NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 29, 2003

11:07 a.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 we bow our heads in a moment of silence, please.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Wednesday, May 28, the Senate met pursuant to adjournment. The Journal of Tuesday, May 27, 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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Nozzolio, on page number 51 I offer the following amendments to Calendar Number 954, Senate Print Number 2746, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: Madam President, on behalf of Senator Morahan, on page number 56 I offer the following amendments to Calendar Number 1025, Senate Print Number 2226A, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: The amendments

are received and adopted, Senator, and the bill will retain its place on the Third Reading Calendar.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Maziarz, I wish to call up Senate Print Number 2627, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 477, by Senator Maziarz, Senate Print 2627, an act authorizing the Town of Newfane, Niagara County.

SENATOR FUSCHILLO: Madam President, I now move to reconsider the vote by which the bill was passed.

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

SENATOR FUSCHILLO: Madam President, I now offer the following amendments.

THE PRESIDENT: The amendments

are received, and the bill will retain its place on the Third Reading Calendar.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 109, by Senator Larkin, Senate Print 1235, an act to amend the Penal Law, in relation to the imposition of criminal penalties.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 144, by Member of the Assembly Parment, Assembly Print Number 4095, an act to amend

the Family Court Act, in relation to the reappointment.

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, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 163, by Senator Saland, Senate Print 2023, an act to amend the Education Law, in relation to excluding expenditures.

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, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

303, by the Assembly Committee on Rules, Assembly Print Number 7882, an act to amend the Surrogate's Court Procedure Act, in relation to jury trials.

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, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 378, by Senator Volker, Senate Print 3090, an act to amend the Criminal Procedure Law, in relation to persons --

SENATOR LIZ KRUEGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 424, by Senator Rath, Senate Print 3566, an act to amend the Family Court Act, in relation to the notice of respondent.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 435, by Senator Wright, Senate Print 1066, an act to amend --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 456, by Senator Wright, Senate Print 3423, an act to amend the Penal Law, in relation to criminal tampering in the first degree.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 467, by Senator Rath, Senate Print 3600, an act to amend the Family Court Act, in relation to child support violation.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 514, by Senator Larkin, Senate Print 2130, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law, in relation to antitrust exemptions.

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, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 515, by Senator Marchi, Senate Print 1884 --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 519, by Senator DeFrancisco, Senate Print 4429, an act to amend the Judiciary Law, in relation to administrative judges.

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, 47.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 527, by Senator --

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

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

THE SECRETARY: Calendar Number 605, by Senator Volker, Senate Print 3127, an act to amend the Criminal Procedure Law and the Family Court Act, in relation to the duration of orders of protection.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 10. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 606, by Senator Rath, Senate Print 3565, an act to amend the Family Court Act and the Social Services Law, in relation to

commitments.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 611, by Senator Rath --

THE PRESIDENT: Senator Rath.

SENATOR RATH: Madam President, I'd like to place a sponsor's star on that bill, please.

THE PRESIDENT: The bill is so starred, Senator.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 652, by Senator Volker, Senate Print 4259, an act to amend Chapter 367 of the Laws of 1999, amending the Civil Practice Law and Rules.

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, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 673, by Senator Leibell, Senate Print 4839, an act to amend the Cooperative Corporations Law, in relation to the formation of cooperatives.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 681, by Senator Kuhl, Senate Print 4452, an act to amend the Education Law, in relation to the salary cap for a district superintendent.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 691, by Senator Velella, Senate Print 4123 --

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 705, by Senator Robach, Senate Print 3916, an act to amend the Education Law and the Retirement and Social Security Law, in relation to the applicable interest rate.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect January 1, 2004.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 721, by Senator Nozzolio, Senate Print 3829, an act to amend the Executive Law, in relation to personal interviews.

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, 47. Nays, 1. Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 734, by Senator Farley, Senate Print 4387A, an act to amend the Banking Law, in relation to making certain technical corrections.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 738, by Senator LaValle, Senate Print 2233, an act to amend the Education Law, in relation to mandatory continuing education for land surveyors.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the same date as Section 1 of Chapter 135 of the Laws of 2002.

THE PRESIDENT: Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: Thank you, Madam President. I rise to request unanimous to be recorded in the negative --

THE PRESIDENT: We have to wait until the roll call is over, please.

The Secretary will continue to

read.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Okay. Thank you. You didn't see me standing before. That's hard to believe, but -- thank you, Madam President.

I would like to have -- I rise to request unanimous consent to be recorded in the negative on Calendar Number 721.

THE PRESIDENT: You will be so recorded in the negative, Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you.

THE PRESIDENT: The Secretary will continue to read.

THE SECRETARY: Calendar Number 771, by Senator Bonacic, Senate Print 4008, an act to amend the Private Housing Finance Law, in relation to the powers of the New York State Housing Finance Agency.

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, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 829, by Senator Velella, Senate Print --

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 830, by Senator Velella --

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 836, by Senator LaValle, Senate Print 284, an act to amend the State Finance Law, in relation to commodities and service contracts.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 846, by Senator Farley, Senate Print 1070, an act to amend the Executive Law, in relation to designation of August 7th as Family Day, a day of commemoration.

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, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 860, by Senator LaValle, Senate Print 3329, an

act to amend Chapter 9 --

SENATOR LaVALLE: Lay that aside, for the day, please.

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

THE SECRETARY: Calendar Number 863, by Senator Golden, Senate Print 3961A, an act to amend the Executive Law, in relation to designating Asian New Year as a day to be commemorated.

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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 872, by Senator Trunzo, Senate Print 1368, an act to amend the Vehicle and Traffic Law, in relation to the penalty for operating certain commercial motor vehicles.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 875, by Member of the Assembly Smith, Assembly Print Number 3309, an act to amend Chapter 122 of the Laws of 2001, amending the Vehicle and Traffic Law.

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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 890, by Senator Farley, Senate Print 4385, an

act to amend the Public Authorities --

SENATOR LIZ KRUEGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 893, by Senator Fuschillo, Senate Print 4740, an act authorizing the study of current rules and regulations relating to the operation of drawbridges.

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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 894, by Senator Nozzolio, Senate Print 432, an act to amend the Penal Law, in relation to making it a crime to steal or possess stolen anhydrous ammonia.

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.

THE SECRETARY: Calendar Number 896, by Senator Balboni, Senate Print 514, an act to --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 901, by Member of the Assembly Ramos, Assembly Print Number 7048B, an act to amend the Penal Law, in relation to possession of billies or blackjacks.

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.

THE SECRETARY: Calendar Number 905, by Senator Johnson, Senate Print --

SENATOR SKELOS: Star that bill at the request of the sponsor.

THE PRESIDENT: The bill is so starred.

THE SECRETARY: Calendar Number 907, by Senator Saland, Senate Print 4528, an act to amend the Penal Law, in relation to unlawful use of a scanning device or --

SENATOR SALAND: Please star that bill, Madam President.

THE PRESIDENT: The bill is starred.

THE SECRETARY: Calendar Number 908, by Senator Saland, Senate Print 4529, an act to amend the Penal Law, in relation to harassment of teachers and school personnel.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first of September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 1. Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 910, by Senator Fuschillo, Senate Print 4584, an act to amend the Penal Law, in relation to false personation.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 1. Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 913, by Senator Marcellino, Senate Print 4941, an act to amend the Criminal Procedure Law, in relation to anonymous juries.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 928, by Senator Kuhl, Senate Print 2581, an act to amend the Parks, Recreation and --

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

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

THE SECRETARY: Calendar Number 936, by Senator Maltese, Senate Print 1180, an act to amend the General Municipal Law, in relation to certain lung disabilities.

THE PRESIDENT: Read the last

section.

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

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 noncontroversial reading of the calendar.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 378, by Senator Volker, Senate Print 3090, an act to amend Criminal Procedure Law, in relation to persons designated as peace officers.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR VOLKER: Madam President,

this is a bill that would allow peace officer status for the security force at the Erie County Medical Center.

I think that one thing we -- I listened yesterday to a debate on peace officer status, and apparently there's a misunderstanding that peace officer status gives the same powers as police officers. That's absolutely not true.

The problems, in fact, we're having now is, and particularly in a city like Buffalo, where the police force is being downgraded, or rather consolidated or whatever is being done -- in other words, there are fewer police officers. In certain high-crime areas, and the Erie County Medical Center is in an area that I think some would consider a high-crime area, you need the color of law.

And what peace officer status does, I think -- understand, police officer status gives a person the right to make arrests off -- in any place within the jurisdiction, basically, although a police officer can make certain arrests anyplace.

A peace officer only has power in

relation to where his authority is; that is, at the facility or wherever it is that he or she is involved with.

It gives no authority to carry guns. Except that I can assure you that most of the security officers at the Erie County Medical Center already carry guns. They have permits. And the reason is, it is a fairly dangerous area. And this -- the peace officer authority does not give it -- if the people that are involved say they can't do that, they can't do it.

And I think one thing that people should realize, a lot of the peace officer people now are asking us for two things. First of all, they want the power of police officers, because that gives them much more authority to make arrests and things of that nature.

The second thing, of course, they all like is they all want to be police officers. But we don't let people become police officers unless they go through the same training as all other police officers go through.

And the difficulty is that in some cases that becomes very problematic. Particularly in New York City, where there's a lot of the people who are doing some very dangerous work that want to be police officers because of the situation they're in, but we have balked at doing that.

The peace officer basically gives that person some authority -- the color of authority, is what I call it. Not a heck of a lot more authority in many ways than an average citizen has, because everybody to a certain extent has the right to grab somebody who immediately just committed a crime.

But it gives some color of authority. And more than anything, to tell you the truth, it allows that person to have some coverage should there be a problem with some action that they take, and gives them at least some authority.

Most peace officers -- and they're asked, by the way, that if there's something very serious where they have time to make an arrest, they call a local police officer. Because the real authority is not in peace

officers, it's with police officers.

And, for instance, serving warrants. And we used to have this even way back when I was a police officer, where we would get calls from people at institutions or whatever and you would go there with the warrant and they would go with you and serve the warrant.

It's really designed if someone sees a crime being committed, that they have the color of authority to go and arrest that person and turn them over to a police officer. Because they have really not the authority to move ahead and really prosecute the case; that has to be done by the local authorities.

THE PRESIDENT: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. If the sponsor would yield.

THE PRESIDENT: Senator Volker, do you yield?

SENATOR VOLKER: Certainly.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

Well, I was so glad that you had a

bill here today, Senator Volker, on peace officers. Because, as I've brought up several times just this week, we seem to keep passing bills here to expand the number of people who are peace officers and the authority they have.

SENATOR VOLKER: Yes. Yes.

SENATOR LIZ KRUEGER: In fact, as you just explained, we don't let people who want to become police officers become them because we don't have enough money to have enough police. And you're using the example of a hospital in your own district.

But as you just said, they carry guns, we're giving them the right to do arrests, warrantless searches --

SENATOR VOLKER: No, that's not -- by the way, that's not true.

SENATOR LIZ KRUEGER: It's not true.

SENATOR VOLKER: They have very little authority to do warrantless searches, except if there's a crime committed or something where there is a reason connected with the -- and I don't mean to interrupt you.

But -- and, by the way, it doesn't give them the authority to carry guns.

SENATOR LIZ KRUEGER: No, but you said that these people already had that.

SENATOR VOLKER: They do because they have permits.

SENATOR LIZ KRUEGER: Right.

SENATOR VOLKER: And if the local people decide, the people that run the institution, that they can continue to carry guns but under the authority of their -- they have to do the same process as everyone else, is what I mean. In other words, get checked and make sure they're -- of their ability to be able to do it.

But I would point out to you, if I just might say, that one of the problems is you need people who have some authority to oversee some of these public institutions.

Many of these people, by the way, are trained as police officers -- or trained the same as police officers. Because what's happening is admittedly this is one of the ways you can then become a police officer, is to become a peace officer at some place and

then later apply, if there is an opening, to become police officers.

But the problem is that you have to have some sort of authority in these type of places. There have been some very serious incidents that have occurred in these places, shootings and so forth. And particularly, unfortunately, at hospitals in Western New York, where people are brought in with stab wounds and things of that nature, and maybe the other people that were involved in it come looking for them at the hospital or whatever. So it's a pretty serious matter.

And I only point out that we pass a -- it's true, we pass a number of peace officer bills a year. But only a few become law. And this one, very, very honestly, probably will, because, I think, of the serious nature of the situation involved. And I only point that out to you.

SENATOR LIZ KRUEGER: Madam President, if through you the sponsor would yield to an additional question.

THE PRESIDENT: Senator, will you yield?

SENATOR VOLKER: Certainly.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

I appreciate your explanation, your clarification.

I guess the question I want to ask you, which is both, I think, on your bill and on the broader issue, we know our crime rate is going down throughout the state of New York, happily. And yet it seems, through the action of the Legislature with these peace officer bills, we are creating a second tier of police where we don't have a mandated, standard training protocol or an institutional relationship with the prosecutors, as you describe.

And yet in various institutions throughout the state of New York -- hospitals, universities, energy plants -- we are talking about creating a secondary structure of police for most purposes, if you're talking about the ability to carry guns in some circumstances, if you're talking about the ability to do searches in some circumstances, to chase

people off the premises in some circumstances.

You are an expert on the police system and the judicial system in this state. Don't you think we're walking down, potentially, a dangerous road by having a second tier, nonpolice police system?

SENATOR VOLKER: The answer is no. And I'll tell you why. Because the problem is we don't do this. These are not police, they're peace officers. There's -- the authority is much, much less.

The prime reason that these people get peace officer status has to do with their ability to enforce certain standards of the institutions. They're really not designed, for instance, to enforce the Penal Law. They're designed to allow for certain actions that have to be taken within these institutions where there are no police officers present.

I think one of the things that has to be remembered also, in this lawsuit-crazy age that we live in, it also gives them some authority to have certain coverage. Because challenging all authority is so prevalent

today in civil suits that you have to have some level of authority in order to even manage these -- the alternative, by the way, the alternative is to hire professional security guards, mandate very expensive procedures with them. And in some places, that has happened.

In this state we have not been very successful at convincing cities, towns, villages or anybody else to do that sort of thing.

So when you think about it here, what is the alternative? Is the alternative not to do this and therefore risk even more problems than we might create now? I don't think so.

And as I say, most peace officers do not carry weapons. They do not. Because the peace officer status does not give them authority. It is only whether the local people want it and, secondly, the issue of permits.

The third thing you should understand is they can't chase anybody off the -- they have no authority, under peace

officer status, to chase anybody anywhere. If the person leaves the building and walks away, they have to call a police officer. I suppose you could argue if you're chasing somebody out the door and they fall on the sidewalk or something.

But their only authority is in relation to the facility that they -- where they work. They do not have any other authority to do any other arrests or any enforcing of the local violations or penal laws or anything of that nature.

SENATOR LIZ KRUEGER: On the bill briefly, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

I appreciate Senator Volker's explanation.

Again, I think the issue here is bigger than his one bill. The bill that we dealt with earlier in the week involved the right of peace officers at nuclear power plants to in fact leave their facilities to follow through, so that one was different.

The bill we dealt with yesterday for a university system peace officers to have certain police powers was slightly different than your bill today.

Your bill today, as you said, doesn't include the right to guns, although they already carry guns.

My point is, and it is my concern with the direction we are going, we are creating a second-tier police system in this state through these individual peace officer pieces of legislation. Each one works under a different set of rules, a different set of standards, somebody else overseeing them. There is no standardization or institutional base of rules, regulations, training, approval for these peace officers throughout the state.

I fear that we walk ourselves down a road where we turn around, take a look back a few years from now and say, how did we create 52 different subpolice systems in the state of New York, each of which have their own rules, but many of which have most police powers?

Because, I would argue, first peace

officer, then you do have people coming forward saying the right to carry guns. If you're doing arrests, you are in a dangerous situation, you're going to ask for the power to carry a gun.

If you can do a search at a university, where's the line between a warrantless search and a search in which you should call the police?

I think New York State is doing ourselves and our communities an injustice by not asking the bigger questions about why are we going down the road of so many subpolice systems.

Do we have adequate police protection in our communities? If we don't, let's address it through our police systems rather than setting up a quasi-privatized, piecemeal system for people who won't be police but will have many of the authorities and powers of individual police.

I'll vote for your bill, again with the hesitation I've raised on all of the bills this week. But I really think this Legislature needs to sit down and take a look

at the needs for police response throughout our communities and what we should doing in a broad-based structure rather than these individual peace officer bills.

Thank you, Madam President.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

Senator Connor.

SENATOR CONNOR: Thank you, Madam President. May I have unanimous consent to be recorded in the negative on Calendar Number 519.

THE PRESIDENT: Without hearing any objection, you will be so recorded as voting in the negative, Senator Connor.

The Secretary will continue to

read.

THE SECRETARY: Calendar Number 435, by Senator Wright, Senate Print 1066, an act to amend the Real Property Tax Law, in relation to the taxation of certain state lands.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR WRIGHT: Thank you, Madam President.

The bill before us today amends the Real Property Tax Law to add the town of Parish in the county of Oswego to a listing of townships in various counties across the state and amends the Real Property Tax Law to provide for the payment of state real property taxes.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Senator Schneiderman.

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

THE PRESIDENT: You may proceed on the bill.

SENATOR SCHNEIDERMAN: This is a bill that we addressed last year that provides for property -- that certain state property will be exempt from taxation -- will be taxable, excuse me, will be taxable by municipalities, and provides a list of certain specific municipalities.

A lot of us voted against this last year because of the sense of injustice of identifying some areas of the state, localities -- and every local government in this state, including the government of the great city of New York, is hurting right now. We have lots of state property in all these municipalities. It hurts every municipality that we can't tax state property.

Senator Breslin's district, I think, is the leader in the state of having state property that's not subject to taxation.

We have a fiscal crisis in many parts of the state. I'm sympathetic to the

fact that the municipalities listed in this bill would like to get the revenue from state property. But so would all of the rest of us. So would all the rest of us.

And there's no reason why state property in the Bronx shouldn't be helping us balance our budget, why state property in Brooklyn, state property in Albany or in Buffalo shouldn't be helping us balance our budget.

So I voted no on this last year -- as did many, many of my colleagues -- because this bill represents a fundamental injustice. If we're going to try to help some municipalities by providing that they can get tax revenues from state land, let's do it fairly. Let's do it for everybody or let's do it for nobody.

This is a serious, serious problem in the City of New York. We have huge, valuable state properties that are not subject to taxation. The state does not, in my view, do enough for the major cities of this state as it is, for New York, for Yonkers, for Buffalo, Rochester, and this bill would

exacerbate the problem.

So I'm voting no, as I did last year, along with 18 of my colleagues, including, I think, virtually everyone from the City of New York on my side of the aisle.

So if we're going to provide additional aid to municipalities, let's do it fairly. Let's not increase the discrimination against New York City and other big cities by the government of the State of New York.

Thank you, Madam President.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Madam President, for the same reason yesterday that I voted against special tax breaks for certain airports -- and as the representative of LaGuardia Airport, I think we are just as in need of assistance -- I will vote no again this year.

Thank you.

THE PRESIDENT: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Just to both be a representative of New York City and highlight for this house that I recognize the issues for the rest of the

state.

In fact, there was a task force chaired by Senator Bonacic and Senator Little around issues around real estate tax inequities in the State of New York in land. And in fact, some of the issues highlighted there, that in much of upstate New York large parts of counties and districts are in fact parkland or state-owned land that also cannot collect tax revenue. And it does great harm not only to the cities, as Senator Schneiderman said, but also to upstate districts.

If we're going to deal with this issue, we have to deal with it from a statewide perspective. And this is not the way to do it. So I vote no and urge people from areas with large parks and open lands and from urban areas to vote no.

Thank you.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 435 are Senators Andrews, Brown, Diaz, Dilán, L. Krueger, Montgomery, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, M. Smith, Stachowski, and Stavisky. Also Senator A. Smith. Ayes, 42. Nays, 15.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 515, by Senator Marchi, Senate Print 1884, an act to amend the Judiciary Law and the Education Law, in relation to creating.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 890, by Senator Farley, Senate Print 4385, an act to amend the Public Authorities Law, in relation to authorizing regional transportation authorities.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5 --

THE PRESIDENT: Senator Krueger, excuse me.

SENATOR LIZ KRUEGER: I'd just like to speak on the bill briefly.

THE PRESIDENT: You may proceed on the bill.

SENATOR LIZ KRUEGER: Thank you.

I just wanted to highlight to this house that this is a bill that gives off-budget authorities even more power to make financial decisions for themselves absent the role of the Legislature.

And while it seems a relatively innocuous bill, the ability of upstate authorities to have the same authority of the MTA, to have lines of credits at banks, allowing them to avoid taking out additional

bonds, and they argue that it's cost-effective -- and it may be -- it raises for me yet again the red flag that all of us should be aware of, that we have large numbers of off-budget authorities in this state that have the ability to raise their own revenues, increase their fees and tax the public without the Legislature being a participant -- and unfortunately, as we have seen with the MTA frequently, lately, the ability to perhaps misrepresent the numbers in the books that they provide to the public when the public asks for information.

And so I worry that this gives the regional transportation authorities an additional power that the MTA already has had to raise its own money, perhaps under the veil of no one in the public eye knowing what's going on.

So I've reviewed this with Senator Farley, and I do think I can support this because it does allow regional authorities simply to borrow some additional money at lower cost.

I wanted to highlight for this

house yet again how important it is for the Legislature to take back authority to review off-budget authorities, to not allow MTA or other off-budget authorities to continue to have 100 percent control over their own decision-making, their own finances, their own ability to raise taxes on the people of New York State.

And I thought I would take this opportunity to urge us yet again to move forward on reform bills for public authorities, including the MTA and other regional authorities such as those covered by this bill.

So I will vote yes for this bill, but I wanted to take the opportunity to raise yet again an issue we should deal with before we go home this year.

Thank you, Madam President.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 896, by Senator Balboni, Senate Print 514, an act to amend the Civil Practice Law and Rules, in relation to prohibiting civil actions.

SENATOR SCHNEIDERMAN: Explanation.

SENATOR BALBONI: Ask nicely.

THE PRESIDENT: An explanation has been requested, Senator Balboni.

SENATOR BALBONI: Madam President, this is a bill that first started passing this house in big numbers in 1998. And my only disappointment is that we have not had this debate on the floor of the New York State Assembly.

We have discussed this ad infinitum or, as some would say, ad nauseam. But nonetheless, the principles inherent in the proposal remain sound. That is, that if you choose to commit a felony in this state you

should not be permitted to walk back into the very courtroom that you snubbed your nose at and then utilize that court system to gain compensation for your injuries that resulted from your own felonious conduct.

That's the bill in a nutshell.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I have been reviewing the records of the Dollinger-Balboni debates on this bill over the years, which, for those of you who have purchased the collected Dollinger-Balboni debates, are at page 4827. In fact, only two copies have been sold, one in Rochester and one in Nassau County.

But Senator Dollinger and Senator Balboni engaged in an interesting debate last year. And I wonder if the sponsor might yield for a question so I might follow up on a point made by our dearly departed colleague.

THE PRESIDENT: Senator, are you willing to yield?

SENATOR BALBONI: I'm sorry,

Madam President. For the record, you're not suggesting that Senator Dollinger passed away. He's merely left this building.

SENATOR SCHNEIDERMAN: No, but people who have --

THE PRESIDENT: I take that as a yes, Senator.

SENATOR SCHNEIDERMAN: He is out of the country at the moment.

Through you, Madam President.

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: Much of the debate last year related to the lack of any language in this legislation requiring nexus between the criminal conduct, the felony -- the conduct that results in a felony conviction and the incident that forms the basis for the claim for damages.

This is an action, as I think everyone knows, that some refer to as the hapless burglar act. If someone is committing a crime and is injured either by the person who's the victim of the crime or by some complete third party -- if someone walks by and see someone stealing a watch and shoots

someone in the back and paralyzes them, that person would be exempt from liability because it was in the commission of a felony.

SENATOR BALBONI: I'm sorry, Madam President, may I just -- I want to make sure that the record is clear. Let me just correct that last statement.

The bill would not exempt that individual from liability. It would merely say that they cannot bring a state civil remedy.

They would still be subject to prosecution and incarceration under the state Penal Law, and they would still be subject to a federal civil rights action.

SENATOR SCHNEIDERMAN: Yes. Thank you, Madam President, thanks, Senator Balboni, for that correction.

The point I am attempting to make is that throughout the debate last year Senator Balboni repeatedly referred to the fact that this bill is limited to actions that are in the course of the commission of a felony.

It states, at the first page, this

would prohibit individuals who commit a felony from suing for any injuries incurred, quote, as a result of the commission of that crime.

Senator Balboni went on to state that this bill talks about being injured during the commission of a felony.

I am reading the section 1411-A, lines 9 to 16 of the bill, which is the relevant section. I do not see anything that requires any nexus whatsoever between the culpable conduct that results in a felony conviction and the civil action.

All this bill says is recovery is barred in any action to recover damages for personal injury or wrongful death. Any. It's barred in any action, any culpable conduct of the claimant or decedent resulting in a felony conviction.

There's not even a preposition. There's nothing that says in the course of the act that's the basis for the civil action. It doesn't say committed during the incident resulting in a civil action. It doesn't say it's the proximate cause of the injury resulting in the civil action.

What's the nexus, Senator Balboni?

SENATOR BALBONI: Madam President, through you.

If I -- I don't have a Black's Law Dictionary here, and I apologize for that. But I can certainly send you the cite.

The key to the answer is what we refer to this bill in the office. This is known as the "culpable crimes bill." And your question goes to the definition in this state's jurisprudence of the phrase "culpable conduct."

We tried to make sure that we had a statute that recognized the judicial realities in this state's civil justice system. And to do that, we went back to 1975, when the CPLR was changed from the contributory negligence standard to a comparative negligence standard. And we went back to the case law that had been developed prior to the change in the statute, and the case law specifically refers to culpability. And that is the phrase upon which we seized.

So if you read the language of the bill, it says in any action to recover damages

for personal injury, any culpable -- which means responsible, connected -- conduct on behalf of the claimant resulting in a felony conviction shall be a complete bar to recovery.

Now, the ultimate safeguard in this particular application is the judicial review attendant to a motion for summary judgment at the threshold of the action. And that's really what this is.

As you know, being a litigator yourself, Senator Schneiderman, that the way that this statute would act as a complete bar is upon the commencement of an action by the felonious plaintiff and then a response by the defendant to dismiss summarily this motion.

That motion would then be reviewed by the court. And in that case, since we actually use the phrase or the word "culpable," the court would then make that inquiry on the papers submitted, whether or not in fact the conduct was culpable to the felony.

So at the end of that review, the court could do one of three things, as you

know. The court could say, you are correct -- I'm sorry, do you have a train to catch?

SENATOR SCHNEIDERMAN: A train of thought is what I'm trying to catch.

(Laughter.)

SENATOR BALBONI: You've been missing that train for several years now. But don't let that discourage you.

(Laughter.)

SENATOR BALBONI: I'm sorry, just a little joking here.

SENATOR SCHNEIDERMAN: Never engage in a battle of wits with an unarmed man.

(Laughter.)

SENATOR BALBONI: The court could say, number one: I agree with you, plaintiff, you do have a case. This goes to jury. Number two: I disagree with you, defendant -- I disagree with you, plaintiff, you do not have a case because of your conduct. Or, number three: It is a question of fact as to whether or not your actions were in fact a nexus or related to this particular cause of action.

So that's what the court would do.

SENATOR SCHNEIDERMAN: Thank you. Through you, Madam President. And for my part, I will endeavor to be brief in this question.

I appreciate all of the historical contextual discussion, but I want to focus on the language of the statute. Because I honestly, honestly do not believe that there is any connection in the language, the way the statute is drafted, between the felony and the subject matter of the action for personal injury.

This says, when you talk about culpable, it doesn't refer to culpability in terms of the action for personal injuries. It states recovery is barred in any action for personal injury, et cetera -- right? -- in any action to recover damages for personal injury, injury to property, or wrongful death, any culpable conduct of the claimant or decedent resulting in a felony.

"Culpable conduct" modifies "resulting in a felony conviction." It does not relate to the civil action. It's a

complete bar to recovery. Culpable conduct of the claimant or decedent resulting in a felony conviction. That is the use of the word "culpable" in the context of the criminal law and the felony conviction.

There is nothing that requires that that felony have any specific connection to the civil action for personal injury, injury to property or wrongful death.

And whatever we say about history and whatever we saw about Black's Law Dictionary, that doesn't cover up what I think is a fundamental drafting error. If the statute is drafted to say any culpable conduct of the claimant or decedent resulting in a felony conviction committed in the course of the events out of which the action for personal injury -- that would be different.

It doesn't say that. I think we've been going year after year through this without addressing a fundamental drafting error.

There is no reason for me to believe that a court could not interpret this as broadly as to say, and this came up in the

earlier debates, that someone who is fleeing from -- or let's give a better example, since we're big on criminalizing multiple misdemeanors and making them felonies in this house.

Say we had someone who's under one of these statutes where multiple misdemeanors turned into a felony, has been driving without a license or some such thing, and is stopped by the police and tries to get out of their car and is beaten up. Now, that person would be barred from recovery.

And I appreciate what Senator Balboni says. We can only do certain things in the state government. We cannot prohibit them from bringing a federal civil rights action. We cannot prohibit a criminal prosecution. But in reality, it is a critical remedy to be able to seek civil redress.

I don't see any connection here. "Culpable conduct" refers to the felony conviction. It does not refer to personal injury. And I don't -- and if we're relying on case law, the case law right now bars recovery in the most egregious circumstances.

And we've discussed this before, Barker versus Kallash.

Where's the causal connection? Where's the nexus between the recovery for a civil action in the language of the statute, not somewhere else out in the ethers of the law?

SENATOR BALBONI: Madam President, through you.

THE PRESIDENT: You may proceed, Senator.

SENATOR BALBONI: I appreciate your concern about the word "culpable."

I would offer several pieces of solace for you. The first is that the New York State Trial Lawyers Association memorandum on this particular bill -- and they, as you know, have been reviewing this bill for several years -- does not mention anything about the nexus between the activity and the felony and the lawsuit.

So apparently they have no problem with that aspect of this legislation.

SENATOR SCHNEIDERMAN: Through you, Madam President, if the sponsor would

yield again, I am --

THE PRESIDENT: Senator, will you -- gentlemen --

SENATOR BALBONI: I have not completed my answer.

THE PRESIDENT: Senators, it's hard for the --

SENATOR SCHNEIDERMAN: Oh, I apologize. It's sometimes hard to tell.

THE PRESIDENT: It's hard for the stenographer to follow you when two people are speaking at once.

Senator Balboni, do you yield for a question?

SENATOR BALBONI: Madam President, I'm actually attempting to still be responsive to the initial inquiry by the gentleman.

THE PRESIDENT: All right, you may continue. You have the floor, Senator Balboni.

SENATOR BALBONI: So that's the first thing. The New York State Trial Lawyers Association doesn't seem to have a problem with the word "culpable" and did not point

out, quote, drafting errors. Their opposition is based upon other concerns.

Secondly, this is an interesting defense, but let's take it out to its logical extreme.

So what you're saying to me is that if this statute were to become law and an individual brought a lawsuit in an automobile accident case, but had recently been convicted of a felony for drug possession, that the court would then apply this statute? Is that what you are saying?

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Oh. I am not saying that at all.

If I have the floor back, I would like the sponsor to yield for another question.

ACTING PRESIDENT MEIER: Senator Balboni, do you yield for another question?

SENATOR BALBONI: Sure. I just want to get clarification on my question.

So, in fact, that is an absurd, extreme example, this -- a perversion of this

statute.

SENATOR SCHNEIDERMAN: I don't know. I think the statute is so incoherent it's difficult to interpret what would be a perversion and what wouldn't be.

But I would like the sponsor to yield to another question.

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

SENATOR BALBONI: Mr. President, I'm going to take the last response as a yes. And then I will also yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Creative creativity in interpretation is a very important skill.

First of all, I think it is excellent that Senator Balboni is now citing the Trial Lawyers as the authority on legal interpretation in this state.

I have learned something, though, in my years here. And I'm often reminded of this by Senator Ruben Diaz. Sometimes the trial lawyers are wrong. I mean, I've been

through a couple of debates on this bill, and this issue was raised, but I had never really focused in until this year to the drafting error.

And I think it is clearly a drafting error. There is no connection between the second half of the phrase and the first half of the phrase. And I don't know how a court would interpret it.

I do know that an overly aggressive prosecutor with an ax to grind for someone could attempt to interpret it broadly. And there are times when there are perversions of statutes.

But once again, I would like to request -- and this is the last time I will do so -- what specific words in this statute indicate that the culpable conduct of the claimant or decedent resulting in a felony conviction has some connection, or what the nature of that connection is, to the action for personal injury.

What are the words in this statute that state there must be some connection between the culpable conduct resulting in a

conviction and any action?

SENATOR BALBONI: Mr. President, through you, I'm beginning to discern the gentleman's confusion over certain aspects of the bill. And let me just clarify.

When you said that you're concerned about a prosecutor's zeal, this is not a criminal statute. So there would be no prosecutor involved in the application of this statute.

The only time that this statute would be invoked is if in fact, say, a county attorney or an attorney for the city or a defense attorney on behalf of some insurance company were to decide this is the applicable statute that would bar recovery.

So I just want to make sure that we're clear, this is not a criminal statute even though it references felony.

Secondly, I will go back again to the word "culpable." And the reason why we did not go to the broader language is to try to make sure it was in, you know, this action and this particular -- because that's very difficult to define. And what we're doing

here, and you -- lastly, your reference to Barker versus Kallash is an important one, and that really goes to the crux of this bill.

This bill is not establishing new ground, new precedent. It's not taking the state in a different direction. What it is doing is it is merely codifying existing case law.

And I think you'll agree that if there is a benefit to codification, it is the utilization of that statute in motions of summary judgment.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: I will take that answer as there is no connection language there.

I will now speak on the bill briefly. Very briefly. Very briefly.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think there are two fundamental problems with this law.

One is that even if it was drafted

correctly, I would vote against it. Because what this bill seeks to do is to take away from the jury the ability to take into account all the factors in a case.

There is no easy course for someone who is committing a felony and attempts to bring a civil action based on that felony to get a recovery. Many of those actions are dismissed. Most are barred by the doctrine of Barker versus Kallash.

And I think that, you know, the examples that have been cited in past debates are clear enough. If someone, you know, is in the process of stealing a watch and a bystander -- because it doesn't even have to be the victim -- shoots him 18 times in the legs, then no civil recovery would be available in the courts of the State of New York if this passed. A question about -- question about its application in other areas.

But more centrally, I think today we have in fact identified a drafting error. There is no language that connects any culpable conduct of the claimant or decedent resulting in a felony conviction to the civil

action. It doesn't say culpable conduct in the course of events that led to the civil action. There is no nexus.

This could be interpreted as broadly as a court wanted to interpret it. It is an invitation to confusion.

And I would like to call the Senator's attention to the fact that, as he has cited the law dictionary, Black's Law Dictionary, "culpable" is defined simply as blameable, censurable, criminal.

So this refers to culpable conduct, culpable conduct of the claimant or decedent resulting in a felony conviction. I think it's absolutely clear that culpability here refers to the conduct resulting in a felony conviction. There is no definition of the relationship between the civil action and the conduct. I think that's a fatal flaw.

I do understand people's concern about some cases that get a lot of publicity. But I do think the law as it exists in the State of New York now does adequately address those concerns while providing a balance. The balance is this. You don't want people's

rights to recover, to put their case before a jury, to be preempted by us saying we're better than a jury, unless you have a very, very extreme circumstance.

In this court, cases brought by felons or alleged felons for civil recovery are frequently thrown out at an early stage. The law works as it is now. And I think passing a statute as poorly drafted as this is just going to make the situation worse.

I vote no, and I urge everyone to vote no.

ACTING PRESIDENT MEIER: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

Having heard my learned counsel colleagues debate the drafting error or non-error, I would say, based on my experience, we're looking at a four-three decision from the Court of Appeals should this ever become law. Which way it will go, I don't know. But that's how drafting issues get resolved.

And that makes our job difficult,

because we're never sure when we pass a law, any law, that it's going to end up meaning what we thought it meant when we all voted.

But I'd like to focus on something less technical and a bigger picture. Because what has disturbed me for some years is the lack of an approach to the total texture of tort law and what it's about.

We tend to see -- and the advocates, whether people who want so-called tort reform or the trial lawyers and consumer groups that talk about individual rights to recover, we tend to focus on the dollars and of a particular case involving a tort or alleged civil wrongdoing, recovery, damages.

It sounds like it's all about money. You know, the advocates for existing law will talk about the poor victim of a tort and their need and ability to recover damages so that they can be put right or get medical treatment or live out their lives in comfort or medical attention, whatever they need.

So we look at that as a onesies thing. And, yes, one purpose of the tort law as it evolved from the common law down into

the state, into our statutes, is to compensate victims of civil wrongdoing for the damages they incurred as a result of someone else's negligence, someone else's actions contrary to their duty to the public or a person, or someone who fails to act who has a duty to act.

But we always lose sight of the larger -- there's a second, equally important function or purpose in tort law. And that is as a means by which society deters certain dangerous or negligent conduct to protect everybody. And we deter it by giving damages to the victim of a particular act, but we do that to deter the tortfeasor's conduct, to protect the public at large.

And, Mr. President, I think this bill is too focused on that onesies situation. My gosh, the burglar gets injured, he's the wrongdoer, yet the homeowner has to pay damages. That does strike the public and everyone else as, gee, that's not fair, the felon gets damages.

But the justification is that larger picture that we want to deter

homeowners or whatever, in the case of a burglary, from doing particularly dangerous things that could hurt not just burglars but other people.

And the classic common law enunciation of this is the question of the trap or the tripwire gun, the spring gun. Worried about your safety, you set up a shotgun with a spring gun attached to the window or whatever, door. And if someone breaks in, the gun goes off and you shoot the burglar.

The law has always imposed absolute liability in this case. There's no justification for it. The homeowner can't say "I was justified." The law is always absolute liability.

Why? To protect burglars? Because the burglar is going to get a recovery, the burglar get a judgment against the homeowner because he's a burglar and we want to protect burglars?

No, it's to protect the newspaper delivery person. It's to protect the firefighter who has to go in there. It's to

protect the police officer who may have reason to go in there. Maybe he has a warrant to go in there, has every right to go in there.

It's to protect children who -- you know, are they burglars? I don't know. Kids are kids. Ten-year-old kids sometimes are tempted to open a window and go in and peek in somewhere. Do we really want their heads blown off? No.

So the function of the law isn't necessarily -- or, in that case, the primary purpose of the rule of tort liability is not to compensate the person who gets hurt, it's to deter everyone from ever setting a spring gun trap.

And I suggest that this bill, in focusing on, as Senator Schneiderman pointed out, the bystander who believes they've just seen a purse snatching and puts, you know, ten bullets in the back of a fleeing perpetrator -- everybody will say: Oh, but why should the purse snatcher get money?

Well, we don't want bystanders to shoot ten bullets in anybody. They don't necessarily know the facts. They don't know

what they've seen, necessarily.

We want to deter people from doing dangerous things. Not to protect the felon who may be injured, to protect everybody.

And I suggest that we go down a very slippery road here when all we focus on is who's going to get the damages.

We don't want -- and the way you do it -- so you say: Well, why protect felons? Protect the innocent. This bill doesn't affect the innocent. This bill doesn't prevent the firefighter who gets shot because of a spring gun going into a building. This bill would let that firefighter recover, but not the burglar.

Sounds logical, doesn't it? Okay, we won't let the burglar recover, but the firefighter can recover.

That misses the point. The point is, we don't want anyone to set a spring gun because we don't want that firefighter to recover damages for having his legs blown off. We don't want him to get shot in the first place.

And that's the purpose of the law.

And that's why I'm against this.

That's why, while you can talk about stories -- oh, he was a criminal, why should he get damages -- a better way, perhaps, Mr. President -- and I'm not in the business of drafting Senator Balboni's bills -- if you want to serve his purpose and still vindicate the larger purpose of the law, to protect the public, to deter dangerous conduct, let the felon recover the damages and give the money to a crime victims fund.

It deters the person who does a dangerous thing, because they're still going to have to pay through the nose for such dangerous conduct as setting a spring gun or some other kind of trap or maintaining a totally unsafe building. You know, whatever -- whatever these things arise in.

They'll be deterred, because they'll still have to pay. And you won't reward the felon. And the public at large will be protected, and innocent people who are damaged will collect the judgment.

I'm going to vote no on this bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Diaz.

SENATOR DIAZ: Thank you, Mr. President.

I represent the 32nd Senatorial District in Bronx County. They call that section the South Bronx. And when you read in the newspaper how terrible the crime is in the South Bronx, some people talk about the South Bronx as something negative.

There is a great incidence of crime in the city of New York, especially in our black and Hispanic neighborhoods. And we politicians, when we go running and asking people to vote for us to get reelected, one of the things that we promise is that we are going to be tough on crime, is that we're going to clean the streets, that we're going to support the senior citizens. And that we're going to give people -- if you vote for me, we tell people, I'm going to bring a better environment, I'm going to bring peace, and I'm going to be tough on crime.

Year after year, year after year, you see that in our neighborhoods, crimes

continue to be. I'm here only five months, but I am starting to know why. It is because we come here and we put our minds and our effort in semantics: this word here and this word there. Meanwhile, the criminals are committing crimes, and we're giving, day after day, more power to the criminals.

I heard here and I found out here that if I'm sleeping in my house and a criminal breaks into my home and I do something to that criminal, that criminal could sue me for damages.

Then I was talking to my wife, and I explained that to my wife. And my wife said: Why don't you pass a law saying to the criminal, Here, come on, here's my daughter, here's my wife. Because what we do here is sending messages to people. Go ahead, keep committing crimes, because crime pays.

Crime -- ladies and gentlemen, crime does not pay. And any behavior, any conduct, anyone that enters into a behavior to commit crime, to do damage, should be punished. And if in doing so someone gets hurt, they weren't supposed to do that.

Why -- what was you doing trying to commit that felony? What are you doing trying to come into my house? You got no business, you have no business trying to -- I got elected to be tough on crime. And I got elected to protect the senior citizens so they could go into the streets, so they could enjoy the park, so they could live a life out of fear.

I got elected so my district could get -- could be tough on crimes so criminals know that they cannot commit crime, that we are tough on crimes and that they, anyone anywhere, if they go into a bodega to rob the bodega and they get hurt, you wasn't supposed to be doing that.

If they go into any one -- if they enter into any kind of criminal behavior and they get hurt, they wasn't supposed to be doing that.

So, ladies and gentlemen, when you go back to your communities and open your mouths and telling the people: Vote for me, because I'm going to be tough on crime, I hope you come here and do that too.

But stop going through the semantics and finding out this word and that word and -- and yes, Mr. Schneiderman, I think that sometimes the trial lawyers are wrong. But I didn't get elected here to defend the trial lawyers. I got elected to defend my community and to be sure that people walk free of crime in my community.

And that's why I'm voting for this bill. Thank you very much.

ACTING PRESIDENT MEIER: Senator Parker.

SENATOR PARKER: Thank you, Mr. President. On the bill.

ACTING PRESIDENT MEIER: Senator Parker, on the bill.

SENATOR PARKER: Let me first begin by thanking Mr. Balboni, Senator Balboni, for again a very thoughtful effort in terms of the idea of protecting our communities. It's really important that we have, you know, a real commitment. And I think that's absolutely what the Reverend says.

And believe it or not, I actually

get up to support the Reverend and to join with the Reverend in saying that we ought to be sending a message and that we ought to be protecting our communities. And I agree that we ought to be protecting our communities. But I'm not clear that this bill does exactly that.

Our communities get protected not just through deterring crime because people are afraid of violence. Our communities don't get protected because, you know, people are afraid to get shot in the streets.

If we want to help senior citizens, we want to help young people, we want to help our communities get better, let's pass a living wage bill that raises minimum wage in this body. And I'm willing to join anybody to work on doing that. Because we absolutely understand that when in fact people's incomes get better and when the economy is better, then in fact crime goes down.

Let's do things like invest in youth programs. Because we do understand that when we engage our young people, our young people have less time to be engaged in, you

know, idle activities that get them in trouble.

So let's add more money for youth programming. Let's add more programs. Let's put more money for school programs, add music and dance and art back into the classrooms so that young people are engaged in the school system.

Let's in fact do things to help, you know, Chancellor Klein in New York City and other chancellors around the state in terms of bolstering their school systems so that we have better education. Let's continue to do the things and the hard work that Ken LaValle and other people have been doing to bolster higher education, to give people more economic opportunity.

Economic opportunity is really where we do protection. But that's not what this bill is about. This bill is really about a question of whether we continue to send the message to our community that freedom and the important things that are put forth in our U.S. Constitution continue to hold true.

And I think that the message we

want to go forward is that the Constitution is right, that to the degree that we have a system that is not perfect but works and is good and we continue to work with it, is the message that we want to go forward with.

And so that, you know, we're looking for now, you know, in this bill an opportunity to, you know, decide whether juries have the last say in whether somebody should be compensated or not for injuries. And my thing is, that's the way the system is. I'm not clear that this bill improves on that system.

And I feel more than comfortable in letting my neighbors and friends who sit on juries in Kings County make the decisions about, in a particular situation, whether somebody should be compensated and whether that person, you know, was engaged in a felonious activity or whether that person was a newspaper delivery boy or just a neighbor or some curious kid. It's the jury's decision, not our decision, to make sure that people get compensated or not compensated as the case goes.

So unfortunately, I'm not going to be able to vote for this bill. But I do applaud the attempt. And I think that we should continue to have these discussions about how we better protect our communities.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: Mr. President, I'm smiling because this has been a bill that I put in when I was in the State Assembly back in 1992. And back then, I never got the chance to discuss it on the floor. When I came here, I got my big chance and I put it out here.

And I want to thank Senator Dollinger, if he's listening from whatever place he is, but also -- from Paris, probably -- and Senator Schneiderman for indulging me. This is one of the finer aspects of law that I've really enjoyed getting into.

But that aside, this bill is about bigger concepts. It's about bigger issues.

And, Senator Parker, you're right, that you need to broaden the scope and the

approach.

And, Senator Connor, I'm thrilled that you've joined this debate. I really mean that. And your points outline the differences.

You know, there aren't that many bills in this Legislature that we can truly say from a philosophical perspective there's a clear line and be able to articulate it. Our constituents say to us all the time that the line between Democrats and Republicans has blurred. We don't really fall down on one side of an issue or another. This is different.

But let me now, as I try to make it into a grander issue, let me take the air out of that balloon and tell you I have bad news for all of you who vote against the bill. This is already law. That's the point. The Court of Appeals has already decided this issue.

So, Senator Parker, the court already takes away from your neighbors the ability to decide this issue in court.

How do I know this? I've tried it.

And then you say to me, Well, then, why did you put in the bill, Balboni?

Because this will save money. It's the implementation through statute of what our Court of Appeals has already determined.

What would really be interesting -- and I challenge all of you to do this -- let's see if you really believe what you're saying. Put in a piece of legislation that repeals Barker versus Kallash. Put a piece of legislation in right now that says: You know what, the Court of Appeals is wrong; as a felon, you should be able to go to a jury every time. Put that bill in, I dare you.

But you won't. You know why? Because you understand what the court understood and what we're trying to understand here and why this bill has passed every year. Because there's a broader message. It is about deterrence, Senator Connor, deterrence of criminal behavior, of all sorts of criminal behavior. But that deterrence is in a lot of different ways.

The thing I truly object to here is that you're right, it's not about dollars and

cents. But yet somehow we elevate, in this debate, dollars and cents to a level that it doesn't belong in. Because here's the absurdity. With the spring gun -- your example, Senator Connor. Here's the spring gun analysis.

As a farmer with a rural piece of property, I'm not going to set up a spring gun to catch a burglar coming into my barn, because I'm not going to be able to stop the guy from suing me but I'm going to spend 25 years in prison for having taken off his legs.

I mean, you know, deterrence? Folks, I mean, maybe my experience in life is a lot different than yours. But lawsuit on one hand, imprisonment on the other hand? There's no comparison, guys.

You know, deterrence is prison. Which is why -- by the way, there's another issue that no one's mentioned, but let me bring it out here. And I'm trying to do this quickly, because I know it -- I'm very conscious of where we are on the calendar.

When the bill first came up, the

main concern was of the minority community and police brutality, that this bill would be used to shield police organizations so they could commit acts of brutality, particularly against the minority community, and not be deterred or be accountable.

Well, let me address that right now. First of all, personally, if I truly believed that that was the effect, I would never put my name to this piece of legislation. Never.

But here's the way it works in the real world. If you have a police organization that commits an act of brutality, first off, the individual officers are subject to criminal prosecution. And if there's anything we know for sure, when a police officer goes inside to a prison system, they're treated a lot worse than almost anybody else. So there's a real deterrent there.

But here's the second thing. The federal civil rights legislation, law, 1983, it's a statute that allows for a broad-based civil liability lawsuit not just against the individual officers, which you can do, but

against the organization as a whole, against the city and the municipality.

And I'll tell you what, that's a lot harder statute than the CPLR here in this state. I know. I've tried it. I've been in court cases where this has been applied.

So again, you don't lose the deterrent because of the application of federal law. As a matter of fact, and I've said this before, if you were to bring an action for police brutality in state courts, it's legal malpractice. Because you should go in federal courts. That's exactly where you should be.

So to wrap up, number one, this is already law. If you really have an issue with this, then repeal the law as it is now. But, number two, recognize that we're not taking away deterrence with this statute. All we're doing is we're saying to everybody else, every other hard-working stiff out there who has never committed a crime in their lives, that if you do commit a crime, you're not equal. You're not equal. You've stepped outside the boundaries. You don't belong here. You

belong in prison. And we're not going to help you. We would help you if you stayed within the bounds of society.

And that's the message. That's what we want to say here. Don't do the crime. Not because you can't do the time, but because we're not going support you in your attempts to be compensated.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Very briefly.

This was a good debate. I think everyone debating is sincere in their beliefs. Even if we disagree, we all have the same agenda of protecting our constituents and making sure that the system of justice operates fairly for all.

I do need to clarify something. Senator Balboni stated that this is already the law. My concern with drafting is not just a technical concern. The law now under the Court of Appeals requires, for the wrongful plaintiff rule to apply, that if a plaintiff

is injured while engaged in conduct that is a serious violation of the law -- and this is the operative language -- the injuries must be a direct result of that violation.

The Court of Appeals has the nexus. The law in the case law is better than the language in the statute that is being proposed.

I think that, you know, the good senator, who no one doubts his sincerity, is simply wrong that this is an improvement on the case law. The case law's language I think is much more clear than the language in the statute. And maybe when we revisit this issue next year we can work up some new language to at least take that issue away.

I will continue to vote no, Mr. President.

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.)

SENATOR DIAZ: To explain my vote.

ACTING PRESIDENT MEIER: Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Mr. President.

In voting in favor of this bill, I also would like to say that in our communities we keep sending messages to criminals and then we try to cover behind blaming the system. Keep committing crimes; it's the system is the one that has you committing crimes. Because the system doesn't give you this, go ahead, kill; go ahead, rob; go ahead, assault.

And we keep blaming the system. And we keep telling the criminal, Go, keep abusing senior citizens; go, keep abusing ladies; go, keep raping; go, keep doing everything. And then we say the system. We should give them this and we should give them that.

And we send the message to criminals, it's okay for you to continue to doing crimes, it's okay for you to continue abusing senior citizens, it's okay for you to

continue doing rape and all those sorts of things because the system is at fault.

I understand that we have a rotten system and that we have to give education and that we have to give more jobs and more opportunity to our people. But we, ladies and gentlemen, we got to stop this blaming the system. People are committing crimes, people are killing people because of the system.

When we come here: Oh, they're doing this because they don't have this. And then the criminal on the street says, You see? I could do it, I could continue killing people and robbing people and abusing senior citizens because the system is forcing me to do this.

Well, my mother, my mother -- I am the eighth child of my mother. And she had to wash, clean floors and wash dishes and do all those kind of things so we could have an education. And those times were very difficult.

Ladies and gentlemen, the system is wrong. Stop blaming the system and stop telling the criminals to continue committing crimes because of the system.

Thank you. I'm voting yes.

ACTING PRESIDENT MEIER: Senator Diaz will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 896 are Senators Andrews, Brown, Connor, DeFrancisco, Dilán, Hassell-Thompson, L. Krueger, Montgomery, Parker, Paterson, Schneiderman, A. Smith, M. Smith, and Stavisky. Ayes, 45. Nays, 14.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

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

ACTING PRESIDENT MEIER: Yes, we have a motion. And Senator Maziarz has also asked to be recognized for another purpose.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

On page number 47, I offer the

following amendments to Calendar Number 912, Senate Print Number 4872, and ask that said bill retain its place on Third Reading Calendar.

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

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

I'd also ask unanimous consent to be recorded in the negative on Calendar Number 681.

ACTING PRESIDENT MEIER: Without objection, Senator Maziarz will be recorded in the negative on Calendar 681.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until Monday, June 2nd, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MEIER: On

motion, the Senate stands adjourned until Monday, June 2nd, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:35 p.m., the Senate adjourned.)