NEW YORK STATE SENATE

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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: With us this afternoon to give the invocation is Rabbi Shmuel M. Butman, from Lubavitch Youth Organization, in Brooklyn, New York.

RABBI BUTMAN: Thank you, Madam Chairman. Let us pray.

Our Heavenly Father, we ask You to bestow Your blessings upon all the people of this great State of New York, and upon the members of the New York State Senate.

These are the people who have suffered so much in the last seven months. Nevertheless, they have proven that the people of New York are made of a special fiber. Nothing will break them. Nothing will defeat them. The people of New York have proven that they are made out of special strength and

special inspiration. And with God's help, they are going to rebuild the city of New York and the state of New York to be even stronger than it was before.

And we ask You, our Heavenly Father, to bestow Your blessings upon the great people of the city of New York and of the state of New York, and upon this Assembly and the Senate of the State of New York, to give us strength and inspiration and to give us health and to give us the ability to serve You properly with all our might and with all our strength.

We are here also today because we are dedicating 100 days of education in honor of the Rebbe's 100th birthday, which we have done for so many years. We have dedicated days of education in honor of the Rebbe. And now it's 100 days of education in honor of 100 years of the Rebbe's birthday.

And it's the greatest gift to the Rebbe, because when the Rebbe speaks about education, he speaks about education of every child: of the American child, of the African child, of the Chinese child, of the Italian

child, of all the children of the world.

The Rebbe says we should teach our children that the world is not a jungle - these are the Rebbe's words -- the world is not a jungle, and there is an eye that sees and an ear that hears, and that we will have to render an account for everything that we are doing.

And this is why education is so important. If we educate the child when he is young, then we know that he is going to grow up to be an honest, decent, and hardworking member of our society.

I remember when I opened up another senate, a maybe less important senate, the United States Senate, in Washington. And I came to the Rebbe and I said, "I'm going to open up the United States Senate."

The Rebbe said to me, "Take a pushkeh with you, a tzedakah box, a charity box, and you should offer one dollar for charity while you are giving the prayer so that everybody would see what you are doing and everybody would know what charity has to be used for."

So I'm going to do what the Rebbe asked me to, and I'm going to offer a dollar for charity. And I'm going to ask you later if anyone wants to join me.

But I don't want you to be scared, Madam Chairman. This is not a fund-raising effort. If we were asking for funds, we would ask you for more than one dollar each.

This is an activity of doing more goodness and more kindness, an activity of doing another just thing, another act and another activity of charity.

I want you to know also that in our prayers every Saturday in our shuls we offer a special prayer for you, and we say [in Hebrew]: All those who serve the public faithfully. And we ask Almighty God for a special blessing for each and every one of you. You should have a lot of naches. Naches means fulfillment. Naches means success. Naches means contentment. You should have a lot of fulfillment and happiness in your personal lives as well as in your communal lives.

And as the Rebbe says, this is the

last generation of exile, the first generation of redemption. We hope that by doing more acts of goodness and kindness we will bring about the redemption for all people throughout the world. The redemption will bring everyone a better day to all people, regardless of race, religion, color, and creed.

And we want to end our prayer by asking Almighty God again to bestow His blessings upon each and every one of you for happiness and fulfillment in your private lives as well as in your communal endeavors.

And let us say amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Friday, March 15, the Senate met pursuant to adjournment. The Journal of Thursday, March 14, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: The Journal stands approved as read.

Senator Lachman.

SENATOR LACHMAN: It's a great pleasure to stand and say a few words about

the wonderful work of the Lubavitcher World Movement, which is based in Brooklyn but exists throughout the United States, Canada, Europe, North Africa, South Africa, Latin America, and Asia.

Usually I follow our Aristotelian philosopher, and also student of Maimonides, Senator Marchi. But since he walked in a few minutes late, I unfortunately am starting first.

The Lubavitcher World Movement has changed university campuses throughout the world. They have brought spiritual, cultural assistance, they have given housing to young people, they have given food, and of course they have given a strong religious basis to their lives. And they have done this throughout the world.

As I said before, one of the great middos, one of the great positive values of the Lubavitcher movement, which goes back hundreds of years, is of kiruv, or outreach to people regardless of income, regardless of family background. And they particularly are concerned with the well-being, the welfare,

and the spiritual growth of young people throughout the world.

So on this, the 100th birthday of the Lubavitcher Rebbe, of blessed memory, we give thanks for all that he did, and that this is continuing in a new century as well as a new generation, and we are very proud and happy that this is so.

Thank you.

THE PRESIDENT: Thank you, Senator Lachman.

Senator Paterson.

SENATOR PATERSON: Madam President, even in spite of the fact that I'm being assaulted by one of my constituents here as I try to address this chamber, I wanted to recognize the presence of Rabbi Butman and all of those connected with the Lubavitcher movement who are here today.

They're having a hundred days' celebration of education, and I would presume in honor of the hundredth birthday of Rabbi Menachim Schneerson, who passed away in, I believe, January of 1994.

Their work is not only

world-renowned, but it is celebrated all over the city. And they have an organization affiliated with the movement, the National Conference for the Furtherance of Jewish Education, which has done more than enlighten the world to the issues that affect the Jewish community, but in many ways has brought a lot of people of all faiths out of different types of oppression, particularly emotional and intellectual, from a number of different movements that disguise themselves as religion but actually are mind-control sort of avenues.

And it is very difficult sometimes for the parents of young people who become victimized by this to bring them back into a state of understanding and where they can make their own choices in life. And the National Conference for the Furtherance of Jewish Education is in the forefront of that movement.

It's always, I guess, my favorite day when we ask Rabbi Butman to come and address us, because he is always articulate and thoughtful and caring as he delivers his message.

And I couldn't go without saying that I was fortunate enough to receive an award from the National Conference for the Furtherance of Jewish Education, which interestingly enough was presented to me on, Sunday, September 9th, of last year. And it's amazing how the world has changed since I've seen some of the members from then until today.

So certainly on behalf of Senator Connor and all of us here in the Minority, particularly Senator Andrews, whose district is the one in which they reside, it's my pleasure and certainly my honor to recognize them here today, to wish them well, and to pray that they will be as successful in the next hundred years as the Rabbi was from the time of his conception through the continued work that the Lubavitcher Movement has conveyed to the world since his passing.

THE PRESIDENT: Senator Andrews.

SENATOR ANDREWS: Madam President, I rise today, along with my colleagues Senator Paterson and Senator Lachman, to give homage and respect to the

United Lubavitcher Movement.

As Senator Paterson alluded to, this organization is in my district. I have known Rabbi Butman for many years, back in the late '80s. And we worked together on many, many issues. And I know that the youth is one of the cornerstones and one of the works that he has been doing over the years with the Lubavitcher movement.

And it's indeed a pleasure to have you up here, Rabbi, and I wish you health and much more success in whatever your endeavors.

And just for the record, I'd like to also say that the Lubavitcher community are the friends and neighbors of all of the community residents of Crown Heights.

Thank you, Rabbi.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: I have to admit that I was surprised, Madam President, but pleasantly surprised to see Rabbi Butman here today, under auspices that I've had the pleasure to speak to for the last 20, 25 years or more.

I did have the pleasure, many years

ago, of meeting Rabbi Schneerson. And what a marvelous intellect, laden with degrees and sophistication, and yet having the relevance that stretches over a period of a thousand years, back to the days of Maimonides, when the world was fast asleep and there were only a few that woke up to it. And he was, I guess, the first in the long line, followed by people of other faiths at that time. This is a thousand years ago.

And it elicited the remarks and the feelings expressed by my friends Senator Lachman and Senator Paterson and -- well, just I think that you can measure a quantitative and qualitative impact that you represent, sir, by your presence here today. And it augurs well that the movement is still alive and really addressing issues that have over a millennium of experience.

And so it is dignum et justum est, we say; it's fitting and just that we do this under these circumstances. And we wish you a very productive and felicitous day here in Albany. And for me, the pleasure of seeing you from now on.

THE PRESIDENT: Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Hannon, from the Committee on Health, reports the following bills:

Senate Print 2518, by Senator Hannon, an act to amend Public Health Law;

2653A, by Senator Larkin, an act to amend the Public Health Law;

4050, by Senator Hannon, an act to amend the Public Health Law and the Education Law;

4336, by Senator Hannon, an act to amend the Public Health Law;

5031, by Senator Hannon, an act to amend Chapter 314 of the Laws of 1984;

6076, by Senator Marcellino, an act to amend the Public Health Law and the State Finance Law;

And Senate Print 6109, by Senator Bonacic, an act to amend the Public Health

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 Velella.

SENATOR VELELLA: Please recognize Senator Meier, Madam President.

THE PRESIDENT: Senator Meier.

SENATOR MEIER: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR MEIER: Madam President, may we please place a sponsor's star on my bill, Calendar Number 174.

THE PRESIDENT: So ordered, Senator.

SENATOR MEIER: Madam President, amendments are offered to the following Third Reading Calendar bills.

By Senator Marcellino, at page 17, Calendar 274, Senate Print 4754;

By Senator Maltese, at page 18, Calendar 284, Senate Print 3670;

By Senator Seward, at page 19, Calendar 294, Senate Print 3795B;

By Senator Trunzo, at page 22, Calendar 328, Senate Print 2147A.

And by Senator Maltese, at page 24, Calendar Number 345, Senate Print 6275.

THE PRESIDENT: The amendments are received, Senator Meier.

SENATOR MEIER: Madam President, I now move that these bills retain their place on the Third Reading Calendar.

THE PRESIDENT: The bills will retain their place on the Third Reading Calendar.

Senator Velella.

SENATOR VELELLA: Madam President, are there any substitutions?

THE PRESIDENT: Yes, there are, Senator.

SENATOR VELELLA: Can we please make them at this time.

THE PRESIDENT: The Secretary will read the substitutions.

THE SECRETARY: On page number 6, Senator Saland moves to discharge, from the Committee on Children and Families, Assembly Bill Number 5026A and substitute it for the identical Senate Bill Number 4231, Third Reading Calendar 68.

And on page 24, Senator Trunzo moves to discharge, from the Committee on Elections, Assembly Bill Number 2422 and substitute it for the identical Senate Bill Number 1683, Third Reading Calendar 352.

THE PRESIDENT: Senator Velella, the substitutions are ordered.

SENATOR VELELLA: Madam President, I believe there are two privileged resolutions at the desk by Senator DeFrancisco.

THE PRESIDENT: Yes, there are, Senator.

SENATOR VELELLA: May we have the titles read and move for their immediate adoption.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 4465, honoring the students of Driver Middle School in the Marcellus School District for their participation in the 49th Senate District "Good News! Good Kids!" Youth Responsibility Program.

"RESOLVED, That this Legislative Body pause in its deliberations to express congratulations to this outstanding group of students: Caitlin Griffin, Jen Young, Hannah Vaughn, Catherine Scott, Julie Kilcoyne, Jackie Lundblad, Lenora Garrison, Lauren Longo, Elily Zimmerman, Michelle Piorkowski, Kaya Liner, Kaylyn Winosky, Sarah Potter, Emmy Lou Potter, Heather Hart, Cassie Weeks, Alyssa Przydrozny, and Amanda Stessen, who have demonstrated outstanding leadership and good citizenship; and be it further

"RESOLVED, that this Legislative Body pause further to welcome the members of the Marcellus School District's Driver Middle School Girls Modified Volleyball Team to the Senate Chamber with praise and pride in

recognition of their selection as the winner of the middle school level 'Good News! Good Kids!' Award; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Coach Kathleen Kusnierczyk, Driver Middle School Girls Modified Volleyball Team."

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you.

We didn't read the entire resolution, but what it really says, all the whereases that were in the resolution were really honoring all you fine young people from Marcellus.

This group won our middle school award this year and were brought to Albany to visit us and to be honored by us because they showed outstanding leadership in providing for the less fortunate in their community by raising funds for families who maybe wouldn't have been able to have a good Christmas because of the lack of funds.

And I'm not even going to tell you the amount of money; it was a substantial

amount of money that they raised for this group of people. Something they didn't have to do. And when every day we see something bad in the paper about kids, remember there's always good news and good kids.

And you're all congratulated, and thank you very much for appearing here with us today.

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 want to wish you congratulations and continued success in your endeavors. Good celebration.

Senator Velella.

SENATOR VELELLA: Madam President, I believe there's another privileged resolution at the desk by Senator DeFrancisco. May we please the title read, and I move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 4464, honoring Catie Vaughn, a student of Marcellus High School, as a winner in the 49th Senate District "Good News! Good Kids!" Youth Responsibility Program.

"RESOLVED, That this Legislative Body pause in its deliberations to express congratulations to Marcellus High School junior Catie Vaughn, who has demonstrated outstanding leadership and good citizenship; and be it further

"RESOLVED, That this Legislative Body pause further to welcome Catie Vaughn, daughter of Lisa and Alec Vaughn, to the Senate chamber, with praise and pride in recognition of her selection as the winner of the senior high school level 'Good News! Good Kids!' Award; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to Catie Vaughn of Marcellus Senior High School."

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: This is the first year we've had this program where the winners for the senior high and the middle school were from the same school, Marcellus. So there must be either something in the water, or they're teaching things right at Marcellus High School and middle school.

Catie Vaughn is an outstanding individual. She's probably going to be sitting in these chambers one day. She had an idea after September 11th to try to help in overcoming the tragedy that everyone knows about.

Now, this is one individual. She organized a fund-raising effort for Red Cross relief in Central New York. And she made the centerpiece of this particular effort the Marcellus March for Heroes, a 5K run and a one-mile family fun run and walk. She wrote letters to local businesses to get them to participate and raised $800 in four days.

To promote the event, she was her advertising agency as well. To promote the

event, she wrote and published articles advertising the event in a local newspaper, and secured coverage on local TV. Maybe we could learn from her a little bit.

She had T-shirts designed to commemorate the race and to raise additional funds. She had 685 participants. This is a one-woman wrecking team here. And they were treated to doughnuts and cider during the run.

Due to her efforts, in three weeks she raised $2,400 for the Red Cross Relief Fund. Now, that's pretty impressive for an idea and then the follow-through from one individual. We could all take a lesson from her.

And we're very proud of you, Catie, and we're happy that your parents are here with you. There clearly are good kids and good news in our state.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Velella.

SENATOR VELELLA: Madam President, I believe there's a privileged resolution at the desk by Senator Ada Smith. I would ask that the title be read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator A. Smith, Legislative Resolution Number 4408, commending Joseph K. Robles, Jr., upon the occasion of his designation for special honor by the United Club of Bushwick at its annual dinner.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Velella.

SENATOR VELELLA: Madam President, may we proceed now to the reading of the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 21, by Senator Volker, Senate Print 1094A, an act to amend the Real Property Tax Law, in relation to a taxing district's obtaining.

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, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 45, by Senator Bonacic, Senate Print -

SENATOR VELELLA: Lay it aside for the day.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number

89, by Senator Trunzo, Senate Print 1237B, an act to amend the Vehicle and Traffic Law, in relation to minimum speed limits.

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, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 173, by Senator Lack, Senate Print 1263A, an act to amend the Labor Law, in relation to direct sellers.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 186, by Senator Balboni, Senate Print 853A, an act to amend the Civil Rights Law, in relation to confidentiality.

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, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 188, by Senator Padavan, Senate Print 1822, an act to amend the Criminal Procedure Law, in relation to the defense of guilty but mentally ill.

SENATOR PATERSON: Lay that aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 200, by Senator Maziarz, Senate Print 4714, an act authorizing certain housing authorities.

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, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 233, by Senator Wright, Senate Print -

SENATOR PATERSON: Lay that aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 236, by Senator Hoffmann, Senate Print 532, an act to amend Agriculture and Markets Law, in relation to defining dangerous dogs.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 240, by Senator Nozzolio -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 267, by Senator Farley, Senate Print 1994, an act to amend the Environmental Conservation Law, in relation to making technical corrections.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 288, by Senator Lack, Senate Print -

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 319, by Senator Rath, Senate Print 5326, an act to amend the General Municipal Law, in

relation to authorizing.

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, 56.

THE PRESIDENT: Senator Hassell-Thompson, to explain your vote.

SENATOR HASSELL-THOMPSON: No, not to explain my vote. I'm sorry, Madam President.

Did we skip Calendar Number 174? Or did I miss it?

THE PRESIDENT: That was starred by the sponsor, Senator.

SENATOR HASSELL-THOMPSON: Okay, thank you. Thank you, Madam President.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

Senator Velella.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 173, by Senator Lack, Senate Print 1263A, an act to amend the Labor Law, in relation to direct sellers.

SENATOR PATERSON: Explanation.

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

SENATOR VELELLA: Would you lay that aside for today, Madam President.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 188, by Senator Padavan, Senate Print 1822, an act to amend the Criminal Procedure Law, in relation to the defense of guilty but mentally ill.

SENATOR PATERSON: Explanation.

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

SENATOR PADAVAN: Thank you,

Madam President.

THE PRESIDENT: You're welcome.

SENATOR PADAVAN: This is, if my memory serves me correctly, the eighth time that we have considered this legislative proposal in this house.

Currently in law there are several options that relate to an individual who has been arrested for committing a crime where the issue of mental state of mind, mental illness, comes into play. The options are guilty, like any other individual who would be found such, having committed a crime. The second might be acquittal by reason of insanity, the so-called insanity defense. And the third determination could be incompetent to stand trial by reason of mental defect.

As we have seen over the years, there are instances where individuals, having been involved in a heinous act, were acquitted by reason of insanity because the jury felt that that individual obviously, obviously had some level of mental illness, and they wanted to make sure that that illness was treated.

On the other side of the coin,

we've seen individuals who were clearly incapacitated, diminished in terms of their capacity by some level of mental illness, but yet were found guilty and sent to a prison where no mandate or requirement in law for the treatment of that illness is provided.

Now, twenty other states in this country have developed a third alternative. And some of those states have had this statute on the books going back to the early '80s, twenty years or more -- states like Illinois, Pennsylvania, California, Michigan. And what they provide for is a third alternative, a third alternative in the choices of guilty or acquittal by reason of insanity. And that third alternative is guilty but mentally ill.

In the bill before you, you will see outlined in very specific terms the criteria that apply in such an instance. You will also read in the bill a mandate that if someone is found guilty but mentally ill, that care would be provided either in a state mental institution or a state prison where such facilities are available for care and treatment of that mental illness. So we take

care of both problems, potential problems.

The fundamental issue, I think, relates to the fact that many jurors are torn. They're not psychiatrists. They hear from conflicting psychiatrists, a psychiatrist for the defense, a psychiatrist for the prosecution. They are somewhat bewildered by all of the technical terms that are used during the course of those presentations.

But yet they know that the person they're looking at, who may have killed a child of their own, may have pushed a woman off a platform under a passing train, may have killed a boyfriend -- all of these incidents having occurred -- did know at that moment the result of the act, but yet at the same time they're obviously unbalanced. And they don't know what to do under the choices that they now have.

And so we provide this alternative. It's not a situation that you're going to find frequently in our judicial system. There are not that many cases that come to the surface or become a fact. But they do occur. And when they do occur, it's important that our

laws provide an appropriate remedy for that particular tragic incident.

Are there any questions, Senator?

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I think I would disappoint Senator Padavan if I didn't have any questions. So if he would be willing to yield.

THE PRESIDENT: Senator Padavan -

SENATOR PADAVAN: Yes.

THE PRESIDENT: He does yield.

You may proceed, Senator.

SENATOR PATERSON: Senator Padavan, it was actually in your explanation that I located the exact focus of the problem that I have with this legislation. And it is that, as you properly pointed out, juries are torn. They hear about these horrible crimes -- people killing their mother with a hedge-clipper, then saying that they thought their mother was the devil. That was a case that I remember working on when I was in the Queens DA's office some years ago.

But the ability of a jury to

distinguish whether or not an individual knew the difference between right and wrong, which is our legal definition of insanity -- it's not necessarily a psychiatric definition of insanity -- is a difficult undertaking, and certainly it's hard to reach.

Is it not a viable alternative for a jury, but not necessarily an accurate alternative to now, in these types of cases, presume, as the juror would, that we're going to get treatment for this person, we're going to put them in a prison that has proper psychiatric care facilities, but we're going to do it in a way by compromising what the charge to the jury is?

In other words, it's hard to tell whether or not the person knew the difference between right and wrong, so it's safer to find them guilty but mentally ill because we generally acknowledge that they are the person that caused the death of the individual for whom they are being tried for killing.

But the fact is that we're no closer to really finding out whether or not the defendant knew the difference between

right and wrong by convicting them and making them guilty but mentally ill, when in fact they may not have been able to distinguish as to what they were doing and may not really be responsible for the crime.

But my question is, aren't we giving the jury somewhat of an out by creating this crime of guilty but mentally ill?

SENATOR PADAVAN: I would not define it as an out, Senator. I would define it as an opportunity to apply an appropriate penalty for the circumstance that they are confronted with.

There are currently 159 individuals in facilities in the state of Illinois today where this particular process was followed, individuals who are receiving mental health care but where juries felt that at that moment in time they knew that the knife in their hand would kill the person or the gun that fired would kill the person or any other crime of a similar nature.

It is not allowing them a way out, but allowing for a way in, a way into a determination that makes sense. These issues

are not simple. Psychiatry is often referred to as less of a science and more of an art. And obviously psychiatrists disagree all the time.

I remember spending a whole afternoon with a psychiatrist who detailed the famous Son of Sam case and all the insights that they developed during that trial.

I've talked to the families of individuals who were outraged because someone took their child's life, then, after two years -- and was acquitted by reason of insanity -- then, after two years, brought up for review on the basis that they were now cured of their insanity and potentially would be released from a psychiatric facility back into the community.

So we've heard from all sides on this issue, and it's not a very simple one. I should also add that the bill provides that in the event an individual who is found guilty but mentally ill and placed in a facility is then subject to parole or probation, that a condition of that parole or probation would be the required level of after-care, outpatient

care.

So that you would ensure the fact that that individual, if on medication, continued to take the medication, but he certainly would be followed up so that another tragedy, as has happened, wouldn't take place. We've had cases where individuals were released after a period of time from state psychiatric facilities and then went out and killed again. We'd like to avoid that.

Is this a perfect, ultimate, ironclad solution? Well, I don't know if there are any in any parts of our law. But I think it's a sound solution. It makes sense, and it provides a framework for preventing tragedies that have indeed occurred under other circumstances.

THE PRESIDENT: Senator Paterson.

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

THE PRESIDENT: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes.

THE PRESIDENT: You may proceed

with a question, Senator.

SENATOR PATERSON: Senator, you most appropriately point out that there have been individuals who were treated and then released, when defined as insane, and were acquitted of charges related to an act that they committed in the past.

And actually, Madam President, the Senator's point is well taken, because there were actually situations, and it's written about in the renowned Supreme Court case of Jackson versus Indiana, United States Supreme Court, cite 408, where there were actually individuals who, because they were found not guilty by reason of insanity, were sent to psychiatric hospitals and it was a civil commitment -- because, remember, the person has not been convicted of a crime, so they are not a criminal.

And in many cases the psychiatrist that signed statements to the effect that they felt that the individual was cured or certainly was eligible for release did not even realize the total history of the individual and didn't know that they had

actually killed someone. They may not have been guilty, but that this actually happened.

And these are glitches that Senator Padavan aptly points out do exist sometimes in the operation of our psychiatric hospitals.

But that nonetheless, Senator Padavan, I don't think that the term "guilty but mentally ill" satisfies that problem. In other words, I think that there are other ways that we can actually deal with that.

And if a person is found guilty because they did know the difference between right and wrong, it would seem to me that we can have the appropriate psychiatric care and even, as you underline to some degree in your bill, you can follow the person's psychiatric history even to the point that when they've served their sentence, there could in a sense be a determination made as to whether or not it would be good to let this person back out on the streets.

So with the current law focusing on both sides of it, what you do with a guilty person who has a psychiatric problem or what you do with a person who is -- and I think the

correct term is "not responsible by reason of mental disease or defect" -- why can't the current system handle these cases one way or the other right now?

In other words, what does your definition that you'd like to add to the law of "guilty but mentally ill" give us that we don't have now?

SENATOR PADAVAN: Senator, first let's talk about the Indiana -- Jackson versus Indiana. That case is not to this issue. In that particular case, the judge determined the person was incompetent to stand trial. There was no trial. There was no determination of acquittal by reason of insanity or guilty. It's not really applicable to the issue we're discussing.

However, in our case, if you take a look at -- well, I bring it up because it's been in the newspapers -- let me finish, Senator, and you can go.

By the way, if you want that Supreme Court case, I have it here in front of me. You can read it, as I did, because you brought it up last year.

But in any event, let's talk about the recent terrible tragedy in Texas where a mother drowned five children. It was on trial, and the defense attempted to obtain a verdict of acquittal by reason of insanity but failed. And then that person was found guilty, that lady was found guilty.

I think it's everyone's conclusion that obviously to have committed such a heinous act, there had to be a level of mental instability. This woman was mentally ill. If that statute had been applicable in that statute, or the one we're proposing, the jury could have said she's mentally ill but guilty, and treatment and all the other safeguards would have been put in place.

As it turned out, in that state, because they're not one of the twenty that I mentioned earlier, they could only find one or the other.

It recognized the concept of diminished capacity in a determination of guilty but mentally ill. Diminished capacity meaning that you know what's going to happen as a result of what you're doing, but your

capacity to fully comprehend it and control that compulsion or whatever it might be has been diminished.

And this provides the alternative for juries to recognize that particular circumstance.

THE PRESIDENT: Senator Paterson.

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

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

SENATOR PATERSON: First of all, Senator Padavan, I was aware that the Jackson versus Indiana case dealt with the issue of whether or not the individual is competent enough to know the nature of the charges against them and whether or not they can assist in their own defense.

What I was just saying is that in dicta of that case, where a lot of those defendants were converted to civil commitment and then slipped through the cracks and got back out on the streets, the Your Honors pointed out that this had even happened in cases where the individual was found not

guilty by reason of mental disease or defect and still somehow managed to get back out on the streets.

The competency hearings which we conduct in this state, under Section 730 of the Criminal Procedure Law, are in compliance with the Jackson Supreme Court case.

But I was just pointing out that it further -- moreover, that it demonstrated the fact that there is this problem, if you have a finding of not guilty by reason of insanity, that you don't always -- you can't always track what happens to the individual even though they may be a very dangerous person.

On the second point, which is really the more dialectic point, the issue of guilty but mentally ill, I still want to aver here, Madam President, that I think it further complicates the situation. Diminished capacity is something that we have in several areas of the law, not only involving mental illness but sometimes intoxication, use of controlled substances, certainly just the mental level or IQ level, necessarily, of the perpetrator and even, in the case of children,

where there is a question as to whether or not there was full understanding of what was happening in the situation.

But as long as the person knows the difference between right and wrong, knows that there could be consequences for the act, in my opinion, under the definition in our law, they would be guilty.

Now, there might be a lot of other mitigating circumstances, as we've always allowed in our law, that a person may be guilty -- a manslaughter is a sense of murder with diminished capacity, which is heat of passion, and yet the person is still guilty, we just hold them guilty of manslaughter as opposed to murder.

My argument is guilty but mentally ill creates further complication and in many respects is going to hurt the possibility of defendants who really didn't understand what they were doing, had no idea where they were when they were cutting another human being, may not have known they were cutting a human being, may have thought they were cutting a fruit. And, I mean, it really gets as bad as

that description with some people's unfortunate mental state at the time that they commit a crime.

And so I just think that it would really be a difficult thing to ask jurors to decipher, and that they would take what would be the alternative that's offered here and deny those defendants a right to justice and even in many cases probably deny those who should have been found guilty for them to get the justice they deserve.

I think that it certainly took a lot of research, Madam President, on the part of Senator Padavan -- he's worked on this type of thing for years -- to try to further delineate a process that we've read in the newspapers in the last couple of weeks has further challenged all of us when we read these horrible cases such as what happened in Houston, Texas.

But the fact is that there really in the end were only two things that could have happened. Either the person knew what they were doing, or they weren't aware of what they were doing.

And that's why I would argue that the charge of guilty but mentally ill really would not assist us in governing through this very difficult process.

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 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 188 are Senators Andrews, Breslin, Brown, Connor, DeFrancisco, Hassell-Thompson, L. Krueger, C. Kruger, Lachman, Montgomery, Paterson, Sampson, Santiago, Schneiderman, A. Smith, M. Smith, Stachowski, and Stavisky. Also Senator Duane. Ayes, 39. Nays, 19.

THE PRESIDENT: The bill is passed.

Senator Paterson.

SENATOR PATERSON: Madam President, Senator Padavan beat me again.

(Laughter.)

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 233, by Senator Wright, Senate Print 5639, an act to amend the Public Authorities Law and the Energy Law, in relation to energy efficiency and clean energy initiatives.

SENATOR PATERSON: Explanation.

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

SENATOR WRIGHT: Thank you, Madam President.

THE PRESIDENT: You're welcome, Senator.

SENATOR WRIGHT: NYSERDA and NYPA are currently authorized by various state budget acts and the Clean Air/Clean Water Bond Act to undertake both energy efficiency and clean energy projects. This legislation would incorporate that into permanent statute.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. If the sponsor would yield for a few brief questions.

SENATOR WRIGHT: Yes, I will, Madam President.

THE PRESIDENT: Senator Wright yields.

You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. Through you, Madam President.

On the second page of this bill, in the definition of clean energy technologies, it lists "biomass" as one of the types of clean energy technologies covered under this bill.

It's my understanding that "biomass," under the current existing definitions in New York State law, also could refer to or includes within the definition of "biomass" incineration; is that correct?

SENATOR WRIGHT: It's correct that it reflects a definition of "biomass." As to whether or not that includes incineration, I'm not sure.

SENATOR SCHNEIDERMAN: Through you, Madam President, is there anything in the language of the statute that clarifies whether or not biomass would include incineration?

SENATOR WRIGHT: Not that I'm aware of, Madam President.

SENATOR SCHNEIDERMAN: Thank you. In addition to biomass -

THE PRESIDENT: First of all, Senator Wright, will you yield for another question?

SENATOR WRIGHT: Yes, I will, Madam President.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. In the same section of definition of clean energy technologies, it refers to microturbines. Some microturbines are run on diesel fuel.

Is there anything in this statute or elsewhere in the law which would make it clear that microturbines that run on diesel fuel, which are in fact not clean energy mechanisms, would be excluded from the

definition of clean energy technologies?

SENATOR WRIGHT: There's no language to that effect in this statute.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Thank the sponsor.

On the bill.

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

SENATOR SCHNEIDERMAN: I appreciate the thought behind this bill, but I do believe that it has a fatal flaw in the definition section. If we're talking about clean energy technologies, we should make very, very sure that we're not including within that definition technologies that are in fact bad for the environment.

Biomass, under the existing state law, is not really defined anywhere. In many other states, biomass includes incineration. Now, incineration is an extremely environmentally hazardous way to generate energy.

I think anyone who has been involved in dealing with opposing efforts to put incinerators in or near our districts

understands what I'm talking about. We should be passing a statute that gives people credit for something defined as clean energy technology if we're talking about incineration.

Similarly, the problem of microturbines I think is even clearer, because microturbines very often are run on diesel fuel. And that is not an environmentally safe system of producing energy.

I would suggest that -- I would urge a no vote on this bill, and I would suggest that we have a place in our existing state policies that provides a series of definitions which, if incorporated into this bill, would solve these problems. And that is in the state's nitrogen oxides state implementation plan, which has been sent on to the U.S. Environmental Protection Agency by the State of New York, by the Pataki administration.

If we use the definitions in the nitrogen oxide state implementation plan, we would not have these problems. That makes it clear that biomass does not include

incineration. It makes it clear that microturbines using diesel fuel should not be included.

We have available to us the language we need to change this bill to assure that the definition of clean energy technologies is accurate and actually reflects the state-of-the-art of clean energy technologies.

I urge that we change this bill and come back to it later in the session, adopting those standards which have already been developed and sent on to the EPA. And in the meantime, I would urge a no vote, because I think in the area of definitions this bill has a fatal flaws.

Thank you, Madam President.

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 4. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 233 are Senators Duane, Gentile, L. Krueger, Schneiderman, and also Senator Stavisky.

Ayes, 53. Nays, 5.

THE PRESIDENT: The bill is passed.

THE SECRETARY: In relation to Calendar Number 233, also Senator Hassell-Thompson recorded in the negative.

Ayes, 52. Nays, 6.

THE PRESIDENT: The bill is passed.

Senator Paterson, do you wish to be recognized?

SENATOR PATERSON: Madam President, may I be recorded in the negative on Calendar Number 233.

THE PRESIDENT: You will be so recorded as voting in the negative.

SENATOR PATERSON: Thank you.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 240, by Senator Nozzolio, Senate Print 224, an

act to amend the Correction Law, in relation to requiring.

SENATOR PATERSON: Explanation.

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

SENATOR NOZZOLIO: Thank you, Madam President.

Madam President and my colleagues, this amends the Correctional Law in relation to requiring inmates to make medical copayments. The measure has passed this body each year since 1997.

And the purpose is to ensure that the copayments are enacted, as is now the case in the Federal Bureau of Prisons. That no inmate would be denied medical treatment for their lack of ability to pay. However, it would save a cost to the taxpayers directly and indirectly, not just with inmates who utilize the services but those who are utilizing the services as a sport to minimize other work-related and other activities in the Prison.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam

President, if Senator Nozzolio would yield for a question.

THE PRESIDENT: Senator Nozzolio, do you yield for a question?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR PATERSON: Senator, what you have accomplished in the legislation is to try to distinguish between the -- is there any division between those inmates that have a capacity to pay and those that don't? And - well, I'll leave it at that. Is there any calculation as to those individuals that have the capacity to pay and those that don't?

SENATOR NOZZOLIO: Madam President, there is no means test to this in the sense that if an inmate is required to pay a $7 copayment for their medical services - this was based a few years ago on the same type of copay that most health recipients, health insurer recipients at the state level would pay.

That copayment has gone up since

this legislation has been introduced, but we have not changed the level of inmate copay. We've kept it at the $7 figure.

That I should add there are provisions in this legislation that would not deny anyone a medical treatment for lack of ability to pay. That each inmate has an account; that account is managed by the Department of Corrections. If there are insufficient funds or not sufficient funds in the account, no inmate would be docked or removed from the med lists. They certainly would be able to see a physician.

But if they did have money in their account, that account would be subject to the copayment.

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

THE PRESIDENT: Senator, will you yield for a question?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Senator Nozzolio yields.

You may proceed, Senator.

SENATOR PATERSON: Then, Senator, what I'm to understand what from what you're saying is that the medical services, if they are needed, would not be -- in other words, the inmate would not be turned away from receiving medical attention.

But on the particular individual's account, if they are not able to afford it, this would be something that they would then owe or would have to work back off of - they'd have to work back off the arrears; is that correct?

SENATOR NOZZOLIO: Yes, Madam President, Senator Paterson is correct.

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

THE PRESIDENT: Senator, do you continue to yield?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Senator Nozzolio continues to yield, Senator. You may proceed.

SENATOR PATERSON: I guess I'll

preface my question, Madam President, just by listing my concern, which is that I don't know how many resources inmates might have. So $7, or I believe now it's probably $10 for the copayment for the people who are not in a facility, the fact is that -- what do prisoners accrue? A dollar a week or whatever?

In other words, how big a hit would $7 be to an inmate if they need medical attention? And would we not put them in the same category as the uninsured -- the uninsured have rights and prisoners don't, I understand that, but where a person might refuse medical attention and perhaps compromise the safety and the health of all of the other inmates because they don't want to pay the amount to go to an infirmary and find out.

SENATOR NOZZOLIO: Madam President, in response to Senator Paterson's lengthy question, let me state the following.

That I may have been unclear to Senator Paterson, that the amount of copay is not $10, Senator, it's $7. The $10 fee, and

in some cases more than that, is the fee that state employees pay when they, the correction officers, when they have to go for medical treatment. To get a prescription, medicine or other medical treatment, they are often required to pay a copay, depending on their insurance plan. It's risen; the minimum is, I believe, $10 now.

So that the amount of copay that this measure requires is less than the copay that other state individuals covered by state medical insurance would pay.

The issue of the amount should be tempered with the fact that these same inmates have an opportunity to buy goods and services at the commissary. They buy those goods, candy, cigarettes, other items at their choice. They have money in their account if they work. Their wages are small, but they should be small; they're in prison. We're not talking about people who are not in prison for a reason. They're in prison.

And we believe that those resources that they do acquire while they are in prison should be utilized to take care of some of the

costs that are associated with incarceration.

Medical treatment is one of those costs. And that we believe that this legislation addresses a fair way to establish this type of reimbursement, in the sense that we have a copayment requirement. That requirement is not onerous. That requirement will not impede on anyone's ability to receive medical treatment.

THE PRESIDENT: Senator Paterson, do you wish to be heard?

SENATOR PATERSON: Madam President, on the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR PATERSON: I conceded in my question to Senator Nozzolio that the $7 amount, which was probably the copayment at the time Senator Nozzolio wrote the bill, is less than what the copayment is that people who are not in a facility are paying, which I estimated these days at approximately $10.

But what I was trying to get at was what was the ratio between the capacity to pay for a person who is not in a state

penitentiary and someone who actually is.

I certainly understand that going to the infirmary might be preferable to an inmate to conducting a lot of jobs or commands that are vested upon them in the facility. But nonetheless, there is a question of whether or not $7 is an exorbitant amount of money when health care is not something that just benefits the individual, it benefits everybody in that community -- in this case, not only the other inmates, but the individuals who are correction officers who are there to protect the public from these individuals.

And we wouldn't want them suffering from some type of contagious disease because an inmate who didn't want to pay the amount of money that he needs to go to the infirmary held back, rather than some system that we could set up.

Say, for instance, that the person is not shown to have an actual illness and is believed to be going to the infirmary to avoid something. The prison can handle that within its own jurisdiction and perhaps exact some

type of penalty or separated condition that could exist at that particular time. I don't know if a copayment can solve that problem as easily as it can in the actual facility.

The reason that I have a problem with this bill is that no one has ever been able to establish to me that if we have the inmates pay for dues at the commissary, which one of the other bills that we've had come before us does, if we have the inmates pay for their actual stay as if they were in a hotel, and if we then add to that that we're going to have them pay a $7 copayment for medical care, if there will even be any resources to actually do that.

Now, we're talking about individuals who have been convicted of crimes, they have committed a wrong against society and maybe sometime a specific violent act against individuals within our society. So they really don't derive very much sensitivity from myself or really anybody else.

But so that there is at least a civilized way of incarcerating them, what I would need in order to vote for this bill is a

comprehensive standard of what $7 means to somebody in an actual facility. I don't know what it means.

If they make a dollar a week, then you would have to work two months just to go to a medical infirmary to find out that you have a cold. And you might not go there. And maybe that turned out to be mononucleosis, and that could be a problem far more costly to the state.

So not because I necessarily am particularly worried about inmates, other than hoping that they're in good health, but have a great deal more concern for everybody in the facility, including visitors, perhaps, that they are in good health, I would recommend that before I could vote for this legislation, I would need a more comprehensive understanding of what that cost actually means when you are an inmate rather than just a member of society.

THE PRESIDENT: Senator Duane.

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

THE PRESIDENT: You may proceed,

Senator, on the bill.

SENATOR DUANE: I know from past debates that the copayment amount of $7 was decided because that was probably the copayment at the time that most state employees paid for their insurance plans. But to me, that's not even a particularly relevant issue. I mean, the cost -- the minimal cost is not really the issue.

One of the issues that I'm most concerned about is that government employees generally have a range of choices and can choose what the best health care policy would be for them. And let's face it, inmates do not have that kind of choice.

In previous discussions and debates I had asked, well, you know, if someone was going to pay their copay, do they get to choose their HMO. And of course that's absurd, they don't get to choose anything but the health care that's delivered to them by their being in the DOCS system.

You know, the theory of this bill is that the copayment will assist in funding the medical treatment of the inmates. Yet the

bill actually doesn't say that. So even if that's the intention, that's not what would happen if this legislation passed. The bill says that all monies collected will be made available for the operation of the correctional facility. That's on page 2, lines 5 and 6. So in fact it just goes into the general fund.

And the money could go to anything. I mean, DOCS already makes a lot of money through inmates getting a high surcharge for using the telephone and making calls home or to their loved ones. And as it is, inmates have to pay for their so-called luxury items, which really aren't luxury items, like shampoo and soap. And the prices for those things are marked up as compared to what we pay on the outside.

I understand that no inmate will be denied treatment due to the lack of their funds. But their accounts on the inside will be frozen until they're able to pay the bill. So if you're a poor inmate that doesn't have money from, you know, working in the facility or whatever amount of money you might be able

to get from home, you might defer or not get medical treatment at all because you don't want your prison bank account frozen.

Because those pennies that people make, those that make them, are really precious and go towards items like shampoo and soap. I mean, we're not even talking about cigarettes.

You know, I've been to several prisons where disabled and infirm, elderly people take up entire units. It's a large and growing population of people who are incarcerated: people who are sick and people who are old and infirm and who generally need to see doctors more often because, let's face it, our bodies start to fall apart as we get older.

And so these older inmates would always have empty bank accounts, because that money would continue to be taken out for them to continue to get health care.

You know, people are always claiming that inmates abuse sick call. And I'm sure that there are some inmates who do use sick call inappropriately. But the vast

majority of people do not.

You know, when I have taken a tour of medical facilities, and I've done that quite a bit in the system, I actually see very, very few people waiting to see doctors in the waiting rooms outside the infirmaries. And I have seen lot of empty beds in those infirmaries. So I don't really understand how it is that the myth continues that inmates frequently abuse sick call.

Also, you know, even if you didn't care about the humanity of it, which I know some people don't really care about, it's, you know, an administrative nightmare for DOCS. To collect this $7 would mean they'd have to put in a whole new system, hire lots of new people.

Can you imagine the overworked correctional officers and administration making sure that their records are accurate on collecting the dollars from inmates? I mean, it's completely ridiculous. It's, you know, something which I guess is meant to be, you know, really somewhat punitive but which actually will punish people who work within

the correctional system as much as it's going to punish people who seek to get health care.

Anyway, proponents of the bill argue that inmates deserve this. That, you know, this is part of the punishment they get by being incarcerated, and that they're having their freedom taken away. But really, anybody who's been to a prison, believe me, prisoners are not living in the lap of luxury. It's a very, very, very harsh life. And I don't really think that many people want to go to prison just, you know, for the perk of free medical care.

And plus this whole system of collecting the $7 would have to go into effect, by this legislation, within 120 days of the bill's passage, which would just be a nightmare for the Department of Corrections.

So from the humanitarian point of view, from the logistical point of view, this bill really is not worth it. And I would encourage my colleagues to vote no on it.

Thank you, Madam President.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: If the sponsor

would yield for a couple of questions.

THE PRESIDENT: Senator Nozzolio, do you yield for a question?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR STAVISKY: Through you, Madam President, what would happen if an inmate just had a simple headache? Would the aspirin cost him the $7 copayment?

SENATOR NOZZOLIO: If the infirmary, Madam President, is called into question to administer this treatment, yes, it would be.

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

THE PRESIDENT: Senator Nozzolio, will you yield for a question?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: You may proceed with a question, Senator.

SENATOR STAVISKY: What would

happen if the inmate were on Medicaid?

SENATOR NOZZOLIO: Madam President, I'm not certain I understand the question.

SENATOR STAVISKY: Madam President, through you, let me rephrase my question.

If the inmate, prior to his incarceration and sentencing, were on Medicaid, would he still have to pay the copayments? In other words, would the Medicaid follow him into prison and would he then have to continue to pay the copayments?

SENATOR NOZZOLIO: Madam President, I don't know if I can adequately respond to this hypothetical question.

I think that there may be some disability payments that follow an individual into prison. If someone was judged disabled and received funds from federal or state sources because of that disability, those may follow. But I'm not certain of all the rules.

I'd have to say generally, in most instances, Medicaid does not -- or state assistance terminates at prison. That might

not be true with federal assistance, particularly assistance that is obtained from Social Security.

The fact of the matter is, if a prisoner has an account and has money in that account, that account will be debited for each time an inmate goes to sick call.

Every time you go to the doctor, Senator, that I'm sure your doctor says that you owe the doctor a payment regardless of whether something was very wrong with you or something was not so wrong with you.

So I think that what we're asking here is the inmates to bear some economic consequence for going to sick call.

And I might also add that we're not talking about really punishing someone who has an occasional headache. Rather, we're having someone who's a headache to the prison system, by continually going to sick call to bypass other important requirements, that -- and I might add that that inmate gets in the way of others who may certainly need the services of medical providers in prison.

SENATOR STAVISKY: If the Senator

will continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Senator Nozzolio continues to yield. You may proceed.

SENATOR STAVISKY: Would there be more than one copayment if more than one procedure were involved? In other words, Madam President, if they said, "Well, we have to do an x-ray," would that be another $7?

SENATOR NOZZOLIO: Each visit, Madam President, requires a copay. That when an inmate -- if the Senator would -- I refer her to the bill. It's a short bill. That on page 1 of the bill it lists those times when copayments are required.

After the inmate logs in and schedules a visit, the inmate then will receive a statement at the end of each month showing how many visits that inmate paid to the appropriate medical provider.

I should also add, Madam President, that this provision is provided in our federal

prison system. This is not new. It's not unique. It's utilized day in and day out across this nation in our federal prison system.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR MONTGOMERY: I would like to ask a couple of questions of clarification of Senator Nozzolio.

THE PRESIDENT: Senator Nozzolio, will you yield?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: You may proceed with a question, Senator Montgomery.

SENATOR MONTGOMERY: Senator Nozzolio, it's my understanding that a person who is working in the manufacturing area of the prison industry who is at the low end of the scale -- a beginner, a beginner manufacturing employee inmate -- earns 16 cents an hour, and the top rate is 65 cents

an hour.

At 16 cents an hour, it would cost pretty much a week's salary to go to the infirmary. And if there is not enough money there to pay for the visit in the inmate's account, the account is frozen until every dollar that comes in goes toward the medical expense. Is that how it would work?

So if that is the case, assuming that an inmate may have one of the diseases that seems to be extremely prevalent in the system, throughout the system now, like hepatitis, like AIDS -- there's a very large percent of the inmate population who are suffering from AIDS. There's a very rampant outbreak of tuberculosis throughout the system. In the facility that I visited recently, there were a substantial number of disabled inmates. There were also a number of elderly, wheelchair-bound, et cetera.

So my question is -- and a number of them are unable to work, so they don't earn any money at all on their own.

So my question to you, Senator Nozzolio, is how do we treat inmates who are

suffering from these kinds of diseases that surely we in society, all of us, want to make sure that they don't spread, that they don't spread within facilities throughout our system, and certainly not to come back into society when people leave there, but they are -- based on your legislation, you want to discourage them from seeking medical care.

How, then, do we make sure that these inmates in fact receive medical care without having to be concerned that every single penny that they could possibly earn be taken for the rest of their time in prison in order for them to access the appropriate medical care based on these serious diseases that so many of the inmates now have?

SENATOR NOZZOLIO: The answer to that is very simple, Madam President. That under section 6 on page 1 of this measure, no inmate will be refused treatment for lack of ability to pay. That's very clear. It needs to be stated, evidently, time and time again in this chamber.

Let me state it one more time: That no inmate will be denied medical

treatment for their lack of ability to pay.

Also, as to Senator Montgomery's question, for someone as drastically afflicted with tuberculosis, AIDS, or the like, it's most probable that those inmates will be confined to the medical hospital that exists in virtually every prison facility in our state.

That what we're talking about here are outpatient requests, primarily. Those outpatient requests are requests that are established and that literally thousands and thousands of inmates every day are taking their leave to get medical attention. Many of those cases may be legitimate; many, I suspect, are not legitimate.

And that what this copayment does is simply provide a chilling effect to those cases that an inmate may not be a legitimate case, in terms of seeking medical address, by getting a copayment.

But clearly, if an inmate doesn't have the money in his account, he's not going to be charged if he needs the treatment. And I think if an inmate is really sick, they're

going to demand the treatment, whether or not they have to pay a copayment.

And frankly, our prisoners at the federal level are no more sick than those at the state level -- no less sick, but no more sick. And the fact of the matter is the federal system seems to be working quite well without the -- in comparison to the state, and that we have at the federal level a copayment requirement.

SENATOR MONTGOMERY: Just one last question, Madam President.

THE PRESIDENT: Senator, will you yield for a question?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR MONTGOMERY: Yes, thank you.

Senator Nozzolio, in your bill on line 15 on the first page, it says "Should an inmate not have sufficient funds in his account to cover the charges, then his account shall be frozen pending receipt of funds

sufficient to satisfy his obligation."

So it seems a little bit disingenuous to say that no one will be refused. They will not be refused, but once they receive treatment, they are obligated to pay at some point in time. Is that not true?

SENATOR NOZZOLIO: That is correct, Madam President. That's fully the intent of our legislation, to require inmates to pay for some of their medical services.

I should also add, as Senator Montgomery listed the wages that inmates make, understand, the taxpayers are certainly paying enough for prisoners with their room, their board, their custody. That I think the Senator understands how large the corrections budget is. That health care is a major component of that cost of incarceration.

This simply says that, as the federal government does, New York State wishes to qualify inmates to pay for part of their cost of incarceration, particularly those that utilize sick call on a more or less egregious basis.

SENATOR MONTGOMERY: Thank you,

Senator Nozzolio.

Madam President, on the bill.

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

SENATOR MONTGOMERY: I just want to have the record show that while Senator Nozzolio apparently views this as having the inmates pay back to the system for some of their keep and their care, it is only one small, small piece of what we do require inmates to pay back.

In fact, the inmates make all of the furniture for every agency in the State of New York, including our chairs, our desks, our wall units. They make every street sign in all of the cities and towns across the state. They make all of the highway signs in our state. They make all of the traffic signs in our state. They make the glasses for all of the Medicaid patients in our state. They train the dogs that assist disabled people in our state. And I could go on.

They have been lauded for providing assistance such as helping to build libraries and community centers and furniture for

libraries and schools across the state for those counties that otherwise would not be able to afford these things if it were not for the inmates doing it.

So I think that it is a bit disingenuous, or at least -- I should say a lot disingenuous to say that the inmates pay back nothing and that this satisfies what they should pay back. Obviously, they should pay back. I agree with that.

But I think that to say we're going to charge $7 to try to dissuade them from accessing health care because they should be paying back goes a bit far. I don't believe we need to do this. We certainly should not do this.

And I certainly, as an elected official who represents an area where a lot of the inmates come from, where they are coming back to my community, to families in my community, I don't want them to come out of a system where they have not had access to health care to the point where they are going to be infecting large numbers of people with diseases.

I think we need health care and health education and access to wellness for them so that when they return, Madam President, they return hopefully, to some extent, in good health.

So I certainly oppose this legislation, and I join the 17 other colleagues of mine who have in the past voted against this legislation. I hope they all will do it again. I certainly intend to.

Thank you.

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 2. This act shall take effect on the 120th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 240 are Senators Andrews, Duane, Espada, Hassell-Thompson, L. Krueger, Marchi,

Montgomery, Onorato, Oppenheimer, Paterson, Sampson, Santiago, Schneiderman, A. Smith, and Senator Stavisky. Ayes, 43. Nays, 15.

THE PRESIDENT: The bill is passed.

Senator Andrews, do you wish to be heard?

SENATOR ANDREWS: Madam President, I request unanimous consent to be recorded in the negative on Calendar 233, Bill S5639.

THE PRESIDENT: You will be so recorded, Senator.

SENATOR ANDREWS: Thank you.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 288, by Senator Lack, Senate Print 3073, an act to authorize the State University of New York to lease and contract.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Stavisky, why do you rise?

SENATOR STAVISKY: I have a question for the sponsor.

THE PRESIDENT: Senator Lack, will you yield for a question?

SENATOR LACK: By all means, Madam President.

THE PRESIDENT: The roll call is withdrawn.

SENATOR STAVISKY: I apologize.

THE PRESIDENT: You may proceed.

That's all right, Senator.

SENATOR STAVISKY: Through you, Madam President, if I may ask it in the form of one question.

THE PRESIDENT: You may proceed.

SENATOR STAVISKY: On page 2, lines 15 through 19, the legislation talks about "without public bidding" and then says "not to exceed in the aggregate 60 years."

May I ask why there's no public bidding and why the period of time should not exceed 60 years, when the building probably

won't last 60 years?

SENATOR LACK: Thank you, Madam President.

Yes, Senator. The bill drafted by university's counsel, of course, is for the West Village campus at the State University at Stony Brook. And it's to allow the maximum ability to attract an anchor tenant in the proposed West Village so that that tenant, who would then build and occupy the facilities, could do so for the longest period of time on terms most attractive to the state.

The competitive bidding requirement refers not to the building of the West Village, of course, but to the tenants who would become subtenants, as it were, to the anchor tenant, and to allow for the most desirable tenants in terms of what would normally be sold and utilized in such a facility in a campus not immediately connected to other commercial space that students could utilize.

It's not to exceed 60 years, giving the maximum ability of time for the university's trustees or their designated

representatives to negotiate the best deal possible for the state in finding a master tenant who would build facilities, occupy them for the maximum period of time under the lease.

SENATOR STAVISKY: Thank you, Senator Lack. That agrees with what President Kenny of Stony Brook told me last year.

And I support this legislation.

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 4. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

Senator Johnson, that completes the reading of the controversial calendar.

SENATOR JOHNSON: Is there any housekeeping at the desk?

THE PRESIDENT: No, there isn't,

Senator.

SENATOR JOHNSON: There being no further business, I move we adjourn until Tuesday, March 19th, at 3:00 p.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Tuesday, March 19th, 3:00 p.m.

(Whereupon, at 4:41 p.m., the Senate adjourned.)