NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 19, 2008

3:18 p.m.

REGULAR SESSION

SENATOR JOSEPH A. GRIFFO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT GRIFFO: The Senate will come to order.

I ask all present to please rise and join me as we recite the Pledge of Allegiance to our Flag.

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

ACTING PRESIDENT GRIFFO: Today to lead us in prayer we have Father Peter Young, of the Mother Theresa Community here in Albany.

Father.

REVEREND YOUNG: Thank you, Senator.

Let us pray.

O God, the builder of all things, You have placed on us the obligation of toil. Grant that the work that we begin here in this Senate chamber may serve to better our lives in New York State and, through Your goodness, contribute to the spread then of all of the people that are called to be Your servants.

God never fails to provide our citizens in New York State with dedicated

Senators. May God pour forth His blessings on our legislators and provide them with a spirit of courage to accept the many demands of their elected office.

We ask You this, amen.

ACTING PRESIDENT GRIFFO: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, May 18, the Senate met pursuant to adjournment. The Journal of Saturday, May 17, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT GRIFFO: 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,

Mr. President.

On behalf of Senator Lanza, I wish to call up Senate Print 3682, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 704, by Senator Lanza, Senate Print 3682, an act to amend the Highway Law.

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

ACTING PRESIDENT GRIFFO: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

SENATOR FUSCHILLO: I now offer the following amendments.

ACTING PRESIDENT GRIFFO: The amendments are received.

SENATOR FUSCHILLO: Mr. President, amendments are offered to the following Third Reading Calendar bills.

Sponsored by Senator Fuschillo, page number 23, Calendar Number 169, Senate

Print Number 5543D.

By Senator Rath, page number 46, Calendar Number 731, Senate Print Number 1311A.

By Senator Little, page number 59, Calendar Number 969, Senate Print Number 6922.

By Senator Fuschillo, page number 60, Calendar Number 1002, Senate Print Number 7577.

By Senator Marcellino, page number 61, Calendar Number 1012, Senate Print Number 3195B.

I now move that these bills retain their place on the order of third reading.

ACTING PRESIDENT GRIFFO: The amendments are received and adopted, and the bills will retain their place on the Third Reading Calendar.

SENATOR FUSCHILLO: Thank you.

ACTING PRESIDENT GRIFFO: Thank you, Senator Fuschillo.

Senator Skelos.

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

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: On page 49, Senator Golden moves to discharge, from the Committee on Aging, Assembly Bill Number 9905A and substitute it for the identical Senate Bill Number 3716A, Third Reading Calendar 825.

ACTING PRESIDENT GRIFFO: The substitution is so ordered.

Senator Serrano.

SENATOR SERRANO: Mr. President, I wish to call up Senate Print Number 3153, recalled from the Assembly, which is now at the desk, by Senator Montgomery.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 656, by Senator Montgomery, Senate Print 3153, an act to amend the Family Court Act and the Social Services Law.

SENATOR SERRANO: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT GRIFFO: The Secretary will call the roll on

reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

SENATOR SERRANO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT GRIFFO: The amendments are received and adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's Resolution 5944 at the desk, by Senator Larkin. If we could have the title read and move for its immediate adoption.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: By Senator Larkin, Legislative Resolution Number 5944, honoring Nancy Kosloski, executive director and founder of Orange County Big Brothers/Big Sisters, upon the occasion of her designation for special recognition.

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

(Response of "Aye.")

ACTING PRESIDENT GRIFFO:

Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, Senator Valesky has a resolution, Number 5929, at the desk. If we could have the title read and move for its immediate adoption.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: By Senator Valesky, Legislative Resolution Number 5929, congratulating the Jamesville-DeWitt High School Boys Basketball Team and Coach Bob McKenney on its outstanding season and overall team record.

ACTING PRESIDENT GRIFFO: Senator Valesky.

SENATOR VALESKY: Thank you, Mr. President.

I'm pleased to be able to stand here today and welcome, in the gallery here, the Jamesville-DeWitt High School Boys Class A Championship Basketball Team, led by Coach Bob

McKenney, and just take a moment before we approve this resolution to congratulate them and share with the members here the kind of season they had.

They ended their year with a 26 and 2 record. They finished as the highest-ranked public high school in the entire state.

Their season was truly marked by dominance, holding opponents in the playoffs -- against the best teams around the state -- to 51 points per game, while they scored an average of 73 points per game. Again, against the best teams in the state. Defeated East Hampton High School in the championship game 78 to 54, so they clearly were head and shoulders above everyone else in the state.

After winning the Class A state championship, they went on and became federation champions as well. And this is their second state championship in five years. So clearly, from a basketball perspective, they're doing something right at Jamesville-DeWitt High School.

But I would add that they and the

character they have built, through teamwork and hard work and dedication over the season, that they have become leaders not only on the basketball court, but off the hardwood as well.

And we look to each and every one of them to continue their excellent athletic success but encourage them to do even more in their school, in their community, in their college, for those who are graduating seniors.

And it's an honor to be here today and to recognize them and congratulate them on their state championship.

Thank you.

ACTING PRESIDENT GRIFFO: Thank you, Senator Valesky.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, I know it sometimes gets tiresome in chambers when we from Central New York, Onondaga County, keep bringing back championship team after championship team after championship team, including the national champions, Syracuse University Basketball Team. But one day your counties will also be as proficient and as

excellent in sports as those that come from Onondaga County.

(Laughter.)

SENATOR DeFRANCISCO: Senator Valesky indicated how great their record was. They've actually won not only two championships in the last two years, but this is their third state championship. You don't see that very often at this level of basketball play.

We had a little get-together in my office for lunch, and I got to meet some of the players. They're fine young men. And you know, the fact that they -- what was it, the margin of victory was 24 points a game, the margin of victory? Just absolutely unbelievable.

Sorry about your losing to my high school team. But it still was an excellent season. Maybe in the future it will be perfect again.

But they're great young men. And I'll tell you, you'll never, ever, ever forget this experience, your whole life. You've got friends for life who you will be communicating

with and being with for many, many years to come.

The coaches also deserve recognition. When you get the resolutions, and each one of you will get one, your names and assistant coaches are there. Obviously Bob McKenney, who did an incredible job to keep it all together.

But there's also another assistant coach that I'd be remiss if I didn't recognize, a former Senate employee, Charles Falgiatano, who now works with me in a law office. And he's here with his son. The coach's daughter is here as well.

And I can tell that they had that same aggression that Charlie has in everything he does.

So congratulations again, and have a great life of success, not only in the sports arena but also in everything you do in your future. You're going to be the leaders of tomorrow. And we're very, very, very proud of you.

ACTING PRESIDENT GRIFFO: Thank you, Senator DeFrancisco.

The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The resolution is adopted.

We take now the opportunity to congratulate the coach, the players of JD, and the entire basketball team for their outstanding championship and for the great athletic prowess that's exhibited in Onondaga County. We congratulate you all.

(Applause.)

ACTING PRESIDENT GRIFFO: Senator Skelos.

SENATOR SKELOS: Mr. President, Resolution 5964, by Senator Bruno, is at the desk. If we could have the title read and move for its immediate adoption.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: By Senator Bruno, Concurrent Resolution Number 5964,

establishing a plan setting forth an itemized list of grantees for certain appropriations for the 2008-2009 state fiscal year, as required by subdivision 5 of Section 24 of the State Finance Law.

ACTING PRESIDENT GRIFFO: On the resolution, the Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT GRIFFO: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: If we could go to the noncontroversial reading of the calendar now.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 231, by Senator Farley, Senate Print 1562A, an act to amend the Public Health Law, in relation to the healthcare practitioner volunteer program.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 552, by Senator Fuschillo, Senate Print 5795A, an act to amend the Penal Law and the Criminal Procedure Law, in relation to identity theft.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 14. This act shall take effect on the 90th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 574, by Senator Nozzolio, Senate Print 4638, an act to amend the Alcoholic Beverage Control Law, in relation to the definition of cider.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 692, by Senator Farley, Senate Print 920A, an act to amend the Tax Law, in relation to filing.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number

728, by Senator Fuschillo, Senate Print 7339, an act to amend the General Business Law, in relation to prohibiting.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 785, by Senator Young, Senate Print 6954A, an act to validate, ratify and legalize.

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

The Secretary will read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 825, substituted earlier today by Member of the Assembly Dinowitz, Assembly Print Number 9905A, an act to amend the Executive Law, in relation to directing.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 913, by Senator Volker, Senate Print 894A, an act to amend the Criminal Procedure Law and the Family Court Act, in relation to duration.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 10. This

act shall take effect immediately.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 955, by Senator Fuschillo, Senate Print 1634B, an act to amend the Tax Law, in relation to establishing.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 960, by Senator Padavan, Senate Print 4487B, an act to amend the General Business Law, in relation to requiring.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 180th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 962, by Senator DeFrancisco --

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

ACTING PRESIDENT GRIFFO: Lay it aside for the day.

THE SECRETARY: Calendar Number 966, by Senator Larkin, Senate Print 537, an act to amend the Agriculture and Markets Law, in relation to the powers and duties of the commissioner of agriculture.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 2. Senators Duane and L. Krueger recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 986, by Senator Golden, Senate Print 1777, an act to amend the Penal Law, in relation to increasing penalties.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 986 are Senators Duane, L. Krueger, Montgomery and Perkins.

Ayes, 50. Nays, 4.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 987, by Senator Smith, Senate Print 1862, an act to amend the Penal Law, in relation to facilitating.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 987 are Senators Duane and Montgomery.

Ayes, 53. Nays, 2.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 1003, by Senator Lanza, Senate Print 7602, an act to amend the Penal Law, in relation to filing.

ACTING PRESIDENT GRIFFO: Read

the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 1055, by Senator Nozzolio, Senate Print 1454, an act to amend the Correction Law, in relation to charging.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1055 are Senators Duane, Hassell-Thompson, Montgomery, Onorato and Perkins. Also Senator Serrano.

Also Senator L. Krueger.

Ayes, 49. Nays, 7.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 1059, by Senator Skelos, Senate Print 3614, an act to amend the Correction Law, in relation to expanding the definition.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 1060, by Senator Skelos, Senate Print 3713, an act to amend the Correction Law, in relation to the registration of sex offenders.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 4. This

act shall take effect on the 180th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 1088, by Senator Winner, Senate Print 1721, an act to amend the Alcoholic Beverage Control Law and the Vehicle and Traffic Law, in relation to the imposition of driver's license suspensions.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 2. Senators Duane and Montgomery recorded in

the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 1093, by Senator Leibell, Senate Print 4699, an act to amend the Alcoholic Beverage Control Law and the Vehicle and Traffic Law, in relation to increasing penalties.

ACTING PRESIDENT GRIFFO: Read the last section.

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

SENATOR ONORATO: Lay it aside.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT GRIFFO: The bill is laid aside.

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

SENATOR SKELOS: Thank you, Mr. President.

If we could ring the bells at this time to let the members know that there is one bill on the controversial calendar.

ACTING PRESIDENT GRIFFO: Thank you, Senator Skelos.

The Secretary will ring the bells.

The Secretary will read.

THE SECRETARY: Calendar Number 1093, by Senator Leibell, Senate Print 4699, an act to amend the Alcoholic Beverage Control Law and the Vehicle and Traffic Law.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: Explanation.

ACTING PRESIDENT GRIFFO: An explanation is requested, Senator Leibell.

SENATOR LEIBELL: Thank you, Mr. President.

This is legislation that we have seen in this house before. It's also, I might add, a Westchester County program bill.

There's not a member in this chamber or in the other house that is not aware of the tremendous loss of life that we have had on our roads over the course of many years now. In fact, it's been said that it's a slaughter out there.

In all too many cases, and

statistics bear this out, that slaughter is caused by young drivers, inexperienced drivers, drivers in cars with other teenagers, and drivers in cars and passengers in cars where there is alcohol present.

This legislation is an attempt to amend Section 65C of the Alcoholic Beverage Control Law, to prohibit any person under the age of 21 who is an occupant in a motor vehicle on a public highway from possessing alcohol with the intent to consume.

The bill would also amend Section 510 of the Vehicle and Traffic Law to authorize courts to suspend the driver's license of any person convicted of such offense.

The offense created under the ABC Law would be subject to a maximum $100 fine and/or community service, not to exceed 30 hours. The penalties provided under the Vehicle and Traffic Law would be the mandatory suspension of a driver's license for anyone convicted of such offense, as follows: Three month for a first violation, six months for a second violation within 18 months, and one

year or until the individual reaches the age of 21 for the third or subsequent violation within 18 months.

This bill mandates the suspension or the delay in receiving a driver's license for occupants of a motor vehicle while on a public highway under the age of 21 who possess alcohol with the intent to consume. It adds teeth, this bill, to what is the existing law on underage drinking. In a nutshell, cars and alcohol simply do not mix.

When we last saw this bill, which was last year in this house, it passed unanimously, 62 to 0.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: Mr. President, would the sponsor yield for a question or two.

ACTING PRESIDENT GRIFFO: Senator Leibell, do you yield?

SENATOR LEIBELL: Certainly.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: Yes, before I ask a question, I want to make it clear and to be

sure that everyone understands that me as a pastor of an evangelical church, I oppose all kinds of drinking, underage and above age. However, I have a question for Senator Leibell.

Senator Leibell, the bill calls for the suspension of a license for the driver of the car or anyone sitting in that car?

SENATOR LEIBELL: It would be for the person who had the intent of consuming that alcohol.

SENATOR DIAZ: And --

ACTING PRESIDENT GRIFFO: Senator Diaz, do you wish the sponsor to continue to yield?

SENATOR DIAZ: Yes, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Leibell, would you yield?

SENATOR LEIBELL: Certainly.

ACTING PRESIDENT GRIFFO: He yields.

SENATOR DIAZ: Senator Leibell, let's assume that I am the driver, I am under 21, and I have two friends that are occupying

my car with me. I'm the driver, but they have the liquor.

SENATOR LEIBELL: They have the liquor.

SENATOR DIAZ: They have the liquor, not me. I'm driving. I don't have anything, but they have it.

Does that mean that their license would be suspended?

SENATOR LEIBELL: Yes, the passengers, if you can establish that they had that alcohol with intent to consume.

SENATOR DIAZ: The passengers.

ACTING PRESIDENT GRIFFO: Senator Diaz, would you just -- through the chair, please.

SENATOR DIAZ: Sorry, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Diaz, do you wish to ask the sponsor to continue to yield?

SENATOR DIAZ: Yes, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Leibell, will you continue?

SENATOR LEIBELL: Yes.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: Senator Leibell, let's assume that I am the driver and there are passengers above 21 years of age -- above 21 -- and they have the alcoholic beverage. Will their license be suspended?

ACTING PRESIDENT GRIFFO: Senator Leibell.

SENATOR LEIBELL: No, this deals with people -- this bill, proposed legislation, deals with people under 21 years of age.

SENATOR DIAZ: So, Mr. President, through you, will the sponsor continue to yield.

ACTING PRESIDENT GRIFFO: Senator Leibell, do you continue to yield?

SENATOR LEIBELL: Yes, I do.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: So this legislation is punishing only passengers in a car who are under 21?

SENATOR LEIBELL: That's correct.

There are other passages of law that make and would involve the scenario you're enumerating here. But for this purpose today, in this legislation, it's 21 and under.

SENATOR DIAZ: Mr. President, will the sponsor continue to yield.

ACTING PRESIDENT GRIFFO: Senator Leibell, do you continue to yield?

SENATOR LEIBELL: Yes.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: Senator Leibell, what is the age in this nation and this state, the minimum age to send a person to a war to fight, kill, or get killed defending our nation? What is the low age?

SENATOR LEIBELL: I understand your point. It's 18.

SENATOR DIAZ: Eighteen.

SENATOR LEIBELL: Yes. You can join younger than that, but my understanding is in a combat zone it's 18.

SENATOR DIAZ: Eighteen.

Mr. President, through you, will

the sponsor continue to yield.

ACTING PRESIDENT GRIFFO: Senator Leibell, do you continue to yield?

SENATOR LEIBELL: Yes, sir.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: Senator Leibell, so you are telling me that a person between 18 years of age and 21 is smart enough, intelligent enough, and capable enough to be sent to a war to get killed, to kill for this nation, but that same person is stupid enough to drink?

ACTING PRESIDENT GRIFFO: What is your question, Senator Diaz?

SENATOR DIAZ: I already asked.

SENATOR LEIBELL: Well, Senator, there are going to be many other examples, too, where somebody who is of an age to serve in the military will probably not enjoy some other privileges also. It will probably be much more difficult for them to maybe get a mortgage, to do any number of things. And that is a reality.

The reality -- Senator, let me just

finish, if I could. The reality we're left to deal with here, though -- and I understand your point.

The reality we're left to deal with is the carnage that's out there on our roads. And I have, with my colleagues in the other house, tried to come with a way to make our roads safer and to do that by increasing penalties. And I believe that this would go a long way towards saving some of those young people, their own lives.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: Mr. President, through you, will the sponsor continue to yield.

ACTING PRESIDENT GRIFFO: Senator Leibell, do you choose to continue to yield?

SENATOR LEIBELL: Yes.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: So, Senator Leibell, we are so concerned in saving, protecting the lives of those young persons from 18 to 21 by not allowing them to drink,

but we are not that concerned to protect and save their life to send them to a war and to kill and get killed, and to use weapons -- a rifle, grenades, all kind of equipment to kill other people?

They are intelligent enough and smart enough to do those things to harm other people, to kill other people, to blow other people away in protecting the nation, and we don't do anything to protect their life in stopping them from going to war, but here we will protect their life by not allowing them to drink?

SENATOR LEIBELL: Senator, I think we're getting probably fairly far afield here.

They also can't serve as president of the United States. Wouldn't be old enough. Or a member of the U.S. Senate or a member of the House of Representatives. They wouldn't have the age requirements there.

Probably many of our jobs here, whether it's state troopers, correction officers, we have age requirements.

We're pretty far afield from what

I'd like to discuss on this bill, but that does exist, you're right. And on the surface there may seem to be a certain lack of fairness there.

But on the other hand, if we can and we have identified this as being a leading cause of the carnage that's out there on our roads, I think it justifies the legislation that's here before us today. Recognizing that we can save lives.

SENATOR DIAZ: Mr. President, through you, will the sponsor continue to yield.

ACTING PRESIDENT GRIFFO: Senator Leibell, do you continue to yield?

SENATOR LEIBELL: Yes.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: As I said before, I'm a preacher, I am a pastor of an evangelical church. We don't smoke, we don't dance, and we don't drink. That's my religion. We oppose drinking, we oppose dancing, and we oppose smoking.

Now, however, it saddens me to see

that here in this chamber here, right here in this chamber, Senator, we call these young soldiers that sacrifice their life protecting the nation, and we bring them here and we call them heroes here in the chamber. We call them heroes, we call them heroines. And we call them all kind of -- we praise them, because they -- let me tell you a story.

My granddaughter just became 18 years old. She enlisted in the Navy, and she's out there. My granddaughter, she's out there. She was smart enough to join the Navy, expose her life and go and kill or get killed for this nation, but now we're telling her -- to me, I admire her. She's my heroine. She's my heroine. She's [gesturing] my love. And I'm scared for her.

But now we're telling her, now: You are not above 21 years of age, so that means that if you are in a car as a passenger and you have a beer with you, your license will be suspended.

And that's what I'm saying. You know, it is not that I'm supporting drinking. It is that, you know, I think it's kind of

discrimination, it's kind of abusive, it's kind of a disrespect to our youth to tell them go kill, go get killed, go over there and use those weapons, and then come here and tell them, now you are sitting in a car, just sitting in a car, you're not driving, you're sitting in a car. And if you get stopped and you have a beer and you are a passenger in that car, your driver's license will be suspended.

Senator, you know, again, I oppose drinking. And I'm opposing this bill. Not because I want them to drink -- I want them to stop drinking -- but because I think it's something wrong that we're doing to our youth. It's a wrong message.

ACTING PRESIDENT GRIFFO: Senator Diaz, are you on the bill now or are you still directing questions?

SENATOR DIAZ: I don't even know where I am.

(Laughter.)

ACTING PRESIDENT GRIFFO: Why don't you speak on the bill, then.

SENATOR DIAZ: I am angry.

ACTING PRESIDENT GRIFFO: All right. Senator Diaz, on the bill.

SENATOR DIAZ: I'm angry. I'm upset. I'm disappointed. I am, you know, all over the place.

But, you know, it is an injustice, Mr. President, ladies and gentlemen, what we're doing, telling our youth, telling our youth: Oh, you are good enough to go and kill, you're good enough to go and give your life, you're good enough to go and handle weapons, you're good enough to go and kill other people in other nations -- you're good enough, you're smart enough. Oh, you're the cream of our country. You are our heroes. You are the best.

And then tell them, if you are the passenger in a car, when they sacrifice their life over there and they come back to our nation and I have to tell my -- vote for something to my granddaughter, while I tell her "I admire you, and I love you, you make me proud, you sacrifice your life now." She's doing something good to go there, and now she will be punished, just punished because she

has a beer as a passenger in a car.

And we're going to ask our young guys, our young girls to go and fight for us? We have no moral to do that. We have no moral to do that, to ask our young ladies and gentlemen from between 18 to 21 to go and fight for this nation and call them heroes and then tell them, You are losing your driver's license because you have a beer and you were a passenger in -- see, if they were the driver, if they were the driver of the car, that's a different story. But a passenger? Just a passenger and they're going to lose their license?

I cannot vote for something like this, and I hope my colleagues understand my point of view.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator Diaz.

Any other Senator wishing to be heard?

Senator Leibell.

SENATOR LEIBELL: Yes, I certainly share in your pride for what your

granddaughter is doing in service.

But as I pointed out, there are many times -- and we are probably far afield on this debate now -- but there are many times in law where you will see differences based on age. As I said, the vast majority of our heroes who are returning will not for some years be eligible to run for president of the United States, or the Congress.

They may feel that that's wrong. You've probably got some pretty talented kids out there who'd say, you know, I want to come back and run for president. But they're not able to do that yet.

It's been a problem in society in general -- and in the military -- with our youngsters out there in cars with alcohol. And this is an attempt to do something about that.

I must have been more eloquent last year, because you voted for it, Senator. But I understand a year can give you some time to reflect on something.

I think this is a good piece of legislation. It's a solid piece of

legislation. Our goals are pure. We hope to save lives -- not only people who are outside the car, but those teenagers who are in the car also. So I'm strongly in favor of this legislation, as you can understand.

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson, on the bill.

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

One of the reasons that this is a program bill out of Westchester County is because of the number of young people who have been killed in automobile accidents in our county.

My concern, and the reason that I support this bill, is that even though many times we think that having a designated driver is enough, when young people are drinking in the car, certain activities within the car -- hassling and horseplay in the car -- have caused accidents.

And so that what we're attempting to do with this bill is to make sure that there is no drinking under the age of 21, because once -- and we can talk about whether

young people are responsible enough to do whatever. But once they have been drinking, their responsible behavior sometimes goes out of the window.

And so this bill gets my support because it speaks to the numbers of incidences that have occurred in our county and in this state where young people who have been drinking have been the cause of accidents even when the driver was not drinking.

And so that I think that the merits of this bill are very important, and I don't want that to get lost in this discussion. So I will be voting in the affirmative.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Is there any other Senator wishing to be heard?

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, thank you very much. Just on the bill.

I want to compliment my colleague Senator Leibell for bringing this to the floor.

You know, in 2006 there were 55,000

DWIs and DUI arrests here in New York State, and I think 558 fatalities. The number-one cause of death in this country for kids between 16 and 25 is car accidents. And when there's alcohol in it, the numbers increase.

Driving drunk and being arrested in this country is a tolerated crime. That's right, you heard me, a tolerated crime. Because every time there's an arrest or a fatality, there should be an outrage in society.

You know, that car becomes a weapon, 2,000 pounds or more, and there should be no distinction between the weapon. And then when you're behind the wheel of that car drunk, or if you're a passenger in that car drunk, there should be no distinction as well.

I'm proud to support this bill, Mr. President. I compliment my colleague Senator Leibell.

Thank you.

ACTING PRESIDENT GRIFFO: Thank you, Senator Fuschillo.

Is there any other Senator wishing to be heard?

The debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Senator Diaz.

Can I have order in the chamber, please. Members please take their seats.

Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Mr. President.

I believe that a driver of a car above 21 years old, if that driver is in a possession of an alcoholic beverage, their license should be suspended. I agree with that.

To punish a passenger, a young person of 20 years old, 18 years, 19 years old who happens to be a passenger with a beer, and not do the same thing to an adult who is

23 years old or 25 years old, is something too much to swallow.

I mean, if you want to punish anybody, you want to stop drinking, let's do it to everybody. Anybody in the car --

ACTING PRESIDENT GRIFFO: Can we have order in the chamber, please, out of respect for our speaker.

Senator Diaz, you may continue.

SENATOR DIAZ: Thank you.

Anyone in a car, any passenger under 21 or above 21 that has liquor, their driver's license should be suspended. But to do that only, to suspend the driver's license only to a passenger in a car who is under 21 and not do the same to a passenger who is above 21, I cannot support something like that.

This is discrimination. It's a wrong message that we're sending to our youth. I will not support it. I'm sorry that people don't get it, but I'm voting against.

And I knew -- and I knew -- and I knew that Hassell-Thompson would vote any which way against me.

(Laughter.)

ACTING PRESIDENT GRIFFO: Senator Diaz to be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1093 are Senators Adams, Diaz, Parker, Perkins and Sampson.

Absent from voting: Senator Connor.

Ayes, 55. Nays, 5.

ACTING PRESIDENT GRIFFO: The bill is passed.

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

SENATOR SKELOS: Thank you, Mr. President.

Is there any further business at the desk?

ACTING PRESIDENT GRIFFO: There is none.

SENATOR SKELOS: There being none, I move we stand adjourned until Tuesday, May 20th, at 3:00 p.m.

ACTING PRESIDENT GRIFFO: On

motion, the Senate stands adjourned until Tuesday, May 20th, at 3:00 p.m.

(Whereupon, at 4:06 p.m., the Senate adjourned.)