NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 15, 2002

11:14 a.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will 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.)

ACTING PRESIDENT McGEE: The invocation today will be given by ourselves. In the absence of clergy, may we bow our heads in a moment of silence.

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

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, May 14, the Senate met pursuant to adjournment. The Journal of Monday, May 13, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President. On behalf of Senator Wright, please place a sponsor's star on Calendar Numbers 77, 105, and 368.

ACTING PRESIDENT McGEE: So ordered.

Senator Espada.

SENATOR ESPADA: Thank you, Madam President.

On behalf of Senator Nozzolio, on page 10, I offer the following amendments to Calendar Number 214, Print Number 2672B, and I ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT McGEE: The amendments are received and adopted, and the bill will retain its place on the Third

Reading Calendar.

SENATOR ESPADA: Also, Madam President, if I might continue, on behalf of Senator Nozzolio, on page 44, I offer the following amendments to Calendar 852, Print Number 7195A, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR ESPADA: And lastly, Madam President, if I might, on behalf of Senator Johnson, on page 60, I offer the following amendments to Calendar Number 1044, Print Number 6150, and I ask that said bill retain its place on the Third Reading Calendar.

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

Senator Morahan.

SENATOR MORAHAN: There is a privileged resolution at the desk by Senator

Nozzolio. May we please have that title read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Nozzolio, Legislative Resolution Number 5550, honoring New York State Police Senior Investigator David Gould upon the occasion of his designation by SAVAR as recipient of the Gold Award.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Morahan.

SENATOR MORAHAN: Madam President, may we please have the noncontroversial reading of the calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 59, by Senator Alesi, Senate Print 2190A, an act to amend the State Administrative Procedure Act, in relation to adjudicatory proceedings.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 180th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 339, by Senator Balboni, Senate Print 850A, an act to amend the Family Court Act and the Domestic Relations Law, in relation to the issuance of orders of protection.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 343, by Senator Saland, Senate Print 4893A, an act to amend the Domestic Relations Law and the Family Court Act, in relation to changing the denotation of "visitation."

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 457, by Senator Nozzolio, Senate Print 6444, an act to amend the Tax Law, in relation to hotel or motel taxes.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 513, by Senator Marcellino, Senate Print 6209B, an act to amend the -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 551, by Member of the Assembly Kaufman, Assembly Print Number 366A, an act to amend the General Business Law, in relation to warranty disclosure.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 629, by Senator Larkin, Senate Print 6146B, an act to amend the Economic Development Law, in relation to promoting small businesses.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 11. This

act shall take effect on the 180th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 818, by Senator Balboni, Senate Print 6171, an act to authorize the Great Neck Center for the Visual and Performing Arts, Incorporated.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2 -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 844, by Senator Trunzo, Senate Print 6814, an act to amend the Vehicle and Traffic Law, in relation to pedestrian right of way in crosswalks.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 850, by Senator Trunzo, Senate Print 7029, an act to amend the Vehicle and Traffic Law, in relation to requiring Social Security numbers.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 872, by Senator Fuschillo, Senate Print 6456, an act to amend the Penal Law, in relation to

identification.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 885, by Senator Saland, Senate Print 7126, an act to amend -

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

ACTING PRESIDENT McGEE: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 892, by Senator Skelos, Senate Print 6189, an act to amend the Correction Law, in relation to failure to register or verify.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 893, by Senator Nozzolio, Senate Print 6770, an act to amend the Correction Law, in relation to community notification.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number

948, by Senator Hoffmann, Senate Print 6511, an act to amend the Agriculture and Markets Law, in relation to the appropriation and apportionment of monies.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 970, by Member of the Assembly Schimminger, Assembly Print Number 9980, an act to amend the General Business Law, in relation to exempting.

SENATOR MORAHAN: Lay it aside for the day.

ACTING PRESIDENT McGEE: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 990, by Member of the Assembly Magee, Assembly

Print Number 10454, an act to amend the Uniform City Court Act, in relation to residency requirements.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1007, by Senator Velella, Senate Print 7329, an act to amend the Labor Law, in relation to the maintenance of payroll records.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1011, by Senator Stachowski, Senate Print 2558A, an act to amend the General Municipal Law, in relation to notification of the presence of wild animals.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1045, by Senator Volker, Senate Print 6663A, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1095, by Senator Volker, Senate Print 6679, an act to amend Chapter 672 of the Laws of 1993.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1116, by Senator Alesi, Senate Print 1131, an act to amend the Correction Law, in relation to work release programs.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1187, by Senator Stafford, Senate Print 6602, an act to amend the Education Law, in relation to state aid for certain institutions of higher learning.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT McGEE: The bill is passed.

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

SENATOR MORAHAN: Thank you, Madam President. Now may we have the reading of the controversial calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. If I could have unanimous consent to be recorded in the negative on Calendar Number 892, S6189.

ACTING PRESIDENT McGEE: So ordered. Thank you, Senator Duane.

SENATOR DUANE: Thank you.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 343, by Senator Saland, Senate Print 4893A, an act to amend the Domestic Relations Law and the Family Court Act, in relation to changing the denotation of "visitation" to "parenting time."

SENATOR DOLLINGER: Explanation, please.

SENATOR MORAHAN: Lay it aside temporarily, please.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 457, by Senator Nozzolio, Senate Print 6444, an act to amend the Tax Law, in relation to hotel or motel taxes in the County of Ontario.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 513, by Senator Marcellino, Senate Print 6209B, an act to amend the Environmental Conservation Law, in relation to idling prohibition for heavy-duty vehicles.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: Senator Marcellino, an explanation has been requested.

SENATOR MARCELLINO: Thank you, Madam President.

This bill simply puts into law that which is the regulation in force now in the state of New York. We're simply trying to expand enforcement coverage.

ACTING PRESIDENT McGEE: Senator

Kuhl.

SENATOR KUHL: Yes, Madam President. Will the sponsor yield for a question?

ACTING PRESIDENT McGEE: Senator Marcellino, will you yield for a question?

SENATOR MARCELLINO: I'll be delighted to.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR KUHL: Senator Marcellino, in the very quick reading of the bill that I had, I read it to expand this idling provision to heavy-duty trucks. Is that correct?

SENATOR MARCELLINO: It's current law now. It's current regulation now, Senator.

SENATOR KUHL: Well, then, can you tell me how trucks are able to -- well, let me back that up.

It's my understanding, Senator, that the operation of diesel engines needs some sort of an electrical outlet to keep them warm if they're not running in order for them

to start.

Now, I can view your bill as requiring a truck driver who has been on the road, say, for eight hours and is required to take some sort of a nap or rest, because there are limitations that way, pulling into a truck stop where there are no electrical outlets where they can plug into, and under your bill then being required to shut the engine down and having no way now, hours later, to start that back up.

Now, is my understanding correct of what your bill does? Because I understand that this is normal operation. And I only understand that because several years ago I had a diesel car and I had to have some sort of electrical device overnight if it was going to be started in the cold weather.

And as you know, in this particular state we do have the occasion to have weather that takes temperatures below freezing.

So I'm curious about how this bill reflects upon the motor trucking industry in the state and if it is a positive reaction to it or if it is in fact a negative one and

imposes certain kinds of obstacles that may be very, very difficult for them to respond to.

SENATOR MARCELLINO: Senator, what you say is now current reg in the state of New York at the present time. The motor truck industry is one of the memos of support. The industry supports this bill because we are simply increasing enforcement capabilities. We are not changing current reg.

At the present time, the situation you describe would be current law, the requirement of our state right now. So they would have to do what you said right now. We do have an exclusion for cold weather in this bill, under 25 degrees. There is an exclusion which is in the bill. And that is current reg as well.

SENATOR KUHL: So what you're telling me is that this bill will not have a negative effect on the motor trucking industry.

SENATOR MARCELLINO: Absolutely not, Senator.

SENATOR KUHL: Thank you, Senator.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to a question, Madam President?

ACTING PRESIDENT McGEE: Senator Marcellino, will you yield?

SENATOR MARCELLINO: Surely.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Senator, I'm going to vote in favor of this bill, I think. But my only question deals with the enforcement of this by peace officers, which is on page 3 of the bill.

The bill says that "peace officers, acting pursuant to their special duties." Could you tell me what special duties would be created for peace officers to enforce this bill?

SENATOR MARCELLINO: That would seem to be language that has been used simply by the lawyers who wrote the legislation up. I don't think there's anything extra added on here or meant to be added on to this.

SENATOR DOLLINGER: Through you,

Madam President, that's actually the reason why I asked. Because I think in other bills where we've put enforcement in the hands of peace officers, we haven't used the language "acting pursuant to their special duties."

Is there some special duty that they are given by either regulation that would allow them to enforce this particular violation?

SENATOR MARCELLINO: No. The only people who are currently enforcing the law right now are the EnCon police, and only the EnCon police. We're trying to allow all other peace officers to enforce this particular kind of regulation so we can get better enforcement and restrict idling, unnecessary idling.

So no, it doesn't add anything or give any police department any extra powers.

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

ACTING PRESIDENT McGEE: Senator Dollinger on the bill.

SENATOR DOLLINGER: I'm going to vote in favor of this bill.

But I just am intrigued by the use of the language "acting pursuant to their special duties," which suggests that somehow peace officers in and of themselves don't have the ability to enforce it, that they need a designation of special duties in order to be able to do it.

And I just don't know what that means. Maybe Senator Volker, who has lots of experience with peace officers, might know what that means. But it suggests that there's some special deputization or some special grant of power, either by regulation or some other thing.

And I know the sponsor -- if this bill gets to the Assembly or eventually gets to a conference committee or is negotiated, it would just be interesting to clarify what those special duties are.

I'll be voting in favor, Madam President.

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

Senator Paterson.

SENATOR PATERSON: Thank you,

Madam President. I'm going to be voting in favor of this bill as well. But if Senator Marcellino would just yield for a quick question.

ACTING PRESIDENT McGEE: Senator Marcellino, will you yield for a quick question?

SENATOR MARCELLINO: I'd be happy to. But I can barely hear the gentleman.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you.

SENATOR PATERSON: Madam President, I'm wondering, in terms of the delineation of the temperature, 25 degrees, that Senator Marcellino referred to in his discussion with Senator Kuhl, does that relate to the time that the vehicle is shut down, or does that relate to the time that the summons theoretically could be given?

Because in a particular situation, there might be an anticipation of a lowered temperature, but at the time that the owner of the truck stopped the truck, they might actually be in violation of the ordinance.

SENATOR MARCELLINO: Madam President, we cannot have a case of premature anticipation with respect to this bill.

The temperature has to be 25 degrees.

SENATOR PATERSON: Oh, okay.

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

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Announce the results.

Oh, Senator Duane, I'm sorry.

SENATOR DUANE: Thank you, Madam President.

I want to commend Senator Marcellino on this legislation. When I first came to the Senate, this was one of my top priorities, to get a bill similar to this one passed in the Legislature. It's been a big problem in my district. So I'm pleased that

this bill is passing the Senate.

I also notice that there isn't an Assembly sponsor. I don't believe there's an Assembly sponsor. So if I could be of help to that, finding someone, I'd be very happy to do so.

And again, I commend Senator Marcellino on this bill.

ACTING PRESIDENT McGEE: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 513 are Senators Kuhl, Mendez, Paterson, Rath, and Volker.

Ayes, 49. Nays, 5.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 818, by Senator Balboni, Senate Print 6171, an act to authorize the Great Neck Center for the Visual and Performing Arts, Incorporated.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 893, by Senator Nozzolio, Senate Print 6770, an act to amend the Correction Law, in relation to community notification procedures.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT McGEE: The bill is passed.

I'm sorry. Senator Duane.

SENATOR DUANE: Thank you, Madam

President.

I'm voting no on this bill, both because of my opposition to Megan's Law and also because if Megan's Law needs to be revisited, we should do so. But we shouldn't be doing things in a piecemeal fashion to reform Megan's Law.

So I'd like to see all the Megan's Law revisions seen in one bill, and then we can decide whether or not Megan's Law in general needs to be revisited. So I'll be voting in the negative on this one, Madam President.

ACTING PRESIDENT McGEE: The Secretary will announce the results on 893.

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

ACTING PRESIDENT McGEE: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. Could we go back to Calendar Number 457, by Senator Nozzolio.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 457, by Senator Nozzolio, Senate Print 6444, an act to amend the Tax Law, in relation to hotel or motel taxes in the County of Ontario.

ACTING PRESIDENT McGEE: Can we please have some quiet so that the Secretary can understand and hear what's going on.

Senator Dollinger.

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

ACTING PRESIDENT McGEE: Senator Nozzolio, will you yield?

SENATOR NOZZOLIO: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Is there a home-rule message on this bill, Senator Nozzolio?

SENATOR NOZZOLIO: Madam President, there is a home-rule message. It was filed the 28th day of March, 2002.

SENATOR DOLLINGER: Good enough for me. Thank you, Madam President.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. If we could return to motions and resolutions. Thank you.

ACTING PRESIDENT McGEE: Can we please have some quiet here. Thank you.

Senator Morahan.

SENATOR MORAHAN: If we could please return to motions and resolutions, I believe there's a privileged resolution by Senator Bruno at the desk. I'd like to have the title read and move for its adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 5551, commemorating the 75th Anniversary as a Mission and 50th Anniversary as a Parish of St. Mary's Roman Catholic Church of Clinton Heights, Rensselaer, New York.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Morahan.

SENATOR MORAHAN: Can we stand at ease momentarily, Madam President.

ACTING PRESIDENT McGEE: The Senate will stand at ease momentarily.

(Whereupon, the Senate stood at ease at 11:40 a.m.)

(Whereupon, the Senate reconvened at 11:45 a.m.)

ACTING PRESIDENT McGEE: Senator

Morahan.

SENATOR MORAHAN: Madam President, there will be an immediate meeting of the Majority conference in the Majority Conference Room.

ACTING PRESIDENT McGEE: Immediate meeting of the Majority in the Majority Conference Room.

SENATOR MORAHAN: And the Senate will stand at ease.

ACTING PRESIDENT McGEE: The Senate will stand at ease.

Senator Paterson.

SENATOR PATERSON: Madam President, there will be an immediate meeting of the Minority in the Minority Conference Room.

ACTING PRESIDENT McGEE: Immediate meeting of the Minority in the Minority Conference Room.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 11:46 a.m.)

(Whereupon, the Senate reconvened at 1:05 p.m.)

ACTING PRESIDENT SEWARD: Senator Skelos.

SENATOR SKELOS: Mr. President, there will be a meeting of the Rules Committee in five minutes, at ten minutes after 1:00, based upon the clock in the chamber.

ACTING PRESIDENT SEWARD: There will be a meeting of the Rules Committee at ten after 1:00, in Room 332.

SENATOR SKELOS: Yes, Mr. President. Thank you.

ACTING PRESIDENT SEWARD: While the Rules Committee is meeting, we will continue to stand at ease.

(Whereupon, the Senate stood at ease at 1:06 p.m.)

(Whereupon, the Senate reconvened at 1:27 p.m.)

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT McGEE: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Print 57B, by Senator Maltese, an act to amend the Penal Law;

6357, by Senator Wright, an act to amend the General Business Law and the Executive Law;

And Senate Print 6358, by Senator Wright, an act to amend the General Business Law.

All bills ordered direct to third reading.

SENATOR SKELOS: Move to accept the report of the Rules Committee.

ACTING PRESIDENT McGEE: The motion is to accept the report of the Rules Committee. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The motion is carried.

SENATOR SKELOS: If you would please recognize Senator Dollinger.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Madam President, there will be an immediate conference of the Minority in the Minority Conference Room.

ACTING PRESIDENT McGEE: Immediate conference of the Minority in the Minority Conference Room.

SENATOR SKELOS: Madam President.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: I have indicated to the chair that the conference would be approximately 20 minutes, so the Senate will reconvene at ten minutes to 2:00.

ACTING PRESIDENT McGEE: The Senate will reconvene at ten minutes to 2:00. Be prompt.

(Whereupon, the Senate stood at

ease at 1:31 p.m.)

(Whereupon, the Senate reconvened at 1:57 p.m.)

ACTING PRESIDENT McGEE: Senator Skelos.

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

ACTING PRESIDENT McGEE: Is there any housekeeping at the desk? Yes, there is.

SENATOR SKELOS: Please recognize Senator Marcellino.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Madam President, on behalf of myself, on page number 23 I offer the following amendments to Calendar Number 510, Senate Print Number 4467A, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Marcellino.

SENATOR MARCELLINO: Thank you,

Madam President.

On behalf of Senator Kuhl, on page number 29 I offer the following amendments to Calendar Number 626, Senate Print Number 5108, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MARCELLINO: Thank you.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 1196, by Senator Maltese.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1196, by Senator Maltese, Senate Print 57B, an act to amend the Penal Law, in relation to unborn victims of violence.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Explanation,

please, Madam President.

ACTING PRESIDENT McGEE: Senator Maltese, an explanation has been requested.

SENATOR MALTESE: Madam President, this bill is a bill to amend the Penal Law in relation to unborn victims of violence. This bill provides that either a person or an unborn child in any stage of gestation may be the victim of an assault or a homicide.

The bill adds certain sections to the Penal Law to provide that either a person or an unborn child in any stage of gestation may be the victim of various degrees of assault.

In addition, the bill specifically provides that nothing in this article shall be construed to permit the prosecution of any person for conduct relating to a justifiable abortional act for which the consent of the pregnant woman has been obtained.

In addition, nothing in the article can be construed to permit the prosecution of any person for any medical treatment of the pregnant woman or her unborn child. In

addition, it would specifically prohibit prosecution of any woman with respect to her unborn child.

The measure makes parallel changes to various portions of the Penal Law, including 125.05 of the Penal Law, which would add "unborn child in any stage of gestation" to the definition of "person."

Madam President, I'd like to mention the fact that this wording is wording that has been arrived at over -- taking into consideration past objections, past legal opinions, and to answer objections to provide for the protection of the woman who in these cases very much wants her child. This would not be construed in any shape, form, or manner as to prohibit a woman who wishes to have an abortion from being prosecuted for a criminal act.

We in the Penal Law, and in all our laws, provide for the protection of the person, protection of the woman. And when we talk about passing legislation to prevent mothers from harming their children by using drugs, to prevent an unborn fetus from being

harmed by secondhand smoke or various drugs, we seek to protect unborn children and children from those adults, including parents, who would harm children at any stage of development.

Yet there is a significant loophole in the law. And what this bill hopes to do is to close that loophole in the law. And that loophole is that if an unborn child being carried by a pregnant woman is killed or injured, the offender may not be criminally responsible, according to our law, which is based on the common law, unless that child is born alive.

I'd like to point to a couple of cases in parts of New York State where, because of the tortured interpretation of the law, perpetrators who should have been punished for causing harm or death to the unborn child were able to emerge from the legal system unscathed.

One such case occurred in Suffolk County. A driver traveling well in excess of the posted speed passed a school bus in the oncoming traffic lane and therefore crashed

head-on into an oncoming car driven by a woman who was six to seven months' pregnant. The mother's unborn child died while in her body. Almost two years after the crash, the mother has pins in her legs and must use leg braces in order to walk.

The defendant could not be charged with any form of homicide because the woman's fetus had not been born alive. As a result, the defendant was charged with no more than assault in the second degree.

In a case in Queens County, a man armed with a handgun demanded money from three teenage girls as they walked on the street. The victim, who was 15 years of age and seven months' pregnant, handed over her gold chain. She was fumbling for the $2 in change in her purse when the gunman shot her at close range in the abdomen. The gunman fled. The victim was taken to the hospital where she identified her attacker to the police.

Her unborn child was killed without ever having been born alive. As a result, when the gunman was arrested, he could not be charged with the death of the fetus. The

highest charge for which the gunman could be indicted was the attempted murder of his 15-year-old pregnant victim. He ultimately pleaded guilty to that charge.

This measure seeks to close that gap in our law. It will do this by providing that those who kill or injure an unborn child in any stage of gestation, by the commission of any number of enumerated homicide or assault offenses, may be held criminally responsible for their actions.

The bill in no way alters a woman's right to an abortion or to medical treatment. The measure specifically provides that nothing shall be construed to permit the prosecution, as I had indicated, for conduct relating to a justifiable abortional act for which the consent of the woman has been obtained.

The Congress of our nation has a bill that this bill was patterned after. That bill was voted on in April of 2001, just about -- a little bit more than a year ago. That bill mirrors this bill, in that it provides for the injury or death of a child at any stage of gestation. That bill was passed

252 to 198, including one independent and 53 members of the Democratic Party.

I'd like to point also, Madam President, to a Gallup Poll taken in April of 2001. And the Gallup Poll was taken in conjunction with CNN and USA Today. The question asked "Suppose for a moment that a violent crime is committed against a pregnant woman and the unborn child is harmed or killed. Do you think the criminal should or should not face additional charges for harming the unborn child as well as the woman?"

"Should face additional charges." An astounding 93 percent agreed that the perpetrator should face those additional charges.

Again: "Suppose for a moment that a violent crime is committed against a pregnant woman and the fetus is harmed or killed. Do you think the criminal should or should not face additional charges for harming the fetus as well as the woman?"

"Should," again. An astounding 86 percent responded yes; should not, 9 percent; and no opinion, 5 percent.

The states that prohibit crimes against the unborn child. Twenty-six states have passed legislation almost identical or similar to the legislation that we consider today.

Madam President, the original - the law that we seek to amend and correct is based upon common law, and it was based upon the common law, the born-alive rule. Now, I submit and others have submitted that that born-alive rule came at a time when medical science was not at the stage that it is today and there was no way to prove that the child was killed as a result of the intent of the act or the stage of development of the child.

This bill expressly excludes abortion and any conduct of the pregnant woman herself. I cannot say that enough times.

In addition, as far as legally, no fetal homicide statute has ever been successfully challenged. Such statutes have been upheld in California, Georgia, Illinois, Minnesota, Missouri, Iowa -- I'm sorry, Ohio and Wisconsin.

Perhaps the most striking case was

the one from Minnesota State versus Merrill, a case from 1990. In Merrill, the defendant shot and killed his girlfriend and her unborn child, who was only 28 days old. It was unclear whether either the defendant or the woman knew that she was pregnant at the time. Nevertheless, the defendant was charged with first- and second-degree murder for the death of the unborn child under reform legislation that had been enacted.

The defendant's challenge to the constitutionality of the statute was rejected by the Minnesota Supreme Court, and the United States Supreme Court refused to review that decision.

In rejecting his challenge, the state supreme court from Minnesota said "The defendant who assaults a pregnant woman, causing the death of the fetus she is carrying, destroys the fetus without the consent of the woman. This is not the same as the woman who elects to have her pregnancy terminated by one legally authorized to perform the act. In the case of abortion, the woman's choice and the doctor's actions are

based on the woman's constitutionally protected right to privacy. Roe versus Wade protects the woman's right of choice. It does not protect, much less confer on an assailant, a third-party right to destroy the fetus."

Madam President, the research, the memos all have indicated that this is not an abortion bill. Those that would say this is an abortion -- to those that would say this is an abortion bill, we look -- we say look at the very plain, express language of the statute itself. The bill -- the bill -- the proposed bill itself has all the protections that a pregnant woman who seeks to terminate her pregnancy would have.

Madam President, I submit that for the objectors to this bill to stand on the fact that it is a matter of a lawful abortional act by a woman or to say that we should confer immunity from prosecution for a serious assault or indeed a homicide on some third-party interloper, some stranger to the woman, in most cases, to come in and terminate that pregnancy, to kill that unborn child, where the mother in most cases very much wants

that unborn child, desires that unborn child and has done everything in her power to protect that unborn child, is a travesty, is not something that should be permitted in the law of New York State.

And this law I believe corrects that inequity and protects the woman. This is a victim's rights bill. This is a woman's rights bill. It is not an abortion bill.

ACTING PRESIDENT McGEE: Senator Mendez, why do you rise?

SENATOR MENDEZ: Would the Senator answer a couple of questions, please?

ACTING PRESIDENT McGEE: Senator, will you yield for some questions?

SENATOR MALTESE: Yes. Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR MENDEZ: Senator Maltese, I agree that choice is as valid, the choice to have an abortion, as the choice to give birth to a child. They are equally valid in my mind.

I am troubled, on this bill, on your definition of a person. Because it says

here "Person, when referring to the victim of a homicide, means a human being who has been born and is alive or an unborn child at any stage of gestation."

I, for one, respect the law of the land, as all of we do here, of 24 weeks for a woman -- of no later than 24 weeks for the woman to have an abortion. But this business of at any stage of gestation, really, it could be 24 hours, if one wants to be -- to exaggerate things.

So I think that -- even though I think that if a woman who is pregnant and has decided to keep her child, if she is beaten up by her lover or her husband or whatever and she loses the child, I would go along with you on this bill.

But that lack of clarity here, an unborn child at any stage of gestation, gives me -- worries me because could it be used as a way to go back at the existing law in terms of not allowing abortions?

SENATOR MALTESE: Madam President, if I might attempt to reply.

ACTING PRESIDENT McGEE: Senator

Marcellino.

I'm sorry, Maltese. Excuse me.

SENATOR MALTESE: He has more hair than I do.

(Laughter.)

SENATOR MALTESE: At any rate, as to that section, that is the section that we sought to change. That's 125.05 of the Penal Law, which defines a person. And it was that section, for the purpose of this legislation alone, the fetal homicide bill, the fetal assault bill, that we made that change.

That change was made as a result of discussion concerning one of the original bills. The change was made to protect the unborn at any stage, absolutely. But the definition itself expanded the definition only for this particular legislation.

As far as going back, I know as a former prosecutor myself how difficult it is at times to prove intent. In this case you would still require an intent, an intent to assault, an intent to kill in the case of a homicide.

A prosecutor who would attempt to

indict or convict in a case similar to this would have a very rough row to hoe. And I believe that in those cases where the unborn child is either unknown, that the person doesn't know that they're pregnant, or is very young, would not be a case that would be sought to be prosecuted by a district attorney.

SENATOR MENDEZ: Thank you.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. Would Senator Maltese yield to a question, please?

ACTING PRESIDENT McGEE: Senator Maltese, will you yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Senator, I want to go back to your example that you referred to about the woman from Queens who was seven months' pregnant when she was assaulted and lost her child.

Isn't it fact, Senator Maltese,

that under the current homicide statute in the State of New York that that would be a homicide?

SENATOR MALTESE: Excuse me, Madam President. May I ask, the homicide of the child or the -

SENATOR DOLLINGER: Through you, Madam President, homicide of the child.

SENATOR MALTESE: No, Madam President. It would only be a crime if the child was born alive.

SENATOR DOLLINGER: Through you, Madam President. Are you familiar with the current wording of Section 125 of the Penal Law that defines homicide, Senator Maltese?

ACTING PRESIDENT McGEE: Senator Maltese, do you yield?

SENATOR MALTESE: Yes, Madam President.

SENATOR DOLLINGER: And through you, Madam President, if Senator Maltese will continue to yield.

SENATOR MALTESE: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Doesn't that term include the person, an unborn child - the definition of "person" in the homicide statute include an unborn child who has been in a period of 24 weeks' gestation? Which at least by my calculation, Senator Maltese, is less than seven months.

So wouldn't a 7-month-old child that is -- whose life is not -- doesn't reach birth, that person is a person under our homicide statute and they should have been charged with a homicide; isn't that correct?

SENATOR MALTESE: Madam President, I have the section in front of me. Senator Dollinger is correct in that it includes the offenses after 24 weeks of gestation.

I am advised by counsel, Madam President, that that particular wording applies only in cases of abortion itself rather than a perpetrator's criminal act.

SENATOR DOLLINGER: Well, through you, Madam President, isn't it a fact that says that homicide means conduct which causes the death of a person or an unborn child with

which a female has been pregnant for more than 24 weeks, under circumstances constituting murder?

Doesn't the current language - through you, Madam President -- provide that if a child in the womb that's more than 24 weeks old and is unable to be brought to gestation because of the act of a third party, that it constitutes a homicide?

ACTING PRESIDENT McGEE: Senator Maltese.

SENATOR MALTESE: Madam President, the quote I have is that a double definition of the victim of homicides was necessary, since the homicide article included the offenses prohibiting medically unjustifiable abortion after 24 weeks of gestation.

In every case other than a legal abortion, the Legislature has ordained that people are required to prove that the victim is a person within the meaning stated in Penal Law 125.05, a human being who has been born and is alive. That is 125.05 that I previously referred to and which is the

section that we specifically changed by adding the wording in reference to "at any stage of gestation."

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, if Senator Maltese will continue to yield.

ACTING PRESIDENT McGEE: Senator, will you continue to yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: You would concede, would you not, under current law, Senator Maltese, that any fetus that is more than 24 weeks old in the womb, if it is somehow -- it's -- it is terminated by the conduct of a third party without the consent of the mother, that that constitutes homicide under our current law? That's exactly what it says.

SENATOR MALTESE: Madam President, in reading the definition of "person," it does not seem to provide the

exclusion that Senator Dollinger is referring to.

SENATOR DOLLINGER: But through you, Madam President, that's why I called your attention, Senator Maltese, not to the definition of "person" -- because we don't need to define "person" under 125.05.

What I'm calling your attention to, Senator Maltese, is the definition of "homicide," which says that "the death of a person or of an unborn child with which a female has been pregnant for more than 24 weeks."

That suggests to me that "homicide" means that if you end the -- if you terminate a pregnancy of an unborn child after 24 weeks, you commit homicide under current law.

Is that correct, Senator Maltese, that's what the definition of homicide is. We don't need to define "person," because this is not -- we're not talking about the death of a person, we're talking about the death of an unborn child. Isn't that correct?

SENATOR MALTESE: Madam President, again, maybe it's clear to Senator

Dollinger and maybe it's clear to me. That's why a good part of our time and effort here in the Legislature is taken with either correcting or amending the judicial acts.

You would think that the Latin expression "expressio unius est exclusio alterius" would apply: When you express something clearly, it excludes all others.

In this case, we have a statute that's been interpreted by various courts and it's been interpreted various ways. We have interpretations, I have one pointed out by - in People versus Joseph, as they feel that the homicide statute is qualified by the definition of "person."

And there are additional courts that have held that it only applies to -- as a matter of fact, I'm given another one here, People versus Abasco, which was a 1974 case. The commentators note that Section 125.05, definition of "person," was included to ensure that the death of a person would not include abortional killing of an unborn child.

And in dicta, with the case -- or not dicta, McKinney's: "It is equally clear

to this court that the Legislature did not intend to make the nonabortional killing of an unborn child a homicide."

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President. Let me go back and just see if I can make this point.

ACTING PRESIDENT McGEE: Are you again asking Senator Maltese to yield?

SENATOR DOLLINGER: Yes, if he would yield.

ACTING PRESIDENT McGEE: Senator, will you yield?

SENATOR MALTESE: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: The section you're referring to, 125.05, defines the term "person"; is that correct?

SENATOR MALTESE: Yes, Madam President.

SENATOR DOLLINGER: The section I'm referring to is 125.00, which defines the

phrase "homicide." Is that also correct, Senator Maltese?

SENATOR MALTESE: Madam President, yes.

SENATOR DOLLINGER: And through you, Madam President, the term "person" is used in the definition of "homicide" in Section 125.00. Isn't that correct, Senator Maltese?

SENATOR MALTESE: Yes, Madam President.

SENATOR DOLLINGER: And isn't it also true -- again through you, Madam President -- that we don't need to define whether a fetus is a person in Section 125, the homicide definition, because in that section we've said that causing the death of an unborn child which is 24 weeks in gestation is murder. Isn't that correct, Senator Maltese?

SENATOR MALTESE: Not exactly, Madam President. Because the problem we have here is that -- is one of interpretation. This is why it is so important for the Legislature to pass legislation that is very

clear and very concise.

And I have two opinions before me. One: The law of the State of New York requires that in every case other than illegal abortion, the victim of a homicide be a person and provides the statutory definition of a person set forth above. But courts indicate that only a clear legislative pronouncement will support a different interpretation."

In another decision, I believe it's -- well, I'll get the case cite. "It is certainly within the exclusive province of the Legislature to provide a criminal sanction for the nonabortional killing of an unborn child. And it is the opinion of this court that the Legislature has not so provided. The Legislature had the opportunity to do so in its lengthy deliberations concerning the proposed Penal Law," et cetera, et cetera. "However, neither the law enacted in '65 nor the twenty years of subsequent legislative and judicial action demonstrate a desire to abrogate a 500-year-old principle of common law" -- which was the born-alive common-law principle that I referred to earlier.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Will Senator Maltese continue to yield?

ACTING PRESIDENT McGEE: Senator, will you continue to yield?

SENATOR MALTESE: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR DOLLINGER: We have a disagreement about this. I'll talk about that in a second.

The other question I have deals with -- you have said that what happens if the interference with a woman who is carrying a child who wants that child is something that we should protect, something that this Legislature should protect.

Well, my question is, Senator Maltese, what difference does it make whether the mother wants or doesn't want the child? Should we have a different rule if the mother for some reason does not want to have that child, that it should not be considered

homicide?

And therefore should it be a part of the prima facie evidence in a case to prove homicide or assault, as you've described it, at any time in gestation, that the mother would testify that she either wanted or didn't want the child?

SENATOR MALTESE: Madam President, I'm not saying that.

I'm saying that in many of these cases, especially the deliberate acts of the fathers of some of these babies, these fetuses that the father does not wish, in many cases the reason that he is resorting to violence against the woman carrying the child, as well as the fetus, is because the woman has not been willing to go through an abortional act -- or the act, the violent act of the father in those cases would not be necessary.

But it would not be an element of proof, as Senator Dollinger knows, to have testimony as to whether or not the woman wants or does not want the child. It would not matter.

I'm merely pointing out, in

discussion referring to this legislation, that in the vast majority of cases where violence is inflicted on the mother and the unborn child, the mother very much wants the child or she would not be carrying it.

SENATOR DOLLINGER: Through you, Madam President.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Senator Maltese, do you have any evidence or any case law that proves that? It's one of the wildest allegations I've heard in my career in the Senate, that suggests that this most often occurs in instances where women want to have the child, their boyfriend or husband says "I don't want to have the child. You either go through an abortion or I'm going to perpetrate -- I'm going to shoot you or molest you or assault you."

Do you have any evidence that that's the case? Do you have any statistics that demonstrate it? Do you have any case law that suggests that happens right here in the state of New York?

ACTING PRESIDENT McGEE: Senator Maltese.

SENATOR MALTESE: Madam President, the discussion that we're having is predicated on a number of cases that have been brought to our attention over the now, I believe, seven or eight years that we've discussed this legislation.

In all that time, literally scores of cases have been brought to my attention and brought to the attention of supporters of this type of legislation where the woman was carrying a child that was unwanted.

For Senator Dollinger to term such a statement indicating that the vast majority of cases refer to women that want the child is quite a reach, and it sounds to me like one of the wildest allegations that I've heard in my 14 years in the Senate.

Therefore, Madam President, I believe that the majority of cases, in the vast majority of cases the child is a wanted child, and that's the reason that the perpetrator is seeking to inflict pain or death on both the mother and the child.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, I guess I would just point out for the record that the only two examples -

ACTING PRESIDENT McGEE: Are you on the bill now?

SENATOR DOLLINGER: I'll be on the bill for a second. Then I'll ask Senator Maltese another couple of questions.

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I'll tell you what, Madam President. I'll save my remarks. If Senator Maltese would yield just to two other questions.

ACTING PRESIDENT McGEE: Senator Maltese, will you yield?

SENATOR MALTESE: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DOLLINGER: Through you, Madam President. Senator Maltese, the

requirement of intent in both homicide and assault requires that the perpetrator intend harm to his victim; is that correct?

SENATOR MALTESE: Yes. Yes, Madam President.

SENATOR DOLLINGER: What if the -- through you, Madam President, if Senator Maltese will continue to -

SENATOR MALTESE: Excuse me, Madam President, intends harm. Intends harm. Not necessarily to the victim.

SENATOR DOLLINGER: Well, let me go back.

The question that I asked, don't you have to intend to harm a person? Is that an element of the mens rea of the crime of assault or homicide?

SENATOR MALTESE: Madam President, yes.

SENATOR DOLLINGER: And through you, Madam President, where is the requirement in this bill that in order to be charged for a homicide or assault on a fetus that the perpetrator know and intend to harm the fetus?

SENATOR MALTESE: Madam

President, obviously it is not in there. But it would fall under the other provisions of the homicide statutes and the assault statutes and would be interpreted in a similar way to all other assaults and all other homicides. It's not within the four corners of the legislation.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, just one final question.

ACTING PRESIDENT McGEE: Senator Maltese, will you yield for one more question?

SENATOR MALTESE: Yes, Madam President.

SENATOR DOLLINGER: Senator, is it a safe conclusion that, since you're amending the definition of "person" rather than the definition of "homicide," that what you're really seeking to do here is to establish personhood at any stage of gestation for a fetus? That's really what this bill is all about, isn't it, Senator Maltese?

ACTING PRESIDENT McGEE: Senator Maltese.

SENATOR MALTESE: Madam President, that is not what we're seeking to do. What we're seeing to do, in a lawyerlike way, based on precedent and statutes and case law, is to provide for the protection of the mother and the unborn child.

This is a victim's rights bill, which I said previously, which seeks to protect the unborn fetus at any stage of gestation. Which is why we're seeking to change the definition of "person" within the four corners of this legislation, this act that seeks to protect the unborn as well as the mother.

ACTING PRESIDENT McGEE: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President. Senator Maltese has -

ACTING PRESIDENT McGEE: Are you on the bill now, Senator?

SENATOR DOLLINGER: On the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Senator

Maltese has cued me to my amendment, Madam President, which I believe has been served at the desk. I would waive its reading and ask to be heard on the amendment.

ACTING PRESIDENT McGEE: The amendment is received, and the reading is waived. You may be heard on the amendment.

SENATOR DOLLINGER: Thank you, Madam President.

Senator Maltese says that what he wants to do is protect victims. Here's the perfect protection for victims of assault that results in the termination of a pregnancy. This is a bill, this is an amendment that's called the "Motherhood Protection Act of 2002."

This bill will provide protection for mothers. And it will do it in the following manner. Number one, it increases the penalties for assaults against pregnant women. It increases the penalties. It will say to those who are perpetrators, who under Senator Maltese's description -- which I'll talk about in a second -- of all of those apparently voluminous cases which involve

women who want to have a child, boyfriends or husbands who don't and therefore perpetrate violence against them to destroy the child, which he claims are voluminous in number that we've heard about for eight years -- we'll deal with that in a second. But this bill will provide them with a protection. It will increase the penalties for assault on pregnant women.

But it doesn't do just that, Madam President. It shows that we're even more serious than simply holding the perpetrator criminally liable. Because it creates a civil cause of action for gender-related violence. It says that in those instances in which gender-related violence occurs against women that we're going to allow them to civilly bring an action against the perpetrator where they can recover in damages because of that violence.

And the last thing it does is it provides treble damages as a deterrent to the conduct for any assault occurring against a pregnant woman that results in a miscarriage at any stage of gestation. So that we would

substantially increase the penalties for anyone who participates in this kind of insidious domestic violence.

I think that this bill goes a long way to doing what Senator Maltese's bill can't do. Which is it not only increases the criminal penalties, but it creates a civil sanction as well, and creates a treble damage penalty which will provide a further disincentive for anyone engage engaging in that horrible circumstance that Senator Maltese talked about.

If you really want to protect motherhood, if you want to send a message, I would suggest that everybody in this chamber vote for the "Protection of Motherhood Act of 2002" right now. I'm going to give you a chance to do it in a second.

And I'll show you the wisdom of this, Senator Maltese. This is a bill, this is an amendment that is patterned after a bill that became law in the United States Congress. It was passed by the Congress, it was signed into law. It was called the Violence Against Women Act. It was passed under the last

administration. It passed a Republican Congress. It passed a Republican Senate. It became law.

And then, somewhere, some Republican judge said "We can't have the federal government doing this. Only the states should be able to do it." So they struck it down, Madam President, and claimed that Congress didn't have the power to put it into law.

I would suggest, Senator Maltese and my colleagues from the other side of the aisle, the court in that case, the United States Supreme Court, said that the states ought to do this. Here's our chance. Here's our chance to take up the invitation delivered to us by the United States Supreme Court to protect motherhood in a way that will work, to provide treble damages for domestic violence that results in a miscarriage, to create a civil action for gender-related violence, and to increase the penalties for assaults against pregnant women.

This is the way to do it, Madam President. I'm very proud to stand here and

ask that the house adopt this worthwhile amendment, the "Motherhood Protection Act of 2002." Madam President, I submit the amendment for a vote.

ACTING PRESIDENT McGEE: Those Senators in agreement with the amendment please raise your hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Connor, Dollinger, Duane, Hassell-Thompson, Hevesi, L. Krueger, Lachman, Mendez, Montgomery, Onorato, Oppenheimer, Paterson, Sampson, and A. Smith.

ACTING PRESIDENT McGEE: The amendment is defeated.

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

ACTING PRESIDENT McGEE: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Thank you. Madam President, I want to make it very clear to everybody in this house that we already protect pregnant women from, frankly, the destruction of their fetus prior to reaching term. It's contained in the homicide law.

Despite Senator Maltese's attempt to define personhood, we don't need to redefine personhood to protect women in this state. They are already protected. Pregnant women and their unborn child, which Senator Maltese refers to, are protected.

The phrase "homicide" includes - it's "the death of any person or any unborn child that's more than 24 weeks in gestation." We already protect unborn children that are more than 24 weeks of age.

The reason why we do that, Madam President -- and Senator Maltese is correct when he talks about abortion. That's largely in there as a result, as a pattern of Roe versus Wade, in which the court said -- the United States Supreme Court said that the protection of the state can extend to the third trimester. At that point, the state has an interest and can protect the life of the unborn child.

And in fact, the Supreme Court has said it can protect the life of an unborn child except -- and we've been through this before, Senator Maltese, when we debated other

amendments involving abortion -- and that is it cannot protect that child, the state cannot protect the child's interest over that of the mother when the life and health of the mother are at stake. That's the law in this nation, Senator Maltese.

I believe that the current law provides an adequate balance and an adequate protection for unborn children that are of - that have reached the third trimester.

In my judgment, what this is really all about, Senator Maltese, is because you're attempting to define personhood as any time in the gestational period, you're going to create a whole host of different legal questions - of intent, of understanding, of whether the child is a wanted child, of whether the mother knew she was pregnant. Countless issues that in my opinion will only obfuscate, rather than clarify, what this statute is all about.

But through you, Madam President, I believe this is all about a redefinition of personhood, to try, quite frankly, to begin to chip away at Roe against Wade. I think it's a mistake, Madam President.

Let's be absolutely clear. We do protect unborn children that are more than 24 weeks of age. We do have protections, it is a homicide. That's the way to go. That compromise was struck years ago. It is still valid. It still reflects the federal and state policy. And from my point of view, Madam President, it should not be changed.

I'll be voting in the negative.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you, Madam President. I guess I have one question, if the good Senator would yield.

ACTING PRESIDENT McGEE: Senator Maltese, will you yield for a question from Senator Oppenheimer?

SENATOR MALTESE: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR OPPENHEIMER: Senator Dollinger has covered a lot of the legal points. There was one thing that you said that he questioned and that I'd like to

question too.

And that was you said that the - in the case where the parents really wanted the baby very, very much. And that harkens back to something you were talking about in the last session when the third-trimester abortion bill was before us. And I was talking about these parents that had found out their child had a tragic malformation, that there was something that had gone extremely wrong, and that the fetus could really not survive, it was not viable outside of the womb.

And I also mentioned at that time that in our nation, to take a fetus, an unborn child's life in the third trimester, if it is sustainable outside of the womb, is murder in our country.

If you feel strongly about the parents who desperately wanted these children -- because they wouldn't be carrying them till the third trimester -- then you should be supportive of the issue of third-trimester abortion, because these people are tragically sad that they have to lose a

child.

So you were talking about the way parents felt, and then I wanted to hear your explanation for why you're against third trimester.

SENATOR MALTESE: Well, Madam President -

ACTING PRESIDENT McGEE: Senator Maltese.

SENATOR MALTESE: -- this legislation is -- stands here before us today. And in this legislation one of the specific protections, if you will, of the parents who would seek to perform an abortional act is right in here.

It definitely, it specifically states that under no circumstances will the woman be criminally prosecuted under the terms of this legislation, and specifically provides that no medical examination or treatment could be found to be criminally prosecuted under this section.

So what we've done is protected the right of that mother, who even prior -- even subsequent to the 24-week exclusion -- which I

believe Senator Dollinger is correct, provides for the protection of the unborn past 24 weeks, and is also, I believe, specifically included in the majority decision in Roe versus Wade, that the court at that point has an interest in protecting the unborn child because it feels that by protecting the unborn child it protects society.

And so -- but as far as your question, I believe that there is no way under this legislation that a mother or a medical practitioner would be prosecuted under this act. No way.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you very much.

I actually was questioning something that had occurred in the last session. And what I was suggesting is that consistency would have you still support women who had to have a third-trimester abortion. But thank you, Senator.

Now on the bill, if I may.

ACTING PRESIDENT McGEE: Senator

Oppenheimer, on the -

SENATOR MALTESE: If I might just respond.

ACTING PRESIDENT McGEE: Senator Maltese.

SENATOR MALTESE: I don't remember who said it, but it probably was a woman who said consistency is the hobgoblin of small minds. And they probably were referring to men.

ACTING PRESIDENT McGEE: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: I want to thank Senator Maltese.

I think we all know why pro-choice supporters are so against this bill. Because we would not subscribe to the belief that a fetus unborn is a child. An unborn fetus isn't a child. A fetus is not a person. And a fetus shouldn't have legal rights, because it is not a person.

And I think that is why it is stalled in Congress, passing one house, probably will not pass the other house. And also it is only a one-house bill here in the

New York State Legislature.

Because at the very heart of this issue is the question of -- is the abortion issue. And so we question why is it before us now. And I think it's because this is a lull period, a period in between important things that are happening here.

And while many people such as - Senator Maltese, I know, brings this up as a point of conscience. But for many others it is a point of politics and only politics.

And I think that it is well understood why all the pro-choice supporters will be against this.

ACTING PRESIDENT McGEE: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

You know, I must say I've read all the memos on this by the different advocacy groups. And I think on both sides they exemplify extremism run amok.

The so-called pro-choice advocates I think go way overboard in speculating where this would could or would lead, this

legislation. I think the advocates for it, this bill, go overboard in the other direction.

I think the purpose that Senator Maltese is trying to accomplish by this bill, at least the stated purpose, could easily be accomplished by legislation drafted in a way that it would receive unanimous support in this house and maybe have a chance of passing in the other house.

You know, Senator Dollinger pointed out, Madam President, that under existing homicide law, a fetus after 24 weeks of gestation can in fact, under our current law, be deemed the victim of a homicide.

Madam President, a trial concluded not a week ago involving an incident in my own district, in my own county. The now-convicted police officer, who was drunk after an all-day binge, then mowed down a family in my district -- mother, a couple of children. A pregnant mother.

The DA initially -- the grand jury initially indicted -- I'm losing track here - I guess for three homicides, and then amended

the indictment to include, at the insistence of the victims' family, to include the unborn child. And that indictment stood.

That indictment stood in that case, and there was a conviction. So under existing law, there is certainly protection, at least at that stage of gestation.

I have no problem with -- you know, this whole debate is over "person" and how you define it. If what we're really trying to do is protect the unborn child of a mother who wants to have that -- to me, that's the essence of pro-choice, by the way. Pro-choice. People choose to carry their pregnancy because they want to go to term and have a child. And other women choose not to do so. And the Supreme Court has said that's their right.

I'm going to vote against this because I think it's drafted poorly. I think it's drafted to be controversial when it needn't be controversial. With all due respect, Madam President, to Senator Maltese, I would urge him to sit down and talk to some people. This can be redrafted so that it

would accomplish the same purpose and receive unanimous support.

Because I don't think there's a member in this house -- I know I wouldn't - who wouldn't vote for a bill to absolutely have severe punishment for anyone who intentionally assaults a pregnant woman, or a woman who happens to be pregnant, and causes damage to the fetus, causes her to terminate a pregnancy that she really wanted to -- that she in fact wanted to carry to term.

I think that ought to be a special crime. I think we're now just caught in this wedge between people who have been shouting at each other instead of talking to each other. If we talk to each other, we can get a bill that could actually become law and perhaps fill in what may -- I'm not convinced, but what may be a gap in the law with respect to pregnancy in the first two trimesters.

But I really think this is clearly trying to be used as a wedge issue to please -- by its sponsors, to please people of one ideology, and by the opponents who are fearful and are expressing their own ideology.

And it needn't be that, Madam President. It really needn't be that.

We can do this. We can protect pregnant women from assaults. We can punish those who would assault a pregnant woman or those who do assault a pregnant woman and cause damage to a fetus at any stage of its development. That's easily accomplished without getting into this kind of dispute, that the wording, the wording of this bill is -- not the object of the bill, not the end goal of the bill, not the result of the bill, but the wording of the bill has caused.

I think it just causes needless controversy and finger-pointing, fear, conflict among pro-choice and antichoice advocates. And it just shouldn't be there.

And I'm kind of disappointed that we fall into this. We don't need to carry this as an ideologically driven bill. This can be done as a bill that is just designed to protect women and the unborn children they're carrying.

So that said, Madam President, the way this is worded I'm not voting for it, I'm

not going to fall into that game. But I would urge the sponsor to redraft it. And frankly, Madam President, if he won't, I think I'll draft my own bill and file it.

Thank you.

ACTING PRESIDENT McGEE: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President.

There are few issues that polarize the members of this chamber the way this one does. And there are few issues that have brought women into the governmental arenas with greater sense of urgency than this one has.

I can remember very well being a young woman coming to this Capitol in 1968 to help lobby for changes in the law at that time that prevented women from obtaining a legal abortion in New York State. And I vowed at that young age that I would do everything in my power, in or out of government service, to protect the right of all women at all times to make that decision as they would determine with the advice and support of their families

and their doctors.

I also vowed that I would try to be cognizant of any efforts that would erode their right once it was dutifully granted by the State of New York and at the federal level by Roe versus Wade.

The measure that we have before us today regrettably is another attempt to erode a woman's right to choose.

There are several memoranda that have been circulating, and I believe that the language in them speaks more poignantly than many of us can on such short notice today, since this bill has just arrived before us.

So if you would indulge me, Madam President, I would just like to read a few excerpts of some memos that I hope in the record will perhaps help signify the significance of this issue as it appears today.

The esteemed League of Women Voters in the State of New York writes: "The League of Women Voters has always urged the New York State Legislature to protect women and children from violence. This bill, however,

uses the tragedy of women being assaulted for another purpose. While pretending to be a pro-woman measure, it is a proposal advanced by antichoice forces and sponsored by antichoice legislators which diverts the folks focus from the victim of the assault to the fetus she is carrying. It even brazenly redefines "fetus" in a way which contradicts the medical definition of the term."

From Family Planning Advocates, I read: "Violence against women is a significant problem in New York, and Family Planning Advocates supports legislation that effectively addresses the issues of battered women and children. Therefore, it is distressing to see legislators using violence against women as an excuse to advance their antichoice, antiwoman agenda. This legislation is part of a concerted effort to undermine the constitutional protection of Roe versus Wade by endowing a potential life with personhood rights.

"We deeply sympathize with the tragic situation of a prospective parent whose plans to continue a pregnancy are thwarted by

the criminal action of another. Sadly, that is not the focus of this legislation. The bill is not designed to protect women, but to strip women of their right to choose by attaching rights of personhood on an unborn fetus or embryo."

I think the point has been made very clearly today that by redefining the law in such a way that we have violated medical terminology, ascribed personhood to a fetus that is not yet viable, we are once again saying that women are no more than mere vessels carrying a child.

That takes us back to an age when women did not have the right to vote, did not have the right to own property in this state or any other state. It renders women unequal by elevating the fetus or the unborn child, if indeed viable, ahead of the woman. Whether it is intentional or unintentional, that is the effect of this legislation before us today.

It pains me that we would be debating this bill today when we should so obviously be debating the budget instead. Hopefully that will come to us later today. I

am used to being a member of the Minority, for many years on the other side of the aisle. Today I find myself a minority in the Majority in a very partisan system of government. But I am comfortable with the position I have taken. And I believe firmly that in the end this measure will not become law in this state.

I urge my colleagues, including the esteemed Senator Maltese, my good friend and neighbor to the -- to my right. Clearly to my right.

(Laughter.)

SENATOR HOFFMANN: -- to take with goodwill the wishes of all of us that this measure should go back to the drawing board, should be redefined so that it does not pit the rights of women against the rights of the unborn at any age. Do not make us feel that our hard-fought rights in Roe versus Wade are as fragile as they appear today.

I pledge my support to work on a more meaningful piece of legislation. Regrettably, the amendment that came before us a few moments ago I had never seen before. On

a cursory reading, I see some technical errors. While I sympathize with the intent, I want anyone listening to understand that the procedures in this house do not allow us time to give the kind of deliberation to the canvass of agreement or motions to discharge that we would all like to be able to deliberate as legislation.

That too is an issue that requires change and cooperation within this legislative body. And I hope someday to see people less frustrated in their attempt to make their voices heard on matters as important as this one.

But today, Madam President, I'll vote no on the piece of legislation before us.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

After Senator Hoffmann, the only thing that I can say is thank her, congratulations. And I appreciate the fact that she has articulated quite clearly my sentiments on this issue.

ACTING PRESIDENT McGEE: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. On the bill, please.

I'd also like to thank Senator Hoffmann for raising so many of the excellent issues that I feel so many of us here in this chamber felt in response to this bill. And the fact that this is an attempt to challenge a woman's right to choose.

And Senator Maltese, in his earlier statement, said that this was a woman's bill. And I have to disagree. In fact, I think that you talked about public opinion polls before. Public opinion polls show that the vast majority of Americans want to ensure a woman's right to choose.

And I think the fact that there were no women legislators who were cosponsors on this bill also reflects the views of women in our Legislature.

But I'd like to address the underlying issue that I also believe you were raising today, the issue of protecting pregnant women from crime. And I would argue,

and I believe that Senator Dollinger's amendment to your bill attempted to do so, that the best way for this Legislature to ensure that we protect pregnant women from being victims of crime is to protect all women from being victims of crime.

And you raised three examples in your arguments earlier on about the need for this bill. One was an issue of negligent driving. And it was a horrendous situation. But I very much doubt that the perpetrator of that accident intended to harm a pregnant woman, but rather was guilty of very negligent driving.

And that we need to address and ensure that people who do not have control of their cars or people who might be under the influence of alcohol or drugs -- although that wasn't referenced in your specific example - are not driving dangerous vehicles where they can harm anyone, man or woman, pregnant or not.

And then you used a second example of someone shot and killed by their boyfriend when they were pregnant, although again you

weren't sure whether in fact there was knowledge of the pregnancy. Again, the issue there is domestic violence with guns. Why do people with guns -- why do people have access to guns? Why are people killing other people they know with guns?

And then your third example was of a robbery and shooting, again of a pregnant woman. But there the underlying issue is why do thieves on our streets have such easy access to guns.

And I would argue we have things we can do in this Legislature to address the broader concern of ensuring that pregnant women are not victims of crime by ensuring that fewer women -- and indeed, fewer men - are victims of violent crime.

We can pass stronger domestic violence protections. Several bills are out there in both the Senate and the Assembly. One would address the fact that if you're a woman who is not married to a man but rather living with a man, but without child, that you don't have the same protections in our domestic violence laws. That's a law we can

all agree to pass.

We should be passing a bill supported by Senator Velella, S6601, which would make it more difficult for people who have been charged with -- excuse me, I'll just get the wording right -- people who have an order of protection -- or a current willful violating an existing order of protection should not be allowed to have access to a gun.

The fact is that so many women who are victims of crime are victims of crime from people they know. We have to strengthen our protections to ensure that people who are intending to do harm through domestic violence or people who are criminals do not have access to guns.

So I would urge that this house support Senator Velella's bill, which would make it far more difficult for people who are likely to be the criminals in these cases to have access to guns so that they can harm women, whether they were pregnant or not.

And in fact, Senator Dollinger raised before a question about how many people were victims of crime, not just because they

were pregnant but because of their pregnancy. And you mentioned that you knew of any number of cases. Well, I have not been in the Senate for 14 years as you have been. I've only been here for 10 weeks. So I tend to come with a bit more of the Missouri rule: Show me.

Because I haven't seen data that shows that there are large numbers of victims of crime who are in fact targeted specifically because of their pregnancy by people they know or don't know.

But there are reams of data about the number of people who are harmed in our state because they are the victims of being shot by people who have guns who have no business having guns. And there's an enormous amount of data out there on the fact that women are disproportionately the victims of crimes in domestic disputes where guns are used.

So I would urge this house to explore what we can do to truly protect women, pregnant women, and men from being the victims of crime. We have many laws that have been sponsored that we could pass in both houses.

The bill proposed today will not get us any closer to the solution. Thank you.

I will vote no on the bill.

ACTING PRESIDENT McGEE: Senator Meier.

SENATOR MEIER: Evidently I sit not only to the right of Senator Maltese but I certainly sit to the right of Senator Hoffmann, were she here.

Senator Dollinger earlier was trying to lean on Section 125 of the Penal Law, which -

ACTING PRESIDENT McGEE: Senator Meier, will you suffer an interruption?

SENATOR MEIER: Certainly.

ACTING PRESIDENT McGEE: Senator Alesi.

SENATOR ALESI: Thank you, Madam President. Thank you, Senator Meier.

Would you please call the last section for the purposes of Senator Seward to cast a vote.

ACTING PRESIDENT McGEE: For the purposes of Senator Seward to cast his vote, please read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

SENATOR SEWARD: I vote aye.

ACTING PRESIDENT McGEE: Senator Seward, in the affirmative.

SENATOR ALESI: Thank you, Madam President. Will you withdraw the roll at this point.

ACTING PRESIDENT McGEE: Roll call is withdrawn.

Senator Meier, thank you so much for the interruption.

SENATOR MEIER: Thank you, Madam President.

Senator Dollinger read Section 125 of the Penal Law, which defines "homicide." To quote one of my beloved professors in law school, Professor Freed, who when he got an incomplete answer would frequently say: "That's a very interesting answer, Mr. Meier. Now let's read the next section and the

section after that."

Because the Penal Law, as it deals with homicide and assault offenses, clearly deals with those offenses in terms of the victim being a person. It uses the term "person." Only in the area of the few remaining areas where abortion is a crime in New York does the section that Senator Dollinger read, the particular part that he read involving a fetus or an unborn child of greater than 24 weeks, does that have application.

So what Senator Maltese has tried to do is to address this issue without dissecting the entire criminal law as it applies to homicide and assault.

Now, lawyers will tell you that when you start doing that, you start messing with certain terms of art in a statutory structure that will create mass confusion in the entire area of homicide and assault.

Senator Connor, I think, although I disagree with much of what he said, took a rather measured approach to this. But I think there's also something interesting in Senator

Connor's comments. There was an acknowledgment that this ought to be addressed -- albeit he doesn't like the bill before the Senate presently -- but that somehow this ought to be addressed in our criminal law.

And there is an implicit acknowledgment there, then, that a homicide or an assault which brings about an injury or death to a fetus -- and even Roe v. Wade acknowledges that a fetus is a living thing - that this is somehow an act which is different -- it is different qualitatively, it is different quantitatively -- than an assault which harms the woman alone, because it harms something else.

And let's face it. What we have here is maybe a certain squeamishness about vocabulary. Because people choose terms to dance around what we're dealing with here. And Senator Connor's remarks, quite frankly, are an acknowledgment that we're dealing with something that's more important than a blob of tissue. And that's what troubles people, isn't it. That's what troubles people.

And that is precisely what makes this an act that has greater ethical and moral and personal dimensions to the pregnant mother than if she were not pregnant at all and if she were simply harmed by herself, the fact that something -- and we don't want -- this is not about abortion. It's not about when life begins, necessarily.

It is about that fact that we're all so squeamish about and everybody wants to dance around, that this is something more than a blob of tissue. And she has a right to make that decision, under the present law of this land, whether she chooses to carry it to term. And I'm not going to debate about Roe v. Wade or what I think about it or you think about it or anybody else does. It is about more than that.

And another thing Senator Connor said that, believe it or not, I'll agree with, is that there's some extremism maybe on both sides of this issue. And part of the extremism seems to be, I think, on the pro-choice side, I must say, which seems to feel that choice is only worthy of respect,

it's only worthy of protection in law when it's exercised on the side of abortion.

And by the way, the trial that just took place in the city of New York, the tragic incident where the police officer was intoxicated and decimated that family, one of the elements of proof the district attorney in that case had to put in, although it was disputed, was that the unborn child was born alive and lived for a period of some seconds. And it was one of the disputed elements in that trial.

I will sit down now. But I must tell my colleagues that one of the things that disturbs me is last year or the year before we passed a statute in this chamber, the other body passed it, the Governor signed it, it's called Buster's Law. And we made a felony out of torturing or killing domestic animals, cats and dogs. And a lot of people in this chamber and in the other body issued press releases and we patted ourselves on the back.

And we afford more protection in this country to people who lose a domestic animal than we do to a pregnant woman who has

a criminal deprive her of her choice to give birth to that child.

I'm going to very proudly vote for Senator Maltese's bill.

ACTING PRESIDENT McGEE: Senator Lachman.

SENATOR LACHMAN: Forgive me, Madam President. I'm still writing my remarks out. I hope they do make some sense, though.

I am supporting this bill because I believe that acts of violence against pregnant women should be punished more severely than similar acts against other people.

Frankly, I would have preferred had the bill achieved this objective without defining a fetus at any stage of gestation as a person. Frankly, the definition proposed in this bill seems unnecessary to me and treads upon very sensitive religious territory that would probably best be left to theologians rather than legislators.

Nonetheless, we all have to make choices in life, and I am satisfied that the bill is carefully drawn to limit that definition to the specific context of this

legislation. Because of the importance of providing extra protection for pregnant women, I will cast my vote in favor of this bill.

ACTING PRESIDENT McGEE: Senator Farley.

SENATOR FARLEY: Thank you.

Senator Meier, I was very moved by what you had to say. You know, I think I have as many women in my district as anyone else here. We all represent the same-sized district. I haven't run into any women that don't support this concept.

The United States Congress passed this overwhelmingly, on a bipartisan basis, overwhelmingly. It's an issue that needs to be addressed.

You know, I don't see this as a pro-choice/pro-life type of situation at all. Gee, if we've ever had a pro-woman piece of legislation come before this house, I think this is it. Unless I'm looking at something strangely, I think that this is very much a crime against a woman that wants to bear a child. It's a criminal act.

Senator Maltese, nobody has the

perfect bill. No one. I've never seen one yet. But this does address a problem that needs to be addressed. And I think anybody - you speak to any woman. Unless they've got an agenda, they want this issue addressed. And I think if this bill -- your bill hit the floor of the Assembly, it would pass in a New York minute.

I'm going to vote aye.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, first, I have had a number of conversations with Senator Maltese over the years about crimes against children, crimes against unborn children. We at different times worked in the same law enforcement office in Queens. And I've never doubted that he is taking this issue of crimes against fetuses, crimes against pregnant women very much to heart.

However, I think that there is an awareness of time impinging upon the concept of justice. The fact is that it has been stated rather clearly by those who do not

agree with the current law as it stands with respect to choice that there will be -- just about any measure taken that would even create confusion or diminish that right would be supported by them.

And we've seen legislation such as that in the past: late term abortion, partial birth abortion, Medicaid funding of abortion.

And in spite of what the sponsor and many people who support this bill may believe, there will be an attempt to manipulate the spirit of this legislation to perhaps create a new definition in the law of what is a person and perhaps translate that new definition into some kind of action which would diminish the right of choice for women in this state.

It's my opinion that we can write a bill, as Senator Connor suggested previously. That can address these concerns, maybe even as much as creating a new law to cover the fetus prior to the time when it's before 24 weeks of gestation, that we have a law that would correspond to what everyone here would want to see.

Which is what Senator Meier really was speaking to, is the issue that there not be a -- that there be a difference drawn between an individual who's the victim of a crime and a pregnant woman who's the victim of a crime.

I think that can be accomplished. It would in many respects take a concerted effort on both sides of this chamber to craft the language so as to be in compliance with the law, as Senator Meier admonished us as he was speaking.

But I do not see this piece of legislation accomplishing that without significant risk to laws and to rights that individuals have in this state.

ACTING PRESIDENT McGEE: Senator Alesi.

SENATOR ALESI: Thank you, Madam President. Would you please call the roll at this point so that Senators Stavisky and Marcellino can cast a vote, as well as Senator Leibell.

ACTING PRESIDENT McGEE: The Secretary will read.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Alesi, it's come to my attention that there is no one else that wishes to speak on the bill.

SENATOR ALESI: Thank you, Madam President.

ACTING PRESIDENT McGEE: The Secretary will read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1196 are Senators Andrews, Breslin, Brown, Connor, Dollinger, Duane, Hassell-Thompson, Hevesi, Hoffmann, L. Krueger, Lack, Mendez, Montgomery, Oppenheimer, Paterson, Sampson,

A. Smith, Spano, and Stavisky. Ayes, 39. Nays, 19.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Alesi.

SENATOR ALESI: Thank you, Madam President. May we at this time take up Calendars 1197 and then 1198.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1197, by Senator Wright, Senate Print 6357, an act to amend the General Business Law and the Executive Law, in relation to requiring cellular service providers.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1198, by Senator Wright, Senate Print 6358, an act to amend the General Business Law, in relation to the provision of cellular service.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Alesi.

SENATOR ALESI: Thank you, Madam President. May we stand at ease for a moment.

ACTING PRESIDENT McGEE: The Senate will stand at ease for a moment.

(Whereupon, the Senate stood at ease at 3:20 p.m.)

(Whereupon, the Senate reconvened at 3:25 p.m.)

ACTING PRESIDENT McGEE: Senator Alesi.

SENATOR ALESI: Thank you, Madam President.

May I ask that we lay aside Calendar Number 343 for the day, and anticipate that there will be a supplemental calendar and that we continue to stand at ease momentarily.

ACTING PRESIDENT McGEE: The bill is laid aside.

And we will stand at ease for a few moments in anticipation of a calendar.

(Whereupon, the Senate stood at ease at 3:26 p.m.)

(Whereupon, the Senate reconvened at 4:06 p.m.)

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, there will be an immediate meeting of the Majority conference in the Majority Conference Room.

ACTING PRESIDENT McGEE: Thank you, Senator Fuschillo.

There will be an immediate meeting of the Majority party in the Majority

Conference Room. Immediately.

SENATOR FUSCHILLO: Thank you.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: On behalf of Senator Krueger, I'd like to call -- and that's Senator L. Krueger -- an immediate conference of the Minority in the Minority Conference Room.

ACTING PRESIDENT McGEE: There will be an immediate conference of the Minority in the Minority Conference Room.

SENATOR PATERSON: Madam President, I've never understood, if we're going to have these meetings, why don't we all just come in here and close the doors and have a meeting, and we can get out of here.

ACTING PRESIDENT McGEE: Thank you, Senator Paterson.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, during the conferences the Senate will stand at ease.

ACTING PRESIDENT McGEE: The Senate will stand at ease during the

conference.

Thank you, Senator Fuschillo.

SENATOR FUSCHILLO: Thank you.

(Whereupon, the Senate stood at ease at 4:07 p.m.)

(Whereupon, the Senate reconvened at 5:10 p.m.)

SENATOR SKELOS: Madam President.

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: Yes, there is. We have two motions.

Senator Morahan.

SENATOR MORAHAN: Thank you, Madam President.

On page 10 I offer the following amendments to Calendar Number 224, Print Number 2656A, and I ask that the bill retain its place on the Third Reading Calendar.

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

SENATOR MORAHAN: That was on behalf of Senator Larkin.

Again on behalf of Senator Larkin, Madam President, on page 25 I offer the following amendments to Calendar Number 559, Senate Bill 3403, and I ask that said bill retain its place on the Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business, I move we adjourn until May 16th at 10:00 a.m.

ACTING PRESIDENT McGEE: There being no further business, the Senate stands adjourned until tomorrow, May 16th, at 10:00 a.m.

(Whereupon, at 5:11 p.m., the Senate adjourned.)