NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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11:10 a.m.

REGULAR SESSION

SENATOR THOMAS P. MORAHAN, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MORAHAN: The Senate will come to order.

I ask everyone present to please rise and join me in pledging allegiance to our Flag.

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

ACTING PRESIDENT MORAHAN: In the absence of clergy, we'll we bow our heads in a moment of silence.

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

ACTING PRESIDENT MORAHAN: The reading of the Journal.

THE SECRETARY: In Senate, Tuesday, April 1, the Senate met pursuant to adjournment. The Journal of Monday, March 31, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MORAHAN: 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 Skelos.

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

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 325, by Senator Volker, Senate Print 6747, an act to amend the Criminal Procedure Law and others, in relation to enacting the "Child Sexual Abuse and Exploitation Act of 2008."

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 59. This act shall take effect on the first of November.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 41.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 399, by Senator Nozzolio, Senate Print 6908, an act to amend the Executive Law, in relation to directing the Division of Parole.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, to explain my vote.

ACTING PRESIDENT MORAHAN: To explain his vote.

SENATOR SCHNEIDERMAN: I think that this bill has some provisions that are commendable as far as transparency of the

parole process. But it also has a provision which I think is something that no member of this house should vote for, requiring that three members of the Parole Board, instead of the current one, must interview a prisoner, and that it requires a unanimous vote of the Parole Board to release an offender.

The system of parole has been operating in this state for many, many decades. It operates pretty well. And I believe that trying to make it more -- this is obviously political in two senses. It's designed to try and make it more difficult for people to obtain parole, which I think contravenes the express purposes of our system and of the parole process, which is to ensure that people who have served their time, who have shown evidence of rehabilitation can return to their communities and participate in the life of their communities as citizens again.

Except for a handful of people who die in prison, everyone gets out. "They All Come Home" is the name of a book written by Jeremy Travis of John Jay College recently,

pointing out how we have to make better provisions in our state and in our country for reentry.

This bill I think is transparently political in a second sense also. It seems to be designed so that hang-over appointees from the Pataki era can stymie the decisions of the new Governor's appointees to the Parole Board to release people who meet all the requirements for parole.

The case law is clear; parole is not supposed to be resentencing. Parole is about conduct in prison. Parole is about enabling us to save money and restore people to their communities in a timely and safe manner.

I urge everyone in the house to vote no. This would interfere in the process and would be a political power grab, frankly, on behalf of the now departed -- two Governors ago, that guy.

Thank you, Mr. President.

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

Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: To explain your vote?

SENATOR DUANE: Yes, Mr. President.

You know, the whole point of having a three-person Parole Board panel is to have a difference of opinion emerge and for the members of the Parole Board to actually read about the person coming before and what they've done while they were incarcerated and about the crime and what's happened and what's happened with rehabilitation. And the whole point is that the Parole Board members would have a discussion among themselves and make an informed decision.

You know, if there has to be a unanimous decision, then let's just have one person make the decision. Because you could have a renegade person that holds up the whole -- that could decide it every time. And that's ridiculous. We don't do that in any sort of deliberative body. It's totally

antithetical to our system of making decisions in this state and in this nation.

It's fixing something that doesn't need to be fixed and shouldn't be fixed. It's not going to make any kind of a perfect parole board. And I just -- I think it's a very, very bad move and I'm actually shocked that it has come before us today. And I would also urge my colleagues to vote no on this, because it's just plain bad public policy.

Thank you, Mr. President. I'm voting no.

ACTING PRESIDENT MORAHAN: Thank you, Senator Duane. You will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 399 are Senators Adams, Connor, Diaz, Duane, Hassell-Thompson, Huntley, L. Krueger, Montgomery, Parker, Perkins, Sabini, Sampson, Schneiderman, and Smith.

Ayes, 34. Nays, 14.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 419, by Senator DeFrancisco, Senate Print 2877, an act to amend the Penal Law and the Criminal Procedure Law, in relation to the crime of engaging in criminal street gang activity.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

This bill I think is overly broad, and I would argue that it probably has a constitutional problem.

The problem of criminal street gangs is very serious. I appreciate that it's intended to add an additional penalty for the participation in a gang, and it establishes the crime of engaging in criminal street gang activity.

However, I would urge all of you to

consider that this makes it a crime if one person, acting in concert with an individual member of a street gang -- so if you're just with one other person who happens to be in a street gang, and you engage in any unlawful activity -- which includes parking violations, that's an unlawful activity -- you are guilty of the crime of criminal street gang activity.

This can't possibly survive constitutional scrutiny. This is not something that is going to help us get rid of the serious, serious problem of gangs. It's a problem in my district; it's a problem all over the state.

Let's take some care in drafting a statute that could work. This statute is drafted so broadly as to, you know, possibly -- I think it's quite possible it could be thrown out, but it also basically criminalizes people for hanging out in their neighborhoods with people they know who may or may not be in street gangs. It doesn't even require you to know the person you're hanging out with is in a street gang if you're parked on the wrong side of the street.

So I'm going to vote no, Mr. President. I think we should take a much more serious look at the problem of gang activity. This is not the way to approach it.

Thank you.

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

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I see here that the City of New York -- specifically, the Office of the Mayor -- is supporting this legislation.

And I just want to remind my colleagues that, number one, those of us who are in our districts and working with young people and talking to them, we understand that the best antidote for dealing with the problem of gang activity is the work that the police department, specifically the youth officers and the community officers, do with young people. They do a tremendous and positive job in intercepting and intervening and preventing this street gang activity.

Last year, 25 members of this

Legislature wrote a letter to the mayor and the police commissioner requesting that of 800 new police graduates, that at least half of them be assigned to our precincts as youth officers and community officers. And we received absolutely no consideration for that request. That request was made specifically in order for us to be able to deal with the problem of street gangs with the police in our communities.

So I'm voting no on this, because this is only to address this issue through criminalization. It has nothing to do with preventing gang activity.

And I think that is really a statement by our city, by our mayor, that he doesn't really care about preventing gang activity, he just wants to make sure that he has every tool to arrest young people. So I'm voting no.

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

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, I vote aye, which is no surprise since I'm the sponsor.

But this bill was definitely supported by the City of New York. And the proposal arose out of the work of the New York City Police Department Gang Division.

Street activity, gang activity isn't limited to the city of New York. It's cropping up all over the state of New York. And the purpose of this bill is not only to stop criminal activity, but it's also to help those same young people that some are concerned that they will be swept up in an overly broad bill.

Because what this bill talks about is that even if you're not a member of a street gang but you associate yourself with a street gang, to solicit another to join a street gang or to deter someone from leaving this street gang.

You know, there's a lot of peer pressure out on the streets, and it would seem to me that these are tools that should be welcomed by anybody in the community,

especially those parents who are extremely concerned, and rightfully so, that their kids might get scooped up into one of these gangs and, if scooped up, can never get out.

And so I think it's a very good bill. And it's not overly broad. And it will pass constitutional scrutiny. And it's a tool that's definitely needed to help those young people. And I agree with Senator Montgomery that the best antidote is work done by youth officers, by various public groups that help kids or where kids have constructive activities.

But there are always those out there. No matter how good you can make it for young people to veer off from those activities, there's always some that are going to be involved. And we need to protect those that don't want to be involved to be able to either stay out or get out of these gangs. So I vote aye.

ACTING PRESIDENT MORAHAN: Thank you, Senator DeFrancisco. You will be recorded in the affirmative.

Senator Parker.

SENATOR PARKER: Mr. President, to explain my vote.

First let me thank Senator DeFrancisco for putting this bill forward and being concerned about gang activity all over the state. And I agree with you and share your concern. This is really one of the major problems that is arising in all of our communities, clearly, in Syracuse, Buffalo, Yonkers, Long Island. And we really need to find a way that we address it.

So it's the right problem but this is not, unfortunately, the cure.

I rise again to just say that raising penalties doesn't in fact stop crime. It doesn't. Every study says that -- the Vera Institute, the Justice Department. Everything that we've done shows that raising penalties does not stop the commission of crimes.

The reality is that we have to hit the crime where it lives and eliminate the environment in which these crimes in fact are created. If we are in fact really concerned about gang activity, which is primarily youth violence, let's bring back the State

Department of Youth which we used to have 10, 15 years ago that in fact gave money to youth programs so that we can do that.

In New York City we need a new mayor who believes in helping our young people. We need to go back to having a Department of Youth Services that puts, again, money into after-school programs and youth development programs. We've gotten rid of music, art and athletics as regular parts of the curriculum in our schools, and so our young people are not as engaged because all they're doing is teaching to the test.

We really have to engage our young people in a real way. And I know that the mayor and the police department, you know, believes in this. But I would say to that that when all you have is a hammer, everything looks like a nail. So, you know, they're doing what they know how to do.

And for six years I've sat here and listened to my colleagues on the other side of the aisle make the same argument about addressing this issue, but yet I have yet to see somebody come up with a bill that puts

money for youth services for the whole state.

Let's, in fact, everywhere from Brookhaven to Buffalo to Brooklyn, engage our young people every single day in after-school activities, in music, art, dance, athletics, in after-school tutoring. Let's provide the services that they really need instead of putting $12 million additional money to hold open facilities in the budget, you know, that we know have no people in them.

And so when I look at the series of bills today, you know, and people start talking about prison closings, what this looks like to me is that we have prison closings is because, Mr. President, because these facilities are empty and so we say let's figure out a way to fill the facilities so we get an agenda that looks like the one we have in front of us today.

I object to that, and so I vote no, Mr. President.

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

Senator Hannon.

SENATOR HANNON: Yes, Mr. President. I really want to commend Senator DeFrancisco for bringing this to the floor.

The problem of gangs and gang activity has been late in coming to New York State, but it's becoming extremely pervasive. And the tools that law enforcement needs haven't been there. This bill would add that tool.

I have seen neighborhoods devastated by the gang activity in recent months. I have seen law enforcement in Nassau County struggling. Just this week, they brought over 20 people to arrests and indictments because of gang activity. But the difficulty they have are the tools, the procedural tools and the criminal laws, are not there. This would add them. And I commend them; I cannot understand why people would be opposed.

The other arguments that have been raised by Senator Schneiderman I think are not well-founded. I think this bill ought to be adopted.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Hannon. You will be recorded in the affirmative.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON:

Thank you, Mr. President. The majority of the concern that I wanted to raise was raised by Senator Parker. I'm explaining my vote because, as somebody who is seen in their community as somewhat conservative, I certainly don't want to send a message that I'm soft on crime.

But I also have been a person who has stood on this floor for the eight years that I have been here and called for us to look at how we choose to address the issue of crime in our communities.

One of the reasons that we are faced with the level of gang violence in our communities that we are is that for a very long time, many of the mayors didn't want to acknowledge that there was gang activities. It's not good when you're trying to promote your city and your community to say that we

have gang problems.

I know that that was an issue in my city, and yet we saw gang violence escalating. But we also saw that the state was deleting from our budget more and more dollars, more and more concern.

And the way in which I think, I believe that we demonstrate how concerned we are is by how much money and creativity. It's not always about money, but it is about how do we creatively look at the problems that are being presented to us. And we have colleges and universities that we continue to support that are turning out reports every day that are telling us and are giving us the answers, and we're not listening.

And the answer that we prefer, because it's easier, is to lock them up. Increase the penalties. Lock them up, lock them away. That is better for the economy, because it's very easy. We don't have to think about it. We don't have to see them, we don't have to think about it.

We have come to a place and a time where we are incarcerating the brains of the

future. And if that's what you're satisfied with doing, then continue to do that.

I suggest that we should not be satisfied with the way in which we look at crimes in our state. I am not soft on crime, but I am not prepared to lock up another generation of young people because we refuse to be creative about what we do in these chambers.

It's not always about money, but it is about how do we think-tank this and how do we look at the data that is available to us and use some great intelligence that is already in this state to look at the way we solve problems.

We have the power to do that. We choose, we choose to take the easy route. We have to stop it.

Thank you, Mr. President.

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

Senator Volker.

SENATOR VOLKER: Mr. President, I rise quickly. I agree and disagree with just

about everything I've heard on the floor of this Legislature.

First of all, this is a good bill. I wish I had it when I was the youth officer in Depew, New York, a number of years ago. If you don't think there were gangs then, you're wrong.

But the problem is -- and by the way, this is a misdemeanor. In New York City, it's like a traffic violation or a -- I mean, nobody goes to jail in New York City for a misdemeanor. It's ridiculous. If you shoot somebody, it may get brought down to a misdemeanor, let's be realistic.

Why do you want a bill like this? For the average kid who's involved in a gang? No. What you want this bill for is to get at the leaders.

I happen to agree, Senator Montgomery, with your assessment on youth officers. The only trouble is, Ray Kelly, who's probably the best commissioner of police, in my opinion, in the country -- the problem is, how could he get 400 youth officers? The 800 cops he's got still leaves

him about 10,000 short of probably the numbers he should have. And by the way, they're probably underpaid. They really are. It's hard to say that today, but they are.

But you've got to remember something. Oh, yes, we should give more treatment. And you're looking at a guy who sponsored and I used to handle all the youth stuff years ago. And we had a much bigger youth budget then, although it's actually not -- it wasn't bigger. It's probably about the same. But the difference is we haven't increased it, and that's true.

But I think we have to understand that treatment's fine. By the way, we are not locking up a generation in this state. That is baloney. 75 percent of the inmates in our prison system today are violent inmates. It used to be 35. It's 25 percent nonviolent. Most of them are pretty big offenders. And we have shock incarceration. That's national statistics -- and probably true, by the way. California has got 185,000 inmates, I think it is, and we got 62,0000. We were at the same level just a few years ago.

I agree with you that we probably locked up too many people. That's changed. Thank goodness it's changed. We're now being -- we're different. The only trouble we have to watch out for is that we don't go back to what happened before the Rockefeller Drug Laws: just let everybody out, and sentence them in New York City to one-fifth of what they do upstate.

Those studies, by the way, do not show that being tough on crime doesn't deter. It does. But what it shows is that that's not the only thing you've got to do. You've got to do more than that. And I agree with that.

I'll only say this. This was Mike Balboni's bill, who's now the head of criminal justice [sic]. I think it was a good bill then. I think it's still a good bill. I commend John DeFrancisco. And I have to say this, that we have to do more on both sides -- more to deal with the criminal end, and we've got to do more with the other side too, for treatment.

I vote aye.

ACTING PRESIDENT MORAHAN: Thank

you, Senator. You will be recorded in the affirmative.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

I, like Senator Volker, agree with a lot of what's been said on both sides of this argument. I commend Senator DeFrancisco for picking up this very important bill.

Let's be clear. When we talk about gangs, we are not talking about young people. Many gangs that are out in my district, out in my area, which some would consider mostly affluent, are international gangs. They're not arising from 13-year-olds and 12-year-olds and 14-year-olds, they're 30-, 40- and 50-year-olds. And they answer to a higher authority in their own sphere of opportunity and of work.

They're a dangerous group. They are recruiting young people by mechanisms of enticement and sometimes flat-out coercion. Any tools we can provide that will help us give young people a means of saying no to these people, a means of avoiding these

people, I think is a good thing. You have to. You have to give them the opportunity to get away from these criminals who are trying to lure a generation of young people into them.

Programs for our young people to keep them off the streets, to keep them occupied? Great idea. Many exist. They exist in the city now, and they exist on Long Island. They exist everywhere in the state. If we can find a more effective program that will work and put it in, I'm all for it. Do it.

But let's not throw the baby out with the bathwater. You need the tools to make it work. Sometimes the carrot is good, but you also need the stick.

And I think Senator DeFrancisco's bill is not an unreasonable measure and not an unreasonable bill. I think it should be passed and probably will be ultimately, if it gets into the other house, negotiated and we can probably include a lot of the other stuff that's needed and that we want to make it a better bill.

So let's pass this bill today and

move this discussion forward. I vote aye, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator. You will be recorded in the affirmative.

Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

You know, gang activity is not an issue that we should be polarized on on each side. I remember a generation ago the biggest threat of harm to our communities was organized crime. And what police had to do at that time, and law enforcement, they had to become sophisticated in monitoring organized crime -- eavesdropping, surveillance, undercover operations.

This generation, the growth of gang activity is rising, and it's becoming a threat to our communities like the mob was a generation ago. So the police and law enforcement do not have the tools or the sophistication that they would like to try to impair growing criminal activity when it comes to gangs.

It's in the schools. It's in the inner cities. It's in the communities. It's in African-American neighborhoods. It's in Asian neighborhoods. It's in Caucasian neighborhoods. It's in Hispanic neighborhoods. It is creeping universally in all our communities.

So the fact that we want to punish young people more, I don't think that's the intent of this legislation. The fact that we need more money for youth programs, I say yes, we do. Having more educational opportunities and recreational opportunities for our youth. It's not mutually exclusive to also supporting giving law enforcement the tools that they need so they can have more qualified people working to try to stop the growing threat of gang activity.

And the last point that I'd like to make is there are parents out there that feel helpless. They love their children, but they can't prevent them from being lured, intimidated, or seduced into gang activity.

And when we've had the dissolution of the family unit over the last decade to two

decades, it gave the gangs an opportunity to move in and fill that vacuum of so-called family and belonging. And we know that that is not true of what a real family does with love and nourishment. That's an arena of destruction, maybe death, but certainly maybe jail confinement.

We are in this together. And I respect those that vote no for the reasons they've said. But keep in mind, we have to work together on multiple approaches to solve this problem. And I want to commend Senator DeFrancisco for putting forth only a part of the solution. Much more has to be done on that.

I vote yes. Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator. You will be recorded in the affirmative.

Senator Diaz.

SENATOR DIAZ: Thank you, Mr. President.

This is a bill that in the past I have entertained and I have looked upon this

bill positively in the past. However, I have to tell you that in this budget there were $10 million for youth for after-school programs, $10 million, and it was cut. When we forget about our youth, forget about our after-school programs, they keep on hanging out there and doing nothing.

Listening to Senator Parker and reading the paper this morning and listening to the Senator that said that -- Volker -- that said that commissioner -- the police commissioner in the City of New York is the best one in the nation, I agree with that. He's a good police commissioner. However, reading the paper this morning, the mayor of the City of New York has given the kitchen, the sink, the toilet, the bathroom and everything else to those City Council members that voted for the congestion pricing. It says there's close to a billion dollars in perks.

Then I have to question myself. Police commissioner the best one, the mayor giving out money for congestion pricing more than what we're going to get from the federal

government. How come there is no money, how come there is no money for after-school programs? How come we have to keep cutting money for our youth to keep them out of the streets, to give them sports?

You know, my daughter lives upstate here in New York. And when I visit my daughter and the school that her children goes, I mean they have tennis, they have basketball, they have swimming, they have horse racing, they have all kinds of entertainment in upstate.

So, you know, but in the city there is no money. There is no money to give them sports, to give them something to keep them out of the streets.

Yeah, gangs, of course we have gangs. In New York we have the Bloods, the Crips, the Latin Kings, the DDP -- Dominicans Don't Play -- we have all kind of gangs. And we have to eliminate them. We have to do away with gangs.

But the only way that we're going to do that is, as Senator Parker said, providing our youth with decent, responsive

programs and after-school programs. That's the only way.

Today I used to look at this bill positively. After seeing that we cut $10 million that we have put there for after-school programs and to see the mayor giving out the kitchen sink, the toilet, the bathtub, and everything else for congestion pricing and there is no money for youth activity, ladies and gentlemen, I am voting no. This is something that should not be done.

Thank you very much.

ACTING PRESIDENT MORAHAN: Thank you, Senator Diaz. You will be recorded in the negative.

Senator Adams.

SENATOR ADAMS: Thank you, Mr. President.

I just want to -- as a member of the law enforcement community, and I will always consider myself to be, I would have loved to have a bill like this. But the reality is police can't have whatever they want. It's important for us to control their

powers.

And it's easy for us to sit in the sterilized environment of the Senate floor and talk about a misdemeanor arrest as no big thing. And it concerns me that we have embarked upon a culture of incarceration as tolerable. And as I look up into the bleachers and see these young people up here, and we continue to say to them: So what if you have handcuffs on, so what if you go through central booking, so what if you're arrested?

No, it's not "so what." When a child is incarcerated, when they wear handcuffs, every time they hear a police siren, every time they see a police movie, every time they see a police officer, they relive that experience. There's nothing normal about being arrested. There's nothing just laissez-faire about being arrested. When that cell door closes, you will hear it for the rest of your life.

And we need to stop with this insidious thought process of so what, they just got a misdemeanor. No, a misdemeanor

stops you from being a police officer, it stops you from having a Civil Service job, it stops you from, when you become an adult, being able to participate in society.

We are creating an environment where countless numbers of people, under Police Commissioner Kelly, have been stopped and have been criminalized. And so I'm not going to ever succumb to the belief and the philosophy that handcuffing a person and incarcerating them is a normal form of living in the greatest city in the greatest nation on this planet. No, that's wrong. That's wrong. And I'm voting no to this bill.

We do have to do more about gangs; I agree with Senator DeFrancisco. We do have a major problem with gangs, and we do need to find with a way to deal with the issue of gangs. I think the problem has spread from Long Island all the way up to our upstate region. We must stop this issue with gangs.

But we can't send a message to our young people that we are more willing to invest in a pair of handcuffs than we are willing to invest in an after-school program.

We can't send a message that we are more willing to see them going to central booking than we are willing to see them go to a centralized environment where they can learn from each other.

And I when we continue to submit bills like this, that's the message that we send. So I am voting no on this bill in hopes that we start the process of showing that we want to invest in our children's future and not give them a terrible start from the beginning with a misdemeanor arrest. It's never just a misdemeanor, it is an arrest.

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

Senator Craig Johnson.

SENATOR CRAIG JOHNSON: Thank you, Mr. President.

I figure since it's my predecessor's bill, I want to channel Senator Balboni for a moment and speak. But I want to speak on behalf and in favor of this legislation.

And I remember as a county

legislator working with Senator Balboni in Nassau County as he worked to secure more funds for the Nassau County Police Department for antigang activity and working on these pieces of legislation. Because as my colleague Senator Marcellino pointed out, gang activity is not centralized in New York City and the boroughs, it's spread like wildfire and like weeds all across our great state and, in particular, Long Island, where gangs like MS-13 are popping up all over the place.

And like Senator Marcellino said, and I agree, it's not just about teenagers. It's about the 40- and 50-year-olds, the gang leaders who are coming into town.

And I commend Senator DeFrancisco for bringing this bill. And I agree with my colleagues, we need to do more in terms of funding. And maybe that day when we can secure those funds and put those bills before the Legislature and the State Senate is coming soon.

But right now we need to do something, because there's an important component to this legislation and in reviewing

the bill, and that's about making it a crime to deter somebody or to attempt to deter another from leaving a criminal street gang. I think there's a saying "Blood in and blood out." And when you join a gang, it's blood in, and when you try to leave a gang, it's blood out.

And how can we not punish those who attempt to keep within their grasps a young man or a young woman who has decided -- maybe through an after-school program that was lucky to get funded, maybe by meeting a mentor and having them persuade him or her to leave the gang, leave that criminal enterprise -- how can we not punish those who want to keep them in?

That's what this bill does. That's what this bill does. It says enough. And it gives those people and those young people, maybe older people, a second chance who are trying to free themselves, and it punishes those who try to keep them in.

And so I support this legislation today. And it's not enough, it's not enough for our young people. We don't want them to

even be exposed to these type of activities. And we need to do more as a State Legislature. But until that day when we can, we need to do something else, and that's to punish those who try to keep our young people within these gangs.

So I vote yes, Mr. President. Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Johnson. You will be recorded in the affirmative.

The clerk will continue to call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results when ready.

THE SECRETARY: Those recorded in the negative on Calendar Number 419 are Senators Adams, Diaz, Duane, Hassell-Thompson, Huntley, L. Krueger, Montgomery, Parker, Perkins, Sampson and Schneiderman.

Ayes, 43. Nays, 11.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number

425, by Senator Volker, Senate Print 4295, an act to amend the Penal Law and the Criminal Procedure Law, in relation to creating.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 9. This act shall take effect on the first of November.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 528, by Senator Maziarz, Senate Print 112, an act to amend the Criminal Procedure Law, in relation to enacting criteria.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 528 are Senators Hassell-Thompson, L. Krueger, Montgomery, Parker, Perkins, Sampson and Schneiderman. Also Senator Huntley.

Ayes, 47. Nays, 8.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 532, by Senator Young, Senate Print 378, an act to amend the Criminal Procedure Law, in relation to eligibility for youthful offender status.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 532 are Senators Connor, Duane, Hassell-Thompson, Huntley, L. Krueger, Montgomery, Parker, Perkins, Schneiderman and Stewart-Cousins.

Ayes, 46. Nays, 10.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 592, by Senator Trunzo, Senate Print 755, an act authorizing the Town of Brookhaven, Suffolk County.

ACTING PRESIDENT MORAHAN: There is a home-rule message at the desk.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 628, by Senator Alesi, Senate Print 163, an act to amend the Penal Law, in relation to the crime of false personation.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Mr. President.

I know that I've debated this bill in the past. I always have voted no on it, and I will continue to do so because it simply is another one of those bills that is particularly, as I interpret it, directed toward youth, and there is no apparent need

for this bill. It does not do anything to improve the capacity of the police to do their job. It simply removes the requirement that a person must be informed by the police officer of the consequences of misrepresenting himself or herself.

There is no reason why the police can't just say "If you do not tell me the truth about who you are, you could be charged with a Class A misdemeanor." I don't know why Senator Alesi has decided that he does not want people to have the information.

I think that we have -- I've never heard a police officer complain that they had to read the Miranda rights to a person. I've certainly not heard any complaints from any police officer, ever, that there is a problem in them informing a person when they stop the person that if you conduct this behavior, you can be charged with X, Y or Z charge.

I think this is just an attempt to make sure that any young person in particular, or any person who makes the mistake, does not know the consequences, can be charged without them realizing that this is not acceptable.

So I'm going to vote no on it. I don't see any need for it. And I think, again, it is directed to young people, and especially young people in districts like I represent. So I'm voting no.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 628 are Senators Adams, Connor, Diaz, Duane, Hassell-Thompson, Huntley, L. Krueger, Montgomery, Parker, Perkins, Savino, Schneiderman and Stewart-Cousins. Also Senator Sampson.

Ayes, 43. Nays, 14.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 629, by Senator Morahan, Senate Print 248, an act to amend the Penal Law, in relation to establishing the crime of unlawful possession.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 631, by Senator Nozzolio, Senate Print 1448, an act to amend the Penal Law, in relation to establishing the crime of unlawful purchase.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Breslin, why do you rise?

SENATOR BRESLIN: Yes, thank you, Mr. President.

I would like the record to reflect that on Calendar Number 528, S112, had I been in chambers I would have voted in the negative, as I have in the past.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: The record will so reflect.

The Secretary will read.

THE SECRETARY: Calendar Number 632, by Senator Skelos, Senate Print 1815, an act to amend the Penal Law, in relation to assaults at sports contests.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 632 are Senators Hassell-Thompson, Montgomery and Perkins.

Ayes, 54. Nays, 3.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 636, by Senator DeFrancisco, Senate Print 2878, an act to amend the Criminal Procedure Law, in relation to the victim's statement.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The

bill is passed.

THE SECRETARY: Calendar Number 638, by Senator Golden, Senate Print 3441, an act to amend the Penal Law, in relation to assault.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 640, by Senator Volker, Senate Print 3949, an act to amend the Criminal Procedure Law and the Family Court Act, in relation to delivery.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 641, by Senator Nozzolio, Senate Print 4043, an act to amend the Penal Law and the Correction Law, in relation to sexual conduct.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 644, by Senator Saland, Senate Print 4789, an act to amend the Penal Law, in relation to theft of credit card.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 649, by Senator Golden, Senate Print 5730, an act to amend the Penal Law, in relation to assault against employees.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, I vote yes on this and also on Senate 3441, and my remarks apply to both of them.

Because what we've been doing over the years, and I've said this before, is we're making so many exceptions as to what degree of assault it is based upon who or what job the individual has that we are almost at the point where the exceptions eat up the general rule.

So I vote aye, but I would hope that someday we would be in a position to treat everybody the same. If the crime is serious enough, it should be a certain level of crime. If it's not as serious, it should be a lesser crime no matter who the victim may be.

ACTING PRESIDENT MORAHAN: Thank you, Senator. You will be recorded in the affirmative.

Senator Volker, to explain his

vote.

SENATOR VOLKER: Mr. President, speaking in favor of this bill, I want to totally agree with Senator DeFrancisco. My problem is that the Assembly will not consider any blanket increases.

There is no argument that I know of -- well, outside of the City of New York -- against that assault statutes should be upgraded. This house for a whole decade has passed general statutes, and not unreasonable, I think, upgrading the assault statutes. Our problem is that none of that has occurred. And as a result, we have got some statutes through the Assembly by specifying groups.

Personally, I happen to agree entirely with Senator DeFrancisco. And I strongly believe that Senator Golden would probably agree with this. The problem is we have to look at life the way it is. So that's why this bill is here.

I vote aye.

ACTING PRESIDENT MORAHAN: Thank you, Senator. You will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 649 are Senators Montgomery and Perkins.

Ayes, 55. Nays, 2.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 657, by Senator Volker, Senate Print 6906, an act to amend the Criminal Procedure Law, in relation to notification.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 658, by Senator C. Kruger, Senate Print 7011,

an act to amend Chapter 906 of the Laws of 1984 amending the Social Services Law.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

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

SENATOR SKELOS: Thank you, Mr. President.

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

And the Senate will stand at ease and reconvene at 3:00 p.m.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Majority

in the Majority Conference Room, and the Senate will reconvene at 3:00 p.m.

(Whereupon, the Senate stood at ease at 12:12 p.m.)

ACTING PRESIDENT HANNON: Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate conference of the Majority in the Majority Conference Room, and the Senate will stand at ease.

ACTING PRESIDENT HANNON: Immediate conference of the Majority in the Majority Conference Room.

The Senate continues to stand at ease.

(Whereupon, the Senate reconvened at 4:39 p.m.)

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Mr. President, the Senate will reconvene at 6:00 p.m. sharp.

ACTING PRESIDENT MAZIARZ: The Senate will reconvene at 6:00 p.m. sharp.

SENATOR SKELOS: And we'll stand at ease.

ACTING PRESIDENT MAZIARZ: The Senate will continue to stand at ease.

(Whereupon, the Senate stood at ease at 4:40 p.m.)

(Whereupon, the Senate reconvened at 6:20 p.m.)

ACTING PRESIDENT ROBACH: The Senate will come to order.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

ACTING PRESIDENT ROBACH: There will be an immediate meeting of the Finance Committee in the Majority Conference Room.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 6:21 p.m.)

(Whereupon, the Senate reconvened at 6:27 p.m.)

ACTING PRESIDENT ROBACH: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing

committees for the report of the Finance Committee.

ACTING PRESIDENT ROBACH: Reports of standing committees.

The Secretary will read the report of the Finance Committee.

THE SECRETARY: Senator O. Johnson, from the Committee on Finance, reports the following bill direct to third reading:

Senate Print 6800D, Senate Budget Bill, an act making appropriations for the support of government: Public Protection and General Government Budget.

ACTING PRESIDENT ROBACH: Without objection, the bill is reported direct to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up Senate Bill 6800D.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 712, Senate Budget Bill, Senate Print 6800D, an act making appropriations for the support

of government: Public Protection and General Government Budget.

ACTING PRESIDENT ROBACH: Senator Skelos.

SENATOR SKELOS: Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT ROBACH: A message of necessity is at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT ROBACH: All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT ROBACH: Any opposed, nay.

(No response.)

ACTING PRESIDENT ROBACH: The message is accepted.

Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

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

SENATOR LIZ KRUEGER: Thank you, Mr. President.

I rise to explain that I cannot vote for this bill. While there are certainly pieces of it that I support, this bill is literally hot off the presses. There is no memo, which is required even with a message of necessity under our new budget rules.

We continue to spend money without having a revenue bill, the wrong way to do a budget, to say the least. This is also the general government and public protection bill, but there's no general government money for AIM funding for the City of New York or revenue sharing for various cities and towns and counties throughout the state.

So I feel it's an incomplete bill, that we are doing it in the wrong order. We should be figuring out our revenues before we're spending our money. And while I hear rumors that we might do revenue-sharing somewhere else at a later time, the tradition of this Legislature has been to put local government money into the general government budget.

So I do not believe this is a full budget bill or a satisfactory one. I'll be voting no.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Senator Krueger will be recorded in the negative.

Anyone wishing to vote no please signify by raising your hand.

Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I also will be voting against this bill.

I've been serving on the New York State Sentencing Commission for the last several months, and we've had public hearings, we've had private meetings, we've had an array of experts from all around the country, including people from the universities and programs of our own state. They have consistently advised us, and I have concluded and I think our final report will conclude, that we know what works in terms of criminal justice programing at this point in the history of the United States.

We know that cognitive and behavioral therapy works. We know what kinds of alternative programs work. We know what the rate track in criminal justice policy and what is the wrong track.

I'm sorry to say that this budget bill is as good an exhibit of the wrong track in criminal justice policy as you could possibly have. This favors incarceration over treatment. Indeed, it takes it a step further. It favors keeping prisons open, even when we're not incarcerating anyone in those prisons, over treatment.

The prisons that are kept open by this bill -- and let's note, Mr. President, that the Governor proposed, the Executive Budget proposed closing prisons and the Senate, this body, has taken responsibility for and is indeed responsible for keeping prisons open we do not need, at a projected cost, this year, of $10 million a year, the next year $33 million, ultimately up to around $70 million a year.

In an atmosphere where we have a budget crisis, where we're telling senior

centers we don't have enough money for you, we're telling school districts we don't have enough money for you, we are keeping prisons open we don't need at a cost of $70 million a year. What kind of public policy is that?

But wait, there is more. This budget does not restore the funding that was sought by the treatment community to expand alternatives to incarceration treatment programs and reentry programs. There is a small restoration -- and we got the bill so late that it's difficult for us to analyze it as fully as we really should before we have to vote on it -- but there's a $3.1 million restoration in General Fund support for alternatives to incarceration, $3.1 million. The DOCS budget, the budget of the Department of Corrections, is $3 billion. And so what we're doing is adding $3 million for alternatives to incarceration.

This is money well-spent. It has been documented in study after study. And I know that Senator Young expressed an interest in studies of recidivism. There are dozens of study of recidivism that we have before us in

the sentencing commission that consistently show that cognitive behavioral therapy, alternative programs, if you use a risk/needs assessment instrument, reduce recidivism significantly.

This is money well-spent. This saves the state money. This gets our children back into their communities, back as productive members of society. This undoes the last three decades of criminal justice policy. We should be undoing the last three decades of criminal justice policy that have resulted in the United States having 3 million people in prisons, virtually all of them African-American and Latinos.

We are destroying communities by continuing on the wrong track in criminal justice policy. We are costing the taxpayers of New York a fortune by continuing on the wrong track in criminal justice policy.

I urge everyone in this house to vote no, first of all because you haven't had time to read the bill so you don't know what's in it, but second of all because, to the extent I have read it, it continues us on that

wrong track.

I'm voting no, Mr. President, and urging everyone to do likewise.

ACTING PRESIDENT ROBACH: Senator Schneiderman will be recorded in the negative.

Senator Nozzolio, to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr. President and my colleagues.

This Senate should be proud of the fact that over the last decade the policies initiated here have resulted in New York State's crime rate dropping more dramatically than any state crime-rate drop in the history of our nation.

It's because we stood tall to establish a zero tolerance for violence. We passed, time and time again, legislation that ended parole for violent felons, that established a zero tolerance for violence, that established a zero tolerance for sex offenders, that established a zero tolerance against the criminal element in our state.

The result of that has been dramatic. It has been significant, and we

should all be proud of it. But those policies have a consequence. And the consequence is that the most violent of felons are kept behind prison walls for longer periods of time.

What we have is a correctional system that requires rightsizing. And this Senate, when hearing of the rightsizing by taking a meat ax and cutting four correctional facilities by the last governor, this Senate conducted a hearing beyond the budget hearing process and held the correctional commissioner's feet to the fire and said: Have you rationalized this system? Have you insured the safety and integrity of the system? And, most importantly, have you protected the 25,000 brave men and women who work in our correctional system today and insured that no facility would be a tinderbox, no facility would be a cause for violent riot behavior?

Frankly, I am proud of the Senate, and I thank Senator Volker, I thank those who served on the public protection committees that established that we will not close the

correctional facilities unless we have a total system of our prisons rationalized in a way that makes sense for our taxpayers.

And what was penny-wise in the cutting of those facilities was dollar-foolish, and that would cost, if the prior governor's policies went into effect, would cost our taxpayers many, many more dollars than were allegedly being saved under the proposal.

So I thank those who supported this. I know that those brave men and women who walk the toughest law enforcement beat in America are thankful for our stand to rationalize the correctional system in a way that is meaningful and protective.

Our conference has never stated that you build prisons to grow jobs. That's not why you grow prisons and build prisons and save prisons. You do establish a policy that's protective of our citizenry. And that's why this conference and this Senate is going to support this legislation.

Before I sit down, I also wish to add that the school resource officer program,

a way to prevent gang violence, to prevent violence and all kinds of other crime and criminality across our state in our schools, is being maintained by this legislation. And for that, Mr. President, I think it's a great step in the right direction and I thank all those who stood to support this important issue.

ACTING PRESIDENT ROBACH: Senator Nozzolio will be recorded in the affirmative.

Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

I too rise, as did Senator Nozzolio, with regard to the effect that this bill will have on our correction system.

A number of weeks ago I had the opportunity to attend a forum in my district at a local community college in which the Commissioner of Corrections was speaking in the context of the closure of Hudson Correctional Facility, a facility that was at or near capacity, had been at or near capacity, a facility that the corrections

people had identified as virtually a model facility, high grades in virtually every aspect you could think of, and very much taken by surprise by the proposal to close.

And I had to listen to the commissioner at that event basically say, in response to a question from one of the over 400 people there expressing their concerns about the closure, I had to listen to him say: "I don't care what the Legislature does, I'm closing this facility."

Well, I suspect that any one of 212 legislators would have found that to be a totally unacceptable way to deal with the issue, would have probably been not merely personally offended, but offended on behalf of the entire institution that the administrative official would just basically blow off the Legislature in that fashion.

This facility has, as I said, been an exemplary facility. It's been a facility that run at capacity or near capacity for as long as anybody can remember. It's a facility which had seen literally millions of dollars worth of improvements provided to make it an

even better facility. And to say one was perplexed by its suggested closing would be an understatement.

The bottom line is that this bill will preserve that facility as an ongoing facility. It will not only serve the same function as it has always served as a correctional facility, but I would add, very vitally, in a community, a city and in a county that has an extraordinarily challenging time today to have disrupted so many lives, will have a major impact not only on the social fabric of the community but also on the economic fabric of the community.

And I'm thankful that we were able to accomplish this, and I'm thankful that we will be able to go forward with regard to a mainstay in our corrections system and a mainstay in our community.

I vote in favor of this measure, Mr. President, and thank you.

ACTING PRESIDENT ROBACH: Senator Saland will be recorded in the affirmative.

Senator Diaz, to explain his vote.

SENATOR DIAZ: Yes, sir. Thank

you, Mr. President.

You know, this is my fifth year here in the Senate. And I could say that those five years there has never been a good budget, the perfect budget. And I don't think that there's ever going to be a perfect budget that we could all agree upon.

So there is always going to be problems that some people don't like, other people like. See, in this budget, there is not everything that I would like to see. But as I said before, when is it that we are going to have the perfect budget? I doubt that we are ever going to have one.

I have to congratulate the new Governor, David Paterson, because in the few days since he took charge of the governorship, he managed to get to an agreement with Senator Bruno, with Shelly Silver from the Assembly, to come to a budget.

It is not a perfect budget. There will never be a perfect budget, and I'm repeating myself again and again on that. But it's a budget that we could live with.

And again, I have to congratulate

the three parties, especially the new Governor. In such a short time, he managed to get people together, to work together without the fight that we usually see here in the five years that I have been here. So there have been no bad discrepancies, without big fights.

So congratulations to the three parties, congratulations to the new Governor. And you can count me yes.

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

If there are no other Senators wishing to explain their vote -- Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, I just wanted to mention very briefly that I'm going to vote yes on this budget, and there were a couple of comments made earlier that I wanted to respond to.

First of all, there was a comment made that it was the Republicans in the Senate that required these prisons to stay open. I was on the Joint Committee for Public Protection, and there was a debate, a very good debate, a very comprehensive debate. And

the decision by both the Democrats and the Republicans from the Senate and the Republicans and Democrats from the Assembly was basically that it was not a wise idea to close the prisons without a comprehensive study done to determine long-range use and needs of the prison system.

So I think that was a reasonable determination, rather than cutting prisons just because it's a budgetary issue. So I think there was a bipartisan effort on that part.

And lastly, with respect to the comment that was made that we don't have enough money for our schools but we've got money to have prisons open, it's recently been reported that the State of New York is 65 percent over the national median in aid to education and number one as far as the amount spent per child in education.

So, you know, we can be maybe embarrassed about some things we do, but to suggest that we are not keeping up a reasonable amount of education per pupil I don't think is a fair comparison. And in any

event, it has nothing to do with whether to open or close prisons. Those are issues that should be done as a matter of policy and study.

I vote aye.

ACTING PRESIDENT ROBACH: Senator DeFrancisco will be recorded in the affirmative.

Senator Hassell-Thompson, to explain her vote.

SENATOR HASSELL-THOMPSON: Yes, just very briefly. Thank you, Mr. President.

This morning I talked about one of the legislative initiatives that was put forward, and I voted no for it because of the direction that it and other bills like it seemed to be taking in this chamber.

And while I think that there are many aspects of this budget that I certainly can endorse and am very appreciative of, I too believe that in light of these numbers that I think that Senator Nozzolio quoted earlier, the way crime has been reduced and the policies he gives this chamber credit for instigating, somehow that's not consistent

with the fact that we want to keep prisons open.

If there are no prisoners, why are we keeping the prisons open? If we've been as tough on crime as many of my colleagues have said, then the numbers of people going to jail certainly has been reduced. I know that's tongue in cheek, intentionally. The reality is, however, we should not be spending money to keep prisons open.

And whether or not we're spending more money in the State of New York than any other state, I applaud the state. I applaud the state because, number one, we have some of the most significant populations of people with the greatest need that come to the State of New York, and they have a right to expect that those needs will be met educationally. So I applaud us for finally taking the major steps that we need to begin to take to talk about education.

But I still don't think that when we talk about prisons that we should be comparing the dollars that we put in prisons with the dollars that we put in education. I

think we need to be comparing apples with apples. And the apples are that we need to be doing more alternatives, we ought to be using the lowered numbers of prisoners in our facilities to look at reuse for some of these facilities. We talk about the fact that we have AIDS and HIV in prison and we have no facilities to put them. We should be using them as treatment centers.

We have a rare opportunity to do some extraordinary things in the State of New York. And I repeat myself again: When we become more creative and stop throwing money at things and thinking that giving a few dollars and giving a few jobs is what's really important, we need to be retrofitting the people that are in these jobs so that they can do the work of the people of the State of New York based on what is needed, not based on what's expedient.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Senator Hassell-Thompson will be recorded in the negative.

Senator Montgomery, to explain her

vote.

SENATOR MONTGOMERY: Yes, Mr. President, briefly.

I just want to, in carrying further the issue that was raised by my colleague Senator Hassell-Thompson, I certainly -- there are some parts of the budget that I am very appreciative of. I'm very happy that the Governor has recommended that we establish a way of dealing with people who violate parole, especially the technical parole violators.

I don't know if you realize, but the largest percent of people who are returned to prison are coming in there for technical violations. Which means they did not commit another crime, they had a technicality breach. And so we're looking for a different way of dealing with that, and I'm thankful for that. And there are some other positive aspects.

But I must say that it's very shameful and embarrassing and disgraceful for a state as wealthy as ours to have a system that part of our state that relies so heavily on this incarceration program. I think that other parts of the world look at us and we

should be absolutely ashamed of this.

And most of those people who are incarcerated are black and brown, over 80 percent of them. Isn't that disgraceful, Mr. President?

We cannot allow our state to continue to represent this reprehensible situation. We need an economy that is based on progress, based on our wonderful university system, that should be the engine for creating new opportunities for young people so that our young people don't abandon the upstate regions of our state.

We need to have a system where our economy drives our business and that we don't rely on the incarceration, the penitentiary system to carry the region of our state, and that that penitentiary system relies on mining communities like mine of black and brown people so that can you continue to claim that you have an economy upstate. This is disgraceful.

And so I'm voting against this not because of the positive things in it -- I wish I could -- but I must make a statement that I

do not agree with this direction. We need to -- if we could save $10 million closing down those facilities, I would be happy to see that $10 million used as a way of looking at where can we go to move our state away from this horrible program that we have to fight every year to keep prisons open because our communities are going to shut down because they don't have jobs and the only jobs that they have that we have to offer are prisons.

So I'm against that. We need to do something different. The Governor has tried to move us in that direction. All of us in this room should be willing to take a step away from these prisons as a means of making our economy work.

I'm voting no, Mr. President.

ACTING PRESIDENT ROBACH: Senator Montgomery will be recorded in the negative.

Seeing no other Senator wishing to explain his vote, the clerk will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 712 are Senators Adams, Hassell-Thompson, Huntley,

L. Krueger, Montgomery, Parker, Perkins and Schneiderman.

Ayes, 52. Nays, 8.

ACTING PRESIDENT ROBACH: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT ROBACH: There is none.

SENATOR SKELOS: There being none, I move we stand adjourned until Thursday, April 3rd, at 1:00 p.m.

ACTING PRESIDENT ROBACH: The Senate will stand adjourned until Thursday, April 3rd, at 1:00 p.m.

(Whereupon, at 6:53 p.m., the Senate adjourned.)