Senator McGee will continue to yield.

SENATOR DUANE: Has the Governor's criminal justice people -- is this a Governor's program bill?

SENATOR McGEE: No, this is not a Governor's program bill. This is a people's bill, Senator Duane.

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

ACTING PRESIDENT MALTESE: Senator McGee, will you continue to yield?

SENATOR McGEE: I certainly will.

ACTING PRESIDENT MALTESE: Senator McGee will continue to yield.

SENATOR DUANE: I certainly appreciate the one case that the sponsor

cited. But I'm wondering how many juveniles a year, on average, this legislation would impact.

SENATOR McGEE: Through you, Mr. President. Unfortunately, Senator Duane, there is no registry for juvenile sex predators.

SENATOR DUANE: I'm sorry, Mr. President, I didn't hear it.

ACTING PRESIDENT MALTESE: The reply, Senator Duane, was that unfortunately there is no registry for juvenile sex predators.

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

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

SENATOR McGEE: Certainly.

ACTING PRESIDENT MALTESE: Senator McGee will continue to yield.

SENATOR DUANE: This bill is not specifically about the sex registry. It's about sentencing for juveniles; is that correct?

SENATOR McGEE: That's totally correct, Senator. I think that I've indicated to you what this bill does. It amends the Penal Law to extend -- to, in fact, allow the juvenile who is tried as an adult to receive the adult time sentence.

SENATOR DUANE: And through you, Mr. President, will the sponsor continue to yield?

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

SENATOR McGEE: Absolutely.

ACTING PRESIDENT MALTESE: Yes, Senator McGee will continue to yield.

SENATOR DUANE: I'm wondering if the sponsor believes that there's a difference between a 13-year-old who commits a crime and a 25-year-old who commits a crime.

SENATOR McGEE: If you're talking about the crime of murder, Senator Duane, the victim is dead.

SENATOR DUANE: I didn't hear the last sentence.

SENATOR McGEE: Pardon me? You can't hear that?

ACTING PRESIDENT MALTESE: Senator McGee, Senator Duane did not hear the last sentence.

SENATOR McGEE: I'm sorry. If you are talking about the crime of murder, Senator Duane, the victim is still dead no matter what the age of the perpetrator.

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

ACTING PRESIDENT MALTESE: Will you continue to yield, Senator?

SENATOR McGEE: Yes, I will.

ACTING PRESIDENT MALTESE: Senator McGee will continue to yield.

SENATOR DUANE: I just want to repeat my question, maybe in a slightly different way. I know that a person who's dead is dead no matter how old the person is who murdered them.

But I'm wondering whether the sponsor believes that there's a cognitive and emotional and developmental difference between a 13-year-old who commits a heinous crime and a 25-year-old person who commits a heinous

crime.

SENATOR McGEE: I would say the crime is still a grievous crime no matter what the age.

SENATOR DUANE: And -- so it's the same?

SENATOR McGEE: I'm not sure what -

ACTING PRESIDENT MALTESE: Senator McGee, will you continue to yield?

SENATOR McGEE: Yes, I will continue to yield.

Senator Duane, I'm not sure if you're asking me to make a psychiatric judgment or not. I am not going to do that.

I am going to tell you that there was a grievous crime that was committed, it was committed by a juvenile who was tried as an adult and sentenced as a juvenile.

Therefore, I feel that that individual who was tried as an adult should be sentenced as an adult because he committed a grievous crime.

Now, I'm not sure if you want a psychiatric evaluation on that or not.

SENATOR DUANE: Through you, Mr. President, because a 13-year-old is the same as a 25-year-old?

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

SENATOR McGEE: I certainly will. Thank you.

ACTING PRESIDENT MALTESE: Yes, Senator McGee will continue to yield.

SENATOR DUANE: Because a 13-year-old is the same as a 25-year-old?

SENATOR McGEE: Pardon me?

SENATOR DUANE: Because a 13-year-old is the same as a 25-year old?

SENATOR McGEE: I don't think so calendar-wise. You were just telling me there's a difference between them.

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

ACTING PRESIDENT MALTESE: Senator McGee, will you continue to yield?

SENATOR McGEE: Yes, I will. Thank you.

ACTING PRESIDENT MALTESE:

Senator McGee will continue to yield, Senator Duane.

SENATOR DUANE: Have the district attorneys weighed in on this bill?

SENATOR McGEE: I don't think that I have anything on the district attorneys. I don't think we have anything from that.

The judge has, of course, expressed his outrage at the fact that he could only sentence this individual to a juvenile's time.

ACTING PRESIDENT MALTESE: Senator Duane.

SENATOR DUANE: I think I'll just speak on the bill, Mr. President.

ACTING PRESIDENT MALTESE: On the bill, Senator Duane.

Thank you, Senator McGee.

SENATOR DUANE: I -- I think it's a disgrace that we would be talking about sending 13-year-olds to adult prisons, to sentence them to adult prisons to serve adult time. I mean, I realize that most likely the first three years of their sentence would be in a juvenile facility.

But then to sentence a 13-year-old to life imprisonment in an adult facility for something they did when they were 13 years old? I -- just in good conscience, I could not possibly support that.

There is a huge difference, and I can't imagine how anybody could deny the difference between the emotional level, the psychological level, the maturity level of a 13-year-old and someone who is an adult. A 13-year-old is not an adult.

Yes, a 13-year-old is capable of doing something terrible. But a 13-year-old is not capable of understanding the full consequences of their action. And for us to think that in any way that a piece of legislation like this would be a deterrent is completely and totally and utterly absurd.

Would we now have classes in seventh grade saying that, you know, if you murder someone you'll be sentenced to life in Sing Sing? It's just completely ridiculous that we would treat 13-, 14-, 15-year-olds the same way that we would treat 25-year-olds.

I don't care how frustrated a judge

is. I don't care, you know, under what misguided emotions people of the state of New York would support such a mean-spirited, regressive piece of legislation. I mean, apparently the Governor doesn't support this. I can't even imagine the DAs would support this legislation.

You know, the only people that support these ridiculous tough-on-youth crime bills are politicians. Nobody else who works in the field of criminal justice with young people supports sending 13-year-olds to Sing Sing. It's completely ridiculous.

And I don't even think if we had a public hearing on this, which I'm sure we didn't, that there would be many people coming to testify in favor of it. I think there would be plenty more testimony in opposition to it.

So, you know, those of you who have children, do you really think that a 13-year-old child is emotionally and psychologically and intellectually the same as a 25-year-old? I don't think so.

So I really think we should send a

message and stop this pathetic pandering and don't vote for this bill.

Thank you.

ACTING PRESIDENT MALTESE: Senator Volker.

SENATOR VOLKER: Mr. President - let me say to you, Senator Duane -- and I understand what you're talking about is the average 13- or 14-year-old. And I don't think you've met some of these young 13- and 14-year-olds.

If you look at this statute, the amendment of this statute, it goes back to 1978. And I guess it doesn't surprise - there's a couple of us here who were there then -- the esteemed chairman of Finance; of course Senator Marchi, who's been here for a few years -- a number of us. And it resulted from some of the most heinous crimes that any of us had ever seen, committed by 13- and 14-year-olds.

One 14-year-old -- who I met, by the way, I met from a distance because you can't get too close to them -- he killed, he admitted the murder of 14 people in New York

City. It brought on some enormous changes in the law. But the same people that you're talking about couldn't imagine the possibility that this person would have the cognitive ability to understand as a 25-year-old.

I can tell you, I've met many 25-year-olds who didn't have the cognitive ability of some of the 13- and 14-year-olds. And they were very bright kids, but they were vicious killers.

Now, the killing that Senator McGee is talking about was a vicious killing by somebody who had a background of a great many problems. You can have all the public hearings you want. And yes, there will be people who will come in that will say, "Oh, my God, we can't do this," in a vacuum.

This is not a vacuum. These are real people in a real world, and we have to deal with real values and real problems.

There are young people today who have become adults at about 12, unfortunately, because of the circumstances that they're in. They're many times more vicious in some cases, maybe, than some of the serial killers that we

deal with. I think the answer is certainly the average 13-year-old, 14-year-old, 15-year-old will not be tried in adult courts. That's just not going to happen.

And by the way, we don't put 13-, 14-, 15-year-olds in Sing Sing with the normal adult prisoners, I can assure you. Although the one fellow that's involved here that I told you killed 14 people, they had to keep him in isolation anyways for lots of other reasons, because there were a lot of people who wanted a piece of him, if you know what I mean, in prison.

I think, you know, when we look at viciousness and crime, it's very hard for us, and for all of us -- and for me too, because I'm a little away from it, from the time that I was out on the streets. But I can tell you this, that I had to deal with people who you wouldn't dare turn your back on. They weren't the normal people, but unfortunately they were people who you knew, maybe personally, but you also know that if you gave them the opportunity, they would kill you.

And it isn't necessarily the

deterrent, but there are some people that are just bad enough, maybe, that there's nothing more you can do with them than put them in prison, away from the general population. It's a shame that it has to be that way, but maybe that's the only answer.

And maybe at some point if they're in prison and they get some help, maybe - maybe they can get out and be productive citizens. Because we are churning out now, by the way -- when I say "churning out," our system is putting more people out into the community than at any time in our history, through our shock incarceration and all the rest of those things.

But there's some people who are nasty enough and vicious enough that there really isn't much you can do. And those are the people that we are so concerned about. And I know that's what Senator McGee's bill is looking at.

The vast majority of people who are looked at, 13-, 14-, and 15-year-olds, to see whether they should be in the adult system are just put in the juvenile system, the vast

majority. Because we don't want all these people in the adult system.

But there are some people who the determination is made that they need to be in the adult system because, frankly, they're too dangerous for the juvenile system. Remember, you get into the regular juvenile system, you're going to be with other young people who they could maybe harm. So in some cases the best place for them is in the adult system.

ACTING PRESIDENT MALTESE: Any other Senator wishing to speak on the bill?

Then the debate is closed.

I'm sorry, Senator Schneiderman.

SENATOR SCHNEIDERMAN: That's okay. Thank you, Mr. President. Just very briefly.

I have strong but very mixed feelings about this particular bill. I think that the length of the sentence it requires is pretty stiff. On the other side, the sentence in the current law that it's amending I think may be a little bit on the light side.

I do think that of all of the theories of why we put people away, I think

incapacitation, which is what Senator Volker was referring to, as opposed to rehabilitation or punishment, is in some respects the most troubling, the notion that we're just -- you know, we're saying that there's nothing we can do with these people, we're just going to lock them up for as much of their lives as we can.

But I do recognize this is something that has to be dealt with. And I also must say that I echo his sentiments about some young criminals. And I do remember my own brief time working for a couple of years in a prison, there were -- some of the most terrifying people in the place were the youngest prisoners.

So I am going to vote yes, although I do think I would prefer a system with more judicial discretion and something in between the current law and the law as written in this bill.

ACTING PRESIDENT MALTESE: Any other Senator wishing to speak?

The debate is closed.

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first day of November.

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

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

SENATOR DUANE: Thank you.

I am aware that a young person is first sent to a youth facility and then sent on to an adult prison. It's still a harsh sentence for a 13-, 14- or 15-year-old.

And to mandate -- because one judge didn't have the power to do what he wanted to do, to mandate that all judges have to do what that judge would want to do in a case like that is just not a good way to legislate.

And someone who's criminally insane to the point that they're murdering people is then, you know, criminally insane and needs services of OMH. And the answer to that is not just to put them away for 25 years.

So I'm going to vote no on this bill and hope that at the point that we do some kind of juvenile justice reform we can

have a further and thoughtful dialogue on how it is that we should be treating youthful offenders in our state.

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

Announce the results.

THE SECRETARY: Ayes, 57. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MALTESE: The bill is passed.

Senator Smith, why do you rise?

SENATOR ADA SMITH: Thank you, Mr. President. I rise to ask for unanimous consent to be recorded in the negative on Calendar Number 153.

ACTING PRESIDENT MALTESE: Without objection, Senator Ada Smith will be recorded in the negative on Calendar 153.

SENATOR ADA SMITH: Thank you.

ACTING PRESIDENT MALTESE: The Secretary will read.

THE SECRETARY: Calendar Number 250, by Senator Nozzolio, Senate Print 6180, an act to amend Chapter 533 of the Laws of

2001.

ACTING PRESIDENT MALTESE: Senator Paterson.

SENATOR PATERSON: Mr. President, this bill makes a technical correction in the law. If Senator Nozzolio would please give us a brief explanation of what it actually cures, we'd be interested.

ACTING PRESIDENT MALTESE: Senator Nozzolio, for an explanation.

SENATOR NOZZOLIO: Thank you, Mr. President.

This measure clears up a technical glitch that is merely just a language issue of grammatical significance, but not much more. That was enacted, a measure that passed last year in this house, unanimously approved, enacted as Chapter 533 of the Laws of 2001.

This law was -- technical correction changes wording which -- this measure deletes two words, "other than," which language appeared in the original bill. Instead of reading that these lands are no longer used for other than public park purposes, it will read "if such lands are no

longer used for public park purposes."

ACTING PRESIDENT MALTESE: Senator Paterson.

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

ACTING PRESIDENT MALTESE: Senator Nozzolio, will you yield for a question from Senator Paterson?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR PATERSON: Considering that that's the technical change, Senator, I just want to know what effect it has on the law through the legislation, based on the change that we're making today.

SENATOR NOZZOLIO: Mr. President, this measure has no legal alteration in the - in the -- has no legal change in the measure. It is -- transfers parkland. That parkland is in the process of being transferred. It simply deletes two words, "other than," which shouldn't have been in the language of the bill in the first place.

ACTING PRESIDENT MALTESE: Thank

you, Senator Nozzolio.

Any other Senator wishing to be heard?

Then the debate is closed.

Read the last section.

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

ACTING PRESIDENT MALTESE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

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

SENATOR PATERSON: Mr. President, just to explain my vote.

I vote in favor, and I understand Senator Nozzolio's explanation. I was just trying to make sure, and I'm voting with the understanding that if the land is not used for parkland, that it reverts to the state.

That's what I thought was the purpose of it; I just wanted to make sure.

ACTING PRESIDENT MALTESE: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, may we return to the order of reports of standing committees.

I understand that there's a report from the Crime Victims, Crime and Corrections Committee at the desk. I ask that it be read.

ACTING PRESIDENT MALTESE: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Leibell, from the Committee on Civil Service and Pensions, reports:

Senate Print 407A, by Senator Volker, an act to amend the Civil Service Law;

2307, by Senator Farley, an act to amend Chapter 729 of the Laws of 1994;

2362, by Senator Leibell, an act to amend the Retirement and Social Security Law;

And Senate Print 6392, by Senator Farley, an act to amend Chapter 729 of the Laws of 1994.

All bills ordered direct to third reading.

ACTING PRESIDENT MALTESE: Without objection, all bills reported to third

reading.

Senator Kuhl.

SENATOR KUHL: Is there any housekeeping at the desk?

ACTING PRESIDENT MALTESE: No, there is not, Senator Kuhl.

SENATOR KUHL: There being no further business, Mr. President, I move we adjourn until Wednesday -- that's tomorrow - March 13th, at 11:00 a.m.

ACTING PRESIDENT MALTESE: On motion, the Senate stands adjourned until Wednesday, March 13th, at 11:00 a.m.

(Whereupon, at 4:10 p.m., the Senate adjourned.)