NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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March 22, 2004

3:16 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Saturday, March 20, the Senate met pursuant to adjournment. The Journal of Friday, March 19, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

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

Senate Print 5342, by Senator Wright, an act to amend Chapter 519 of the Laws of 1999;

5736, by Senator Meier, an act to amend the Tax Law;

5737, by Senator Meier, an act to amend the Tax Law;

5738, by Senator Meier, an act to amend the Tax Law;

5894, by Senator Farley, an act to amend the Tax Law;

6115, by Senator Maltese, an act to amend the Public Officers Law;

6162, by Senator McGee, an act to amend the Tax Law;

6228, by Senator Alesi, an act to amend the Alcoholic Beverage Control Law;

And Senate Print 6240, by Senator McGee, an act to amend the Alcoholic Beverage

Control Law.

All bills ordered direct to third reading.

THE PRESIDENT: All bills reported direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On page number 29 I offer the following amendments to Calendar Number 477, Senate Print Number 4988, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: On behalf of Senator Maltese, on page number 13 I offer the following amendments to Calendar Number 271, Senate Print Number 93, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: On behalf of Senator Robach, on page number 25 I offer the following amendments to Calendar Number 423, Senate Print Number 6300, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: On behalf of Senator McGee, on page number 28 I offer the following amendments to Calendar Number 471, Senate Print Number 2776B, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: On behalf of Senator LaValle, I wish to call up Senate Print Number 839, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 6, by Senator LaValle, Senate Print 839, an act to amend the Town Law.

SENATOR FUSCHILLO: 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, 44.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received.

Senator Skelos.

SENATOR SKELOS: Madam President, we are about to go to the reading of the noncontroversial calendar.

But before we do that, I would like to, on behalf of the entire Senate, wish you a happy birthday.

(Applause.)

THE PRESIDENT: Thank you very

much. I appreciate that.

And does that mean a very short session, Senator? Thank you.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, I might add that the color looks very good.

THE PRESIDENT: Thank you. You're referring to my blazer, of course.

SENATOR SCHNEIDERMAN: No, you're blushing.

THE PRESIDENT: Oh, not my tan. Well, that's good.

Senator Skelos.

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

THE PRESIDENT: The Secretary, please, will read.

THE SECRETARY: Calendar Number 26, by Senator Kuhl, Senate Print 1429, an act to amend the Vehicle and Traffic Law, in relation to exempting.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 56, by Senator Leibell, Senate Print 4838, an act to amend the Public Authorities Law, in relation to the special powers of the New York State Environmental Facilities Corporation.

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, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 175, by Senator Larkin, Senate Print 5864, an act to amend the Agriculture and Markets Law, in relation to authorizing.

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 283, by Senator Padavan, Senate Print 52, an act to amend the State Administrative Procedure Act, in relation to denial, suspension and revocation.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 313, by Senator Spano, Senate Print 4228, an act to amend the Tax Law, in relation to adjudication of penalties assessed.

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 440, by Senator Balboni, Senate Print 513, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 440 are Senators Duane and Hassell-Thompson. Ayes, 51. Nays, 2.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 487, by Senator Saland, Senate Print 215, an act to amend the Penal Law, in relation to including school buses within the definition of "school grounds."

THE PRESIDENT: Read the last section.

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

September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 488, by Senator Volker, Senate Print 1109, an act to amend the Criminal Procedure Law, in relation to appeals from certain orders of suppression.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 489, by Senator Volker, Senate Print 1384, an act to amend the Criminal Procedure Law, in relation to proof of the commission.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

Senator Morahan, do you wish to be recognized?

SENATOR MORAHAN: Thank you, Madam President.

There will be an immediate meeting of the Higher Education Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Higher Education Committee in the Majority Conference Room.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 494, by Senator Flanagan, Senate Print 3582, an --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 509, by Senator Maziarz, Senate Print 930A --

SENATOR SCHNEIDERMAN: Oh, definitely lay that aside.

(Laughter.)

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

517, by Senator Meier, Senate Print 6357, an act to amend Chapter 906 of the Laws of 1984 amending the Social Services 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, 53.

THE PRESIDENT: The bill is passed.

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

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 26, by Senator Kuhl, Senate Print 1429, an act to amend the Vehicle and Traffic Law.

SENATOR MONTGOMERY: Explanation.

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

SENATOR KUHL: Thank you, Madam President.

This bill is a very simple bill. It's just that currently in the State of New York there's a requirement that says that people who ride bicycles are required to wear a helmet. There are times in my district when the religious tenets of Mennonites and Amish people actually put them in a position where they have to make a choice whether to comply with their religious requirements or to wear a helmet, because they can't do both.

This bill would essentially exempt them from having to make that choice, but it would allow them to continue to wear the hats or the bonnets, which actually prohibit them from wearing helmets.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I would like to know if Senator Kuhl would yield for a question.

THE PRESIDENT: Senator Kuhl, will you waive your time for a question?

SENATOR KUHL: Yes, I'd be happy

to answer any questions Senator Montgomery might have.

THE PRESIDENT: The Senator yields, Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Senator Kuhl. I just wanted to know, this is specifically applicable to children under the age of 14?

SENATOR KUHL: I believe that's what the law says, Senator.

SENATOR MONTGOMERY: Okay. Thank you, Senator.

Madam President, I know I have voted against this in the past. And I'm going to continue to oppose this legislation because, even though I fully respect the religious tenets of all groups, I think that we have a special obligation to protect the interests of children, who really are not in the position to be an independent agent and to decide for themselves whether they want it wear the helmet or not or how important it is to their safety or whether they want to respect a religious tenet that they or may not even understand yet.

So I'm going to oppose this because I think that we should protect all children equally, and that adults certainly should have the option to make those decisions, but not children.

Thank you.

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

Senator Lachman.

SENATOR LACHMAN: Yes, Madam Chair. It's a pleasure to ask to be heard on the bill.

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

SENATOR LACHMAN: Thank you.

This bill has legal precedent going back to 1973 in a court case known as Yoder v. Wisconsin. It dealt with the Amish community -- some call them Aim-ish -- the Amish community, and the Amish community did not want any of their children to attend classes beyond the 8th grade. Now, the Wisconsin state constitution said that every child in the state of Wisconsin must attend school until the age of 16 -- must attend

school.

Now, the Supreme Court of Wisconsin reviewed the Amish case, and they looked at the First Amendment to the Constitution, which I believe is America's greatest gift to religion in the world. It's the separation of church and state. At the same time, it also states that there should not be anything that would get in the way of freedom of religion, that this must be expressed positively.

Now, that is why the Wisconsin Supreme Court -- and I believe it was appealed to the U.S. Supreme Court -- sided with the Amish community. It would be a diminution of their religious expression.

Now, therefore, in Wisconsin and in other states Amish children leave school when they're 12 or 13 -- before the age of 16, which is mandatory for everyone else -- in order to have this free expression of their religion.

Now, this is another case, but it's similar. It's similar in two ways. The Amish community basically was an outgrowth of the Mennonite community, which is a little bit

more flexible than the Amish community. The Amish community would not ride bicycles, it would not ride motorcycles, whereas the Mennonites would.

I think that Senator Kuhl is doing a great service, not only to the Mennonite community but to the whole concept of freedom of religion. And since the Mennonites do not even vote in his district, and I believe there are about a thousand Mennonites who don't vote, he gains nothing from them. Perhaps their goodwill.

So in upholding the U.S. Constitution and the First Amendment, I would vote yes on this measure.

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 26 are Senators Montgomery and Stachowski. Ayes, 51. Nays, 2.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 283, by Senator Padavan, Senate Print 52, an act to amend the State Administrative Procedure Act, in relation to denial, suspension and revocation of a license.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR PADAVAN: This bill, which has been considered by this house on several prior occasions, would deny, suspend or revoke a license permissively by any state agency for a period of not greater than five years, on the basis of two violations of federal law dealing with the hiring of unauthorized aliens.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you,

Madam President. If the sponsor would yield for a few questions.

SENATOR PADAVAN: Yes.

THE PRESIDENT: Senator Padavan does yield. You may proceed, Senator Schneiderman, with a question.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, this legislation appears to be permissive in that it permits an agency to revoke a license. Are there any standards of any kind set forth in this bill or anywhere else that would guide that discretion and determine when an agency would revoke a license and when it would not, under the circumstances contemplated in this bill?

SENATOR PADAVAN: As I explained, Senator, the standard that is applied here would be, number one, for a period of not greater than five years, and on the basis of two violations occurring in a five-year period. That's the standard.

The specifics of the federal law are clear, and that is referred to in this proposed bill. Having violated that federal

statute, either section of it, twice in five years, a given state agency could, could consider the revocation of a license.

SENATOR SCHNEIDERMAN: Thank you. Through you, Madam President.

My question, though, is about the "could." This makes it permissive for an agency to revoke a license if the licensee violates the specified federal law twice in a five-year period. But it doesn't require the agency to revoke the license.

SENATOR PADAVAN: No, it does not.

SENATOR SCHNEIDERMAN: And the question is, what would be the standard or what guidelines are given for whether or not an agency would actually do the revocation?

SENATOR PADAVAN: Senator, there are literally dozens and dozens of licenses issued by various state agencies. Let me suggest just one of them.

The Department of Transportation licenses the transportation of hazardous materials, which includes explosives. That agency, if it found out the firm that they are

licensing or the individual they are licensing is in violation of federal law, having hired unauthorized illegal aliens, they would consider within their judgment whether or not to revoke that license.

The standard is one of common sense. It would have to be applied by every agency that issues a state license.

SENATOR SCHNEIDERMAN: Thank you. Through you, Madam President, if the sponsor would continue to yield.

SENATOR PADAVAN: I yield.

THE PRESIDENT: The sponsor does yield.

You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: And has there been any study or research into the effect this would have on businesses in the state, whether this would have a negative impact on businesses in this state as opposed to other states where similar legislation was not in place?

SENATOR PADAVAN: No such study was ever done, to my knowledge, Senator.

SENATOR SCHNEIDERMAN: Thank you. I'd like to thank the sponsor for his answers and speak on the bill.

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

SENATOR SCHNEIDERMAN: It's interesting to watch the progression of our national debate over immigration and over the presence of many immigrants here who are not properly documented. I note that the President of the United States has proposed a program that would essentially allow many immigrants who are here without documentation to remain here working for businesses such as those that would be affected by this legislation.

And my sense is that our national debate is moving, really, in some respects away from the position reflected in this proposed bill. The fact is that we have many millions of undocumented immigrants living among us. They work with us, we know them, they work in businesses here. And the answer to the problems posed by their presence in this country and the extraordinarily

complicated series of issues that it raises -- given the fact that their children are citizens and other things like that -- really, I feel, is not best addressed by punitive legislation that intervenes in a piecemeal way and suggests that some businesses that have undocumented aliens and are found to have them working there may lose a license, some others may not, without any sort of standard.

The fact of the matter is we have to address this issue in a national way. And while I'm all for the state doing everything it can do to deal with difficult issues and not leave the federal government responsible for things where they lack resources -- which is a point I believe the sponsor has made in relation to immigration on other issues -- this is a case in which a state-by-state approach just doesn't seem to make any sense.

The fact is we all know there are many, many undocumented immigrants working in businesses in New York State. Many of them do good work. There would be a negative effect on businesses in this state, I submit, if this became law. But also this would have a

chilling effect, I believe, on businesses' willingness to hire anyone they thought might be an undocumented immigrant. This could have a chilling effect on their willingness to hire people who maybe appear to be from some other country or look different to some of the business owners.

And I think that the answer to this really has to come at the federal level. And the answer has to incorporate an approach that I believe, although I disagree with the details of his proposal, is contemplated by President Bush's proposal for immigration reform, which is that we have to accept the reality of the millions of undocumented immigrants here, of our dependence on them economically, and accept in the spirit in which America was founded that we are a nation of immigrants, we have a particular set of problems unique to the situation that we face today.

It's different than what we faced with previous waves of immigrants. But the solution has never been, the solution has never been arbitrary revocation of licenses on

what the sponsor calls a common-sense basis.

But that's to say that it's up to the discretion of anyone who runs a state agency. There might be someone who runs an agency who is particularly tough on this issue; there might be someone who runs a different agency who's not. There can be severely varying standards imposed by different agencies or by the same agency. Say someone who had a very strong anti-immigrant animus was the head of an agency and was revoking people's licenses left and right, and then was replaced by someone who was more sympathetic.

This is not something that I think would work in a practical way. I believe it would impose a penalty on businesses in New York and disadvantage them relative to other states. And I do think it would also have a chilling effect on their willingness to hire immigrants and hire people who they might even suspect were immigrants.

So I have voted no on this. I will vote no again, but with more of a sense that the debate on the issues related to the

presence of undocumented immigrants in this country is shifting. We're moving towards trying to develop a national consensus on how to solve the problem. I think we -- I hope we will, in the years to come, do that. But I think that debate is shifting away from the approach reflected in this bill, and I would urge everyone to vote no.

Thank you, Madam President.

THE PRESIDENT: Senator Sabini.

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

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

SENATOR SABINI: I share the sponsor's concern about people who have entered the country illegally. However, two of the items that Senator Schneiderman has raised I want to echo.

I think that it's wrong to enforce federal policy with state law. And I think that that's what this bill seeks to do. And I also think it would bring a situation where people who are foreign-born or who may speak with an accent would be at a disadvantage in

seeking employment in the private sector because employers would be fearful of any penalties if the person was found to be undocumented later on at a future time.

I represent a district where probably three out of every four people are foreign-born, and I would not want to see them at a disadvantage when going on a job interview and seeking employment, especially if they weren't guilty of any violation but that the judgment of the employer would be toward cancelling out their qualifications and putting someone ahead who may be American-born but no more or no less a citizen than someone who's foreign-born and a citizen and would make employers, I fear, a little suspicious of those who may not look or act or sound like them.

So I'll be voting against with the bill, with the understanding that the sponsor has some legitimate concerns but that the net effect may be wrong, and that I also really don't believe we should be using state law to enforce federal policy.

Thank you.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Madam President, I should really just be quiet and let the vote take place as it has on other occasions. But, frankly, some of the things that have been said by the previous two speakers are disturbing to me.

Their suggestion that this is some sort of an xenophobic approach to immigration is totally wrong. If you look at the federal statute that we're referring to in our bill, the violation of that federal statute is a criminal act, subject to imprisonment -- depending, of course, upon the conditions and all of the other factors surrounding it. But it is a criminal act.

Now, we're saying here that if someone has committed a criminal act under federal law -- not charged with a criminal act, convicted of a criminal act, twice over a five-year period, then one of our agencies may consider revoking that license. Now, I don't consider that either overbearing or overly aggressive. I consider it reasonable.

We're not trying to be punitive.

We're not trying to discourage the employment of immigrants. But we do have a responsibility as a state to issue myriad licenses for all kinds of things. And I think we have a responsibility to the people of this state, who are subjected to the actions of that licensee, to ensure that that licensee is not in violation of federal law on a repetitive basis. A criminal act on a federal basis, more than once. I repeat it.

I think this is a reasonable approach. Now, if we had mandated, which we don't -- if we had said first offense, which we don't -- you might have an argument. But we're talking about an entity that knowingly violated federal law twice. And we then are therefore going to consider some action as a state with its inherent responsibility to protect its citizens.

THE PRESIDENT: Senator Krueger.

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

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

I will continue to vote no on this bill, as I did last year. And I do want to reinforce some of the comments that my previous colleagues talked about, the fact that you are likely to open up people to discrimination in attempting to apply for jobs if in fact an employer feels that they are at greater risk for hiring you because perhaps English is not your first language or because you have a foreign-sounding last name. And there is a long history of that in this country.

So whether or not they would ever be found guilty, as Senator Padavan describes, under federal law of a criminal act, if this law serves to increase the possibility of discrimination against people when they apply for jobs, that is a law that we should think very carefully and long and hard about before we pass.

But in response to Senator Padavan's most recent statement, my other concern about this bill is in fact that you leave it to the discretion of agencies. If you had a bill that said we will do away with

your license if you've been found guilty twice, and we laid out what those licenses were, I'd have less concern over the alternative discrimination in this bill, which is the possibility or the likelihood that a state agency is going to be more likely to pull the license of some small neighborhood business found guilty than it is likely to pull the license of a major corporation that might employ 5,000 or 10,000 or 15,000 people in the state of New York.

And I don't think we should be passing laws that have the possibility of being discriminatory against the size of the business as well. Because, let's face it, larger organizations, larger companies are in a better position to advocate and negotiate with state agencies than your small restaurant or your small neighborhood store who might have been found guilty under this charge.

And so I don't think that we in the State of New York want to be passing bills that on either end of the spectrum open up the possibility of increased discrimination against people when they apply to work at

companies or can result in being discriminated against, as the companies, by various state agencies because we're leaving the discretion so broadly which agency, which license, as they see fit.

If in fact there is guilt by the company in being found to have violated the federal act twice, then there ought to be equally specific standards in state law for how we apply a determination at the state level about whether they lose a license or not.

So I'll be voting no on this bill for multiple reasons.

Thank you, Madam President.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Madam President, on the bill.

THE PRESIDENT: You may proceed, Senator.

SENATOR STAVISKY: It's extremely hard for many people to get a job, particularly in today's economy, no matter what people say, particularly at the bottom end of the economic ladder. It's hard for

people to get a job, but it's even harder if they don't look like you and me.

I have a great many constituents, approximately over 100,000 people who have come to the United States -- hopefully, most them are here legally; perhaps not. But those people who are here legally are having a very difficult time finding a job.

And this legislation is going to make it even harder, because the manufacturer or the restaurant or whatever the type of employment may be involved, it's going to be harder for these people, even if they're here legally, to get a job.

And for that reason, I think it puts them at a severe disadvantage, and I will be voting no.

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 first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 283 are Senators Andrews, Diaz, Dilán, Duane, Hassell-Thompson, L. Krueger, Lachman, Mendez, Montgomery, Parker, Paterson, Sabini, Schneiderman, A. Smith, M. Smith, and Stavisky. Ayes, 41. Nays, 16.

THE PRESIDENT: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President. Could I ask for unanimous consent to be recorded in the negative on Calendar Number 26.

THE PRESIDENT: Hearing no objection, you will be so recorded as voting in the negative.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 488, by Senator Volker, Senate Print 1109, an act to amend the Criminal Procedure Law, in relation to appeals from certain orders of suppression.

SENATOR VOLKER: Madam President.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: This is a bill that has passed this house for several years, and we're hoping that it's passing for the last time, because we'd like to get this done.

I realize that there are some defense attorneys in the other house who simply look at this and say, well, it gives certain people some assistance. But what this really is, it authorizes the people to appeal an intermediate order from an appellate court from an order excluding the introduction of evidence.

Right now, you can appeal to an intermediate court from an order suppressing evidence. But because of the Myers case, where I think the judge -- you know, I don't know exactly what the judge was thinking, but neither here nor there. You cannot appeal from an order that precludes the introduction of evidence.

And when you really think of it, I guess the reason is because very often what the preclusion of evidence will do is make the

situation so that you can't move ahead. And therefore, many of the cases then fall by the wayside.

So what we are saying here is at least give an opportunity to the people to make a petition to an intermediate court to further review the evidence where an order precluding the introduction of evidence has been made.

Any questions?

ACTING PRESIDENT McGEE: Senator Krueger.

SENATOR VOLKER: By the way, Senator, you voted for this last year, I just want you to know.

ACTING PRESIDENT McGEE: Senator Krueger.

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR LIZ KRUEGER: He got me confused because he was jumping the gun.

Yes, I did vote for this, Senator Volker. And I do have one question.

SENATOR VOLKER: Sure.

SENATOR LIZ KRUEGER: On the theory of, I don't know, equity, would this bill also allow the defendant to appeal preclusion of evidence in a case in a parallel way? Or just the prosecutor?

SENATOR VOLKER: I think the defendant can always appeal a preclusion of evidence, one way or another. The problem is it's the prosecution that can't.

The -- the -- what can happen is -- of course, most of the time you do it after the case. But, you know, you can -- certainly you can appeal if a judge who's asked to preclude evidence refuses to do it, you can appeal from that, eventually, and say that judge should have precluded the evidence and didn't and therefore I was prosecuted.

And therefore, on the appeal, and if a judge looks at it and says he was wrong, you can in fact throw out the case. In most cases, you'd throw the whole case out because you threw the evidence out.

ACTING PRESIDENT McGEE: Senator Krueger.

SENATOR LIZ KRUEGER: Madam President, quickly on the bill.

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

Senator Volker has me at a disadvantage because I have been neither a prosecutor nor a defendant in a criminal case. So I'm going to take him at his word that there would be some equity and balance in allowing prosecutors to have this ability to appeal. And I will vote for his bill again this year, hoping that before this becomes a two-house bill -- because as I see, it is still just a one-house bill -- we get a formal answer on whether in fact there is equal possibilities for both the prosecution and the defendants to take advantage of this right if it in fact goes into law.

Thank you, Madam President.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 489, by Senator Volker, Senate Print 1384, an act to amend the Criminal Procedure Law --

SENATOR LIZ KRUEGER: Explanation.

ACTING PRESIDENT McGEE: Senator Volker, an explanation has been requested by Senator Liz Krueger.

SENATOR VOLKER: As I said last year, this bill almost passed unanimously also, except for about 15 people.

(Laughter.)

SENATOR VOLKER: Actually, very quickly, I was looking at the history of this bill, and it was originally part of the Sexual Assault Reform Act, which was drafted back in

1997. And what actually is here is what we were not able to get passed when we negotiated the Sexual Assault Reform Act several years ago. And there was another piece of this I think we passed last year, as part of an amendment to the Sexual Assault Reform Act.

This legislation really involves three areas. And as usual, in my -- I try to be candorous [sic] -- or I try to show candor. "Candorous" is bad. The first part of the bill, which is I think probably the main part of the bill, although some would argue the latter parts are very, very important also, relates to the ability of the people to provide evidence of prior bad acts.

Now, prior to the Molineaux rule -- and I happened to realize, as I was reading last year's debate -- and I hesitate to tell Senator Schneiderman, but he made an error last year. And I didn't even catch it. And the error was -- you know, when you can read debates two or three times, you can figure those things out. I made a lot of errors.

No, he said that prior to the Molineaux case, you couldn't bring in evidence

of bad acts. Actually, you could, because the law provides for limited introduction of bad acts. And the Molineaux rule said that you couldn't do that.

There are still areas, by the way, in the law, such as domestic violence and places like that, where you can bring in evidence of bad acts by statute. But the -- after the Molineaux case in New York, which said you can't bring in evidence of prior bad acts, the federal courts, or the Federal Omnibus Court Act, whatever, allows it in limited cases.

This provision, by the way, is more limited than the Federal Omnibus Court Act, or whatever it is. And what it says is that only in sexual assault cases you can bring in evidence of previous sexual assault bad acts, but subject to the authority of the judge to make a decision whether the -- I'll read the language here, if I can get it here -- whether the -- whether it's admissible, "it may be considered on any relevant issue unless the court determines that its potential to unduly prejudice the defendant substantially

outweighs its probative value."

Secondly, this statute provides for the right of the people to appeal an unduly lenient sentence. Now, in all candor -- and I said last year this provision does not just apply to sexual assault cases; this applies in general. And there are those who have argued, including myself, that we might at some point agree to apply this directly to sexual assault cases if the Assembly would agree to limit it just to sexual assault cases.

Thirdly, the final provision relates to the right to appeal, the prosecution to appeal unduly lenient bail and to have a hearing, what amounts to an appeal hearing where the people believe that the bail that was set by the judge was too light and therefore there should be a review of the bail to determine whether it really is out of line with normal bail proceedings.

And that is basically the three main provisions of this bill.

ACTING PRESIDENT McGEE: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you,

Madam President. If the sponsor would yield.

SENATOR VOLKER: Sure.

ACTING PRESIDENT McGEE: Senator Volker yields.

SENATOR LIZ KRUEGER: Thank you.

Senator Volker, as you said yourself, this bill has come up multiple times. It isn't going anywhere in the Assembly. And as you admit, there are really three completely different sections of this bill, the first one relating sexual assault prosecution and the other two relating to any criminal case, although they could apply to sexual assault.

Why don't you just separate this bill into at least two parts, your sexual assault arguments and then your judicial review of bail and recognizance? Rather than continuing to put out there on the floor a bill where I might agree and want to support one part of this bill but certainly couldn't support the other two, for example.

SENATOR VOLKER: Well, I guess the answer to that is that this is what really effectively is left, as I say, from the old

Sexual Assault Reform Act that we had proposed, I think it was back in 1997. These are the provisions that were taken out because we couldn't get the Assembly to agree.

Now, if you said to me and if the Assembly says to me, look, we'll agree to part of this bill if you will move that out, I would certainly be happy to do that. In fact, you know, we're kind of waiting -- we may do that. We're trying to see if we can do that.

But I guess the answer is, what's the sense of passing these in separate bills? They all relate to prosecution issues. We might just as well leave them together, pass this bill, because there are a lot of people who feel very strongly that all of these provisions are provisions that should be passed and that are in the best interests of the people of this state, and therefore that's why we left them together.

But I can assure you, if I could get any kind of assurance that any of these provisions could see better treatment in the other house, I'd be happy to separate them out.

SENATOR LIZ KRUEGER: Thank you.

ACTING PRESIDENT McGEE: Senator Krueger.

SENATOR LIZ KRUEGER: Briefly on the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: I appreciate Senator Volker's answer to my question, but it still leaves me in the dilemma that I could not vote for this bill because, on his logic that since they all relate to prosecution we should keep them together, we probably work on or even pass in this house three, four, five bills a week relating to prosecution cases. By the way, bills that don't go through the Assembly and are one-house bills. So on that theory, we might as well do an omnibus act, which this is not.

But this combines three separate issues, some of which might come together in some sexual assault cases. I recognize that, and I've read the history of the particular case that is referenced in the memo attached

to the bill.

But the fact is when you're talking about wanting to provide for a new process for overriding judicial decisions about bail and recognizance, a new opportunity for the prosecution only to appeal what they define as unduly lenient sentences, you are talking about radical changes in our structure of our court system today.

And I think, frankly, it is unfair to try to blend these two fairly radical proposals in with the argument -- that is perhaps much more sensitive to many people -- about documentation of a history of sexual assault in a sexual assault case.

So I do not share Senator Volker's opinion that these three acts -- excuse me, these three proposed changes are in one act because they naturally go together, but I rather think the concern should be that legislators will feel, well, if they feel strongly about one section of the three, they have to vote for the bill even if they may have significant uncomfort levels with two completely unrelated sections of the bill.

So I guess I have concerns about the germaneness of the way these three sections are brought together in one bill, and I'm also very uncomfortable with our going forward with several of the sections, as I described. So I will be voting no and urge my colleagues to at least think through the three different sections of the bill and the fact that their support for one may not reflect their understanding of the implications of the other two unrelated sections.

Thank you, Madam President.

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

Senator Volker.

SENATOR VOLKER: Can I ask the Senator a question, please?

ACTING PRESIDENT McGEE: Senator Krueger, will you yield?

SENATOR LIZ KRUEGER: I will yield. Thank you, Senator.

SENATOR VOLKER: You said you might support this bill. What if I strike out the last two sections of this bill and leave the Molineaux provision in there? Would you

vote for it?

SENATOR LIZ KRUEGER: You know, I would have to evaluate that, Senator. Because in fact -- again, partly because of my lack, as I said earlier, of not being an attorney or having work worked in criminal law -- I have a feeling that several of my colleagues think there are some dangers inherent in that also.

But I do agree that I share your concern that a history on sexual assault not being allowed to be brought into court can be a very serious problem. And so I certainly would be much more interested in exploring your bill if it was just that section.

Thank you.

SENATOR VOLKER: Okay. Thank you.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

On the bill.

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: Or,

actually, on Senator Krueger's comments.

(Laughter.)

ACTING PRESIDENT McGEE: On Senator Krueger's comments on the bill.

SENATOR SCHNEIDERMAN: The Molineaux rule, which -- and I appreciate Senator Volker's correction that I did not accurately recall the state of the law prior to the Molineaux case. I in fact had not been admitted to practice law in 1901 when it was decided.

But the Molineaux rule is something that I respectfully submit is an extraordinarily articulate and elegant balancing of the equities that has been put in place by the New York State Court of Appeals and repeatedly reaffirmed -- and not just reaffirmed, but enthusiastically endorsed by the courts of this state.

The concern I have with Senator Volker's effort to make it easier to admit evidence of a defendant's prior acts in the context of a sexual assault proceeding is that unlike the Molineaux rule, the proposed legislation would allow the admission of

evidence of the defendant's commission of an offense even if the defendant was acquitted of the offense. It would allow evidence even if no charges were ever brought.

And whereas the Molineaux rule -- and I believe that, you know, to respond to his candor, Senator Volker would be hard-pressed to disagree -- the Molineaux rule clearly states that when you're admitting this type of prior conduct, the probative value has to overcome the prejudicial effect. That's the Molineaux standard.

Senator Volker's proposed standard is that you have to admit this evidence even if the sexual assault proceeding of the prior conduct was never brought, even if the defendant was acquitted; you have to admit it unless the court determines its probative value is substantially outweighed by the danger of undue prejudice.

Now, what is the justice of saying, you know, the prejudice of this really outweighs its probative value, but it doesn't substantially weigh it, so I'll let in something that I acknowledge is prejudicial

and prejudicial to the point that it outweighs the probative value?

I think that this is an effort to accomplish something which we all agree is an issue. There is a different -- really, we're into a different category of offenses. And work done by psychologists and sociologists and others in recent years has in fact established -- and Senator Volker I know is aware of this -- that sexual assaults are a different kind of offense and that the propensity to commit sexual violence is somewhat different than the propensity to rob banks or to commit other kinds of offenses. We all recognize that.

But I think that altering a rule that works extremely well and that is substantially just -- and I'm referring to the Molineaux rule -- that allows for the admission of prior conduct if it's relevant, establishes collateral issues, and if its probative value overcomes the prejudicial effect, that's a good rule, that's a well-crafted rule. And to replace it with something that allows the admission of

evidence unless the probative value is substantially outweighed, whatever that standard is and however the court would determine that, is really a mistake.

I think we have to come up with a different approach to making it easier to admit this type of evidence. And I certainly would object very strongly to the notion that someone can be acquitted on charges and yet evidence of the commission of the crime would still be admissible. Or someone could have the charges in fact dropped, the prosecutor even refuse to prosecute because they determined that there's so little credible evidence, and yet the evidence of the commission of that crime could be admitted.

So I think we have to come up with another approach. And I'm all for separating out things that we can actually get done and pass two-house bills on. But I would respectfully suggest that Senator Krueger look for another portion of this interesting piece of legislation to separate out and support in an effort to actually make this bill into a law.

I'm going to be voting no. I think this is a bad change in a good law. We have a lot of areas of the law in this state that don't work very well. Let's not go screwing around with one that has been proven to work very well for a long time. I urge everyone to vote no.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I just want to take the opposite position of my colleague to my right. I would be against Sections 2 and 3.

SENATOR SCHNEIDERMAN: Oh, I didn't say I was for Sections 2 and 3.

SENATOR MONTGOMERY: Okay. I may also be against Section 1 as well, but I won't -- Section 2 and 3 to me are extremely problematic, because Senator Paterson's staff has just completed an extensive research on the state of New York in comparison to all other states in the nation, and to find that New York has the most draconian laws as it relates to certain offenses of the entire

United States, including Louisiana Mississippi, Alabama, and so forth and so on. Texas, even.

And so now I thought that under the current law in New York State, the prosecutor in fact makes a proposal to the judge as to what the sentencing should be, and the judge, taking into consideration all factors, would decide on the sentencing. And in addition, there are many other people who participate in supporting a particular sentence, one sentence or other.

But now Senator Volker, in his legislation, is proposing that the prosecutors now, after all of that, and after the judge finally makes a decision on the sentencing, that the prosecutor may be allowed to come back and appeal the sentencing that the judge finally comes up with, as well as that the prosecutor should be able to review the orders of low bail or what the prosecutor considers to be low bail.

And I just think that this flies in the face of our attempts to look at reforming our laws so that they are at least, as Senator

Duane has said, in the mainstream, at least they reflect more what the legal community and the criminal justice community around the country and the nation says that we should be doing as it relates to the whole question of sentencing and discretion and latitude that judges have to make decisions and looking at second-chance programs and approaches and all of that.

So this seems to fly in the face of that. And I don't think that Senator Volker intends to take us in fact backwards, that we are really looking while at the same time we are all trying to come up with a consensus on how do we move New York State forward along these lines.

So I'm going to vote no on this legislation. I think it's just the wrong message to send to our citizens at this time.

ACTING PRESIDENT McGEE: Senator?

SENATOR DIAZ: Diaz.

ACTING PRESIDENT McGEE: Senator Diaz.

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

I used to be a member of the Civilian Complaint Review Board in the City of New York, representing the County of the Bronx. And in the Civilian Complaint Review Board, when a police officer is accused of using excessive force, police brutality, or he's accused of all those kinds of things, many times those police officers are found innocent. Sometimes they are found unproven, the accusation.

But nonetheless, their record shows a pattern of excessive force used before. So even though before, they were found innocent, it shows that the person has a track record of being accused of something.

So if a person commits sexual abuse or rapes someone, even though that person was found innocent before, why not bring in that incident now, to be sure that the jury and everyone in the court knows that the person has a track record of being accused of sexual abuse, even though the person has been found innocent.

So I think that this is a beautiful bill, and I will support this bill.

ACTING PRESIDENT McGEE: Senator Volker, to close.

SENATOR VOLKER: Madam President, let me first of all say, quickly, that I don't know where this idea came that we have the most draconian laws in the country. Somebody is feeding somebody some very bad information.

If that were so, why is it that California has 175,000 inmates and we only have 60-some? And they have evened us up at 40/40 some years ago.

I don't know -- this idea came because somebody did some sort of national study and looked at the 500 or 600 people that we have in jail under the old Rockefeller Drug Laws -- we don't really have Rockefeller Drug Laws anymore. I've tried to explain that to people. They've been gone for years. Otherwise, we wouldn't have as many violent people in. We have seventy -- better than 75 percent of our prisons is now violent people, compared to years ago when it was probably 40 or 50. Or maybe less.

But all that aside, there's one thing I want you to understand. And I heard

what Senator Schneiderman said. There's one group of victims where it seems to me this Molineaux becomes especially important, and that's children. People that are child molesters. And, you know, I guess because I came from one of the largest investigations way back -- and I don't want to get into that, in my police days. I came here in part because I was so fed up with the fact that we couldn't convict people of rape.

And we had such a time with child molesters. In fact, it was outrageous. I mean, I was one of those crazy people that tried to charge a mother and father with incest because they attacked their children. And I was almost sort of pushed out of the station because they said: You don't do that. We don't talk about that. DAs wouldn't touch it.

It's something I think we don't really realize that this is something altogether new, now, that we are really beginning to understand that you've got to go after sex offenders.

Well, one of the problems with the

Molineaux rule, it is very difficult to prove many of these child molestation cases, child sex cases. And sexual assault, because of the fact that so often it is a private kind of thing -- and I'm not just talking about children's sexual assault, but assault of women -- it can be very difficult to provide proof. And one of the issues is if the person has prior bad acts, it is evidence, it should be evidence that that person might be involved in something -- in a case involving rape or child molestation or whatever.

And I tend to agree that I think you have to be extremely careful in these areas. That's why you give the judge the ability to look at the probative value of it versus the potential for a problem, you know, in the case.

And in all honesty, this bill -- and I want to just say this now, because you've given us an idea. This bill is no longer a Governor's program bill. Not that I want to -- this was way back, sexual assault reform, this was changed.

You're going to get a chance to

vote on just the sexual assault part of this bill, because we are going to separate it. And it was a good idea. I think it's an excellent idea. And we are going to separate it out. And we'd like to pass this bill now, but we are going to do that, and -- because I think this issue is an important enough issue to have it stand or fall on its own.

So we're going to move the bill and -- it's unusual to say this on the floor, but as you know, I very often -- in fact, we have another bill you're going to see pretty soon that Senator Paterson helped me decide on, because he made a commitment to try to help me with the Assembly if I would make the amendments. And he's been very good about that. So I just want you to know that.

So we are going to -- I'd like to pass this bill now, and I'm sure a lot of you will be excited about that. But we do intend to move on with separating the issues that are in this bill.

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

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: Those recorded in the negative on Calendar Number 489 are Senators Andrews, Breslin, Dilán, Duane, Hassell-Thompson, L. Krueger, Montgomery, Parker, Paterson, Schneiderman, and A. Smith. Ayes, 47. Nays, 11.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 494, by Senator Flanagan, Senate Print 3582, an act to amend the Penal Law, in relation to definitions of criminal enterprise.

SENATOR DUANE: Explanation.

ACTING PRESIDENT McGEE: Senator Flanagan, an explanation has been requested by Senator Duane.

SENATOR FLANAGAN: Thank you, Madam President.

This bill is an outgrowth of a case from Suffolk County in 1998. Judge Vaughn at

the time came down with a decision that we think was too narrow of an enterprise of the statute involving RICO.

And the language in this bill would do, I believe, a couple of things. It would clarify the intent of the statute; it would provide the district attorneys with greater flexibility and authority to properly charge individuals with this type of crime; and it would also, frankly, give us an opportunity to go after some of the people who are involved in criminal racketeering.

ACTING PRESIDENT McGEE: Senator Duane.

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

ACTING PRESIDENT McGEE: Senator Flanagan, will you yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR DUANE: My primary question on this is that -- how can a single act be construed to be a pattern?

SENATOR FLANAGAN: Well, two

things, Senator Duane. You actually have -- I checked, just because I was paying attention, and you actually voted for this bill three times before I even got here, having voted for it five times. And I personally don't want to ruin that percentage for you, so I want to make sure I'm giving you the answers that you need.

What I think this allows is for an interpretation, so it's not overly -- so narrowly construed as it was by Judge Vaughn. This provides an opportunity to say how can we look at this, can we look at each activity as separate and distinct and come to a pattern.

I don't know if that -- I'm probably not helping you in terms of what you want.

SENATOR DUANE: No.

SENATOR FLANAGAN: I think it provides the district attorney greater flexibility, and it allows for our judiciary to make a fairer interpretation of what the statute was originally intended for.

ACTING PRESIDENT McGEE: Senator Duane.

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

ACTING PRESIDENT McGEE: Senator Duane, on the bill.

SENATOR DUANE: And I do have to take credit for forewarning the Senator that I would be asking this question.

But it just struck me that there might be a better way to get at what we're trying to do here. I'm going to vote in the affirmative, but it does -- I think that there's a better way to get at what we're trying to do here. And I'd be more than happy to try to figure that out with the Senator if he'd be gracious enough to allow me to do so.

Thank you, Madam President.

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

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 509, by Senator Maziarz --

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

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

Senator Morahan.

SENATOR MORAHAN: May we return to reports of standing committees.

I believe there's a report of the Higher Education Committee at the desk.

ACTING PRESIDENT McGEE: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator LaValle, from the Committee on Higher Education, reports:

Senate Print 1222A, by Senator Larkin, an act to amend the Education Law;

2073B, by Senator Padavan, an act to amend the Education Law;

6241, by Senator Paterson, an act

to amend the Education Law;

6334, by Senator LaValle, an act to amend the Education Law;

6348, by Senator LaValle, an act to amend the Education Law;

And Senate Print 6364, by Senator LaValle, an act to amend Chapter 253 of the Laws of 2002.

All bills ordered direct to third reading.

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

Senator Morahan.

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

ACTING PRESIDENT McGEE: One motion.

Senator Larkin.

SENATOR LARKIN: Madam President, on page 12 I offer the following amendments to Calendar Number 249, Senate Print 1390, by Senator Spano.

ACTING PRESIDENT McGEE: The amendments are received, and the bill will

retain its place on Third Reading Calendar.

Senator Morahan.

SENATOR MORAHAN: Petitions out of committee, Madam President?

ACTING PRESIDENT McGEE: Senator Duane.

SENATOR DUANE: Thank you, Madam President. I believe I have a motion at the desk. And I would love to have it called up at this time.

ACTING PRESIDENT McGEE: The reading is waived, and Senator Duane may speak on the motion.

SENATOR DUANE: Without even asking.

ACTING PRESIDENT McGEE: Without even asking.

SENATOR DUANE: You read my mind. Thank you, Madam President.

This amendment is generally known as the Mental Health Parity Bill. Under current law, unfortunately, mental health is not treated equally to physical health issues. Many New Yorkers of all ages have mental health issues, and yet they are not getting

the insurance coverage which they need in order to get the -- am I --

ACTING PRESIDENT McGEE: No, I just need to correct you, Senator Duane, for one moment. This is not an amendment. This is a petition.

SENATOR DUANE: It's a petition, yes.

ACTING PRESIDENT McGEE: Thank you very much.

SENATOR DUANE: You know, I'm such an old-timer now, Madam President, I have trouble keeping up with the new lingo. But thank you.

ACTING PRESIDENT McGEE: You're welcome, I'm sure.

SENATOR DUANE: So my petition might be better known as a mental health parity petition.

And the lack of coverage for mental health in our state leads to, I would submit, greatly increased costs across the board in a whole host of ways: loss of worker productivity, family problems, inability for families to get substance abuse treatment for

members of their family that might need that substance abuse treatment. And mental illness untreated in all of those cases leads to far greater problems for our neighborhoods, our families, and ultimately for our state.

I think that most of us have at least one if not more members of their family who have either profited because of access to mental health care or, because they did not have coverage for their mental health care, were subjected to a tremendous financial burden. And what this legislation seeks to do is to reduce that burden for the individuals and families in New York State.

The vast majority of members, in fact, of this house as well as the other house support parity for mental health services. And yet for some reason we haven't been able to see this proposal come to the floor.

And while I know that there is a cost to consumers in New York State, I think that New Yorkers would be more than happy to bear that cost, particularly if they focus on the cost that getting mental health services for their family members is to their family.

You know, in addition to the cost issues -- and I would be willing to debate with anyone the cost effectiveness of it -- I think the other issue that we need to look at is how much would parity for mental health services cost if we compare it against those who have died because we have not had access to mental health. The number of families who have not been able to get their children health care because they couldn't afford it -- five minutes.

Madam Chair, I've used three out of five, which means I am just lousy with time still.

So just to repeat this point again, that when you compare the cost of providing mental health services for New Yorkers against the tragic deaths of young people because their families could not afford mental health care for their children, or, for that matter, the number of persons who perhaps have been involved in an accident where there was alcohol or a drug involved, there really is no comparison. Why would we not incur the very small cost of providing parity for mental

health if it would prevent the deaths of people in our state?

And I'm just going to come full circle again. I think if you ask New Yorkers if they would be willing to pay less than a couple of dollars a month in order to be able to provide mental health coverage for themselves and their families, they would overwhelmingly say yes.

So let's provide some leadership. Obviously this kind of -- these facts and opinions have been enough to sway the majority of members of this house and the other house. So let's for real bring mental health parity to the floor and make all New Yorkers safe from needless deaths because of not having access to mental health parity, and let's make all New Yorkers a little bit healthier because they have access to mental health services.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Duane.

All those Senators in favor of the petition out of committee please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Diaz, Dilán, Duane, Hassell-Thompson, L. Krueger, C. Kruger, Lachman, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, A. Smith, M. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT McGEE: The motion is defeated.

Senator Morahan.

SENATOR MORAHAN: Would you please recognize Senator Ada Smith, please.

ACTING PRESIDENT McGEE: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Madam President. I request unanimous consent to be recorded in the negative on Calendar Number 26, Senate Print Number 1429.

ACTING PRESIDENT McGEE: Without objection.

Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. There being no further business, I move we adjourn until Tuesday, March 23rd, at 3:00 p.m.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Tuesday, March 23rd, at 3:00 p.m.

(Whereupon, at 4:35 p.m., the Senate adjourned.)