NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 21, 2003

3:13 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

THE PRESIDENT: In the absence of clergy, may all we bow our heads in a moment of silence, please.

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

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

Unfortunately in the absence of clergy, because clergy is doing this in the Assembly, we had a Senate colleague, Virginia Rosenbloom, who was involved in a tragic accident. She currently works for the Assembly. She's in a coma, in critical condition; her baby son was killed.

And I've been asked if I could ask my colleagues to just offer a moment of

silence, a prayer, for her well-being.

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

SENATOR FARLEY: Thank you, Madam President.

THE PRESIDENT: Thank you, Senator Farley.

Reading of the Journal.

THE SECRETARY: In Senate, Sunday, January 19, the Senate met pursuant to adjournment. The Journal of Friday, January 17, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Seward, from the Committee on Insurance, reports the following bill:

Senate Print 632, by Senator

Seward, an act to amend the Insurance Law.

Senator Saland, from the Committee on Education, reports:

Senate Print 208, by Senator Morahan, an act to amend the Education Law;

216, by Senator Saland, an act to authorize the City School District of the City of Poughkeepsie;

And Senate Print 492, by Senator Padavan, an act to amend the Education Law.

All bills ordered direct to third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Investigations and Government Operations Committee in Room 124. And following that, there will be a meeting of the Higher

Education Committee in Room 124.

THE PRESIDENT: There will be an immediate meeting of the Investigations and Government Operations Committee in Room 124. And at the completion of that meeting, the Higher Education Committee will also meet in that room.

Thank you, Senator.

SENATOR SKELOS: Madam President, if we could go to the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 5, by Senator Alesi, Senate Print 59, an act to amend the Penal Law, in relation to the crime of false personation.

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 7, by Senator Velella, Senate Print 99, an act to amend the Penal Law, in relation to multiple convictions for the criminal sale of

marijuana.

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 9, by Senator Hoffmann, Senate Print 181, an act to amend the Penal Law, in relation to inciting to riot.

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 10, by Senator Saland, Senate Print 215, an act to amend the Penal Law, in relation to including school buses within the definition of "school grounds."

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 12, by Senator Volker, Senate Print 237, an act to amend the Criminal Procedure Law, in relation to fingerprinting persons arrested.

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 17, by Senator Skelos, Senate Print 246, an act to amend the Correction Law, in relation to requiring a Level 3 sex offender.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

22, by Senator Kuhl, Senate Print 203, an act to authorize His Tabernacle Family Church, Incorporated.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Madam President, thank you. If we could go to the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 5, by Senator Alesi, Senate Print 59, an act to amend the Penal Law, in relation to the crime of false personation.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Alesi, an

explanation has been requested.

SENATOR ALESI: Madam President, if we could lay that bill aside temporarily, please.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 7, by Senator Velella, Senate Print 99, an act to amend the Penal Law, in relation to multiple convictions.

SENATOR MONTGOMERY: Explanation.

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

SENATOR VELELLA: Yes, Madam President. This bill is one that we passed in the house last year.

And under present law, an individual who sells marijuana may only be charged with a misdemeanor unless the amount in question is 25 grams or more. This bill would say that if you have been convicted -- it elevates the charge for marijuana sales in the amount of 25 grams or less when the individual charged has previously been convicted of three controlled-substance or

marijuana offenses within a five-year period.

This would except the unlawful possession of marijuana which a person may have for their own personal use.

Unfortunately, we have cases -- and specifically, this was as a result of an incident in Washington Square Park where many of the people selling marijuana were selling it at weights under 25 grams, which is just about an ounce, maybe a sandwich bag of marijuana. And they, when apprehended, had 30 and 35 and 40 arrests for sale of marijuana under this specific weight, knowing that it was only misdemeanor offenses.

If you continuously sell these after three warnings, you ought to be elevated to the possibility of a felony charge or a sentence of incarceration. And I think this bill will go a long way to giving the message that we don't support drug use.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam Chair. Would the sponsor, Senator Velella, yield for a question.

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

SENATOR VELELLA: Certainly, Senator.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Senator Velella, through you, Madam President, I think that we debated this bill last year, was it? It was on our calendar, it passed our house last --

SENATOR VELELLA: Yes, Senator, I have the transcript here if you want to take a look at it.

SENATOR MONTGOMERY: Okay, I'm sure that would be helpful, because I could say my exact words, whatever I said last year.

(Laughter.)

SENATOR VELELLA: Senator, I'd be willing to agree with you that we could incorporate last year's debate by reference into the transcript.

SENATOR MONTGOMERY: Okay, that's helpful. I thank you.

Let me just ask, for the current

discussion, this represents, in fact, a charge for possession --

SENATOR VELELLA: No, sale.

SENATOR MONTGOMERY: In other words, after sale of so many --

SENATOR VELELLA: Not for possession, no.

SENATOR MONTGOMERY: So this does not institute a charge now for being arrested for a certain number of times for possessing less marijuana than it would require in order for you to be convicted of the sale of marijuana?

SENATOR VELELLA: That's correct, Senator. The possession charges are specifically excluded in laying a requisite for the felony charge.

SENATOR MONTGOMERY: All right.

Senator Velella -- through you, Madam President, if I can ask another question.

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

SENATOR VELELLA: Yes.

THE PRESIDENT: You may proceed,

Senator Montgomery.

SENATOR MONTGOMERY: Senator Velella, what is the purpose, then, of now instituting legislation which would require incarceration or would result in possibly incarceration of a person for a marijuana charge that up to now does not?

Since we are talking about reforming the Rockefeller Drug Law, and in relation to that, the whole issue of using the amount that a person possesses, the quantity, as the measure, rather than other aspects -- why do we now want to use a quantity of marijuana on a number of arrests, which seems to reverse what we intend to do with the Rockefeller Drug Law vis-a-vis the Governor's intent to address the Rockefeller Drug Law this year? This seems to go in the opposite direction.

So I'm just wondering why do you want to do this now, as opposed to waiting until we can reform the Rockefeller Drug Laws to see how all of this fits together.

SENATOR VELELLA: Well, Senator, one, the proposed Rockefeller Drug Law

revisions span the gamut of many, many things. There are people who want to slap you on the wrist, there are people who want to do various things, there are even proposals to make them stiffer. So I don't know where we're going to wind up. I hope we're going to address them and hopefully do something that will be constructive.

I think this is a positive step, because we're not saying that if you get caught selling -- not possessing, selling marijuana to someone else, that we're going to put you in jail. We're saying the first time you may have sold it, you may not have sold it, you may have been guilty with a technicality. You got a chance. And you know what? If you make a second mistake, we give you another chance. You sold it a second time. And within a period of five years, the third time.

But when you're doing it four times, I think you got to get the message that you can't keep ignoring the law and breaking the law.

I am sure that in your community in

Brooklyn you have had numerous people call you and say "They're selling drugs in the park, right under the nose of the police, and they don't do anything about it." The cops come, they take them out, and the next morning or the next night they're back in that park again selling their drugs again.

This will stop it, Senator. This will be the answer. I think you should support it.

SENATOR MONTGOMERY: Thank you, Senator Velella.

Madam President, briefly on the bill.

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

SENATOR MONTGOMERY: As I look at Senator Velella's proposal, the fact of the matter is that this -- the whole issue around marijuana sale and possession we have tried to deal with to some extent in prior years.

I think that we've made some progress, although the fact is that we still have far too many people who are already serving these exorbitant sentences, very long

sentences for having small amounts of substances. And in many instances the so-called sale of these drugs is expressly for the purpose of getting money so that they can feed their own addiction.

So we do not -- this bill does not address that problem, and it only will lead to a further expansion of our criminal justice system. We will be way -- you know, the system will be overburdened with all of these cases, and we will still not be addressing the main issue. And that is the use of drugs and the need for drug treatment.

So I'm going to vote against this legislation. I do not view it as really addressing the problem of the sale of drugs, and so I'm going to vote against this bill.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 7 are Senators Andrews and Montgomery. Ayes, 53. Nays, 2.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if I could just interrupt and remind everybody that's on the Higher Education Committee, the meeting is beginning now.

THE PRESIDENT: The Higher Education Committee is meeting now.

Thank you, Senator Skelos.

The Secretary will read.

THE SECRETARY: Calendar Number 9, by Senator Hoffmann, Senate Print 181, an act to amend the Penal Law, in relation to inciting to riot in the first degree.

THE PRESIDENT: Read the last section.

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

SENATOR MONTGOMERY: Explanation.

THE PRESIDENT: Senator

Montgomery, are you asking for an explanation?

SENATOR MONTGOMERY: Yes, please.

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

SENATOR HOFFMANN: Thank you, Madam President. I'd be delighted to explain this bill once again.

This is the third time the bill has been before this house. I'm happy to say that it has passed -- actually, the fourth time this bill has been before this house. It has passed the previous three times.

There is a similar bill, although not identical, before the Assembly. I'm confident that the Assembly will look favorably upon this measure if we can pass it again this year.

This bill originated after a riot occurred at the Mohawk Correctional Facility on July 18th of 1997, in which ten correction officers were injured, two of them very, very seriously.

I happened to visit the facility shortly after the riot. I had an opportunity to talk with the officers and the

administrators who were on duty at that time, as well as nursing staff and other employees. And I want to establish on the record that the men and women at Mohawk Correctional Facility in all capacities that day were exemplary public employees. They showed remarkable patience and courage in the face of imminent personal danger.

The fact that several of the officers had already been overcome might have easily excused a retaliatory force by the correction officers remaining on the job, or could have compelled them to call in the State Police, who were surrounding the facility at that point. But they chose not to do that. And in the end, they very calmly and patiently and wisely waited out the inmates, who eventually gave up their insurrection.

Sadly, following this riot it became apparent that the inmates who had caused the riot were not going to be punished by anything more than transfers, in a few cases, to other facilities. And that is because there is a significant omission in our laws right now and a riot within a prison is

not actually considered a riot at all.

The law ironically states that a riot is defined as a grave risk -- conduct creating a grave risk of public alarm. And therefore, a prison, which is not a public facility or open to the public, does not comply with the definition in New York State of a riot.

This bill would create a category of a riot, and it would create two new felonies: riot in the first degree and riot in the second degree. A riot in the first degree may not be plea-bargained below a Class E felony under this piece of legislation.

I'm happy to report, Mr. President, that this bill has the strong support of the Correction Officers Association of this state, NYSCOBA. Many individuals who are employed within our correctional facilities have asked repeatedly when this bill would become law. It would give them a tremendous measure of comfort in what is an exceedingly difficult and increasingly dangerous job.

The men and women who work within

our prison facilities are entitled to the maximum level of protection, as are the other inmates in those facilities, who are also often the victims of riotous actions. So I would ask all of my colleagues to join me in sending an overwhelming message of support for the new riot law in New York State.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I'd like to ask a question of the sponsor, Senator Hoffmann.

ACTING PRESIDENT MEIER: Senator Hoffmann, do you yield for a question?

SENATOR HOFFMANN: Yes, certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Hoffmann, I note that your legislation has added "tumultuous and violent," "tumultuous" to the issue of violent conduct.

And I'm just wondering, what is the meaning of this in your mind? How is that to be interpreted in relationship to what we

already have in law, which is "violent conduct"?

SENATOR HOFFMANN: Mr. President, through you, I'd be happy to respond.

The change on the word "tumultuous" simply corrects a typo in the existing statute.

SENATOR MONTGOMERY: Excuse me?

SENATOR HOFFMANN: It corrects a typo in the existing statute. "Tumultuous" was misspelled.

SENATOR MONTGOMERY: Oh, I see. Okay.

SENATOR HOFFMANN: That is the only change that you would have noticed.

SENATOR MONTGOMERY: All right. One further question.

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

SENATOR HOFFMANN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Hoffmann, I note that you have now reduced the

number to five or more persons. So the issue is that you have reduced from ten to five.

And who determines the extent of danger that is involved when five inmates talk to each other? Is that -- is there any -- you know, I know you have -- it's "tumultuous and violent conduct." I'm just wondering what triggers a charge of inciting a riot.

What is the conduct that we're talking about? Is it that five people talk to each other? What -- what -- and who determines that? I guess really the question of what it is, what determines. Because I'm sure I know who determines it, but . . .

SENATOR HOFFMANN: Mr. President, if I understand Senator Montgomery's question correctly, she's asking who would determine whether the number of five inmates were guilty of acting in a riotous fashion, consistent with this legislation.

The response to that would be that the jury would make the determination. Charges would be brought by the district attorney, and a jury would then, based on the evidence, decide whether in fact there was a

riot or not.

In the case of the Mohawk Correctional Facility situation, there would have been no question. The evidence would have clearly shown that the injuries, the significant injuries to the ten correction officers who suffered physical attacks more than justified the charge of riot.

For them to have gone unpunished for their act is an egregious mistake on our part. We owe it to our public employees in the correctional facilities of this state -- whether they are correction officers, teachers, nurses, doctors, clerical staff, or custodians, we owe it to all of them to establish that their safety is a concern for us. And we also owe it to the other inmates who could be injured to indicate that the crime of riot does in fact exist within correction walls.

SENATOR MONTGOMERY: Mr. President, if I just may pursue one further point with Senator Hoffmann.

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

SENATOR HOFFMANN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Hoffmann, I'm reading the change that you are seeking in this legislation, and it says "while in custody, if a person urges five or more persons to engage in tumultuous and violent conduct of a kind likely to create alarm."

So my question is, what do you actually define as riotous behavior? Is it a conversation between five or six people? And what is "tumultuous"? What exactly are you talking about?

Because if that is as loose as it sounds to me, there could be any level of discussion among people which would result in them being charged with inciting a riot because they alarmed someone and being charged with a Class E felony, which extends for X number of years their incarceration just because they spoke to each other.

SENATOR HOFFMANN: Just because

what?

I'm having trouble hearing, Mr. President. Could we have a little quiet in the chamber?

ACTING PRESIDENT MEIER: Can we have some order in the chambers, please.

SENATOR HOFFMANN: I'm sorry, I did not hear the last few words from Senator Montgomery, Mr. President.

ACTING PRESIDENT MEIER: Senator, could you repeat the last part of your question?

SENATOR MONTGOMERY: Yes, Mr. President. My point is that we are now seeking to create a first-degree riot based on five or six people, if I understand correctly, having some level of discussion among themselves. And the wording here says that if they engage in "tumultuous and violent." I understand "violent." I'm not clear what "tumultuous" means.

And it says that if they create alarm, that they can then be charged with inciting a riot. I would like to know what do you exactly mean by "tumultuous." And if six

people are having some discussion, does that mean that a correction officer can, based on this law, charge them with inciting a riot because they became -- he or she became alarmed, and in fact these six people are eligible to be charged with a Class E felony?

SENATOR HOFFMANN: Is that the --

SENATOR MONTGOMERY: That's the question, yes. What exactly are we talking about? What is the level that it requires in order to be charged with this?

And what is this "tumultuous"? What type of behavior are we talking about? "Tumultuous," it seems to me, is the issue here.

Obviously, if someone is acting in a violent manner, we understand that. But if they are having a discussion about some issue, as inmates are prone to do, as far as my experience in dealing with them -- they talk to each other, they, you know, have all kinds of activities inside -- what will be the trigger? What is the least thing that can happen that would trigger this legislation? That's what I'm trying to find out.

SENATOR HOFFMANN: Mr. President, as best as I can understand the question from Senator Montgomery, she appears to be concerned that discussion among inmates numbered five or more could be misconstrued under this law. And I would ask Senator Montgomery to please read the existing statute carefully, as I have, because it is very clear that "riot," as already described within the statute in New York state law, is really quite specific: "Tumultuous and violent conduct, thereby intentionally or recklessly causing grave risk of public alarm in the course of, and as a result of such conduct a person other than one of the participants suffers physical injury or substantial property damage."

Now, this is the actual description within existing law. In nowhere does that law refer to "discussion." It's quite obvious that there could never be any misconstrued situation where five or six inmates could be accused of a riot merely by discussion. That really demeans the correction officers and the other employees of the New York State criminal justice system.

The men and women who work in our prisons understand the difference between discussion among inmates. And indeed, they're subjected to many stressful situations. Discussion is hardly a concern of theirs.

But physical acts of violence directed against them are a concern of theirs and should be a concern of ours. There is really no question why we need this law.

And I am somewhat disappointed that a senator with the seniority of Senator Montgomery on the other side would inject the silly notion of discussion, to substitute that for violent and tumultuous action within the statute. We need this law changed to protect the employees of our correctional system now.

SENATOR MONTGOMERY: Just briefly, Mr. President, on the legislation.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes. I certainly appreciate my colleague, who happens to be in my same class, but not in my same group at the moment, referring to my issues as being silly and ridiculous.

However, I just want to -- I want to remind my colleague, who is -- certainly I agree with the fact that we want to protect corrections employees and anyone who is in the facilities, either as visitors or as staff at any level.

The fact of the matter is that the wording in this legislation, one, it reduces from ten to five. So five people who are communicating at whatever level. And it says, very specifically, acts, conduct of a kind likely to create alarm.

And I wanted to be -- I want you to be very clear about what I am trying to say regarding this kind of legislation. We have many, many opportunities that we have provided for extending the time of incarceration of people. And my concern is that since we have removed most of the support that we once had in the correctional system for inmates -- there are younger and younger inmates coming into the system, they have longer and longer sentences, and my fear is that this is one more opportunity to say even if you have a small group of people who are talking to each

other -- and if you can imagine these institutions with acres and acres and acres of space and people moving around, thousands of people moving around on a daily basis, and people who are communicating with each other, there are many opportunities for corrections people --

ACTING PRESIDENT MEIER: Senator Montgomery, would you excuse me a moment.

Can we have a little order in the chamber, please. There's a member who has the floor and who's speaking.

Senator Montgomery.

SENATOR MONTGOMERY: There are many opportunities in any given institution for activities that go on to be judged as likely to create alarm.

And so I would just caution that we should take extreme care in setting up a situation where inmates can be charged just because they want to raise an issue, they talk among themselves. Maybe they just want to talk out something that they feel important that it needs to be dealt with. But certainly not instantly to be able to charge them with

rioting and to receive an extended felony charge, an E felony. So my caution to you.

And I will vote no on this legislation.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Briefly on the bill.

I support this legislation, but really more because I support what I think it's trying to accomplish than that I support the particular draftsmanship.

I think Senator Montgomery was calling attention to something that is disturbing. The courts do look to the Legislature for clarification of the language that we put into the law that the court is obliged to follow.

And I am not sure that after listening to this debate I understand what conduct of a kind likely to create alarm is. I know -- you know, and I spent two years as an officer in a correctional facility, and if you just announced the wrong menu was on for dinner that night, that was likely to create

alarm.

So I think in a situation like this where we're talking about substantial terms of additional punishment, that additional clarity is required.

I support this bill because of the -- what I believe is the underlying intent, but I would urge that this may in fact be the kind of issue that could hold things up in our efforts to come to agreement with the Assembly and actually pass a law. So I will vote yes, but I do think the issues raised by Senator Montgomery should be addressed should this not become law this year, as I have a feeling it may not.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor will yield for a question.

ACTING PRESIDENT MEIER: Senator Hoffmann, will you yield?

SENATOR HOFFMANN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

I don't have the seniority of you or Senator Montgomery, so perhaps these are questions that other people already know the answer to. But it's certainly piqued my interest.

How many riots do we have in New York State correctional facilities per year?

SENATOR HOFFMANN: Mr. President, I'm not at liberty to reveal statistics that I don't have. I certainly don't know how many we have, but I know that we have far too many.

We recently had one at Auburn Correctional Facility, which is in Senator Nozzolio's district, right on the border of my district. And I know that we had this one in 1997 that was tremendous in its damage, psychologically as well as physically to the correction officers and their families, I might add, many of whom were engaged in counseling for months and sometimes years afterwards.

Practically every year there is a

riot in some facility or something that requires what is called a lockdown.

I think it's an excellent question. I don't know the information to that, but I'm sure that Senator Nozzolio would be happy to provide it through the Crime and Corrections Committee.

SENATOR LIZ KRUEGER: Thank you.

Mr. President, if the sponsor would continue to yield to another question.

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

SENATOR HOFFMANN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

One of the reasons for my first question of Senator Hoffmann was to try to get a number sense of inciting to riot versus a riot, and how large a problem this is. Because as I understand this bill, it increases criminal penalties but it doesn't actually create a new class, per se, of things that happen now that aren't already penalized.

Is there a -- it's not a fair question, I know, given your answer to the first one, which was reasonable that you wouldn't know exactly the number of riots per year in New York State correctional facilities. But I'm wondering, is there a separate number for the number of inciting to riot without riot activities, as opposed to just rioting?

Because I think that Senator Montgomery's questions were reasonable about the concept of what is the definition of tumultuous, what is the definition of inciting as opposed to the actual activity of a riot.

And I would think that it would be relevant to this house when passing this bill, although I too believe I will end up voting for it today, to have a good understanding of, in real life in our correctional facilities -- and I don't imagine there's anyone here who supports riots -- how large a universe are we talking about and are there two universes now, actions that are charges of inciting to riot versus actions that are actual riots.

And I think that would help to

explain to Senator Montgomery the question of what is the definition of "tumultuous" in this bill, because I think that's what she was going after. And I also think it's a little confusing to myself as a junior senator.

So I don't know whether you have an answer to how many inciting-to-riot charges we bring in this state as opposed to rioting.

SENATOR HOFFMANN: Mr. President, every riot would obviously have somebody who was responsible for inciting it. Again, there might be statistics in the Department of Corrections, which I'm sure Senator Nozzolio would be able to find.

I think it's kind of unfortunate that so much of this discussion has broken down around semantics. The use of the word "tumultuous" is not my personal choice. That appeared in statute. It is a somewhat archaic word. I'm sure we could dissect it at some great length. But the other words that follow "tumultuous" are much more readily understood.

And I would just ask all of my colleagues, senior and junior, to bear in mind that what we are looking at here is a law

which deals with the conduct of violent behavior. Terms like "reckless endangerment" and "physical injury" appear within this statute already. This change in the law merely extends that definition to actions within prison walls, because they are now, by omission only, exempt from the definition of "riot."

And indeed, the last time we had this debate, Senator Paterson made a very important observation in his discussion, stating that he supported this change in the law because of the fact that it appeared to be largely an omission in the original language of the law.

But this omission, while it might seem like a relatively small one or one that could be discussed at great lengths by philosophers, in reality, for the people who are employed in the prison system, is a very egregious omission. And we owe it to those men and women to correct that omission today.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the

last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to motions and resolutions.

And I believe that there is a privileged resolution at the desk sponsored by Senator Bruno and others. I would ask that it at this time be read in its entirety and move for its immediate passage.

ACTING PRESIDENT MEIER: Motions and resolutions.

The Secretary will read the privileged resolution at the desk.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 71, congratulating the 2002 South Troy Trojan Warriors Football Team and Head Coach Joe McNall upon the occasion of capturing the National Pop Warner Midget Division II Championship.

"WHEREAS, It is the sense of this Legislative Body to acknowledge the prominent athletes and teams of this great Empire State who distinguish themselves through outstanding performances and exemplary athletic achievements; and

"WHEREAS, Attendant to such concern and in full accord with its long-standing traditions, this Legislative Body is justly proud to congratulate the 2002 South Troy Trojan Warriors Football Team and Head Coach Joe McNall upon the occasion of capturing the National Pop Warner Midget Division II Championship; and

"WHEREAS, the South Troy Trojan Warriors finished its regular season with an 8-0 record, outscoring their opponents 192-50; and

"WHEREAS, The first two rounds of the regional playoffs were played in Syracuse, New York. On November 16, the South Troy Trojan Warriors defeated Poughkeepsie by the score of 20-12. On November 24, they were victorious over West Valley-Geddes by the score of 24-21; and

"WHEREAS, On November 30, the South Troy Trojan Warriors traveled to Lock Haven University in Pennsylvania, and defeated a team from Rosedale, Maryland, by the score of 20-13. This victory earned them a trip to Disneyworld in Orlando, Florida, to compete in the National Pop Warner Division II Championships; and

"WHEREAS, the South Troy Trojan Warriors played their first game in the championships on December 10, against the Dale City Cowboys from Virginia, and defeated them by the score of 14-6; and

"WHEREAS, in the championship game, the Trojan Warriors, now 12-0, faced the 13-0 Mexicali Halcones from California, on December 12. The South Troy Trojan Warriors emerged victorious by the score of 19-7,

overcoming a string of setbacks, including inclement weather and an injured quarterback; and

"WHEREAS, The South Troy Trojan Warriors became the first team from the State of New York to win a National Pop Warner Championship, bringing national recognition to the Capital District; and

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

"WHEREAS, Coach Joe McNall, 25, became the youngest coach to ever lead a team to the National Pop Warner Championship. In addition, he was the first coach ever to accomplish this feat in his first year of coaching; and

"WHEREAS, Coach Joe McNall, Assistant Coaches Joe Angrisano, Donn Liebener, Pat Shufelt and Nick McNall, and Commissioner Charlie Arnold, have done a superb job in guiding, molding, and inspiring

the team members toward their goals; and

"WHEREAS, The hallmarks of the South Troy Trojan Warriors Pop Warner Football Team, from the opening game of the 2002 season to its participation in the championship game in Orlando, Florida, were a brotherhood of athletic ability, of good sportsmanship, and of honor, demonstrating that these team players are second to none; and

"WHEREAS, The South Troy Trojan Warriors were loyally and enthusiastically supported by their families, fans, and friends, as well as the entire South Troy community at large; and

"WHEREAS, The team was also supported by their staunch and faithful cheerleaders, coached by Judi Byrnes and assisted by Tori Martuscello and Tina Liebener. The 2002 cheerleaders include: Tessa Bertrand, Carly Fontana, Aliza Reilly, Cassie Cardnuto, Tonia Jalet, Morisa Ryder, Alyssa Casale, Liz Konopasek, Patty Schiotis, Bianca Cooper, Devan Liebener, Theresa Schiotis, Alexandra Dayton, Colleen Maloney, Alyssa Spiak, Deanna Deeb, Melody McGrath,

Andrea Trong, Kaylin Erbe, Allison Raymond, and Kadriss Waters; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishments, and clearly made a contribution to the spirit of excellence which is a tradition of the South Troy community; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the 2002 South Troy Trojan Warriors Pop Warner Football Team, its members -- Jared Bell, Jeffrey Hough, Joshua Shoemaker, Jahod Crumble, Stephen Liesenfelder, Michael Seebald, Eugene Kennedy, Michael Krogh, Trevel Smith, Andrew King, Michael Fitzgerald, Michael Arnold, James LaWare, Michael Cioffi, A.J. Pasinella, Anthony Valenti, Vito Angrisano, Derek Schneider, and J.R. Serrano -- and Coach Joe McNall, as well as Assistant Coaches Joe Angrisano, Donn Liebener, Pat Shufelt and Nick McNall, and Commissioner Charlie Arnold, upon the occasion of their undefeated season as well as capturing the National Pop Warner

Midget Division II Super Bowl; and be it further

"RESOLVED, that copies of this resolution, suitably engrossed, be transmitted to all the aforementioned team members, coaches, cheerleaders, and commissioner of the 2002 South Troy Trojan Warriors Pop Warner Football Team."

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President.

I'm as proud as I can be that I represent the Senate district that hosts these national champions that are joining us here today. I have had a lot of good things happen in my district in my life; nothing is as important or more important than this.

So we're glad that you're here. And I rise really to welcome you on behalf of my colleagues. And I can tell you now, if any of these people were speaking, they would echo my words and how proud we are of you and all the good things that you have done, you that are on the team, Coach Joe -- with a great

name like that, he's got to be great --

(Laughter.)

SENATOR BRUNO: -- in his first year.

But think about young people who go on and win eight straight and then go into quarterfinals, semifinals, go to Orlando. And each time they're challenged, a defeat eliminates them -- and they go 13 straight undefeated. Now, that is to be applauded.

The resolution that you heard passes in the Senate just like any law that passes in this state. So when your children and your grandchildren want to look up, when you as a grandparent are bragging about the great things that you did, they will be able to come in, go into the records of this state and check this resolution and find that, yes, your name is there and on December 12th you did win the national championship.

You know it's something to be proud of, and I know you're proud. Your parents are proud, your neighbors are proud, your teachers are proud. Coach Joe and all of the staff is proud. The cheerleaders are proud. Not just

because you're champions and that you win nationally against a lot of the teams that these Senators represent.

(Laughter.)

SENATOR BRUNO: But you know what? They're good sports. They're good sports. They're going to applaud you even though you drubbed their teams.

(Laughter.)

SENATOR BRUNO: But it's a credit to you that -- and I can tell you don't let it go to your head. You understand that you win not by being individuals and stars -- although there are stars, each and every one of you -- but by being team players.

Life is a team effort. Nobody gets on in life without your teachers, without your parents, without your neighbors, without your teammates, without people that support you generally as you move on with your life.

I am standing here now because I have a team, here. And I am elected as their leader. But I'm only their leader because they elect me. And without them, I'd be sitting here listening instead of bragging

about how great you are. And you are great. You are great. And we're here to applaud you.

And for those of you that may not be aware, we're going to host a reception for these young Trojan Warriors, who are victorious and who really bring great acclaim to Troy, especially the South end of Troy. And when I moved into Troy, it was always the South end against the world. And they just proved it.

So we're happy you're here, we're happy that we could recognize and honor you. And we join with everyone in just really applauding you for not just the great championship that you won, but for being the team players that you are.

And as you go on in life, you will continue to excel in every way, just as you excelled with the coaching of Coach Joe McNall and all of your teachers and all of your supporters that have rallied around you to help you achieve this great, great victory.

So congratulations to you on behalf of all my colleagues here. You keep up your good work. You make us very, very proud.

Thank you, Mr. President.

(Applause.)

SENATOR BRUNO: Would you stand up, those of you that are on the team? Just stand up, guys, okay.

(Applause.)

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: Senator Bruno, what a surprise, it passed unanimously.

(Laughter.)

SENATOR BRUNO: Thank you, Mr. President.

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to the controversial reading of the calendar.

ACTING PRESIDENT MEIER: The

Secretary will resume the controversial calendar.

THE SECRETARY: Calendar Number 12, by Senator Volker, Senate Print 237, an act to amend the Criminal Procedure Law, in relation to fingerprinting.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT MEIER: Senator Volker, Senator Montgomery has requested an explanation.

SENATOR VOLKER: It's hard to believe, I guess it was eight or nine years ago, 1995, there was a crisis in New York City of -- at the time it was considered of somewhat epic proportions, when they found out that there were literally a hundred thousand people driving around New York City unlicensed.

I remember Assemblyman Joe Lentol and I, we did joint legislative hearings in New York City, and we were told by a police officer how disgusted he became when he investigated an accident and found out both drivers had no licenses, the ambulance driver that came to the scene had no license, nor did

the tow truck driver who came to pick up the cars. Both tow truck drivers, neither had licenses.

And he was a little bit infuriated. They found one guy had been arrested one hundred times for driving without a license.

But the problem was and still remains, although it's not as bad as it once was, is that tracking these people down in a city such as New York -- and the merge between the New York City Police Department and Motor Vehicles is extremely difficult to do. So we passed a bunch of legislation.

The one piece of legislation that we have never passed since '95 -- it has passed this house many times; last year it passed this house by a vote of 53 to 3, I believe, yes -- is this bill.

And the reason it hasn't passed the Assembly is because there's such a nervousness about fingerprinting, as if there's something magic about fingerprinting.

But this bill says if you lose your license and you're arrested for driving without a license and then you're arrested a

third time for what becomes aggravated unlicensed operation, you then are subject -- even though it's not a crime or a misdemeanor, you are subject then to fingerprinting. And the reason for that is that's the way you can track a person who has multiple unlicensed operations.

They've arrested people in this situation, by the way, in the city on other crimes, got them fingerprinted, and found out that they were 40-or-50-violation people for unlicensed operation.

It just seems to me -- and I understand the reluctance on the part of some individuals to support this, but unlicensed operation in New York City and in parts of upstate New York -- I'm not just saying it's New York City. But I can see it in a lot of other places.

Admittedly, we have a little different situation in upstate New York. When I was a police officer, if we found somebody we knew was a persistent unlicensed operator, we just picked his car up on a hook, drove it in, checked it all out, put him in jail for

the time being -- because you could actually arrest him on a violation -- and made sure that he didn't have any other violations. That if he did, then we'd book him for -- actually for a misdemeanor, then. Because if you have a number of violations, you certainly have an intention that the person is not going to be stopped to drive.

So all we're doing, I think, in this bill is providing a vehicle so that if a person is a persistent unlicensed operator, that you'll have a way of tracking him through the fingerprinting. That's all this bill really does.

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

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 5, by Senator Alesi, Senate Print 59, an act to amend the Penal Law, in relation to the crime of false personation.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Alesi, an explanation has been requested of Calendar Number 5.

SENATOR ALESI: Thank you, Mr. President.

This bill recognizes the danger of false personation, not only to police officers but to innocent victims as well whose identity might be stolen during the time of an arrest. And it increases the penalty for false personation from a Class B misdemeanor to a Class A misdemeanor.

Thank you very much.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first day of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I just wanted to ask Senator Alesi a question.

ACTING PRESIDENT MEIER: We're on a roll call. Would you like us to withdraw the roll call?

Roll call is withdrawn.

SENATOR MONTGOMERY: Okay. Thank you.

ACTING PRESIDENT MEIER: Senator Alesi, do you yield for a question from Senator Montgomery?

SENATOR ALESI: Yes, Mr. President.

SENATOR MONTGOMERY: Senator Alesi, I just did not understand why -- I see that your legislation passed unanimously last year.

SENATOR ALESI: Yes, it did. Through you, Mr. President, yes, it did.

And, Senator Montgomery, I appreciate your support on that vote last year.

SENATOR MONTGOMERY: Right. Now, the question that I have for you is then why do you want to remove the requirement that a person be informed?

Is there a problem with that, that when someone says -- you know, goes to make an arrest or a police officer goes to talk to someone or whatever, that that officer be required to say "If you do not give me your correct information, X, Y, and Z can happen"? Why is that a problem? I don't understand why you want to remove that requirement from the law.

SENATOR ALESI: Thank you. In response, Mr. President, to Senator Montgomery, everybody, from the time we're very, very young, understands what a lie is, and everybody understands that there are consequences for not telling the truth.

But in this case, by removing that

requirement, it removes a loophole that someone could say that they weren't informed that by telling a lie that there would be a consequence.

And it simply enhances the arresting officer's ability to -- and for society in general to punish somebody who impersonates someone else.

And it should be noted that the main thrust of this bill is to increase the penalties for that, especially at a time when we know that impersonating someone else or stealing someone else's identity is far more serious than most people would have thought prior to all of the terrorist activity that is going on in today's world.

SENATOR MONTGOMERY: Mr. President, I want to just -- I feel very unhappy that Senator Alesi has brought us a proposal to actually remove what I think is a -- at least some level of a safety valve, especially as it relates to teenagers who, yes, they know the difference in telling a lie and telling the truth, but they may not, legitimately may not know that if they lie to

a police officer, there are certain consequences, and in fact they can be charged with a Class A misdemeanor. Is that what it is, a misdemeanor?

So I don't buy this argument that people will get away with doing it because the police officer forgets to tell them. I don't know why it's not just an automatic assumption by any police officer or any law enforcement officer that when you stop someone, they know up front from that officer that if you falsely impersonate yourself, you can be charged with an additional charge just based on that.

So I have to oppose this legislation, even though I supported it in its form the last time. I just think removing that language places a certain group of people in particular, young people who may not know -- and it's a simple thing that the officer could just say to them: "If you lie to me, you can be charged." I don't see why that can't happen.

So I'm going to oppose it now, even though I certainly agree with the concept. I understand what you -- the intent of the

legislation. But I think the original language has merit.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos, that completes the controversial calendar.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there are a number of committee reports to be read at this time.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Spano, from the Committee on Investigations and Government Operations, reports:

Senate Print 235, by Senator Volker, an act to amend the Tax Law;

396, by Senator Saland, an act to amend the Tax Law;

614, by the Senate Committee on Rules, an act to amend the Tax Law;

And Senate Print 688, by Senator Wright, an act to amend the Tax Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Without objection, all bills are ordered directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, without objection, may we please take up Senate Bill 492, by Senator Padavan, that was just reported from the Education Committee.

ACTING PRESIDENT MEIER: The Secretary will read Calendar Number 30, Senate Print 492.

THE SECRETARY: Calendar Number

30, by Senator Padavan, Senate Print 492, an act to amend the Education Law, in relation to extending.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT MEIER: There is none.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Senator Bruno, in consultation with Senator Paterson, hands up the following Minority committee changes and asks that they be filed in the Journal.

ACTING PRESIDENT MEIER: They will be filed in the Journal.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until Wednesday, January 22nd, at 11:30 a.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Wednesday, January 22nd, at 11:30 a.m.

(Whereupon, at 4:17 p.m., the Senate adjourned.)