NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 20, 2006

3:07 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, please.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, March 19, the Senate met pursuant to adjournment. The Journal of Saturday, March 18, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Skelos, I wish to call up Senate Print Number 6829, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 419, by Senator Skelos, Senate Print 6829, an act to amend the Real Property Tax Law.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

SENATOR FUSCHILLO: I now offer

the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Maziarz, on page number 29 I offer the following amendments to Calendar Number 432, Senate Print Number 5849, and ask that said bill retain its place on Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Madam President, I believe there's a substitution at the desk, if we could make it at this time.

THE PRESIDENT: We do.

The Secretary will read.

THE SECRETARY: On page 23, Senator Young moves to discharge, from the Committee on Finance, Assembly Bill Number 4452A and substitute it for the identical Senate Bill Number 6269A, Third Reading Calendar 356.

THE PRESIDENT: Substitution

ordered.

Senator Skelos.

SENATOR SKELOS: I believe there's a resolution at the desk, 4089, by Senator Maltese. Could we have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Maltese, Legislative Resolution Number 4089, commemorating the 95th Anniversary of the Triangle Shirtwaist Factory Fire on March 25, 2006.

THE PRESIDENT: All those in favor of the resolution please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I move that the following bill be

discharged from its committee and be recommitted with instructions to strike the enacting clause: Senate Bill Number 1296, on behalf of Senator Montgomery.

THE PRESIDENT: So ordered, Senator.

SENATOR SCHNEIDERMAN: Thank you.

THE PRESIDENT: Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 186, by Senator Bonacic, Senate Print 3347A, an act to amend Alcoholic Beverage Control Law, in relation to Class A-1 distiller's license.

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, 41. Nays,

1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 187, by Senator Larkin, Senate Print 4075A, an act to amend the Alcoholic Beverage Control Law, in relation to authorizations.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 41. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 280, by Senator Farley, Senate Print 4299, an act to amend the Banking Law and the General Business Law, in relation to the business and licensing of budget planning.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 290, by Senator Bonacic, Senate Print 4062, an act to amend the Private Housing Finance Law, in relation to the farmworker housing.

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, 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 340, by Senator Little, Senate Print 6387A, an act to amend the Tax Law, in relation to authorizing the County of Hamilton.

THE PRESIDENT: There is a local fiscal impact note at the desk.

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, 43. Nays, 1. Senator Valesky recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 356, substituted earlier today by Member of the Assembly Christensen, Assembly Print Number 4452A, an act to amend the Executive 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 PRESIDENT: Senator Young, to explain your vote.

SENATOR YOUNG: Thank you, Madam President, to explain my vote.

This bill designates November 12th

as a day of commemoration for Elizabeth Cady Stanton, who we know in New York State was a pioneer for women's rights and actually basic human rights.

One of her earliest memories was that her brother passed away suddenly during the night, and the next day she went in to comfort her father, and he gathered her into his arms and rocked back and forth and said: "Oh, my daughter, I wish you were a boy."

And at that moment, she really set upon a course of doing all that she could to excel. She was excellent in Greek, Latin, and mathematics. She obtained the finest education possible at the time, at the Troy Female Seminary. And when she was married to her abolitionist husband, Henry Stanton, the word "obey" was omitted from the ceremony at her insistence.

On their honeymoon they journeyed to London to the great World's Anti-Slavery Convention in 1840, and there the women delegates were not seated. And again, Elizabeth Cady Stanton saw a great injustice.

And eventually she drafted the

Seneca Falls Convention's "Declaration of Sentiments," which got people together for the first time for women's rights. And it was a pivotal moment in New York State's history and our country's history and actually the world's history.

It was after that gathering that she met her lifetime friend and partner Susan B. Anthony. And they were a great team together, but they also were a study in contrasts. Susan B. Anthony was raised in a plain Quaker upbringing; Elizabeth Cady Stanton came from a privileged background. Susan B. Anthony never married, so she was free to travel about the country and give speeches. Elizabeth Cady Stanton, married with seven children, traveled when she could but she mainly stayed at home in New York and wrote speeches. Susan B. Anthony was a strategist; Elizabeth Cady Stanton was an idea person. Susan B. Anthony was reserved and focused; Elizabeth Cady Stanton was joyful and had diverse interests.

But what they stood for and what they fought for really was profound.

Elizabeth Cady Stanton not only fought for the women's right to vote, but she also fought for women's rights, because at the time women were considered to be the property of either their husbands or their fathers. They could be in the most direst situation in a marriage, for example, where there might be domestic violence, sexual abuse, alcohol abuse, and they had no recourse. And so Elizabeth Cady Stanton worked very hard to make sure that women were protected and actually gained rights.

So it is with great pride that we now designate, through this bill, November 12th as Elizabeth Cady Stanton Day in New York State. And it's very appropriate because, as we know, November is when we hold our elections. And we will forever remember Elizabeth Cady Stanton's contributions to New York State, and that's the way that it should be.

Thank you very much.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President.

I want to commend Senator Young for bringing this bill honoring Elizabeth Cady Stanton to the floor today, and I strongly support the bill. As we all know, Elizabeth Cady Stanton was a tireless advocate for women's equality, and she accomplished much in her day, although some was unfortunately left undone. But she is absolutely a hero and a New York hero.

And that's why it's so sad that today, in 2006, New York State still does not have an "Equal Rights Amendment" in its Constitution. And until we have a state ERA, every woman in New York State is on unequal footing with their male counterparts. And that's why Assembly Member Bing and I have introduced S1864, Assembly 3465, which will create an ERA in the New York State Constitution.

And I want to invite everyone to a public forum I'm having this Wednesday, from 10:30 to 2:00 in Room 120 of the Legislative Office Building, where we will hear from advocates regarding the Equal Rights Amendment. The testimony will come from a

diverse group of women in government, labor, sports and academics. And I hope that you will all be able to attend.

Madam President, I'm voting yes.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President, on the bill.

THE PRESIDENT: You may proceed.

SENATOR NOZZOLIO: Madam President and my colleagues, I rise in support of Senator Young's legislation to establish an annual day of commemoration for Elizabeth Cady Stanton, a genuine American heroine, a woman who spent much of her time in advocacy here in New York State.

I commend to anyone who cares about freedom, who cares about suffrage, who cares about democracy in America to support this resolution and to recognize the significant contributions that this heroine gave to all of us in a day when the Founding Fathers had omitted very important designations as to who should have the right to vote.

I share with my colleagues a personal aside in that Elizabeth Cady Stanton,

in conducting the very first National Women's Rights Convention in the United States, held that in a place in upstate New York called Seneca Falls. She conducted that convention in Seneca Falls, New York, and her legacy lives on in that community.

Elizabeth Cady Stanton, the park, the National Women's Rights Historical Park, is named after her. She is in the National Women's Hall of Fame. A school is named after Cady Stanton.

But the point I'd like to put aside is what she meant to all Americans and what her sacrifices and contributions were. I'd like to just illustrate a story that I told to about 10,000 people upon the 150th anniversary of the National Women's Rights Convention. That anniversary celebration was held in Seneca Falls.

On a side street in Seneca Falls, Elizabeth Cady Stanton lived. And coincidentally, when my grandmother and grandfather and father came to America from Italy, they moved into the house right next door. Elizabeth Cady Stanton had long since

gone when they moved in, but I recall that historic marker that was in front of her house, that type of historic marker that you all see that says someone lived here or something happened here. That marker at that time, when I was growing up, was the only designation for Elizabeth Cady Stanton in our community.

When I saw that marker at the age of 4 or 5 years old, I remember asking my grandmother, who was a naturalized American citizen -- she took the test, she was very proud of her citizenship. She same from a country where women did not have the rights that American women enjoyed, in large part because of Elizabeth Cady Stanton.

When I asked Grandma Tina, looking at that historic marker, what that was all about, at the age of 4 or 5, I'll never forget what she said to me in her broken English. She said: "Because of the lady who lived in that house, I have the right to vote." A right that she took seriously, that in this day and age not enough Americans and New Yorkers are taking seriously.

Upon the occasion of Elizabeth Cady Stanton's Day, let's remember how treasured that right to vote was, how she dedicated her life so that we could see universal suffrage in this country. Thank you, Elizabeth Cady Stanton.

Thank you, Senator Young, for bringing this to the floor. Madam President, it's a wonderful bill; I support it wholeheartedly.

THE PRESIDENT: Senator Young, Senator Duane, and Senator Nozzolio will all be recorded as voting in the affirmative on this bill.

The Secretary will announce the results.

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 394, by Senator Padavan, Senate Print 6744, an act to amend the General Municipal Law and the Retirement and Social Security Law.

THE PRESIDENT: Read the last section.

SENATOR DUANE: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 400, by Senator Skelos, Senate Print 497, an act to amend the Domestic Relations Law, in relation to parents and other persons.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 405, by Senator Meier, Senate Print 5195, an act to amend the Family Court Act and others, in relation to legal powers.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 452, by Senator Balboni, Senate Print 1927, an act to amend the Penal Law, in relation to creating the crimes of solicitation or recruitment.

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 476, by Senator Balboni, Senate Print 6331, an act to amend the Public Authorities Law, in relation to prohibiting.

ACTING PRESIDENT WINNER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT WINNER: The bill is passed.

THE SECRETARY: Calendar Number 478, by Senator Farley, Senate Print 1851A, an act to amend the Election Law and the State Finance Law, in relation to requiring.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT WINNER: The bill is passed.

THE SECRETARY: Calendar Number 481, by Senator Saland, Senate Print 5021, an act to amend Chapter 698 of the Laws of 1996 amending the Education Law.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT WINNER: The bill is passed.

THE SECRETARY: Calendar Number 490, by Senator Morahan, Senate Print 6424, an act to amend Chapter 672 of the Laws of 1993, amending the Public Authorities Law.

ACTING PRESIDENT WINNER: Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT WINNER: The bill is passed.

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

SENATOR SKELOS: Thank you, Mr. President. If we could go to the controversial calendar at this time.

ACTING PRESIDENT WINNER: The Secretary will ring the bell.

The Secretary will read the controversial reading of the calendar.

THE SECRETARY: Calendar Number 394, by Senator Padavan, Senate Print 6744, an act to amend the General Municipal Law and the Retirement and Social Security Law.

ACTING PRESIDENT WINNER: Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

Would the sponsor yield for two questions?

ACTING PRESIDENT WINNER: Senator Padavan, will you yield?

SENATOR PADAVAN: Yes, I will.

ACTING PRESIDENT WINNER: The Senator will yield.

SENATOR DUANE: Through you, Mr. President. Does this bill, which talks about surviving spouses, include domestic partners?

SENATOR PADAVAN: Whatever the definition in the current law is, relevant to

surviving spouses, is what it is. This doesn't change any current definitions in law.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT WINNER: Senator Padavan, do you continue to yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT WINNER: The Senator yields.

SENATOR DUANE: Is there an Assembly sponsor for this legislation?

SENATOR PADAVAN: Is there an Assembly sponsor?

Yes, there is, but I don't have the name here in front of me. I can get that information for you, but I don't know right now.

SENATOR DUANE: Thank you. Thank you, Mr. President.

On the bill.

ACTING PRESIDENT WINNER: Senator Duane, on the bill.

SENATOR DUANE: I am not a hundred percent sure -- in fact, I'm not even

50 percent sure if, under current law as it applies to death benefits for police and fire personnel, that domestic partners are included.

And I'm going to, with the permission of the sponsor, research and maybe share with him that information. Because if this bill is going to be reconciled with the Assembly version, I would be much more comfortable supporting it strongly if it included domestic partners.

Because after the horrendous bombing of the World Trade Center, we discovered that, due to the flaw of the legislation put forward by the then-mayor of New York City, some benefits that should have gone to the domestic partners of some police and fire personnel who were killed that terrible day were not entitled to get benefits.

And that's something that we need to rectify. The city part of the responsibility has in fact been fixed, but the state part still is not completely rectified. So I'm hopeful that we will be able to get

that completed this session.

Thank you, Mr. President.

ACTING PRESIDENT WINNER: Thank you, Senator Duane.

Senator Padavan.

SENATOR PADAVAN: Yes, just to fully answer Senator Duane's question.

The Assembly sponsor is Markey, Assembly Member Markey, Assembly Bill 10334.

ACTING PRESIDENT WINNER: Any Senator wishing to be heard?

Debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect July 1, 2006.

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT WINNER: Announce the results.

THE SECRETARY: Ayes, 55.

Those Senators absent from voting: Senators Hannon, Meier, Oppenheimer, and Stavisky.

ACTING PRESIDENT WINNER: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 452, by Senator Balboni, Senate Print 1927, an act to amend the Penal Law.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT WINNER: Senator Balboni, an explanation has been asked for.

SENATOR BALBONI: Thank you, Mr. President.

This bill addresses the issue of gang violence. According to a recent U.S. Department of Justice survey, there are 750,000 gang members in the United States and over 28,000 different gangs. In recent years, there has been a spate of recent gang activity in United States. Gangs like the Bloods, the Crips, MS-13, they are becoming national in stature.

In the county that I represent, Nassau County, we have a number of gangs. We've seen the number of gang members go up from a handful in the early '90s to near 3,000 today. But gangs are not just a downstate

problem. Recent Times Union reports from the city of Albany indicate that gangs are a serious issue in this city. Likewise, in Buffalo and around this state.

And they're getting younger, ladies and gentlemen. Gang recruitment is targeting children. Consider these recent episodes.

In May of 2005, an 8-year-old boy in Brooklyn was attacked and slammed to the pavement by classmates outside Public School 289 in Crown Heights and was ordered to choose between the Bloods and Crips.

In April of 2005, a 14-year-old New York City student was stabbed with an ice pick in a gang-related melee.

On March 11th, teenagers were suspended for gang-related brawls at a Niagara Falls High School.

And it's not just assault, it's all sorts of crime. And many of the crimes that target children begin with an initiation project, that the person who has been solicited to join the gang and then accepts must show their fealty to the gang by committing a violent act. We've had this in

Nassau County. Slashings in malls, particularly by female gang members, are the most common practice to literally draw blood.

This bill creates two new sections of the Criminal Procedure Law --

ACTING PRESIDENT WINNER: Excuse me, Senator Balboni.

Could we have some order, please.

SENATOR BALBONI: Thank you, Mr. President.

I misspoke. It is not the Criminal Procedure Law, it is the Penal Law we are amending today. And this would create a new section for the solicitation and recruitment of gang members to become a part of a criminal street gang, and creates an E felony for that act. And it also creates another section of the law to make it a D felony to go and solicit minors in order to join a criminal street gang felony.

My colleagues, this has become an epidemic nationwide, but particularly here in New York State. And these types of issues and bills are difficult to craft because of the constitutional protection of the right of free

association. But that should not limit us in our attempt to try to bring justice for the victims of criminal street gang solicitation.

If any of you have been the subject of a bully when you were growing up in school, you know the fear when someone says "You better do this." Now imagine it is someone who's a part of a gang that you know has access to weapons and has violent tactics.

Mr. President, I offer the bill for this house's consideration.

ACTING PRESIDENT WINNER: Thank you, Senator Balboni.

Senator Montgomery.

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

I want to thank Senator Balboni for his explanation. And certainly one of the incidents in particular that you mention was in my district formerly. I'm very familiar with that school, and we've had sessions there with the police department on gangs. And so I really do identify with the fact that we have this level of violence, and it's very unfortunate.

I just want to caution, however, that I'm not sure that there is a direct relationship between the incidents that you listed and you iterated and this legislation. Because the way that I read this, this is specifically legislation which seeks to deal with recruitment of minors into gangs. And certainly I agree that we need to figure out how to break that part of the cycle, the recruitment process.

However, what we've done in this bill, what this bill will do is simply add some jail time based on this new gang activity process. It does not speak to how we actually break that cycle. It just says if you recruit someone, you will get a longer sentence. And the reason that I'm so troubled by this approach --

ACTING PRESIDENT WINNER: Senator Balboni, why do you rise?

SENATOR BALBONI: Mr. President, I was wondering if Senator Montgomery would yield for one question, please.

ACTING PRESIDENT WINNER: Senator Montgomery, do you yield?

SENATOR MONTGOMERY: Yes, I do. But let me just finish my thought, if you will.

ACTING PRESIDENT WINNER: The Senator will yield in a moment, Senator Balboni.

SENATOR MONTGOMERY: I will yield in a moment.

ACTING PRESIDENT WINNER: Thank you, Senator.

SENATOR MONTGOMERY: The thing that troubles me about this process is that we now see already, from the kinds of incidents that Senator Balboni has talked about -- which I agree are violent crimes and we need to deal with them -- we already see a rising number of young people who are being incarcerated for quite long sentences.

So that's already happening. We've sort of moved in that direction. But what this does is just adds on additional jail time.

Now, if we can talk about, Mr. President, if we can talk, Senator Balboni and myself and others of us in this chamber, about

breaking the cycle, especially at the level of when a young person decides or is recruited into the gang, then I think it merits a lot of attention on behalf of all of us.

I yield for Senator Balboni's question.

ACTING PRESIDENT WINNER: Senator Balboni, Senator Montgomery yields.

SENATOR BALBONI: Yes, Senator. Mr. President, through you, would the Senator, just for clarification purposes, just tell me where the sentence would be added on. Because as you can see from the bill itself, we are creating two new crimes but these do not currently exist.

And so therefore I just was wondering if you could just let me know of your reference to additional time. Added onto what?

SENATOR MONTGOMERY: My interpretation of this legislation, it is part of -- it amends the Penal Law. And it says yes, we have two new crimes related to gang activity, and these new crimes are going to be part of any sentence that deals with gang

activity.

So if you have a violent act and you are charged with a felony, felony A, and that requires X number of years, and in addition to that we have a new charge that can be tacked onto that for an E or D, or D or E, then that increases the length of time of the sentence.

That's how the Penal Law works. Ask any young person who's ever been to court, they'll tell you. Ask any judge how it works. So they look at the record and, depending on the record or depending on the number of charges, your sentence is long or short, period, based on the maximum possibility for that judge to give you in prison. And this adds up to 7 years to that.

ACTING PRESIDENT WINNER: Senator Balboni.

SENATOR BALBONI: I'll speak after the Senator.

Thank you very much, Senator.

SENATOR MONTGOMERY: So, Mr. President, I'm very, very reluctant to support this. I'd like to hear some more from

Senator Balboni, but this really troubles me. Because this is how we approach every single issue, especially related to young people. But we are not willing, on the other hand, to invest in providing the types of support systems so that young people who are bound to get into trouble have an opportunity, based on our willingness to support them, to get a second chance ever in life.

So that concerns me. And I don't think that I can support this legislation.

Thank you, Mr. President.

ACTING PRESIDENT WINNER: Thank you, Senator Montgomery.

Senator Volker.

SENATOR VOLKER: Mr. President, I've been involved in these debates for some time. And whenever I hear that young people are telling somebody that people are going to jail, I have to kind of laugh.

It's very hard to go to jail for gang activity in New York City. Very hard. It's hard to find anybody that goes to jail. In fact, that's part of the problem. Judges have tended to look at young people -- and

young people meaning not up to 18, but even up to 21 -- as kind of disjointed and so forth.

And as a result, the amount of people -- as someone just said to me some years ago, it's hard to go to jail on a drug charge in New York City. You know, we tell about all these people that go to jail that we look at their records and usually they've been arrested about 20 or 30 times before they ever go to jail. It's no secret, particularly in the city.

As far as gangs are concerned, very, very few people ever go to jail as far as gangs are concerned. But Senator Balboni is talking about here not necessarily gang violence, he's talking more about gang recruitment.

These are the hard-core people who try to lure in young people and claim to them that society is so terrible -- many times these are not necessarily poor kids, by the way. Maybe they have a few bucks. Or maybe they sell drugs, which gives them a few bucks.

The problem we have is if we sit back and say, Let's wait until we can give

them some sort of support -- of course, we spend millions and millions and millions of dollars in trying to do support. Often, it's true, maybe the help doesn't get to them. But the trouble is we sat here in the Legislature and at home -- and I say at home, in Buffalo -- and all kinds of places and basically said: Well, we shouldn't sentence these people to long sentences because they're poor kids and they have problems and so forth.

What happened was a rash of drugs. What happened was our neighborhoods got torn apart by violence. And then we said enough is enough. In this state, this Senate and the Assembly and the Governor got together and we said: We must take a stand.

Years ago I remember, when everybody was telling me about the drug laws were so terrible and all that sort of stuff, 75 percent of the people in prison were nonviolent, 25 percent were violent. That is all turned around entirely now. Approximately 75 percent of the people in our prison system are violent, 25 percent are nonviolent.

In addition to that, we have the

shock incarceration program, which most people believe is the best -- it's mostly drugs. It's supposed to be nonviolent; it's less violent. Because there's very few people that go to jail that don't have some violence in their background. We've sifted through literally thousands of people, thousands of young people, and most of them are doing pretty well. But the problem is we still have this reluctance to deal with these poor young people.

Now, the vast majority of poor young people do well. They don't get into trouble. But there's a certain number of them that are lured in, particularly by people who are ready to get them out on the streets and say, Look, we're giving you an opportunity to get in with this group and you can make a lot of money and you can do all kinds of things. If we sit back and we don't do anything with them, what unfortunately is going to happen, more of those young people are going to get sucked into this, and then they're going to end up in jail.

My humble opinion, very few judges

in New York City are going to send anybody to jail under his statute. But I will tell you this. The ones they send are going to be good people to go to jail, because they're going to be the real hard-core people. And I don't see anything wrong with that.

And when I say New York City, I'm also talking about Long Island. I don't mean -- but I mean the city is probably the biggest problem. You know, you've got more people. Quite obviously, it's a tough problem. We have a problem in Buffalo. It's a big problem.

What's happening in Buffalo is that people just don't realize, we got way too few cops now. We just had the sheriff's department that lost nine people that used to do undercover work in Buffalo. Suddenly we got drug problems, we got killing problems, and we've got -- my gosh, we're surprised, we've got gang problems. We haven't had that in years.

We need this kind of legislation. We also need what you said. We need more help, that's true. But let's start out by

getting rid of those people off the street who are doing the recruiting, because they're the ones that are going to scar these kids and force them to end up in jail someday.

ACTING PRESIDENT WINNER: Thank you, Senator Volker.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: If the sponsor would yield for a question.

ACTING PRESIDENT WINNER: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, I do, Mr. President.

ACTING PRESIDENT WINNER: Thank you.

SENATOR SCHNEIDERMAN: I think that the -- hopefully our objective here today is to try and come up with legislation that can actually deal with a very serious situation. I mean, the victims of gang violence more often than not are people who are represented by Senator Montgomery and others. So that I hope there is no effort to suggest that we're not serious, that everyone in this chamber is not serious about trying to

address the problem.

These are just hard bills to write. This is just hard drafting. Because you can end up unintentionally, you know, causing effects and roping people in who aren't necessarily the people you want to get. No one wants disagrees with Senator Volker that the hard-core gang people are the ones you want to get, and it's hard to get them sometimes.

My question, Senator Balboni, on page 2 of the legislation, lines 7 through 11, this is a bill that prohibits -- that criminalizes solicitation, just inviting someone or intending to invite someone to join an organization. And where you define organizations, the definition of criminal street gang, this is a new definition, is it not? This is not something that exists elsewhere in the law at this time; is that correct?

SENATOR BALBONI: Mr. President, through you. Yes, that's correct.

SENATOR SCHNEIDERMAN: And my concern is this. Is there any requirement --

and if so, please point it out -- that the person who is doing the recruiting actually is a part of the agreement to commit crimes?

Because the way I read this, this defines the organization and says the organization is three or more individuals who agree to act in concert with a purpose, not the only purpose, but a purpose being that any of these persons alone or in combination will commit crimes.

So the way this is drafted, it appears to me that as long as several people in this organization agree that one of them will commit crimes, there's no requirement that everyone else involved in the organization even know that that's true.

Could you point out, if I'm incorrect, where there's the requirement that the person who is being prosecuted under this section actually be someone with knowledge that people are in this organization to commit crimes?

SENATOR BALBONI: Mr. President, through you. First off, let me thank the gentleman for his question.

And in responding to him, I just want to point out to Senator Montgomery that this bill, this approach is based upon some of the conversations that you and I have had in the past and does, in fact, create a simple stand-alone crime of solicitation. In other words, so it can't be added onto anything else necessarily, it must be only as to recruitment as a crime in and of itself.

As to Senator Schneiderman's concern, as you know, the drafting of what constitutes a criminal gang is in fact the most difficult aspect of this type of legislation. But if you read the front section of the bill that talks about what is the actual act -- that is, solicitation of an individual to join a street gang and get that individual to commit a crime -- that is what is going to be presented to the jury.

Here is the difficulty with this drafting. If you say that each and every member of the gang, in order to constitute a criminal street gang, must have the requisite intent to commit a crime simultaneously, then you will absolutely no prosecutions in the

State of New York whatsoever.

Instead what we have here is a framework that could be presented to a jury for them to consider whether or not, as under all criminal law, you have to have the requisite intent to commit the crime. If you do not find that, you cannot be proven guilty.

So this statute would be utilized in such a way that you would have the individual who made the solicitation, you'd have to have evidence of that. Then you would have -- the other form of intent you'd have to prove is that that person intended to solicit someone to join the street gang and commit a crime. And then other individuals in that gang are in fact going -- have or are going to commit a crime. Those are all the elements of the proof that must be presented to a jury. And that's for the jury to deliberate and truly is a question of fact.

I think what we are doing is we are saved -- at least this is my intent as the sponsor -- we are saved by the intent requirement under criminal law in general to make sure that people cannot go to jail for

crimes that they never intended to commit.

SENATOR SCHNEIDERMAN: Thank the sponsor for his answer.

I do think that there are great difficulties -- this is something that has been addressed, that people are attempting to address. Gang membership is serious. Senator Sabini, Senator Parker, Senator Sampson and others in our conference have raised this. Senator Montgomery has been actively involved, as Senator Balboni noted.

I do think that there are tremendous problems in drafting a statute like this. I would like to take the sponsor's optimistic belief of this and be supportive of the legislation, because I do think that it's very difficult. I think it's extremely hard to define membership in an organization where there's no requirement that everyone in the organization even know that it's a criminal operation.

So I would urge you to consider Senator Montgomery's concerns and objections as we move forward in this area. We want to address the real problems. We do want to make

it easier to put an end to the reign of terror of many gangs in our communities.

I would, however, urge the sponsor that I do think a little more work is required in the section that defines "criminal street gang" to make sure that this is not something -- look, there are a lot of good prosecutors out there; Senator Volker and others of us who have worked in this system for a long time. But you also open yourself up to irresponsible conduct, should it ever take place, that can be -- that sometimes does take place in this area.

I would urge the sponsor to revisit this. I think we will have time to, to take into account the issues that I raised relating to the definition of criminal street gang. With that, I am going to try and be supportive of the effort as we go forward. And I hope that we will have further room for bipartisan cooperation and discussion on this issue.

Thank you.

ACTING PRESIDENT WINNER: Senator Ada Smith.

SENATOR ADA SMITH: Thank you,

Mr. President. On the bill.

I will be voting in favor of this legislation. But I'm greatly concerned -- even though I understand how hard it is to craft this type of legislation, I'm concerned that we are creating new offenses with the possibility of increasing sentences.

And I challenge my good friend Senator Balboni, in this time of budgetary concerns, to please remember that we must do something so as not to make it attractive for these young people to join a gang.

While we're creating legislation, we also have to do something on the other side. And we must not cut summer jobs programs, we must not cut youth programs, we must do everything to give them an opportunity not to be a part of a gang.

Thank you.

ACTING PRESIDENT WINNER: Thank you, Senator Smith.

Any other Senators wishing to be heard?

Debate is closed. The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT WINNER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT WINNER: Senator Sabini, to explain his vote.

SENATOR SABINI: Thank you, Mr. President.

I just want to mention a couple of things regarding this legislation. I'm going to be voting in favor of it. I agree with Senator Montgomery that we cannot only do penalties, but also we have to ensure that we offer our young people alternatives. But I want to commend Senator Balboni. This is an epidemic problem.

His point about the gang members being younger and younger is true, but they're also older and older. We are getting gangs in from other countries, as he mentioned. Many of those people are coming in as adults, as recruiters. They're coming in to avenge

actions that take place in the other country. So that we have spillover violence in our neighborhoods sometimes caused by incidents a continent away.

So I want to commend Senator Balboni and say we need more, we need more prevention, but we also need more tools to allow the police to track and apprehend gang members and to stop their activities. This is a good first step. I supported it the last time it was up; I'll support it again and hope it gets passed through the Assembly.

But I urge my colleagues to look at a whole stack of legislation that I've introduced, and Senator Sampson has a bill as well on gangs. And I've introduced companion bills with Assemblyman Peralta in the Assembly, and hope we can move forward to eradicate this growing cancer in our neighborhoods.

Thank you. I vote yes.

ACTING PRESIDENT WINNER: Senator Sabini will be recorded in the affirmative.

Senator Montgomery, to explain her vote.

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

One man's cure is another man's poison. We all understand that. And very often I see the poison pill in some legislation that really is intended to do a good thing. And I think this is one of those instances.

But I have never been in the presence of a group of young people in my district, especially young males, where they have not said how many times they were accosted in the subway by police. They get picked up if they don't have an ID, they get picked up if they have a desk warrant for something that they've done.

And so there's tremendous pressure on young people in my district. I know that's not the case in all parts of the state, but certainly where I represent. And each time we do a penal law such as this, you can rest assured that there are going to be some people in my district who are going to be specifically targeted and susceptible to this law.

And so since that's always a problem, and I feel like I have an obligation to represent the young people in my district specifically, I am going to vote no on this legislation because we have so many other different pieces of legislation with the same intent of this, to solve a problem.

But I can tell you -- and I invite you to come to my district, and I can introduce you to police officers who I have a very lot of contact with, and ministers in my district who spend days and hours in court trying defend young people. I will have you meet them, Mr. President, and they can tell you what the pressure is in terms of the criminal justice on young people in my district.

So I'm going to vote no on this because I'm representing my young people. Thank you.

ACTING PRESIDENT WINNER: Thank you, Senator Montgomery. You will be recorded in the negative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 452: Senator Montgomery.

Those Senators absent from voting: Senators Meier and Oppenheimer.

Those Senators absent pursuant to Rule 9: Senator Stavisky.

Ayes, 55. Nays, 1.

ACTING PRESIDENT WINNER: The bill is passed.

Senator Hannon.

SENATOR HANNON: Yes, Mr. President. A few minutes ago I was outside the chamber in a budget meeting when Calendar Number 394, S6744, passed. Had I been present, I would have been in favor of that measure.

ACTING PRESIDENT WINNER: The record will so reflect. Thank you, Senator Hannon.

Senator Skelos.

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

ACTING PRESIDENT WINNER: Yes, Senator Skelos, Senator Fuschillo has a

motion.

Senator Fuschillo.

SENATOR FUSCHILLO: On behalf of Senator Volker, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Print Number 2843.

ACTING PRESIDENT WINNER: So ordered.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

On behalf of Senator Oppenheimer, I would move that the following bill be discharged from its committee and be recommitted with instructions to strike the enacting clause: Senate Bill Number 3781.

ACTING PRESIDENT WINNER: So ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please recognize Senator Klein.

ACTING PRESIDENT WINNER: Senator Klein.

SENATOR KLEIN: Mr. President, I have a motion at the desk. And I would like to have it called up at this time and have the opportunity to speak on said motion.

ACTING PRESIDENT WINNER: The Secretary will read.

THE SECRETARY: Senate Print 2697A, by Senator Klein, an act to amend the Social Services Law.

SENATOR KLEIN: This motion, Mr. President, would create a system in New York State of mandated reporting of financial exploitation of the elderly.

All of us here certainly have a vested interest in making sure that our senior citizens are able to live out their golden years in comfort and dignity. Unfortunately, year after year, one of the growing crimes in New York State and really around the country is financial exploitation of the elderly. The recent nationwide estimates show that 1 in 25 cases of financial exploitation is reported, which translates to at least 5 million financial abuse victims each year. And those are actually the reported cases.

When we look a little further, New York State has the dubious distinction of being one of only six states that have no mandatory requirements for reporting either physical abuse against the elderly or financial abuse.

My legislation is rather simple. It would require certain persons in their official capacity to report the suspected financial exploitation of persons 62 years of age or older. It would run the gamut of people in the medical industry -- doctors, nurses -- and would even require people at banking institutions to have mandatory reporting requirements of financial exploitation of the elderly.

I think the time is now to pass this legislation. I know Senator Golden has legislation, which I voted for and I know passed this house several years in a row, which would create the crime of financially exploiting the elderly. I think my motion takes it one step further and requires mandatory reporting.

I urge my colleagues to vote yes

on this motion.

ACTING PRESIDENT WINNER: All those Senators in favor of the petition out of committee please signify by raising their hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Coppola, Diaz, Dilan, Duane, Gonzalez, Klein, L. Krueger, C. Kruger, Montgomery, Onorato, Parker, Paterson, Sabini, Sampson, Savino, Schneiderman, Serrano, A. Smith, M. Smith, and Stachowski.

ACTING PRESIDENT WINNER: The petition is not agreed to.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until Tuesday, March 21st, at 3:00 p.m.

ACTING PRESIDENT WINNER: On motion, the Senate stands adjourned until Tuesday, March 21, at 3:00 p.m.

(Whereupon, at 4:10 p.m., the Senate adjourned.)