NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 24, 2003

3:17 p.m.

REGULAR SESSION

SENATOR JOSEPH E. ROBACH, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT ROBACH: 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 ROBACH: In the absence of clergy, may we all bow our heads for a moment of silence.

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

ACTING PRESIDENT ROBACH: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, February 23, the Senate met pursuant to adjournment. The Journal of Saturday, February 22, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT ROBACH: 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 Hoffmann, from the Committee on Agriculture, reports the following bills:

Senate Print 188, by Senator Hoffmann, an act to amend the Agriculture and Markets Law;

616, by Senator Hoffmann, an act to amend the Agriculture and Markets Law;

And Senate Print 1973, by Senator Kuhl, an act to amend the Agriculture and Markets Law.

All bills ordered direct to third reading.

ACTING PRESIDENT ROBACH: Without objection, the bills are reported direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr.

President.

On behalf of Senator LaValle, on page 6 I offer the following amendments to Calendar 58, Senate Print 296, and I ask that that bill retain its place on the Third Reading Calendar.

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

Senator Little.

SENATOR LITTLE: Mr. President, I wish to call up my bill, Print Number 741, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 50, by Senator Little, Senate Print 741, an act making certain findings and determinations.

ACTING PRESIDENT ROBACH: Senator Little.

SENATOR LITTLE: Mr. President, I now move to reconsider the vote by which this

bill was passed.

ACTING PRESIDENT ROBACH: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT ROBACH: Senator Little.

SENATOR LITTLE: Mr. President, I now offer the following amendments.

ACTING PRESIDENT ROBACH: The amendments are received and adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, are there any substitutions at the desk?

ACTING PRESIDENT ROBACH: Yes, there are.

SENATOR SKELOS: I ask that they be made at this time.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: On page 8, Senator Velella moves to discharge, from the Committee on Higher Education, Assembly Bill Number 1409 and substitute it for the

identical Senate Bill Number 759, Third Reading Calendar 91.

ACTING PRESIDENT ROBACH: Substitution ordered.

Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Children and Families Committee in the Majority Conference Room.

ACTING PRESIDENT ROBACH: There will be an immediate meeting of the Committee on Children and Families in the Majority Conference Room.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's a privileged resolution at the desk by Senator Volker. May we please have the title read and move for its immediate adoption.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: By Senator Volker, Legislative Resolution Number 483, commemorating the 25th anniversary of the Displaced Homemaker Program.

ACTING PRESIDENT ROBACH: Senator Volker.

SENATOR VOLKER: Mr. President, this is a resolution, as was previously read, that honors a group of women, and a group that is now operating across the state, that takes care of people who have had various problems, through no fault of their own, and tries to help them out. I think that it is a very good organization that this house and the Assembly has funded for many years.

The resolution is sponsored by all the Western New York delegation, but I'd like to offer sponsorship or cosponsorship to anybody in the Senate who would like to be on it.

ACTING PRESIDENT ROBACH: The question is on the resolution. All in favor say aye.

(Response of "Aye.")

ACTING PRESIDENT ROBACH: Opposed, say nay.

(No response.)

ACTING PRESIDENT ROBACH: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President,

if we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 44, by Senator Skelos, Senate Print 554, an act to amend the Penal Law, in relation to sentencing of persistent violent felony offenders.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT ROBACH: The bill is laid aside.

THE SECRETARY: Calendar Number 59, by Senator Balboni, Senate Print 857, an act to amend --

SENATOR BALBONI: Senator Robach, I'd like to lay that bill aside, please.

Mr. President. President Robach. Thank you.

ACTING PRESIDENT ROBACH: For the day?

SENATOR BALBONI: For the day.

ACTING PRESIDENT ROBACH: How about the session?

(Laughter.)

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

THE SECRETARY: Calendar Number 73, by Senator Marcellino, Senate Print 785, an act to amend the Vehicle and Traffic Law, in relation to increasing penalties.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 76, by Senator Volker, Senate Print 665, an act to amend the Penal Law and the Criminal Procedure Law, in relation to the offenses of bail jumping.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT ROBACH: The

bill is laid aside.

THE SECRETARY: Calendar Number 77, by Senator Padavan, Senate Print 685, an act to amend the Penal Law, in relation to the piercing and branding of the body of a child under the age of 18 years.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 77 are Senators Parker and Schneiderman. Also Senator Duane. Ayes, 51. Nays, 3.

ACTING PRESIDENT ROBACH: The bill is passed.

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

SENATOR SKELOS: Mr. President, if we could go to the controversial reading of the calendar.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 44, by Senator Skelos, Senate Print 554, an act to amend the Penal Law, in relation to sentencing of persistent violent felony offenders.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT ROBACH: Senator Skelos.

SENATOR SKELOS: Mr. President, this legislation -- which has passed the Senate in 1998, 1999, 2000, and 2001 -- would eliminate discretionary parole for violent felony offenders who have been convicted and sentenced for three or more violent felonies within a ten-year period.

ACTING PRESIDENT ROBACH: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. On the bill very briefly.

ACTING PRESIDENT ROBACH: On the bill.

SENATOR SCHNEIDERMAN: This

legislation is a part of an ongoing process to transfer discretion over sentencing -- not to eliminate discretion over sentencing from the criminal justice system, but simply to transfer it from judges to prosecutors.

And I would urge my colleagues that, as has often been said, absolute power corrupts absolutely. We're getting to a situation where prosecutorial control over sentencing is becoming a serious problem.

I would call my colleagues' attentions to a study by the Criminal Justice Policy Foundation, in which the president of that institution, Eric Sterling, stated: "The entire criminal justice system knows that perjury is the coin of the realm. People's homes are invaded because of lies, people go to prison because of lies, people stay in prison because of lies, and sometimes bad guys go free because of lies."

What he's referring to is this phenomenon that is becoming widespread, which is that in the absence of any judicial outlet, prosecutors are essentially in a position to coerce testimony out of people, because if

they charge a crime that requires life imprisonment, that's the price you're going to pay. And if you have any way to get out, including making up testimony to get an alleged coconspirator in with you, you will do that.

So I would urge that we really should think more carefully before increasing prosecutorial control over the sentencing process. We've increased, in 1995, the mandatory sentence for the sorts of defendants that would be addressed under this legislation.

Again, the crime rate has been going steadily down. It does not appear that from any sort of public policy point of view the criminal justice system requires more severe sentences.

And again, this is not a situation, I would urge, in which we're eliminating discretion, this is a situation in which we're shifting discretion. I would like to see judges and parole boards continue to play a role.

Having worked in a prison, I

certainly don't like the idea of these people doing time without any possible incentive to behave while they're serving their sentences. And I certainly also do think -- and I have many friends who are prosecutors -- that it's just too tempting and it's too tempting to criminal defendants.

A defense lawyer has commented that he stopped representing people who are cooperating with prosecutors because for those defendants you just don't have to teach them how to sing, you have to teach them how to compose. I think that's a lot of what's going on now in our criminal justice system.

I'm going to vote no on this, and I also would urge a no vote from my colleagues. Thank you.

ACTING PRESIDENT ROBACH: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, just briefly on this bill.

ACTING PRESIDENT ROBACH: On the bill.

SENATOR MONTGOMERY: I have voted no in the past and will vote no again today.

I think that one of the issues -- a couple of issues that I have, in addition to those raised by my colleague, is, one, on the fiscal implications.

Senator Skelos, the author of this legislation, sponsor of this legislation, indicates that the fiscal impact is yet to be determined. He does acknowledge that there will be an increase in incarceration costs. So we don't know -- we have no idea how much more we're going to have to spend if this legislation passes.

The other issue that I raised, I recall, I believe last year or the year before, was that this bill essentially is a "two strikes and you're in for life without the possibility of parole." And we know that in cases where this kind of legislation has been passed in other states, the costs to them have been enormous. And it's questionable as to whether or not this really is an answer to the issue that is being addressed here.

So I'm going to continue to vote no on it, and I would urge my colleagues that this is quite an irresponsible approach to

dealing with the issue of incarceration and crime in our state, because it is going to essentially break us as it relates to the cost of this bill. So I'm going to vote no on it.

ACTING PRESIDENT ROBACH: Thank you, Senator Montgomery.

Is there any other Senator wishing to be heard on this bill? If none, debate is closed.

Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 44 are Senators Andrews, Dilán, Duane, Hassell-Thompson, Montgomery, Parker, Paterson, Schneiderman, and A. Smith. Ayes, 48. Nays, 9.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number

76, by Senator Volker, Senate Print 665, an act to amend the Penal Law and the Criminal Procedure Law, in relation to the offenses of bail jumping.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT ROBACH: Senator Volker.

SENATOR VOLKER: Mr. President, this is an old City of New York bill which is also an Office of Court Administration bill, I believe.

It relates to primarily a problem in New York City and the bigger cities, and relates to a ludicrous situation primarily in regards to appearance tickets, where what happens is that a person is summoned to appear in court and doesn't appear in court, so that the -- they're allowed 30 days after that. Usually I guess what happens in the city is the ticket is usually lost for a while, because there's so many appearance tickets, and then the person is then pursued at some point.

Years ago, there was over 250,000

appearance tickets out there, and some 281,000 warrants. And I haven't tabulated this recently. It -- by the way, this also relates to the hearings that Joe Lentol and I held in New York City some years ago, and we had passed a bill here just about two weeks ago on aggravated unlicensed operation.

And the reason it relates to this is the City of New York spends a ton of money pursuing these people, and they have such a backlog that they have virtually given up in some ways.

What this bill really does say is that if you don't appear on an appearance ticket, you can be subject to some sort of penalty. And we increase the penalties for bail jumping.

So that what would happen, I guess, is somebody will get about 30 tickets and they'll get a warrant for them, they'll bring them in, and they'll charge them with 20 or 30 bucks' bail, or whatever they are, and the person would be then subject to a violation if they didn't appear on the bail. And of course they don't appear again. And then they bring

them in.

What this bill does is up the penalties, depending on what you were charged with in the first place.

I realize that some of the people in this house are a little sensitive to this. But if you think about it, you know, it is pretty ridiculous what's going on. What it is, it's encouraging scofflaws at an epidemic rate in places like Buffalo and New York City and Rochester and so forth.

We don't have quite that problem in some of the other localities because we have -- we don't have as many of these, and the judges usually keep track of them. Even there, there's a substantial cost to it. Although what happens, I think the justices usually eventually send somebody out, they just grab them, bring them in, and put them in jail. And then they figure out what to do from there.

But what this bill is, it's really a simple bill. And what it says is we're not giving them -- they're supposed to come in. If they don't come in, they're subject to

being brought back in. And they must -- they can take jail. And if they jump the bail, then they're subject to some sort of penalty, starting out at a B misdemeanor, going to an A misdemeanor, depending on the crime, and eventually getting to a felony.

Most of the felony charges -- there is, by the way, a penalty already, but this is in case -- there are some lesser violations where you don't usually give an appearance ticket out or a -- for a felony. But there are in certain cases where this can be done. It really is a commonsense approach.

And, by the way, this doesn't say you have to do it. All it says is that that penalty is available and you don't have the extra 30 days. Because remember, this is extra. This is after you are supposed to appear in court. Which may be, I don't know, it may be two months. When you get an appearance ticket, somebody may set it up for two months from there. And so the person doesn't come in in two months, and then you've got 30 more days before they do anything.

And what this does is to eliminate

the 30 days.

ACTING PRESIDENT ROBACH: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. If I can ask Senator Volker a question.

ACTING PRESIDENT ROBACH: Senator Volker.

SENATOR VOLKER: Sure. Certainly.

SENATOR MONTGOMERY: Senator Volker, I'm just looking at the memo attached to your legislation. And it says that the failure to respond to an appearance ticket is currently a violation --

SENATOR VOLKER: Right.

SENATOR MONTGOMERY: -- that becomes a Class B misdemeanor.

SENATOR VOLKER: If they don't appear.

SENATOR MONTGOMERY: If they don't appear, punishable by up to three months in jail.

And bail jumping in the third degree, currently a Class A misdemeanor,

becomes a Class E felony punishable by up to four years in prison.

SENATOR VOLKER: No, no, no. Wait a minute. You've got --

SENATOR MONTGOMERY: Am I reading that wrong?

SENATOR VOLKER: No, I think you're misreading it.

SENATOR MONTGOMERY: It says bail jumping in the third degree, currently a Class A misdemeanor, becomes a Class E felony --

SENATOR VOLKER: Right, E felony.

SENATOR MONTGOMERY: -- punishable by up to four years in prison.

SENATOR VOLKER: Mm-hmm. Yes.

SENATOR MONTGOMERY: So I'm just -- and it goes on.

So that the farthest out that we go with your legislation is 15 years in prison.

SENATOR VOLKER: Right.

SENATOR MONTGOMERY: I'm just wondering, again, what is the value of this legislation vis-a-vis the cost to the state if we take it to the farthest degree, based on

what your legislation does.

SENATOR VOLKER: Senator, let me explain something to you. The process right now is costing the City of New York tons of money. There's nothing in this bill that's going to add any costs at all.

A person who is out on bail and jumps bail on a felony, let's remember that they're already subject -- by the way, quite clearly, it would be stupid -- it's stupid for somebody if they're innocent to jump bail. But people do it anyway. Usually it's because they're guilty and they don't want to come back in. So you're almost encouraged to try to escape.

What we're saying is you're not encouraged to escape, you're encouraged to come back in and at least face the charges. If you don't, if you jump bail, then you can get an extra sentence to the one that you would be entitled to anyways.

Now, let's understand that appearance tickets -- I don't know of hardly any felonies that are subject to appearance tickets. The only thing is that most of the

nonappearances in the major cities are for appearance tickets. They're things like parking and different violations. So the worst you could get for not appearing eventually would be a B misdemeanor.

Now, in New York City, a B misdemeanor is -- no one is going to jail on a B misdemeanor, by the way. They could, but nobody is. Unless they yell at the judge or -- I mean, well, who's going to bother to put somebody in jail for that?

But the big thing is to try to get them to come in without having to send out police officers or the sheriff's people in the city -- or in upstate New York, the sheriffs also -- which costs umpteen dollars and actually detracts from the ability of the City of New York, the City of Buffalo, and all these places to be able to enforce the law and to deal with real crimes. Because most of these are not real crimes, they're comparatively minor.

And that's what you're trying to do, you're trying to get people in to respond to these. Okay?

SENATOR MONTGOMERY: Thank you, Senator Volker.

SENATOR VOLKER: You're welcome.

SENATOR MONTGOMERY: Mr. President, briefly on the bill.

ACTING PRESIDENT ROBACH: On the bill.

SENATOR MONTGOMERY: I am looking at Senator Volker's legislation and the memo that accompanies it, and the thing that really is quite disturbing to me is that we're talking about, as Senator Volker says himself, to a very large extent failure to appear for a desk ticket, an appearance ticket. And those people who do that, under his legislation, would possibly be required to spend three months in jail, based on his bill.

It occurs to me that it's much more costly for the city to have -- you have 43,000. If we got half of them, and they received the maximum sentence under your legislation, we'd have a huge cost to the City of New York, because they're going to spend those three months in a local jail. If we go to the maximum possibility, 15 years in

prison, just consider how much that costs.

We already have a major problem with people who are being reincarcerated because they violated a parole -- not that they committed another crime, but they violated some parole rules, and they end up back in prison. It's very costly. It does not help to deal with the whole question of the behavior of people. There's nothing to be gained by this kind of legislation that I can see.

And I think that Senator Volker is at least fair in admitting that these are basically minor issues that we're talking about. But still, we want to incarcerate them.

I just cannot go along with this notion that every single issue that we have, especially in the city of New York, in the urban centers of this state, everything that we consider to be an issue is dealt with with the criminal justice system. And this is just one more example.

So I'm going to vote no again on this legislation, as I have in the past.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT ROBACH: Senator Volker.

SENATOR VOLKER: Senator, I guess I have a question. What you're saying is we shouldn't do anything because people violate the law. Should we flog them? I mean, what is there you would like to do?

Nobody is saying these people are going to go to jail, but they're violating the law. Maybe they harassed their wife, or maybe -- who knows what it is. And it costs us millions -- or it costs them millions of dollars to go out and look for them. And you're saying what do we do, tell them to come in? I mean, you have to think about this. There's laws in this state. And the only way you can enforce some of those laws is to have penalties.

Now, for instance, drug offenders, many of them in the City of New York get arrested a hundred times before they ever go to jail. And then finally they go to jail and people say, "Well, they're only nonviolent drug offenders." Well, the problem is maybe

if they had at least been called in in the first place and had some treatment, maybe they wouldn't be doing it.

But the only way you can do this is to have some sort of a penalty. How else are you going to do it? I think you're thinking that all these people are going to jail. Of course they're not going to go to jail. But you have to have some sort of penalty to get them even in there.

And the problem is that the police department just gets so fed up with these things -- so what that means is you have a hundred thousand scofflaws running around knowing that they can do anything they want. They can run into your car, drive away, and nobody is going to bother them. That's not the solution.

I know what you're talking about incarceration, but the solution is not to let them do anything they please. And you can't just talk them into it, because some of these people have 30 appearance tickets. And my personal opinion is if they have 30 appearance tickets, they're obviously saying we don't

care about you, your family, or anybody. And they ought to be in jail, frankly, because they ought to do the same thing you and I do, and that is follow the law.

ACTING PRESIDENT ROBACH: Thank you, Senator Volker.

Is there any other Senator wishing to be heard on this bill? If not, debate is closed.

Read the last section.

THE SECRETARY: Section 16. This act shall take effect on the first day of November.

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT ROBACH: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, I would like to explain my vote, Mr. President.

I know that Senator Volker feels very strong about this issue. And I just want to offer, as -- by way of example, the -- an approach to this kind of a situation. Not exactly the same, but it's an approach.

The district attorney of Kings County has implemented a program whereby he contacts parolees and brings them in. The purpose of him bringing them in and the reason that he gets such a tremendous response is, one, it is the district attorney who is approaching them, and, two, he is looking to offer them a way of staying out of trouble, remaining free of incarceration, and therefore people do respond in a very positive fashion.

So I think that we just need to figure there are possibilities, there are ways of approaching this kind of situation that doesn't cost so much money and doesn't end up being at the -- part of the problem of so many people being incarcerated in our state.

So I vote no.

ACTING PRESIDENT ROBACH: Thank you, Senator Montgomery.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 76 are Senators Andrews, Hassell-Thompson, Montgomery, and Parker. Ayes, 54. Nays, 4.

ACTING PRESIDENT ROBACH: The bill is passed.

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

SENATOR SKELOS: Thank you, Mr. President. If we could return to reports of standing committees, I believe there's a report at the desk. Could we have it read at this time.

ACTING PRESIDENT ROBACH: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Rath, from the Committee on Children and Families, reports the following bills:

Senate Print 517, by Senator Balboni, an act to amend the Family Court Act and the Domestic Relations Law;

556, by Senator Skelos, an act to amend the Family Court Act and the Criminal Procedure Law;

And Senate Print 1023, by Senator Skelos, an act to amend the Domestic Relations Law.

All bills ordered direct to third

reading.

ACTING PRESIDENT ROBACH: All bills reported direct to third reading.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT ROBACH: No, there is not.

SENATOR SKELOS: Would you please recognize Senator Krueger.

ACTING PRESIDENT ROBACH: Senator Krueger.

SENATOR KRUEGER: Thank you, Mr. President. I'd like unanimous consent to be recorded in the negative on Calendar 44, S554.

ACTING PRESIDENT ROBACH: Without objection.

SENATOR KRUEGER: Thank you.

ACTING PRESIDENT ROBACH: Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we adjourn until Tuesday, February 25th, at 12 noon.

ACTING PRESIDENT ROBACH: On

motion, the Senate stands adjourned until Tuesday, February 25th, at 12 noon.

(Whereupon, at 3:46 p.m., the Senate adjourned.)