NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 2, 2004

3:10 p.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will come to order.

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

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

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

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

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 1, the Senate met pursuant to adjournment. The Journal of Saturday, February 28, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Fuschillo, from the Committee on Consumer Protection, reports:

Senate Print 2099, by Senator Marcellino, an act to amend the General Business Law;

4497, by Senator Alesi, an act to amend the General Business Law;

5088, by Senator Fuschillo, an act to amend the General Business Law;

5745A, by Senator Golden, an act to amend the General Business Law;

And Senate Print 5954, by Senator Nozzolio, an act to amend the General Business Law.

Senator Velella, from the Committee on Labor, reports:

Senate Print 4379A, by Senator Velella, an act to amend the Labor Law.

Senator Golden, from the Committee on Aging, reports:

Senate Print 1348, by Senator

Morahan, an act to amend the Real Property Law;

2965, by Senator Spano, an act to amend the Executive Law;

And Senate Print 6047, by Senator Golden, an act representing to constituting Chapter 35A.

Senator Volker, from the Committee on Codes, reports:

Senate Print 851, by Senator Balboni, an act to amend the Penal Law;

1055, by Senator Skelos, an act to amend the Penal Law;

1433A, by Senator Volker, an act to amend the Penal Law;

2360, by Senator Leibell, an act to amend the Criminal Procedure Law;

2810, by Senator Flanagan, an act to amend the Penal Law;

4170, by Senator Volker, an act to amend the Penal Law;

4171, by Senator Volker, an act to repeal;

4529, by Senator Saland, an act to amend the Penal Law;

4844, by Senator Volker, an act to amend the Penal Law;

4999A, by Senator Bruno, an act to amend the Penal Law;

5321, by Senator Golden, an act to amend the Criminal Procedure Law;

5396, by Senator Volker, an act to amend the Penal Law;

5407, by Senator Volker, an act to amend the Criminal Procedure Law;

5951, by Senator Volker, an act to amend the Criminal Procedure Law;

6043A, by Senator Skelos, an act to amend the Penal Law;

6111, by Senator DeFrancisco, an act to amend the Criminal Procedure Law;

6117, by Senator Volker, an act to amend the Criminal Procedure Law;

And Senate Print 6118, by Senator Volker, an act to amend the Penal Law.

Senator Wright, from the Committee on Energy and Telecommunications, reports:

Senate Print 3801A, by Senator Wright, an act to amend the Public Authorities Law;

4890B, by Senator Wright, an act to amend the Public Service Law;

5119, by Senator Alesi, an act to amend the Executive Law;

And Senate Print 6120, by Senator Padavan, an act to amend the Executive Law.

Senator Little, from the Committee on Local Government, reports:

Senate Print 520, by Senator Balboni, an act to amend the General Municipal Law;

722, by Senator LaValle, an act authorizing the Town of East Hampton;

1066, by Senator Wright, an act to amend the Real Property Tax Law;

2230, by Senator Meier, an act to amend the General Municipal Law;

2898, by Senator Bonacic, an act to amend the General Municipal Law;

5082, by Senator Larkin, an act to authorize;

5801A, by Senator Volker, an act to amend the Local Finance Law;

5888, by Senator DeFrancisco, an act to amend the Town Law;

6032, by Senator Little, an act to amend the Town Law;

And Senate Print 6066, by Senator Little, an act to authorize.

All bills ordered direct to third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could adopt the Resolution Calendar at this time.

ACTING PRESIDENT McGEE: All in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution at the desk by Senator Padavan. Could we have the title read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Padavan, Legislative Resolution Number 3720, paying tribute to Alan J. Friedman, Ph.D., upon the occasion of the celebration of his 20th Anniversary as Director of the New York Hall of Science on March 18, 2004.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, I believe there are two substitutions at the

desk. If we could make them at this time.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: On page 23, Senator Spano moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 8135A and substitute it for the identical Senate Bill Number 4812A, Third Reading Calendar 316.

And on page 26, Senator Marcellino moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 6927 and substitute it for the identical Senate Bill Number 2101, Third Reading Calendar 354.

ACTING PRESIDENT McGEE: Substitutions ordered.

Senator Skelos.

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

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 144, by Senator Skelos, Senate Print 5554, an

act to amend the Criminal Procedure Law, in relation to eliminating.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 11. This act --

SENATOR MONTGOMERY: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 182, by Senator Maltese, Senate Print 145A, an act to amend the Vehicle and Traffic Law, in relation to providing for distinctive license plates.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 185, by Senator Trunzo, Senate Print 935, an act to amend the Vehicle and Traffic Law, in relation to dealers and dealer registration.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 90th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 193, by Senator Little, Senate Print 4358A, an act to amend the Vehicle and Traffic Law, in relation to establishing distinctive license plates.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 212, by Senator LaValle, Senate Print 4516, an act to amend Chapter 453 of the Laws of 2000, amending the Parks, Recreation and Historic Preservation Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 217, by Senator Maziarz, Senate Print 561, an act to amend the Penal Law, in relation to killing or injuring a police animal.

ACTING PRESIDENT McGEE: Senator Flanagan.

SENATOR FLANAGAN: Madam President, to explain my vote.

ACTING PRESIDENT McGEE: We need to read the last section first.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT McGEE: Senator Flanagan.

SENATOR FLANAGAN: Thank you, Madam President.

I just want to explain very briefly my vote on this bill. Senator Maziarz is obviously the sponsor. I think this is a great bill. I'll just use one story.

In Suffolk County, there's a police officer named John Mallia, and he has a dog named Boomer, a 9-year-old German shepherd. They basically are like family, they've worked together for a number of years. And there was a recent incident which underscores the need for legislation like this.

Officer Mallia basically had his life saved because the dog, his German shepherd, Boomer, protected him from an assailant. He was stabbed six times, the dog was, as was the police officer. Fortunately, the dog survived, as did the officer.

But during the dog's surgery, the officer was wounded and stayed there for the whole time because this person -- this companion or this animal, I should say, saved his life.

And when you think about it, this is a police animal who's acting in the course of duty just like a police officer. He was there to protect this person. And here we are enhancing penalties in a very positive way, and addressing a situation that I think needs to be rectified.

Assemblyman Tonko is working on this bill in the Assembly; I've had discussions with him. And hopefully this will be the year when this bill can get passed in both houses in chapters.

But it's a good piece of legislation, and there are real-life stories

to underscore that.

Thank you.

ACTING PRESIDENT McGEE: Thank you, Senator Flanagan.

Announce the results.

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 222, by Senator Marcellino, Senate Print 763, an act to amend the Penal Law, in relation to including the theft of dogs and cats.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 233, by Senator Robach, Senate Print 6038, an

act to amend the Civil Service Law, in relation to the resolution of disputes.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 5. This act shall take effect one year after it shall have become a law.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 298, by Senator Morahan, Senate Print 5147, an act to amend the Not-for-Profit Corporation Law, in relation to corporations for the prevention of cruelty to animals in Orange County.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 299, by Senator Volker, Senate Print 5452B, an act to amend Chapter 824 of the Laws of 1933, relating to creating the Buffalo and Fort Erie Public Bridge Authority.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 120th day.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 357, by Senator Saland, Senate Print 4023A --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 358, by Senator Saland, Senate Print 5325, an act to amend the Education Law, in relation to involuntary transfer of violent or disruptive pupils.

SENATOR MARCELLINO: Lay it aside temporarily, please.

ACTING PRESIDENT McGEE: The bill is laid aside temporarily.

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

SENATOR MARCELLINO: Senator McGee, may we just stand at ease temporarily, please.

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

(Whereupon, the Senate stood at ease at 3:21 p.m.)

(Whereupon, the Senate reconvened at 3:24 p.m.)

ACTING PRESIDENT McGEE: Senator Bruno.

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

And I believe I have a privileged resolution at the desk. I would ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 3664, commending John Sawchuk and Michael Bennett for their heroic action at Columbia High School on February 9, 2004.

"WHEREAS, It is the sense of this Legislative Body to recognize and commend the concerned and heroic acts of distinguished citizens who voluntarily take immediate and appropriate action to protect the health and safety of others; and

"WHEREAS, Few individuals are ever confronted by that moment of truth when, in a hazardous situation, a single act may determine the course of life of others; and

"WHEREAS, John Sawchuk and Michael Bennett were confronted with such a moment on Monday, February 9, 2004, at Columbia High School in East Greenbush, New York, just

across the Hudson River from the New York State capital, and responded immediately and valiantly, risking their lives without thought of their own personal safety to protect the lives of others; and

"WHEREAS, On that fateful day, John Sawchuk, Assistant Principal, and Michael Bennett, Special Education Teacher and Coach of the Girls Basketball Team, responded to the actions of a 16-year-old-student who had sneaked a pump-action shotgun into the school and had fired some shots; and

"WHEREAS, John Sawchuk was observing a class when he heard what he thought might have been an explosion coming from a technology classroom. Then he heard what he believed to be a shot. He and Michael Bennett ran into the hallway, as school personnel so often do whenever they hear a noise or a commotion in the halls; and

"WHEREAS, As John Sawchuk moved down the third floor hallway toward the sound, he met Michael Bennett and asked him to get the students in the hallway into classrooms and come with him. As the two men turned the

corner, they saw a young man with a gun; and

"WHEREAS, The young man had loaded the gun in a restroom and had fired twice in the main hallway of the school's south tower; fortunately, missing two students. As John Sawchuk and Michael Bennett came around the corner, the student's back was to them, but John Sawchuk could see the smoking gun; and

"WHEREAS, John Sawchuk jumped the man from behind, wrestling him to the floor, disarming him and holding him down until the police arrived. Unfortunately, in the scuffle, the gun went off again, hitting Michael Bennett in the lower leg as he moved forward to help the assistant principal. Thankfully, Michael Bennett was not seriously wounded and is recovering; and

"WHEREAS, The courageous and heroic act of John Sawchuk and Michael Bennett to confront and subdue the student prevented further injuries and perhaps an even greater tragedy on that day. By quickly recognizing the dangerous situation, they protected students and teachers alike from harm; and

"WHEREAS, John Sawchuk and Michael

Bennett credit the precautions, drills, and contingency measures put into place in 2001 as part of New York State's SAVE (Schools Against Violence in Education) regulations, and the other teachers and staff for also following other aspects of their training and these regulations, for helping to safely end this tragic incident. But it is John Sawchuk and Michael Bennett who have justly earned the gratitude and appreciation of students, staff, parents, and community; and

"WHEREAS, The efforts of John Sawchuk and Michael Bennett, who unselfishly risked their own lives to protect others and defuse a situation no one should ever have to face, are worthy of the full praise and recognition of this Legislative Body and the people of the State of New York; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to pay grateful tribute to John Sawchuk and Michael Bennett in recognition of their heroic actions at Columbia High School, East Greenbush, New York, on February 9, 2004; and be it

further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to John Sawchuk and Michael Bennett with the appreciation of this Legislative Body."

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: Thank you, Madam President and colleagues.

We've just heard a chronicle of two educators who acted in an extremely heroic way and affected the lives of an awful lot of people -- students, parents, teachers, the community.

And when you hear what was just read as part of this resolution, it almost sounds like a movie that might have been rehearsed. But these men, faced with a situation, had to act within a fraction of a second.

And by their heroic actions, John, moving to disarm that young individual -- who was there to hurt people or to kill people. And Michael, seeing what was going on, teamed with him. And when the shotgun went off, by

the grace of God, it just grazed his leg. Inches in any direction, and we might have talked about a tragedy instead of just relating to these heroic acts.

So I'm here really on behalf of our constituency, all of our colleagues. The Governor was on the phone, knowing what we were doing, as I was coming into the chamber, to extend his congratulations to John, to Michael, to your families.

Terry Brewer, the superintendent, is here, who helped after this situation, and during, to just create a situation that was as comfortable for the students and the parents as it could be under those very, very difficult and trying circumstances.

So John and Michael really are role models for all of us -- not just for teachers, educators, but for all of us -- on how we should relate in selfless ways, as they did, to protect others without regard to their own safety. So we thank you for your heroism.

And they're very humble and were almost reluctant to be here with us. And you can understand that as you visit with them

somewhat. But let me just share that recognizing what goes on really helps deliver a message to a larger community about what life ought to be like.

So we're indebted to you, and we thank you. And we congratulate you and your families that I know are as proud of you as we are.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

I want to join Senator Bruno in commending these two men, John Sawchuk and Michael Bennett, for what was really superhuman service at the time that they probably protected people in that school from loss of life.

It's hard to say that in a way they set an example, because in those types of situations human beings react in a number of different ways, and none of the ways are wrong in a time of crisis. But there are some of us who have it in them, almost innately and

naturally, that they go beyond where others would have gone, and selflessly, as Senator Bruno, described, make a great statement for humanity by saving the lives of others and preventing tragedy that would have been remembered for the rest of everyone's life.

As it is, they will remember for the rest of their lives and those who are around them will always remember them in a positive way. And even though it started out to be a malignant tragedy, it was spared by their herculean effort on that day, February 9th of this year.

We can't thank them enough. Our hearts go out to them. I speak for this side of the aisle, but there are no aisles when it comes to human tragedy, just our heartfelt desire that now that they have performed beyond what would be the capability of most people, that we as a Senate, as part of this government, will do all we can to ensure school safety and to try to keep guns out of the hands of young people.

It is a tremendous day, not only for these two men who we honor, but for our

society, that we can produce people of such valor and such courage. And it's also an inspiration to us, in a different environment, to try to outperform perhaps our predecessors and bring peace and safety to our state and to our country.

Thank you.

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

As a former schoolteacher myself, of twenty years, I wanted to just say thank you to these two gentlemen. Because when they acted the way they did, they demonstrated the fact that they cared more for their students and their students' safety than they did for their own personal safety.

And I'm sure they didn't concern themselves with notoriety or anything like that. They were doing a job that they were trained to do, and demonstrated the caring and respect that they had for their students and for their fellow teachers.

That's a great thing, and that's

something that every parent that has a child in that school and in that school system should be proud of. They can feel safe that the children that are in these men's charge are going to be safe as long as they're on the job.

And as I said before, as a former teacher, I just wanted to say thank you very much. You are, in fact, a role model for the people who I know put themselves on the line every single day when they go to the schools to teach and to educate our kids. It's not an ease job, it never has been. But you guys have taken one great step and improved and impressed all of your colleagues.

You have our respect, and I know you have the respect and feelings of the parents and gratefulness of the parents of the children in the school in which you are charged with their education and safety.

So thanks a lot, gentlemen.

ACTING PRESIDENT McGEE: Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Thank you very much, Madam President. I also rise to

support my colleague Senator Bruno, and also Senator Paterson, in thanking both John and Michael.

And I just want to bring them a little personal experience to it. My nephew, Michael, who lives in East Greenbush, attends that school. And I will tell you that not a day that when I go home after session or after we have a full day here, that they're not talking to me about what occurred.

You should know, as much as it was publicized in the press, the impact that you had on those children. And each night he is at some point talking to me about the experience, talking to me about what you did and what it meant to him and what it means to his thinking in terms of how he moves forward in life.

So from one who has a personal experience, not so much being there but has a family member who actually goes to the school, and I see him every day, I wanted to tell you how thankful I am to each and every one of you.

And if there's any point in time in

life that my path crosses yours again and that we need to be working together, you can be sure that I will be there for you as you were there for those children.

Thank you very much, and may God continue to bless you.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Madam President, just quick.

I think that the other thing that this incident shows is something we all take for granted.

This school district trained, they worked together as professionals to prepare for an emergency. When this happened, everything went the right way. Not because of luck, not because of chance, but because they took the time to make safety and emergency preparedness a priority. That's a message for all of us.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, I would offer up this resolution to all of my colleagues that would care to go on this resolution as sponsors. Anyone wishing not to, would you just privately address the front desk.

And thank you, John Sawchuk and Michael Bennett. I would ask my colleagues to please recognize them.

(Standing ovation.)

SENATOR BRUNO: There's Terry Brewer, who has joined us. Terry, would you stand up and be recognized as well.

(Applause.)

ACTING PRESIDENT McGEE: Anyone not wishing to be on the resolution will please notify the desk.

The resolution is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, I believe Calendar Number 377 has previously been reported from the Codes Committee. I would ask that we take it up at this time.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 377, by Senator Bruno, Senate Print 4999A, an act to amend the Penal Law and the Highway Law, in relation to violence committed on school grounds.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR BRUNO: Thank you, Madam President, colleagues.

Six years ago exactly today, a constituent of mine, adjacent to Senator Farley, disappeared getting off a bus, it's believed, at the SUNY campus. Suzanne Lyall, six years ago at age 19, disappeared, hasn't been heard from.

Her parents, Doug and Mary, are here with us. They have for six years

supported legislation which increases the penalties and defines "school grounds" in an expanded way. So that any crime that is committed on a school ground -- and that would include athletic fields, nurseries, daycare centers, elementary, higher ed, spans the definition of school grounds -- would be more severely punished.

We have passed this bill six years in a row. It has not passed the Assembly. And we're hopeful that with our support here, and Mary and Doug, who are here, who haven't given up hope -- and we keep them in our thoughts and in our prayers, because every day and every week they live with the expectation, positive expectation that something good will happen in their life.

So that's what the bill does. We have passed it, I believe, with bipartisan support for I believe the last five years. This will be the sixth year.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Farley.

SENATOR FARLEY: Thank you, Madam

President.

I rise to speak to this legislation, because this is not a unique situation. There's been another girl from the same campus right here in our area, SUNY Albany -- where I taught for a number of years -- the Wilton girl, who's never been heard from.

And Doug and Mary, this tragedy that you've lived with for many years, just a few hundred feet from my district, and who I know the family -- this is a stalking place. University grounds, school grounds are a stalking place for these people to take advantage of young women. And this legislation is really needed to send a message that they've got to stay off those grounds.

Senator Breslin, you remember that tragedies have happened right in our campus and right near this Capitol.

And Doug and Mary Lyall have been relentless in trying to get this legislation passed in the name of their daughter, who has been lost and gone in the tragedy that you live with day by day.

And there's no reason why the Assembly won't pass this. As they said at the press conference, they get somewhat of -- they didn't say it in that way, lip service -- but sympathy from the Assembly, but no action.

It's time for action on this legislation, because it's needed to protect, I think, young women or anybody that's the subject of a predator on these school campuses.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I don't have in front of me my past voting record on this, but I may or may not have voted no on it in the past. But I'm going to vote no today, and I want to explain my vote.

I certainly am very concerned about the environment within schools, especially high schools and middle schools, what happens to students, the degree of violence that we apparently are experiencing throughout the country, but also in my own district to some degree.

But I'm just going to -- in my vote today, I'm going to represent the interests of the young people that I represent in Brooklyn, in Bedford-Stuyvesant, in Red Hook, in Crown Heights, in Fort Greene, in housing projects. Many of them have come to their schools with varying degrees of stress and in crisis. Many of them have to travel through gangs, through drugs, through police shootings. We had one recently, where the police shot a young person. There's been two of those incidents in my district in the past several months.

And when they get to school, there is no one in that school to address any of the issues that those young people bring to them. And I'm talking especially about a group of people that I call, I refer to as the do-rag people. And one of them is my son.

So I'm especially sensitive to legislation which targets young people in schools, to increase the penalties and to put them on track to incarceration at a very early point in their lives, at the site of their schools.

Now, obviously, if anyone commits a

serious crime -- certainly as in the case of what happened in Columbia High School. And, Senator, I was here that day, I saw that, and I certainly join you in expressing my pride in the staff there, and the students. But that young man goes through the criminal justice system, and I'm happy about that. It was immediate that that situation was addressed.

But now we're talking about increasing the penalty just because it's at a high school. And unfortunately, the criminal justice system always ends up being much more harshly enforced and much more often impacting young people that I represent, especially young men who are black and brown.

So I'm going to vote against this, only because I think we have -- we certainly do have plenty of different levels of charges and penalties that we can use already. And I feel very uncomfortable when we target -- we already have, in New York City, very poorly trained safety personnel, but they are part of the Police Department. We have the Police Department, we have the safety codes, we have already laws that we have passed to increase

penalties.

And now to go one step further and create this whole new series of penalties just because it's at a school, I am going to certainly have to vote no on this bill because of my own conscience and because of what I experience with young people in my district very, very often. And it's become a national movement that we're closing in on our young people.

And I have talked about school-based health clinics that would have comprehensive health and mental health services for young people. I think that is critical. I have talked about the need for guidance in our schools, the need for support systems for young people in their communities. That's what I support. I don't see that happening.

So I have to take exception to looking to the criminal justice system as the answer for every issue that our young people bring to us. We're adults; we should be able to do better. And I hope that we can begin to turn our focus around to addressing the needs

of young people rather than simply addressing their behaviors, which very often is an indication of their needs not being met.

So, Madam President, I am voting no on this legislation.

ACTING PRESIDENT McGEE: Senator Diaz.

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

I represent a section of the city called the South Bronx. Our children, the dropout rate is about 40 percent. Mothers and fathers are afraid to send their children to school because of the bullies, the crimes, the violence.

So I'm asking all the time -- when we get together, we politicians, when we get together, we say that we have to stop the school violence, that we have to start protecting our children, and the 1.1 million students in the City of New York should be protected.

And when I hear that we should -- I don't know if I am not understanding, but when I hear that because children come with

problems and frustrations that they could come to school and we should allow them to violate the law and commit crimes -- to me, anybody that commits a crime is a criminal. To me, anyone that violates the law is a criminal.

So if someone commits a crime in school, it prevents, prevents the great majority of the students from getting a proper and nice and decent education. And some of our children are being -- are leaving the school because they're afraid to go to school because of the bullies and the crimes and the criminals in school.

So I am here to tell Senator Bruno that I'm supporting your bill. I'm supporting your bill, and I think that we should be -- that you should be stronger to students in our school. See, sometimes, if the mayor want to put police protection in schools, then we say no, we can't do that. We got to put laws to protect the rest of the children? We say no, we can't do that.

Ladies and gentlemen, what is it we're going to do here? When is it that we are going to really take a look at the rest,

the great majority of children that have been prevented from getting a proper education?

I'm here for those students that have been prevented from getting an education. If you come to school to violate the school and to bring violence to school, you do not belong in that school. Let all the children that wants to get educated be educated.

So I'm for that bill, and I encourage you to keep putting bills like that, so my children in my district will be protected. Thank you very much.

ACTING PRESIDENT McGEE: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, thank you very much.

And Senator Bruno, my compliments to you and the family that lost their innocent daughter. My heart bleeds with you, as a parent of three children.

I have a different philosophical belief than some of my colleagues. And I represent a district of kids who were away this summer at a football camp at a school-sanctioned trip that bullied entire

participants, bullied 60 kids, terrorized three kids, sodomized them with broomsticks, brutally raped them, beat them, tied them up with duct tape.

And in Pennsylvania, where it took place, they were charged as juveniles, and the judge said, They're kids.

Baloney. You don't commit acts of crime like that and be treated like children. Because you're not a kid when you step out of that line.

So we can't do enough to protect the kids that you ensure, that we as parents ask you to protect every day of our lives. And we go home, and the kids have gone home, and the administrators have gone home, and the public thinks we've gone on with our lives.

Well, I got three kids that are neighbors of mine that emotionally are scarred for their life. One kid's been in and out of a hospital since August, trying to correct rectal bleeding. And people think they've gone on with their lives.

So we can't do enough. And I commend you for your action, and Senator

Saland and Senator Balboni, and the other bills that we're introducing today. Because they're not kids anymore when they perform these acts. And if we can't teach people at a young and early part of their life, then we've lost them altogether.

Madam President, I'll be voting aye on these bills. Thank you.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 2. Senators Montgomery and Parker recorded in the negative.

ACTING PRESIDENT McGEE: Senator Parker, to explain his vote.

SENATOR PARKER: Madam President, to explain my vote.

I voted no on this bill, not

because I don't care about young people and I don't want to see them protected. I agree with everything that's been said in support of this bill in terms of protecting young people. I have one of the largest underserved populations of young people in the entire City of New York, where we have a gang problem that rivals south central L.A.

However, I'm clear that more penalties do not prevent crimes -- in the same way that we in this state are now arguing and discussing reforming the Rockefeller Drug Laws, because after 30 years of these horrendous laws, the drug addiction and the problems with drug abuse haven't gone down because of higher penalties. So in fact, just creating higher penalties within themselves is not going to do it.

If we want to protect young people and we want to protect the folks in our communities and in our schools, we need to be interacting with our young people in a very, very different way. We need to be on the ground figuring out how do we create dollars out of this budget to make sure that we

increase after-school programs, increasing things in terms of young people understand where they are in life. We need to be interacting with them and not just saying if you do this, you're going to pay the penalty.

Because people who are in fact committing some of these horrific crimes are not thinking about the penalties. And they're not going to start thinking about them just because it's something horrific.

You know, unfortunately, just a couple of weeks ago, right here -- you know, we oftentimes categorize this stuff as a New York City problem, but just over in East Greenbush, we had a young man come in and shoot a teacher. That young man wasn't thinking about, you know, the crime and what's happening. He had a problem that really should have been addressed by the community. And we need to do a better job at that.

And so I'm voting no on this bill.

ACTING PRESIDENT McGEE: Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: Madam President, just to explain my vote briefly.

In my district, a young child was beaten on a bus by other children on the bus. The parents, who were poor, very poor, feared putting the kid on the bus, but actually put -- they put the kid in a cab. They could hardly afford to put the child in a cab, but were fearful of putting her on the bus because she was being attacked routinely.

The district could not deal with it, did not deal with it adequately. The child was beaten into a coma.

Now, that's tragic. We need -- and I thank my colleagues, Senator Bruno, Senator Balboni, Senator Saland, for bringing up these bills and doing this kind of legislation, because we must get a handle on violence in our schools.

As a parent, when I send my child to a school, any parent sends their child to a school, they have a reasonable expectation that that child will be cared for and safe, with the emphasis on safe.

And as I said before, as a teacher of twenty years, I learned a long time ago that the numbers of kids involved in this kind

of activity is small. It's 1 percent of the student body that causes 99 percent of the problems. Ninety-nine percent of the kids, they're there for the best reasons, to get an education. Do they get in scrapes? Yeah, sure, now and again. But it's not the serious stuff.

The kids who engage in this kind of behavior deserve to be punished and dealt with by the system. Dealt with. Not patted on the wrist, not slapped on the hand, but dealt with in a serious way. Otherwise, we will have more districts with problems like in Senator Fuschillo's district, more problems like in my district, more problems like in their district. We cannot have this.

Safety must be our concern, and the protection of the children. These bills will do that.

Thank you. I'll be voting aye.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, can I ask for an immediate meeting of the

Rules Committee in the Majority Conference Room.

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

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time take up Calendar Number 357.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 357, by Senator Saland, Senate Print 4023A --

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR SALAND: Thank you, Madam President.

Madam President, this bill is the "Schools as Safe Harbors Act." And what this bill proposes to do is to underscore the very theme we've heard discussed time and again here during the course of this afternoon. Schools should be houses of learning and not

houses of fear, not houses of anxiety, not houses of intimidation.

What this bill does is really several things, with one basic and simple end. The basic and simple end is to create an environment in which students will be more secure, free from the menace of bullying, and in which school employees and teachers, very similarly, will not have to fear being harassed or the subject of acts of physical violence that previously may have been treated as a violation and, under this bill, would be proposed to be treated as a B misdemeanor.

You may recall that just a few short years ago we passed the SAVE legislation. And the SAVE legislation required, among other things, that schools establish codes of conduct. It also required that schools provide instruction in civility, citizenship, and character education.

Well, what we're proposing to do in this legislation is to expand that component, which was required of the Regents to provide to our schools, to also address methods of discouraging acts of bullying by one student

against another.

We provide a mechanism that requires that those school employees who become aware of the fact that there are acts of bullying that have occurred and are occurring will be required to report them so long as there's a reasonable suspicion to believe that in fact they constitute an act of bullying.

We define an act of bullying, and we say that no student shall be subject to bullying by any other student. And what we say is that the means by which we shall deal with those who shall bully will be by means of the disciplinary action in accordance with the school's course of conduct.

We also require of our schools that they provide a plain-language, age-appropriate description of the policies dealing with bullying, and they distribute it to not only employees and students, but parents as well.

The last component of the bill, as I mentioned in my opening remarks, is one that creates a crime of aggravated harassment of teachers and school personnel. Basically, the

effort there is to deal with these instances in which teachers are subject to some act of physical violence that at times actually require them being seen in an emergency room, where the nature of the crime -- or the nature of the act is not deemed to rise to the level necessary to equate with the standard for a misdemeanor.

We say in this legislation that it shall be a B misdemeanor, where in those circumstances a school employee is struck, shoved, kicked. And as a result of those actions, the person who engages in that activity will be subject to the potential of a criminal law instead of a mere violation.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Read the last section.

Senator Sabini.

SENATOR SABINI: Madam President, I believe there's an amendment at the desk. I would waive its reading and ask to be heard on it.

ACTING PRESIDENT McGEE: The reading is waived, and you may speak on the

amendment.

SENATOR SABINI: Thank you, Madam President.

I have submitted an amendment to this bill substituting the language in Senate 1925, Senator Duane's bill, and its companion, Assemblyman Saunders' bill, which is the Dignity for All Students Act. I believe that our Education chair has put in a good piece of legislation; I just seek to make it better.

There's no reason, in my mind, why we can't fully address the problem that S4023 tries to address and does a good job of getting sort of halfway there. I'd like to go the whole way now, rather than wait.

And when I say "the whole way," the Dignity for All Students Act goes more toward prevention and education, so we don't have to always worry about the penalties, but rather to intervene in these situations before they occur. And it prohibits harassment by any school staff or anyone on school grounds other than the student, which addresses a broader range of people.

You know, I've experienced, in my

time in public office, situations that were brought to the attention of groups for study. One study in New York City showed that teachers and school administrators really didn't recognize these situations as they developed, that in fact they thought, when students came to them talking about doing an act of violence or harassment, that in some ways it was something to be ignored, something to be chuckled about, something to view as part of growing up. And it's not. And we shouldn't allow it to be.

What the language in the amendment does is to train teachers and school personnel to recognize potential violent situations before they occur, to inform teachers and school personnel that it's not all right for children to harass other children or even other citizens outside the school grounds because of their affectional preference, because of their religion, because of where they've come from.

We're now faced -- and some of my colleagues in our conference have talked about some of the video games that our young people

are playing, where they're encouraged to shoot people because they're of a specific ethnic group or a specific religion. And so it's becoming almost an ingrained thing for our young people to think that it's okay to do these things, to treat people differently because of who they are.

And while I think that Chairman Saland's bill does go some of the way, I'd like to go further. And I'd like to set a tone for the personnel in our schools to understand that they can prevent these things from happening and that they should set a tone of tolerance within the schools.

I think the amendment goes much further than the bill does that's before us to do that, and I urge my colleagues to support the amendment and hopefully prevent young people from being harassed or even, in some cases, having their lives threatened because of who they are. That's a society we've chosen to develop a framework of in this state and all over America, but unfortunately it often gets lost on our young people.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman.

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

ACTING PRESIDENT McGEE: Senator Schneiderman, on the amendment.

SENATOR SCHNEIDERMAN: I think what we're dealing with here today, quite simply, is the question of whether this Legislature is going to address the issues that have been raised -- articulately, in some cases; emotionally, by some of my colleagues here today -- or whether we're going to continue this pattern of passing one-house bills that pass each other like ships in the night.

This is an extraordinarily serious issue. And I would note that a lot of the organizations that have spoken in support of Senator Saland's bill are also in support of the Dignity for All Students Act, and in fact are urging us to get the two houses of the Legislature together so we can actually deal with this issue. And that includes the New York State United Teachers, and the 170

members of the Dignity for All Students coalition.

Among the problems with the bill that has been presented to us today that Senator Sabini is seeking to address are the fact that the bill before us in the Senate omits teacher training on how to prevent and respond to bias bullying. It has no prohibition on harassment by school staff or other people besides students, which is a serious problem in many schools.

It has a very relatively narrow definition of verbal bullying, and bars private causes of action as an enforcement mechanism with noncompliant school districts. It provides no specific definition of gender, to include gender identity and expression, and it doesn't have any specific protections relating to discrimination in a broader context than student-on-student bullying.

So this bill is an effort to address a problem. The amendment would make it a much stronger bill. But I urge that even if this amendment were to fail, it's time to move beyond this pattern of year in, year out,

having the Dignity for All Students Act pass overwhelmingly in the Assembly and never see the light of day in this house.

Let's get this issue on the table. Let's not hide behind one-house bills and tell our constituents we're really trying to deal with it. Let's do a conference committee if we need to.

I support the amendment. I hope everyone will vote for it. But it is time to finally address this issue, and I hope this year will be the year we do it.

Thank you, Madam President.

ACTING PRESIDENT McGEE: All those Senators in favor of the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Dilán, Duane, Gonzalez, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Parker, Paterson, Sabini, Schneiderman, A. Smith, and Stavisky.

ACTING PRESIDENT McGEE: The amendment is lost.

Read the last section.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, just briefly on the legislation.

I am going to vote no again. I believe that I have voted no on this legislation in the past. However, if I have not, I'm changing my vote.

And one of the responses that I have to the issue of bullying, especially as it relates to persons of a different sexual orientation or a different ethnicity, I look at the example that we have set for young people in our discussions, both politically and otherwise.

There are so many people in our country who ascribe to English only, because they say this is America and everyone should speak English and English should be the only language that we teach in schools. And people, young people, are forced to learn English.

There is a raging debate about prayer in the schools, and my question is whose prayer are we talking about. But it's prayer in the schools. They're not talking

about teaching young people about world religions and the understanding and the respect for other religions in the world. I don't think that's what the message is.

And it's abstinence versus an opportunity to have sex education in schools, and AIDS education. And the idea that we would keep young people from having access to health care that includes reproductive health services to young people, as well as mental health.

What we are doing to the Haitians who put their bodies in a boat and come across because they're refugees from a horrible situation, and we just send them back. No other group of refugees in the world are treated that way by us.

And we don't talk about conflict resolution. And do we suppose that young people don't understand and don't see that and don't respond to it?

So the idea of bullying starts from the top. I've heard some very interesting comments made by the President of the U.S. Talk about bullying.

So I know it's a problem. But I think that we have a problem in our country as it relates to how much respect and tolerance and understanding and acceptance of a multinational, multiethnic, multi-sex orientation world that we live in.

I don't think there's any other nation that would call themselves a modernized country where young people grow up speaking only one language. Every other country, young people speak many different languages.

So we have a lot to do as adults. So I'm going to vote no on this, because I think that the idea that we want to address bullying has very little to do with this legislation. It has to do with setting up codes of punishment.

And I want to remind my colleagues that it says from elementary, secondary, kindergarten, prekindergarten. So when you come into school at three and a half, four years old, you're already set into a system that has very rigid guidelines. And if you go outside of that, if you behave like a child, if you behave like a 4-year-old, if you

behavior like a 5-year-old, you're going to be -- there's punishment for you. And there's very little else that we're going to offer you.

And the issue of aggravated harassment of teachers, I think I've spoken on that before. And I said specifically that I would not like to see -- I would not like to be put in a position personally, if I go to school and I'm upset with a teacher or a principal or a guidance counselor and I start yelling at them and they accuse me of harassment, and I'm going to be charged with a crime.

So personally I have to object to that, because the way that I speak on this floor, very often, I could be charged with a crime. Because people could assume that I'm harassing them when I yell at them across the floor, across the aisle.

So I'm going to vote no for that reason, personally, and also for the reason that I think we're not really talking about addressing bullying, we're talking about establishing penalties for children behaving

as children do.

Thank you. My vote is no.

ACTING PRESIDENT McGEE: Senator Balboni.

SENATOR BALBONI: Yes, if I might just interrupt for a moment, Madam President, there will be an immediate meeting of the Social Services Committee in the Majority Conference Room.

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

Senator Lachman.

SENATOR LACHMAN: Yes, I first of all want to commend my colleagues in offering up the amendment that failed. I think that would have been an improvement, and it would have created one bill.

But we are discussing a very important issue today, and that's the issue of bullying on school property. And whether we realize it or not, there are teenagers who not only bully but strike out, hurt, and hit other students when these students want to learn.

Now, I'm particularly concerned

about one high school, which is slightly out of my district, where I began my teaching career at the age of 21. I'm concerned about it because the newest minorities, the newest immigrants in this country, from China, and Muslims from Bangladesh and Pakistan, are being beaten up by people born in this country of different ethnic and racial groups, to the point where the police department had to get into the act when the principal was beaten up by one of these students and knocked to the floor unconscious.

This is not a minor act of bullying. I was in the hospital with one student, who was beaten to a pulp and almost died because he was a Pakistani Muslim student. And this occurred before 9/11. And it's occurring today. And we're closing our eyes if we don't realize that.

A young lady who's a Chinese-American at the school turned around to her colleagues and said, "The teacher is trying to teach. Why don't you let her teach?" And she was beaten up in class and followed home, bleeding, because of this.

Now, many of the suggestions that my dear colleagues have offered are excellent for the future. What we have in front of us today is a bill. Is it perfect? No. Does it raise the issue? Yes. Does it try to be a first step to resolve the issue? Yes.

I hope there will be a compromise with the New York State Assembly. But in the world of reality, we have to deal with what exists today to make our schools not prisons, but not to make our schools streets where children can be beaten to pulp because of their ethnic and racial backgrounds.

I vote yes. In case you don't realize.

ACTING PRESIDENT McGEE: Senator Sabini.

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

ACTING PRESIDENT McGEE: Senator Sabini, on the bill.

SENATOR SABINI: I believe in all our work here that the perfect and the good aren't enemies. And therefore, while I offered an amendment to the bill, I intend to

vote for this bill, because I think something should be done.

But I would also echo the words of Senator Schneiderman, in that if we're really serious about this, we should have a conference committee with the Assembly and stop the game of we have two different bills that are shades of gray in difference, really, and actually move a law to the Governor's desk that can protect our young people -- and frankly, in some cases, protect people who aren't on school grounds if our young people are made to understand that acts of violence against people for who they are are not acceptable.

I vote aye.

ACTING PRESIDENT McGEE: Senator Stavisky.

SENATOR STAVISKY: Thank you, Madam President.

Very briefly, I support the bill also, also as a former high school teacher.

However, there are parts of it -- the part that deals with aggravated harassment of teachers and school personnel, I expressed

my misgivings yesterday in committee, particularly to the phrase that includes "to annoy or alarm a person." To me, that does not qualify as aggravated harassment.

It's in the bill. I think it's an overly broad inclusion. I think it's a mistake.

But I think, in balance, the entire measure is so important that we have to hope that the people administering this bill, the school personnel, don't just file charges because a child ignores the warning that you can't annoy a teacher.

I'm not unhappy that kindergarten is included, because it seems to me that children at a very young age have to learn that you don't become a bully, that you learn respect. And I think it's a lot easier if the children learn it at the age of 5 than at the age of 15.

I will vote yes.

ACTING PRESIDENT FUSCHILLO: Senator Sampson.

SENATOR SAMPSON: On the bill.

ACTING PRESIDENT FUSCHILLO:

Senator Sampson, on the bill.

SENATOR SAMPSON: Mr. President, I salute the sponsor for this legislation. But as I hear the legislation that we're passing here today, we're just concentrating on the penalty and the punishment instead of getting to the root cause of why have these children reached to that point.

Our main concern should be looking at the root cause. Because once we punish or administer such penalties, once these individuals, when they come out of incarceration, they can't find jobs, what do you think they're going to do?

You know, the whole issue is if you don't prepare someone for the future, they're going to revert back to the ways of the past. Our main concentration is on the penalties, but we should look at the root cause of why these children reach to this point, ladies and gentlemen.

Until we understand the root cause, we will continuously increase the penalties but, at the same time, forget how they reached to that point. And once again, it's just

going to be a cycle going around and around and around and around. One day we have to wake up and realize that we have to do something to prevent them from reaching this point.

Thank you very much.

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

Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the first of September.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 357 are Senator Andrews, Duane, Parker, and Montgomery. Ayes, 57. Nays, 4.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator Balboni.

SENATOR BALBONI: Mr. President, I'd like to ask that Calendar Number 358 be called up for consideration by the body.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 358, by Senator Saland, Senate Print 5325, an act to amend the Education Law.

SENATOR SCHNEIDERMAN: Explanation.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill -- which I believe we've considered in a prior session, favorably -- this bill basically creates a mechanism for the involuntary transfer of a disruptive student.

Under the existing law, a student can be suspended for being disruptive. There's virtually no limit to the number of suspensions. The fact of the matter is that the disruptive student does little to advance his or her education, and in the course of being disruptive actually impedes the education of those who might be his or her classmates.

This bill provides a mechanism for a transfer to an alternative school within the

same school district. The bill provides -- although the bill language is not in this text, but in the Education Law which is being amended -- this mechanism would be a mechanism that would require the ability for a hearing and would also, again, ensure that the child being transferred would remain in his or her district.

And my understanding is that the Big Five basically have this mechanism on board already, have the alternative schools that provide for these children -- generally in smaller class settings, which are advantageous to the furtherance of the education of the child or the student who has been transferred. And, again, enhances the opportunity for those remaining in the classroom where this disruptive student has departed to have the opportunity to advance their education as well.

ACTING PRESIDENT McGEE: Senator Lachman.

SENATOR LACHMAN: Through you, Madam President, will the sponsor yield for a question?

ACTING PRESIDENT McGEE: Senator Saland, will you yield?

SENATOR SALAND: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LACHMAN: I share your concern, Senator Saland, that suspending children again and again and again does not resolve this issue, even though we have built into these suspension laws measures that protect the civil liberties of these children, such as their having the right to bring outsiders with them so they're not taken advantage of.

What I would like to know, what guarantee is there that when these children are not suspended, and they're sent to alternative schools -- I assume alternative high schools, but perhaps junior high schools -- that there will be facilities and the availability of means to work with these children so the antisocial behavior comes to an end?

SENATOR SALAND: Obviously,

Senator Lachman, the intention here is to benefit both the student being transferred and those remaining behind.

In the absence of a school district establishing an alternative school to which this child could be transferred, there would not be the ability to accomplish that.

And experience indicates -- and I know one of the districts in my Senate district has such a school. The effort there is basically, again, smaller class size and more intensive interaction to try and assist the student not only educationally but behaviorally as well.

SENATOR LACHMAN: On the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Lachman, on the bill.

SENATOR LACHMAN: On the bill.

The bill is a first step. And Senator Saland knows I have misgivings about this, because we discussed it before. It's a first step because getting children out of a violent situation or an antisocial situation and putting them into high schools, or

alternative high schools, does not resolve the problem completely unless those schools have the facilities to deal with these children.

However, because I think it is worse that these children receive no education whatsoever when they're suspended and suspended and suspended, at least here we can, in a sense, negotiate and develop a process by which, in the other schools, these children will be able to learn.

So I will be voting for this measure -- reluctantly, but voting for it as a first step. And I do hope that this bill is not considered a means by which children who are antisocial are just thrown into another high school, and then thrown five months later into another high school, and ten months later into another high school.

I will vote yes on this bill.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 4. Senators Andrews, Duane, Montgomery, and Parker recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Balboni.

SENATOR BALBONI: Yes, Madam President, would you please call up Calendar Number 368.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 368, by Senator Balboni, Senate Print 851, an act to amend the Penal Law, in relation to criminal street-gang activity on school grounds.

SENATOR SCHNEIDERMAN: Brief explanation.

ACTING PRESIDENT McGEE: Senator Schneiderman has requested a brief explanation, Senator Balboni.

SENATOR BALBONI: Madam President, the discussion this afternoon has

centered upon the strategies by which we could reduce the amount of violence in our schools. And for anyone in law enforcement who deals with gangs, the one thing that has become a virtual certainty is that schools are playing a greater and greater role in the ability to continue to grow the ranks of violent street gangs.

This bill would create a crime -- way overdue in the State of New York -- of a felony penalty for anyone who would attempt to recruit gang members on school grounds.

If you talk with the members of the Nassau and Suffolk County police departments, they will tell you that gang recruitment in grammar school is now a reality. And the threats and intimidations towards young children, the most vulnerable, continue at almost a daily pace. It is outrageous that we do not have a penalty to stop this type of behavior and to try to provide these protections.

The bill would basically create three crimes. The first would be gang recruitment on school grounds in the second

degree. That would be a Class E felony. Gang recruitment on school grounds, first degree, that would be a Class D felony, and in repeat offenses would be a Class C felony.

I am frustrated, as I stand here today, that we have passed this bill many times in this house, with very little discussion or objection, and yet it has fallen on deaf ears in the Assembly. It is beyond my comprehension as to how this type of a measure to protect the most vulnerable in our school systems has not passed.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, I believe there's an amendment at the desk. I would waive its reading and ask that I be heard on the amendment.

ACTING PRESIDENT McGEE: The reading is waived, and you may speak on the amendment.

SENATOR SCHNEIDERMAN: I sympathize with Senator Balboni's frustration when bills pass overwhelmingly in one house

and fall on deaf ears in the other house. The amendment that I'm seeking to add to his legislation today would add a bill that has passed for 11 years in the Assembly and has never made it onto the floor in this house.

And in view of the fact that we had today with us some courageous teachers and a principal who dealt with a student with a gun that he should not have properly had, I think it's appropriate that we address this issue.

I'm trying to add a safe storage bill, called the Gun-Free Kids bill, to this package that supposedly deals with school safety. And I find it absolutely astonishing that we've brought these courageous teachers in here and that we're supposedly dealing with school safety without dealing with one of the most fundamental problems, which is preventing children from having access to guns.

Furthermore, we're dealing with a fundamental problem that has a solution that has been enacted in many states and that has a demonstrable effect on the problem. There is no question that a law requiring the safe storage of guns, requiring that guns be in a

safe or otherwise safely stored, has a tremendous impact.

In fact, ten other states, including California, Florida, and New Jersey, have passed comparable laws. And a study by the National Center for Injury Prevention and Control indicates that those states have reduced unintentional deaths of children by firearms by an average of 23 percent.

How can we purport to care about school safety here, and the safety of our children, enhancing crimes with the purpose of saying, you know, schools are special places, children are there, it should be a more serious crime if you do it in the school -- and not deal with something that has been proven to save children's lives.

In the State of New York, in the last year for which I have detailed statistics, 1999 -- the number has apparently gone up since then -- we had over 1650 hospitalizations due to gun injuries, 965 deaths due to gun injuries. And of those, a significant number were children.

The problem of children getting

guns is a problem all over the country. There are two groups of states, the states that have addressed it and the states like New York that have not addressed it.

I do not see how we can honestly say that we care about the safety of our children and we are trying to deal with school safety, that we care about what happened to those teachers, and we're not enacting this simple bill that has passed the Assembly for 11 years and that would have kept the gun out of the hands of that student and prevented the situation from the outset.

I urge everyone here to vote for this amendment. And I would urge my colleagues that if we are serious about moving things forward, let's get this bill on the floor this year, let's break up the gridlock between the two houses, and let's ensure that some of our children whose lives we know would be saved if we pass this bill are not put at risk due to the failure of this house to act on this simple, proven piece of legislation.

I urge everyone to vote yes on the amendment.

ACTING PRESIDENT McGEE: All those Senators in favor of the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Duane, Hassell-Thompson, Montgomery, Onorato, Parker, Paterson, Sabini, Sampson, Schneiderman, and Stavisky.

ACTING PRESIDENT McGEE: The amendment is lost.

Read the last section.

THE SECRETARY: Section 6. That act shall take effect on the first of November.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 368 are Senators Andrews, Duane, Montgomery, and Parker. Ayes, 57. Nays, 4.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Balboni.

SENATOR BALBONI: That's good

news, Madam President. Thank you.

Could we please call up Calendar 375.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 375, by Senator Saland, Senate Print 4529, an act to amend the Penal Law, in relation to harassment of teachers and school personnel.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR SALAND: Thank you, Madam President.

Madam President, this bill is a bill which would create the B misdemeanor crime of aggravated harassment of teachers and school personnel. In fact, it is a freestanding version of the very same provision that was in the Schools as Safe Harbors Act that we entertained earlier and passed overwhelmingly earlier today.

It basically creates a mechanism whereby those who would, with intent to

harass, annoy, or alarm a teacher or a school employee, engage in some type of physical activity, such as striking, shoving, or kicking such teacher or school employee, would run the risk of being charged with a Class B misdemeanor for which there could be a sentence of up to 90 days.

The rationale behind this obviously is an intention to create some kind of mechanism beyond the existing law, which in effect, in many of these instances, treats it as a violation -- which is not a crime, by definition -- with a penalty of up to 15 days.

Hopefully, it will serve as a means by which this type of misconduct and abuse of school personnel would be deterred.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. Would the sponsor, Senator Saland, answer a question?

ACTING PRESIDENT McGEE: Senator Saland, will you yield?

SENATOR SALAND: Certainly. Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR MONTGOMERY: Senator Saland, I was just trying to figure out, what is the difference in your Bill 4529 and the Bill 4023A?

SENATOR SALAND: 4023A, I believe I made reference to earlier, is the Schools as Safe Harbors Act.

That had two components. The first component was one which dealt with bullying, adding several provisions to the previously passed SAVE legislation several years ago.

At the very conclusion of that act, there was a provision identical to this that was part and parcel of that bill, which provided also for aggravated harassment of teachers and school personnel, under the same definition, with the same penalty.

SENATOR MONTGOMERY: Okay, great. Thank you for that clarification. I thought maybe you had changed the language.

SENATOR SALAND: No, no. It's the same.

In fact, the amendment to the

preceding bill was to make sure that this language was identical to that language.

SENATOR MONTGOMERY: Okay. Thank you.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 375 are Senators Duane and Montgomery. Ayes, 59. Nays, 2.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Calendar Number 44.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 144, by Senator Skelos, Senate Print 5554, an

act to amend the Criminal Procedure Law, in relation to eliminating the statute of limitations.

SENATOR MONTGOMERY: Explanation.

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

SENATOR SKELOS: Madam President, this legislation eliminates the current five-year statute of limitations for a Class B violent felony offense and also expands the list of offenders required to submit a DNA sample.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Madam President. Just a couple of comments on the bill.

ACTING PRESIDENT McGEE: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes. I have a memo from the NYCLU, and I think there are a couple of issues that they point out that make a lot of sense, certainly, to me and have convinced me to oppose this legislation.

The first point that I would like

to point out is the issue of creating an additional felony based on essentially a technical violation, which could essentially be a technical violation.

Now, during budget hearings, the Director of Criminal Justice Services for the State, when I asked how many people were returned to prison, reincarcerated for technical violations, he informed me that there were some 8,000 people returned just on technical violations every year.

So if that is the case, then this bill only adds to the number of people who essentially -- maybe they moved around, maybe they can't be found, maybe they didn't get their mail, whatever. But if they don't answer, I think this legislation, Senator Skelos gives them 30 days to answer.

And if they don't answer, they could -- their probation or parole would be revoked. And essentially, rather than just even having a technical violation, they now have committed another crime, they have an additional felony. Which, we passed legislation in the past, will give them an

additional length of time to serve.

The other issue that is a concern of mine with this legislation is that when we say that you -- the bill now, if you are -- you will no longer be able to essentially have your records, if you have that category of offense -- I believe it's a B misdemeanor. I'm sorry, I can't -- I need a minute to find it.

There is no longer a time limit on an action on a Class B felony. It removes the current five-year statute of limitations applicable to Class B felony offenses.

Now, the one thing that some states have done -- and I would hope that we could begin to consider that in our own state, and that is the idea of a second chance. Because one of the issues that is very, very prevalent for people who serve their time, even though they've served their time or they're out on parole and they return to their communities, because of the long list of restrictions on the kind of work that they can do, the requirement for fingerprinting in most jobs and the inability to move beyond the immediate

offense makes it pretty much impossible for people to ever move on and become productive citizens and begin to repay, in a very meaningful sense, their debt to society outside of prison. So this legislation brings us a step backward.

So those were two points that I wanted to make for Senator Skelos to consider with this bill. Even though I'm definitely in favor of DNA testing. I don't have a problem with that, because I think it's a positive thing and we should have that for all felony offenders.

But I do think that we have to be careful that we don't put ourselves in a position where we create more problems than we already have by extending a person's length of incarceration or making it much more likely that they will be reincarcerated based on what would otherwise be considered a technical violation, which we are trying to address as we speak.

So, Madam President, I'm just going to vote no on this because I do have some concerns. And hopefully Senator Skelos and

our colleagues can begin to look at this issue much more closely as it impacts in the future, on a long-term basis, on the explosion -- or creating an explosion in our prison population.

Thank you very much.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 11. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT McGEE: The

Secretary will read.

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

Senate Print 5724A, by the Senate Committee on Rules, an act to amend the Tax Law;

And Senate Print 6224, by Senator Hoffmann, an act to amend the Tax Law.

Both bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Senator Skelos.

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

ACTING PRESIDENT McGEE: All in favor of accepting the report please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The report is accepted, Senator Skelos.

Senator Skelos.

SENATOR SKELOS: Thank you, Madam President. If we could take up Calendar Number 390.

ACTING PRESIDENT McGEE: Without objection, the Secretary will read.

THE SECRETARY: Calendar Number 390, by the Senate Committee on Rules, Senate Print 5724A, an act to amend the Tax Law.

ACTING PRESIDENT McGEE: There's a local fiscal impact note at the desk.

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Calendar Number 391.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number

391, by Senator Hoffmann, Senate Print 6224, an act to amend the Tax Law.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Thank you, Madam President. Is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: There is no housekeeping at the desk.

SENATOR SKELOS: Madam President, there being no further business to come before the Senate, I move we stand adjourned until Wednesday, March 3rd, at 11:00 a.m.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Wednesday, March 3rd, at 11:00 a.m.

(Whereupon, at 4:50 p.m., the Senate adjourned.)