NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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9:53 a.m.

REGULAR SESSION

SENATOR DAVID J. VALESKY, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT VALESKY: The Senate will please come to order.

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

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

ACTING PRESIDENT VALESKY: Father Peter G. Young, of Mother Theresa Community here in Albany, is with us this morning to provide the invocation.

REVEREND YOUNG: Thank you, Senator. Let us pray.

As we gather this morning in this early session, may we again pray for the health of all of our Senators. And may we pray that they who have been accepted into the leadership position so that they can more fully serve the people of our great state.

In the spirit of community, may our prayer today be that we will be better able to achieve the goal of dedicated representation in the power that is entrusted to all of our

legislative leadership.

May they attain Your satisfaction in Your services and Your services to our needy constituents all over the state.

We ask You this in Your name, now you forever. Amen.

ACTING PRESIDENT VALESKY: Thank you, Father.

The reading of the Journal.

The Secretary will read.

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

ACTING PRESIDENT VALESKY: 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 Klein.

SENATOR KLEIN: Mr. President, I believe Senator Schneiderman has a privileged resolution at the desk. I'd ask that you read the title of the resolution and give Senator Schneiderman the opportunity to speak on the said resolution.

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: By Senator Schneiderman, Legislative Resolution Number 1192, paying tribute to the lifetime achievements and contributions to the Dominican Community of this year's 22nd Annual Somos El Futuro Conference honoree, Raquel E. Batista, Esquire.

ACTING PRESIDENT VALESKY: Senator Schneiderman, on the resolution.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

We're going to be wrestling with a lot of difficult issues here today, but I

think it is appropriate to start the day by honoring someone who has been serving in my community and serving people in the greater metropolitan area of New York City for many, many years, who is retiring from her position as the head of the Northern Manhattan Immigrants Rights Coalition, Raquel Batista.

And I would like to remind all of my colleagues that the best way to celebrate finishing a budget is at Somos El Futuro, which is this weekend here in the Capitol. So for any of you who still have the energy for a few more days in Albany, we will be honoring Ms. Batista along with a whole array of distinguished New Yorkers at that time.

Thank you, Mr. President. I'm very proud to support this resolution.

ACTING PRESIDENT VALESKY: Thank you, Senator Schneiderman.

All in favor of adopting the resolution indicate by saying aye.

(Response of "Aye.")

ACTING PRESIDENT VALESKY: Opposed, nay.

(No response.)

ACTING PRESIDENT VALESKY: The resolution is adopted.

The resolution is open for cosponsorship. Any member wishing not to cosponsor Senator Schneiderman's resolution should notify the desk.

And also, one announcement as the day continues. I would remind the members that the rules prohibit the use of cellphones in the chamber. Those of you who heard sounds through the microphone system yesterday, it was an indication of cellphones that were being used.

So I would simply ask members as the day proceeds, if you have to make calls or receive calls, please do that outside of the chamber. Thank you.

Senator Klein.

SENATOR KLEIN: Mr. President, can we please stand at ease.

And please, I ask all my colleagues to stay close to the Senate chamber.

ACTING PRESIDENT VALESKY: The

Senate will stand at ease.

(Whereupon, the Senate stood at ease at 9:57 a.m.)

(Whereupon, the Senate reconvened at 10:04 a.m.)

ACTING PRESIDENT VALESKY: Senator Klein.

SENATOR KLEIN: Mr. President, at this time can we open the roll, with unanimous consent, on each bill on today's active list.

ACTING PRESIDENT VALESKY: At this point we will open the roll, with unanimous consent from the Minority, on each of the eight remaining budget bills, for the sole purpose of allowing Senator Hassell-Thompson to cast her vote.

After that point in time, the roll call will be withdrawn, the bill will be laid aside, and we will return to debating each bill on the controversial calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 132, substituted March 31st, Assembly Budget Bill, Assembly Print Number 135C, an act

making appropriations for the support of government: Education, Labor and Family Assistance Budget.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Aye.

ACTING PRESIDENT VALESKY: Withdraw the roll call and lay the bill aside.

The Secretary will read.

THE SECRETARY: Calendar Number 133, substituted March 31st, Assembly Budget Bill, Assembly Print Number 154C, an act making appropriations for the support of government: Health and Mental Hygiene Budget.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Aye.

ACTING PRESIDENT VALESKY: Withdraw the roll call and lay the bill aside.

The Secretary will read.

THE SECRETARY: Calendar Number 130, substituted April 1, Assembly Budget Bill, Assembly Print Number 150C, an act making appropriations for the support of government: Public Protection and General Government Budget.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY:

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Aye.

ACTING PRESIDENT VALESKY: Withdraw the roll call and lay the bill aside.

The Secretary will read.

THE SECRETARY: Calendar Number 136, substituted April 1, Assembly Budget Bill, Assembly Print Number 157B, an act to amend the Education Law.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Aye.

ACTING PRESIDENT VALESKY: Withdraw the roll call and lay the bill aside.

The Secretary will read.

THE SECRETARY: Calendar Number 138, substituted April 1, Assembly Budget

Bill, Assembly Print Number 159B, an act to amend Chapter 279 of the Laws of 1998 amending the Transportation Law.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Aye.

ACTING PRESIDENT VALESKY: Withdraw the roll call and lay the bill aside.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 137, substituted March 31, Assembly Budget Bill, Assembly Print Number 158B, an act to amend the Public Health Law and the Elder Law.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Aye.

ACTING PRESIDENT VALESKY: Withdraw the roll call and lay the bill aside.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 135, substituted April 1, Assembly Budget Bill, Assembly Print Number 156B, an act to amend the State Finance Law.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Aye.

ACTING PRESIDENT VALESKY: Withdraw the roll call and lay the bill aside.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 131, substituted April 1, Assembly Budget Bill, Assembly Print Number 151A, an act making appropriations for the support of government: Legislature and Judiciary Budget.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Aye.

ACTING PRESIDENT VALESKY: Withdraw the roll call and lay the bill aside.

Senator Smith.

SENATOR SMITH: Thank you very

much, Mr. President.

Colleagues, Senator Skelos, this is a day where obviously our chamber once again distinguishes itself. We have a member who, for natural reasons, has found herself in a condition where she cannot stay in the chamber.

I want to express my appreciation to Senator Skelos and to all my colleagues. This is a day that I think the 19 million people of New York have come to recognize as this is a fine chamber. Irrespective of all that the papers have written, the editorial boards have said, today we have proven to all of New York that we are a distinguished body, that we are also a body that has a heart and understands the challenges that face this state, and we rise above that.

Senator Skelos, we spoke several times. And I will tell all my colleagues, the leader was extremely heartfelt, he was very disturbed, very concerned about our colleague. He was concerned about our colleague.

And if we can at least remember

what this day is for us, that we are all colleagues. Notwithstanding our beliefs and interests, we are all colleagues.

And I would hope that as we move forward with the day, one, that we keep my colleague Senator Ruth Hassell-Thompson in prayer.

I love you, and you know how I feel about you.

And also, I want us to remember what was done this morning. I want to us remember what was done this morning. And we appreciate it tremendously, Senator Skelos.

ACTING PRESIDENT VALESKY: Senator Skelos.

SENATOR SKELOS: Thank you, Senator Smith.

And, Ruth, we welcome you back. We know it's going to be just for a few minutes now. But we ask God to give you a speedy recovery, because in the Senate we are all one family. We may have our disagreements at times, but we all respect each other, we all love each other, and we pray together that you

have a speedy recovery and that you join the debate and the process that we have here in the Senate.

So God bless you. Speedy recovery.

ACTING PRESIDENT VALESKY: Thank you, Senator Skelos.

Senator Klein.

SENATOR KLEIN: Mr. President, can we take up the active list at this time and treat it as a controversial calendar.

ACTING PRESIDENT VALESKY: The Secretary will proceed with the reading of the controversial calendar, beginning with Calendar 132, which members will recall was debated yesterday. We'll pick up at that point.

Senator Libous.

SENATOR LIBOUS: Mr. President, I would request a slow roll call on the bill.

ACTING PRESIDENT VALESKY: We're not on the roll call yet, Senator Libous. Let's bring the bill back before the house first.

SENATOR LIBOUS: I'll sit back

down, thank you.

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: Calendar Number 132, substituted March 31, Assembly Budget Bill, Assembly Print Number 153C, an act making appropriations for the support of government: Education, Labor and Family Assistance Budget.

ACTING PRESIDENT VALESKY: Are there any other Senators who wish to debate Calendar Number 132?

Seeing none, the debate is closed. The Secretary will ring the bell.

I ask all members to proceed immediately to the chamber so that we may proceed with the roll call on Calendar Number 132.

The Secretary will read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Skelos, a slow roll call has been requested.

Seeing the required minimum of five Senators having stood, a slow roll call is in order.

The Secretary will ring the bells and call the roll slowly.

THE SECRETARY: Senator Adams.

SENATOR ADAMS: Yes.

THE SECRETARY: Senator Addabbo.

SENATOR ADDABBO: Yes.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: No.

THE SECRETARY: Senator Aubertine.

SENATOR AUBERTINE: Yes.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: To explain my vote.

ACTING PRESIDENT VALESKY: Senator Bonacic, to explain his vote.

SENATOR BONACIC: Thank you,

Mr. President.

You know, this chamber has always been champions of SUNY and CUNY. And I'm disappointed in the cut of approximately $50 million we allowed SUNY and CUNY to keep of the tuition increase, and we swept $150 million in the General Fund.

To me, that was a raid. That was a betrayal of trust from the students who paid the tuition, from the middle-class families who sacrificed the tuition so their children could get a better education with what those monies could have purchased.

That was a wrong priority. The Senate Republicans have identified $3.2 billion in alternate measures, sources of funds we could have cut, but not the SUNY and CUNY tuition. The most glaring one being the $1 billion slush fund which was referred to in the debate yesterday.

So for this reason, I'm voting no on this. And thank you, Mr. President.

ACTING PRESIDENT VALESKY: Senator Bonacic, to be recorded in the

negative.

The Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: To explain my vote.

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

SENATOR DeFRANCISCO: I vote no because of the sweeping of funds out of the increase in tuition by SUNY and soon CUNY.

The problem with that is that increases in tuition were done on the express understanding -- this wasn't just the SUNY board saying we're going to go ahead and raise tuition again -- but the express condition that it was going to be used for SUNY. And that was a lie. And we're betraying that trust by not providing those funds.

There's another problem with the sweep. In our deficit reduction plan, we

swept SUNY tuition, but CUNY didn't get around to increasing tuition yet. And that means that upstate New York, those upstate colleges ended up taking money from their schools when CUNY didn't even get an increase yet. And then after the increase, CUNY's increase is going to be less than SUNY's increase, another difference between upstate and downstate New York.

I hope this doesn't mean that the three New York City Democrats in a room have a regional bias against the upstate community, because I'm seeing more and more of that in this budget.

In addition, the amount of money that was taken out of libraries was peanuts compared to all of the different projects that are listed in this budget that only the public should be able to read with amusement that those would be priorities over libraries in this difficult time.

So for those reasons, I vote no.

ACTING PRESIDENT VALESKY: Senator DeFrancisco will be recorded in the

negative.

The Secretary will continue to call the roll slowly.

THE SECRETARY: Senator Diaz.

SENATOR DIAZ: Yes.

THE SECRETARY: Senator Dilan.

SENATOR DILAN: Yes.

THE SECRETARY: Senator Duane.

SENATOR DUANE: Yes.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Yes.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: To explain my vote.

ACTING PRESIDENT VALESKY: Senator Farley, to explain his vote.

SENATOR FARLEY: As someone that has spent most of his adult life working as a law professor in SUNY, I just want to say how badly I feel that this chamber in particular, who has had a history of supporting our great treasure of the State University system, has somewhat abandoned it with this legislation.

And it's unfortunate. I think it's

a tragedy. And I want to just mention one other thing that offends me about this piece of legislation. Libraries, which this chamber again has been in the forefront of not only promoting and protecting.

And my colleagues on the other side, who voted, I understand, unanimously to restore all the library aid, it hasn't been done. I feel badly about that because the libraries desperately need it.

And it is with that and all of these things in mind that I vote no.

ACTING PRESIDENT VALESKY: Senator Farley to be recorded in the negative.

The Secretary will continue to call the roll slowly.

SENATOR FLANAGAN: No.

THE SECRETARY: Senator Foley.

SENATOR FOLEY: Aye.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, to briefly explain my vote.

ACTING PRESIDENT VALESKY:

Senator Fuschillo, to explain his vote.

SENATOR FUSCHILLO: The modest increases that some of my schools received was mainly attributed to the federal stimulus money. It's not enough. Long Island is still not getting its fair share. We're losing $129 million because the foundation aid was frozen. We're losing $370 million because the Governor took away the STAR rebates. We're losing $499 million with those two particular categories.

For that reason, I vote no on this budget bill.

Thank you very much, Mr. President.

ACTING PRESIDENT VALESKY: Senator Fuschillo to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Golden.

SENATOR GOLDEN: No.

THE SECRETARY: Senator Griffo.

SENATOR GRIFFO: To explain my vote.

ACTING PRESIDENT VALESKY: Senator Griffo, to explain his vote.

SENATOR GRIFFO: Mr. President, SUNY and CUNY both were told to help themselves during these difficult times, and they did that. They've put a burden on students, a difficult burden on students, as they're trying to make their way and receive a higher education.

And then what do we see? The Executive goes in and raids those monies, takes them away from SUNY and CUNY at this time when we need to help young people to continue to pursue higher education.

You see libraries being abandoned. It's only a matter of priorities. You could have reprioritized and redirected some of the funds to these type of organizations like libraries, invest in higher education. And still, as we had heard with the stimulus program, use that in the right way so that commitments mean something.

I think what we're showing and demonstrating right now is a total disregard

and a disrespect for these institutions and all of the fine people of this state who need them to continue to be a part of this state.

For that reason, I vote no.

ACTING PRESIDENT VALESKY: Senator Griffo to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: To explain my vote.

ACTING PRESIDENT VALESKY: Senator Hannon, to explain his vote.

SENATOR HANNON: Thank you, Mr. President.

Among the other reasons I'm voting no on this measure is that embodied in this education bill is the beginning of a series of massive taxes on healthcare premiums that are contained in this bill and other bills in this budget package. It is a stealth tax. It's going to result in increased costs to every family in this state. There's $107 million levied in this bill. This is part of the

800-and-so-million that is levied throughout this package. Why it's here, I don't know, but it's a good reason to vote no on this measure.

ACTING PRESIDENT VALESKY: Senator Hannon to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Hassell-Thompson voting in the affirmative earlier today.

Senator Huntley.

SENATOR HUNTLEY: Yes.

THE SECRETARY: Senator C. Johnson.

SENATOR CRAIG JOHNSON: Yes.

THE SECRETARY: Senator O. Johnson.

SENATOR OWEN JOHNSON: No.

THE SECRETARY: Senator Klein.

SENATOR KLEIN: Yes.

THE SECRETARY: Senator L. Krueger.

SENATOR LIZ KRUEGER: Yes.

THE SECRETARY: Senator C. Kruger.

SENATOR CARL KRUGER: Yes.

THE SECRETARY: Senator Lanza.

SENATOR LANZA: No.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: To explain my vote.

ACTING PRESIDENT VALESKY: Senator Larkin, to explain his vote.

SENATOR LARKIN: You know, I've been listening to this debate on this bill for a couple of days, and the mail in my office has not diminished. Questions are raised: We're going to take money from students, raise the tuition. Everybody assumes that's going to go to the college. And then the Governor decides he's going to take it and put it in his budget.

How many of you are answering your mail? I know you've gotten the mail. What are you saying? "Well, we had to take it from somebody"?

And then as my good friend and

colleague and most knowledgeable on healthcare Senator Hannon spread out the word of what's going on, the taxes we're doing on it.

Have we lost our sense of responsibility? I believe we have. We've forsaken politics instead of the true measure that we were sent here. We were sent here to represent the people, not a political persuasion. I vote for the people. I vote no.

ACTING PRESIDENT VALESKY: Senator Larkin to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator LaValle.

ACTING PRESIDENT VALESKY: Senator LaValle, to explain his vote.

SENATOR LaVALLE: Thank you, Mr. President.

I want to remind everyone that my remarks yesterday on offering up an amendment to this bill is that the State University was cut during 2008-2009 by $210 million. We had swept from State University $134 million and

for CUNY swept $88 million, taken away.

We are a society, rule of law is prevalent, and our processes. We have a process where we have trustees, the Governor appoints a chair. The SUNY board and the CUNY board went out on a limb and said in order for us to maintain quality education for our students and to be able to do what we need to do in terms of our economic responsibility, we need a tuition increase.

And what we've done is we have gone in and just taken that money. It's not a fee increase any longer, it's tax on the students. And I think it builds bitterness and resentment which I think is going to be very difficult to recapture.

Lastly, the elementary and secondary schools, what we've put into place is going to be a train wreck. Because of using the stimulus money -- which is great, helps us out. But I think we're going to have to in the future replace that money somehow, and it's a lot of money.

I vote in the negative,

Mr. President.

ACTING PRESIDENT VALESKY: Senator LaValle to be recorded in the negative.

And the Secretary will continue to call the roll.

THE SECRETARY: Senator Leibell.

ACTING PRESIDENT VALESKY: Senator Leibell, to explain his vote.

SENATOR LEIBELL: Mr. President, this is one of the most troubling pieces in what is truly a disastrous budget. It's not that long ago that a Governor from the Majority's party, Governor Spitzer, laid out a plan and a dream for the SUNY and CUNY systems. He identified how critically important these two universities are to New York State's future.

Today we are robbing those two systems of that future and future generations of New Yorkers of a great educational system.

We live in an increasingly competitive world, a world that will need more and more great universities, great teachers.

We are depriving the young of New York State of that future.

This is an abandonment of that system. This is a path we are taking now which is going to be disastrous for SUNY and CUNY. The priorities we have established in this budget are not the priorities, I believe, of my constituents in this state.

I would also add that not restoring fully the funding for libraries is a terrible mistake. This is a very small amount of money in terms of the total amount of dollars being spent in this budget.

In this recession, go and visit any of your libraries, assuming they're going to be open, and go and visit them and see how many people are out there looking for jobs, Looking for employment through our public library system. Those dollars should have been restored.

Mr. President, I vote in the negative.

ACTING PRESIDENT VALESKY: Senator Leibell to be recorded in the

negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Libous.

ACTING PRESIDENT VALESKY: Senator Libous, to explain his vote.

SENATOR LIBOUS: Thank you, Mr. President.

I rise to vote no on this piece of legislation. I want to talk about two things.

And one is the fact that 80 percent of the tuition money is being swept -- or, as I phrased before, being stolen. It's a trust issue. I spoke on this floor the other night about the Dedicated Highway Fund, how money was being stolen from that fund. That's the problem with New York State government.

The people in my district, in Broome, Tioga and Chenango County, and certainly people from all over the state -- it doesn't matter if you're from New York City, Long Island, upstate, the Hudson Valley -- they've lost their faith in government because of issues like this. Because money was

supposed to go for SUNY education, tuition money that parents are paying, that students are paying, that students borrow to pay.

And instead of going directly to the institution that they're attending, the government is taking the money, stealing the money, and putting it into the General Fund. That's wrong.

The other issue is, as Senator Leibell mentioned, at Binghamton University we have worked together with the community to help create job opportunities for the people of the Southern Tier. And we are also educating those individuals who have lost their jobs. You know, it's not just young people that are 18, 19, and 20 years old that go to SUNY schools. Adults go to SUNY schools. At Binghamton University, many people who lost their job go back to get degrees in engineering, degrees in nursing, other types of degrees, so that they can go back into the workplace and find a job.

So, Mr. President, two issues here. One is an issue of trust. People cannot trust

the government anymore because the government continues to do something different than what they tell the people they're going to do. And the other issue is the issue of education at a time when people need a job.

I vote no.

ACTING PRESIDENT VALESKY: Senator Libous to be recorded in the negative.

And I would remind members that we do have a two-minute time limit in explaining votes.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Little.

ACTING PRESIDENT VALESKY: Senator Little, to explain her vote.

SENATOR LITTLE: Thank you, Mr. President.

I have several reasons for voting no on this budget. First of all, I represent 53 school districts, all of which are struggling to keep their expenses contained. Due to the stimulus money, they will at least have a flat aid going into this year.

However, they don't have a flat increase in expenses.

So for all the talk about property taxes and reduction in property taxes in New York State, they will find it difficult to keep their property taxes down.

And then the STAR rebate check has been taken away. So in spite of that, there still will be a difficult time keeping property taxes down. They will go up in New York State.

For all the talk of mandate relief, there was no mandate relief in this budget for our schools. The Teacher Mentoring Program was not funded in the first budget that the Governor put out. It was somewhat restored by this budget, and yet the mandate has not changed. Therefore, a huge expense to the schools.

I also represent SUNY Plattsburgh. And in this economy, we have told and asked our students to pay more and get less. The young people of New York will pay more, but they will find it more difficult to get the

courses that they need in the time span that they need to graduate.

For those reasons and many others, I vote no on this budget, and I encourage everyone to vote no on this budget.

ACTING PRESIDENT VALESKY: Senator Little to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Marcellino.

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

SENATOR MARCELLINO: Thank you, Mr. President.

I represent SUNY Old Westbury, and Dr. Calvin Butts is the president of that school. And he asked me at the beginning of this process to do the best I could for SUNY Old Westbury, which is a school that needs a lot of help.

Now, unfortunately, they're not going to get the help we thought they were going to get. When we authorized that

increase in tuition, that was done to provide the SUNY schools and the CUNY schools with the money to provide extra sessions in the different courses so that the kids could go there who, with the increase in the youngsters going there, will have courses to go to and we wouldn't have do overcrowd the ones that are already there.

Unfortunately, as my colleague Senator Libous points out, the money was stolen. And this is not a good thing. These schools are going to be in distress.

The libraries did not get their full restoration of funds. They're going to be in distress.

The local schools are getting a stimulus to fill holes in a budget created not at their fault, but created by an economic system nationwide that has impacted everybody. Yet the stimulus money is a Band-Aid, it's an artificial fix that is going to go away in two years, and they're still going to be where they are.

In some cases that stimulus money

is going to authorize them or require them to do bigger programs than they already have, increased programs, which means they have increased spending and they're going to have a problem when that money goes away.

Property taxes, as Senator Little said, will go up as a result of this budget. It's a mistake. I vote no, and I hope everybody else will also.

ACTING PRESIDENT VALESKY: Senator Marcellino to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: No.

THE SECRETARY: Senator McDonald.

SENATOR McDONALD: No.

THE SECRETARY: Senator Monserrate.

SENATOR MONSERRATE: Aye.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: Yes.

THE SECRETARY: Senator Morahan.

ACTING PRESIDENT VALESKY: Senator Morahan, to explain his vote.

SENATOR MORAHAN: Thank you, Mr. President.

I rise to join my colleagues who are voting against this budget for some very basically foundation reasons in this budget.

Number one, I agree that when we took the money from SUNY, we took it and we stole it. Normally, it's the State University of New York. Normally, the flow of money will go from the state to support that public education so many of our young people and now older people can get an education at a reasonable cost. But we reversed that flow.

Instead of the state giving its support, it now has the students giving the money to the state, in addition to what they pay for their tuition. I think it was just downright wrong.

Using the stimulus package on the budget, moving it up to $132 billion, really sets the stage for a crash, especially with

our school districts two years out. Nothing has fundamentally changed in the way the schools are going to be run or what they're doing. And as Senator Marcellino points out, it may even be greater responsibility, because these stimulus packages will create newer and bigger programs. And two years out, there will be a sticker shock for our property taxpayers that will be really hard to bear.

Yes, we did get some flat-line and some modest increases in our local schools, but that's not enough. We're setting them up for a doomsday approach two years from now.

And on the libraries, what can we say? What can we say about taking money out of the libraries, one of the leading edges of education in the State of New York. I think we should have restored it fully, and we didn't.

Therefore, I vote no, Mr. President.

ACTING PRESIDENT VALESKY: Senator Morahan to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Nozzolio.

ACTING PRESIDENT VALESKY: Senator Nozzolio, to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr. President and my colleagues. I rise in opposition of this proposal because it is an unconscionable raid by government, by state government, on our futures.

It's a tax on SUNY students. By taking money that should go from their tuition to fund the schools that SUNY students are attending, rather it goes into the state coffers and becomes nothing more than a tax.

But it even goes beyond that, Mr. President. This is a robbing of our futures. I was very fortunate to have attended and graduated from a SUNY school, the New York State School of Industrial and Labor Relations at Cornell University, a flagship in the SUNY system along with some of the other statutory divisions at Cornell -- the College of Agriculture and Life Science, the College of Human Ecology.

Those schools are paid for in large part by the tuition collected from their students. And that tuition, because of this proposal, will not be funding the operations of SUNY but, rather, into the coffers of the state, robbing futures.

Prior generations had the foresight to support and develop the great SUNY system. We have excellent colleges and universities in our state because of the foresight of those who preceded us here. But to ensure that the system continues, this type of raid I believe will certainly diminish our opportunities to have a strong SUNY system.

Just a word about libraries. Libraries are a great democratizing tool in America. They are an opportunity for those who can least afford it to have a window on the world and to have the opportunities presented to them that --

ACTING PRESIDENT VALESKY: Senator Nozzolio, how do you vote?

SENATOR NOZZOLIO: I respectfully oppose this legislation and vote no.

ACTING PRESIDENT VALESKY: Senator Nozzolio to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Aye.

THE SECRETARY: Senator Padavan.

ACTING PRESIDENT VALESKY: Senator Padavan, to explain his vote.

SENATOR PADAVAN: Thank you, Mr. President.

Earlier this year I had an opportunity to meet with the presidents of a number of the City University colleges in Queens -- the president of Queens College, your college, LaGuardia Community College, CUNY Law School, and so on, along with the vice chancellor representing the CUNY system in its totality.

They outlined to us, those who were there, their needs, what their expectations

were with regard to this budget, acknowledging the tuition increases that would be imposed upon students. And I can say, based on everything we've heard from Senator LaValle and others, that we're not providing those needs. We are taking away.

They gave us data which showed that in my district I have, on a per capita basis, more students attending City University than any Senator in the City of New York, all the colleges. Who are these young people? They are basically coming from middle-income, the low-middle-income families. And they're going to be hard-pressed to get the education we want them to get.

Now, yesterday we had a discussion with the chairman of the Education Committee relevant to the City of New York and specifically with regard to the Campaign for Fiscal Equity agreements that have been entered into by our state. Those agreements are not being met. The stimulus money takes care of part of it, but that's just for two years. We don't know what will happen after

that.

But the CFE agreement and the funds that were to be directed to the City of New York for educational purposes are simply not there. The result will be a failure to keep the promise that we made last year of small class size, of all the services needed to keep that system moving in the right direction.

For those reasons and others that have been expressed here, I vote no.

ACTING PRESIDENT VALESKY: Senator Padavan to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Parker.

SENATOR PARKER: Aye.

THE SECRETARY: Senator Perkins.

SENATOR PERKINS: Me too.

THE SECRETARY: Senator Ranzenhofer.

ACTING PRESIDENT VALESKY: Senator Ranzenhofer, to explain his vote.

SENATOR RANZENHOFER: Mr. President, thank you.

Before I begin my explanation, I just find it very interesting, having listened to a number of speakers explaining their no votes and giving the justification, and having not heard one single speaker speak in explanation of their vote -- not give an explanation, not give a justification. And the only thing I can take away from that is that this is such a bad vote that there really is nothing to explain. It's a horrible vote.

Now, I'm a graduate of two SUNY institutions, Albany and Buffalo. And I have the University of Buffalo in my district, and they have a very prominent program that they're trying to develop, U.B. 2020. And this kind of what I would call a bait-and-switch, where you tell the university that if you raise your tuition, you can do it to enhance your programs, to try to get your students to graduate in four years as opposed to five years, so it doesn't cost the student as much money, doesn't cost the family that much money, that's simply unconscionable.

What this is going to do is to

prolong someone's education. And for middle-class families that are struggling with respect to the universities, this is just going to kill them.

One further thing I want to mention with respect to what Senator Little said. There is no STAR relief. Property taxes are going to go up. And I do want to quote the Comptroller, because the Comptroller did say, and I quote: "The budget is balanced by the overreliance on nonrecurring federal stimulus funds and new tax revenues projected to materialize at a time of declining tax receipts."

In other words, you're balancing this budget on money that's not going to be there in a couple of years, and you're expecting money that you're never going to receive.

I vote no.

ACTING PRESIDENT VALESKY: Senator Ranzenhofer to be recorded in the negative.

The Secretary will continue to call

the roll slowly.

THE SECRETARY: Senator Robach.

SENATOR ROBACH: Yes, Mr. President, very quickly.

ACTING PRESIDENT VALESKY: Senator Robach, to explain his vote.

SENATOR ROBACH: I feel obligated to vote no for this bill, both as the chair of the SUNY Caucus and also as an alumni of Brockport State University, along with our colleagues here Senator Thompson, Senator Griffo. And so I think I know firsthand, as many of us do, how important access to higher education is.

The actions that we're taking today, as many of my colleagues pointed out, really are going to result in three things -- less faculty, less access at a time when we know tens of thousands of students are going to be turned away from our flagship State University system that was put in place to make sure everyone could access higher education, at a time where we all know in today's economy a college degree is like a

high school degree was when I was growing up. Bad stuff.

And lastly I point out, and I think Betty Little touched on this, when we do this, for those who are lucky enough to get in, what's going to happen is now instead of finishing your coursework in four years at the great university we've built up, many students are going to have to stay longer to get the coursework they need.

So I know we're in a tough budget time, but this really is not the right direction.

And I'll just end with this; I know I'm probably at the end of my time, even though Senator Lanza said I could have his two minutes.

I really think that if we would have went to conference committees and used the process that we had used for the last several years, I really think we would have thought about this, talked about it a little bit more, and I think we would have gotten to a different place.

So for those reasons, I am going to going to vote in the negative, Mr. President.

ACTING PRESIDENT VALESKY: Senator Robach to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Saland.

ACTING PRESIDENT VALESKY: Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, two minutes will not permit me to recite all the reasons why I'm not going to support this bill.

I have said to any number of people that budgets hide a multitude of sins. This budget sins grievously, grievously and horridly. The only thing that's more sinfully grievous and horrid is the process that has brought us here, the three-men-in-a-room process. The lack of openness, the lack of transparency, the lack of conference committees.

I too am a SUNY graduate. I have two children who have graduated from SUNY

schools. It is the height of hypocrisy to speak of the importance of education and balance the budget on the backs of those students and their families, the absolute height of hypocrisy. Emphasize the importance of education, and then say we are going to use your bodies to balance our budget. That reeks, absolutely reeks with a stench that nobody should be able to stomach.

The education portion of the budget. What we have done, with a heavy reliance on over $2 billion of federal money, is managed to flat-line the schools in our districts. Now, for that there is some degree of relief, because they were expecting even worse based on the Governor's runs.

The reality, however, is that there are going to be enormous tax increases, despite districts' efforts to contain their costs. There's going to be layoffs or firings that we have not seen in this state within any of our collective memories.

This is a bad budget bill in the context of a horrible budget. And to have

between $10 and $11 billion in nonstimulus spending here, in addition to the $7 billion which we discussed previously, and not to be able to find enough money to fund libraries at their level from last year, is truly beyond belief.

ACTING PRESIDENT VALESKY: Senator Saland, how do you vote?

SENATOR SALAND: Mr. President, I vote in the negative.

ACTING PRESIDENT VALESKY: Senator Saland to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: Yes.

THE SECRETARY: Senator Savino.

SENATOR SAVINO: Yes.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes.

THE SECRETARY: Senator Serrano.

SENATOR SERRANO: Yes.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Mr. President.

ACTING PRESIDENT VALESKY: Senator Seward, to explain his vote.

SENATOR SEWARD: Yes, this is my 23rd year as a member of this body and also my 23rd year as a member of the Higher Education Committee. And I have been very proud of this Senate over the years for standing up for higher education, both SUNY and CUNY, for that matter.

This budget proposal before us is a big step backwards. It's a very disastrous proposal.

As one who has a number of SUNY campuses in my district, I know firsthand the SUNY campuses are part of the economic engine of our communities that host campuses but also economic engines for the whole state. Because our campuses train and retrain a workforce so vitally important to the businesses of our state.

Certainly anyone who has a campus in their district knows full well the benefits. Mr. President, you have a SUNY campus, SUNY Morrisville. Senator Aubertine

has SUNY Oswego. Any member that has a campus knows what I'm talking about.

And the fact that this proposal raids the tuition increase money, 80 percent of it, to go into a black hole of the General Fund breaks faith with the students, the parents, and the campuses throughout New York State -- at a very time when enrollment and demand for a SUNY education is up. The same can be said for CUNY as well, I'm sure.

The same for libraries. We're shortchanging our libraries at the very same time when the demand for their services is way up. People who are out of work can go in there and scan the Internet and find a new job or help with their resumes, all of those things. Demand for library services are up.

ACTING PRESIDENT VALESKY: Senator Seward, how do you vote?

SENATOR SEWARD: I vote no, because I feel that in a $132 billion budget, up -- spending up that high, we cannot find a few more dollars for our libraries and to return that tuition money to our campuses.

ACTING PRESIDENT VALESKY: Senator Seward to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Skelos, no.

Senator Smith, aye.

Senator Squadron.

SENATOR SQUADRON: Yes.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stavisky.

ACTING PRESIDENT VALESKY: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Yes, I couldn't sit quietly and listen to the inaccuracies that I've heard this morning, words like "stolen," words like "hypocrisy."

Let me remind you, those of you who were here in 1998 and in the year 2000, you voted to increase tuition at SUNY and CUNY, and that money went into the General Fund. It went into the General Fund. It was never returned to the campuses.

Now we are saying we return 20 percent to the campuses of the increase in tuition.

Nobody is claiming this is a good budget. But it is a budget caused not by anything we have done, but by circumstances. And we are trying to deal as best we can with the circumstances. But please, this is not money that is being stolen. It was never, ever, ever given to the campuses. And in fact, in 2003, this budget passed unanimously.

I wish to be recorded in the affirmative.

ACTING PRESIDENT VALESKY: Senator Stavisky to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Stewart-Cousins.

SENATOR STEWART-COUSINS: Yes.

THE SECRETARY: Senator Thompson.

SENATOR THOMPSON: Yes.

THE SECRETARY: Senator Valesky.

SENATOR VALESKY: Aye.

THE SECRETARY: Senator Volker.

ACTING PRESIDENT VALESKY: Senator Volker, to explain his vote.

SENATOR VOLKER: Mr. President, I feel obligated to say something. I'm a graduate of a private college, Canisius College, and SUNY Law School. I have three professors in my family. My son Marty is a professor of psychology at SUNY Buffalo, and his wife Gloria Lee is a professor of psychology. And my son Mark is a professor of music at Colgate.

The reason I mention that is that every one of those schools, obviously, has been hit. You know, we've mentioned SUNY, but we forgot about Bundy Aid. Bundy Aid has been hit too. Every higher education institution in this state has been hit.

In fact, I believe, in all the years I've been here, that this is the worst higher education budget that I can ever remember. That's a shame. Because you know, all this talk about the aid from Washington, as much as it's probably a bad idea to use it,

we could have used it to avoid some of the shock that the schools are going to find out when they find out what they're really getting.

The school that I represent, Geneseo, was hoping and praying that they would get some additional money. They're not going to get that. And the result is that they're not going to be able to have the kind of student body that they wanted to have, because they're just not going to be able to have as many students as they have in the past. And Geneseo is one of the most popular school in the United States of America.

So I vote no.

ACTING PRESIDENT VALESKY: Senator Volker to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Winner.

SENATOR WINNER: No.

THE SECRETARY: Senator Young.

SENATOR YOUNG: To explain my vote.

ACTING PRESIDENT VALESKY:

Senator Young, to explain her vote.

SENATOR YOUNG: I'd like to remind my colleague Senator Stavisky that in '98 and 2000 that tuition was raised, but at the same time there were huge increases of state support to the SUNY system. That is not true this year. Not only was tuition raised and taken away, but $279 million has been taken away from the SUNY system.

New York State now has the dubious distinction of being the only state in the country that taxes college tuition.

And I took part in two rallies, one at SUNY Alfred and one at SUNY Fredonia. And I have to tell you, the students are angry. They are angry about what Albany has done to them. Their parents have scrimped and saved for years so that they could afford the dream of a college education. They've taken out college loans that they have to pay interest on to pay for their tuition.

And it's not just the students who are angry, it's the faculty and staff, it's the parents, and it's the alumni. And at

those rallies, the rallying cry was "Save SUNY." "Save SUNY."

And it wasn't just a rallying cry, it was a plea to lawmakers, Senators, saying to them: Don't erode the quality of our education. Don't cut SUNY. Don't take away our college tuition, especially in these tough economic times, because it's harder now more than ever to be able to afford a college education.

I think what's happened with this bill and in this chamber is shameful, and I vote no.

ACTING PRESIDENT VALESKY: Senator Young to be recorded in the negative.

And the Secretary will announce the results.

THE SECRETARY: Ayes, 32. Nays, 30.

ACTING PRESIDENT VALESKY: The bill is passed.

Senator Klein.

SENATOR KLEIN: Mr. President, can we now go to Calendar 133.

ACTING PRESIDENT VALESKY: The Secretary will proceed with the controversial reading of Calendar Number 133.

THE SECRETARY: Calendar Number 133, Assembly Budget Bill, Assembly Print Number 154C, an act making appropriations for the support of government: Health and Mental Hygiene Budget.

SENATOR VOLKER: Explanation.

ACTING PRESIDENT VALESKY: Senator Kruger, an explanation has been requested by Senator Volker.

SENATOR KRUGER: Thank you, Mr. President. The explanation will be given by our Health chair, Senator Duane. Thank you.

ACTING PRESIDENT VALESKY: Senator Duane, to explain Calendar Number 133.

SENATOR DUANE: Thank you, Mr. President.

I just want to preface my --

ACTING PRESIDENT VALESKY: Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: I think

Senator Duane started to speak, but it's difficult to hear anything. So I would appreciate if he could speak up a bit, please.

ACTING PRESIDENT VALESKY: Senator Duane, we'd ask you to project.

SENATOR DUANE: Well, it's been a long-time goal of mine to be the chair of the Senate Health Committee. And New York is a very diverse state with diverse healthcare needs. And as I think most of my colleagues know, every issue in healthcare is complex, and some issues can actually mean life and death.

Now, New Yorkers demand and deserve high-quality, affordable, intelligently provided healthcare, and they demand that our healthcare policies follow that demand for high quality, affordability, and really intelligent choices.

Now, it's a tough challenge no matter what the financial situation is, but this year perhaps even -- well, not perhaps, definitely more challenging. And that's the challenge that I face this year. It was a lot

of work -- tough work, frankly -- but even tougher choices as we came up with the budget, the health budget that we have before us today.

You know, in a perfect world everyone would be happy. But I guess someone needed to -- and believe me, I didn't want to be this person, but I guess it was my job. Because this year, in the greatest economic recession since the Great Depression, honestly, this health budget is not going to make everyone happy. But it will provide access to quality healthcare for New Yorkers, And I think that that met a challenge this fiscal year.

Now, this year especially, and with these conditions as chair, I knew that New Yorkers were asking for a responsible budget and I think also a caring budget, especially for those who are most vulnerable.

I think maybe I'll begin with some of the hospital issues, beginning with the reallocation of the Graduate Medical Education funds, which was frankly contentious.

So what we did was reallocated at $141.3 million from the current GME/PEP pool, which is the Professional Education Pool, to other uses -- and this isn't really the technical term, but I think it's easy to understand -- by Medicaiding that money. We drew down federal funds, and we doubled the amount of the pool.

Now, the Executive, their idea was to reallocate the money from the Graduate Medical Education and use it for care for the uninsured. There was a lot of discussion around that. And what happened was in order to deal with some of the very legitimate issues that were raised, we created a number of pools to meet specific needs during this changing healthcare policy for the state. But the goal is still that the bulk of the money will be used to care for the uninsured.

Now, the academic medical centers are going to receive a pool of $24.5 million going forward. Safety net hospitals are going to receive a pool of $25 million. And high Medicaid hospitals received a pool of

$24.2 million. And rural and nonteaching hospitals received an additional pool of $16 million.

On the outpatient side for hospitals, frankly my preference would have been to accelerate the enhanced reimbursement for outpatient care. So I thought that should begin as soon as possible. I didn't think it should be linked to inpatient reform. But in the end, implementation was delayed a little bit to December 1, 2009.

On the inpatient side, ultimately what we decided to do was to begin the modified inpatient reimbursement December 1, 2009, as well.

Let's see. I'm just going to actually -- I think people might have some questions about what happened with the GME/PEP pool conversion, so I'm just going to sort of go through that specifically for people. The GME/PEP pool is being moved into the indigent care pool. Now, the PEP pool had been distributing $283 million per year. And by moving it into the Indigent Care Pool, we're

able to draw down the disproportionate share funding -- which I'm going to refer to as DSH funding going forward -- and that will generate savings to the state of $141 million.

Now, for 2009 that $283 million is increased by shifting an additional $24.5 million to a never-before-allocated PEP pool, which is state-only dollars, not with a DSH match. So that creates a total new pool of $306 million.

Now, for 2009, those monies will be distributed based on the current GME distribution formula. Now, starting in 2010, that $24.5 million becomes the new -- and again, state-funded-only -- academic medical center pool. It's replaced in the GME/PEP pool by $27 million, which is being shifted out of the current $847 million Indigent Care Pool. So that will create a pool of $310 million.

Now, starting in January of 2010, all those funds are going to be distributed based on units of service to the uninsured, and they'll be paid at the Medicaid rate.

Now, the two pools will draw off the top -- there will be two new pools that will draw off the top of the new indigent care pool -- $16 million to the non-New York nonteaching hospitals, and $25 million to the high-Medicaid-volume nonmajor public teaching hospitals. The rest of the money, $269 million, will be allocated based on a regional distribution method based on the provision of care to the uninsured, which was an important goal.

Now, in addition to the Indigent Care Pool, two additional pools were established that are outside the GME/PEP pool. And I referenced this before, but just to go through it again, these are stand-alone pots of money that go on -- you know, I'd say in perpetuity, but who knows. But it's envisioned that they'll go on year after year.

Now, again, $24.5 million is going to go to the six academic medical centers -- and again, that's state money only, not DSH -- and $24.2 million to high-Medicaid-volume hospitals to cover the non-GRT losses, gross

receipts tax losses, they are incurring due to the rate reform. And that pool is really to shore up the safety net hospitals. It's not for charity care.

Now, the list of high-Medicaid-volume hospitals in that pool is almost exactly the same as the $25 million pool within the new Indigent Care Pool that I spoke about before.

And then I just want to say also there will be an additional $75 million in transition funding, and that's going to be distributed to hospitals that experience a large shift in revenue as a result of the inpatient rate reforms which are going to be starting December 1, 2009.

That's on the hospital side. We're also going to invest $63 million in the development and enhancement of primary healthcare centers. And we're also creating even another pool of new funding for our primary healthcare centers.

Now, on nursing homes, what we were trying to do was to accomplish some reform

while trying to limit the disturbances within the nursing-home sector. So we wanted to protect middle-class and frankly low-income elderly patients and their families by trying to guarantee quality-care nursing homes but also implementing reforms which would reduce costs and I'd say achieve efficiencies in savings.

So this budget adopts a new reimbursement that for the first time what I hope will do will drive efficiency while, again, providing quality and workforce development.

There's approximately approximate $224, $225 million in Medicaid savings to nursing homes, which accounts for about a 43 percent restoration of the proposed cuts put on the table by the Executive. One of the most important reforms is regional pricing. And that should take into account local costs when we reimburse the homes.

Now, to give some extra time to adapt to those reforms, we delayed the implementation of the reforms and we're going

continue to work with the industry. And the plan is to delay it for a year.

Now, when the reforms go into effect, we want to make sure that unionized and high-wage workers won't -- this isn't really the right term, but they won't be discriminated against. So the benefits paid to those front-line-care workers in nursing homes will be factored into the new reimbursement methodology so those that pay fair wages, those that provide quality work won't be punished for doing that.

Now, on the home care side, we fought against the 2 percent across-the-board Medicaid rate reduction, and we restored about $132, $133 million for home care that the -- a cut that the Executive had put in the budget.

You know, we rejected, the Senate, a new reimbursement system that probably would have reduced the ability of families to continue their ability to keep family members in the home and they can continue to receive medical care at home. And we also rejected a proposal that would have reduced the supply of

available help for home care patients. And I could get into some detail. Some of you probably became very familiar with -- I think they're acronyms when they're letters together -- CHAs and LHCSAs. But I won't unless you want me to.

So we're creating a working group to examine how to reform that part of the home care industry. And also, at the same time we wanted to make sure that we kept quality in the provision of services to those receiving home care services, and also to work to make sure that the wages and benefits of home care workers -- and I think we'd ultimately like to see that increase, because after all they are taking care of those most vulnerable and in most cases people who we love the most.

So let's see. We did reduce the impact of the gross receipts tax. We made it 0.35 instead of 0.7 percent.

Let's see. We did also reject $229 million in taxes on health insurers, although we did support a $107 million tax on for-profit health insurers. So it was a way,

really, to try to raise revenue from the sort of more well-heeled for-profit HMOs and insurers while trying to protect the nonprofit insurers.

And we're going to continue to work with the Attorney General to make sure that not only is there no cheating of New Yorkers, but also to make sure that we have data which is not used to manipulate payments for out-of-network care in a bad way but actually to help people who need care from providers outside the network.

We -- and this is we, I -- we refused to decrease pharmacy reimbursement for Medicaid. The pharmacists, the local pharmacists really did make very compelling argument that they should not have their reimbursement decreased, and I agreed and we agreed.

Now, that's only the second time in 14 years that pharmacies haven't been cut. So I think we really did help protect our mom-and-pop pharmacies who really serve a lot of our citizens who use Medicaid to get their

pharmaceuticals.

Maybe I'll just recap a couple of things for people. Basically, we made a 62, maybe a little more percent restoration of the Governor's proposed cuts to hospitals. And the reform that I spoke about earlier, again, is going to start December 1, 2009. We cut the gross receipts tax in half.

We put $16 million in new funding for suburban, outer borough, and upstate hospitals, which should reduce the impact by about 40 percent, if not more. We provided $30 million in additional DSH funding -- I may not have mentioned this before -- to HHC to cover some of their losses in the reform. And we actually have lifted the cap as well, so they should be able to draw down more money. And we also put in over $100 million in DSH funding for SUNY hospitals and other public and quasi-public hospitals around the state.

The new D&TC Indigent Care Pool is increased to $126 million, and we put $16 million in new Senate funding targeting community clinics.

The $75 million for hospitals -- actually, I think I said before for one year, but in fact that $75 million is over two-year period. And then there's ongoing funding for academic medical centers and for safety net hospitals. Of course the HEAL funding that's presently there will also remain available for capital and operating support for transitions.

On the nursing home -- for those of you perhaps love facts and figures even more than I do, if that's possible, on the nursing home side we made a 43 percent restoration of the Governor's proposed cuts. Of the $335.5 million in savings originally on the table by the Executive, we reduced that to $224 million. So that's $111 million restored.

And working with the industry, we've put off a little bit the implementation of the reimbursement reforms. And we also made sure that we kept the Fair Wage Pool so that quality care provided by quality workers to our loved ones in nursing homes, we're going to keep that investment.

Home care, I just did that, so hopefully you all remember that. And pharmacy, I already just did that, so hopefully you all remember what I said about that so I don't have to repeat all of that.

There's probably some more details that I could give to you, but maybe I'll just perhaps wait to see if you have specific questions about other parts of the healthcare budget.

And thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Duane.

Senator Hannon.

SENATOR HANNON: Yes, Mr. President. On the bill.

ACTING PRESIDENT VALESKY: Senator Hannon, on the bill.

SENATOR HANNON: I appreciate Senator Duane reading the bill memo. And that alone should be a good reason to vote against this. The incredible manipulation of the monies that hospitals currently expend to take care of patients has never been seen before in

the history of our financing of the healthcare system.

There is a need to reform healthcare in New York. None of it is done this year. There is a need to make a financial system that is predictable, that is assured, that can be measured, that is transport, that will result in quality care, give incentives for quality care and disincentives for bad care. This is not that bill.

The first error that occurred is the money that came to the Medicaid system has been diverted to other purposes. For years, we've said we have to increase what is known as FMAP. That's the federal monies that come from Medicaid. We are at the lowest level of any state. The stimulus bill moved it up from 50 percent, the current level, to 61 percent for 27 months. Permanent? No. 27 months.

But according to Governor Paterson's own numbers, the amount of money received would be $1.9 billion for the fiscal year just ended March 31, 2009, it would be

$5 billion for the fiscal year for which this budget would affect, and it would be $4.6 billion for the subsequent fiscal year.

That's an incredible amount of money. There did not need to be any cuts whatsoever. Should it have been redirected to a transition to a better system? Yes. Should it have been put into these bills the way it has been? No. Why not? Because, as Senator Duane has reflected, there is a creation of pools out there that is just incredible. We have more pools than any type of resort would ever want.

You go to page 90 of the language bill -- it's not the bill that's in front of us, because the appropriation bill is the one in front of us, but it's the one that lays out the pools that the money is appropriated for -- and we find just all these new pools that we've never had before.

And while it may be that some of these pools, as Senator Duane claims, are for rural, I don't find that in the bill. I don't find that these numbers are all set forth. We

have no list here as to where those hospital monies would go. We're not assured.

And why would I get concerned about that? Because I go back to another provision dealing with what is the claimed reform of moving from inpatient to outpatient, to the ambulatory patient group system which we began last year and is supposedly working -- but I don't know how it's working when I find that -- this is new language added -- "if the commissioner determines that the use of the APG method is not or is not yet appropriate or practical for specified services, the commissioner may utilize existing payment methodologies for such services," da-da-da-da. In other words, do whatever you want.

There's other language in here that says if the commissioner deems we may not get enough money, he can do whatever he wants.

This is not a system. And why am I saying this? Because it can get boring, it can get esoteric. But think. We have to change the system. And in order to change it for the almost 300 hospitals we have in this

state, we have to do it in a predictable manner. They operate 24 hours a day, seven days a week. They have to have money coming in. They have to go out and hire people. They have to recruit physicians, nurses, nurse practitioners, orderlies, the whole list. They have to know how much money they can predict.

You know, just because a budget is late doesn't mean they can stop services. Just because we say we're going to go into preventive care and outpatient services doesn't mean they can stop the inpatient care. People are still going to need operations. People are still going to have car accidents and need to be repaired in emergency rooms. That all has to go on.

The creation of these pools means they don't know what's going to happen. Two hundred sixty-nine million dollars in one pool, 25, 16, 25, 24. That's just the new ones that came out of this budget as they tried to patch every problem they thought they had. The Governor had started out with his

own two pools, a $75 million and a $25 million.

This is not a system. People can't do reform if they don't know what's going to be taking place. You start to take a look at the numbers that the Hospital Association provides, and you say they have taken into account all of this appropriation. And we still find, for Senator LaValle, the hospitals in his district lose $1.75 million. Senator Flanagan, who has SUNY Stony Brook, a medical center of the state, $4.7 million.

Now, you say, well, it's tough times. Go back to the proposition. Where did the $5 billion go that came in from the increased FMAP? Why was it diverted? Where is it accounted for? You will look in every one of these bills, you will look on the Department of Budget's website, you'll look on the Governor's website, the only thing you'll find are the Governor's press releases, which gives me the numbers, but it's not set forth here. Now, someday we'll have to account for it for the federal government, but it's not

set forth.

There are other reasons contained in these bills that I have a major problem with. While Senator Duane said they cut the gross receipts tax, this -- what is that? That means every hospital, every home care agency, on the total amount of money that comes into their agency, is paying a tax. Thanks for cutting it. But you know what? This is the first permanent imposition of a gross receipts tax we've ever seen. Every time before, it's always been temporary and it expired, and it didn't get automatically renewed.

That's not reform. When you have to have this much money to raise revenue and you didn't have it before, I don't think that the reform.

Granted, some of the things on home healthcare have been relieved. They still have to pay the gross receipts tax. We had sent them into chaos. How are they going to manage all the people? They didn't know. Finally, when this budget came out on two

minutes of 1:00 on Saturday night, they could find out that they didn't have to change their entire staffing patterns. But what about going forward in the future? It's not sure. It's not fixed.

Nursing homes. There's a mention in the bill about regional pricing. But you say to yourself, well, what happened to our changing the system for the nursing homes that we passed three years ago and two years ago and last year? Didn't nursing homes go out and borrow so they could improve their facilities and have that quality that we're promised in the future? Are they not doing that?

What are they going to do with that borrowing now that this budget cuts basically in half the amount of money that they would have received from the prior rebasing, bringing a reform that was way overdue? A promise is not something you can deliver quality care about.

I think the basic problem is that while we have seen major changes, it has not

been done in a systematic way. It's not been done in a studied way. You can move money from the Graduate Medical Education Pool, a move that there is little reason advanced for. You can move it into other federal formulas that will drive some more money, but that's only temporary at best. And neither of those moves allow you to take a system that is in vital need of reform and actually accomplish that.

For those reasons -- and we will be advancing some amendments when we get to the language bill -- I will be voting against this measure.

ACTING PRESIDENT VALESKY: Thank you, Senator Hannon.

Senator Robach.

SENATOR ROBACH: Yes, through you, Mr. President, would Senator Duane yield for a couple of questions?

ACTING PRESIDENT VALESKY: Senator Duane, will you yield?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT VALESKY:

Senator Duane yields.

SENATOR ROBACH: Thank you for that explanation. I know this is a big appropriation, a big bill. I actually had just a couple of areas that I'm parochially concerned with.

How much money was swept or rediverted from the Graduate Medical Education Pool in total, do you know?

SENATOR DUANE: I'm not sure -- through you, Mr. President, in response, I'm not sure I would characterize what we did with the graduate medical education funds in the same way as my colleague has. So without -- well, I would say a more objective characterization of it, although people of course are entitled to use whatever words, and I'm assuming they will. So what happened --

SENATOR HANNON: I cannot hear, and this is a quiet chamber. So maybe you can turn the amplification up.

SENATOR DUANE: I was saying I don't really agree with my colleague's

characterization of what action we took with the Graduate Medical Education Pool. I think the characterization that I made before, which I'm going to do again, is more objective. But everyone is entitled to characterize whatever happened in whatever way they want to, but I don't really accept that particular characterization.

So the GME/PEP pool, Graduate Medical Education/Professional Education Pool, is being moved into the Indigent Care Pool. The PEP pool had been distributing $283 million per year. By moving it into the Indigent Care Pool, we're able to draw down DSH funding -- remember disproportionate share, disproportionate share -- which will generate net savings to the state of $141 million.

Now, for 2009 the $283 million is increased by pools. And I just -- we've always had pools in this state. We eliminated some pools, we've made new pools, all in an effort to help hospitals with transitioning into our desire to bring primary and

preventive healthcare to as many people as possible.

In 2009, the $283 million is going to be increased by shifting an additional $24.5 million in new PEP money, which is going to come from the state only. So it's state-only dollars; it's not matched. So there's no DSH match. And that's going to go into this pool. So now the total new pool will be $306 million. And for 2009, for the rest of 2009, these monies are going to be distributed based on the current GME distribution formula. All right?

Starting in 2010, that $24.5 million is going to become the new, again, state-only money for the academic medical centers, and that's going to go forward. It's being replaced in the Graduate Medical Education/Professional Education Pool by $27 million, which is going to be shifted out of the current $847 million, which was in the Indigent Care Pool. So $27 million is going to be taken out of the $847 million, which is a lot of money, and that's going to

create a pool of $310 million. And that, again, will start in 2010.

We're going to use $16 million for non-New York City, non-teaching hospitals, and $25 million to high-Medicaid-volume -- they have a lot of Medicaid-using patients or they're not even -- hopefully they're not just going to be patients, they'll be actually getting primary care -- for the non-major public teaching hospitals.

Then the rest of that money, the $269 million, is going to be allocated based on a regional distribution method. And that will be based on the provision of care to the uninsured. Which again, care for the uninsured, primary care, so to reduce emergency room visits and inpatient care. That's what a major component of our reform is, to make sure that they get care, but not in emergency rooms and not because they have to be inpatient.

SENATOR ROBACH: I'm sorry for my term "sweeping."

Through you, Mr. President, if

Senator Duane would continue to yield.

ACTING PRESIDENT VALESKY: Senator Duane, do you continue to yield?

SENATOR DUANE: Yes, Mr. President.

SENATOR ROBACH: My first question. Are you trying to filibuster me, Tom?

On a serious note, for simple-minded people -- and I sort of know part of the answer. In the aggregate -- I know what the University of Rochester is get for this. But for, you know, Buffalo, Syracuse, Albany Med, what will be the aggregate money spent, in total, on graduate medical education this year as opposed to last year?

And I'm really being serious. I appreciate your time and answer. I didn't really -- that didn't answer my question for me, because I can't do that all in my head. I'm not from -- I'm not that smart, I guess.

SENATOR DUANE: Through you, Mr. President. And I just want to clarify.

The reason that I describe or talk about what we're doing with reform with the healthcare system is because I -- there are many here who understand it just on the face of it, but I think there are also many of my colleagues on both sides of the aisle -- and I may be wrong about this, and maybe it's my experience teaching civics or something, but I find it's easier to go through it in sort of an orderly fashion. And frankly, it's easier for me to understand it that way. So that's -- I do it the way I do it.

So I don't -- I can't nor do I think it's helpful to try to give a precise answer to that question, because the use of the GME/PEP pools and the other pools that are supposed to help with transition both for academic hospitals and the -- the academic hospitals that aren't like strong, which won't be receiving one of the pools, but they'll get access to the other pools. It's actually, I think, better to describe what is available to institutions to help ease the transition. And again, to get care to people in the most

efficient way, which means access to primary care, preventive care, so that they don't become emergency room visitors and inpatient -- so emergency rooms are for emergencies, and inpatient is for inpatient care, but we're trying to avoid inpatient care.

SENATOR ROBACH: Through you, Mr. President, if Senator Duane would continue to yield.

ACTING PRESIDENT VALESKY: Senator Duane, do you continue to yield?

SENATOR DUANE: Yes.

ACTING PRESIDENT VALESKY: The Senator continues to yield.

SENATOR ROBACH: I'm almost done, and then I've got one more area. But on this, so the money that went for graduate medical education for Upstate Teaching College -- which we all agree will be less; I think we could argue over how much less, but I think significantly -- to put money in the Bad Debt and Charity Pool, who uses the most significant portion of the Bad Debt and

Charity Pool? What hospitals?

SENATOR DUANE: Through you, Mr. President. There's a very important goal that we're trying to achieve. And that is no matter where people go to get care, no matter whether they have private insurance, whether they're in managed care, for those people who don't have insurance -- and by the way, we are working with the Department of Health and the federal government to try to provide access to even more people if they don't have insurance. And thanks to Senator Breslin, we made a whole group of people eligible to continue getting insurance through COBRA. But for those that don't have that, we're trying to make Family Health Plus, Child Health Plus more available to people, which will have a reimbursement system which will help all hospitals, including the academic medical centers.

So again, I can't -- it would be difficult to predict the future on precisely what will happen. However, I do also want to say -- and I know this is incredibly important to us here in New York State because

healthcare is a very important industry in New York State. So while at the same time we're trying to provide care for as many New Yorkers as possible and to provide access to care for as many New Yorkers as possible, we also need to protect New York State's investment in our graduate medical institutions and other academic hospitals.

So I may be -- I think -- and I could be mistaken, but I think the question is about making sure that our academic medical centers, during these incredibly difficult economic times, remain an economic engine. By the way, I'm going to be introducing legislation with Assemblymember Weprin to provide tax credits for biotech industries for New York City. And if -- what I'd like to do then is to also do that for the rest of the state, but that's another matter.

But all of that said, I think what my colleague's question has to do with is whether or not graduate medical education will be preserved. The answer is yes. To what exact amount, it's hard to predict the future.

But they are referred to as the crown jewels. Which would not be my title, but that's what we call them. But one of them is the Strong Clinic in Rochester. So they are, in addition, eligible to that $24.5 million pool, which is state-only money.

So your local hospitals, the teaching hospitals as well as other hospitals in the Rochester metropolitan area, we are, in very, very difficult times, trying to help them as we transition to this model in providing the best quality healthcare to the most people that we can, and access to healthcare.

And in addition, I think that the Senator also has areas which could be characterized as exurban, if not rural. We're also encouraging the provision of primary healthcare through primary healthcare clinics, whether they're freestanding or affiliated with hospitals.

SENATOR ROBACH: Through you, Mr. President.

ACTING PRESIDENT VALESKY:

Senator Robach.

SENATOR ROBACH: If Senator Duane -- different topic. I appreciate --

ACTING PRESIDENT VALESKY: Senator Duane, do you continue to yield?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR ROBACH: -- your effort, but I don't think that answered the question. I have some of the answers. I know Strong Memorial Hospital will be getting $6 million less because of this shift -- we'll call it a shift, not a sweep -- to the Bad Debt and Charity Pool.

But there's another area especially for upstate New York and healthcare, even though I know this is all very complex, that I'm also very, very concerned with.

We had made, in past budgets that we all voted on, some continuing-year commitments to rectify the huge imbalance between reimbursement rates for upstate

nursing homes to New York City nursing homes. I was wondering if you could tell me how much money was put in this year's budget to do that.

And I hope, in all due respect, I could get a little more exact answer than I got in the last round of questions.

SENATOR DUANE: Through you, Mr. President, I am going to have to ask for an indulgence. Because in an effort not to be imprecise where I can be precise, I do need to just check a document. So if everyone would just take a deep breath, including me, while I find that document.

There's no need to stand at ease for it. It's not going to take that long.

We made a 43 percent restoration across the board statewide across all nursing homes across the state to the Governor's proposed cuts. So we restored 43 percent of what the Governor had put on the table.

In terms of -- I'm going to call them reforms, which is I think the way they should be referred to -- they're actually not

going to start till April 1, 2010. So there's going to be a -- we're all going to be involved, and I welcome the Senator's involvement on working with the Department of Health and, frankly, the second floor and the Assembly and, interestingly, the people who represent the workers in those homes on what we're going to do about reimbursement. And of course the industry, the not-for-profit, the proprietary, et cetera. So we'll have work to do together on that.

But in terms of this year, across all nursing homes across all of New York State, we made a 43 percent restoration. So in terms of actual dollars, we restored $111 million to the $335 million that were in the Executive Budget. And then, again, there is the Fair Wage Pool so that nursing homes can continue to invest in workers who really do a good job taking care of people, to make sure that we maintain quality in nursing homes for, unfortunately, for those people who need to be in nursing homes, so that families and loved ones don't have to worry. And frankly,

for people that don't have families but who are in nursing homes, to make sure that even if they don't have people, family members alive to care for them, that they get quality care.

SENATOR ROBACH: Thank you, Senator Duane, for that overall answer on the condition of healthcare.

Mr. President, I would like to go on the bill, if I could, for a minute.

ACTING PRESIDENT BRESLIN: Senator Robach, on the bill.

SENATOR ROBACH: Thank you, Senator Duane.

I am absolutely going to vote no for this bill. And I encourage all my colleagues on both sides of the aisle, especially those from upstate New York, to vote no for this bill. While it's very big and complex, I know we're at challenging times -- let me talk about the graduate medical education first, what we did. Not less money, not savings. We took money, you could call it sweep, shift, whatever word you

want to call it. I certainly mean no offense by it, other than talk about the merits, and took it to the Bad Debt and Charity Pool, which from year to year most of that money is used in New York City, sometimes up to 75 percent of it, and took it out of teaching colleges in upstate New York -- Syracuse, Senator Valesky's district; Albany, Senator Breslin's district; Binghamton, Senator Libous's district; Rochester, and so on and so on.

And this we all -- or we should know, if you follow healthcare, is important even more than the money that the universities are going to lose. Those doctors not only come to our region and often stay there, providing the healthcare, whether you have private insurance or other insurance, but that's how we get our doctors in upstate New York, and even more so into the rural areas, there's almost no chance for them to get there without having that exposure, that education at those universities. Very difficult to recruit without that. That's as

real as rain.

In the Upstate Caucus, we had people come in and educate us on this even further. And I can assure you, there's already beginning to be a shortage of certain doctors in upstate areas. This is only going to make it more acute.

Now, it is absolutely outrageous that New York graduates 20 percent of the country's doctors, but we're heading towards only doing it out of one part of the state, the City of New York. That is not public policy, number one.

Number two, those doctors, when in residency, are the ones that treat our residents. In my city, the West Side Health Clinic, Anthony Jordan, the two biggest clinics that access people that fall through the cracks, don't have Medicaid, or slip through it -- that's where the doctors come to provide that. Critically, critically important for the indigent as well.

And then lastly, I have to say this as a Rochesterian and upstate person, again

this is another example where the policies follow in advantage to New York City at the expense of upstate. That reason alone is enough for me not to vote for this appropriation bill.

The second reason, on long-term care, if we really are "One New York" and one state, like a family, if we had a reimbursement rate or if you were sending one kid to a college that cost $50,000 and one that cost $10,000, and all of a sudden the other one's tuition went up -- and maybe this is a bad analogy -- you wouldn't keep spending more on one, you would rectify that by ratcheting down the spending on one to get to equality, is the point I'm talking about.

We made that pledge knowing that there's an acute crisis in upstate New York, Western New York, the Finger Lakes area, where I'm from, where nursing homes are literally on the brink of financial disaster or closing while our population continues to age. Our answer to that was nothing. Not only are we not putting in more money, we put in less

money and didn't even live up to that pledge. That's troubling to me.

And it's troubling because I was upset with that before we knew we were getting $6 billion from the federal government that has to be used for this kind of thing.

So I really, really have to say, totally on the merits of this, I would like us to go back to the drawing board in so many areas of the budget, but especially this one.

And again, I think if we had conference committees and had a chance to hash this out, talk about it, listen a little bit more to healthcare providers and people that get service, I don't think we would have got to this spot, I really don't. I'd like to think that if we really had a chance to talk about it, hash it out, listen to people, we would have got a much, much better outcome on this and not had this result.

And so while we had people that work in healthcare, get healthcare services, work in hospitals and do those things asking us during this process, we had no way to

answer their questions. Now, having this kind of be heaped on us, I can't even go back and say we don't have the resources. We have $6 billion, with a B -- that's a big B -- that has to be used for healthcare.

And I would just submit to everyone in this chamber, these are just two important things we've talked about that have not been addressed very fairly. I don't think they're good on policy, I don't think they're fair. And I think that there's going to be a long-term deleterious effect on healthcare in my part of the world and retaining quality doctors and facilities.

And so for that reason alone -- I know you don't want me to give you more; I could continue. There are some other things in here I don't like. For those two main reasons, I really feel obligated to vote no. And I hope people will take a long, long look. It's not too late to go back, have a different process, and perhaps do something better and different.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Robach.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, would Senator Duane answer a question or two?

ACTING PRESIDENT BRESLIN: Senator Duane, would you yield to Senator DeFrancisco?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator DeFrancisco.

SENATOR DeFRANCISCO: Senator Duane, Senator Robach just asked you a question about how much is going to be spent on graduate medical education this year as compared with last year. And after a long, involved diatribe on that answer, you answered that you'd rather not answer it precisely.

And my question is simply this. What do I tell my teaching hospital at SUNY Upstate what are they going get for their graduate medical education program this year?

ACTING PRESIDENT BRESLIN:

Senator Duane.

SENATOR DUANE: Through you, Mr. President. Again, I have no control over characterizations. But I think that my colleagues are familiar with my diatribes, of which I don't think that was one.

That said, my colleague from Rochester raised an issue which is very compelling and which I agree with, that graduate medical education funds are in part used for indigent care. What we've attempted to do, and why I can't give precise numbers on that outside of the large, hundreds of millions of dollars of GME/PEP money and pools, adding and subtracting, is because for those institutions, reimbursement based on indigent care, as well as what we're going to do going forward with inpatient and outpatient rates, will actually determine ultimately what that will be.

In a perfectly transparent world, in the future I could go back and say how much that is. However, today going forward, I frankly feel it would be irresponsible for me

to put a number like that on the table because the money is available in different ways. Which makes sense, although I'd have to say it over and over again, because that's the best way to show how they make sense.

But I just think it would be irresponsible for me to throw out a number because I don't know how much indigent care that they'll be providing. I don't know how they'll use transition funds. I can't say that today, and I don't think anyone here could say that.

So that's why I am talking about the bigger picture and as they impact graduate medical institutions across the gamut to freestanding primary healthcare clinics.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Duane yield to another question?

ACTING PRESIDENT BRESLIN: Senator Duane, will you continue to yield to Senator DeFrancisco?

SENATOR DUANE: Yes,

Mr. President.

ACTING PRESIDENT BRESLIN: He continues to yield.

SENATOR DeFRANCISCO: Senator Duane, since apparently you can't answer that question, and so no answer will be given to my medical university, how are they supposed to plan their program for next year?

ACTING PRESIDENT BRESLIN: Senator Duane.

SENATOR DUANE: Through you, Mr. President, I'm assuming that that hospital which Senator DeFrancisco refers to, and probably the majority of hospitals, have strategic planning departments.

And again, I offer, I'm sure Senator Hannon would offer, I'm sure the second floor and the Department of Health would all offer to any institution any help that we can provide to them to plan as these reforms move forward. And I pledge that, and I'm pledging on behalf of all of the stakeholders I just mentioned. I just can't pledge on behalf of Senator Hannon.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Duane answer another question, please?

ACTING PRESIDENT BRESLIN: Would you yield once more, Senator Duane, to Senator DeFrancisco?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator DeFrancisco.

SENATOR DeFRANCISCO: If I understand your answer to a previous question correctly, the reforms won't kick in until April of 2010. We're now in April of 2009. So between April of 2009 until some reform kicks in and some clarity is created, what does Upstate University Medical Center do at this point in time as far as determining their graduate medical education program?

ACTING PRESIDENT BRESLIN: Senator Duane.

SENATOR DUANE: Well, just -- for 2009, I just want to clarify. And I'm

assuming that the Senator is referring to GME. So for 2009, the monies that I referred to before, the $283 million and the $24.5 million that's just state funds, not DSH-matched money, that money is going to be distributed under the current graduate medical education formula.

Although, actually, I think it was Syracuse Hospital which is not -- that hospital will not be available for that $24.5 million, that's for like the Strong Clinic, Strong Hospital. So if you'll bear with me for a moment, let me pull up what monies will be available to that hospital that we will work with them on.

Well, let's just say there's $75 million over two years for transition funding. And there's also the HEAL money which is there. So just at the very least, that's money which that hospital can access by working with us, the other house, and the Department of Health.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco.

SENATOR DeFRANCISCO: Now that that's been cleared up, I'd like to go into another area. The other area I'd like to go into is personal care.

ACTING PRESIDENT BRESLIN: Do you wish to ask a question of Senator Duane?

SENATOR DeFRANCISCO: I do. I'm just giving a little preface.

I'd like to go into personal care. And would Senator Duane yield for a question?

ACTING PRESIDENT BRESLIN: Senator Duane, will you continue to yield to Senator DeFrancisco?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, you may proceed.

SENATOR DeFRANCISCO: In the Governor's budget he had called for a 10 percent across-the-board cut in personal care in all regions of the state. How did the final budget deal with that?

SENATOR DUANE: Through you, Mr. President, just before I get to that, I

absolutely understand the irony that my colleague put forward when he said that "I guess that clears everything up." I am, as you can imagine, incredibly sympathetic to that. It is very hard to describe what we're doing in this part of the budget in a way where anyone can say that it clarifies it to exactly the way that they need to understand it.

I'm trying to meet the needs for clarification from my colleagues as they ask them, and I apologize if the way I've answered it is not clarifying it the way that they want it clarified. I will try to clarify in a way that makes it more understandable, because it is very hard to understand, and I appreciate my colleagues on both sides of the aisle trying to understand what is happening with this budget.

I just also want to say -- and I think it's important, again, before I -- just to make a new context, or not a new context but to say something else. My colleague from Rochester seemed to indicate that FMAP dollars

could only be used for healthcare. As the chair of the Healthcare Committee, I wish that that were so. However, our Washington leaders, in their wisdom, decided not to encumber FMAP dollars to only be used for healthcare.

They encouraged it in the way that they will match it, which is that we spend you know -- I'm going to be a little imprecise -- 40 cents, we get 60 cents more. Those of you who are in our conference remember when I held up a sign to that effect, which I probably have in one of these files, but I'm not going to pull it out. But if you recall, I held up a sign which said for every 40 cents we spend, we get 60 cents back on the dollar if we're using it for healthcare reasons approved by our colleagues in Washington. So --

SENATOR DeFRANCISCO: Point of order.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, point of order.

SENATOR DeFRANCISCO: I'm just wondering if there's any rule of germaneness

in an answer to a question. Do our rules have any --

ACTING PRESIDENT BRESLIN: No, Senator DeFrancisco, there isn't.

SENATOR DeFRANCISCO: Okay. Thank you. So we'll just wait.

SENATOR DUANE: Well, I just -- I mean I know, through you, Mr. President, that it sounds --

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: Mr. President, point of order.

ACTING PRESIDENT BRESLIN: Point of order, Senator Klein.

SENATOR KLEIN: You know, I hope the members on the other side of the aisle will conduct themselves with the proper decorum and not get personal. We're debating the budget, which is of course very important to all of us, and under General Rule Section 9, 4(B), members are expected to uphold the highest standard of civility in dealing with other members. And I hope

they'll all do that.

SENATOR DeFRANCISCO: Point of order.

ACTING PRESIDENT BRESLIN: And I hope that the entire chamber will have that degree of civility outlined by Senator Skelos and Senator Smith earlier today.

SENATOR DeFRANCISCO: Point of order.

ACTING PRESIDENT BRESLIN: Yes, Senator DeFrancisco.

SENATOR DeFRANCISCO: With respect to civility, I am the epitome of civility. I can't imagine why I'm being so patient.

I think part of civility is when you have a debate and ask a question, that there's a good faith opportunity to give an answer that has something to do with the specific question. And I would hope that in answering questions there would be civil and germane answers rather than what we've heard so far. And it's nothing to do with personal, it has to do with the reality of what we've

been listening to.

So I don't know if he remembers the question or not. I can repeat it if he doesn't.

ACTING PRESIDENT BRESLIN: Senator Duane, do you recall the question?

SENATOR DUANE: Thank you, Mr. President. I guess I was originally responding to the preface of the exact question that was being put on the table, which I thought was in the bounds of providing an answer. Because there was a -- I thought the characterization of what was happening here, followed by a precise question, I thought it was important to note the characterization.

And, Mr. President, I am going to ask your indulgence to just finish that, because I think it's important for everyone.

ACTING PRESIDENT BRESLIN: You may continue.

SENATOR DUANE: In all candor, Mr. President, on this side of the aisle during some -- and the later it got, the more

this probably was the case -- there was some, I would say, laughter about the complexity of this healthcare budget. And in addition, when I spoke with my colleagues on the other side of the aisle on points of clarification, there were also smiles and laughter as well as, on both sides of the aisle, people being deadly serious talking about very complicated issues.

That said, Mr. President, for personal care, for 2009 the personal care cut is 2.1 percent. However, I would be remiss if I did not also note that for 2008 we also -- and I'm forgetting the date now, but we made a cut at that time of 1.495 percent, so the 2.1 is on top that.

However, I think that -- well, let me leave it -- at the risk of adding to confusion, because I understand how that could happen, so I'll just -- I'll leave it at that unless there's more information that my colleague wishes on that part of the healthcare budget, the home care part of the budget.

ACTING PRESIDENT BRESLIN:

Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Duane continue to yield?

ACTING PRESIDENT BRESLIN: Senator Duane, do you continue to yield?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may continue, Senator DeFrancisco.

SENATOR DeFRANCISCO: During the course of the hearings on the budget that I was present at, the number was given that the total amount of dollars spent by the State of New York for personal care is approximately 1.4 billion -- with a B -- dollars, 1.1 billion of which was paid to New York City residents alone. And the other $300 million was spread throughout the remainder of the state, including Long Island, Westchester County, all the way up the Hudson, the Capital Region, to Central New York and Western New York and Northern New York.

Is that the figure that is in the final budget?

ACTING PRESIDENT BRESLIN:

Senator Duane.

SENATOR DUANE: You know, Mr. President -- and I don't mean to upset people, that's not my wish or desire. But predicting how home care dollars are going to be spent, I cannot do that. I don't -- I can't do that.

In terms of the policy on home care, which is something that we've all wrestled with, and obviously my colleague from Syracuse, by showing his interest today. And I'm not sure whether he asked that question during the budget hearings or not, but it is obviously an issue of great interest to people around the state.

And frankly, even with the dollar amounts that the Senator put on the table, there are concerns in New York City about why their amount is their amount, among the New York City -- among New York City government, among that HRA, and why people are approved for it.

So again, I -- just because I --

instead of predicting the future, which is impossible, I would encourage my colleague to, you know, work with me and Senator Hannon and the Assembly and the Department of Health.

You know, one of the things -- and it's in the Article VII part of the budget, one of the tools that we put on the table, and again it's not going to -- it's not going to today help me or anyone to predict what the exact or even close to what the exact dollar amounts are. But we are instituting -- and this was a cause of some controversy, quite frankly -- assessment centers on the provision of home care. And I think with two goals, of course a cost-saving goal, but also to make sure that people who need personal care are getting personal care. So it might also cut -- the people who were not getting it now will be entitled to it, and people who maybe don't need it won't be getting it going forward.

So that assessment center -- and again, there were providers and consumers that were on both sides of that issue of the

assessment centers and for personal care. And again, because I don't want to -- I could, but you probably would all be grateful that I don't, I could list the reasons the consumers and the agencies and the administration had for wanting to do it and really for not wanting to do it. It was a very lively debate. And we did come down on deciding to provide the assessment centers.

But how, again, that policy is put into place in counties around the state, I and I know the second floor and the Department of Health and the human -- the -- let's see what we call them -- the human services agencies and departments in counties around the state, they -- I think it's important that we do be involved in that discussion.

So an excellent question. I'm sorry it was such a long answer. But the actual what we did with the trend cut which I put on the table before, in addition to the new assessment centers and how we're going phase that in, I think we'll be able to look back in a year and see exactly what's

happened, and that will inform our policy going forward.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco.

SENATOR DeFRANCISCO: On the bill.

ACTING PRESIDENT BRESLIN: Thank you, Senator Duane.

Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: You know, there's been a lot of talk about the three New York City Democrats in a room and the lack of transparency. The budget debate is another example of the lack of transparency.

I just hope this series of questions that Senator Robach had asked Senator Duane and the ones I asked are seen by every New Yorker, because it is total lack of transparency. If the chairman of Health cannot give a clear answer to the simplest of questions in an open meeting in this wonderful chambers, then how are all the providers supposed to decide what this budget means to them? How are we supposed to decide whether

this is a good budget or not?

And to suggest that this is a personal thing, it's not absolutely not a personal thing. It has to do with the quality of the question and the quality of the answer. And anybody who's watching this question and answer period cannot come out of it with any other conclusion than the answers were total obfuscation. That's all it was. Because he either didn't know the answers or he didn't want to provide the answers.

Well, as to the last question I asked, during the hearings -- and I thought he was there as well during the hearings, Senator Duane was, during the health part of it -- there were questions asked about the total amount of money spent on personal care in the state. And the answer given was $1.4 billion, 1.1 billion of which went to the City of New York.

Now, there must be some way of determining in this budget how much money is being projected to go to the City of New York this year and the rest of the state. I don't

think that's a fair share. Either the system is wrong in the way it determines who's entitled to it, personal care, because it's different in New York City than elsewhere -- and if it's a different system, than the people upstate are not being provided with the proper personal care or the right amount.

If, on the other hand, they're being provided with the right amount, then New York City is wasting a heck of a lot of money on personal care, and there's an area where we could save in order to provide in other areas. Because reform is what we should be doing, not the nonsense that this budget shows.

So I think that answer had to be readily available, but I think, in all honesty, the answer was one that he didn't want to give. Because it's got to be embarrassing not only to Senator Duane, who is from New York City, but the three New York City leaders that sat in that room, that there's such an unfair distribution of personal care dollars throughout the state.

It's totally embarrassing. And it's got to be corrected. And obviously it's not going to be corrected in this budget, or we would have heard about it.

Graduate medical education. You know, these teaching schools have to know what they're going to get. They have to know, and they have to plan their budgets. How do you possibly plan your budget if you've got to wait for some process to happen that no one could even explain other than, well, there's pots here, there's pots there, and we'll try to help them planning when -- who's going to try to help them planning if this body, who's passing a budget, can't even explain what the system is or give any idea of how that number is going to be determined?

You know, it's personally embarrassing to me, and it's not my responsibility to be on this floor and try to explain a budget to another Senator. It's personally embarrassing to me that the public can't get a straight answer, even in the openness of the sunlight of this beautiful day

today, that we can't get a straight answer or an answer that can give anyone a way to plan the future of their particular aspect of this budget, in this case healthcare.

So because of that and because of so many other reasons, I'm going to vote no on this bill. It's a bill that not only is unexplainable by the sponsor of the bill or the chairman of the Health Committee, I think it's unexplainable by anyone, since no one -- whether it's a hospital, whether it's a nursing home, whether it's a medical college -- nobody can figure out what's in support store for them in the future. And if they can't plan from day to day, then how are they going to provide this quality healthcare that everyone claims that they're in favor of? They just can't. You can't do it.

So I'm going to vote no on this budget bill for those reasons and many other reasons. Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator DeFrancisco.

Senator LaValle.

SENATOR LaVALLE: Thank you, Mr. President. Would, through you, Senator Duane yield to some questions?

ACTING PRESIDENT BRESLIN: Senator Duane, will you yield to Senator LaValle for a question?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: Senator LaValle, Senator Duane yields. You may proceed.

SENATOR LaVALLE: Senator Duane, I just want to preface. I think my questions are simpler. But if there is a number that you don't know, maybe you can get that for me. Because our hospitals will be asking us questions, and it's important that we are able to answer it.

As I look through this, is it true that we are making a philosophical move, through this budget, in moving away from hospital-based care, inpatient care, to clinic care?

ACTING PRESIDENT BRESLIN:

Senator Duane.

SENATOR DUANE: Mr. President, what we are trying to do is to provide more preventive and primary healthcare to encourage outpatient service rather than inpatient service, while at the same time trying to preserve the economic engine that our healthcare industry is in this state.

And I just -- I think that the academic institutions would absolutely confirm and reinforce that they -- in fact, they've done numerous reports on this -- that they use money that -- part of their graduate medical education money to provide care to the indigent throughout their systems, from clinics to inpatient.

So as we put money towards indigent care, as we try to get more people signed up for Family Health Plus and Child Health Plus, as you know, Mr. President, because of your work on the COBRA bill which we did -- I would say last week, but maybe it was the week before, because time is just -- I don't -- what day is -- anyway, I don't remember when

that was. However, that -- some of that insurance, if you will, as well as care for the indigent is part of the mission provided through graduate medical education.

Yes. Yes. The answer is yes. But unfortunately, I had to do it in my own step-by-step way.

SENATOR LaVALLE: Through you, Mr. President.

ACTING PRESIDENT BRESLIN: Yes, Senator LaValle. Will you continue to yield, Senator Duane?

SENATOR LaVALLE: Senator Duane, our colleague, Senator Ruth Hassell-Thompson, has been receiving medical attention. Could you tell me where she has been receiving medical attention?

SENATOR DUANE: Through you, Mr. President, I'd be more than happy to. But in my heart I think that my colleague knows. And let me just -- and I --

ACTING PRESIDENT BRESLIN: I'd also just suggest that's private information for a member of the body, and I don't see its

relevancy to this proceeding. It's not germane.

Senator LaValle.

SENATOR LaVALLE: Okay, I respect that. Through you, Mr. President.

ACTING PRESIDENT BRESLIN: Will you continue to yield, Senator Duane?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator LaValle.

SENATOR LaVALLE: Senator Duane, if a person was to be taken to Albany Med, do you know how Albany Med fared in this budget?

SENATOR DUANE: Through you, Mr. President, again, I don't -- the future is determined by a number of different factors which I think everybody would -- although I'd love to, because it helps me to remember. At some point I'll have it memorized. Or maybe not. I mean, I don't -- maybe I would ask Senator -- we can have a contest on who has memorized more. But I'm not sure, he might do better this year than I will, but I'm

determined to get there.

I cannot predict what resources Albany Med will access going forward. I cannot predict what insurance people going to that hospital will be using and so how their reimbursement will go. I also, and I -- for any hospital, and this isn't particular to SUNY Albany -- I'm sorry, not to SUNY Albany, excuse me; my motel used to be across the street from SUNY Albany -- Albany Med. And I have a friend who's on the board, so she's going to be angry with me that I just said that. Albany Med, for instance. And now I've lost what I was going to say.

But I don't know, I can't predict what forms of assistance they will access as we transition our healthcare. Oh, what I was going to say is I'm not 100 percent sure whether that question for Albany Med is -- I don't know offhand what their entire system is. And so when you break down what a hospital -- for instance, my hospital, my local hospital is St. Vincent's, and they have primary, they have a hospital, they have home

care, they have nursing homes.

So I'd have to actually -- and I don't think anybody wants me to go through my list of what the system is for Albany Medical Center to see how they could fare going forward across whatever system there is with whatever is available to them from the state itself or using matched funds.

ACTING PRESIDENT BRESLIN: Senator LaValle.

SENATOR LaVALLE: Through you, Mr. President.

ACTING PRESIDENT BRESLIN: Would you continue to yield, Senator Duane?

SENATOR LaVALLE: Senator Duane, I'm not trying to play 20 questions with you and expect you to have answers. You know, we have staff to assist us. And I know that Albany Med loses $3.3 million.

But my question is I'm going to read some statistics to you from SPARCS, from the state reporting system. And I would like you to react to the statistics that I read to you that deal with inpatient hospital care.

There are 245,000 babies born in a hospital each year; 200,000 are normal, with 45,000 having complications to a greater or lesser extent. We have 44,000 related to heart failure, 6,400 related to mastectomies. About 20,000 inpatients are treated for multiple significant traumas. Three thousand are treated for burns on an inpatient basis. And 44 million outpatient visits, of which roughly 6 to 7 million are ER, emergency room-related.

In your judgment as chairman, having worked through this, are those figures accurate, in your mind, and reflect a picture of what hospitals and the inpatients that they deal with today, the relevancy of their having the resources to deal with the figures that I've read to you?

SENATOR DUANE: Through you, new Mr. President. The new Mr. President is the old Mr. President.

Through you, I'm not sure that it is a prudent use of my time to go -- I mean, I could probably verify or dispute the

statistics which my colleague from Long Island has put on the table. But I'm not sure that even if he really wants me to, that his colleagues or my colleagues would really like me to do that.

So let me just say that whether or not that's accurate, I think that the bigger-picture answer is that this is a very difficult year. And what we did in the health part of the budget and across the budget is really a balancing act with many competing needs, worthy, important needs. But we are in a very difficult, difficult economic time, the worst since the Great Depression.

At the same time, the State of New York is trying to bring primary and preventive healthcare to people, and more people will be accessing Child Health Plus, Family Health Plus. Who is insured by what, depending on what happens with employment in the state, is going to shift dramatically. So that's going on. We're trying to reform the system so that we make the best use of dollars and we actually provide care for people and

preserve the healthcare industry.

And on top that, and I'm grateful for it, and I think we all are -- and Senator Hannon referenced it, and Senator Robach, though he had a slight error about whether or not that was dedicated to healthcare only, which it's not. So that is yet another layer on top this year.

So we want to make sure that we try to keep people out of emergency rooms. We want to make sure that people who are entitled to Family Health Plus and Child Health Plus or just -- they hate it when I say this, or just plain old Medicaid -- are getting that, that we try to keep as many people insured as possible, that we try to make it so that people don't use emergency rooms as their primary care facility, and that less people require inpatient care because we're providing them with care earlier on.

So whether the statistics are correct or not, I'm not sure that that really, really matters. I think what matters is how we take care of people going forward. And I

think that -- and I can stand behind what we're doing in the healthcare budget today in these difficult times, with trying to bring care to people, the best possible care, to use our dollars, our healthcare dollars wisely, and being prudent about how we use FMAP dollars insofar as those dollars that are being used for healthcare, we don't know what the future holds, so we have to make sure that we're prudent in the months going forward when those dollars are available to make sure we use them wisely.

So we are trying to today provide care, to provide the best care going forward, and to make sure we're prudent about how we spend precious dollars, whether from the federal government or our own tax-levy dollars, in the months to come, because who know what the future holds.

SENATOR LaVALLE: Through you, Mr. President, would Senator Duane continue to yield?

ACTING PRESIDENT VALESKY: Senator Duane, do you continue to yield?

SENATOR DUANE: I do, Mr. President.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR LaVALLE: Thank you, Senator Duane.

I think our hospitals thought there was so much stimulus money that they thought that they would be able to weather the storm for this year. And yesterday I read some figures, but just moving now to our medical centers, the three hospitals, SUNY hospitals. And Senator Flanagan, who represents the Medical Center at Stony Brook, it has an impact of $4.8 million they're losing. And also, there is a permanent $28 million reduction in base aid support.

So what do we -- myself as the ranking member on the Higher Ed Committee, Senator Flanagan, who represents the hospital -- what do we say to Dr. Strongwater? What would you say to Dr. Strongwater? He's telling me he's losing $4.8 million and has a permanent $28 million reduction in base

support.

SENATOR DUANE: Mr. President, through you. You know, just without getting into the specifics, again, I do know that yesterday -- and I'm sure my colleague was listening closely to this, and I'm pretty sure that I heard this yesterday, but it does impact SUNY hospitals. But we did restore, I want to say -- and for some reason this 25.4 -- or sometimes it's 24.5. But we did restore 25 -- I think $25.4 million to SUNY hospitals.

Now, again, there are many ways that hospitals can draw down money. There's DSH, disproportionate share. There are the hospitals with high Medicaid use. I mean, I can go back to them all again, but I've already said them several times. But I'll do them again.

But, you know, in addition, by encouraging and incentivizing, not today but soon, outpatient care by improving outpatient rates, that should -- that will help hospitals as we transition.

And I -- it's just killing me, Mr. President, so I just need to say something else because it was left unsaid. Even though the Senator from Syracuse is not here. I was there when the commissioner said those numbers about personal care. But, you know, in all candor, the local government makes the decision about who gets home care. I don't decide that. He doesn't decide that. You don't decide it. His local government makes that decision.

And so the assessment centers, I would hope, will be objective in figuring out why some counties are -- I was going to say meaner about providing home care, but really I'm trying to be objective -- why they are stricter, why they are -- I don't know why that is. And maybe that's not what it is. Hopefully, these assessment centers will figure it out.

But I don't think that Senator DeFrancisco, who is not here, could answer that question, because those decisions are made at the local level. So if there's a city

upstate, Long Island, we should really -- and I have, interestingly enough -- spoken with the county administrators of these programs. But the assessment centers I think are actually a better tool. But I will keep everyone posted every step of the way as those assessment centers are phased in and as we work with county governments to find out why home care is approved in some cases and not in other cases and whether it should be approved more or less, et cetera.

But outside of New York City, that is a county decision. That's not mine or the Department of Health's decision, or yours or his -- unless he bosses around his -- you know, I don't know how it works there. But they make the decision.

SENATOR LaVALLE: Through you, Mr. President, would the Senator yield?

ACTING PRESIDENT VALESKY: Senator Duane, do you continue to yield?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT VALESKY: The

Senator yields.

SENATOR LaVALLE: Thank you. Thank you, Senator Duane.

I believe that Dr. Strongwater at the University Hospital at Stony Brook is doing everything to ensure that, you know, he is cutting costs and so forth, and he has indicated that.

What do I tell him? Just going back to the medical education, he's saying Stony Brook specifically is going to lose $13.2 million. You have indicated that that's now in a new pool, in the indigent pool. Why would graduate medical education be in an indigent pool? I don't understand that. It sounds like we're going to get hurt, we're going to lose money in this. So maybe you could explain that, please.

SENATOR DUANE: Through you, Mr. President. That hospital will have and will be getting -- well, I'm assuming -- and again, I could look at my numerous runs, but I don't think that's really what this question is about. But there's potentially access to

$25 million. Not just that hospital center, but others will have access to it. If it's high Medicaid, and a teaching hospital, it will have access to that pool of money. In addition, it can draw down DSH money.

And the rates in the future are going to shift. And if that hospital needs transitional funds, there is the $75 million transition fund available for hospitals that need it. And also there are HEAL grants which exist today. And there is also, just generally -- and I can't say precisely how it's going to -- well, I could probably, I could hazard a guess, but I don't think that's helpful.

But the GME/PEP pool, remember, it's being moved into indigent care. However, that money is also available for that hospital, that medical center.

SENATOR LaVALLE: On the bill, Mr. President.

ACTING PRESIDENT VALESKY: Senator LaValle, on the bill.

SENATOR LaVALLE: Thank you,

Senator Duane. I know it's very difficult to answer in a very complicated area with specificity some of the questions that we've been asking.

We've been asking these questions because our hospital CEOs are asking us questions. Like the hospital in the village that I live in, in Port Jefferson, Mather Hospital, the CEO is going to ask me: How did we lose a million dollars?

Hospitals in the east end, after we went through the Berger Commission and we led the way with a model of bringing three rural hospitals in the east end of my district, bringing them together to form an alliance to save precious healthcare dollars and to improve access to people on the east end by being able now to bring doctors in specialty areas that had not been out there in the past to be able to be there. We've done that.

Yes, we have accessed HEAL money. There is still more HEAL money that we can access. We have brought the alliance into a relationship with the State University

Hospital at Stony Brook. Again, trying to use valuable dollars to be able to establish clinics where necessary, to use our residents at the university at the hospitals on the east end.

So we have gone through all that we're doing, and yet they're going to say to me: Hello? We get stimulus money. And we thought we were going to be okay, and we've done everything by the book, and now we're going to lose money.

I am going to tell them -- and you might at some point say there's a shift in rules here. We now have a new concept of healthcare. We are moving away from inpatient care, whether it be through the ER or in the hospital. We've changed the rules. And I'm not sure what the rules are.

So I don't know what I'm going to say to them. I guess we're going to be learning as we move forward. I'm probably in a little better shape than the other 61 colleagues here, because I've got Senator Hannon sitting next to me. So I can ask

Senator Hannon, as can Senator Larkin.

But it is critically important that -- and what's happening at a federal level, potentially, can be very, very damaging. And I hear you say things, something that I have -- earlier in my career, I had the good fortune of serving as vice chairman on a commission on health education and illness prevention. And back 25 or more years ago, I along with the commission members were the strongest advocates in this state for more dollars in illness prevention than -- all the money was going into primary care.

Now, we have done in 25 years a much better job, and our citizens themselves are doing a better job. We have each year, thankfully, rates dropping in terms of cessation of smoking and other things that are not good for us. And people are doing that on their own. They're making their own decisions that they should be doing this. And they're getting some benefits, through life insurance and other things, to keep encouraging them to have a good lifestyle.

But, you know, I didn't mean, Mr. President, to be intrusive where our colleague was taken. I was trying to make a point that hospitals continue to be a critical part of this delivery system. And if we change the rules so quickly, those people that are there today, tomorrow, a year from now are not going to get the kind of care that they need. So we are shifting the rules. Because we're choosing to put money, more money, I'm gathering -- I don't know this, but I'm gathering -- into indigent care. We're putting more money, which is not a bad thing, more money into health insurance so that we are providing and cutting down on the people who do not have health insurance and healthcare.

But I think people need to know this, what we're doing. And as I've said so many times on this floor, when we move to this thing called fairness and we're trying to provide for someone else, we're taking away from somebody. We're taking away from someone.

I happen to live in an area that is very rich in a healthcare delivery system. The Village of Port Jefferson, I have two hospitals. State University at Stony Brook is very close by, a 10-minute drive. I'm now wondering what is going to happen to that healthcare delivery system when State University at Stony Brook is getting $4.8 million less -- and that's at minimum, by the way, minimum that they're getting less. Mather Hospital is getting $1 million less.

So in the area that I represent, and in the east end hospitals of the First Senatorial District, are the people going to expect out of this budget less care, less care?

And that's why, when the roll call is called, I am not going to support this piece of the budget.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator LaValle.

Senator Larkin.

SENATOR LARKIN: Thank you,

Mr. President. Would Senator Duane yield for a series of questions?

ACTING PRESIDENT VALESKY: Senator Duane, do you yield?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT VALESKY: Senator Duane yields.

SENATOR LARKIN: I'd like to ask Senator Duane, have you met with an organization called NorMet, which is the Northern Medical Hospital Association [sic] outside of New York City?

SENATOR DUANE: Through you, Mr. President, I did not bring what I refer to as my meetings matrix. So I'm going to be a little imprecise about this, but I guarantee that I met with members of the board and CEOs of hospitals in Senator Larkin's district.

SENATOR LARKIN: Will he continue?

ACTING PRESIDENT VALESKY: Senator, do you continue to yield?

SENATOR DUANE: Yes,

Mr. President.

ACTING PRESIDENT VALESKY:

Senator Duane continues.

SENATOR LARKIN: Senator Duane, they said you met with them, and some of your staff did, and you told them this would be a fair budget.

In that 44 hospitals, six of them are in my district, who converged under the Berger Commission. By converging, they made some progress for single operational hospitals. Yet when I look at the printouts, these hospitals are going lose $6 million.

The question they're asking me I ask you. How do they keep their operating rooms, their cancer centers, their emergency rooms open when we take it away from them?

SENATOR DUANE: Through you, Mr. President, I probably should have asked my colleague to spell out the association and not just give me the initials, because not doing so and then sort of doing "gotcha" kind of made it feel like a trick question.

And I'm confident that that's not

how it was intended; however, that is how it felt to me just then.

That said, Mr. President --

SENATOR LARKIN: Mr. President, point of personal privilege.

ACTING PRESIDENT VALESKY: State your point, Senator Larkin.

SENATOR LARKIN: I specifically said NorMet, North Metropolitan Hospital outside of New York City. I wasn't treating to be smart or anything, I was telling you the acronym and I spelled it out who they are. They represent 44 hospitals.

It wasn't a trick. It wasn't meant -- I was trying to be specific and shorten it up. That's what we're looking for, is answers.

SENATOR DUANE: Through you Mr. President.

ACTING PRESIDENT VALESKY: Senator Duane.

SENATOR DUANE: Again, that's how it felt to me. I actually -- what I thought was that my colleague was asking me -- and

this could very well have been my mistake. I actually thought that the question was going to be specific to the hospitals in the area that the Senator represented. And I apologize for misunderstanding that question.

Of course I do remember meeting with that group, although it was $2 billion ago that I met with them. We've already lost, in this state, $2 billion in revenue.

And in that context, I would maintain my promise to them that while at the same time we are trying to keep people from getting sick, we are also go to try to help hospitals as they -- as we transition.

So I am pledging my help to make sure that as we go through this difficult economic time, and as our healthcare system continues to transition, that I will work with the hospitals in that association and those that are within Senator Larkin's district. That is my pledge.

ACTING PRESIDENT VALESKY: Senator Larkin.

SENATOR LARKIN: Will Senator

Duane continue?

ACTING PRESIDENT VALESKY:

Senator Duane, do you continue to yield?

SENATOR DUANE: Only with answers -- only with answers that the sponsor does not already know the answer to. If he would at least tell me the answer. But I'm willing to answer questions that he may not know the answer to.

ACTING PRESIDENT VALESKY:

Senator Larkin, Senator Duane continues to yield.

SENATOR LARKIN: I'm not here, Mr. President, to make games. I'm here to try to find out answers for my constituents. Maybe if this body would have followed the laws of 2007 and had committees, we wouldn't be wasting our time asking a lot of questions.

These are questions that are being asked to me. I don't have the answer. I'm going to the chairman of the Health Committee.

The question is, are any of these hospitals going to get any of the pool money?

ACTING PRESIDENT VALESKY: Excuse

me, Senator Larkin.

Senator Klein, why do you rise?

SENATOR KLEIN: Mr. President, can Senator Larkin ask a question of Chairman Duane, please.

ACTING PRESIDENT VALESKY: Senator Larkin, please state your question.

SENATOR LARKIN: My question is, are any of these hospitals going to get any of the pool money?

SENATOR DUANE: Through you, Mr. President, we're all, I think, angry at the economic times that we find ourselves. They are very, very difficult times. I'm angry about what has happened to our economy as well.

The answer regarding those hospitals in the Senator's district is to the extent that they are entitled to it, I will absolutely help them access the state-levy funds that are available to them as well as the larger pools of money that I don't know offhand what they're entitled to, whether they're teaching hospitals, without going

through the list. But to the extent that they are entitled to any of those pools of money in addition to what they get with reimbursement, et cetera, you betcha, I will help them.

SENATOR LARKIN: Will Senator Duane continue to yield?

ACTING PRESIDENT VALESKY: Senator Duane, do you continue to yield?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR LARKIN: If that's the case, that something may or may not be done, Tom, are we going to have a renewal of the HEAL money, grants?

SENATOR DUANE: Through you, Mr. President, HEAL money is going to continue to be available.

SENATOR LARKIN: When?

SENATOR DUANE: It's available today, and it will be available tomorrow.

SENATOR LARKIN: If that's the case, when will the information that's

appropriate go out on the medical records? As I'm sure you know, that they said through the stimulus package there were going to be fundings available so that we can do all of these prescriptions and everything on medical records so we won't have an incident like we had in New York not too long ago with the child with the paint, because they put the wrong prescription on it.

There's talk out there that something's in this budget. I've looked at it, I cannot find it. The Health Department said they're working with the Senate Health Committee, and I think it's a very important thing. And I'm not trying to be rude; I know you're sincere about it. I would just like to know what I can tell my people.

SENATOR DUANE: Through you, Mr. President, I believe that the Senator in good conscience can assure his hospitals and his other providers that we are -- and I am encouraging the department, and I believe they -- I know they share this concern, moving as quickly as possible to implement those

changes. It's one of the goals and aims not just of the state but also of the federal government.

SENATOR LARKIN: Because of timewise, I want to quickly get through this. One more question.

ACTING PRESIDENT VALESKY: Senator Duane, do you yield to Senator Larkin?

SENATOR DUANE: Mr. President, I just want to -- one of the things that in our negotiations between the other house and the Executive is there is actually language in the budget that mandates, for lack of a better term, that that money move out as quickly as possible as we get it.

ACTING PRESIDENT VALESKY: Senator Larkin, proceed with your question.

SENATOR LARKIN: When we're discussing this and funding at hospitals and we're discussing the MTA, what position do you take about taxing the hospitals who we're already taking money away, we're shorting them, and then we're going to tax their payroll?

SENATOR DUANE: Through you, Mr. President, I just want to reiterate that we fought for and got a reduction in the gross receipts tax from 0.7 to 0.35 percent. So we made progress there.

SENATOR LARKIN: Well, I'm not their accountant. But their accountants are telling me that 1 and 1 is not 3.

My final question is --

ACTING PRESIDENT VALESKY: Senator Duane, do you continue to yield?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR LARKIN: What about our Article 28 clinics? They're starting to complain that they're being short-shrifted and there's a question about some legal operations that they're going to venture into. Can you enlighten us on that?

SENATOR DUANE: Mr. President, through you, I believe that -- it's almost like this question is a setup for me,

Mr. President. I believe when --

SENATOR LARKIN: I can't hear him.

SENATOR DUANE: I said it almost feels like this question is a setup -- a good setup, actually. I think when my colleague from the Hudson Valley checks with his clinics, they will say that I did very well by them, we did very well by them, the state has done very well by them.

We actually have made giant progress in making sure that they provide care to people. We have more to do, but we made -- all of us together, the Executive, the Assembly, the Senate, everyone -- we made enormous progress. And I think that they will be -- of course, it's never enough, is it? But I think they'll be pleased.

SENATOR LARKIN: Mr. President, no more questions. Just a comment.

ACTING PRESIDENT VALESKY: Senator Larkin, on the bill.

SENATOR LARKIN: I resent someone telling me -- if I could have Senator Duane's

attention. I resent someone questioning my honesty and integrity on this floor and saying that it's a setup. There is no setup. I pay attention to the mail that I receive, and these are questions that were asked of me.

It's my responsibility to ask you, because your side of the aisle wouldn't have open hearings where some of these questions could have been asked. This is not a bad question. We have a responsibility.

You talked about healthcare and what you want to do, and I'm pleased that you're proposing certain things. But I'm not pleased when somebody tries to say someone is trying to get me in a corner. There's no corner in here unless you fail to do what you're supposed to do.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Larkin.

Senator Klein, why do you rise?

SENATOR KLEIN: Mr. President, as the bill has been under consideration for more than two hours, I move to close debate under

Rule 9, Section 3(D) of the Senate rules.

SENATOR WINNER: Slow roll call on that motion.

SENATOR KLEIN: -- calls for a show of hands.

SENATOR WINNER: Slow roll call.

SENATOR SALAND: Point of order, please.

ACTING PRESIDENT VALESKY: Senator Saland, please state your point of order.

SENATOR SALAND: My point of order is by anybody's watch or anybody's timetable, this debate was consumed in large part by the responses provided by Senator Duane.

As has been pointed out several times during the course of this debate and prior debates, there has been no opportunity to freely and openly discuss the legislation that is before us in the form of these budget bills. As far as I know, there's only one speaker left on the speaker's list, and that speaker just coincidentally happens to be me.

So I don't know if this is an effort just to call off the debate, to muzzle me, or to basically say we're going to attempt to filibuster to keep this side of the aisle from having the opportunity to ask the questions that it could have asked had we had the conference committees that everybody knows were required.

ACTING PRESIDENT VALESKY: Senator -- Senator Saland, the chair has ruled your point out of order.

SENATOR WINNER: Point of order.

ACTING PRESIDENT VALESKY: Senator Winner, the chair has ruled Senator Saland's point out of order.

SENATOR WINNER: I'm making a point of order, Mr. President.

SENATOR SALAND: Mr. President, I would ask for a roll call on the point of order.

(To Senator Winner.) You may have your point of order after my point of order.

I'm appealing the ruling of the chair.

ACTING PRESIDENT VALESKY:

Senator Saland, the question on the motion to close the debate is nondebatable, according to the Senate rules.

So we need to proceed with a vote on Senator Klein's motion.

SENATOR WINNER: Point of order, Mr. President.

ACTING PRESIDENT VALESKY:

Senator Winner, state your point.

SENATOR WINNER: Mr. President, pursuant to the rules of the house, in order to prevail on a motion for a previous question, one must have a majority of the votes of the members elected. Therefore, if the Majority has 32 members here present to close the motion, have a vote.

ACTING PRESIDENT VALESKY:

Senator Winner, pursuant to Rule 9, Section 3(D), a motion is decided by an affirmative vote of the majority of Senators present, as opposed to a majority of Senators elected. Therefore, your point is not in order.

And the question is on Senator

Klein's motion to close debate under Rule 9, Section 3(D). All those in favor of the motion --

SENATOR SALAND: Fast roll call, please.

ACTING PRESIDENT VALESKY: Senator Saland has asked for a fast roll call. Therefore, all Senators in agreement with Senator Klein's motion to close the debate should indicate so by raising their hand.

(Pause.)

SENATOR SALAND: Mr. President, are you prepared to announce the roll?

ACTING PRESIDENT VALESKY: Senator Saland, we are not at this time.

SENATOR SALAND: You are not. Is there a time limit as to how long we have to wait during which that roll call will be taken?

ACTING PRESIDENT VALESKY: Senator Saland, there is not.

SENATOR SALAND: There is not.

Mr. President.

ACTING PRESIDENT VALESKY:

Senator Saland.

SENATOR SALAND: Let me recite the same rule that you've been referring to. It reads: "Such motion to close debate shall not be amendable or debatable and shall be immediately put."

It's been immediately put. We've been standing here now or sitting here now for some four or five minutes. I would think we should have the roll call announced and we should get on with dealing with the bill.

ACTING PRESIDENT VALESKY: Senator Saland, your comments will be taken under advisement.

The Secretary will announce the results.

THE SECRETARY: Ayes, 31. Nays, 30.

ACTING PRESIDENT VALESKY: The motion is approved, and debate is closed.

The Secretary will read the last section.

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

SENATOR YOUNG: Slow roll call.

SENATOR WINNER: Slow roll call.

ACTING PRESIDENT VALESKY: A slow roll call has been requested. The Secretary will --

SENATOR SALAND: Point of order.

ACTING PRESIDENT VALESKY: Senator Saland.

SENATOR SALAND: Could you please tell me whose seat between Senator Smith and Senator Onorato is vacant?

ACTING PRESIDENT VALESKY: That would be mine.

SENATOR SALAND: Thank you.

ACTING PRESIDENT VALESKY: The Secretary will ring the bells and call the roll slowly.

THE SECRETARY: Senator Adams.

ACTING PRESIDENT VALESKY: Before we proceed with the slow roll call, in order so that we all may hear, I ask that we continue to follow the practice of the last several hours and we keep conversations to a minimum. Anyone who feels that they need to

have a conversation needs to take it outside of the chamber.

The Secretary will call the roll slowly.

THE SECRETARY: Senator Adams.

SENATOR ADAMS: Yes.

THE SECRETARY: Senator Addabbo.

SENATOR ADDABBO: Yes.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: To explain my vote.

ACTING PRESIDENT VALESKY: Senator Alesi, to explain his vote.

SENATOR ALESI: I appreciate the hard work and effort that has gone into these last few days, and that relates to both sides of the aisle.

And I think that since we've come this far, especially on a bill of such significance and such importance that it deals with the health and welfare of our citizens, that it disturbs me that I haven't had the ample time to hear debate. Because there still appears to be a significant amount of

opinions on both sides of the aisle, at least on this side of the aisle, to have the opportunity to express those opinions, continue to ask questions, continue to make sure that we're doing the best thing possible when we're voting either for or against this bill when it comes to serving the needs of our citizenry.

I had intended to vote no on this bill anyway, because with the amount of information that I have had, I can't see where it does the best service that our citizens and taxpayers have come to expect. But in light of the fact we have just been issued technically, legally, correctly -- right? -- nothing more than a gag order at this point because we're now stymied in terms of expressing our opinions and asking points of view from those people that would have wanted to share them if they had not had the gag order imposed on them as well, that I can't in good conscience vote in any way other than in the negative.

ACTING PRESIDENT VALESKY:

Senator Alesi will be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Aubertine.

SENATOR AUBERTINE: Yes.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: To explain my vote, Mr. President.

ACTING PRESIDENT VALESKY: Senator Bonacic, to explain his vote.

SENATOR BONACIC: You know, as a Majority Senator for 10 years, I had five counties and I had 11 hospitals in my -- directly in my district or in my encatchment area. And the profit margins in the rural area of the hospitals were being squeezed.

And one of the things I was able to do was to fill the gap sometimes with discretionary Senate money. But even doing that, I never caught up to try and put the hospitals in the black. And I had the experience of having three hospitals go bankrupt.

So I was never on the Health Committee, but I became a health expert in trying to save three hospitals from bankruptcy: Ellenville, in Ulster County; Margaretville, in Ulster County; and Sidney Hospital, in Delaware County.

Then we went through this commission, the Berger Commission, where we were going make hospitals stronger. And those that were weaker, we were going to have them go away. And same with nursing homes.

Those rural hospitals started to get a little stronger. And now we come along and, with this budget, take out millions and millions of dollars to set these rural hospitals back. And again, I think it's a case of misplaced priorities, and I would ask the Majority to revisit this down the road.

I vote no. And I thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Bonacic.

Senator Bonacic will be recorded in the negative, and the Secretary will continue

to call the roll slowly.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: To explain my vote.

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

SENATOR DeFRANCISCO: You know, there's a couple of reasons to have debate on the floor. One is definitely to get clarification of issues that may be unclear, to try to shed some light on an otherwise very dark process.

Well, with the time we were allotted -- actually, we could have been allotted all day and that aspect of the benefit of debate on the floor would never have been realized because there were no answers to the few very clear questions that were asked. So that in and of itself is a reason not to vote for the budget.

There's another reason not to vote

for this budget bill, and that is that debate also informs the public of the various points of view of people so that they're on record and knowing where they stand on various issues. And that's why this two-hour limit was -- it's really a shame that this secretive process by this group of people who now call themselves the Majority that got into office on reform agenda -- on reform agenda -- are closing off debate on one of the biggest bills and one of the most important bills.

So, you know, I know it seems to be repetitive, but the bill is bad in process, the bill is bad in substance. I vote no.

ACTING PRESIDENT VALESKY: Senator DeFrancisco will be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Diaz.

ACTING PRESIDENT VALESKY: Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Mr. Chairman.

I would like to vote yes. But also

I would like to say that we have two conferences, Republican conference and the Democratic conference. The two of us, ladies and gentlemen, the two of us already have decided. We already conferenced. That side already has decided that they're going to vote no, no matter what. This side has decided we're going to vote yes.

But we are stalling and stalling and talking and talking, repeating the same question, the same question. And making believe that anybody's going to change anybody's mind.

Nobody's going to change anybody's mind. The only thing that we're doing here by extending the days, ladies and gentlemen and people that are listening, each and every one of us are collecting $160-plus every day that we're here. So by your standing and standing and standing and the session over yesterday, you're all going to get $160 each, and we too.

I'm proposing, Mr. Chairman, that because we love the state so much and we are concerned with the fiscal crisis in this

state, that we all, we all reject, not -- not one penny out of our per diem. Not to pay the hotel, nothing. Nothing. Not to postpone the payment; no payment at all for any one of us.

And then, ladies and gentlemen, we could stay here tomorrow, Saturday, Sunday, so you could show the world how much you love the state. No payment. I would do it if you do it. But then we can show how much we love the state.

But you are voting no anyway. So what is the show? Let's go. I'm voting yes.

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

The Secretary will continue.

THE SECRETARY: Senator Dilan.

SENATOR DILAN: Yes.

THE SECRETARY: Senator Duane.

SENATOR DUANE: Yes.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Yes.

THE SECRETARY: Senator Farley.

ACTING PRESIDENT VALESKY:

Senator Farley, to explain his vote.

SENATOR FARLEY: Thank you.

Senator Diaz, Senator Breslin, Senator McDonald, and myself agree with you. We're going to -- any per diems we get, we're going to reject.

(Laughter.)

SENATOR FARLEY: Let me just say something on this. You know, many of these budget bills are very serious. There's a lot of grave concerns that we have. But, you know, this is one bill that is really of grave concern to almost everybody in here that has a hospital. It's driving them close to bankruptcy, if not into bankruptcy.

Healthcare, the most precious thing we can do for our constituents, is in serious jeopardy as a result of this budget bill.

I have to vote no on this one because this really makes a difference for every single person in this chamber and for every constituent that you have, because our hospitals and our healthcare system is in very severe jeopardy as a result of what is

happening here in this budget.

I vote no.

ACTING PRESIDENT VALESKY: Senator Farley to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Flanagan.

SENATOR FLANAGAN: To explain my vote.

ACTING PRESIDENT VALESKY: Senator Flanagan, to explain his vote.

SENATOR FLANAGAN: Mr. President, thank you. To explain my vote.

You know, I listened to my colleague Senator Diaz. I find it somewhat ironic, when we're accused of stalling, that you're the last person to walk into the room.

SENATOR DIAZ: I'm here. I'm here.

SENATOR FLANAGAN: You're here now. But for everyone who thinks we're making believe --

SENATOR DIAZ: -- and this --

ACTING PRESIDENT VALESKY: Senator Diaz.

Senator Flanagan, please continue to explain your vote.

SENATOR FLANAGAN: Thank you, Mr. President.

No one's making believe. I think this is a bad budget. I think this is a bad budget bill that's before us. And frankly, if there's debate and there's some consternation, so be it.

I'm listening to Senator Hannon, Senator LaValle inquire of Senator Duane. I'm looking at my own district, $5.6 million in cuts to the hospitals. I have to go back and explain that with over $5 billion in Medicaid funding coming, that they're still not going to be able to make those hospitals whole.

And I'm looking at Senator Adams, Senator Krueger, Senator Duane. Their numbers are skyrocketing above the ones that affect my district.

The fact that we're asking questions is so that we can get some real answers. And when Senator Hannon talks about pools, we've now shifted how we're doing

everything. Everything is going to be floating around in some pool of money, and we're not sure how it's going to be getting to the people who really need it. People can't plan, they can't get ready for the future. We're trying to get some real answers so we can go back to our constituents and inform them properly. This is not make-believe, this is real life.

I vote no.

ACTING PRESIDENT VALESKY: Senator Flanagan will be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Foley.

SENATOR FOLEY: Aye.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: To explain my vote.

ACTING PRESIDENT VALESKY: Senator Fuschillo, to explain his vote.

SENATOR FUSCHILLO: When you spend the taxpayers' dollars and you ask them

for more and you ask them for money they don't have, you have a right to debate and question.

And I think what's come out most in the past couple of days when we've debated this bills is what has not been known or told to the public on how much you're raising their taxes, on how much you're killing the healthcare industry, on how much you're not giving them property tax relief, and on and on and on.

But when you're taking hundreds of millions of dollars out of the healthcare system -- and everybody should have the same goal, to make our healthcare system open, accessible, and affordable. Our government certainly isn't open, and the budgetary process that has gone on for the past couple of months has shown that, how it's been taken away from the people of New York State because of one simple reason: You don't want them to know what's in here. And that's why you shut down the debate.

I want to know what Senator Saland has to say about this budget. I've listened

to this for my 11 years on both sides of the aisle. That's the process.

Now, I've had two hospitals, Mr. President, that have gone bankrupt and closed down in my district. I don't have hospitals in my district anymore. They have to go outside their district, their community, to get the healthcare. And I wonder what's going to happen when you take hundreds of millions of dollars out of the healthcare system to the existing hospitals.

I vote no.

ACTING PRESIDENT VALESKY: Senator Fuschillo to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Golden.

ACTING PRESIDENT VALESKY: Senator Golden, to explain his vote.

SENATOR GOLDEN: Thank you, Mr. President.

My mother is recovering from a broken hip. She also has Alzheimer's. She was in Lutheran Medical Hospital, moved across

to Augustana, which is a nursing facility, and now she'll move home and hopefully we can get home care. But that's not unusual for a lot of our seniors across this great state.

And unfortunately this bill, this bill going out today, this budget will impact on seniors like my mother and others across this great state. Looking at what it will do to those in the City of New York, we're talking about hundreds of millions of dollars. We're talking about impacts in hospitals, nursing homes, adult homes, assisted living facilities, home care. We're talking about teaching hospitals. We are talking across the entire spectrum.

We could have done better. We could have dealt with the structural deficit. We did not. We played with that stimulus and didn't do it the way it should have been done. It's unfortunate that people will suffer. People will suffer.

I vote no for this bill. I vote no for the 19.5 million people of this great state and 8.5 million of those people that

live in the City of New York.

ACTING PRESIDENT VALESKY: Senator Golden will be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Griffo.

ACTING PRESIDENT VALESKY: Senator Griffo, to explain his vote.

SENATOR GRIFFO: Thank you, Mr. President.

Healthcare is so essential to every individual who lives in this state. And when you think about what is taking place here today, this process we should be ashamed of. The specter of secrecy that has surrounded this budget process is unparalleled even for Albany.

Thousands of pages put on our desks, thousands of pages on the desk, in front of the desk. And people are expected to absorb all this and not to discuss, debate, and to question what exists. Particularly when upstate hospitals would suffer significantly. Pools of money that exist

where nobody can specifically explain how or why those pools will be distributed.

I have a number of hospitals who have expressed their concern over what they're going to be able to do as far as physician retention and the delivery and the quality of the services that they can provide to the people of this state, particularly the people that I represent. We need to deal with that. We need to be able to question, to understand that.

And to Senator Diaz's point, yes, maybe somebody will become enlightened as a result of this debate, somebody will truly get it and become concerned and as a result of that change their mind to do what's right and to make a difference to try to ensure that people are being taken care of, provided the type and quality of healthcare that they deserve regardless of where they live -- not because a New York City troika of leadership went behind closed doors and put something together that now we can't even debate as extensively as we should and could.

So for that reason, Mr. President, I vote no.

ACTING PRESIDENT VALESKY: Senator Griffo will be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Hannon.

ACTING PRESIDENT VALESKY: Senator Hannon, to explain his vote.

SENATOR HANNON: Thank you, Mr. President.

The major error committed by this bill is the diversion of the stimulus money away from healthcare, for which it is appropriated by Congress, to other things. That money gone means that all of this shenanigans that goes on in this budget bill have to be carried out. Unnecessarily. Seven new pools.

In what could be best described as a meandering response to a series of questions, the Health chair said, "Well, we're going to help with this pool, that pool." Not once acknowledging that not a single hospital

is named in the bill.

You've been misled. You've been told by the Executive, Oh, we'll take care of you. Guess what? That's not going to happen.

I know from personal experience. Hospitals with great needs serving very special populations have been told that and tried to get, absent language, help for those hospitals. It doesn't happen.

Yes, there's a lot of money, but you can't take it on faith. It ought to have been here. That's why I'm voting no.

ACTING PRESIDENT VALESKY: Senator Hannon to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Hassell-Thompson voting in the affirmative earlier today.

Senator Huntley.

SENATOR HUNTLEY: Yes.

THE SECRETARY: Senator C. Johnson.

SENATOR CRAIG JOHNSON: Yes.

THE SECRETARY: Senator O.

Johnson.

ACTING PRESIDENT VALESKY:

Senator Owen Johnson, to explain his vote.

SENATOR OWEN JOHNSON: Yes. You know, there's an expression called "deja vu all over again," colloquially spoken. Every time we have budget problems, the hospitals and the nursing homes are the first place they look to cut and the first ones we have to defend because our people need the services of those hospitals in our districts.

I have two of the largest hospitals in Suffolk County in my district. They're always on the borderline of going broke, but they're not going to. Although several of them did go broke some decades ago. We can't let that happen.

So I think that it's pretty obvious that this budget in many respects is defective, and primarily this is one we have to defend and we have to get that money flowing back to those hospitals.

Thank you. I vote no.

ACTING PRESIDENT VALESKY:

Senator Owen Johnson to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Klein.

SENATOR KLEIN: Yes.

THE SECRETARY: Senator L. Krueger.

ACTING PRESIDENT VALESKY: Senator Liz Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you very much.

I am going to be voting yes on this bill. And in fact, my district has an enormous number of hospitals -- it's my largest industry -- and I have heard from them all, and I have talked to them all. And yes, we're making some cuts.

But I have sat here for many years listening to my colleagues on the other side of the aisle complain about New York State expenses in Medicaid, and I have done research showing that in fact we do have one of the more expensive states for Medicaid programs.

And so I believe that we did need

to reform the system and that we did need to use our money more efficiently and more effectively, because the important measure and outcome of any changes we make this year will be what will be health outcomes of New Yorkers.

Because this isn't an issue of which hospital; they're all sharing pain. But we have to focus in a tough economic time on using the money most effectively to preserve the health of all New Yorkers.

And so I'm proud that in this bill we restored 69 percent of the Governor's proposed cuts to hospitals. And we assured that there was 40 percent more money than originally proposed for suburban and upstate hospitals. And we helped protect public hospitals. And we increased the funds for clinics. And we have a $75 million transition funding pool to address some of the concerns that were raised on the floor today.

And we keep our commitment to the HEAL program coming out of the Berger Commission to provide $370 million in capital

and operating support for the communities who may have been impacted by the Berger Commission. And we restored 43 percent of the Governor's cuts to nursing homes. And we gave them more time to work with us to figure out a better model, and a 60 percent restoration for home care. And again, more time to work together as a state to come up with a model.

ACTING PRESIDENT VALESKY: Senator Krueger, how do you vote?

SENATOR LIZ KRUEGER: I vote yes, Mr. President. Thank you.

ACTING PRESIDENT VALESKY: Senator Liz Krueger to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator C. Kruger.

ACTING PRESIDENT VALESKY: Senator Carl Kruger, to explain his vote.

SENATOR KRUGER: Thank you, Mr. President. To explain my vote.

Firstly, I vote yes on this bill.

And just to digress for a moment, I

assume that all of my colleagues realize that since 2007 we've had the pleasure in this house of passing an on-time budget. Well, it costs us in excess of $4 million a day for every day that this budget is late. And the Assembly passed this year's budget after 10 hours of spirited debate.

I would like to remind everyone, while we talk about how much money -- we are in a deficit environment and how much money we are shortchanging those that desperately need our help, our conversation here for each day that it takes brings us further down that pike in excess of $4 million you.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Senator Carl Kruger to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Lanza.

ACTING PRESIDENT VALESKY: Senator Lanza, to explain his vote.

SENATOR LANZA: Thank you, Mr. President.

I'm going to read a quote from a newspaper. It says: "Most legislators, let alone the public, have no idea how this spending plan was put together. It was one of the most secretive deals ever concocted in Albany, done by three downstate Democrats working behind closed doors. It locked out Republicans and back-pedaled on budget reform that had been made in recent years."

And that was before today. Let's see what they say tomorrow -- as I listen to my good friend Senator Valesky, someone who's touted himself as a leader for reform, sound like a technocrat reading provisions in rules in order to quell this chamber.

You know what? There haven't been conference committees. This has been done in secret. This is our opportunity to explain to the people of New York why they ought to be shackled with the largest tax increase in the history of this state.

Senator Kruger, if you wanted an on-time budget, you had the power to present this budget last week or the week before or

three weeks ago in a way that would have allowed us to have a public vetting of the process and of the result. So it is because of your lack of leadership on that side of the aisle that we are here discussing a late budget.

I have to tell you, Senator Kruger, you said that this was an historic moment. You're right. This is an historically bad moment for the people of this state. I have to go back home -- Senator Krueger, Liz Krueger, you talked about hospitals in your district. We have 500,000 people on Staten Island; only two hospitals. Not a single public health hospital, as you're afforded in Manhattan and in the other four boroughs.

One of those hospitals is on the brink, and in this budget, your budget, they're being cut $1 million. You know where the money is going, Senator Krueger? It's going to your district. It's going to the wealthy hospitals in Manhattan.

To shut down debate I think at this point is a disgrace. The people of Staten

Island should hear why you on that side of the aisle are putting one of their hospitals on the brink of closure.

ACTING PRESIDENT VALESKY:

Senator Lanza, how do you vote?

SENATOR LANZA: I vote no.

ACTING PRESIDENT VALESKY:

Senator Lanza to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Larkin.

ACTING PRESIDENT VALESKY:

Senator Larkin, to explain his vote.

SENATOR LARKIN: You know, yesterday we had ten cadets from West Point here, and we were talking to them about democracy and how it works. And then today, Senator Saland wants to get up and ask some questions, and we shut him off. We're going to send these young men all over the world to teach democracy. Well, if they were here today, they would have seen democracy absent.

This bill -- somebody on the other side of the aisle asked a question outside and it said, "Why are you asking so many

questions?" I didn't hear the full answer, but part of it was because they don't want to explain it to us.

It's just like some of my colleagues have said, we cut down enough trees with this paperwork, but we've done nothing to inform the public.

Senator Duane took objection to my questioning him with regard to tricks. There's no tricks. The trick is on that side of the aisle and on the second floor and the other part of this building, when you did it all in secrecy. If you'd done it out in the open, people would have seen what you were doing.

In 2007 we said we're not going to do it anymore. You folks on that side of the aisle now were big, big for it, pounding the drums for it. You got it. You don't know how to use it. You just want to tell the public believe us, believe us, believe us.

I asked the question three or four times at meetings: How much stimulus money do we have? How much stimulus money do we have

for health? I'm told it's in the bill. Well, I've read some of the bills and I've listened to talk outside by people from Congress, and I've added up the number. The Governor says we got 25, Shelly says 25, Malcolm says 25. Schumer says 25. Gillibrand says 25. Add these numbers up, they may be closer to 35.

What are you ashamed of?

ACTING PRESIDENT VALESKY: Senator Larkin, how do you vote?

SENATOR LARKIN: I vote no. I'm ashamed.

ACTING PRESIDENT VALESKY: Senator Larkin to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator LaValle.

ACTING PRESIDENT VALESKY: Senator LaValle, to explain his vote.

SENATOR LaVALLE: To explain my vote.

This morning we started our deliberations with great collegiality, great spirit. It's interesting how in a few hours it evaporated.

I would hope that on subsequent bills that all of the members who were sent here and elected by 300-or-more-thousand people will be allowed to represent the frustrations, the hopes of the people that we represent. I have never received more emails and phone calls on a budget bill, on a budget, than I have this year.

I heard Senator Liz Krueger talk about all these percentages that we added. All can I tell you, Senator Krueger, is that when I looked at this and the impact on the hospitals in the First Senate District, a suburban district, I will tell you, it has a great impact.

We saw a commercial or commercials by the hospital industry of the family driving with a little girl in the back who is sick, and as they pulled up to the hospital, there was a sign: "Closed."

You heard Senator Lanza. I could tell you that the hospitals in my district are hanging on by a thread. And I am representing the people of my district by voting no.

ACTING PRESIDENT VALESKY: Senator LaValle to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Leibell.

ACTING PRESIDENT VALESKY: Senator Leibell, to explain his vote.

SENATOR LEIBELL: Thank you, Mr. President, to explain my no vote.

There was a point in time not too long ago that this chamber was considered to be among the greatest deliberative bodies on earth, when there was a vast and free exchange of thoughts and ideas.

This is in some sense a fitting conclusion to this terrible budget process, One that has been conducted in complete secrecy. I daresay most of my colleagues on the other side of the aisle knew as little as we did about this process and about what was in this budget. Three men in a room, three Democrat men in a room, three Democrat men in a room from New York City.

And now you want to shut down

debate. And you do this a day after the State Comptroller, a Democrat, came out and said this budget is wrong, this budget is flawed, this budget is bad for the State of New York.

There's not a member in this chamber that doesn't have today a hospital at risk, a hospital at risk of closing in a state with an aging population. We should be debating these issues fully today, tomorrow, the next day if necessary.

And Senator Lanza said it best of all. If time is of an issue, this budget could have been brought forth by this Majority some time ago, some weeks ago, but you chose not to do it. You choose now to shut down debate. Not very American.

I vote no, Mr. President.

ACTING PRESIDENT VALESKY: Senator Leibell to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Libous.

ACTING PRESIDENT VALESKY: Senator Libous, to explain his vote.

SENATOR LIBOUS: Thank you, Mr. President.

I rise to explain my vote with great disappointment. I will be voting no on this for two reasons.

The first reason is that I am extremely disappointed that my colleagues from the other side of the aisle chose to shut debate down on an issue that is as important as healthcare and access to healthcare to all of the citizens of New York State. I've listened to them over the years talk about the importance of healthcare to their constituents and the importance of access to healthcare. But I'm disappointed because they will not allow us to point out, as we have on this floor, the inadequacies in this proposal, the number of people -- and I speak for upstate New York on this point -- that will have no access to healthcare and have to reduce not only the number of beds but the number of employees in upstate areas.

Healthcare is an extremely critical part of this budget. It is important to my

constituents in the Southern Tier and throughout all of upstate New York.

And as pointed out by my colleagues Senator Hannon and others today, there are flaws in this budget, that money is not flowing equally, as it has in the past, to all facilities, And that particularly, as I speak as an upstate representative, that the upstate hospitals are being cheated and they're being taxed. They're going to have to reduce the number of beds, they're going to have to cut employees. And that means less access to healthcare for the citizens of New York.

Mr. President, I vote no.

ACTING PRESIDENT VALESKY: Senator Libous will be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Little.

ACTING PRESIDENT VALESKY: Senator Little, to explain her vote.

SENATOR LITTLE: Thank you, Mr. President.

I too am surprised to be here today

and have a debate cut off. We're cutting off debate on bills that spend more money than this state has ever spent, at a time when people in my district, and I am sure in yours, are losing their jobs, are worried about how they're going to get by, how they're going to educate their children, just how they're going to be able to provide.

This side of the aisle has presented several options for other cuts, for ways of funding, doing what's absolutely necessary -- public protection, roads and bridges, healthcare.

I represent an area larger than Connecticut and Rhode Island in my Senate district, and we have six hospitals left. Their profitability, if ever, never reaches more than 1 percent, and most of them are in the red. We're putting them farther in the red, and we're making it more difficult to access emergency rooms and hospital care.

It is good to go for preventive care, absolutely, more primary care. But let's not focus and target hospitals and make

them a thing of the past in New York State.

I vote no.

ACTING PRESIDENT VALESKY: Senator Little will be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Marcellino.

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

SENATOR MARCELLINO: Thank you, Mr. President. I rise to explain my vote.

Yesterday I commented on the process and indicated the chaos that we are in, and I say it again. This process is chaotic. We are shutting down debate. We had one speaker left who would have asked a few questions, and we would have been voting by now on the bill, would have been long gone, probably would be in debate on the other bills going in now. Instead, we're still explaining our votes, and we're going to do it for a while longer.

This is wrong. NYPIRG, Blair

Horner of NYPIRG said the process that we've been going through in the budget this year stinks to high heaven. Other advocates for reform have said this process leaves a lot to question and leaves a lot to be desired.

This is not a good thing to do here. We're not doing the right thing by the public. We talked about -- Senator Duane, in response to a question on nursing home cuts, said that we restored 43 percent, we increased spending by 43 percent over the proposed budget. What he didn't say was that's a 57 percent overall cut in funding to the nursing homes. Shouldn't they know that? Shouldn't that be exposed? Shouldn't that be talked about? Shouldn't that be debated?

I thought that's what we were here to do, to express ideas and to debate concepts. Instead, we shut off debate. Instead, we don't reform. If this is reform, you know, my God, where are we?

This is wrong, and I vote no on a very, very bad bill.

ACTING PRESIDENT VALESKY:

Senator Marcellino to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Maziarz.

ACTING PRESIDENT VALESKY: Senator Maziarz, to explain his vote.

SENATOR MAZIARZ: Thank you very much, Mr. President.

I will associate my comments with those of Senator Ken LaValle, who got up and pointed out the fact that this morning the Republican Conference extended a courtesy to the Democratic Conference to allow a member who was in distress to be able to be recorded and to have her opinion count and matter here today.

And I thought that we had taken at least a little bit of a leap forward. So it's sort of distressing that people want to hurry up and get out of here.

I rather suspect, Mr. Chairman, that now there will be other procedural moves that will probably slow us down even more.

But I want to vote in the negative,

Mr. Chairman, because Roswell Park Cancer Institute -- which I think is one of the best hospitals in all of New York State -- just recently announced that they were laying off 30 members of the Public Employees Federation.

With the cuts that are contained in this budget to Roswell Park, they will probably have to lay off even more members. So if you vote for this bill, you're voting to lay off employees at Roswell Park Cancer Institute.

I will also be voting in the negative because by voting for this bill, by voting for this bill you are voting to cut hundreds of thousands of dollars in funding to Golisano's Children's Hospital in Rochester. Hundreds of thousands of dollars to Galisano's Children's Hospital in Rochester will be cut if you vote yes on this bill.

Mr. President, I'm not going to vote to lay off employees at Roswell Park Cancer Institute, and I'm not going to vote to cut the funding to Galisano's Children's Hospital. I vote in the negative.

ACTING PRESIDENT VALESKY: Senator Maziarz to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator McDonald.

ACTING PRESIDENT VALESKY: Senator McDonald, to explain his vote.

SENATOR McDONALD: Thank you, Mr. President.

I sadly vote no too. In my district, which is the Greater Capital Region, I worry about my rural communities. These urban hospitals stretch way beyond the cities and streets that they serve immediately. It's not been a good decade or decades for the rural communities in upstate New York. A few years ago they closed Mary McClellan Hospital on the border of Vermont; it not only took in New Yorkers but Vermonters. It took in several tourists -- skiers, people visiting our great, beautiful state.

Rural people in this state are the poorest people in this state. They're the ones who have the biggest problem, and that

problem is distance. Every place they go is a problem. We tax their gas, we eliminate hospitals to the point like they did with Mary McClellan. We turn around and make it more difficult for the urban hospitals to relationship out there.

More people, more people in need, more people who need our help in every aspect are cut off. That's what I see here. I don't like it. Now, I've been supportive of urban areas, suburban areas. I grew up in an urban area. That isn't the point. The point is we're all New Yorkers. And every year I'm here, the schism between the urban and the rural gets greater. It's not fair.

I don't think it's intentional; I think it's benign. They forgot about us. They forgot about those people out there. I don't think it's mean-spirited. Nevertheless, it is what it is.

They can't tolerate it anymore. Whether it be the cost of gasoline and transportation or emergency services, schools being cut or closed, or now hospitals, nursing

homes, you can't do this to these people. You got to reconsider this. You got to come back. There's no reason for us to have a spring vacation. I don't want to say that to my people when we go back with these type of cuts. Please, come back here, work with us.

ACTING PRESIDENT VALESKY: Senator McDonald, how do you vote?

SENATOR McDONALD: I vote no. Thank you.

ACTING PRESIDENT VALESKY: Senator McDonald to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Monserrate.

SENATOR MONSERRATE: Aye.

THE SECRETARY: Senator Montgomery.

ACTING PRESIDENT VALESKY: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President. First I want to say I think you're doing a fine job serving as our

temporary president, and I'm very proud of the work.

And of course I remember there were many times when Senator Dean Skelos was sitting in the chair that Senator Klein is sitting in, and we had debate cut off because we had gone over the rules. And so I'm very amused.

And I'm also very saddened, because we have reached a new low. I hear all of this assaultive language and name-calling. This is unfortunate. We have never had this. Every single budget that has ever come before us, there has been some pain. Sometimes I have voted no. Most times I vote yes, because I understand that we often have to make difficult decisions.

And this year is no different, except we had to make bigger decisions that none of us wanted to make.

So I'm surprised. This takes me aback. I've never heard this kind of name-calling of members at each other in a debate.

Mr. President, there are certainly a number of aspects of this budget that are very painful for my people. All of us love our constituents, else we would not be here. We would not spend the number of hours that we do working on their behalf, in our districts and here.

But this is one time that I'm going to certainly proudly vote yes, because we have to get this budget done so that the people in our state can begin, our state itself can begin to go forward and move beyond the point that we are now.

I vote yes.

ACTING PRESIDENT VALESKY: Senator Montgomery will be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Morahan.

ACTING PRESIDENT VALESKY: Senator Morahan, to explain his vote.

SENATOR MORAHAN: Thank you, Mr. President.

I didn't plan to explain my vote

initially, but with the turn of events here this afternoon in closing down debate, especially closing down a debate on a budget that was done in secret, no conference committees, as outlined by the law, done by three people from one part of the state -- when debate and enlightenment would have been most helpful for all of those who represent our constituents as best we can.

And I hear Senator Liz Krueger talking about all the good stuff in the budget, in this particular bill. And that's good, but I remarked that in the other house, notwithstanding how good this bill is, 23 Democrat Assemblymembers voted against it.

Senator Valesky, two of your Assemblypeople, Democrats, voted against this budget. Senator Stachowski, four of your Democrat Assemblypeople voted against this great bill. And I can go on. Senator Foley, same thing. You had two of your Democrat Assemblypeople vote against this bill.

So maybe the bill isn't as great as you have been told it is. But for a lot of

other reasons that were outlined by my colleagues, I'm casting my vote in the negative.

ACTING PRESIDENT VALESKY: Senator Morahan to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Nozzolio.

ACTING PRESIDENT VALESKY: Senator Nozzolio, to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr. President.

I am deeply concerned with this proposal, as the small rural hospitals are the lifeblood of our community. By this legislation, $460 million in seven pools of money to be distributed later, without criteria, without discussion.

First you ended the leaders' meetings in any kind of open way, three men in a room from New York City. Then you excluded our Minority Leader from those meetings. Then you all violated the law that you supported just two years ago by refusing to allow any

open conference committee meetings so that none of these proposals could be vetted appropriately. Where's the transparency? Where is the abiding by the law?

Senator Kruger, the chairman of the Finance Committee, mentioned the Assembly. I want to follow up on that. What are 23 Democrats in the Assembly telling us about this proposal? They had the courage to stand up to the Governor, they had the courage to stand up to their leadership and vote against this proposal. Maybe they debated it longer, or maybe they had more knowledge about where those processes went.

But when Bradley, Latimer, and Paulin in Senator Oppenheimer's district voted against this, when Christensen, Destito and Magee voted against it from Senator Valesky's district, four Assemblymen in Senator Stachowski's district, and two Assemblymen in Senator Foley's district, they are saying something very clearly. We should be listening.

And when you talk about the

Assembly, they at least had the courage to engage in bipartisanship. I never thought I'd hear the day when they did and this Senate did not.

Mr. President, I vote nay.

ACTING PRESIDENT VALESKY: Senator Nozzolio to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Yes.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Aye.

THE SECRETARY: Senator Padavan.

ACTING PRESIDENT VALESKY: Senator Padavan, to explain his vote.

SENATOR PADAVAN: Thank you, Mr. President.

First, Senator Montgomery -- what happened to you? I wanted you to know I love you dearly, but you're wrong.

This side of the aisle, when it was on that side of the aisle, would frequently

extend the debate on consent on important issues. In my 36 years prior to this year, that was done frequently. And it was done because we were dealing with an important issue. And I can't think of anything more important than the budget and certainly this part of it. So to say that we have cut off debate willy-nilly is just wrong.

In Queens County we had two hospitals within the last two months shut town, St. John's Hospital and Mary Immaculate Hospital. Full-service hospitals. Hundreds of employees gone -- nurses, doctors. But more importantly, all of the patients who used those facilities are now impacting on other hospitals in the county, a county of over 2 million people, where the population, the bed ratio is very, very much out of skew when you compare it to other parts of the city such as Manhattan. Totally inadequate.

Now those other hospitals that remain in that area, such as New York Hospital-Queens, Flushing Hospital, Jamaica Hospital, the heads of those facilities have

contacted me, and I assume they've contacted other legislators from Queens and pointed out the impact that those new demands are having on them with already stretched resources. And they're hurting.

And they're telling us directly that if we pass the budget the way it is before us, they will have to let people go. They will have to curtail their services. So they're getting a double-whammy. More people coming to them because hospitals have shut down, and fewer resources to do the job that they were previously doing.

ACTING PRESIDENT VALESKY: Senator Padavan, how do you vote?

SENATOR PADAVAN: Senator, I'll vote no.

ACTING PRESIDENT VALESKY: Senator Padavan to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Parker.

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

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

Senator Padavan, with all due respect, you're actually wrong. And as my grandmother said, the truth of the matter ain't in ya if you're going to stand here and say that the former Republican majority never cut off debate.

The atrocities that the former Republican majority committed against us are well documented, well documented. In my two minutes, I wouldn't even waste it to go through all of the things that were done. So, you know, to use Senator Saland's favorite word, the chutzpah that's being shown today is monumental.

That being said, I want to congratulate Senator Carl Kruger and Senator Thomas Duane for their hard work on this bill. This is not a perfect bill, but nothing that we do in this body is perfect. But we have done the best that we could, given a situation, Mr. President, that we have inherited.

Let's get the record straight again. This bad budget is the result of a bad economy, a contracting economy that was created under 43 years of Republican regime in this Senate chamber, of another 12 years of Republican regime in the second floor in the Executive Chamber, and eight years of a Republican regime that has flushed our economy down the toilet with President Bush in Washington. And here we are today trying to make amends.

And I congratulate all my colleagues who are voting for this and understanding that we are taking the steps forward to put us on a responsible and sure footing for the future of our communities and our state.

I'll be voting aye.

ACTING PRESIDENT VALESKY: Senator Parker to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Perkins.

SENATOR PERKINS: Aye.

THE SECRETARY: Senator Ranzenhofer.

ACTING PRESIDENT VALESKY: Senator Ranzenhofer, to explain his vote.

SENATOR RANZENHOFER: I wonder if some of other freshman Senators are as amazed as me listening to some of this debate here. Listening to the fact that debate is being cut off because, well, we did it to you or you did it to me, it looks like children in the playground who need adult supervision. It's really quite embarrassing.

Two, again, I did not expect when I came here to having most of the work done by the Senate done in secret. I can't believe that I'm standing here on the floor and saying that, well, we're delaying this and it costs $4 million a day -- when we were here for two months and didn't do a damn thing. How much money did that waste?

It's just amazing to me that politics is being played with healthcare. And I reference what was said before about the effect of this on Roswell Park. When we were

talking about issues during the campaign last year, Roswell Park and the Buffalo Medical Campus is key to our area. Well, it's so key that every single Assemblyman, Republican and Democrat, representing Western New York voted against this bill -- DelMonte and Schimminger, in my district; Gabryszak, Hoyt, Schroeder, Peoples. These are Assemblymen who would always vote a healthcare budget, and didn't. And the reason that they didn't is because they realize how badly it hurts Roswell Park and our area.

When the Governor himself says that he doesn't think his own budget is balanced, when the Comptroller says that the spending is not sustainable, I can't stand here and vote for a healthcare budget which is unbalanced and which kills Western New York. So I will vote no.

ACTING PRESIDENT VALESKY: Senator Ranzenhofer to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Robach.

ACTING PRESIDENT VALESKY: Senator Robach, to explain his vote.

SENATOR ROBACH: Yes, Mr. President. You know, I talked a little bit earlier on content. Other colleagues have covered hospitals. We talked about GME, which brings doctors, the imbalance of reimbursement to upstate nursing homes to New York City. That's enough.

But I have to tell you, you know, the debate, this issue of the process is really deplorable. My father used to say to us when we were young and we did something wrong and tried to defend the indefensible or bad action: When you're in the hole, stop digging. I suggest my colleagues on the other side listen to my father.

I think it's a little bit of spin. I don't know what happened in the past. I think there's some inaccuracies. But if that's what happened, that's wrong. We're here now, today, on important stuff. This is bad. You are the Majority. You are driving the ship. This process, this outcome, is the

Titanic. You are the steerers of it, nothing more, nothing less.

You leave me no choice but to vote no on this bill. And I hope, rather than get worse, we'll learn from it. Privately many of you have told me this was a terrible process. When I see you cutting off debate and doing other things, I'm wondering, is this the road we're going to continue on, or are we really going to try to have a better process?

Because I've got to tell you, forget about this moment of muscle-flexing and arrogance. That might win now, but the public, the media, and nobody over here is going to go away. They're going to ask. Someday you're going to have to answer the question how we're spending that money, where it went, where it goes.

We could have avoided this so easily with a better process, and if people just followed what they said they were going to do before the election instead of doing something after. And I think that's sad, sincerely.

So here we are, no time to put in for our constituents, no area to answer the question, no opportunity. And now it sounds like people over there are upset, people over here are upset. But the biggest losers, and this is the shame, is the public. It's easy to vote no on this one.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Senator Robach to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Saland.

ACTING PRESIDENT VALESKY: Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, earlier this year you may recall there was an exchange between myself and Senator Smith in which I asked him to yield and he refused. And I was quite taken aback by it. It was something that was unprecedented, a discourtesy which I had never displayed to any member of this chamber.

To his credit, Senator Smith came

up to me, our Majority Leader, came up to me afterwards and apologized and said that wouldn't happen again.

Today I was effectively muzzled, a discourtesy which I have never demonstrated to, I believe, any colleague in this house, either side of the aisle, whether it was as a member on the floor or as a chair.

Nobody can contest the fact that this has been the most secretive of secretive processes. It's absolutely impossible. There's a legitimate reason for the debate. Two big issues, biggest issues, better than 60 percent of the budget, health and education. Why would you want to stymie debate on a health bill that takes up such a large portion of our budget?

I have a hospital that just closed the majority of its mental health beds and is now being asked to take in excess of a $2 million hit. The hospital will be gravely threatened.

This is a horrible, horrible piece of legislation. And what I condemn even more

is what you have done institutionally. You have given up your legislative authority by creating these pools and giving it to the commissioner to determine how they shall delegate it. You have weakened this institution again.

And you sit there lamely when every single one of these budget bills, including this budget bill, had a number of Democrat votes in opposition. In some instances, 20 or more. Is there nobody among you who agrees with your colleagues in the Assembly? Are you marching in unison, holding hands, and taking us to the brink and then --

ACTING PRESIDENT VALESKY: Senator Saland --

SENATOR SALAND: -- perhaps we'll all jump over together.

ACTING PRESIDENT VALESKY: Senator Saland, how do you vote?

SENATOR SALAND: I vote, quite obviously, in the negative. And strongly resent being muzzled in the fashion in which I was muzzled by the leadership of this house.

ACTING PRESIDENT VALESKY: Senator Saland will be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: Yes.

THE SECRETARY: Senator Savino. Senator Savino.

SENATOR SAVINO: Yes.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes.

THE SECRETARY: Senator Serrano.

ACTING PRESIDENT VALESKY: Senator Serrano, to explain his vote.

SENATOR SERRANO: Thank you, Mr. President.

You know, all my colleagues know that I don't get up every five minutes on the floor here. And I think you all know what I'm about, and I work hard to try to find consensus and common ground.

And my appeal is that we try a little bit to ratchet down some of the anger

in this chamber. I think it's important that we try to find some common ground, and with the firm understanding that this entire budget is not an easy pill to swallow for anyone. I mean, this is an unprecedented deficit of $17 billion. Any way you slice it, it was not going to be something that was going to be easy for us to handle.

But I think it's important that we try to find a little bit more civility, a little bit more of an opportunity for us to engage one another in debate, as we have over these past few days, in a way that is a bit more constructive and meaningful.

And as I sit here, I -- fortunately, I have a picture here of my son. And I miss him terribly. But I know that I'll get back to him soon enough. I know this is where I need to be. But looking at this picture reminds me that we are not here to fight one another, we're here to fight for our children. And I hope that that's what we engage with for the rest of this debate.

Thank you. I vote yes.

ACTING PRESIDENT VALESKY: Senator Serrano to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Seward.

ACTING PRESIDENT VALESKY: Senator Seward, to explain his vote.

SENATOR SEWARD: Thank you, Mr. President.

Building on the remarks of my colleague Senator Serrano, I want to just point out that when it comes to healthcare issues, it's not a Republican issue, it's not a Democrat issue, it's an issue that impacts every single New Yorker, including Senator Serrano's son and all of our families and every single New Yorker.

And let's face it, when it comes to our hospitals and our other healthcare facilities across this state, they are really the lifeline in our community for the people who need medical care and attention. And speaking for the rural areas, that's particularly true, because very often when a

hospital or nursing home goes out, it may be 40, 50 miles, sometimes more, before you come to the next healthcare facility.

So the financial survival of hospitals and healthcare facilities are absolutely vital. These are very, very important issues.

Now, just as our hospitals are lifelines in our community, the federal stimulus money -- now, I have some mixed filings about what's going on down in Washington, but it is what it is. And the federal money can be very helpful to us over the next 27 months.

And questions about how that money is going to be used, particularly in the healthcare area, billions of dollars coming into New York to help us with our Medicaid and other healthcare expenses -- where that money is going, how it's being used, these are legitimate questions.

There's a better way than hitting our hospitals and healthcare facilities with a gross receipts tax. We're going back to that?

The so-called sick taxes? Cuts? Raising new revenues, the HCRA surcharge increase that's going to increase health insurance costs for New Yorkers? If you go in and pay the bill yourself, you're paying more right out of your own pocket. There's got to be a better way.

ACTING PRESIDENT VALESKY: Senator Seward, how do you vote?

SENATOR SEWARD: I vote no.

ACTING PRESIDENT VALESKY: Senator Seward to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Skelos.

ACTING PRESIDENT VALESKY: Senator Skelos, to explain his vote.

SENATOR SKELOS: Thank you, Mr. President.

I rise in opposition to this bill.

And I should point out that when I was sitting over there, Senator Montgomery, there were many occasions where Senator Duane asked that we extend the opportunity to speak, and that was granted, especially when it was on important issues.

You know, earlier this morning Senator Hassell-Thompson was here, and we could have shut down the process in Albany because you would not have had a sufficient amount of votes to pass any of these bills. And after a conversation with Senator Smith, we both decided that that was not in the best interest of the people of the State of New York.

We rose above it, and right now you're sinking below it, by not allowing us to have the free speech that we should have.

This budget was negotiated behind closed doors. You know it. You know it. Senator Dilan, I didn't see you out here debating the transportation issues yesterday, because you probably had nothing to do with it.

SENATOR DILAN: Excuse me, sir. Point of order.

ACTING PRESIDENT VALESKY: Senator Dilan, why do you rise?

SENATOR SKELOS: I'm explaining my vote. You can explain yours --

SENATOR DILAN: Point of personal privilege. Point of personal privilege.

SENATOR LIBOUS: Point of order. Senator Skelos is explaining his vote, and I don't believe a Senator can question at this point.

ACTING PRESIDENT VALESKY: Senator Skelos, please continue to explain your vote.

SENATOR DILAN: Point of personal privilege.

ACTING PRESIDENT VALESKY: Senator Dilan, state your point of privilege.

SENATOR DILAN: I expect an apology, sir.

SENATOR SKELOS: If I could continue explaining my vote.

ACTING PRESIDENT VALESKY: Senator Skelos, please explain your vote.

SENATOR SKELOS: Senator Valesky --

SENATOR DILAN: Idiot.

SENATOR SKELOS: -- I'd like to read a quote from you. It was in the

Post-Standard, March 23, 2008.

"As an advocate of reform, and a former member of the media, I believe openness is more than just a cure for what ails us, it's a core principle to incorporate into every aspect of our democracy. Our leaders in Albany seem to have lost sight of this principle in recent decades."

Now, since you've become the vice president pro tem of the Senate, I'd like to read to you what the same paper is saying.

SENATOR DILAN: I expect an apology.

SENATOR SKELOS: I apologize.

"In endorsing State Senator David Valesky for a third term in October, this paper labeled him a poster boy for reform of state government. Well, one horrendously dysfunctional budget process later, it's time to strip Valesky of his poster-boy status and put him up on the wall of Albany dysfunction with the rest of his go-along, get-along colleagues."

Unfortunately -- and many of the

names of the Assembly Democrats that had the courage to vote against some of these bills, most of them have come from upstate communities --

ACTING PRESIDENT VALESKY: Senator Skelos --

SENATOR SKELOS: -- because they understand --

ACTING PRESIDENT VALESKY: Senator Skelos, do --

SENATOR SKELOS: Are you cutting me off?

ACTING PRESIDENT VALESKY: Senator Skelos, I have extended you the courtesy as the Minority Leader of this house --

SENATOR SKELOS: Well, I'd like, as the Minority Leader --

ACTING PRESIDENT VALESKY: -- to go well beyond the two-minute limit.

SENATOR SKELOS: I would like, as the Minority Leader --

ACTING PRESIDENT VALESKY: I'm asking you to explain your vote -- I'm asking

you how do you vote.

SENATOR SKELOS: -- to have an opportunity to continue to be heard.

ACTING PRESIDENT VALESKY: I have extended --

SENATOR SKELOS: Are you calling me out of order?

ACTING PRESIDENT VALESKY: I have extended a courtesy to you as the leader of the Minority Conference in this house to go well past the two minutes and the two-minute rule. I am asking you, how do you vote on the bill that's before us?

SENATOR SKELOS: You're muzzling my opportunity to speak --

ACTING PRESIDENT VALESKY: I'm asking you how do you vote, Senator Skelos.

SENATOR SKELOS: -- on behalf of this conference.

ACTING PRESIDENT VALESKY: I am enforcing the rules of the house. How do you vote on the bill before us?

SENATOR SKELOS: Is there an opportunity at times for -- that I've extended

to members on your side of the aisle when I was the deputy majority leader to extend the opportunity as a courtesy to speak, whether it was David Paterson --

ACTING PRESIDENT VALESKY: Senator Skelos, I have extended that courtesy to you beyond other members who are here.

SENATOR SKELOS: -- you're not allowing me to complete my thoughts.

ACTING PRESIDENT VALESKY: I am asking you to explain your vote.

SENATOR SKELOS: I am.

ACTING PRESIDENT VALESKY: I'm asking you to conclude the explanation of your vote so that we can continue. We're well past the rule.

SENATOR SKELOS: You're saying I can continue to speak?

ACTING PRESIDENT VALESKY: I'm asking how do you vote, Senator Skelos?

SENATOR SKELOS: I vote no.

ACTING PRESIDENT VALESKY: Senator Skelos to be recorded in the negative.

The Secretary will continue to call

the roll.

THE SECRETARY: Senator Smith, aye.

Senator Squadron.

SENATOR SQUADRON: Yes.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Yes.

THE SECRETARY: Senator Stewart-Cousins.

SENATOR STEWART-COUSINS: Yes.

THE SECRETARY: Senator Thompson.

SENATOR THOMPSON: To explain my vote, please.

ACTING PRESIDENT VALESKY: Senator Thompson, to explain his vote.

SENATOR THOMPSON: I think it's important -- I wasn't going to speak, but I think it's important --

ACTING PRESIDENT VALESKY: Senator Smith, why do you rise?

SENATOR SMITH: Just a point of

order for a moment, Mr. President.

Colleagues, I know that we've been going through vigorous debate. I understand that there is concern on everybody's side. This morning Senator Skelos and his colleagues extended an important privilege to us with regard to one of our colleagues, and that is going to help us finish this budget, whether it is today or tomorrow.

Therefore, I think it's very important that we still maintain that level of civility in the house. And what I would like to do is extend Senator Saland the opportunity to finish his questions. And then if you, through Robert's Rules, want to dispense with the roll call, let him finish and then come back and continue the roll call, or finish and let him finish.

But we have to get back to where it was this morning. And I understand that tensions is high. We do want to finish this off. We are all colleagues. And again, I think this morning we were in the right place.

And I'm not saying that you can't

debate the bill and be aggressive and, you know, have your point to be raised. But I do want to make sure that we keep that modicum of professionalism in this house.

ACTING PRESIDENT VALESKY: Senator Smith, are you moving to withdraw the roll call?

Senator Skelos, why do you rise?

SENATOR SKELOS: Mr. President, I'd just like to ask Senator Smith whether he was explaining his vote or just extending a courtesy to Senator Saland. And I'd love to ask him whether it's an opportunity now on the rest of the bills, when they come up, to waive the rules concerning the time limits on debate of the various bills.

ACTING PRESIDENT VALESKY: Senator Smith.

SENATOR SMITH: I will leave that to the president who is presiding as the bills are moving forward.

I just believe at this point, on this particular matter, it is slightly moving in the wrong direction. I think that we will

be able to make that decision as we move forward. And I'm very open to accommodating.

ACTING PRESIDENT VALESKY: Pursuant to Senator Smith's motion, the roll call is withdrawn.

Calendar 133 is back before the house on the controversial calendar.

And, Senator Saland, if you wish to continue to debate Calendar 133, the floor is yours.

SENATOR SALAND: Mr. President, thank you.

And I would like to personally extend my gratitude to the Majority Leader, Senator Smith, for extending me that courtesy.

I fear we've gone so deeply into the roll call at this point that it may render moot and academic -- if Senator Duane would care to yield, I'll be more than happy --

ACTING PRESIDENT VALESKY: Senator Duane, would you yield to Senator Saland?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT VALESKY:

Senator Duane yields, Senator Saland.

SENATOR SALAND: Thank you, Senator Duane.

Senator Duane, in the brief explanation I offered with regard to explaining my vote, I made some comments about the pools that have been created that I believe were referred to earlier by Senator Hannon.

In the past, there has been some legislative direction, for lack of any other term. Things have been lined out. Is there a policy reason why we are giving this kind of autonomy to the health commissioner?

SENATOR DUANE: Through you, Mr. President. The pools are, for the most part, intended to ease transition during the reform process.

SENATOR SALAND: If Senator Duane would continue to yield.

ACTING PRESIDENT VALESKY:

Senator Duane, do you continue to yield?

SENATOR DUANE: Yes,

Mr. President.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR SALAND: Senator Duane, taking that at face value, again, should not the Legislature have a role in making those determinations or be part of the process in making those determinations? For example, at times there are MOUs, memoranda of understanding, that accompany these types of pots or pools. Is there any memorandum of understanding required here?

SENATOR DUANE: Through you, Mr. President, the Legislature actually has put parameters around -- I'm assuming we're talking about the -- not the GME/PEP Pool in its entirety, because I don't think anyone wants me to go through all of that again. But if I may --

SENATOR SALAND: I'm sorry, if you'd suffer an interruption --

SENATOR DUANE: If I may finish -- may I --

SENATOR SALAND: I cannot --

SENATOR DUANE: May I finish --

SENATOR SALAND: I cannot hear.

SENATOR DUANE: -- finish, right? Let me finish.

ACTING PRESIDENT VALESKY: Senator Duane, you will be allowed to finish. I'm just asking you both if you could speak a bit louder, and other members keep the noise down to a minimum. Anyone who feels they have to have a conversation can take it outside the chamber.

Senator Duane, please finish the answer to your question from Senator Saland.

SENATOR DUANE: Thank you, Mr. President.

So there's the -- and this is what we have put parameters around legislatively, $24.5 million for what are referred to as the crown jewels of the academic medical centers. The safety net hospitals are receiving a pool of $25 million. The high-Medicaid hospitals are receiving $24.2 million. And, you know, the rural and the non-New York City nonteaching hospitals have access to a pool of

$16 million.

Actually, in fact, the bulk of those pools, we do know where the money is going to be going. And we know how much money is going to be going to each of those places. So I'm not quite sure -- the question, I think, is not really accurate to the situation. But . . .

SENATOR SALAND: Mr. President, would Senator Duane continue to yield?

ACTING PRESIDENT VALESKY: Senator Duane, do you continue to yield?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT VALESKY: Senator Duane yields.

SENATOR SALAND: Senator Duane, could you take me to the page and the lines to which you're making reference in this budget bill?

SENATOR DUANE: Mr. President, it may take me a few minutes to get there. But if you want, I can do that. Is that what I'm being asked to do?

ACTING PRESIDENT VALESKY: Senator Saland has asked for you to identify that particular point in the bill.

SENATOR DUANE: Okay. So it will take me a little while, but I'll do that.

(Pause.)

SENATOR SALAND: To spare Senator Duane having to pore through the bill to look for the passage, what I'm really looking for is the language that basically ensures the role of the Legislature, the role that we've had in the past in dealing with these funds. If he could just identify it for me and basically for this house, that certainly would resolve one of the issues that I have.

ACTING PRESIDENT VALESKY: Senator Duane. Senator Duane. Senator Duane, Senator Saland has restated his question. Would you care for him to repeat that question in lieu of finding the specific reference in the bill?

SENATOR DUANE: You know, I'm often like a dog with a bone. Does that mean you want me to stop pulling it out?

ACTING PRESIDENT VALESKY: Senator Saland, would you please restate your question for Senator Duane?

SENATOR SALAND: What I was asking of Senator Duane is to merely identify the language that says that this institution is not forgoing its ability to have control over these pots, as in the past we have frequently done with things such as memorandums of understanding. Some type of limiting language that enables us to say that we still have the ability to be part of the process when it comes to the distribution of these dollars.

SENATOR DUANE: Through you, Mr. President. Of course, we haven't gotten up to the Article VII part, so that's why it wasn't on top of the pile. But I'm going to, now that I've found that, even though -- is it all right for me for go to Article VII even though we're not on it yet? I don't want to break any rules.

ACTING PRESIDENT VALESKY: Nor do I wish you to break any rules, Senator Duane.

SENATOR DUANE: And that's why we love you, Mr. President.

ACTING PRESIDENT VALESKY: Senator Saland, is your question specifically related to a bill that is not before the house at this particular time? Or is it your understanding that your question is related to the bill that's on the floor?

SENATOR SALAND: I believe my question is related to the bill.

The bill appropriates funds into certain pools. I'm using the term that was used by both you and Senator Hannon. My question is to what extent we have been willing to forgo our power, the institutional, legislative institutional control over those funds. Are they subject to a memorandum of understanding? Are they subject to some language limitations?

If you're telling me they're in another bill --

SENATOR DUANE: Through you, Mr. President. It's in here, and we're not up to this. Although we did, just for

clarification -- and I guess -- I mean the precedent sort of was set because we did allow Senator Hannon to use the Article VII language, and so -- but you are in charge, Mr. President, so I am going to await your ruling on whether or not I can reference the Article VII language to answer the Senator's question on the legislative language.

ACTING PRESIDENT VALESKY: Senator Duane, in order to provide as much flexibility as possible, I would ask that you answer Senator Saland's question. If that means that you have to refer to a bill that is scheduled to come before this house later today, then we will give you the opportunity to find that answer so that you can answer Senator Saland's question at this time.

SENATOR DUANE: Thank you, Mr. President. Although it will take a moment for me to actually go through it, but I'll find it.

(Pause.)

SENATOR DUANE: Okay, Mr. President, here we go. "Notwithstanding

any inconsistent provision of this section, Section 2807-w of this article, or any other contrary provision of law, and subject to the availability of federal financial participation for periods on and after May 1, 2009, funds as hereinafter described shall be reserved and set aside and distributed in accordance with the following" --

ACTING PRESIDENT VALESKY: Senator Duane --

SENATOR DUANE: -- (a), for the period May 1, 2009, through December 31, 2009, payment shall be made as follows" --

ACTING PRESIDENT VALESKY: Senator Duane. Senator Duane, can you just identify the page that you are on so that Senator Saland and others who would like to follow can do so?

SENATOR DUANE: Oh, but Mr. President, then, I mean -- we're not up to that.

ACTING PRESIDENT VALESKY: Senator Duane, I would appreciate it if you could identify where you are reading from.

Thank you.

SENATOR DUANE: If everyone goes to -- it's S58B. I know where it is. I know. I just want to say, Mr. President, our staff is amazing and incredibly helpful, but I happen to know exactly where this is once I find the actual Article VII bill. And they do too, but I do too.

Anyway, in S58B, if everyone would turn to the bottom of page 89, starting at 5-b. And if they want to follow along, shall I start over, Mr. President?

ACTING PRESIDENT VALESKY: You can certainly pick up where you left off.

SENATOR SALAND: Thank you, that won't be necessary. I have the page in front of me.

And let me just suggest this is certainly not the appropriate time to engage in the debate on the language that's in here, I would concede that for our purposes. I certainly would have more questions and I assume, perhaps even more appropriately, Senator Hannon may have questions as to the

language that follows at page 90, in which those different pools are enumerated. And I don't wish to start, out of respect to all of my colleagues and the very process, debating what this language means in the bill that isn't before us.

But I thank you for the courtesy of identifying the subject area, and I believe we'll have the opportunity to resume that later today.

If I may, one more question -- well, two questions.

ACTING PRESIDENT VALESKY: Senator Duane, do you continue to yield?

SENATOR DUANE: Absolutely, Mr. President.

ACTING PRESIDENT VALESKY: Senator Duane yields.

SENATOR SALAND: How much was provided in last year's budget for graduate medical education? Lump sum.

SENATOR DUANE: Oh, Mr. President.

SENATOR SALAND: Perhaps one of

the staff members that you just lauded could --

SENATOR DUANE: No, no. No, Mr. President, I can get it myself. If I can't, I know where to turn. But I know. So if you'll all just wait a moment while I pull that up. Although, I'm sorry, now my budget bills are out of order.

SENATOR SALAND: Well, if I may, Mr. President --

SENATOR DUANE: That's okay. Fine, fine, fine. No, no, no, I insist, Mr. President --

SENATOR SALAND: I don't want to interrupt Senator Duane's train of thought --

SENATOR DUANE: I insist.

SENATOR SALAND: If I may, while he's looking for that number, if he could also look for the number for this year's graduate medical education expenditure.

SENATOR DUANE: Oh, I thought I said that before, Mr. President, but I'll do it again.

ACTING PRESIDENT VALESKY: Thank

you, Senator Duane.

SENATOR DUANE: Well, Mr. President, last year -- and as I say, I'm probably more up-to-date -- well, I'm going to risk being less than perfect on this, but I'm sure someone will jump to correct me if that's the case. Last year, in the Hospital Indigent Care Pools, there was $847 million. There were other hospital programs, but I believe that that is the -- I think that's what -- which that is what we are using as part of this year's changes, reforms.

However, on the Medicaid side, it's $1.3 billion. Now, that used a base that was set, I believe, in 1981, and then it trended forward. And then it was distributed as a part of the general Medicaid rates.

SENATOR SALAND: Mr. President.

ACTING PRESIDENT VALESKY: Senator Duane, would you pardon an interruption from Senator Saland?

SENATOR SALAND: Senator Duane, perhaps I wasn't clear in my question. What I'm merely attempting to ascertain is not the

Bad Debt and Charity Pool, but what was spent for graduate medical education in our last fiscal year, the 2008-2009 year, and what we're projecting to spend pursuant to this budget in the 2009-2010 year.

SENATOR DUANE: Through you, Mr. President, is the Senator referring to the Medicaid part or overall?

SENATOR SALAND: Either.

SENATOR DUANE: Well, through you, Mr. President, I just gave what I believed is a pretty accurate -- of the Medicaid. But we actually have no way of knowing, because each hospital makes their own contract with insurance companies. And not only do they not share with us, but they actually can't share it with each other.

So I think what's imprecise is more the -- it's just -- it would be impossible and probably illegal if anybody could answer that question if it was the total amount spent on GME. Medicaid, yes, that's public. But the other is -- for better or for worse, frankly. Because, remember, we used to set the rates in

the state, but now as of -- I think it happened before I came here; I'm not exactly sure what year. But the hospitals, in an artful way to say it, cut their own deals with insurance companies for reimbursement.

SENATOR SALAND: Thank you. Thank you, Mr. President. Mr. President, on the bill.

ACTING PRESIDENT VALESKY: Senator Saland, on the bill.

SENATOR SALAND: I appreciate the time and effort expended in response to my questions by Senator Duane.

I was merely trying to determine what the state spent for GME last year, what it spent this year. I wasn't inquiring into how it breaks down hospital by hospital, nor attempting to invade the contractual processes of any of those hospitals.

Mr. President, I said earlier the two 800-pound gorillas of the budget are always health and education. And we've certainly had the good fortune for a dozen or more years to have somebody who, quite

honestly, has been recognized nationally as an expert on healthcare issues, and that's Senator Hannon.

Not to take anything away from whatever it is that Senator Duane may grow into or evolve into, but the simple fact of the matter is is that in one of the most complicated areas that we deal with, we've been fortunate to have a man who led and who led well and who was always an integral part of the budget process.

This process, as has been acknowledged in every corner of the media world, has been acknowledged in this chamber, certainly has been woeful at best. And I'm being as polite as I can be when I describe it as woeful. These are the kinds of issues that deserved an airing. This is a miniscule issue, but when you're talking about spending tens of billions of dollars in healthcare, you're talking about spending tens of billions of dollars in education, the bottom line is we as an institution failed. Not merely the product that we're presenting, but the process

by which we got there.

I've been in the Legislature for some 29 years, in both houses. And yes, I'm well familiar with the three men in a room. But we attempted, over the course of the past two or three years, in a bipartisan fashion -- and certainly there were many members on the other side of the aisle, now the Majority, who were advocates for reform, as there were members on this side of the aisle who were advocates for reform to open up that process.

And things such as conference committees, open leaders' meetings, certainly provided some amount of transparency. Perhaps not as much as all would have hoped for, but certainly was a very strong beginning and a productive beginning.

What we've seen today is what we can reasonably expect to occur when we return to the dark ages, when we return to the periods in which members are effectively frozen out of the process. I daresay that there are few if any members in this Majority who have had any input or input of

significance into the production of this final product, into the production particularly of this healthcare budget.

Mr. President, I will thank you, I will thank again the Senate Majority Leader, Senator Smith, for affording me the opportunity. My remarks might have been a little more impassioned a half hour or so ago. My concerns are not merely for the product, my concerns are for the process. And my concerns are that we do not abdicate as an institution, regardless of who the majority party may be, our authority, our ability to be decision-makers and policymakers in any process, particularly in the healthcare process.

And I fear that what we have done here, by abrogating our responsibility and our authority -- abdicating, more appropriately -- to the Commissioner of Health, we have in effect left ourselves in a position where we're going to have little or no say in how those monies are going to ultimately wind up being distributed. Unless, of course, I find

some memorandum of understanding language in the Article VII bill.

Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Saland.

That concludes the debate on Calendar 133. The Secretary will ring the bells.

I'd ask the Secretary to return to the roll call. We will open the roll and pick up where we left off.

Those Senators who have not already voted on Calendar Number 133 are asked to return to the chamber to cast their vote. We are returning to the slow roll call.

The Secretary will proceed.

THE SECRETARY: Senator Thompson.

ACTING PRESIDENT VALESKY: Senator Thompson, to explain his vote.

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

First, I want to say that I'm thankful that the Majority Leader did come on the floor to set, I think, a more balanced

tone. I know that in this chamber there's a lot of tension because of not only the budget; I must admit that we have a $17.5 billion deficit. A deficit that many of us are frustrated with, programs that many of us care about, that we're struggling and scraping to keep afloat.

And I can tell you, as someone who's only been here two years, that I would have loved to come into the majority and really have all the bells and whistles many others in the chamber have been able to enjoy.

But I also know that when people are in the majority, whether you're on this side of the aisle or the other side, it also comes with a lot of headaches and responsibility as well. I'm not naive to believe that just because folks were in the majority before, even on the best days and the worst days, that they did not have to make tough decisions.

I believe as well that while I support this budget, that it's a painful budget, but we have to get the budget passed.

And every day that we wait, it does cost us $4 million.

One of the issues that has come up time and time again today is the issue of the rules. The rules have been amended a little bit. I think they will be further amended. But I think we must be mindful of the fact that whether we agree or disagree, that we don't have to level personal attacks.

The issue of the time of the debate has been traditionally two hours, and I think we should continue that process. I believe in Washington, I'm told, it's about two hours as well.

And the rules that we govern under today, while they are not perfect and while they do need to be amended, we must be mindful that we did not create those rules and we are working to improve them. And it won't happen overnight, but you can be certain that we will work to improve them.

ACTING PRESIDENT VALESKY: Senator Thompson, how do you vote?

SENATOR THOMPSON: And so I vote

yes.

ACTING PRESIDENT VALESKY: Senator Thompson to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Valesky.

ACTING PRESIDENT VALESKY: Aye.

THE SECRETARY: Senator Volker.

ACTING PRESIDENT VALESKY: Senator Volker, to explain his vote.

SENATOR VOLKER: Mr. President, first of all, as somebody who has been here for a lot of years, I'd like to start out by what I consider clearing up something.

The Bureau of the Budget always alleges there's some number that if we don't pass the budget on time -- $4 million. We have no idea whether that number means anything. In fact, we've found out in the past, when the budget was delayed, we actually made money.

The truth is that's just -- that's a full-fledged hoax. It comes out of the Bureau of the Budget. It's, by the way, one

reason why some of us voted for Tom DiNapoli, because he didn't have connections with Wall Street and many of those people. I just want to make that clear.

I'm voting against this budget because it hurts my hospitals. I have four public hospitals that are in some trouble. I have a nursing home that may go out of business because of that. There's a whole series of problems that occur because of this bill.

I would like to say, however -- and I forgot to tell you this, Senator Young -- I'm voting for one other person. And if I might just digress for a second.

On this day in 2005, at the age of 70, Senator Patricia K. McGee passed away. And I'd just like to make that statement and kind of dedicate my day to Pat, who was succeeded, of course, by the great Senator Young. A wonderful person, very active in healthcare.

And I'd just like to say that as I vote no.

ACTING PRESIDENT VALESKY:

Senator Volker to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Winner.

ACTING PRESIDENT VALESKY:

Senator Winner, to explain his vote.

SENATOR WINNER: Thank you, Mr. President.

Mr. President, I want to associate my remarks and explain my vote with comments that have been made by Senator Hannon. In particular, Senator Hannon pointed out so effectively what was the real problem with this particular bill, and that is the creation of these pools and the uncertainty as to how we're going to be funding our hospitals going forward.

I have gotten information that a number of my hospitals are going to be very negatively impacted. But I am not comfortable leaving all these millions of dollars over to a health department that's headed by a commissioner that, when the budget was originally submitted, suggested that all of

the cuts that he was proposing to these hospitals wouldn't hurt them, that they were fine, that they had plenty of money.

Now, I don't know if any of you associate your remarks with those of the health commissioner. But for someone who is so out of touch with the financial conditions of the hospitals in the State of New York to be able to make that assertion that our hospitals are in great state in the State of New York, to me doesn't deserve to be handed a bunch of money to make a determination to how he's going to dole it out to help the hospitals that he now has so little knowledge as to how they're performing.

So, my colleagues, you know, to get back to another point that's been made earlier, there were 23 Democrats who had the courage to vote against this bill, knowing full well that it was a lousy proposal, many of whom I think are good, solid representatives that have good judgment.

I just think that we only need one of you to follow that lead and to be able to

do the right thing and go back and renegotiate this budget so that we're not hurting the hospitals and the healthcare industry in this state but we actually could do some things going forward that would be helpful.

This bill is not helpful to our healthcare industry. It will close rural hospitals, it will hurt public hospitals, it will definitely be harmful to upstate New York with regard to healthcare. It will limit access, cost jobs, and be generally a very, very large step backward in healthcare in New York State.

I vote no.

ACTING PRESIDENT VALESKY: Senator Winner to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Young.

ACTING PRESIDENT VALESKY: Senator Young, to explain her vote.

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

I just want the people on the other side of the aisle to understand that this is

devastating to rural healthcare, but especially in Western New York. And we already receive the lowest Medicaid rates in the entire country in Western New York.

HANYS, the Hospital Association of New York State, did an analysis on these numbers that are included in this budget. And what they said was that the hospitals in Western New York are getting a higher percentage of Medicaid cut than the rest of this state. You are making a very dire situation even worse.

And I'd like to echo the remarks of my colleague Senator Winner, because I believe that we will lose services in Western New York. We already had 30 layoffs at Roswell Park. But I also believe that if these cuts go through that we will have hospitals' doors close in Western New York.

One of my hospital administrators called me during this debate. She was in a panic. She said, "Please, do something about this. We are losing $2 million from my hospital. We already are in a deficit

situation. And we serve thousands and thousands of people every single year, and the next closest hospital is an hour away. What are we to do?"

Well, I pose my question to you. What are we to do about this? The right thing to do is to vote no, and I vote no.

ACTING PRESIDENT VALESKY: Senator Young to be recorded in the negative.

And the Secretary will announce the results.

THE SECRETARY: Ayes, 32. Nays, 30.

ACTING PRESIDENT VALESKY: The bill is passed.

Senator Klein.

SENATOR KLEIN: Mr. President, can we please stand at ease for 15 minutes. I know the Minority wants to have a brief conference.

ACTING PRESIDENT VALESKY: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. There will be a brief Minority

conference in 315.

ACTING PRESIDENT VALESKY: Minority conference in Room 315.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 3:04 p.m.)

(Whereupon, the Senate reconvened at 3:45 p.m.)

ACTING PRESIDENT STEWART-COUSINS: Senator Klein.

SENATOR KLEIN: Thank you, Madam President. Before we begin, I just want to say a few words to my colleagues.

You know, I know tensions are high. We've been here for quite some time on this budget bill. But one thing I do want to get across. I understand we're all politicians, but I think we have to be statesmen first. And politics is involved in some ways in all of our lives; we all understand that. But it shouldn't be acted out on the floor.

Clearly, if you're not happy about the process, not happy about the budget, that's certainly fair game here in the Senate.

But of course, to cite once again Senate Rule 9, Section 4(B), and I'll read it: "Members are expected to uphold the highest standards of civility in dealing with other members. Debates should be dignified and lacking in personal invective." If you look up, in Webster's Dictionary, "personal invective," it's personal criticism.

So again, as I said, criticizing the process is one thing, criticizing the specific merits of the legislation. But criticizing individual members is off-limits, and we intend to rule on that as such.

If we can now just take the active controversial list out of order and go to Calendar Number 135, Madam President.

ACTING PRESIDENT STEWART-COUSINS: The Secretary will read.

THE SECRETARY: Calendar Number 135, substituted April 1, Assembly Budget Bill, Assembly Print Number 156B, an act to amend the State Finance Law.

ACTING PRESIDENT STEWART-COUSINS: Read the last section.

Senator Libous, why do you rise?

SENATOR LIBOUS: Explanation on the bill, please.

ACTING PRESIDENT STEWART-COUSINS: Senator Kruger, an explanation of the bill, please.

SENATOR CARL KRUGER: Thank you, Madam President.

At this time, for Calendar Number 135, I will call on Senator Schneiderman to give an explanation. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Thank you, Chairman Kruger.

This is our Article VII bill, and it is accompanied by an appropriation bill for public protection and general government.

In the area of public protection, I have to say this is overall a pretty rough year. And I have spoken about this on various occasions with my counterpart, the distinguished former chair of the Codes Committee, Senator Volker, and I know he will

speak to this.

People who think there are not cuts in this budget should look at public protection. There are some rough cuts in this section of the budget. We are allocating a little over $5.6 billion, which includes over $40 million in federal stimulus money, but we still have had to impose some serious cuts.

Among the most serious, and cuts that I honestly and deeply regret, are a $10 million cut to our local governments that was to reimburse them for jails; $4.3 million in cuts for local probation services; $8.1 million in cuts for parole treatment contracts. We are closing three prison camp facilities, for a savings of $12.8 million. We are closing several annexes, for savings of $9.2 million. You know, this is a tough budget time in the area of public protection.

We do have a significant amount of money that is specifically designated for criminal justice purposes under the American Recovery and Reinvestment Act of 2009, and we are using that funding, and as in many areas

that's getting us, in part, through this very, very difficult stretch as far as the budget of the State of New York goes.

But I have to say, and this is the Article VII bill, which includes a lot of language where we have tried to accomplish some good things even in spite of the financial difficulties we face.

We have in this bill adopted a system that will be fleshed out by our courts and by the Department of Criminal Justice Services for graduated sanctions for parole violations. This is an excellent move as far as public policy goes.

I served for 18 months on the New York State Commission on Sentencing Reform, and we accomplished a great deal and learned a great deal in that process. One of the things we learned, working with people at the Vera Institute of Justice, was that 11 other states have adopted systems to save money by implementing systems of graduated parole sanctions.

We have over 5,000 people in our

state prisons today for technical parole violations. They are not there because they committed another crime, they are there because, for example, they had to meet a curfew or have a job as a condition of parole. They violated that condition. We have little recourse in New York now but to send them back to state prison at a tremendous cost. And also, I must add that in the view of most criminal justice professionals, in many cases that impedes someone's efforts to rehabilitate themselves and to get themselves back on the right road in life.

So we now are going to adopt a system of graduated sanctions, provide for alternatives to state prison for those people. That's a great reform that we are enacting.

We have implemented in this bill -- authorized, rather, in this bill the imposition of caseload caps in the City of New York -- I'm sorry we couldn't it do it for the whole state, but at least we're taking this important step -- for those who provide indigent legal defense services.

The First Department of the Appellate Division imposed a rule to try and limit the number of cases that indigent defense attorneys were handling, because we just weren't getting justice, we just weren't getting adequate representation. And they discovered, when they went through this process, that the average indigent defense attorney in the First Department was handling 656 cases per year. That's no way to run a system. That's not a way to get adequate legal representation.

This provision in this piece of legislation provides for caseload caps. It is a critical first step to ensuring that everyone has representation in the State of New York.

We have an innovative program in this bill called the S.N.U.G. program, which is based on other earlier programs in both Boston and Chicago. It is an innovative way to break into the cycle of gang-related violence, using what's called the all-levers approach to stopping gang violence. It is

something that is exactly the kind of groundbreaking work that we hope to engage in when we're turning a corner in America, as I will discuss later, in terms of our attitude towards criminal justice policy. It is tough on crime, it is smart on crime, it will make us a more efficient, safer, and more just state.

We have expanded on the provisions that are available now for medical parole. Only for those who are physically or congenitally debilitated, rendering them incapable of posing any danger to society. They're people who we're spending money to incarcerate, we're spending a great deal of money to treat, who really don't need to be in the prison system, many of whom can't walk, mostly cancer survivors. We're going to have some of those people out of the system. It will save us all money. They're not a threat to society.

We also have expanded the Tuition Reimbursement Program with this legislation, which went to reimburse district attorneys to

provide a small subsidy, for the people who go into public service, with their law degrees. We're expanding that now to cover those that provide indigent, civil and criminal defense services.

So these are some of the things that we've done even in these difficult times, even while we are making cuts, even while there are programs, there are worthy programs that we should be funding -- treatment programs, experimental law enforcement programs -- that we're not able to fund.

We also with this legislation -- and I am very pleased and honored to have had a chance to work on this. We are also with this legislation eliminating finally, once and for all, the harshest provisions that remain of the Rockefeller drug laws. This is something that many, many people in this chamber and outside of this chamber have worked on for many years.

And I know we're going to have a discussion about the issue, but I would like to start out by saying that the idea that the

Rockefeller drug laws have been eliminated, the idea that we in this Legislature should do nothing to correct a grievous wrong that we inflicted on the people of the State of New York, must be rejected.

Let me clarify for you before we engage in this debate what the laws are today and how we got where we are today. The people who say do nothing -- and we've been getting letters and complaints from people who obviously haven't read the legislation, obviously haven't read the report of the Commission on Sentencing Reform, which laid the groundwork for this legislation, saying: "Do nothing. Do nothing. The Rockefeller drug laws are gone, we're not locking up people for possession."

Ladies and gentlemen, we now have over 13,000 nonviolent drug offenders in our state prisons today. In 2008, last year, we admitted 5,191 people to New York State prisons for nonviolent drug crimes, over 40 percent of those people for possession. So anyone who's walking around saying, "Oh, we

don't lock people up just for possession anymore, that part of the drug laws is gone," are telling a lie. We are locking them up to this day.

Who are the people who are in jail under the Rockefeller drug laws? Well, I'll tell you something about them. They're primarily addicts. According to the Department of Corrections, 82 percent of all of the prisoners in our state prisons have substance abuse problems. Eighty-two percent of all the prisoners in our state prisons have substance abuse problems, as identified by the State Department of Corrections.

Virtually all prisoners who are in for drug crimes have serious substance abuse problems. In fact, there's a huge number of people waiting in our prisons, 27 percent of our prisoners are waiting to get into treatment programs that are overbooked.

Who are the people who are in under the Rockefeller drug laws? They're people with drug problems. I'll tell you something else about who they are. Ninety percent of

them are black and Latino. Today. This is not something in the past, this is not something back in the Rockefeller era. Today in the New York State prison system, 90 percent of the people in for these nonviolent drug crimes are African-American and Latino.

We know that 32 percent of the population of the State of New York over the age of 16 are African-American and Latino. And we know from every study that has been done that drug use is roughly the same across racial lines. So we have 32 percent of the population of the State of New York, and yet 90 percent of the people in under this set of laws that were enacted by this Senate, by this Legislature.

And if that doesn't bother you, if it doesn't occur to you that maybe there's something wrong here, then I think you've got to take another look at these statutes and at their sordid history.

This is not a matter of soft on crime. This is a matter of smart on crime.

This is a matter of making our state safer by making our laws smarter and recognizing that public safety and justice always walk together. When the public does not have confidence in our system of justice, it cannot function effectively.

So I would suggest to you, ladies and gentlemen, that the bill before us now will make us a safer state, will make us a more efficient state, and will make us a more just state.

This law has three key elements. Excuse me, I'm getting ahead of myself. This bill has three key elements. First -- and this is based on the work of the Commission on Sentencing Reform -- is a judicial diversion program to help people break out of the cycle of criminality and drug abuse.

The judicial diversion program was first proposed in the report of the Commission on Sentencing Reform. It is the core of the proposal that Governor Paterson made to us earlier this year. And I think it's a terrific program.

Second, this bill will reverse one of the -- probably the worst aspect of the Rockefeller drug laws and restore discretion to judges, restore discretion to judges to sentence nonviolent drug offenders. This is something that is critical. It's been written about for decades. And we are finally making good on our promise to correct this injustice today.

And third, this bill creates enhanced penalties for major drug traffickers and for those who would sell drugs to children.

So this is, I believe, a balanced approach. I am absolutely confident it is an effective approach. A lot of people who are a lot smarter than I am have spent a lot of time and energy to craft this bill. And I hope you will listen to me about what's in it before you get up to say we should do nothing.

The Rockefeller drug laws, I think it's important to note, enacted in 1973 were enacted after Nelson Rockefeller in his State of the State speech announced his intention to

eliminate any option except life in prison for anyone dealing hard drugs. But I think it is instructive to read how Governor Rockefeller began this whole process of enacting these laws that we've been stuck with for decades.

He announced this by saying the following -- this is the beginning. "I will now turn," he says, "to another major program recommendation." This is what he said. "Virtually every poll of public concerns documents that the number-one growing concern of the American people is crime and drugs."

It all started with public opinion polls, ladies and gentlemen. It all started with an effort to pander to the public's fears.

And I hope as we continue this debate today we'll stick to the facts, we'll look at the empirical evidence, we'll look at the records of the Department of Corrections and of other states and not resort again to pandering to the public's fears. That's how we got here in the first place.

The first part of this bill, the

first part of this bill is the treatment program, the judicial diversion program. I commend this to you as a model that will be used in other states after we enact it here. The first step is a treatment evaluation. A defendant comes in, the judge says "This guy may be addicted" -- or the prosecutor or the defense attorney. You have to -- before you can get diverted from prison, you have to get a treatment evaluation.

The treatment evaluation has to report, among other things, the following facts: Does this individual have a history of substance abuse or dependence? And that language is not made up, that comes from the Diagnostic and Statistical Manual of Mental Disorders. This is the terminology used by drug treatment and mental health professionals.

Second, this treatment evaluation has to determine that diversion into the drug treatment programs that are available could address the substance abuse problem. And, three, make a recommendation as to the

specific modality of treatment.

This is an approach that is supported by every medical organization, every drug treatment organization in the state. The New York Academy of Medicine has held forums on this, they have issued reports recommending this. This is not something that is a fly-by-night deal.

I have here one of the evaluation forms that is used currently in drug courts which serves as the model for this program. This is not a casual thing. You're going to get a thorough treatment evaluation of a defendant, and then it goes to the judge.

The judge, after the treatment evaluation, then has to make findings that, first of all, the defendant has a history of abuse; second of all, that the abuse problem is a contributing factor to the criminality. This is not just some guy who commits crimes and is cool-headed and then gets high on the weekends. It has to be a contributing factor to the criminality.

Three, that the proposed treatment

can effectively address the substance-dependence problem.

And four, the court has to find, before you can divert anyone, that institutional confinement is not necessary for public safety. So you have to jump through all the hoops of the evaluation, then you've got to get the court to make these findings.

The district attorney can demand a hearing at any time, submit evidence, and object to the judge making any of these findings.

This is a system that provides more protections than I think anyone really -- as many protections as anyone could want, to make sure that we are finding the addicts, we are finding the people with substance abuse problems, and we are separating them out from any other type of criminal.

This program is explicitly open only to nonviolent offenders. If you have a violent offense in your background, you're not eligible. If you have a sex offense in your background, you're not eligible. So we're

talking about the group of people who are most in need of treatment and least appropriate for prison, people whose substance abuse problems are a contributing factor to their criminality, they're not violent, they don't commit sex crimes, and both the treatment evaluator and a court have found that they can benefit from the treatment that's available.

So they then move forward in the process under the drug court model. And page 127, Section 15-R of this bill, explicitly directs the chief administrator of the judge to direct these cases into drug courts wherever possible. And those of you who know -- and I know some of my colleagues here today know well how effective drug courts are. You have judges who have the expertise, who have the resources, who have the staff to provide the sort of intensive supervision that we know for a fact, that the empirical evidence shows, helps people kick the habit and break of the cycle of drug use and criminality. That is the first step of this process.

Now, there is a requirement in this bill that as you enter a diversion program you plead guilty, except under very, very narrow circumstances. There are exceptional circumstances provided for. I want to speak about this, because some of the commentary related to the guilty plea by at least one prosecutor in one daily newspaper has, in my view, has been just this side of despicable. And I want to comment in particular about this because I was involved in negotiating this section of the bill.

The language in the bill requires that before there's an exception made for a guilty plea that the court find that imposing a guilty plea, requiring someone to plead guilty is likely to result in severe collateral consequences.

Now, in yesterday's New York Daily News, a prosecutor commented on the severe collateral consequences language, which is language I negotiated with the Governor's counsel and with Assembly counsel. And this prosecutor said that this term is most often

used to protect illegal immigrants who face deportation if convicted of a crime.

The term "immigration" doesn't appear in this bill. There is nothing in this bill to indicate that. And I can only conclude from this statement and from the attention given to this statement in that newspaper that this is a last-ditch effort to block the reform of these drug laws by going back to what got us into this mess in the first place, appealing to people's fears.

This is not about immigration, it has nothing to do with immigration. And to say, "Oh, block this now, because we're trying to cut a better deal for immigrants than we are for Americans" is disgraceful, it is despicable, it is untrue.

Let me tell you what we're talking about when we talk about severe collateral consequences. We're talking about a constitutional requirement imposed by a Court of Appeals decision, People of the State of New York v. Michael AC, 27NY2d 79, following a line of cases from the United States Supreme

Court that make it very clear that you cannot induce someone or encourage someone to waive their right to a trial by jury by providing an alternative sentencing regime if you plead guilty to the one that is available to you if you exercise that constitutional right.

It is unlawful for us to enact a law requiring a guilty plea without this exception. So if anyone wants to get up and complain about it, I suggest you take your complaint to the Founding Fathers. Because the New York State Court of Appeals has stated very clearly: "A procedure which offers an individual a reward for waiving a fundamental constitutional right or imposes a harsher penalty for asserting it may not be sustained."

So we had to come up with a narrow exception. We drafted it as narrowly as we can. What are we talking about? What's a possible severe collateral consequence? A severe collateral consequence. You've got someone maybe who's a single father, with two kids who aren't healthy, whose entire life is

dependent on his electrician's license -- and you lose an electrician's license in the State of New York if you plead guilty to a drug crime. That person would have the ability to go to the judge and say, "Your Honor, I'm facing severe collateral consequences."

And the judge, in the judge's discretion, having heard the arguments from the prosecutor and arguments from the defense, would have the ability to say "In this case, I'm making an exception to the guilty plea. Do your allocution, take responsibility for your crime, we'll have it on the record, and we'll go forward." This is done in courts all over America.

So I would urge you that the exception to the guilty plea requirement is something we're constitutionally required to do. It's something that does not mention and has nothing to do with immigration. And I would urge all of you to condemn anyone who wants to try and block any bill here by pandering to people's fears, by pandering to people's prejudices, to reject that sort of

approach.

What's the next section of this bill? The next section of this bill provides discretion to judges. The next section of this bill corrects one of the most egregious wrongs of the Rockefeller drug laws. I read to you from a statement from Supreme Court Justice Seymour Rotker, who stated: "I've said this before" -- this is when he had to sentence someone to 4 1/2 to 9 years. His hands were tied because of the provisions of the Rockefeller drug laws; he could not make an exception even though he found compelling circumstances.

"I've said this before, this is not the first time I've said it. We really have to try to put more money up front to try to help people who are involved in narcotics as users, so-called user/sellers with regard to this situation. But the bottom line is that I am handcuffed as a matter of law, so I have to do what the law says. I have to do so because I cannot violate the law."

How many hundreds of statements

have we seen from judges over the last 30 years that they would have made an exception, but the very provisions that Nelson Rockefeller announced in 1973 to state his intention that there would be no loopholes have bound their hands.

So what we are doing now is in some measure restoring discretion to our sentencing judges. This bill reduces some mandatory minimum sentences. It does not reduce any maximum sentences. Every offender would face the same level of punishment they face now. But for first-time B, C, D drug offenders, second-time C, D and E drug offenders, this gives judges discretion to impose lesser sentences upon a compelling showing.

You know, C offenders, second-time C offenders, that's the most serious level of offenders for whom we're restoring judicial discretion. And I think it's important for everyone here to recognize what a C offender is. You are guilty of a C felony, nonviolent narcotics felony, if you have an eighth of an ounce or more of any narcotic drug in

aggregate weight. You could have two grains of narcotics mixed in with a lot of baking soda; that's a C felony.

So this doesn't say you get off, this doesn't say you don't get prison time, this just says judges have more discretion to craft a sentence to the particular circumstances of the case.

How else are we expanding judicial discretion? We are providing, as we did in the reforms of 2004 and 2005, for a limited resentencing program. And I have to note that the -- and I'm sure I'll hear from some of my colleagues on the other side of the aisle that there are some prosecutors who are writing in saying, Don't change things, things are perfect the way they are, we've got it just right since we enacted the 2004-2005 reforms.

Well, every one of them opposed the 2004-2005 reforms, every one of those prosecutors who's writing in now. And I understand the desire of prosecutors to maintain complete power over the system. No one who has power likes to give it up, and few

are able to do so gracefully, as we all know in this room. Prosecutors don't want to give up power either.

But I will tell you that the resentencing provision here is even tougher than the resentencing provision in the 2004-2005 reforms. We have a series of exclusions, people who are not able to apply for resentencing who were able to apply under the last round of reforms -- which we call the Johnson exclusions -- which we've added in here. Anyone with a violent felony within 10 years, a myriad of ineligible offenses, including all sex offenses, you're not eligible to apply.

In the 2004-2005 reforms on which this set of resentencing guidelines are based, a total of a little less than 500 people were resentenced, 476 people were resentenced. A larger number applied for resentencing, but the courts screened out about a third. The people who had the biggest potential to cause problems, to cause harm, were screened out. What was the result of that resentencing

provision which we emulate here today for another group of offenders? The total, out of the 476 people resentenced, we had a total of less than 2 percent recidivism.

This is a staggeringly microscopic recidivism rate. Not one violent crime. Not one violent crime. We had a few people who committed drug crimes, a few people fell off the wagon, we had one DWI, and we had one nonviolent property offense. Out of 476 people, that's an extraordinary success rate for a group of felons.

So the resentencing provisions worked last time, they're going to work this time. They are in this bill. Again, we have all the procedural protections you could want. The prosecutor is free to oppose. Every prosecutor who ever dealt with a defendant who's eligible for resentencing is notified and has a chance to submit evidence. The courts will do, I believe, as they did in the 2004-2005 reforms and only let out the people who are able to reintegrate into society.

This bill has a conditional ceiling

provision that is again something that is done in many, many states. It provides that if you successfully complete the diversion program -- after jumping through all these hoops, getting your evaluation, going through court -- if you successfully complete this tough-love diversion program run by a drug court, that you can apply to the judge and the judge has the discretion to say: "You know what, you're doing so well, we're going to conditionally seal your records." So we're going to say you have a chance to apply for a job without writing down "no, I had a drug crime."

If you screw up, ever, it's unsealed. And it is never sealed from law enforcement. It's only something to give people a better chance to get back into the workforce to make a life for themselves. It is only a matter of justice.

It has been proven to work in dozens of states -- including, interestingly enough, a lot of states we consider very conservative. You have to note that under the Rockefeller drug laws we had far stricter

sentencing guidelines that any of the so-called red states, and they have ceiling and expungement statutes in places like Mississippi, Oklahoma, Kentucky, Indiana.

This is not some radical move. This is something that's getting us more in line with the rest of the country.

Finally, we have additional penalties for the worst sorts of offenders. We have a kingpin statute for major traffickers with operations that net themselves more than $75,000 in a year or six months, depending on the section of the provision.

We also have a -- this drug trafficker provision has a much higher minimum and maximum sentence than the current laws. It's something that has been requested by prosecutors. And we were pleased to be able to provide this to them in this legislation. And we have an additional provision for sales to a child, a person over 21 selling to a person under 17, enhanced sentencing. Those are two provisions that have been requested

we're happy to provide.

So in short, ladies and gentlemen, we had a set of drug laws that didn't work. We've had hundreds of thousands of people in prison who didn't need to be there. It is time to admit that our experiment in this state -- and our national experiment, because we're not alone here -- in mass incarceration of people who do not need to be in prison has failed; in particular, the mass incarceration of African-American and Latino citizens.

I would urge you to take a look at what's happened in the last 30 years in our state and in this country. We now have 2.4 million people in prison in the United States. We have 5 percent of the world's population and 25 percent of the world's prisoners. Bills like this are simply trying to get us back in line with everyplace else in the world. Even totalitarian societies in this world now, none of them incarcerate people at the rate we do.

And I would urge you that we're now turning a corner in this country in a lot of

ways. Last year's election showed the public is ready for change. I think it's time for us to acknowledge that just incarcerating as many poor black and Latino people as possible is not an approach to public safety that is sustainable, that is workable, or that is fair.

Today, with this bill, we're undoing one piece of that pattern of abusive legislation that has led to three-strikes-and-you're-out laws and other laws in other states, to this travesty where we have 13 million children in this country with a parent in prison. I mean, this is just an unsustainable situation.

So I would urge all of you, keep the big picture in mind, but also focus on the empirical evidence. To the extent that anyone wants to criticize our efforts at reform by looking at the facts, by looking at what we hear from DOCS, what we hear from the treatment professionals, what we've learned from the Sentencing Commission's work and other work that has gone on in this state in

the last 20 years -- stick to the facts. Let's try to stay away from Nelson Rockefeller's propensity to look at public opinion polls. Let's try to stay away from prejudice. Let's try to stay away from invective.

This is a sound, prudent program. We've worked hard on it. It will work for the people of the State of New York. And it will make us a safer, more just, and more efficient state.

So that is my summary of the Article VII bill. I am sure there are no questions or comments. But, Madam President, if there are any, I'll be glad to respond.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

There are two amendments on this bill. The first one I believe deals with our prisons, by Senator Nozzolio, Senator Little and myself and Senator McDonald. Could we

please ask that its reading be waived, and could you please call on Senator Little.

ACTING PRESIDENT STEWART-COUSINS: Yes, Senator Libous, I will do that.

The amendment is at the desk, the reading is waived, and, Senator Little, you may be heard on the amendment.

SENATOR LITTLE: Thank you, Madam President.

I speak today on this amendment because I feel that it's necessary to return to the law that we passed in 2005. And that law in 2005 required a one-year notification period to all local governments in the area where a correctional facility was going to be closed. It also required that the Department of Corrections and all confer with other agencies on the economic impact of a closure, and it also said that we should consult with the Department of Economic Development and come up with a strategy.

The current budget eliminates that one-year time span for a closure of a facility. And I believe that that is harmful,

truly harmful to the areas that I represent. Four of the six counties that I represent are host to 12 state correctional facilities. These correctional facilities are within the communities. They do provide jobs. I have many, many people in my area who work within those facilities.

Slated for closure is Camp Gabriels, which is north of Saranac Lake in the Town of Gabriels. The Town of Gabriels has a population of a bit over 1500 people. The second one is an annex in Washington County for 200 inmates.

I know that we have a deficit. We're all aware of that. Our Congressional delegation and our Governor went to Washington and really made a great case for us that we had the biggest deficit, next to California, of any. And I believe that we have received one of the biggest amounts of stimulus money for New York State. That stimulus money is supposed to be used to stimulate the economy, not to use that money to hurt the economy. And it will hurt the economy in my area.

And I will talk to you about Camp Gabriels. Let me read the mission statement of the Department of Corrections. The mission statement of DOCS is "to enhance public safety by providing appropriate treatment services in safe and secure facilities that address the needs of all inmates so that they can return to their communities better prepared to lead successful and crime-free lives."

The camps that are being closed are minimum-security camps. And we are being told that there are very few minimum-security inmates in the prison system. Well, does that mean that you are going to go directly from a medium-security facility home, with no reentry, with no preparation, with no transitional help? I don't believe that that's the way to do it.

The other thing is that we're told that our inmate population is dropping, and I agree. And it's appropriate, and certainly the drug courts and drug rehabilitation has helped that. However, when you are looking at the drop, you are looking at a figure where

our prison facilities were 120-some percent over capacity. I don't know about you, but in a correctional dorm there are 60 inmates to one correctional officer. I don't believe that that's a safe ratio.

And now we have added the last 10 of those 60 are on the top bunk. In the prison that I have in Malone, which is called Upstate, and that's a very secure maximum-security prison, you have two inmates in a prison cell for 24 hours a day, for months. They open up the gate, and they can go out and exercise in the outside, caged-in area. We even had an incident in that prison where one inmate strangled the other inmate because he wouldn't change the radio station. And with the security, by the time the correction officers got to him, he was dead.

I almost think that that's inhumane for the inmates. So the idea that we are -- you know, have all of these empty beds and all of this empty capacity, I would suggest that instead we make our prisons more humane and utilize them, make them safer for the

correction officers who work there.

Camp Gabriels, in Saranac Lake, has no fence. I had the Commissioner of Correction up there last July, and as we were walking along, he said: "I can't believe I'm seeing all of these inmates walking by, and there is no correction officer in sight." And I said to him, "And there's the road."

These inmates are learning how to do a work program, to get their GED. They have vocational training. The facility has a its own sever and water treatment facility. An inmate that's interested in getting that kind of job works there, gets a one-year certificate to go forward.

These are transitional facilities. And the capacity at Gabriels is 300. When we were there in July, it was 186. They're dropping it even lower than that.

My point is we need the one-year notification. Of the 136 people who work at that facility, let's just say 30 of them leave the area when they find another job. In a town of 1500, that affects the school, the

hospital that's nearby, the volunteer fire department, the retail stores, the diners. It affects the activity.

So it's almost like if you had a community college in your district and suddenly you got a three months' notice that it was going to be closed.

This has a tremendous effect on our area. And I am asking that we go back to what we instituted in our legislation, that you have an appropriate timeline when those facilities are scheduled to be closed. And that we truly look at them and look at how they could be better utilized rather than closed.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Little.

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

I join my colleague Senator Little on this amendment. I have, in the beautiful county of Chenango, Camp Pharsalia, which has

been in existence for many, many years and has been a tremendous asset to the community there.

But before I talk about what the economic impact is going to be and how the inmates at Camp Pharsalia have contributed to the community, I want to just touch on something that changed this year that disturbed me.

Last year we put into law, and I believe it was supported by everyone in this house, legislation that said that if you're going to have a prison closure that you needed to notify the employees one year in advance before any closure could take place. I'm told that the language was changed in this bill. That's been stricken. And now Camp Pharsalia, as with the other facilities that my colleagues will talk about in this amendment -- and of course the purpose of this amendment is to keep them open -- they will now close within the next 90 days.

That's disturbing, because at the time everyone in this chamber was quite

amenable to making sure that we protected those employees at these facilities and that they were given opportunities to look for other employment and maybe possibly move on to other facilities during the course of that upcoming year.

We did this with the mental health system a number of years ago. When mental health facilities and psychiatric facilities were closing, legislation was passed in this house, and I believe it was passed unanimously, that basically said that they would have a year's time before that facility would close.

Having said that, I am extremely disappointed that these facilities will be closing, particularly Camp Pharsalia. I want to talk about Camp Pharsalia. For a number of years it has been a major contributor to the community of Chenango County and surrounding counties. And as a matter of fact, Madam President, it has been a contributor to the State of New York.

Many of you may not realize -- and

I'm sure it's the fact at these other camps that are closing -- the inmates from Camp Pharsalia not only painted churches, not only did community service work in Chenango County and Broome County, but did quite a bit of forest preservation on state parkland for the Parks Department of the State of New York and for the Department of Environmental Conservation.

As a matter of fact, we have estimates -- and they may be a dollar on or off -- but about $450,000 a year contributed to helping reduce taxes in the State of New York, because that's money that those two departments would have had to spend to go out and hire people to work in our forest lands and certainly in our various parks departments. So there is a benefit.

The other benefits were to certainly the City of Norwich and the towns and villages that are being strapped because of financial restrictions.

And it's just very disturbing that while this facility not only was able to help

the communities, but certainly the employees, the men and women just like any other New Yorker, who are raising families, putting food on the table, trying to make ends meet in these very difficult times -- and we know that they are difficult times -- putting their kids through school, are going to lose their jobs. That's extremely disturbing.

Yes, they'll say that, well, they can transfer somewhere else. That's not always an easy thing to do. But I guess in this case, if this amendment does not pass, they'll have to deal with that.

I am disappointed, Madam President, that these facilities are slated for closure. I know this house in the past, when other Governors -- both Republican and Democrat, by the way -- had proposed closure, that this house came to the aid of these facilities that we're talking about and saved the employment, saved the value to the community. I hope that we can do that again.

ACTING PRESIDENT STEWART-COUSINS: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President. On the amendment.

It may be difficult for us to recall the situation in New York State less than a decade and a half ago. But let me take a moment to remind you all that we had the highest rate of violent crime of any other state in the union, that we had thousands of murders each year in New York City. We had the most revolving door of a correctional system, where after someone was arrested, prosecuted and convicted, the policies of the late 1980s and early 1990s put those convicted violent criminals behind bars for the shortest period of time, because those same inmates were let out of jail free with a program called work release.

Prosecutors across this state were perplexed by seeing the person they had convicted for a violent crime in a grocery store a few weeks after their sentence because they were let out on work release. This is more than just an anecdote, this happened time and again throughout New York State.

What we have done, this Legislature, in conjunction with working with former Governor Pataki, was an establishment of a zero tolerance for violence in New York State. That zero tolerance for violence established the end of work release for violent felons. Violent felons were no longer to get parole, and violent felons were to be put behind bars for longer periods of time. That required determination, but it resulted in the largest decline in violent crime of any state in the union in the history of America.

We had a success here. We were pursuing violent crime, we were protecting our citizens, we were establishing a policy, a series of policies that ensured the integrity of our streets and ensured the safety of our citizens.

At the same time, that required rightsizing of the correctional facility. Senator Little, Senator Libous have both discussed how their own facilities had a great deal of pressure within them over the past decade. In other words, correction officers

were having to have custodianship over violent inmates in prisons that were never built to house violent inmates. We had our prisons, particularly the medium-correctional facilities in our state, bursting at the seams.

There was a riot in Mohawk a few years ago that sent a clarion call to everyone that the system needed to be rightsized, and rightsized quickly. And that's what we did.

We built additional correctional facilities, maximum-security facilities, that could house and incarcerate violent criminals in a more safe and secure way. We have established annexes in a variety of medium facilities that house those more violent inmates. And at the same time, we took some very important steps to end solitary confinement for those who were sentenced that were obviously deeply mentally ill.

We have made our jails safer and more humane. We've made them safer for the correction officers who walk the toughest law enforcement beat in America. We've made them

safer for the correctional teachers and other correctional personnel who work under very stressful conditions within our prison system. That pendulum went from one side, where it was a disgrace, to the other side, where I believe it's a system that we should be -- although it has its problems, we can be proud of in protecting our citizenry and ensuring a safe working environment for our citizens, our 25,000 state employees who work in our prisons across this state.

What Senator Little and Senator Libous and our conference are very disturbed about is the way that this budget totally annihilates a transparent process that we fought hard to achieve, where, when a prison is to be closed, the least the Corrections Department can do is establish a notification requirement, Section 79-A, where the mandate is that the state must provide notification of its intention to close correctional facilities at least a year ahead of time. And providing notice to all local governments that that's to be the case.

I proudly authored that legislation, and I'm proud that this body aggressively supported it prior to any other of those in this Legislature or even in the Governor's office. We proudly supported this legislation because we care about the correction officers and other correctional personnel who work under the most stressful of conditions, whose decision to close the facility changes their lives. The COs' families don't move down the street, they have to move to get jobs maybe 30, 40, 50 miles away to be able to establish their lives and continue working as correctional officers.

The notice provisions are simple, they're direct, and they're important, because we need to have notice when these policies are changed. What this legislation does today, this bill that Senator Schneiderman is putting forward that has been basically, again, negotiated behind closed doors, it sends a clear signal that no longer does the state believe in obeying the law of this state.

This notification requirement is a

state law. It's a requirement. You've eliminated that requirement with just simply a push of a pen. If you can do it for those three of the facilities that are to be closed, you can do it for any item. And I believe changing this law at this time does a tremendous disservice to the correctional personnel who are laboring very strongly under very stressful times in our correctional facilities.

There's also a question of partisanship. You can't sugarcoat it. You can't gloss over it. The decision was made to close those correctional facilities in Republican areas. Now, that's clear. That there has been no demonstration, no demonstrable assessment of the matrix of why these were closed, why these units were decided to be closed. Frankly, I think the rhyme and reason is obvious and that it is partisan. And to me, that's disturbing.

Remember, this is the same state government, though -- back to the notice requirement -- that tells the private sector

that if you're going to close a plant or a business, a private business, that has a certain level of employment and that level of employment is very small, this state tells private employers that you have to provide notice to the communities and to the state that you are going to be leaving.

That notice requirement is fine when the state tells the private sector to do it. Why shouldn't the state follow the laws of this state and comply with the notification requirements under the law that this body passed, that many of you voted for, in favor of, when it was established.

Lastly, Section 79-B in our amendment provides for a reuse plan, a requirement that the state, in partnership with local government, establish appropriate reuse plans for the correctional facilities that are to be abandoned. That only makes sense. Senator Libous said we had a template for that with the closure of those mental health facilities that were changed. We should have that same type of procedure here.

We have it in the reuse plan.

You are ignoring 79-A, and with the notification requirement you are running roughshod over 79-B, the reuse requirement. And what is occurring? Three communities are in effect jeopardized by this situation.

Madam President, that's why we're proffering this amendment, and that's why we're aggressively supporting it.

Thank you for the opportunity to speak on its behalf.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator McDonald, on the amendment.

SENATOR McDONALD: Madam President, thank you. I'm speaking about the correctional facilities and a lost opportunity that we might be able to get back.

Approximately two years ago, I requested the Department of Corrections, and not too long ago I requested the commission that was prepared statewide on consolidation of services -- my concern was that my counties and many counties across upstate New York are

being requested to expand their correctional facilities, the state requesting them to add on, improve, update county jails. Legitimately so. These facilities need to be updated and modernized in many, many cases.

What an opportunity to utilize existing minimum-security prisons that are being closed and the wonderful men and women that work there as corrections officers and civilian workers, instead of our local counties being mandated to expand that facility.

I think in terms of Rensselaer County, one of my communities, approximately a $60 million expenditure for an improvement of a facility, where they have minimum-security facilities close by and they can put their prisoners in there on a per diem basis, much like many communities do in different parts of the country, and even federal prisoners coming to state facilities.

What a great opportunity to show the taxpayer that we will combine the services without eliminating a local government for the

first time, that the consolidation can start at the top as well as the bottom. These are the concerns I have. And the reuse legislation would have enabled us to turn around and pursue that further.

That's something we have to start thinking about, working with these counties where we mandate, in many cases, 90 percent of their budgets and we keep on cutting their money. And many of the mandated requirements are legitimate, such as the county jail. What a great opportunity to save my county the capital expenditure money, the need to go out and hire new professional people, when we already have them on our staff, and to continue the professional services of them and at the same time serve the public.

And we should be doing more of that. And I think we should be looking at consolidation and reuse from a different perspective. The perspective is that we should be looking more at the top, as opposed to the bottom. We've seen that with the local governments. We bombard them with mandates,

hidden taxes, yet we don't give them the tools to provide the services that we also mandate.

So if we do anything and we reinvigorate the legislation for reuse, we should turn around and start working as the Department of Corrections. Because the public thinks a jail is a jail. It's a government jail. It's not a state jail, it's not a county jail. This is how we can solve some of these problems and we can save money for the taxpayers.

It's a very difficult issue. I agree with my colleagues, and I'm happy to support this amendment.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, on the amendment.

SENATOR SALAND: Thank you, Madam President.

Madam President and my colleagues, on the amendment, if you look at the existing language on page 10, which language is replicated in the amendment, it basically sets out the notification process in rather simple

terms. And what notification is about is trying to avoid the trauma to both the employee, to a community, and to try and collaborate and coordinate the resources of local government and state government, including the Department of Economic Development, to try and reduce the blow to the community when there's a closure.

Well, in addition to the three camps that are proposed not to get the benefit of this one-year period -- and lord only knows time is an ally in these situations -- the three camps, as was noted, seem to have been selected somewhat discriminatorily.

The bill also eliminates this notice provision for annexes. There's no sound policy reason I could think of for eliminating it for annexes. I mean, the annexes are a part of the system. Their employees are entitled to the very same notification. The families are every bit as traumatized as anybody else would be when told that they're about to lose their job and now have 90 days to do something about it. The

community, again, has to try and see what they can do to compensate in some fashion, working collaboratively with DOCS and with Economic Development to see if they can do something about trying to somehow or other energize their community and encourage some economic alternatives.

So, Madam President, this bill does more than pick on three camps. This bill selectively chooses to deny this very carefully crafted notification provision to annexes as well. And I obviously rise in support of the amendment.

ACTING PRESIDENT STEWART-COUSINS: Thank you.

Senator Farley, on the amendment.

SENATOR FARLEY: Thank you, Madam President. I do rise in support of this, from a little different perspective, to speak on behalf of something that is affected in it, and that's a prison that I have, Mount McGregor, up near the Town of Wilton. I share part of it with Senator McDonald and former Senator Bruno.

For years, they've been trying to close that. That is a minimum-security camp. But I just want to speak to one facet of it, how successful that was as a minimum-security facility and how successful it is for our criminal justice system.

They had work-release programs for these minimum-security prisoners that went out into the community and helped restore churches and other community projects which were so well-received by the community that it was unbelievable. Now, some people say they don't want a prison in their area. I'll tell you, Mount McGregor or Camp McGregor or however you want to phrase it, it was really beloved by that community for all these prisoners contributed.

And let me just say this, it was a wonderful rehabilitation for them. They got outdoors, they worked, they got fresh air. They really enjoyed it. They did an awful lot on behalf of the community.

And of course over the years, where we've tried to save Mount McGregor, the

purpose of this amendment is one of the things that we can do to give these communities a chance to get -- and also, I just feel it's terrible that they've gone on and closed some of these minimum-security prisons, because they can work so well to -- not only in the criminal justice system, in rehabilitating the prisoners and that sort of thing.

But I do speak in favor of this amendment for many of the things that it does, particularly in the Rockefeller drug laws and so many other areas. Of course, I'm going to vote for it.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

The question is on the nonsponsor motion to amend Calendar Number 135. Those Senators voting in support of the nonsponsor amendment, please signify by saying aye.

SENATOR LIBOUS: Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Libous.

SENATOR LIBOUS: I believe this

is a fast roll call, and it's a show of hands.

ACTING PRESIDENT STEWART-COUSINS: Those Senators voting in support of the nonsponsor amendment please raise your hands.

Announce the results.

THE SECRETARY: Ayes, 30. Nays, 21.

ACTING PRESIDENT STEWART-COUSINS: The motion fails.

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

I believe there is another amendment at the desk, by Senator Golden and Senator Volker. I ask that you waive its reading and then call on Senator Golden first, please.

ACTING PRESIDENT STEWART-COUSINS: Fine. The amendment is here at the desk, and without objection, the reading is waived.

And, Senator Golden, you may speak on the amendment.

SENATOR GOLDEN: Thank you, Madam President.

My amendment deletes the Rockefeller drug law change from this suggested bill, from this bill today. I ask that all Senators join me in this. Even if you support the change in the law, this budget bill is not the place to do it.

It is no secret that I oppose this change. I have been vocal about it, as many of Senators here in this Senate chambers have been in the past. I believe it's bad policy to put convicted drug pushers back on the streets and to leave others there to continue to do their business.

We know that the money from their transactions funds more crime and also terrorism. And recent news reports say that Hezbollah is using the same southern narcotics routes that the Mexican drug kingpins do to smuggle drugs and people into the United States, reaping money to finance its operations and to threaten U.S. national security.

There are also many other questions about this bill. Is there enough drug

treatment money for this? I am told that one agency alone would need $50 million -- one agency, out of all of the agencies across this great state. Why is it so important to cut the DAs out of the process? How many criminals will be eligible for resentencing?

I have heard the suggestion that this provides help to addicts and jail for the pushers, but I don't see that. There are many other questions. Some of the key issues, the Assembly passed this bill, Assemblyman Aubry's bill, 98 to 46, with a debate. And on March 4th, Senator Schneiderman introduced the bill into the house, S2855. It was reported to the Crime Victims Committee, but the committee has never brought that bill up for consideration. It has not held hearings and it has had not one discussion on that bill. I am on that committee, and there's been nothing done in that committee on this bill.

What we have are three men in a room doing a back-door deal on a major change in state policy. Even if you like the change, even if you support it, this is not the way to

get it done. The way to do this is by having hearings, letting people speak on the bill, get input from the DAs, from the advocates, and from all sides. Then change the bill if there are good ideas, or bring it through the committee's process and bring it to the floor and let's have a good debate on it.

It's possible that the reason that this bill is being done this way is because the other side does not have the votes for this bill to stand alone. Is that the case? And if that is the case, then shame on everybody for making that decision. What you afraid of? Are you afraid of debate?

Putting a change this radical in a budget bill is against anything and everything we believe about democracy. It is undemocratic to not have all interested parties involved in debating and improving.

This bill is a shame. It also gives a lie to something that many members in this house have said they feel strongly about, transportation and openness. How sad is that?

Ladies and gentlemen, this budget

is being criticized rightly for its unprecedented secrecy. Let's not compound this problem by passing a change this radical, this profound, with no public input and no input from the members or the committees in this house.

We need just one or two votes from the other side of this room who will stand up to do the right thing and to make sure that we do not make families suffer across this great state because of an injustice that's being done here today. It's the right thing to do. Take this change out of the budget, and send it through the process.

We've heard Senator Schneiderman talk about the newspapers across the state. One I guess that he's definitely against is "The plan goes all the way" -- quoting, "The plan goes all the way to giving druggies a pass for crimes like breaking into cars, burglarizing liquor stores, and grabbing purses off park benches. Citing addiction as justification for thievery would make them eligible to be considered for rehab rather

than prison."

Further quoting, "Sentences for most drug crimes would be reduced, not just for addicts but for the run-of-the-mill traffickers motivated by greed. Judges would have almost unfettered discretion to put drug offenders into probation or treatment no matter how many offenses the offenders have on their rap sheets."

"Addicts who steal," still quoting, "would also be eligible for rehab regardless of criminal history. After treatment, convicts could apply to have charges dropped or records sealed, wiping away long-time consequences for law-breaking."

Still quoting: "Proponents of the Drug Dealer Protection Act realize their ideas would not stand up in the light of day, so they negotiated the law in secrecy, bypassing all semblance of public hearing with the intent of jamming this package through as a footnote to the state budget due this week. This craziness must not become law, or crackheads, dopers and drug gangs will rule

the streets."

Still quoting. "New York's prison population is falling faster than the inmate census of any other state. More people arrested for drug crimes last year went into treatment than to state prison, and New York crime rates remain at historic lows."

Still quoting. "'If you saw something that was so successful, why would you tinker with it?' asks Staten Island District Attorney Dan Donovan, speaking for virtually every prosecutor in the state. Good question."

Still quoting. "The only hope for those who care about safe streets lies in the Senate."

And as I said before, the Democrats on the other side of that room can stand up and vote no and give us the opportunity to take this out of this bill.

I would ask our illustrious Senator, sponsor, if he would yield for a question. Pardon me? No? On the amendment, I'm sorry.

SENATOR SCHNEIDERMAN: You're on the amendment, so I can't. If you finish on the amendment, I'll be glad to yield to a question later.

SENATOR GOLDEN: Thank you.

As I was saying before, what would this bill cost? One, Phoenix House, $50 million. That's what we they say they would need. How many criminals would be eligible for resentencing? The bill says 1500. The DAs say 5,000. And people from inside DOCS and inside DCJS are saying closer to 9,000. Think about that.

This bill makes no distinction -- although the Senator did point out the difference to users and sellers and a test that they would have to go through. And of course the evaluation would be a history of use to judicial diversion, whether they needed that judicial diversion, if it would work. It would also have to prove that at the end of the process that the individual would not need or would not need to go to jail and could go a rehab.

I have other questions as to what standard do the judges use. Why did they have to put in this bill burglary? Why do we need to have nonviolent criminal mischief, larceny, criminal possession of stolen property, forgery, and then we add burglary to this bill? Why was it, again, necessary to cut out all the DAs across this state? And then if you really had to do that, why would you divert people with multiple felony offenses?

The bill allows defendants to opt for treatment over jail up to the day of trial, resulting in a defendant's holding out to the end for the best deal. What will this do for plea bargaining situations? What about the waste of time for the police, the DAs, and the court personnel?

This bill would allow judges, including town and village court judges, many of them not lawyers, to transfer these felony cases to the misdemeanor drug court in the county without the consultation or consent of a district attorney. And in many cases, none of them have any courts, drug courts. Many of

them -- some of them without even treatment facilities within their districts. What would this do?

Then we've heard mention that there were two exceptions, upon consent of the prosecutor, or a finding of exceptional circumstances based on the finding of severe collateral consequences. Other members will speak of that.

This is definitely a "get out of jail" card that's going to be used in the revolving justice that will be served across this state because of that severe collateral consequences.

And yes, illegal immigrants will use it, and those quoted today will also have an opportunity to use it, meaning that we will be putting more people that are selling drugs to our children in our streets back on the street so that they can continue to sell drugs.

Upon successful completion of drug court, the defendant could withdraw a guilty plea and the court could dismiss the

indictment or the court could require a plea to a misdemeanor with a sentence of probation. The defendant could then move to have all the records of the criminal prosecution sealed.

We've heard that. That was very good. I guess those that are applying for a job at a school, we couldn't find out if that person -- because they sealed his records. A childcare center. A home care center. Hospitals. Do we really want to do that?

The district attorneys foresee this generating a lot of work. As I had posted, I told you that 1500 people is what they said, across the hall. The DAs say it's more like 5,000. If a person is arrested for 3 1/2 years, serves six months, goes into Shock, gets out six months later, serves a year out of 3 1/2 -- sounds pretty good, doesn't it, so far?

The list goes on. In all cases currently in treatment, defendants will have to be returned to court. Those that are presently in treatment will have to be returned to court and offered the opportunity

to withdraw their guilty plea and to withdraw from treatment. This will be highly disruptive and definitely counterproductive.

The new statute provides no clear standards for drug treatment. It does not even require that treatment cases be handled by a drug court. The judge can send someone to treatment who is not an addict.

You said he has to make -- or it was said on the floor that the person have these four evaluations met. But it doesn't say that the judge has to act on all four. Suppose you only met one or two. Suppose you had no history of drug use but they felt that you wouldn't have to -- going to jail would not be good for you, so they decide, okay, we'll use that one.

They could get away with whatever they wanted to do. There is no standards. And that's why everybody is so afraid of this bill. Defendants with multiple prior C and D felonies can get probation, no jail under any circumstances. For example, a meth or a PCP dealer with many prior drug-sale convictions

who are charged with multiple sales can get probation.

This bill is a disaster. Defendants with multiple felony convictions can be sent to treatment without prosecutor consent. No standards for when a judge can divert the defendant. No requirements of current substance abuse or need for treatment. No clear consequences of failing drug treatment or relapsing.

The bill will create costs and encourage forum shopping. No limit on the number of times a defendant can be diverted to drug treatment. No requirement that the diversion be supervised by a drug court. No requirement for a treatment program to be available.

And the resentencing is the best part, where we sentence anywhere from 1500 to 9,000 people, of which God knows how many go back to the street, God knows how much more drugs they sell, God knows how many people they kill.

I deal with a kid on a regular

basis. That kid was 17 when he turned to drugs. Today, he's 40, and he's in and out of that jail sentence time after time. He's gone for 14 different rehabs. But guess what? He got in a shootout with a police officer two years ago, 38 years of age then. He's back on the street again. He's run down people, he's back on the street again. Been put in rehabs more times than we can count.

This bill is going to give them the opportunity to put more people like him on the street, to hurt more people across this great city and state. This is not just me. This is editorial pages across the state. This is the prosecutors across the state. This is the sheriffs across the state.

They didn't even confer with any of the sheriffs. They didn't confer with Commissioner Kelly. They didn't confer with anybody of any authority to find out if this bill would hurt.

Ladies and gentlemen, my other colleagues want to speak, so I have to sit down. But I'm telling you, I can go on for

hours on this. This is the wrong thing to do. This is going to turn this state backwards. And people -- yes, people will die.

We need two of you to stand up and do the right thing for the children of this great state. You're going to vote with us? I hope you are, Senator, because that would be the right thing to do.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Volker, on the amendment.

SENATOR VOLKER: You know, there's an old saying that the truth shall make us free. Big problem with modern society is -- and especially here in New York and on this floor -- is we are a very restricted state, and we are very, very restrictive. Truth seems to have lost itself somewhere.

Let me first of all say this is not a reform of the Rockefeller drug laws. I've got letter after letter here that says, Senator, it's not a reform of the Rockefeller drug laws. I think it was 1979, if I'm not mistaken, that we did the mandatory minimums

and a bunch of other things. Because the Rockefeller drug laws were aimed mostly at big people. They were aimed at big drug people.

You know, Eric, you weren't there. Let me tell you, it was not what you think that caused Rockefeller to become so draconian. It was judges in New York City that were sentencing to one-fourth of what judges upstate were sentencing, and the streets of New York were in chaos. People were dying everyday. The first Rockefeller drug laws, which I opposed very strongly, you can't believe what they were: $500 bounty for picking a person off the street and bringing him in as a drug person. And it didn't say whether he'd be dead or alive, by the way, and I noticed that.

He had all kinds of provisions in there, and he got so mad at me he ended up pushing me against the wall and threatening me. He ended up -- well, I won't get into some of the details. He did tap my line, also.

So if you think that I didn't have

a wrestling match over Rockefeller drug laws, you're wrong. Dead wrong.

But you know, Velmanette, I can't help but think as I'm looking at this, when I did the death penalty, you said to me: No hearings, no -- where are the hearings? And you started reading to me college professors and so forth. Well, let me tell you something. Back in 2004 we had three solid weeks of joint committees -- with Democrats and Republicans, Assembly, the Senate -- and we came up with what basically was the end of the old Rockefeller drug laws. That was in 2004.

Now, the people who said no were mostly from out of state. And of course they also were defense attorneys from New York City, because this bill -- the drafting of this bill is obvious to me. No disrespect, Eric, but it's got all the earmarks of the Assembly staff people. I mean, even in the bill it says the date January 13, 2005. I immediately understood what that was. That was the date that the old bill came into

effect. So they were so mad because we wouldn't do the B's that what they did is they went back there to resentence people before that date because they couldn't get us to do it back in January.

I just want to warn everybody in this place, this is the most dangerous provision I have ever seen on the floor of this Senate. No upstater should ever vote for this kind of bill. This is dangerous. It is the beginning of a whole new street chaos. It is a provision that, in my opinion, at the very least should have had months of discussion. But there's a reason it didn't have months of discussion. You could never get this passed. I don't know of one reputable criminal justice person that really supports this.

And, Senator Schneiderman, your commission did not support this. Your commission gave it as one of the recommendations, and your commission didn't even fully support this proposal. You have to admit that. I'll ask you later. But I happen

to know that's true.

In 2004, we did what was considered the most heralded reform of the Rockefeller drug laws. It was -- in fact, let me read to you what a DA, my DA said about this.

He said: "The proposed judicial diversion legislation in its current form will have devastating consequences for public safety. It should not be passed in its current form.

"The existing framework has produced better results than any other statutory scheme in the country. Over the last 10 years, New York has seen the largest decrease in prison population of any state in the country. New York's incarceration rate has decreased 15 percent, while the national average was a 14 percent increase. Our prison population declined from a high of almost 72,000 inmates to 60,000.

"More important, the number of drug offenders in state prison has declined from a high of 23,000 to less than 12,000. From 2000 to 2008, New York has seen a 44 percent

decrease in the number of drug offenders in our prisons. Last year, there were more offenders in New York's drug treatment courts than drug offenders in prison.

"Despite such unparalleled success, there are those who continue to mislead the public by claiming that the draconian Rockefeller drug laws must be repealed. Such a characterization is misleading because the 2004 drug law reforms eliminated all of the Rockefeller drug laws sentences and replaced them with a more moderate and reasonable sentencing range."

And one more thing I have to say. You know, we could talk about it. The DAs did not oppose the 2004 changes. They were lukewarm on them, but they didn't oppose them. Because they were nervous, but they said, Okay, we'll see how they work out, because we think maybe you went a little bit too far. And I said, No, we didn't go too far, we did what was the right thing to do.

But let me just say putting this amendment into the budget is like putting the

death penalty in the budget. Imagine if I decided that I couldn't get the death penalty passed, you know, in a regular bill, so I put it right in the middle of the budget. Oh, my gosh, people would be crazy, they'd be running around saying, "Volker, you've gone nuts, you can't do that."

That's what we're doing here. The reason this is in the budget is because this bill couldn't get reported out of our committee -- I'm talking about yours and mine, Eric, nor could it have been out of -- and I don't know what it -- I don't want to say anything, but I don't know why it ended up in Crime and Corrections. It really should have been in Codes. But that's neither here nor there. It doesn't matter to me.

It was a bill that most of us never saw until right at the end. And I'm the one that agrees with many of you; over the years, you said you shouldn't sneak criminal justice legislation through. I agree with that 100 percent. I have always agreed with that. You give it time, you give it all the time it

needs to be looked at. But there is a reason why this couldn't be looked at. It could never stand up.

And by the way, there's other problems here. There's some drafting problems in this bill, I'm told by a lot of the legislation people. And their concern is that it's so vague, they have no idea how many people are going to be let out of jail because of this. They have no idea.

And I know there's a huge celebration going on in New York City if this bill passes. They're defense attorneys, they're calling all of us up: When is this going to pass, when is this, so I can get -- you know, this is going to be a defense attorney's -- what's the word I'm trying to use? They're going to have a drink on us, I hate to say it. A dream. Dream. Dream. Dream.

But I'm only going to -- I'm going to finish, because this is just the amendment. If you want to get rid of this proposal and do something for this state and for New York City

and for upstate New York, vote this down right here and we'll redo what's been done here. You can't just change this scheme here, because the scheme is so skewed away from DAs that it's virtually impossible.

And there's just one more thing I want to tell you. We treat an awful lot of people in this state, there's no question. We've developed a good system of courts, of drug courts. And Shock incarceration has been a very successful. This bill finishes Shock incarceration. You're going to up 50? I mean, it was designed as a young people's -- the whole idea of the boot camp was young people. So we're going up to 50. And there's even a credit as part of it, so that they can come in and out.

And we haven't got anywhere near enough drug courts. Where's the money coming from? I'll tell you where it's coming from. It's going to come out of local taxpayers. And we're not giving them the money for local jails either. And even worse, we're not giving them the money for treatment.

Remember, the Governor's budget stripped money for treatment of alcohol and drugs. So what we're doing here, we're doing a bill that claims to allow people to go from prison to treatment, and there isn't going to be any treatment.

So my advice to all of you is, vote with us, let's get this amendment out of the budget and move on from there.

ACTING PRESIDENT STEWART-COUSINS: Thank you.

Senator Flanagan, on the amendment.

SENATOR FLANAGAN: Thank you, Madam President. On the amendment.

I had an opportunity to listen to my colleagues, and in particular, starting off with Senator Schneiderman. And I will say this very clearly. I believe he has true passion and dedication to this issue. And while I respect what he's offering, I will also respectfully disagree with this. And that's why I want to get up and speak on the amendment.

And I don't come with any

particular bias. I don't have the same law enforcement background that some people do. But I try and look at this as objectively as possible. And when we speak about things like deferring to Senator Hannon on health issues or Senator LaValle on higher education issues, this is an area of the law where we can all become students, but I think it's extraordinarily important to listen to people who are actually in the field, the people who are doing the work every day.

And very simply, I can tell you that my DA, Tom Spota in Suffolk County, does not like this legislation at all and has been quite outspoken about it. And no pandering, no vitriol, no hyperbole or anything like that, just very matter-of-fact claims and assertions about what he believes this legislation will do.

But Senator Volker has a penchant for sharing information with his colleagues, and I was one of the people who had received an essay entitled "The Law of Unintended Consequences," which was authored by the

special narcotics prosecutor for the City of New York. I don't live in the city. I don't even know the people who run this office. But it was actually extremely enlightening to read what they had to say.

And let me -- I'll try and characterize it in a couple of different ways. First of all, they didn't object to the prior legislation. And there's no pandering whatsoever in what they wrote. It's a factual recitation of what they believe to be the practical applications of what happened with the previous reforms that we had done. And they include some very basic things.

And let me add this. The head of that office is a woman named Bridget Brennan, who's not elected. She is the special narcotics prosecutor. She has been heading this office for 10 years in the City of New York. She has a 25-year career as a prosecutor. She comes with no political ideology. She serves at the discretion of the five district attorneys within the City of New York.

So this woman has an absolutely proven track record, no bias in any way, in my humble opinion. And I had an opportunity to speak with her on the phone today and really get to someone who is doing this work every single day.

And they have a reputation for this program of being a national model. And she clearly advocates for treatment as the first opportunity and the first course of action. And some of the facts that they offer in terms of what has happened with the reforms that we previously did -- here's a couple of facts. And I'm reading specifically from information that was provided.

In special narcotics cases, one thing has remained unchanged. Under the new laws as well as under the old law, the vast majority of first-time felony offenders do not go to prison.

What are the effects of the new law that we enacted years ago? Eighty-nine percent of those sentenced to state prison had prior felony convictions. Drug offenders with

no prior convictions, only 36 first-time felony offenders were sentenced to more than one year in prison. In each case, aggravating factors were present such as other pending cases, severity of the crime, or a prior misdemeanor criminal history.

And here's one of the things that happened with the law, and this is the unintended consequence. They say that treatment applications are trailing off, because when you start to reduce the available time for punishment in terms of the crime, there are those who will say: I'll weigh it. Should I go for treatment, or should I opt for the prison sentence and try and get out in an expedited time?

In terms of what they said, Senator Schneiderman, they do not -- I think a fair assessment of what is written herein does not have anything that is critical of the prior changes that we made but actually says, in the end, that we may have had some unintended consequences because the bigger people, the drug kingpins and the worst offenders, were

the ones that got the most revision in their sentences and had the most reductions. And they do advocate for a drug kingpin statute as a recommendation in what they were putting forth.

Now, in speaking with Ms. Brennan, I will say that -- and I want to be very clear. I'm saying this as an observation, no more, no less. She came up, she lobbied, she told me she spoke with Senator Sampson, because I asked specifically who did you have an opportunity to speak to. She told me she spoke to people in the Assembly, members of the State Senate. She did not have an opportunity to meet with you. That's not a value judgment, it's just part of the discussion that I had with her. But she told me that she got a fair hearing from Senator Sampson.

I called her today, in light of the letter that we all received. And frankly, I had a fabulous conversation with her because I thought she was terrifically knowledgeable. And I just want to give you a few of her

comments, verbally then and in writing as well, in terms of what they believe will be the practical effect.

Narcotic offenses will no longer be taken as seriously as they have been previously. Lower sentences on even basic things like drug sales. She believes it will have a big trickle-down effect, that it will lead to despair in communities. And I've heard Senator Volker mention this separately before. They have, in the DA's office, a very real concern about what the practical effect will be for undercover police officers and what their work will be like on the streets.

And with no disrespect to the sponsor, there are grave concerns about how the bill was drafted. Here's a classic example. The sentencing provisions take effect immediately, but the treatment piece is not effective for six months.

She said that there is a lot of worry and a lot of consternation in the judiciary already about what will happen. Judges were talking about -- even without this

bill being passed -- that for cases that are pending, that they'll adjourn them for six months so that they can wait until the new sentencing provisions come in, which creates a greater likelihood that some of these offenders, and they can be very serious felony offenders, will be out on the street. That's a ripple effect in terms of what is out there for the communities and the undercover police officers.

The definition of who is eligible is quite -- again, no disrespect -- is porous and sloppy in terms of its drafting and leaves it open to way too much discretion.

But I also think of work that's been done by my colleague Senator Fuschillo in terms of DWI. And one of the things that she specifically referenced and I want to give as an example -- and we checked in the statute -- under this bill, the ceiling provision will apply. You can have up to three prior misdemeanor convictions, a felony conviction, and if you go through drug treatment, you can have all of these sealed. All of them. Not

just the felony conviction, but all of them.

So when you go for a prospective application to work -- and I think what Senator Golden spoke to -- I'm not sure exactly in every instance, but it worries me that an employer will not have the right to have information about someone who has not had one, not had two, not had three but four prior criminal convictions. That's something that should concern all of us.

And I will conclude by reading a portion of a letter dated today, which I am going to gather many of you received, but I think there are some salient points in here for the record. And this letter is from Bridget Brennan, again, the special narcotics prosecutor.

"The following is an excerpt from an anonymous letter received in connection with rampant drug-dealing at a public housing development in New York City. The desperation and frustration expressed about these drug dealers is overwhelming.

"'We demand help here. This letter

will be sent out every week until we see some results, and I'm not talking about patrols for a week and then it stops, we are talking about daily patrols until someone is caught and they're put away, with the building secured for the good people who live here.'

"In response to this letter, they had completed a year-long undercover investigation into widespread, open crack dealing in 13 of the housing complex's 17 buildings.

"The day this bill is signed, many of the drug dealers arrested will face substantial sentence reductions. Very likely they will return to the complex in short order, much of the dismay of the letter writer quoted above and all of the other residents he bravely spoke up for.

"This drug law proposal creates a porous and ineffective treatment diversion model." And it says here: "Judges, like prosecutors, are bound by the words of the statute and not by the good intentions of those who designed it or voted in support of

it. The statute was poorly and hastily drafted and never subjected to any debate or to scrutiny. It has more loopholes in it than I can enumerate here."

So I would concur with the remarks of my colleagues Senators Golden and Volker. The reality is we're doing this bill on the budget because the votes wouldn't be here. And if that's the approach you want to take, we don't have to agree with it, but I think that's actually why we're doing it.

And going back to the issue of the collateral consequences, I did have a discussion with the special prosecutor about the question of legal and illegal immigration. And part of the problem they see is that there is no definition. There's complete latitude and no clear definition in this bill that defines what exactly those collateral consequences are.

So it is reasonable to assume that a judge could look at the status of one who is a legal immigrant and an illegal immigrant, and that could affect their decision. And I'm

hearing that. This is not John Flanagan. This is not some undercover police officer. This is the head of the special narcotics prosecutor's office of the City of New York, a person who has been doing this for 10 years, has made a career out of this. They have massive and grave concerns about this proposal.

I'll conclude with this point. Senator Volker, really with incredible due diligence, spent three weeks at the conference committees in getting the last reform. That's an indication of how serious this issue is, and that's more of an indication why this bill should not be part of the New York State budget.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

The question is on the nonsponsor motion to amend Calendar Number 135. Those Senators voting in support of the nonsponsor amendment please raise your hands.

Announce the results.

THE SECRETARY: Ayes, 30. Nays, 20.

ACTING PRESIDENT STEWART-COUSINS: The motion fails.

Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: Yes. Would Senator Schneiderman yield to a couple of questions?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, will you yield for some questions?

SENATOR SCHNEIDERMAN: I'll be glad to yield, Madam President.

SENATOR DeFRANCISCO: Now, Senator Schneiderman, you indicated that the reason for the collateral consequences, severe collateral consequences exception to someone pleading guilty before they go to treatment was that if you didn't have it in there, it would be unconstitutional. Is that what you're saying?

SENATOR SCHNEIDERMAN: That was what I said. I cited the case of People v. Michael A.C. of the Court of Appeals and read

the language from that case indicating that that was a problem.

SENATOR DeFRANCISCO: Well, would Senator Schneiderman yield to another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: Yes, I will continue to yield.

SENATOR DeFRANCISCO: When someone presently pleads guilty, they're giving up their right to a trial. And it happens every day of the week where someone pleads guilty in return for a specific sentence; is that correct?

SENATOR SCHNEIDERMAN: Actually, as a technical matter, you do not get the sentence until after the guilty plea.

SENATOR DeFRANCISCO: Would Senator Schneiderman please yield to another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you yield?

SENATOR SCHNEIDERMAN: Yes, I'd be glad to yield.

SENATOR DeFRANCISCO: Are you saying that people do not plea bargain and plead guilty in return for a definite sentence?

SENATOR SCHNEIDERMAN: I think the difference -- through you, Madam President -- is that this would be a statutory imposition of something that is in the context of a plea bargain worked out in court. And as you know, the judge does an allocution to make sure that the defendant is freely choosing this.

The courts have consistently held that you cannot enact that sort of a requirement in a statute. And the People v. Michael A.C. is one case, there are cases all over the country, there are U.S. Supreme Court cases holding this. You cannot enact this in a statute. And that's the objection to the proposal.

As this was originally proposed -- and I would like to correct some things that

were said here. This bill is not the bill that passed in the Assembly. This is a very different bill. This is built around a proposal that Governor Paterson developed building on the work of the Sentencing Commission. There was a similar proposal in the Sentencing Commission report. This is a different piece of legislation entirely from the bill that was passed in the Assembly.

So the Governor's original proposal did not include an exception to the guilty plea. When it was pointed out that there was this constitutional problem, counsels to the Governor, to the Assembly, and to the Senate, we all reviewed the case law and decided that in fact there is a constitutional prohibition to enacting this in statute.

SENATOR DeFRANCISCO: Would Senator Schneiderman yield to another question.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: I will be

glad to yield.

SENATOR DeFRANCISCO: If we did not have this exceptional collateral consequences in the statute, and a requirement or an opportunity to go to drug treatment, and this statute wasn't written the way it was, couldn't a prosecutor and doesn't presently a prosecutor and a judge have the authority to send somebody, to divert somebody if they plead guilty right now, under the current law?

SENATOR SCHNEIDERMAN: Yes.

SENATOR DeFRANCISCO: So you're saying that if we put that in statute, no longer does that individual have the same opportunity because it becomes unconstitutional?

SENATOR SCHNEIDERMAN: No, no, no. Through you, Madam President.

There are two exceptions that are provided for in this bill, if Senator DeFrancisco would look at it. One is on consent of the prosecutor. But the second is in the exceptional circumstances of a finding of likelihood of severe collateral

consequences.

So the provision for prosecutorial consent is there as well. It does not remove the constitutional impediment to a statute that says that there is a sentencing scheme with -- a more lenient sentencing scheme that is available to you if you waive your constitutional right to a jury trial. Not a specific plea bargain, but an entirely different sentencing scheme.

You may disagree with the U.S. Supreme Court and the Court of Appeals, but we have attempted to comply with their rulings and draft a constitutional statute. And I hope you will be supportive at least of our efforts to do so.

SENATOR DeFRANCISCO: Well, thank you, Senator Schneiderman.

I was on that conference committee, and I worked cooperatively with you and everyone else to come up with the last reforms. But I disagree with your reading of this Michael A.C. case.

And on the bill. On the bill, if I

could.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: And I may have another question.

But this case basically says that a procedure that was stated in statute where someone could not avail themselves of the youthful offender status unless he previously to getting into that system where he could become a youthful offender would have to waive his right to a jury trial.

Now, that's substantially different than one consenting to plead guilty in return for a specific sentence or a specific sentencing structure or, better yet, a diversion. If you are an individual that is willing to plead guilty to get a specific sentence, you certainly -- and that's plea bargaining. It happens every day in every jurisdiction -- you certainly should be able to plead guilty in order to be diverted to a nonsentenced situation like a diversion program.

This has absolutely nothing to do with a constitutional violation. That's my opinion. And I know we disagree on that. And I would suspect that others can give their opinions.

I had another question that was raised that I had heard Senator Flanagan talk about that I think is important. Would Senator Schneiderman answer another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, will you yield for another question?

SENATOR SCHNEIDERMAN: I will yield for another question.

SENATOR DeFRANCISCO: Senator Schneiderman, you indicated that you worked very hard on this idea that you don't have to plead guilty if there's exceptional circumstances or severe collateral consequences.

Senator Flanagan mentioned in reading that letter that nowhere in the statute does it have a definition of those particular terms. Was that correct?

SENATOR SCHNEIDERMAN: That's correct.

SENATOR DeFRANCISCO: So -- would he answer another question, please?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: Yes, I will answer another question.

SENATOR DeFRANCISCO: So it is totally up to the judge at this point in time to determine whether to allow a person to plead -- excuse me, to be diverted without having to plead guilty, it's totally the judge's decision as to what that means, exceptional circumstances or severe collateral consequences. Is that correct?

SENATOR SCHNEIDERMAN: Well, through you, Madam President. The way the status is written, it provides that the court must find that a plea of guilty is likely to result -- not just may result, but is likely to result in severe collateral consequences. It is correct that there is no further

definition provided.

But I would like to note for Senator DeFrancisco that this statute also provides that the chief administrator will direct these cases to drug courts. And this is something that we've been talking about for as long as the efforts to reform the Rockefeller drug laws have been underway. And drugs courts have been in existence for -- certainly I've been involved in these discussions for years.

Drug courts always require guilty pleas. The statute as contemplated -- and the fact that the chief administrator is directing these cases into drug courts -- virtually guarantees that there will be guilty pleas required in every case except if there's some -- and again, we came up with language that was as limiting as we could come up with -- unless there is a likelihood of severe collateral consequences.

You're correct. But this will be defined by the courts, there will be case law on this. But that the effort was to ensure

that while we understand that in the overwhelming majority of cases -- as in drug courts today, they require guilty pleas -- there had to be an exception for constitutional reasons, and we made it as narrow as possible.

I do not think that an exception that had a very specifically enumerated provision saying, you know, if there was a health consequence or something like that -- I'm not sure that would have met the constitutional challenge.

SENATOR DeFRANCISCO: Would Senator Schneiderman answer another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: I will yield for another question.

SENATOR DeFRANCISCO: Senator Schneiderman, under current law, under drug courts that are being used now, there's a requirement of a guilty plea. Under the system right now, is there an exception in the

system right now that has something like exceptional circumstances or severe collateral consequences would result in the person not having to plead guilty?

SENATOR SCHNEIDERMAN: Actually, Senator DeFrancisco -- through you, Madam President -- is proving our point. There is nothing in the statute now which requires a guilty plea in drug court because of this very problem.

SENATOR DeFRANCISCO: You're saying there's nothing in there requiring a guilty plea.

SENATOR SCHNEIDERMAN: No, sir, there is not. Through you, Madam President, there is not.

SENATOR DeFRANCISCO: All right. One other question, and it's a little bit unrelated.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: I will yield for one other question that is related.

SENATOR DeFRANCISCO: All right. Maybe I'll think of -- well, you indicated that in this bill there are caseload caps in New York City for indigent defense. And is it fair to say that the caseload caps are only in here for New York City, is that correct?

SENATOR SCHNEIDERMAN: Through you, Madam President, it's actually not a specific caseload cap. It is the authorization for the courts to establish caseload caps and phase them in over a four-year period.

This is in response to a caseload cap that was set up by the First Department in New York City. And I would like to see this all over the state, but we're taking this first step forward to provide that the courts can establish caseload caps for the courts in the City of New York.

And I hope that the Senator will agree with me that the finding of the First Department that indigent defense attorneys were averaging 656 cases per year, that that really is a system that is crying out for some

sort of a cap so that we can ensure adequate representation.

SENATOR DeFRANCISCO: Would the Senator yield again.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: Yes, I will continue to yield.

SENATOR DeFRANCISCO: Senator Schneiderman, how much is it estimated that these caseload caps is going to cost the indigent defense -- for indigent defense in New York City?

SENATOR SCHNEIDERMAN: Through you, Madam President. We do not have a specific cost estimate. The chief judge has indicated that he is going to handle this in the current judiciary budget. And it is a phased-in program so that we can evaluate the cost.

But this is something that the judiciary has undertaken and essentially agreed to take responsibility for, and they

have advised us that they believe they can deal with it within their existing budget.

SENATOR DeFRANCISCO: One last question, please.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, one last question. Do you yield?

SENATOR SCHNEIDERMAN: Through you, Madam President, one last question.

SENATOR DeFRANCISCO: If there's no cost, and at least the First Department can put caps on indigent defense for people in New York City, why doesn't the bill provide for upstate, Long Island, and the like and have the judiciary provide for the additional funding through their existing sources and treat upstate, Central New York, and every other part of the state the same way as you're treating New York City?

SENATOR SCHNEIDERMAN: Through you, Madam President. In fact, in response to the guidance of the judiciary, this is where they felt the need was greatest, and they wanted to phase in a program for New York City

over this period of four years.

I will certainly pass your suggestion along to the chief judge. Would you like to see a cap in your part of the state also?

SENATOR DeFRANCISCO: Do you want me to yield? I don't want to interfere with the process.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, are you asking Senator DeFrancisco to yield?

SENATOR SCHNEIDERMAN: Yes.

And I don't want to burden you with too many questions, but I am curious as to your point of view on this. Do you think this would be appropriate to impose a cap on the rest of the state?

SENATOR DeFRANCISCO: I have no problem with it being around the state. In fact, it's going to cost more money no matter what their estimates may be.

And my point was simply that it's another instance where the city is being treated differently by the three people who

negotiated in this closed-door session than any other part of the state.

And if there's too many cases being handled by defense lawyers and it's hurting the poor or indigent defendants, then it should apply throughout the state. And that's my point.

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

SENATOR DeFRANCISCO: On the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: Well, first of all, I think Senator Flanagan made several points. And I'm not going to repeat all of them. But I think this issue of a person not having to plead guilty to get diverted to a drug program has to have a provision exceptional circumstances or unintended or extreme consequences, that that's unconstitutional is pure nonsense.

If you're allowed now to plead guilty in return for a specific sentence, then

you certainly should be able to make a decision as a defendant whether you'd rather plead guilty to be diverted or be prosecuted to the full extent of the law and possibly go to jail. That's a decision that the individual has to make. And they could choose clearly not to do it.

The example, not to go through diversion, they'd rather go through trial, that doesn't deprive them of any constitutional right.

It's different in the case that was cited because there, in order to get into a youthful offender program, you had to agree in the prosecution of your case that you'd go nonjury rather than jury. That's a substantial constitutional right you're giving up in order to be treated as a youthful offender. That's nonsense.

Secondly, and most importantly, as the head of the narcotics division in the DA's offices down in New York City said, there's no definition. So when Senator Schneiderman just protested so loudly that it might provide --

that it's just racism to consider that it might be used by individuals who are illegal immigrants or undocumented, however you want to sugarcoat it, the fact of the matter is that under those circumstances that could be a very extreme consequence.

If the judges are making that determination where we don't have to have this person who's an illegal immigrant plead guilty because there's exceptional circumstances, the next stop is going to be deportation.

So whether or not -- I think it's a very interpretation of what that article said. And whether you think it's a good or a bad idea to allow that to happen, the fact of the matter is that certainly can happen under this particular definition.

Secondly, which hasn't been mentioned -- and I supported all the changes and actually some more changes than were supported in the last revision of the drug laws back a few years ago when I was on that committee. The other thing, it's very dangerous I think, to not have the district

attorney have any say whatsoever in whether a second felony offender is diverted or not diverted. It's totally up to the discretion of the judge.

The DA is elected to office to enforce the laws of their jurisdiction. And that DA has got to run for reelection based upon how he did his job in protecting people and going forward and enforcing the laws and prosecuting. He doesn't even have a say as to whether a second felony offender can be prosecuted or not. It's up to a judge, who gets elected maybe every 10 years or 14 years.

The fact of the matter is that's the prosecutor's job. To take him out of that system is simply wrong.

The letter -- and I'm not going to read it again. But the letters we've got from my DA and every other DA in this state basically have the same concern. It's a very loosely written law. It takes the prosecutor out of prosecuting. I have no problem giving judges discretion on how to sentence. But I do give judges discretion as to when to

prosecute and when not prosecute. This is a very dangerous law.

And finally, this is unconscionable to have a law of this significance be put away in a budget to guarantee a number of votes and to guarantee there will be no debate or no discussion and no input from the people that have to enforce the laws of this state. It's wrong, and it should not happen.

And hopefully someone on that side of the aisle understands that this should be put apart from the budget. The world isn't going to come to an end if this is taken out of the budget. Put it back to conference committees. If this is a good idea and what we say is hogwash, then put it on the floor for a vote.

But to allow such loose language, and when the consequences are so significant -- just to call something Rockefeller drug law reform doesn't mean it's good. The fact of the matter is the significance of putting people on the street that maybe shouldn't be back on the street is

so great to our community, it affects everything, that we should have this separate from this bill, have open meetings, and have input from all interested parties, especially the law enforcement officials of this state who are required to enforce the law and are going to be impeded by this law in view of its language.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Padavan, on the bill.

SENATOR PADAVAN: Thank you, Madam President.

There are three members of this house who were here in 1973 when the so-called Rockefeller drug laws began. Just as an anecdotal piece of information, that law, that bill was done independently. There were public hearings. As a matter of fact, Governor Rockefeller came before the Assembly Codes committee and gave testimony and was grilled by members of that house on the efficacy about the reasons behind his

legislation and to justify it. So there was full and open debate from the very beginning.

In the years that followed, with the Marijuana Reform Act of 1976 and all of the changes in those laws that Senator Volker articulated -- and I won't repeat it -- right up to 2004, a great deal has occurred, and much of it in a very positive way. During Governor Carey's administration, we began -- and I chaired the committee during a 10-year period, from '76 to '86 -- we created the Division of Substance Abuse. Drug treatment programs in this state were expanded and funded and created in a significantly positive way. We led the nation then, and we do today, in terms of our capacity to deal with drug treatment, drug education, and drug prevention, I might add.

These were all positive things that occurred. One of the individuals who was here during that period of time, counsel to Governor Carey, was a gentleman by the name of Richard Brown, who then was on the bench and now, for the last 19 years, has been district

attorney of Queens County. So he was here during that entire period of time.

He, along with all the other district attorneys, have articulated in very, very specific ways why this legislation is wrong, why it should not be enacted.

Now, obviously it's part of the budget because I don't think in a million years could it get 32 votes if it stood on its own. I can look over there at some members that I know would not vote for it if it was a clean and on-its-own bill but will do so because it's part of the budget.

And it's pointed out to us in the DA's memo on their list of concerns that a defendant can have three, four, five or more felony convictions and still receive treatment over a prosecutor's objection, on and on and on and on. And the other provisions, about convictions or pleas sealed?

Now, imagine if someone applies for a job as a schoolteacher in some school district in our city or in our state and there's no record whatsoever that's available

as to that person's prior guilty pleas of selling drugs.

And haven't we adopted over the years a number of penalties that are extra penalties for selling drugs near and about schools? There's a lot of hypocrisy here.

But one of the things that the DAs have pointed out, and I think they're absolutely correct, is that we will diminish the incentive for drug pushers to go into treatment. And one of the things they cite is a quotation from the National Center on Addiction and Substance Abuse at Columbia University. And they say immediacy and certainty of punishment is the key to successful completion of drug treatment.

You're going to take that away in this legislation. So there will be fewer drug addicts who are also pushers and peddlers of drugs going into treatment and staying into treatment.

And you heard, of course, at some length the discussion here about the communication we all received from the special

prosecutor talking about the gaming that many of these drug pushers will participate in to get out of going to jail. And they'll be in and out and in and out and in and out. The Daily News called this the Drug Pusher's Protection Act. I call it the revolving door of the drug pusher, because that's what it will be.

And all of the all gains that we achieved in this state -- and Senator Volker and others pointed out the reduction in the number of people going to prison because of what we did, collectively, over a period of years in areas of treatment, education, prevention and incarceration. Much of that will be placed in jeopardy.

And I think there's a certain amount of arrogance from those who are suggesting that we pass this legislation, arrogance because they are saying all the district attorneys in New York State haven't the slightest, foggiest idea of what they're talking about. They're wrong.

The special prosecutor we created

to coordinate drug prosecution and all those things associated with it in the City of New York, she doesn't know, her office doesn't know what they're talking about. Research center at Columbia University, they don't know what they're talking about. The Legislature over a period of years, in its wisdom, they were wrong. Only you, today, have the key to what is right. That is arrogance.

You know, it's so disappointing to me to have seen all of these things occur over a period of 36 years -- I'm in my 37th year here -- and all of the successes we've had. And to see that put in jeopardy because of the motivation on the part of some people is just mind-boggling. I don't know how you can go out and explain to this any person with half a brain. I happened to be with Commissioner Kelly Saturday night, and we talked briefly about this. And he said, "Frank, you don't have to be a rocket scientist to know what's going to happen. We're going to have more and more of these people on the street, we're going to arrest them over and over again."

By the way, whoever said there's no cost associated with this -- I think that was a question earlier. A tremendous amount of cost. Prosecuting over and over again, a revolving door. And it will happen largely in the City of New York, where you live and where I live, to the people we represent.

We're probably speaking to no one here because only about a third of the Majority members are in this chamber. So obviously we're not going to influence too many minds here. But I'm hopeful that at some point in time we'll flip here and we'll undo the damage that you're about to do.

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, on the bill.

SENATOR SALAND: Madam President, just somewhat interestingly, I had a conversation a bit earlier in the lounge with one of my colleagues from New York City, just talking about the city and what a wonderful place it is to visit and be.

And we talked about the fact that my wife is from the city, and I told him as a

young married man with children I wouldn't go to the city and I wouldn't want my wife or my children in the city. And this was back in the '70s. This was back in the time when the streets of New York were truly frightening places to be. This was back in the time when there wasn't a day that passed that there wasn't some crime of some sort being committed by somebody who in all likelihood was under the influence of or securing the ability to secure some drugs.

It's interesting to note the dichotomy in the New York City newspapers between the tabloids and the Times. And certainly I can understand that for some it's very important to appease the New York Times. But when you look at somebody who's a supposed nonviolent offender, you don't look at their rap sheet. That person could have a rap sheet longer than both my arms, and that person could have been charged with or indicted on multiple counts. That person might have accepted a plea to a drug-related offense because it might have been better than the

burglary charge, it might have been better than the assault charge, but it was a plea. And certainly the wheels of the justice in New York City are under greater strain than the wheels of justice probably in any other community that we harbor within our borders.

So there is a certain really dubious question, I think, surrounding the accuracy of what constitutes nonviolent members of our currently incarcerated prison system.

I note that there is in this bill a provision that diverts not merely those who may be guilty of one or another drug-related offense but for certain other nonviolent crimes.

And I would merely ask Senator Schneiderman to respond to one question, if you would, Senator Schneiderman.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you yield for a question?

SENATOR SCHNEIDERMAN: Yes, I would be glad to yield for a question.

SENATOR SALAND: Could you tell for me the compelling philosophy or policy for diverting or permitting to be diverted somebody who commits an act of burglary? Burglary third, I believe, is what you are permitting under your bill.

SENATOR SCHNEIDERMAN: Yes, through you, Madam President. The theory of the judicial diversion program -- and again, this was really articulated in the Commission on Sentencing Reform's report. This is the part of the proposal that came from Governor Paterson and is really his vision -- was that we have to separate out people whose primary problem is drug addiction from people who are just criminals.

And the proposal included some nonviolent property crimes in addition to nonviolent drug crimes, because it was the opinion of the experts and people whose work went into the proposal of the Sentencing Commission, and it's been the view of the drug treatment people that I've spoken to about this, that the most important thing about the

judicial diversion program is maximizing the window so that we can divert as many people who are caught in the cycle of drug dependence and criminality as possible, who could benefit from drug treatment, whose primary problem is drug abuse, into a treatment program.

And the proposal -- and again, this is actually interesting. In this case, the Governor's proposal went further than the Assembly's proposal. Whoever is saying this has the Assembly written all over it, this is something that was not in the Assembly's bill.

The theory is that if you are guilty of a nonviolent property offense -- and burglary three means breaking into a shed, basically, an uninhabited, unhabitable building. This is like stealing something out of something that is not a dwelling -- that that and other nonviolent property crimes should be included, keeping in mind that the point of the diversion program is to get a drug assessment to determine that the person is essentially an addict and that their criminality was caused by their addiction.

So that is the reason these were included. There was a determination made that in addition to being able to divert people who happened to be caught for the crime of drug possession, adding some nonviolent property crimes also would broaden the diversion program. Once again, there is no one who the treatment professionals and the judge, with the prosecutor's input and objection, did not determine to be primarily an addict and that their criminality was caused by their addiction who would ever get into the diversion program.

SENATOR SALAND: And if the Senator will continue to yield. Is that the opinion of the experts, or is that an opinion you share?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: Well, it is my opinion, but it's my opinion based on all of the 18 months of work we did in the Sentencing Commission and the work we've done

in drafting the bill.

SENATOR SALAND: Thank you. Thank you, Senator Schneiderman.

Let me share with you some of the other offenses that you would be diverted for that were not drug-related offenses. And I guess if you want to tolerate property crime, it's a good thing to do.

The sections I believe are listed -- let me just get my section of the bill here. In addition to burglary in the third degree -- and it's not necessarily a shed. I think that's an extreme example. It could be a place of business, could be a building on your property that perhaps you don't use as your residence. You know, it could be any number of commercial structures. So we're not talking merely about sheds here.

Now, if under criminal mischief in the third degree someone damages a motor vehicle by breaking into the vehicle when it's locked, with the intent of stealing property, and has within the prior 10 years been convicted three or more times of that crime or

similar crimes, that person too gets diverted. So it's open season on your automobile and the property in your automobile.

Let's see what other ones we have here. GPS systems are readily marketable on the resale market, I understand. If you were to commit grand larceny in the fourth degree -- steal someone's credit cards, debit cards, obtain property by way of extortion, or if the property consisted of a scroll, religious vestment, vessel or other item of property having a value of at least $100 kept in connection with religious worship, you too would be diverted.

There are a slew of others. I would merely suggest -- and those are simply representative -- that if you have concerns about your property, if you have concerns about perhaps a member of your family being accosted or assaulted in a parking lot, if you have concerns about -- you know, or perhaps you're not concerned about having a pocketbook snatched or your house broken into, I guess this is okay legislation.

The impact on local jails with this proposal, particularly with the -- now the ability to provide one-year sentences, will be staggering, staggering in particularly those non-New York City counties. Even though the burden may not be as great in numbers, many of them are currently at full capacity, many of them sent inmates at great cost out to other facilities because they simply can't handle anymore. And what we're saying here is you will handle more, and you will pay for those more. It's out of your pocket.

So as quickly as they can move out state-ready's and technical parole violators, they're going to have to swallow hard and pump in more money from their property tax base to make this work.

I have with me an article which I thought was somewhat interesting. It's a New York Post article. And while it's in a different context, it is analogous. And the context had to do with the civil confinement legislation. And it's an article that was published on December 2, 2005. And it says:

"Pervs Flood Apple." "100 ex-cons since August" is the subtitle.

And there's a quote in there from one of our colleagues, and we're referring here to sex offenders. "We're letting those individuals loose in our community, and they're nothing but ticking time bombs waiting to commit another crime." And he goes on to say, having served in the Assembly, he would support a civil confinement bill but leadership is holding it because "you have some staff whose only reason for living is to prevent tough criminal justice legislation from passing."

And that truly is -- having served on the Codes Committee in the Assembly, that truly is the philosophy that has driven this bill, that is the philosophy that stymies virtually any criminal justice effort in this institution. It is a philosophy that is driven by both leadership and staff. There has never been a bill in the Assembly that had a penalty that they didn't like. And I see today, when we're talking about people who are

time bombs, if we had a way to deal with what I'll call the little loser, the person with a habit who goes out on the street because of that habit, and limit it to that little loser, I think that would be a really, really estimable goal to attain.

This paints with such a broad brush that we're going to put people back on the street, people who in order to satisfy their habits, knowing full well that they're going to get so many bites of the apple that there will be nothing left, if even a core, that we are going to see an increase in street crime. And we're going to see also an increase in more than street crime. We will see an increase in violent crime. And the people who are going to pay the price are going to be your constituents and my constituents. But certainly the City of New York, which has enjoyed a reputation over the past two or three years as being one of the safest major cities in the country, is in the process of losing that reputation.

I'm not going to repeat what the

lawyers or the DAs or the prosecutors have said. I'm merely going to tell you that you're placing your constituents at risk.

And incidentally, the person who made those comments is the deputy majority leader who I quoted, Senator Klein. He's the one who expressed concern about letting those individuals out on the street, and that the Assembly in effect never saw criminal justice stuff that they wouldn't try and kill.

Thank you, Madam President. I vote in opposition to the bill.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Nozzolio, on the bill.

SENATOR NOZZOLIO: Thank you, Madam President.

Madam President, I rise with great concern and wish to thank Senator Volker and Senator Golden for bringing this important issue to our attention, because for so long the discussions regarding the so-called drug law change bill was secret, behind closed doors. It wasn't something that the general

public and certainly this house had any opportunity to review at length.

To contrast with the conference committee process that took place in 2004, I was proud to be with Senator Volker, Senator DeFrancisco, as a member of that joint committee that worked to reform the drug laws of our state and were very successful in doing so in a full, open, transparent way. There's been a 23 percent decline in drug offenses since these laws were enacted in 2004. And for that, this house, which supported those changes virtually unanimously, should take some pride.

I take pride in the fact that in 1995 we created the first of its kind in the state, and I daresay the first of its kind in the nation, when we took the abandoned Willard Psychiatric Center and created the Willard Drug Treatment Prison. The Willard Drug Treatment Prison has been an enormous success, but it does not -- and I should say at the outset and say it as loudly as I can -- it does not decriminalize drugs.

What it does do is focus on those who have committed crimes because of drug dependency, because of alcohol abuse and dependency, and ensures that their stay in prison is a productive one that focuses on rehabilitation.

But my colleagues, Madam President, just as the old adage said, you can lead a horse to water but you can't make them drink. If someone is not committed to rehabilitation, if they don't have the appropriate incentives to get off of drugs or narcotics or whatever their dependencies are, unless they're committed to reforming themselves, they will not make it.

The Willard Drug Treatment Prison provides the opportunity for rehabilitation. It's a success story in many other ways. It helps grade-point average in education and helps reading skills. And it's focused on those inmates who actually want to be rehabilitated, who have the desire to be so. And that desire is the incentive, and the incentive is that their stay in prison, if

they focus on this rehabilitation, will be less than it would otherwise be.

That I'm very disappointed and concerned that as some have called this a disaster and an outrage, the legislation that's before us today, and particularly aspects of it that I wish to highlight.

Protecting illegal aliens who are arrested for selling illegal narcotics. Senator Volker terms it the Drug Dealer Protection Act. Parenthetically, it seems as though this is the only aspect of the New York State budget -- and I don't know why it's in the budget. I think it's a travesty that it is secured in the state budget as opposed to a separate legislative measure that will require a separate debate that will require separate oversight and separate review. Instead of that, it is jammed into this huge budget that's on our desks that's over a foot tall of paper.

But at any event, that is the new transparency that the Democrats in the Senate are presenting us. This new transparency that

tries cloud the issues. Well, in any event, we've already seen in this budget how jobs will be lost in New York, how tax will be increased, how spending will be increased, how businesses will be driven out of this state. Those that haven't left already are going to get billions of dollars of incentives to leave New York State, by the billions of dollars that are going to be thrust upon them by this budget. It seems as though the only growth industry in New York is going to be drug dealing. Because New York is now the safe haven for drug dealers in America. And you don't have even to be exclusively an American franchise. You can be an illegal alien and sell drugs in New York State -- and what will happen? Not much. Not much at all. A slap on the wrist.

Some so-called treatment that frankly the infrastructure that is designed for treatment, infrastructure that members of the Democrats cut last time we did a budget, which was the DRP just a few months ago -- the infrastructure for parole, probation,

correctional alternatives, all those areas have been cut by you. That the infrastructure is so weakened, it will never be able to withstand, withhold the types of process that are thrust upon them with this legislation.

Bridget Brennan, who was quoted before -- who is again the special narcotics prosecutor for the City of New York -- reflects to me what many of the prosecutors in my counties that I represent have already communicated to me. Jon Budelmann, from Cayuga County, the district attorney, indicated clearly that he and the other district attorneys from our state oppose this legislation.

But Bridget Brennan, the special narcotics prosecutor, indicated clearly that "At a time when we are seeing troubling escalation in heroin use in Long Island and upstate counties, as well as New York City, this bill sends the message that today we view cocaine, heroin, and methamphetamine dealing as less harmful today than ever."

That's very disturbing. It's

extremely disturbing to all of us who represent areas that have seen too much an invasion of drug dealing. The methamphetamine issue is one that is becoming increasingly prevalent in the upstate area.

We need to do exactly the opposite of this legislation. We need to make sure that those who are selling drugs in a schoolyard, they may be young, but they're pushing a very potent, powerful, and destructive commodity. Those who sell drugs in a schoolyard that may be under the age of 21 will get nothing more than a slap on the wrist -- not even a slap, will be simply diverted, by this legislation, away from prison, away from incarceration, away from punishment. And frankly, away from appropriate treatment.

This is an outrage. It's something that we should never support. It should be vetted, it should be dissected throughout the rest of this legislative session at the very least, unless we can defeat it now.

And I noticed that there are over

15 Democrats in the New York State Assembly who had the courage to stand up in opposition to this legislation. It's a shame that we can't find more than one Democrat from this house that couldn't stand up to protect their citizenry from an invasion of drugs and the development of a system that simply says drug dealers can apply to New York State. If you're an illegal alien who is drug dealing, you won't have to worry deportation if you're caught. And of most concern is the drug dealing by young drug dealers that had the franchise around our local schools will be not punished but simply sent with less than a slap on the wrist to begin again without even a criminal record as a result.

Madam President, for those and many other reasons, this legislation should be defeated. And that I hope that as the Assembly found 15 Democrats to, in a bipartisan fashion, oppose this legislation, it's my hope we can find the same number on the Democratic side of the aisle of this house.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Fuschillo, on the bill.

SENATOR FUSCHILLO: Thank you very much, Madam President. The sponsor, Senator Schneiderman, talked about how this is Governor Paterson's bill. I want to start off by saying that if I had a medical problem, I wouldn't go to Governor Paterson, I'd go to a doctor.

It amazes me how Governor Paterson, in this piece of legislation, has made the prosecutors of the State of New York irrelevant. Now, there's nobody here in this body or in the Assembly or in the executive branch that is currently a prosecutor defending the people in this state. Yet this bill ignores their expertise. It ignores their daily work, it ignores everything that we've heard from them since the Governor and the Assembly passed the bill and then the Governor proposed this bill.

In 2004, when Senator Volker had

chaired the joint legislative conference committees with many members on both sides of the aisle, weeks of meetings were held to negotiate this out in the public for everybody to see. And to the best of my recollection, the bill passed unanimously because it was done in a democratic, nonpolitical process where every legislator had the opportunity for input on reforming the criminal justice system in this state.

And now, when the reforms are before us, it was done in the nature of this budget of secrecy. And the question is why. You know, why, when the prosecutors say it's going to put drug dealers and pushers on the streets, is it ignored? We don't get an answer to that question.

Why, when Senator Flanagan talked about Bridget Brennan, who is the special narcotics prosecutor from the City of New York, when he read her letter -- and I'm going to read the first paragraph, because it's frightening. "With a great sense of urgency, I ask you to vote no on the state

budget unless the drug laws are changed and removed. While this proposal may be full of good intentions, I fear that it paves the proverbial road to hell for thousands of decent citizens living in vulnerable communities throughout our state."

Whoa. Here's a special prosecutor dealing with narcotics that's saying exactly what we feel, what Republican Senators feel today, that drug dealers are going to get out on the street and make our streets vulnerable.

My own district attorney, Kathleen Rice, sent me a letter. And she stated in the letter: "Let me be clear that I strongly supported the reforms that we achieved to these laws in the 2004 legislative session, and I believe wholeheartedly that additional reforms can be made that will address the needs of our addicted population and at the same time make our streets safer."

But she goes on to say: "I find it deeply concerning regarding the new proposed reforms to these drug laws. First and foremost, it is my belief that the current

proposals have not adequately recognized the important role that the district attorney's office must play in determining who among our drug dealing or drug possession defendants is eligible for alternatives to incarceration."

She goes on to say: "There is nobody more familiar with the defendant's background and the details of their current case than the district attorney's office. Exclusion of the most informed party from such an important process is ill-conceived and will result in fewer drug treatment success stories and more nonaddicted criminals on our streets.

"It is my belief that absent appropriate and stable funding, the financial cost of this legislation will be shifted almost exclusively to our local jails and probation departments, and that potentially dangerous individuals in need of assistance will go untreated and remain in our streets."

Those are the prosecutors. Those are the people that are elected to be on the front line of defense to the people in our communities.

ACTING PRESIDENT STEWART-COUSINS: Senator Marcellino, why do you rise?

SENATOR MARCELLINO: Madam President, would Senator Fuschillo yield to a question?

ACTING PRESIDENT STEWART-COUSINS: Senator Fuschillo, will you yield for a question?

SENATOR FUSCHILLO: Yes, Madam President.

SENATOR MARCELLINO: Senator, you just read a letter from the prosecutor, the district attorney of Nassau County, in which I live and you live. Just for the record, what is her political persuasion?

SENATOR FUSCHILLO: She's a Democrat.

SENATOR MARCELLINO: Thank you.

SENATOR FUSCHILLO: May I continue?

ACTING PRESIDENT STEWART-COUSINS: Senator, continue, please.

SENATOR FUSCHILLO: Thank you, Madam President.

So I've just read two letters, from the Nassau County district attorney, Kathleen Rice, and Bridget Brennan, who is the special narcotics prosecutor for the City of New York. And it was referenced before by Senator Padavan, Senator Flanagan, and Senator Golden.

As a parent of three children -- all of us as parents -- that's our first line of defense with law enforcement, our prosecutors. And for the Democrats in the Senate and the Assembly and the Governor to ignore the prosecutors that defend the people and want to put these individuals behind bars to protect us is something I'll never understand.

Now, before I got elected to the Senate I ran a nonprofit agency that ran drug treatment programs, alternative to incarceration programs called TASC, Treatment Alternatives to Street Crime, throughout Nassau County and the five boroughs, Rockland and Westchester.

And a recommendation to the court to go into a TASC program was made after the

prosecutor sent the individual to TASC for an evaluation. The evaluation came back to the prosecutor, and then the prosecutor made the determination whether or not this person should go into the program or jail. And that's being taken out of this, and that's of great concern.

Would the sponsor yield for a question, Madam President?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, will you yield for a question?

SENATOR SCHNEIDERMAN: I would be glad to yield for a question.

SENATOR FUSCHILLO: Thank you, Senator. Just two or three quick questions.

The TASC programs that I was involved with many years ago, and other programs like that, faced significant reductions in funding in the deficit reduction plan and I believe in this budget as well that we're voting on -- maybe not this section, but other sections.

They were overloaded, the

caseloads, they were overloaded before they faced a reduction in the DRP, and they are overloaded now. And I've talked to them, and I've talked to the programs in the five boroughs and Long Island that handle this Treatment Alternative to Street Crime. They can't handle this.

If this goes through, Senator, and when it goes through, there's no additional funding to handle the caseloads. How is it going to be dealt with?

SENATOR SCHNEIDERMAN: Thank you. Through you, Madam President, that is an excellent question.

In fact, there is additional funding in this year's budget. We have, over the course of the next two years, a commitment of $71.6 million as essentially on the down payment for this Rockefeller reform effort.

We know that breaking the cycle of drug dependence, getting people out of prison and into treatment programs, will save us money. In the long run, it should save us hundreds of millions of dollars. But the

first two years of expansion of drug treatment slots, as the Senator points out, does require a down payment.

By a happy coincidence, we have a significant amount of money, Edward J. Byrne JAG program funding that's available through the federal government as a part of the American Recovery and Reinvestment Act of 2009. So we are able to use federal stimulus money for the two-year period of down payment not just for treatment slots -- although, as the Senator correctly points out, that's a primary concern -- but to expand drug courts and to provide additional funding for local governments who are going to have additional expenses for probation and other things.

I share the concern of everyone who has spoken about the issue of cost and cuts in the public protection budget. This is a serious concern going forward. I do think, and it seems pretty clear, that two years from now the amount of money we're going to be saving by having people, instead of spending $60,000 a year to keep someone in prison, to

have someone in drug treatment, is going to come back to help us. But we do need money in the short term, and we have that through the federal stimulus package.

SENATOR FUSCHILLO: Senator, thank you.

Would the Senator continue to yield for one further question?

ACTING PRESIDENT STEWART-COUSINS: Senator, do you continue to yield?

SENATOR SCHNEIDERMAN: I continue to yield.

SENATOR FUSCHILLO: Senator, in the bill these local conditional release commissions, are they new.

SENATOR SCHNEIDERMAN: The local -- I'm sorry?

SENATOR FUSCHILLO: Local conditional release commissions. Is that newly established?

SENATOR SCHNEIDERMAN: Yes. Yes, that is new.

SENATOR FUSCHILLO: Would the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: Yes, I continue to yield.

SENATOR FUSCHILLO: So in my county, Nassau County, or I represent Suffolk County as well, the county executive would set this commission up and set up and appoint the members, and they would be the ones determining whether it's a conditional release or not?

SENATOR SCHNEIDERMAN: I believe that this is optional to the counties. This is something that's not required. And it is something at the discretion of the county government.

So I don't know that your county governments will choose to have conditional release commissions or not. It's something that we provide as an alternative. We're trying to provide flexibility for local governments.

SENATOR FUSCHILLO: Thank you,

Senator.

There are other sections of the bill, Madam President, that deal with fiscal matters. Would somebody be kind enough to answer some questions?

ACTING PRESIDENT STEWART-COUSINS: Senator Kruger, will you yield for questions from Senator Fuschillo?

SENATOR CARL KRUGER: Yes, I will.

SENATOR FUSCHILLO: Thank you, Senator Kruger. Thank you, Madam President.

Senator Kruger, in reading this bill, on page 57 --

SENATOR CARL KRUGER: If you say so.

SENATOR FUSCHILLO: I'll wait for you, because I have some questions on page 57.

SENATOR CARL KRUGER: That's okay, go ahead.

SENATOR FUSCHILLO: The monies that -- and there's a lot of appropriations here, but I'll just pick one. $41 million from the Office of Temporary and Disability

Assistance Accounts, with the federal Health and Human Services Fund, to go to the General Fund. Is that a sweep?

SENATOR CARL KRUGER: It might be. Or it might not be.

SENATOR FUSCHILLO: Okay. Well, I'll go with might be.

Would the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator, do you continue to yield?

SENATOR CARL KRUGER: Yes, I do.

SENATOR FUSCHILLO: Thank you, Senator Kruger.

On the page previous to that, page 56, line 49, it says $20 million from the Hazardous Waste Remedial Fund Oversight and Assistance Accounts to the General Fund. Is that a sweep?

SENATOR CARL KRUGER: It may be.

SENATOR FUSCHILLO: Okay, good. Would the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Kruger, do you continue to yield?

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT STEWART-COUSINS: Yes, he does.

SENATOR CARL KRUGER: It's a lot of money, by the way.

SENATOR FUSCHILLO: Thank you, Senator Kruger. On that same page -- let me get my notes -- $10 million from the Office of Children and Family Services, Office of Temporary and Disability Assistance, to the Department of Health Special Revenue Funds, and General Fund. Is that a sweep?

SENATOR CARL KRUGER: On what page is that now?

SENATOR FUSCHILLO: Same page, 56.

SENATOR CARL KRUGER: Page 56. Let's see what it says.

To the best of my knowledge, Senator, they're transfers that are done each year. But do you have a copy of the Article VII bill?

SENATOR FUSCHILLO: Are we on that now?

SENATOR CARL KRUGER: But if you do refer to the Article VII bill at your leisure, you'll be able to see that.

SENATOR FUSCHILLO: Thank you. Would the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Kruger, will you continue to yield?

SENATOR CARL KRUGER: Absolutely.

ACTING PRESIDENT STEWART-COUSINS: The Senator yields.

SENATOR FUSCHILLO: On page 58, the next page, line 42, $192.4 million from the Health Insurance Reserve Receipt Funds to the General Fund. Below that, $150,000 from the Not-for-profit Revolving Loan Fund to the General Fund. Below that, $11 million from the Miscellaneous Special Reserve Fund to the General Fund. Below that, Surplus Property Account to the General Fund. Below that, another $2 million from the Miscellaneous Fund. And I see a lot of these things. And I'm not going to go through each one, Senator Kruger, and I'll close the bill. But in looking --

SENATOR CARL KRUGER: To my knowledge, Senator, these transfers of funds are no different this year than they're done every year. The same ones that were appropriated last year when you did the budget.

SENATOR FUSCHILLO: Okay. Then on page 61, it continues, taking almost $10 million out of a Miscellaneous Special Fund, which is the Criminal Justice Improvement Account, and puts it in the General Fund. And in the Indigent Legal Services Fund, takes it out of that fund, puts it in the General Fund. And something I know Senator Young would probably be concerned with, that's $600,000 from an Agency Enterprise Fund, Farm Program Account, to the General Fund. And there's pages of all of these things that go on.

SENATOR CARL KRUGER: Yeah, it is. It's a lot of money.

SENATOR FUSCHILLO: So these funds, Senator -- I'm sorry, Madam President, would the Senator continue to yield?

SENATOR CARL KRUGER: Senator, once again, to the best of my knowledge, these transfers and these funds are done every year. This is nothing different, nothing strange, nothing new, nothing different than was done when you did the budget last year and for the previous years.

SENATOR FUSCHILLO: So in this budget today, for 2009-2010, these funds are being taken out of specific accounts for specific programs today and being put into the General Fund?

I'm sorry, Madam President, will he continue to yield?

SENATOR CARL KRUGER: No, they don't all go into the General Fund, Senator. Through you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Kruger.

SENATOR FUSCHILLO: I'm sorry, Madam President?

ACTING PRESIDENT STEWART-COUSINS: Would you repeat your answer, Senator?

SENATOR CARL KRUGER: Yes,

through you, Madam President, they are not all going into the General Fund.

SENATOR FUSCHILLO: No, I -- Madam President, will the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator, will you continue to yield?

SENATOR CARL KRUGER: Yes, I will.

SENATOR FUSCHILLO: Thank you, Senator Kruger. No, I know that. And I only picked the ones that are going to the General Fund.

But to just ask my question, and I think I'm finished, the ones I mentioned are coming out of specific accounts that I mentioned and going into the General Fund; correct?

SENATOR CARL KRUGER: Yes.

SENATOR FUSCHILLO: Okay. Thank you very much, Senator Kruger.

SENATOR CARL KRUGER: Thank you.

SENATOR FUSCHILLO: Just on the bill.

I just want to reiterate, Madam President, that the prosecutors are the prosecutors, just as doctors are doctors. And if you need medical advice, I'm not going to go to the Governor for medical advice, I'm going to go to a doctor.

If I need advice from a prosecutor, with all due respect, I'm not going to come here to the Senate or the Assembly or to the Governor. I'm going to go a prosecutor. Because they're on the front line every single day prosecuting cases and defending our families throughout New York State.

And yet the letters, the comments, the calls, the emails, the visits to this chamber, outside the chamber, in the lobby, to our offices, where the prosecutors came and said this bill, if enacted, Governor Paterson's bill, if enacted, will put drug dealers out on the street and will jeopardize all our families.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Diaz, on the bill.

SENATOR DIAZ: Thank you, Madam President. Through you, Madam President, will Senator Schneiderman yield for a question or two?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you yield for a question?

SENATOR SCHNEIDERMAN: Through you, Madam President, I will yield for a question.

SENATOR DIAZ: Senator Schneiderman, you are a lawyer. You are such a good lawyer that you were mentioned as a possible candidacy to fill the vacancy in the Manhattan DA's office. So you are a lawyer. But I'm not a lawyer.

And obviously, over there, they are confusing violent with nonviolent. Will you as a lawyer tell me, please, what is the difference between a nonviolent crime and a violent crime?

SENATOR SCHNEIDERMAN: Through you, Madam President. There's an extensive

set of definitions in the law as to what constitutes violent crime and nonviolent crime.

And I would like to emphasize, because sometimes our rhetoric breaks outside the boundaries of the actual legislation that we're talking about, that there is no one eligible for the judicial diversion to drug treatment program that is enacted through this legislation who has ever been convicted of any violent crime. No one convicted of assault, of robbery, anything else.

It is also true that people who are convicted of sex offenses, even if they're nonviolent, are excluded from this program. This is a program designed to get at people who are drug addicts who commit nonviolent crimes because of their addiction, whether it is a drug crime or a nonviolent property crime. The only people eligible for this diversion program -- which will get more people off drugs and out of the cycle of criminality and will make all of us safer, are nonviolent criminals.

SENATOR DIAZ: Through you, Madam President, would the Senator still yield for another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: I will yield, Madam President.

SENATOR DIAZ: So, Senator, you are telling me -- because I heard the other side saying that criminals and killers and murderers are going to be let go loose and that the streets are going to be filled with criminals, killers. Are you telling me that this is not so?

SENATOR SCHNEIDERMAN: Through you, Madam President. I'm telling you not only is that not so, but that I have a tremendous amount of confidence and that I think my colleagues, once things cool down and they get a chance to actually assess the proposed program, I have a lot of confidence that my colleagues will conclude that a diversion program where treatment

professionals assess a substance abuse problem and judges, after input from prosecutors, are able to send drug-addicted criminals into the best treatment programs available in our state through the tight supervision of a drug court model, will absolutely decrease crime in this state and make all of us safer.

This is not something to put more criminals on the street, this is something that will absolutely reduce the number of criminals on our streets. And there is no violent criminal who will be let out of prison or diverted from prison under this legislation.

SENATOR DIAZ: Madam President, through you, will Senator Schneiderman yield for another question, please?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: I will yield for another question, Madam President.

SENATOR DIAZ: Senator, you know, I have to get it clear in my head. You are

telling me that what we heard from that side that we are cutting criminals loose, killers, and that the people should panic because we're sending people into the street, killers, you're telling me that's a lie?

SENATOR SCHNEIDERMAN: Well, through you, Madam President, I'm not saying that it's a lie, but it's certainly not true.

SENATOR DIAZ: Madam President, through you, would the Senator yield for another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: I will yield for another question, Madam President.

SENATOR DIAZ: Through you, Madam President. Senator Schneiderman, now you have to define for me the difference between not true and a lie.

SENATOR SCHNEIDERMAN: I think we're -- although I am lawyer, we may be headed into territory over which you have more jurisdiction than I do, Reverend.

(Laughter.)

SENATOR SCHNEIDERMAN: But I think there may be people who are mistaken, there may be people who have heard things from folks who have a particular ax to grind here who are not fully disclosing all the facts.

Let's stick with what's true. I do believe that most of my colleagues, when they have a chance to assess this after the heat of the moment wears off, will understand how good a program this is. It is clearly the case that this is a program for nonviolent offenders whose primary problem is drug addiction.

And I will say to you, Senator -- through you, Madam President -- 30 years ago we did not have the empirical evidence and the experience in drug treatment to be able to say what we can say today with confidence. What we can say today with confidence is the drug court model, the treatment programs we have in New York State, can absolutely get people off drugs, reduce crime, reduce addiction, reduce recidivism. We are confident this can work.

And I would urge the Senator and all of my colleagues to take the evidence of the last 30 years and not be blinded by headlines, not be blinded by any sort of extremism. This is a sound program that will work. And I would urge anyone who has any questions to take a look at the work of the Sentencing Reform Commission, which did indeed form the basis for this proposal.

SENATOR DIAZ: Thank you, Senator.

Madam President, through you, would Senator Sampson yield for a question or two?

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz, the rules do not permit Senator Sampson, who has not spoken on the bill, to reply to a question. But you can certainly speak on the bill if you'd like.

SENATOR DIAZ: Through you, Madam President. Would Senator Schneiderman please come back and yield for another question or two?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you yield for a

question?

SENATOR SCHNEIDERMAN: I will yield for another question, Madam President.

SENATOR DIAZ: Senator, tell me about the Rockefeller drug laws. When a person is arrested and is accused of possessing 2 ounces of heroin, what is the penalty for that? Under the Rockefeller drug laws, what is the penalty for a person that possesses 2 ounces of heroin?

SENATOR SCHNEIDERMAN: Under the Rockefeller drug laws as enacted, 3 1/2 to 12 years would be the minimum sentence.

SENATOR DIAZ: Three and a half to 12 years.

SENATOR SCHNEIDERMAN: That would be the minimum.

SENATOR DIAZ: Through you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Would you like the Senator to continue to yield?

SENATOR DIAZ: Those 3 1/2 to 12 years, mandatory, no parole, no -- it's

mandatory, or do we go --

SENATOR SCHNEIDERMAN: Through you, Madam President, that was the design of the Rockefeller drug laws, was to have absolute mandatory minimums. That's why so many judges protested. No matter what your circumstances, you would have a minimum of 3 1/2 to 12 years.

SENATOR DIAZ: Through you, Madam President, will Senator Schneiderman still yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: Yes, I will continue to yield.

SENATOR DIAZ: If I go into a bodega -- through a taxi driver -- and then go boom-boom-boom and shoot someone, and they confuse me of criminal intention, murder, or something like that, manslaughter, what would be my penalty?

SENATOR SCHNEIDERMAN: Well, through you, Madam President, it would depend

on which of those you're accused of. Man two, I think that the minimum sentence is probation. Man one is a B violent, so -- the mandatory for man one, that would be a mandatory prison sentence of three years.

SENATOR SALAND: Point of order.

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, why do you rise?

SENATOR SALAND: Just simply because if you walk into a bodega, take a gun and go boom-boom-boom, that's not going to be manslaughter. That's all. Thank you.

(Laughter.)

SENATOR DIAZ: Madam President, through you.

ACTING PRESIDENT STEWART-COUSINS: I think that was just a point of clarification there.

(Laughter.)

SENATOR DIAZ: Madam President, through you.

ACTING PRESIDENT STEWART-COUSINS: Senator, you would like Senator Schneiderman to continue to yield?

SENATOR DIAZ: Yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, will you continue to yield?

SENATOR SCHNEIDERMAN: Yes, I will continue to yield, Madam President.

SENATOR DIAZ: Senator Schneiderman -- through you, Madam President. Senator Schneiderman, I don't understand this. I'm confused. You're telling me that a person who is accused of manslaughter that shoots someone will get a less sentence than a person that is arrested with also some marijuana -- I mean, of heroin?

SENATOR SCHNEIDERMAN: Through you, Madam President, manslaughter two has a shorter minimum sentence than if you're a B offender for drug possession. That was correct under the Rockefeller drug laws. There are a wide variety of violent crimes that have shorter mandatory minimum sentences than drug crimes under the Rockefeller drug laws.

We are seeking to change that. We

made some changes in 2004 and 2005, and today we are reducing the mandatory minimums for certain other nonviolent drug offenses.

SENATOR DIAZ: Madam President, through you. Last question, if the honorable Senator agrees to yield one more time.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, will you yield for one last question from Senator Diaz?

SENATOR SCHNEIDERMAN: Madam President, I will yield for one last question.

SENATOR DIAZ: Senator and colleagues and Madam President, through you, I heard Senator Golden say hopefully -- no, that was Senator DeFrancisco, I'm sorry. Senator DeFrancisco, in his beautiful speech before, he said, Madam President, hopefully someone in the other aisle -- referring to us Democrats -- he said hopefully someone in that aisle will understand -- that's what he said, and Senator Golden said -- I hope that someone in that aisle, referring to us Democrats, stand up and do the right thing. The two of them said that.

And now Senator Schneiderman is telling me that a person with intent to kill someone will get a less sentence -- manslaughter, person with a manslaughter -- accused of manslaughter will get a less penalty, a less penalty than somebody that is caught with 2 ounces of heroin.

So now, Senator Schneiderman, my question. Who should stand up and do the right thing, and hopefully who should understand this?

SENATOR SCHNEIDERMAN: Thank you. Through you, Madam President. We should all stand up and do the right thing. And everyone should understand, and I hope everyone understands more clearly now. Thank you, Madam President.

SENATOR DIAZ: Thank you. On the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz, on the bill.

SENATOR DIAZ: I'm a black guy from Puerto Rico. Kinky hair, from the South Bronx, listening to all the geniuses here

telling us why this law should not go through.

According to the law, Madam President, ladies and gentlemen, we are only asking to do the right thing. And what is the right thing?

The right thing is that we have committed an injustice, injustice in this state. That injustice was written -- was signed by a guy named Nelson Rockefeller. And we call that Rockefeller drug laws. And that's an injustice. Injustice because a person that is caught with 2 ounces of heroin -- by the way (indicating), this is sugar. Sugar here.

(Laughter.)

SENATOR DIAZ: This is sugar. But this is 2 ounces. Let's make believe that this is heroin here. Again, Madam President, sugar. I want to make that clear. But this is 2 ounces. And I want you to see, on the other side. Maybe hopefully someone --

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz --

SENATOR DIAZ: I'm speaking here.

ACTING PRESIDENT STEWART-COUSINS: No, this might help you. We're not allowed to use props. So put that away.

SENATOR DIAZ: I'm sorry.

ACTING PRESIDENT STEWART-COUSINS: Okay.

SENATOR DIAZ: But no, no, I just wanted to show them that. We're not allowed to -- I'm not allowed to show you this (indicating).

But -- and I'm showing this because hopefully -- hopefully -- someone, someone in that aisle will finally understand. Maybe someone in that aisle will stand up and do the right thing.

And what is the right thing? The right thing is to correct an injustice. An injustice that has been done in this state for people that are being punished more for possession of an ounce of heroin than someone that is even -- a man that is accused of manslaughter.

So, ladies and gentlemen, this is a good bill, a good bill to correct a big

injustice. And you should understand that. Simple as that, simple. Don't talk no more. Don't find faults. This is an injustice. People have been sent to jail for 15 years just for possession, while some criminal, real criminal, real criminals, are being given one-year probation. That's an injustice. And we should all be willing to correct that injustice.

We are not asking anyone to release criminals. And don't stand over there and say to the camera and to the people in your neighborhood: Oh, criminals are going to go into the street, oh, we are going to have murders and killers. That's not so, and you know that.

So stop and let's stop this and let's go to the bottom of the merengue. And the bottom of the merengue is that an injustice has been committed and that this Democratic Senate and this Democratic Conference is telling the whole State of New York: Join us, join us and correct this injustice.

Punishment should be equal to the crime. And we have here penalties that's unequal to the crime. People getting a free ride for assaulting and killing, and other people going to jail for 15 years and seven years for possession of heroin. And that's not a violent crime. We are asking only the violent.

And, Mr. -- don't start up, because I'm yielding. I'm not yielding to anyone. I'm here talking the way you're talking. I'm saying --

ACTING PRESIDENT STEWART-COUSINS: Senator Golden, why do you rise?

SENATOR GOLDEN: I was going to ask Senator Diaz if he'll yield for a question.

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz, will you yield for a question?

SENATOR DIAZ: Maybe I will yield after Senator Golden stands and do the right thing. Then I will yield, but not now. But maybe he's looking --

SENATOR GOLDEN: Madam President,

I am standing to do the right thing. So if the good Senator --

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz, will you yield for a question?

SENATOR DIAZ: To my colleague from Brooklyn, the beautiful colleague from Brooklyn, yes.

SENATOR GOLDEN: Madam President, to the good Senator Diaz, we put up props and we display what turns out to be sugar but was alluded to could be heroin, pure heroin.

And I wonder if my good colleague, Madam President, understands how many kids could be addicted because of those to two little props that he put up there, if in fact they were pure heroin. And does my dear colleague understand how many kids would die because of those two little props that could have been pure heroin?

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz.

SENATOR DIAZ: If my colleague understands that we are committing an injustice to send that little kid that might

be possessing that ounce of heroin to 15 years in jail and be separated from their parents and from their community and from their -- for that time.

But yes, you -- my colleague, you are right. But you have to stand up, do the right thing, and let's correct this injustice. You and I together -- Republicans, Democrats together -- correcting an injustice in the State of New York that has been done to many people. Too many people are suffering. Too many families have been broken down. Too many people -- and now we're using this to attack the immigrants. Come on, let's stop this thing.

Thank you, Madam. Thank you for time. And by the way, as always, you're looking there good there with your trademark. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Espada, on the bill, please.

SENATOR ESPADA: Thank you, Madam President.

You know, I'm very privileged to be

able to speak after Senator Diaz. He's the first person that represents the voice of the 90 percent that were disproportionately impacted over 36 years with respect to this policy.

But let me first start with giving praise, too, to the Legislature over a series of sessions for making some changes to the so-called Rockefeller drug laws.

But let me give special praise to my colleague Senator Schneiderman, because Senator Schneiderman's passion for this has been duly noted.

But I want to go on record as a person that is a child of the '60s, when this heroin invaded our communities. I came from Puerto Rico, as did Senator Diaz. We settled in in the South Bronx. There were not just Puerto Ricans or African-Americans, it was a heterogeneous community, a diverse community.

The civil rights movement, the blackout, we're moving into the late '60s now. And all of a sudden -- none of us grew up with heroin in Puerto Rico. I grew up in Coamo,

you grew up in Bayamon. We didn't grow up with that. We didn't even know what it was.

But we're here in the South Bronx, and all of a sudden there was an invasion of this white powder, an invasion of it. And I know that there was a primal scream, a primal scream for someone to do something about this. There was the usual get 'em, lock 'em up mentality, and it won. It won over people in our communities, it won people votes and passions throughout this state.

And so here we are, 36 years later, still with the scales of justice tilted way against, way against the 90 percent nonviolent drug addicts that are in jail.

And so Senator Schneiderman, as a lawyer, has done an excellent job of going through the elements. He warned us against political pandering, but we didn't listen. The elements -- judicial diversion, treatment programs, drug courts. The elements, judicial discretion.

And I want to pause there, because we made a judge, the most powerful judge,

Judge Lippmann, just a couple of weeks ago the presiding judge of the Courts of Appeals, the highest courts of this state. He absolutely has lived through the 36 years. He's in charge of our justice system. He absolutely sees, Senator Diaz, the injustice engrained in this, institutionalized in this for too long, for decades.

And so while we do find humor and while we are asked to stand up and do the right thing, because of a failure of a one-year notification as it relates to the minimum security prisons -- if this bill were about that, you'd have my vote. If this bill was simply about not having legislation that doesn't belong in the budget in terms of budget reform, you'd have my vote.

But let me voice my disappointment in the fact that no one -- and Senator Diaz has his way of bringing out the truth in a lot of these matters. But the bare essence of that truth is that no one has spoken to the fact that this has created racial disparities. Let's be clear about that.

We don't want to talk about that, we don't want to pander to that. But just as President Obama got on TV several months ago and spoke truth to the racial divisions and the racial injustice that's institutionalized as real, we need to be real.

And if you're going to call on honesty and bravery and courage and independence on this side of the aisle, you're absolutely right, we need to call it on the house in general.

And on the house in general, if we're to weigh this issue and what it has done, I'm not a lawyer, but the codification of these issues of severe collateral damage -- as a social worker, as a parent, as a grandparent, we can speak to collateral damage.

For every mother and father that took up residence that was a nonviolent drug addict and took up residence way up north, way away from New York City, a long way from the eight Assembly districts that make up the highest percentage of inmates in New York

State prisons, there was a lot of collateral damage. There were children and grandchildren and foster care that made their way into our budgets here for sure. We pay a lot for that collateral damage.

But thanks to this legislation, we're now at a point where we will "Drop the Rock." We won't have to talk about this anymore after today. And I think that deserves praise, Senator Schneiderman. You have authored landmark legislation that has cured the ills that so many have suffered throughout the decades.

Now, I know that folks were reading different things, and I get my turn now. This is from Newsday, a newspaper that does not circulate much in the districts that we represent.

But it says: "After growing up in Syosset and Hewlett, Eric Marsh hoped to inherit his father's truck dealership.

"But somewhere along the way, cocaine beckoned.

"As Marsh cared for a brother who

was dying from AIDS in 1990, he also developed a cocaine habit, capping a relationship with illegal drugs that began in his late teens.

"Soon, Marsh says, two friends were charged with selling a little more than 2 ounces of cocaine to a Nassau undercover police officer. To avoid prison, Marsh said one of them turned police informer and said Marsh had sold him the cocaine.

"The Rockefeller drug laws allowed reduced sentences for defendants who cooperated in drug cases, and the friend received probation.

"Quotes Marsh, 'I wasn't guilty of the charge. I was basically guilty of making poor judgments in my friendships.'.

"But a Nassau jury believed the prosecutors and found Marsh, then 35, guilty. Under the strict Rockefeller drug laws, Marsh received a mandatory minimum sentence of 15 years to life in prison. It was his first brush with the law.

"'They put me in handcuffs and I was locked up for 11 years, two months and

three days,' Marsh said.

"While serving time, Marsh earned a bachelor's degree in psychology through Marist College's prison program. His father and mother both died while he was in jail.

"'It devastated my family,' Marsh said. 'No parent wants to see their child go to prison for a disease.'.

"In 2002, Marsh asked Governor George Pataki for clemency, citing good behavior in prison and his psychology degree. On Christmas Eve 2002, Pataki granted Marsh clemency. On January 16, 2003, he left prison.

"While jailed, Marsh said, 'I had many months of boredom peppered with moments of sheer terror.'.

"After his release, Marsh stayed with friends in Blue Point. He has occasionally visited friends who remained in prison, and has since earned a master's in education from Hunter College.

"Today, Marsh, 52, is assistant clinical director for a Queens mental health

program. He still insists he was unjustly imprisoned.

"But he also said, 'They certainly gave me new purpose. I had enough smarts to become what I am now.'"

And so for the many Eric Marshes, for the women that were made into drug mules that never got their day in court, and so many other families -- and, as I said earlier, the collateral damages that have accrued -- this is a new day. This is a new day of freedom for a lot of folks that have been imprisoned unjustly that will lead, as Mr. Eric Marsh, productive lives when they get out. They will lead productive lives when they get treatment for a disease.

I thank you, Senator Schneiderman.

And like Senator Diaz, I ask us to put away the pandering, to put away the politics of fear, and really invest in this program, because it will save generations and restore a degree of decency and fairness to our system of jurisprudence.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Little, on the bill.

SENATOR LITTLE: Thank you, Madam President.

If I may, I would like to return to the budget elements of this bill, since that is supposed to be the main focus of the bills that we're doing today.

Would Senator Carl Kruger respond to a question, please?

ACTING PRESIDENT STEWART-COUSINS: Senator Kruger, will you yield for a question?

SENATOR CARL KRUGER: Absolutely, Madam President.

SENATOR LITTLE: Thank you, Senator.

In the Governor's bill that was presented in December, there were four minimum-security prison closures, including Camp Gabriels in my district. And the reason given was that there were not enough minimum-security inmates. This budget only closes three of those camps. Has there been

an increase in minimum-security prison inmates?

SENATOR CARL KRUGER: Through you, Madam President, if we were to refer to the bill itself and to refer to the reports surrounding the determinations, we would quickly learn that those camps that you're referring to were severely underutilized.

And what we have done is that we have consolidated those camps into one facility. And by doing such, we are going to be able to save approximately $7.7 million out of the 2009-2010 budget.

SENATOR LITTLE: Thank you, Madam President. Would Senator Kruger yield?

SENATOR CARL KRUGER: Excuse me, Senator Little, I take that back. It's actually in excess of $12.5 million.

SENATOR LITTLE: Thank you. Would the Senator yield for another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Kruger, do you continue to yield?

SENATOR CARL KRUGER: Yes, I do, Madam President.

SENATOR LITTLE: Thank you.

Senator Kruger, can you tell me what criteria was used to determine which facility would be kept open?

SENATOR CARL KRUGER: Through you, Madam President, I would suggest that geography was a main factor in making that determination.

SENATOR LITTLE: And could you tell me what location -- the location of that facility and the name of it that's being saved?

SENATOR CARL KRUGER: The camp that is going to remain open -- I don't know, does the word "saved" mean open?

SENATOR LITTLE: To me, it's saved.

SENATOR CARL KRUGER: All right. And to me, it's open.

Through you, Madam President, Camp Georgetown will remain open because it is 18 miles from the closed facility.

SENATOR LITTLE: Thank you. Another question, if I may.

ACTING PRESIDENT STEWART-COUSINS: Senator Kruger, do you continue to yield?

SENATOR CARL KRUGER: Yes, I do, Madam President.

SENATOR LITTLE: Thank you. Senator Kruger, can you tell me what the timeline is for the closure of Camp Gabriels at this point?

SENATOR CARL KRUGER: Immediately within the next 90 days. Through you, Madam President.

SENATOR LITTLE: So that would be immediately being June 30th, July 1st?

SENATOR CARL KRUGER: Through you, Madam President. From the passage of this budget hopefully before midnight tonight.

SENATOR LITTLE: Well, this -- excuse me, but through you, Madam President. I believe that in this bill an adaptive reuse plan has to be submitted by -- there's some point. October, is that correct?

SENATOR CARL KRUGER: Through you, Madam President, after the closure of that facility, a plan will be presented by

October 1st of this year.

SENATOR LITTLE: Thank you. Madam President, through you, another question, if I may.

ACTING PRESIDENT STEWART-COUSINS: Senator Kruger, do you continue to yield?

SENATOR CARL KRUGER: Yes, I do.

SENATOR LITTLE: So am I correct in saying that this facility will be mothballed and closed down for a several-months period while you determine what its reuse will be?

SENATOR CARL KRUGER: Well, through you, Madam President. I guess when, you know, when we start dealing with the pejorative of what "mothballed" means --

SENATOR LITTLE: Closed.

SENATOR CARL KRUGER: -- I really can't answer that. But through you, Madam President, if we want to talk about decommissioning the facility as we move forward with a plan for retooling it for future use, then I guess that would be an appropriate answer to your question.

SENATOR LITTLE: Thank you. And through you, Madam President, I just assumed that you would have to close down the entire facility or secure it so that it wouldn't be damaged, keep some kind of presence there while you await a reuse plan. Is that correct?

SENATOR CARL KRUGER: Through you, Madam President. In all due respect, Senator, you know, we here in the Senate really do not dictate the methodology that the Department of Correction uses in decommissioning a facility. I would hope that they secure it and treat it respectfully so that it's protected and it can be reopened at a future date.

SENATOR LITTLE: Thank you. But there is a cost to doing that.

Another question, if I may, through you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Kruger, do you continue to yield?

SENATOR CARL KRUGER: Yes, I do.

SENATOR LITTLE: In this reform

or drug law change that we have in this bill, can you tell me approximately how many inmates would be eligible for a resentencing program that are currently serving in prison?

SENATOR CARL KRUGER: Through you, Madam President. Based upon, once again, information that's supplied to us, we're taking the position that approximately 1600 people would fall into that broad category.

SENATOR LITTLE: Thank you.

And through you, Madam President, I would assume that many of these inmates were in prison for drug-related infractions. And it's my understanding that an inmate is not required to do a drug and alcohol program until they are within 18 months of their first possible release from prison.

So would these inmates in a resentencing program be put out on the street without a drug and alcohol rehab program?

SENATOR CARL KRUGER: Through you, Madam President. Within the spirit and the intent of the program, it is clearly suggested that the component of this is an

alcohol and drug rehab program.

SENATOR LITTLE: Thank you. And one more question, through you.

ACTING PRESIDENT STEWART-COUSINS: Senator Kruger, do you continue to yield?

SENATOR CARL KRUGER: With pleasure.

SENATOR LITTLE: Do you have enough drug and alcohol programs within the prison system to accommodate these inmates?

SENATOR CARL KRUGER: Through you, Madam President. Within the context of the budget, there's approximately $33 million that is going to OASAS by the use of stimulus money that would be dedicated towards these programs over a two-year period.

SENATOR LITTLE: Thank you.

On the bill, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Little, on the bill.

SENATOR LITTLE: Thank you.

This Camp Gabriels, which is in my district, is, as I said, in a very small community, and it's also within the Adirondack

Park. And the Adirondack Park has many, many restrictions as far as any business coming in and has to be permitted for everything that they do. It's very expensive and costly for a business to come into the Adirondack Park. And there are few and far between who come in and begin a brand-new business.

But in light of that, this camp was mentioned in last year's budget, and we were able to secure the funding to keep that prison camp open. However, I knew and the community knew that we needed to find a reuse for that camp, an expansion of the transitional programs that they have there, to make it into a reentry program that it could be.

To say that the numbers were down and that the camp was not at full capacity is determined by the Department of Corrections. The inmates don't decide where they would like to go; the Department of Corrections decides where they will send them. So it's very easy to drop the capacity at a facility.

The community together worked to come up with a plan. Once the plan was put

together and, again, we saw that Camp Gabriels was in the Governor's budget, we contacted the Department of Corrections. And actually, the commissioner of corrections visited Camp Gabriels with us and listened to the plan last July.

The plan is to have St. Joseph's Drug and Alcohol Rehab, which is an OASAS-certified program, provide drug and alcohol treatment at the facility. Their programs have about a 25 percent recidivism rate, and their programs are only nine months long instead of 18 months long. So the 18-month program, which costs the State of New York I think it's $67,000 for an inmate over the course of 18 months, could be shortened to nine months, and we actually show a savings.

This is a good program. The inmates would still have their work-release programs during the day, be out in the community and doing all of that.

In addition to that, we brought in Paul Smith's College, which is a culinary

school, and it's just up the road. That college looked at the kitchen, and for $50,000 they could put in a vo-tech program on food prep, hospitality services, and all kinds of things to train these inmates so that not only would they get the drug and alcohol treatment, they would be able to find a job when they left the facility.

We also have worked -- we have North Country Community College. We have done everything we could. And Senator Ruth Hassell-Thompson, certainly to her credit, went with me to Camp Gabriels just a couple of weeks ago to see the facility, to listen to the programs.

We presented the program. We've showed the cost savings. We've shown how this program can really and truly help inmates with their drug and alcohol programs, as well as do some vocational programs and reentry programs.

So I can't tell you how disappointed I am -- I can tell you. I'm extremely disappointed that Camp Gabriels is not the camp that is chosen to stay open. We

presented so many plans and so many opportunities for that. We are in an economically distressed area. There is nothing else. When that facility is closed this summer, we have no other opportunity for anything to go in there due to the nature, the location, and the fact that they're in the Adirondack Park.

So I just encourage you to take a look at this and the adaptive reuse plan. You need to come up with something, but do not close it in the meantime. See that we can work in facility into an adaptive reuse program going straight from what we have there into that program.

And I would encourage you, and I would work with you, whatever we can do. But it is extremely disappointing to have this facility closed.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Lanza.

SENATOR LANZA: Thank you, Madam President. Madam President, would Senator

Schneiderman yield for a series of questions?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, will you yield for questions?

SENATOR SCHNEIDERMAN: Thank you, Madam President, I'd be happy to.

SENATOR LANZA: Thank you. Through you, Madam President. Senator Schneiderman, why did you decide to place this package of legislation in the budget as opposed to having it come to this floor as stand-alone legislation?

SENATOR SCHNEIDERMAN: Through you, Madam President, that was not actually a decision that I was empowered to make. But the way this evolved, as I understand it, is that there were proposals for Rockefeller reform moving around. The Assembly introduced a bill and passed it very quickly. When negotiations were ongoing, the Governor came up with a proposal different from this but somewhere in between the Sentencing Commission's proposal for judicial diversion and the one that appears in this legislation.

And then our conference leader, Senator Malcolm Smith, I think this was probably about a month ago, issued a statement, I think there was a press release with several of us on it, saying that our conference took the position that we did not want to do Rockefeller reform without guaranteeing that the funding necessary to make that reform work was available.

And among the items that were cited in that statement, which I commend to you and I think it was a very important statement and a very important part of the debate that we've gone through in the last couple of months about this, were several elements.

First of all, that we had to have the money for treatment, because otherwise we're asking judges to divert people into treatment slots that don't exist.

Second of all, we had to have funding for local governments. Because one aspect of this, and I think Senator Fuschillo pointed this out, one aspect of Rockefeller reform is if you make more people eligible for

probation, with drug treatment as a condition of the probation, you're requiring local governments to spend more money on probation. So Senator Smith said we need more money for treatment, we need more money for local governments.

And, finally, we need to make sure we have economic development resources committed to the communities that might be adversely affected by a reduction in prison population. And at that point I think that the legislation moved into the debate around the budget cycle.

And I'm very pleased to report that in fact in this legislation and the appropriation bill that's attached to it, we have a commitment for $71.6 million over a two-year period to make this program work.

So that's my understanding of how it evolved into a part of the budget.

SENATOR LANZA: Madam President, would Senator Schneiderman continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to

yield?

SENATOR SCHNEIDERMAN: I will.

SENATOR LANZA: Through you, Madam President. Senator Schneiderman, do you know or did you have a commitment from the members of your conference that had this legislation been put to the floor as stand-alone legislation that each member would have voted in favor of it?

SENATOR SCHNEIDERMAN: Through you, Madam President, the issue never came up because it was negotiated as a part of the budget.

I am confident that we could pass this. And in fact, I think if we had some more time to talk about it, I firmly believe we could pick up a few members of Senator Lanza's conference.

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

ACTING PRESIDENT STEWART-COUSINS: Senator Lanza, on the bill.

SENATOR LANZA: Madam President, first let me say that I have enormous respect

for Senator Schneiderman, his intellect, the dedication he brings to this issue, and with respect to his expertise. We just have two different approaches.

And that's not necessarily a bad thing; that's why we have these discussions and these debates and, in my humble opinion, why we should have had greater discussion and debate on this issue.

I come to this issue with some experience, as a former prosecutor in the Manhattan district attorney's office, working for Robert Morgenthau, working with folks like John Kennedy, Jr., in a place where Republicans and Democrats came together, bound by the desire to keep the public safe and to administer justice.

I believe that one of government's fundamental responsibilities is, as I know Senator Schneiderman agrees, public safety. I believe that this legislation represents a very dangerous retreat in that regard. Someone else who worked in the Manhattan district attorney's office is a good friend of

mine. He's Dan Donovan. He's the Richmond County, Staten Island, district attorney. He's also the president of the District Attorneys Association of the State of New York.

There was talk earlier of this being some sort of power grab or that a opposition to this legislation was an effort to retain power. I can tell you that Dan Donovan, our district attorney on Staten Island, it is not about that. For him and for the district attorney's office, district attorneys across the state, their opposition to this legislation is about compassion and their sense of duty to protect families and children from the ravages of the drug trade.

I have a letter from Dan Donovan, District Attorney Donovan. I won't read all, but I'd like to read some sentences from it. It says: "As president of the District Attorneys Association of the State of New York, which represents the state's 62 elected district attorneys, I write to offer the association's comments on the drug reform

bill.

"We believe that the bill does not provide a structure for effective drug rehabilitation programs and fails to adequately protect public safety. The bill undermines existing demonstrably successful treatment programs and offers no incentive to convince addicted offenders to enter and remain in programs. In our experience, only drug offenders who face the certainty of a prison sentence are motivated to enter and to complete rigorous treatment programs.

"The proposal is further flawed in its authorization of nonjail sentences for those convicted of selling cocaine and heroin, even over the objection of district attorneys, regardless of the number of times an offender has been convicted of a narcotics felony. It is the district attorney who is charged with ensuring community safety, and it is the district attorney who possesses the information necessary to balance the propriety of a nonjail sentence and public safety concerns.

"Moreover, the proposal could lead to revolving-door justice, with drug sellers repeatedly arrested and released, placing the public at risk. It must be recognized that many drug sellers commit that crime for profit only, not as a result of or in support of their own addictions. Instead, they sell drugs to take advantage of the addiction of others. There must be some assurance that such individuals do not escape punishment, and it is the district attorney who is best positioned to do that.

"It requires further study" -- this proposal -- "and should be discussed at an open public hearing before it is considered by the State Senate. There is no need to rush the bill through only to regret the results before the ink is dry."

There's been a lot of talk of the failure of the present state of the law. This section of the letter speaks to that. The district attorney goes on to say: "The success we have had over the last 20 years has been ignored. The number of incarcerated drug

felons is at its lowest level in 20 years. The overall prison population has declined to levels not seen since 1991, and drug treatment as an alternative to prison is increasingly available. In fact, in 2008, more drug offenders participated in drug treatment than were sent to prison."

That seems to fly in the face of everything we have heard with respect to the justification and motivation for this legislation that is here on the floor.

The district attorney goes on to say: "The District Attorneys Association, like the State Legislature and the Governor, supports the need to provide alternatives to incarceration opportunities without compromising public safety. We have had enormous success over the last 20 years. We do not want to jeopardize that success by enacting laws that will threaten public safety and undermine drug treatment programs."

That's where the opposition today is coming from. We don't want to jeopardize the success that we have enjoyed in town after

town, city after city, all across this state. We don't want to, as they say, Madam President, throw the baby out with the bathwater.

As Senator Fuschillo said, why are we ignoring, why are we ignoring the 62 district attorneys across the state? Don't they have something, some expertise, experience, wisdom? Don't they have something to add to this debate? Should not they have been heard? Shouldn't we have had hearings?

Senator Schneiderman, I'm proud to sit on the Codes Committee with you now chair. I've watched as you've allowed vigorous and thoughtful discussions and debates on the various pieces of legislation which have come through that committee so far. Why not allow this legislation to come through your committee, with your stewardship, with you as the chair, and allow that debate? Why not let us avoid a rush to judgment with something that is so fundamentally important to our responsibility to the people of this state?

Senator Diaz I don't see in the

chamber. I hesitate to mention him without him being here. I know he doesn't think this is funny. But holding those two packets of sugar here in the chamber I think sends the wrong message. This is not funny. This is far from funny.

The rest of the budget that we're here to debate and discuss is about economics, serious enough to the people of this state. This issue is about life and death in our state. It is about the future of this state and the future of our neighborhoods.

I listened to Senator Diaz compare certain crimes under the present statutes -- a B felony, selling some drugs -- and saying, in effect, would you believe they're trying to compare this to manslaughter. You can get a more serious sentence for selling drugs than you could for manslaughter.

You know, I don't think that's such a bad idea. And let me tell you why. Drug dealers are murderers, as far as I'm concerned, in many, many respects. As Senator Golden said, those two glassines or those two

ziplock bags containing sugar, if it was heroin, represents the death of many of our neighbors across this state. You allow a drug dealer, God forbid, to sell drugs to one of my children, you've taken them away from me. You've in effect ended their lives. That's what this is all about.

Would we rush to judgment, would we put in the budget, as opposed to having it go through the Codes Committee, legislation that would reduce sentences for murderers, for rapists, for burglars, for robbers? Of course we wouldn't. That's what we're doing here today without giving it adequate, thoughtful analysis.

Senator Schneiderman, you earlier discussed the statistic that 80 percent of those incarcerated in our state have substance abuse problems. That is a sad fact and one I know to be true. Why would we want to allow our streets to once again be flooded with these substances and these narcotics, polluting and destroying the lives of tens of thousands more of our citizens who, based on

that statistic, would no doubt invariably, if they survive, end up incarcerated?

There's another statistic that you and I both know. Talk to law enforcement, talk to prosecutors across the state, talk to the tens of thousands of police officers and troopers in our state, and they'll tell you another fact. The vast majority of violent crime has, as its root and source, narcotics. So if we misstep here, if we rush to judgment here, the results will be irreparable across this state.

You know, the myth, the myth that what we're doing here is to reform the so-called Rockefeller drug laws I think has been dispelled very well by my colleagues Senator Volker, Senator Padavan, and others who have spoken. It is a myth. It is untruthful to tell the people of this state that the laws we seek to amend today are the same ones which were enacted in 1973. We all know that that is not true. We all know that there have been improvements to those laws which were made by this Legislature to reflect

the realities of the times.

Senator Schneiderman -- through you, Madam President -- I would join you, members of this side of the aisle would join you, gladly, to further make improvements that are responsible and reasonable, that would try to address the situation that Senator Espada brought up. But again, we don't want to throw out the baby with the bathwater.

There was talk of these drug laws that we have on the books as being a pandering to the public fear. We ought not pander to any special interests. We ought not, likewise, pander to a slogan, and that's what Seems to be happening here. I see the pins "Drop the Rock." I see them worn by people who are too young to remember the times when our streets and our neighborhoods and our corners were owned, were owned by ruthless drug dealers who peddled death.

But let's not forget where those public fears came from. They came from the reality of a problem that is real.

You know, I grew up in Staten

Island, very fortunate, very blessed to grow up there with a loving family. I had the privilege of serving under Robert Morgenthau in the Manhattan DA's office in Manhattan. I had the opportunity to represent the people, prosecuting hundreds and thousands of cases.

I remember once going to a crime scene. It was a public housing complex. I'd never been to one before. And what I saw there were hundreds of some of the most decent, law-abiding, salt-of-the-earth people you can ever meet, many of whom told me that they were being held hostage by a few ruthless thugs. Ruthless thugs who were involved in a business, the business of selling drugs.

Why would we want to chance going back to the days when we turned over the keys to our neighborhoods, where we allowed a few to hold the many hostage? Why would we want to chance doing that?

What if -- what if -- what if the 62 district attorneys across the state are right and you're wrong? What if law enforcement, folks like Commissioner Kelly in

the City of New York, is right and you're wrong? What if the millions of folks across the State of New York who say we want our streets kept safe from these drug lords are right and you're wrong?

Then what? What do we say? What do we do? What could we do at that point? It will take decades, if we are wrong, to clean up in the aftermath of the death and carnage and lost lives that will result if you are wrong, if you are wrong, and all those folks are right.

You know, we talk about economics in this budget. This is a plea. This is a personal plea on behalf of my kids back home, on behalf of the people of the State of New York. Take this out of this budget. Let's come together. Let's work together. We'll come back with a better piece of legislation, I promise you. Let's not rush to judgment. Let's not, as District Attorney Dan Donovan has said, push this through only to regret for the rest of our lives the results before the ink is dry.

Madam President, I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Golden, on the bill.

SENATOR GOLDEN: Thank you, Madam President. Senator Schneiderman, could you yield for a question?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you yield?

SENATOR SCHNEIDERMAN: Yes, I will be glad to yield, Madam President.

SENATOR GOLDEN: Thank you, Madam President.

Does the good Senator believe that under the collateral consequences that illegal immigrants would be referred, in that phrase, by the judges?

SENATOR SCHNEIDERMAN: I'm sorry, Madam President, I don't understand the question.

SENATOR GOLDEN: Do you believe collateral consequences will be an escape clause used by illegal immigrants to be able to not have to plead guilty and therefore go through treatment and then be released to

probation after they finish their treatment plan?

SENATOR SCHNEIDERMAN: Through you, Madam President, no, I don't really understand -- other than the fact that undocumented immigrants or illegal immigrants are apparently a group that it's okay to cite when you're trying to terrorize people, I don't see how they are involved in this at all. Because if you are not here legally and you are arrested for a drug crime, you are at that moment subject to deportation.

The only people who could conceivably be involved would be legal immigrants. Someone who is awaiting citizenship, I suppose, might make that a factor if they, similar to the person who is going to lose their electrician's license, I suppose that would be -- but the motion that this has anything to do with undocumented immigrants is absurd. They are subject to deportation at the moment of arrest.

I would also like to point out to Senator Golden, by way of conveying that I

don't think any immigrants are really going to be implicated here, that according to this -- and this is a release from the Department of Homeland Security, Citizenship and Immigration Services -- they, in their inquiries related to court dispositions, seek to find out not just whether or not you pleaded guilty or had an actual conviction, but they add the following question. "If you were granted diversion, you must submit court records that identify the charge and whether you plead guilty to the charges."

So this is for legal immigrants. Legal immigrants, whenever they are going through the process of trying to become citizens, have to acknowledge diversion as well as a guilty plea.

So this really -- with all due respect, this is a complete red herring. And I think that -- you know, I hope the Senator recognizes the fact that his mentioning illegal immigrants makes no sense whatsoever, since they are subject to deportation at the moment of arrest. But I really don't see that

this is anything other than trying to scare people about undocumented immigrants, which apparently is easy to do in some places. I hope not here in the New York State Senate.

SENATOR GOLDEN: Well, Madam President, will Senator Eric Schneiderman continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: I will, Madam President.

SENATOR GOLDEN: Not according to the district attorneys across the state. Not according to the sheriffs. We just had a number of sheriffs talk to us from Senator Aubertine, Senator Valesky, Senator Foley, Senator Stachowski's seats, from the Oswego County sheriff to the Lawrence County sheriff to the Lewis County sheriff. They all read it a little bit different than you do.

And you seem to have your fingerprints all over this, so one would presume that you would know what collateral

consequences means.

And it's also true that -- and I know you know this -- that Medicaid does not pay for treatment for illegal aliens, only for legal. So illegal aliens under this proposal, this bill, treatment is paid for. So there is also an additional cost to the state and to the counties. And the general treatment is about 24 months.

So so many people read it so differently than you do, Senator. Can you explain that?

SENATOR SCHNEIDERMAN: I would welcome if the Senator could identify a specific statement by any of the people that you have cited that undocumented or illegal immigrants would somehow not be subject to deportation immediately on the moment of arrest and therefore would not be involved in this program at all.

SENATOR GOLDEN: How about, if the good Senator continues to yield, Bridget Brennan from -- her title is the prosecutor for the City of New York for narcotics. Does

she work for you, does that help you?

SENATOR SCHNEIDERMAN: Could you please give me the citation? Are you reading her April 2nd letter?

SENATOR GOLDEN: I am not reading her April 2nd letter. I am reading her -- let me see what we have here. This is April 1st. It says special narcotics prosecutor, please remove this legislation --

SENATOR SCHNEIDERMAN: I would welcome the Senator's reading the section that relates to undocumented or illegal immigrants. Please, right now.

SENATOR GOLDEN: Where is the second document? (Pause.)

I can't locate it, but I will find it for you and get it to you.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Golden, would you want to speak on the bill?

SENATOR GOLDEN: No, Madam President, I am going to continue.

ACTING PRESIDENT STEWART-COUSINS: Senator, would you like Senator Schneiderman to continue to yield?

SENATOR GOLDEN: If he continues to yield, please.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: Yes, thank you, Madam President, I continue to yield.

SENATOR GOLDEN: Does the judge in a finding have to go according to the finding of the four recommendations that are made from that finding as to is that individual addicted to drugs or have a drug problem or alcohol problem, judicial diversion would work, that the crime that he committed was attributed to the alcohol or drugs that he or she is addicted to, and that if the defendant were sent to treatment he would not have to go to jail, he would not be served well or she served well by going to jail?

Does the judge have to go according to those four evaluations?

SENATOR SCHNEIDERMAN: Through you, Madam President, as I outlined in my earlier presentation, before any defendant can be diverted into a treatment program under this legislation, there has to be a treatment evaluation by substance abuse professionals that have to issue a finding that includes the following elements: That the individual has a history of substance abuse or dependence, a finding that diversion could address this substance abuse problem, and a recommendation as to the specific modality of treatment that would be the most beneficial.

The district attorney has the opportunity at that point for a full hearing and to submit any evidence relating to the judge's decision as to whether or not to divert that defendant. And as set forth at page 118 of this legislation, and I -- Senator Golden, please look at it, it's pretty clearly articulated.

This sets forth the findings that the judge is required to make. And at line 44, it states: "Upon completion of such

a proceeding" -- what I've described earlier -- "the court shall consider and make findings of fact with respect to whether the defendant is an eligible defendant, the defendant has a history of alcohol or substance abuse or dependence, such alcohol or substance abuse or dependence is a contributing factor to the criminal's behavior, the defendant's participation in judicial diversion could effectively address such abuse or dependence, and subsection 5, institutional confinement of the defendant is or may not be necessary for the protection of the public.

Those are all of the elements as set forth in the statute. I think it's pretty clear.

SENATOR GOLDEN: And the question was, does the judge have to use any of those elements to deter an individual or have the deterrent and have that individual sent into a program? Through you, Madam President.

SENATOR SCHNEIDERMAN: Through you, Madam President, I don't understand the

question. What you do mean, deterrent?

SENATOR GOLDEN: What you're doing, you're sending the individual into a program. Does he have to listen to all of the recommendations made by that friend of the court or by that evaluating group that came up with the evaluation? Does he have to listen to that? Can he go outside of that evaluation and make a determination?

SENATOR SCHNEIDERMAN: Through you, Madam President, I think the Senator may be confused.

This is a multistep process. First you have the evaluation. I've set forth what has to be done there. Without an evaluation, you can't proceed. The district attorney has the opportunity for a full hearing. Then the judge has to -- and again, I will read it once again, that the court shall consider and making findings of fact with respect to the following elements.

So the court is not just required to think about them, the judge has to make findings of fact.

SENATOR GOLDEN: Madam President, it says here "shall consider" doesn't mean he must consider. Am I reading this correctly on page number 56 on line number 44?

SENATOR SCHNEIDERMAN: I think, except for the fact that "shall" does mean "must," yes. "Shall consider" means "must consider." And must make findings of fact on these issues. So the court's role in this is defined quite carefully.

I assure you that this is a tighter model even than the drug court models that we're operating in now.

SENATOR GOLDEN: Madam President, as I had asked him, is he bound by that? Is the judge bound by that, Madam President?

SENATOR SCHNEIDERMAN: Through you, Madam President. This is a mandate for the findings of fact a judge may make. The judge -- I don't even understand the question. The judge is bound by his own findings of fact. The judge is required to make findings of fact. The judge then has to determine, based on those findings of fact, whether

someone is eligible for and should be diverted into a treatment program or not.

SENATOR GOLDEN: Well, I -- the statement you've just made is that he's not bound by that decision and he can make any decision he wishes to make when taking that individual and making that diversion. Am I correct?

SENATOR SCHNEIDERMAN: Through you, Madam President, no, the Senator is not correct. I don't know how I can state it any more clearly. Obviously I'm not doing a good job at articulating it. But it is set forth very clearly at page 118 of this legislation.

SENATOR GOLDEN: Well, I think the good lawyer and the good Senator knows that the court always has discretion and therefore discretion can be used here. And I think he understands where I'm going with this.

ACTING PRESIDENT STEWART-COUSINS: Senator Golden, would you want to speak on the bill or do you want Senator Schneiderman to continue to yield?

SENATOR GOLDEN: I have one more question for Senator Schneiderman -- at least two more questions.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, will you continue to yield?

SENATOR SCHNEIDERMAN: I will continue to yield.

SENATOR GOLDEN: What happens if the individual fails to be able to get through that process? What if he or she relapses?

SENATOR SCHNEIDERMAN: Then through you, Madam President, the individual would come back, as they will come back periodically before the drug court judge, they will come back before the judge and be sentenced in accordance with the provisions of the statute.

SENATOR GOLDEN: Only if they plead, I believe. But I do believe that in your bill there are sanctions, that they allow the judge to make sanctions in the sentencing of this individual or putting this individual back into treatment a number of times if they

should relapse.

SENATOR SCHNEIDERMAN: Yes. Through you, Madam President, this is precisely the drug court model. It does provide for judges, as they do every day in drug courts, to consider the fact that some people do relapse. And a graduated sanction is permitted, yes. That's absolutely correct. This is the treatment model that has proven the most successful in New York State and across the country at reducing recidivism and reducing crime. The Senator is absolutely correct.

SENATOR GOLDEN: Thank you.

Madam President, what about if there is no program and the judge can't find that program? What happens to the individual that is before the drug court or, in places where there are no drug courts, before the judges? What happens at that point?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: Yes, Madam

President, I do continue to yield.

This question relates to an issue that came up earlier, and this is one reason why I think it is quite appropriate for this to be in the budget.

In the same legislation that we're passing and in its companion appropriation bill, we are securing the allocation of $71.6 million to guarantee that the problem that Senator Golden is concerned with never takes place. We have to ensure that there are the treatment slots, and we have to ensure that they are effective.

We have excellent treatment programs that are working all over the State of New York. And I would urge the Senator that this is not a matter of us reinventing the wheel, this is a matter of us simply providing the resources to the treatment professionals who are running excellent programs now with proven records of success, empirically demonstrated to get people out of the cycle of drug use and criminality. These programs are out there. We just have to

provide them with the funding. And that's something we are doing in this legislation and the companion appropriation bill.

SENATOR GOLDEN: Well, I do know -- through you, Madam President -- that the judge can put him or her back out on bail and put them back out into the streets of the City or State of New York. That's in the legislation.

I'm going to close down on this. Two more questions.

On collateral consequences, we spoke of the empirical data that you had. And I wonder if the collateral consequences was figured into your data, for the simple reason there is no guilty plea, so therefore we have nothing to hang over the individual's head that goes into treatment under our collateral consequences.

So one would think that the empirical analysis would be somewhat flawed, because we've seen this in the past. Where you had no guilty plea, you had nothing to hang over their head, we've seen those

policies in the past, we've seen them fail across the country. And I was just wondering if that was part of your empirical analysis.

SENATOR SCHNEIDERMAN: Through you, Madam President, no, that was not a part of any empirical analysis I've undertaken.

SENATOR GOLDEN: And in the empirical analysis --

SENATOR SCHNEIDERMAN: I would like to mention, if I may, though, if I may mention it, the indictment doesn't go away. Someone who for whatever reason a court finds the likelihood of severe collateral consequences and has an allocution in which someone admits their wrongdoing but doesn't actually plead guilty, that person has the allocution on record and the indictment is still in existence.

So, you know, the idea that someone would evade responsibility and somehow, you know, not face consequences if they were diverted into a program and failed and came back to the judge is absurd.

SENATOR GOLDEN: When I get that

letter for you from the district attorney that gave us that information -- which I will get to you -- I will also get to you studies which show that when we don't have a guilty plea and the individuals are put into treatment programs, that they don't work.

Last but not least --

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you yield for a final question from Senator Golden?

SENATOR SCHNEIDERMAN: Yes, I will yield for a final question.

SENATOR GOLDEN: On the empirical analysis, the ones that I understand had the prosecutor involved with the empirical data, does the prosecutor -- is that in your empirical data?

SENATOR SCHNEIDERMAN: Through you, Madam President. I don't understand the question. Prosecutor relating to my empirical data?

SENATOR GOLDEN: When the cases go forward and the individuals are placed into diversion, it is done in conjunction or with

the district attorneys or the prosecutors across the counties, across this state and across the country. And I was wondering if your empirical analysis had included the prosecutors in that analysis for a final result.

SENATOR SCHNEIDERMAN: I don't understand the question, Madam President.

Are you talking about the hearing that the judge holds before there is a diversion where the prosecutor gets a chance to present evidence and has full input?

SENATOR GOLDEN: The empirical knowledge that I understand that you may be talking about has been used with the district attorneys' input and the district attorneys' involvement in these cases. And this new legislation, the district attorneys are not involved in this, and their responsibilities have been limited in your legislation.

So my question to you is, isn't the empirical data that you have somewhat flawed?

SENATOR SCHNEIDERMAN: Through you, Madam President, no, my empirical data is

quite accurate.

SENATOR GOLDEN: Madam President, I guess depending on who's looking at this empirical data.

But if you take out the prosecutor, I don't see how it works. And if you take out the ability to have the guilty plea, we know it doesn't work.

ACTING PRESIDENT STEWART-COUSINS: Are you speaking on the bill now, Senator Golden?

SENATOR GOLDEN: And of course the sheriffs from Oswego and St. Lawrence County, they have empirical data, and they're against it.

On the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Golden, on the bill.

SENATOR GOLDEN: It is amazing how we would do this diversion. We would have an individual that's committed a number of crimes, misdemeanors and felonies, multiple misdemeanors and felonies. And before that individual is arrested for those and put into

this diversion program, the tens of thousands of dollars of damage they've already cost to our communities.

And now we're going to bring them in, allow them to go into a diversion, give them probation, and allow their records to be sealed, with no consistency from case to case. And then when those records are sealed, we have the opportunity for that individual to be placed in a childcare center, into a vulnerable senior, into home care or into pre-K programs where we would have no way of knowing what was going on and no way of knowing who we were hiring and no way of knowing if those individuals would be safe in the future.

The cost of this is astronomical. If anybody is looking to save money, we would save $500 million by pulling this right out of the bill, and billions of dollars into the outyears.

I talked to you about Medicaid, because Medicaid is not paid for the illegal immigrants. So the program in this bill will

pay for it. The cost of the mandate for the use of the drug courts across the state, that is going to be laid into the counties.

And these cases would be presided over by judges in an already overcrowded court system. Which who would pay for all of that additional dollars? And of course the extra costs to the localities and the reimbursement to the budgets and how that would reflect in being paid for. The probation officers, the parole officers.

The cost of having all of these people that are on treatment today who would have the opportunity now to go back to the court, take their guilty plea away, get out of their treatment, take a new guilty plea and go back into a new program, the costs of that. The costs of the 5,000 -- let's say -- there's one figure at 9,000, there's one figure at 1500. Let's say 5,000 go for resentencing.

Five thousand people go back to the localities for resentencing. I don't know how many get out, but I would suggest a good number get out. Could you imagine the costs

of that?

The costs of treatment. We talked about the $71 million of the stimulus money and $75 million in probation. There's not nearly enough money. And the stimulus will be gone very, very shortly. In the next 24 months, 25 months, what do we do?

Ladies and gentlemen, this is not only the "Drug Dealers Protection Act," it's also the "Criminal Defense's Dream Act," as Senator Volker pointed out. We've seen, in the City of New York, when we had at that time it was Mayor Dinkins running the City of New York, we had over 2200 homicides in the city and we had over 800,000 crimes. And the large percentage of that would be to drugs.

And ladies and gentlemen, that's the exact era that we will be returning to if we go down this road and allow this bill to stay part of this. Families will get damaged, families will be torn apart, people will be hurt, and people will die. This is a terrible, terrible, terrible bill for our state, and it's going to set us back decades

before we can correct it. And I don't know how many lives will be lost before it is corrected.

Thank you, Madam President. I vote no.

ACTING PRESIDENT STEWART-COUSINS: Thank you.

Senator Ranzenhofer, on the bill.

SENATOR RANZENHOFER: Thank you, Madam President.

I've listened to the lengthy debate, and obviously there's some passion and very strong feelings on both sides of the issue. I was especially moved by Senator Lanza's description and his experience as a prosecutor and what people on the front lines of fighting drugs in families and communities, what they actually go through.

I was a little bit disturbed by some of the discussion between Senators Schneiderman and Diaz when there was some commentary about people who hold a different view somehow being uninformed, having an ax to grind, or being extremist. And I don't think

that people that are on the front lines, such as police officers, prosecutors, sheriffs, district attorneys, have an ax to grind or are uninformed or are extremist. Generally these are people that have devoted their entire lives as career law enforcement professionals and have a lot of experience on this particular issue.

I can tell you that, like many of my colleagues, I also received a letter from my district attorney, as did some others. I have received communication from sheriffs in my community and, you know, what they feel about in particular issue. And again, these are career law enforcement people who don't have a vested interest from a personal stake, but I think what they want to do is what's best for the community.

I know that the sheriffs of the counties that I represent -- and again, maybe the sentiment is different upstate than downstate. But I know at least for upstate, law enforcement is very much against that. I know that the sheriffs of my two counties do

not support this. I know that the sheriffs, for instance, in Senator Aubertine's district do not support this. The sheriff of Lewis County has come out against this. The sheriff of Oswego County has come out against this. The sheriff of Lawrence County has come out against this. My sheriff, in my two counties, has come out against this.

This is law enforcement speaking out. These are the professionals that deal with this particular issue day in and day out.

I want to just go to another part of the discussion, and that is why is this particular legislation, which is very controversial, why is this buried in the budget? Well, I think the reason is obvious, and I'll state it for the record. When you go home and you're trying to explain your vote in your district, you can say: Well, I voted for an omnibus budget bill. And rather than having to explain your position on this particular legislation, you can say, well, it's part of a larger process and I voted for or against the budget -- in this particular

case, if you're on the other side of the aisle, I voted for the budget, but I was really against the Rockefeller drug law reform. Which is really not reform, in my opinion.

And I think what is actually happening here is it's the only way that you can sneak something as controversial as this through. As was stated before, this was drafted behind closed doors. There was absolutely no discussion on this, as apparently happened when there was modification of the drug laws in the past.

And I think why there was no discussion and no debate is because this wouldn't pass. And we can speculate all we like. As I know some Senator said, "Well, if this was a stand-alone vote, well, this would pass."

Well, you know what, Madam President, there actually were two stand-alone votes on this issue. There was an amendment that was offered by Senator Little on prison closures. And the vote on that bill, a

stand-alone vote, was 30 in favor, 21 against, and two people not here. Nine people didn't want to take that vote, so they were outside the chambers so they wouldn't have to take that vote, they wouldn't have to go home to their community and explain why didn't they vote the right way, why didn't they vote in favor of keeping drug dealers in prison where they belong. They were absent from the chamber. They didn't cast a vote.

Then there was a second amendment; again, another stand-alone vote. Are you up or down? Do you favor modification of the laws, or don't you? And that was the amendment that was offered by Senator Golden on that particular vote. There were 30 people in favor of the amendment. There were 20 people that were against the amendment. There were two people that weren't here. And there were 10 Senators who did not come to the chamber to vote.

Now, some of those Senators were absent for both of these votes, and I'll tell you why. Because if there was a stand-alone

vote, no way, no how, do they want to be on record as casting a bad vote. So what they decided to do is to be absent, to not vote, to not take a position, to not have to explain to their constituents where they were on the issue. They can kind of hide behind the whole big budget and try explain their way out of it.

But on the two stand-alone votes that were cast in this chambers, it's a matter of record who was here and voted yes, who was here and voted no, and who didn't have the courage to cast a vote in public and be recorded. And that's a shame. That's a shame.

Now, let me tell you this, Madam President. I'm not going to read the entire letter, but we have a district attorney in the county that I represent who's a career prosecutor, has been a career prosecutor for over 20 years, just became elected to the district attorney's office after having served in the DA's office for many, many years. He doesn't have an ax to grind, he is not an

extremist, he is not uninformed. But let me just read a couple of sentences from his letter to me on this particular issue.

He says: "The proposed judicial diversion legislation in its current form will have a devastating consequence for public safety."

What does that mean? This means what Senator Lanza said. This means what Senator Golden said. That people are going to die as a result of this, that communities are going to be less safe.

Now, there was an issue that was raised earlier about the young man who was 35 and was sent to prison for 11 years. And there is probably a way of dealing with that particular issue that's not here.

And that issue won't be resolved. Instead, what we're doing is we'll allow thousands and thousands of people out onto the streets -- because everybody knows that when you have turf wars and drug wars between rival gangs, this terrorizes communities. This is going to terrorize my community, this is going

to terrorize your community. Because these people are not creating havoc right now; they're in jail. And the ones that should be in jail should be in jail.

And as the district attorney says, he says: "Existing New York law gives judges the unbridled discretion to make those decisions for truly nonviolent first-time felons." He says: "For violent felons, like those who rob or seriously assault another, or repeat felony offenders, existing law, through the use of mandatory minimum sentences, requires approval of both the judge and prosecutor before an offender can be released into the community for treatment."

Madam President, there is a law that works, that perhaps might need some modification. But in closing, what he says is "The Legislature's proposal will take a sledgehammer to one of the two pillars, eliminating the prosecutor's effective voice in the decision. We will be left to hope that the system can balance on a single pillar. If it does not, dangerous drug dealers will be

released back to the neighborhoods they were destroying, and the residents of those neighborhoods will pay the price."

This is not about this side or that side. This is about what career professionals -- district attorneys, police officers, sheriffs -- who have combined hundreds and thousands of combined years of experience are saying across the state. This is a bad bill. Bring it back, let's talk about it. But this is going to create havoc and increase crime and danger in our community.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator LaValle, to close.

SENATOR LaVALLE: Thank you, Madam President.

The two previous years, in 2008 and 2007, was a mantra in this chamber. Brennan Center, Brennan Center. Constituents didn't know what it was about, but in the Emerald City everyone knew about the Brennan Center report.

And yet we have, from Bridget Brennan, a very articulate special narcotics prosecutor from the City of New York, who in the topic sentence says: "With a great sense of urgency, I am asking you to vote no on this bill." So a different Brennan. But I would think that people would be kind of alert to hearing that name.

Senator Volker, in the year 2004, worked very diligently, held hearings. And I think as everyone knows who served on the Codes Committee, Senator Volker listens to people on the committee and brings in -- tries to build consensus.

Here we have a bill that is in the budget and no one has given a good reason of why this bill is in the budget, other than there would be no 32 votes. Senator Ranzenhofer was right; people have been out of this chamber hiding.

Now, let me say that having been in the Majority for 32 years, I know that our conference would have enormous debates about whether something was in the budget, not in

the budget, how we would handle it. So it is obvious that the new Majority has taken a position that this is important to the Speaker, it's important to the Governor. Gee, is it important to the people of this state who have written?

We on the Judiciary Committee, we don't pass a bill unless we have the imprimatur of the Surrogate's Court Committee of the State Bar Association. We listen to them because these are attorneys and Surrogate Court judges who we value their opinion.

Now we have a bill before us and the prosecutors of our state say this is a bad bill, the law enforcement community says it's a bad bill. This bill will do great damage, will do great damage. I just want to say, before I move on to why I feel this is going to do great damage, that the people who couldn't put this bill out as an individual bill and vote for it or against it, I will not -- I will fight anyone who hides behind that this was not budget and, you know, I had to support the budget. This shouldn't be in

the budget. This bill should have been a freestanding bill, and we should have voted on it.

I feel very passionate about this because my whole career I have spent in education, dealing with children, whether they be at the elementary school level, or as an adjunct professor at a collegiate level. And I will tell you that I have seen great damage done to young people because of the rising drug use in our community. So much so that Nassau and Suffolk Counties passed a bill -- in Nassau County, it was Resolution 1122 that was passed in 2008, and it's called Natalie's Law.

Natalie's Law was about a young lady, an 18-year-old, probably in Senator Fuschillo or Senator Hannon's district.

And when we look at the number of cases that have been escalating in both counties, it's at epic proportions. Suffolk County reported 312 heroin overdoses last year, up from 151 in the year 2000 -- a 106 percent increase. In Nassau County, overdoses

have risen by 22 percent in the same period of time.

Now, one of the first jobs that I had in government on appointment, I was the director, the chairman of the Brookhaven Town Narcotics Guidance Council. We set up the first counseling program in Suffolk County. I would tell you that maybe drug counseling has improved a whole lot. I don't have the rate of recidivism, unless someone else does and can tell us how effective these programs are.

But I do know that when the district attorneys tell us that 5,000 drug dealers are going to be out on the streets, my sense is that my constituents in Suffolk County and in Nassau County are going to be prime victims. And why? Fortunately and unfortunately, young people have a little more money. And so drug dealers come out into the suburbs -- they come all over, as Bridget Brennan talked about in the project here, the problems in a project in New York City. So it's not only a New York City problem, but it's a problem in our suburban areas.

So I don't know, Senator Schneiderman -- I've listened to you, you talked about dollars being available for treatment. Well, you know, we passed the civil confinement bill and we put some dollars in the budget for treatment. And I'm told that that money was a mere pittance and really nothing has been done.

So why do I believe that we're going to have the kind of money to do the kind of intensive drug rehabilitation that is needed to ensure that when people are released that they're not going to commit the same kinds of crimes?

So for my community, I just see a lot of young people who are going to be robbed of a future, who will never be able to live a full life because an addiction, any form of addiction, is very, very difficult to kick. But why are we going to rob our young people of the best years of their life? We know it. Our law enforcement people are telling us, and our prosecutors.

You want to know the only one who's

going to benefit from this? The people who have committed crimes and defense attorneys. This is probably a defense attorney's full employment act. Full employment act.

And so it's a shame that we're putting the wrong emphasis -- instead of protecting our communities, protecting our young people, we are doing just the reverse. We are protecting individuals who commit crimes.

So far -- let's see, we're in the month of April, we just started -- I've been on this floor, we've passed laws to lessen the standards on Election Law, we are now lessening the ability to keep people who should be in correction facilities in correction facilities. There's a provision in the budget that we remove fingerprinting of individuals who apply for welfare, and yet we complain about welfare and Medicaid fraud.

We are going in the wrong direction. In the wrong direction. And I hope that when people come into this chamber to vote that they will cast the right vote for

the people that they represent. Because I can tell you that people on this side of the aisle will not tolerate anyone saying, Well, it was in the budget and I had to vote for the budget, but if it was a freestanding bill I would have voted against that turkey.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

The Secretary will please ring the bells.

Read the last section.

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

(Several Senators standing for a slow roll call.)

ACTING PRESIDENT STEWART-COUSINS: Seeing that -- where's Senator Libous?

SENATOR MAZIARZ: Senator Owen Johnson is standing. That's all you need.

(Laughter.)

ACTING PRESIDENT STEWART-COUSINS: I was looking for Senator Libous, but okay. Seeing that more than five Senators have

risen, a slow roll call has been called.

The Secretary will ring the bell, which you've done, and call the roll slowly.

THE SECRETARY: Senator Adams.

ACTING PRESIDENT STEWART-COUSINS: Senator Adams, to explain his vote.

SENATOR ADAMS: I want to explain my vote, which is stating to our colleague Senator Lanza how much I appreciate him. There's a level of cordiality and respect that he brings to this chamber. Even when you disagree, there's a way we should communicate with each other. And after a year and a half or two years from being here, he exudes what I believe we owe to each other. And I disagree with his position, but I respect the manner in which he has shared his position.

This is an important issue, and we know it is. And there are parts of the bill we can question, we can look at. That goes without saying. But the fact of the matter is -- I've said this so often -- that we have to look at the entire, the totality of how issues impact us.

And we are all always going to have different views, and that's what makes this process great. There should be those who are for, those who are against. And then there are citizens who are in the middle just looking for results.

I know that every weekend as I drive through my community that there are large numbers of grandfathers and mothers and daughters who didn't commit one crime, but they are boarding buses with their hard-earned dollars to go to the northern part of this state. There's a whole industry around that.

And I also know some of those same mothers go to various parts of my district, and they're afraid of crime, they're afraid of drug deliveries. And I know a large number of young men for first arrests are incarcerated, taken away from their homes and their families. So there's a problem.

Our decision and my decision to vote aye, if I'm wrong, is not a mistake from the mind, it's a mistake from the heart. I believe we need to do better with the

Rockefeller drug law. It was a mistake. And I have a right to point out why I believe it's the wrong thing that the Rockefeller drug law was in the wrong place at the wrong time. And I will continue to feel that way.

And as long as I spent 21 years putting a vest on, standing on the corner protecting the city and the state, I believe my decision today is the right one. I vote aye.

ACTING PRESIDENT STEWART-COUSINS: Senator Adams to be recorded in the affirmative.

Continue calling the roll.

THE SECRETARY: Senator Addabbo.

SENATOR ADDABBO: Yes.

THE SECRETARY: Senator Alesi.

ACTING PRESIDENT STEWART-COUSINS: Senator Alesi, to explain his vote.

SENATOR ALESI: I have listened to the passion on both sides of the aisle, both sides of the issue. And I appreciate not only that passion but the effort that's gone into putting this bill forth and the effort

that's gone into resisting this bill.

From my standpoint personally, I cannot embrace this bill. I believe it reaches far too far in what it is attempting to do. My district attorney in Monroe County, Mike Green, is a Democrat. He is steadfastly opposed to this bill. My two Assemblymembers, Morelle and Koon, in Monroe County, are Democrats. They have voted against this bill.

Without going into all the reasons because we're limited to two minutes, I can justify to myself and to my constituents that this is not the bill that it could be, not the bill that it should be. But probably most important for me, this is a bill that should never have been debated or included in the budget.

I simply can't support a bill that does those things, even though it intends to do things that the sponsor wants us to believe are good for the citizens of this state. To me, it's simply unbelievable, and I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Alesi to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Aubertine.

SENATOR AUBERTINE: Yes.

THE SECRETARY: Senator Bonacic.

ACTING PRESIDENT STEWART-COUSINS: Senator Bonacic, to explain his vote.

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

You know, the fact that the bill was buried in a budget bill speaks volumes of hiding the bill and having the fear of let it be subject to public hearings and have everybody weigh in. That disappointed me the most.

As to the merits of the bill -- and as also a former prosecutor, like Senator Lanza -- I believe this bill will give the message of soft on crime, it will enhance the danger in our communities for families, it will proliferate more gang activities that are related to drugs.

And I love the way we try to create

our own language like "nonviolent drug user." Can you tell me, when someone uses drugs, how they're going to behave? Haven't we had many experiences where people who use too much drugs killed indiscriminately without regard to life? So the marketing of "nonviolent drug user," I don't buy it.

This is a dangerous, dangerous legislation. And I honestly believe if we had to vote as a legislature here on this bill not related to the budget bill, this would not have passed.

I vote no. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Bonacic to be recorded in the negative.

The Secretary will continue, please.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: To explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: I was on the joint committee to reform the Rockefeller drug laws a few years ago, and there was spirited debate. We heard from mothers of children that were in prison, we heard from district attorneys, we heard from everyone. And a compromise of all those positions was worked out.

And apparently it worked, from all the statistics we're hearing about how there's less people in jail who have been convicted of drug crimes due to diversion programs than there are that are in jail. Many, many people were resentenced. Things happened, and the Rockefeller drug law changed back then, and there was no longer any Rockefeller drug laws as of that date, in my opinion.

This process is so unbelievable in view of the fact that the new majority became the majority on the theory of openness. They even sued us because we weren't open last year. I mean, this is the most closed process

in the world when you close out the experts on crime from the process. Almost unanimous throughout the state, sheriffs, DAs think this is bad.

Specifically, we talked about the fact that judges alone can divert cases from the criminal prosecution to drug treatment without any input from prosecutors. Predicate felons who have committed several felonies can be diverted many, many times away from conviction. So the prosecutor's role is eliminated completely.

And then the exception that I love the most is the exception when you can't -- you don't even have to plead guilty to get diversion as long as there is severe collateral consequences. And despite the comment that we had to have that because it's unconstitutional otherwise, the fact of the matter is there's no definition and it's an open door.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco, how do you vote?

SENATOR DeFRANCISCO: For these

and many, many other reasons, I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Diaz.

SENATOR DIAZ: To explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Madam President.

Today we are responding to the call, to the plea of so many people, including the Catholic Conference. For years, the Catholic Conference -- for years -- pleaded with your side to do this. And they were ignored, their pleas were ignored, fell on deaf ears.

Today, this Democratic Conference is responding to the pleas of the Catholic Conference that want this done, this injustice that has been done, to do away with it.

And yes, Senator Lanza, yes, Senator Lanza, it is not good to show the two bags. But I will join you in going to the newspapers, the Daily News, the New York Post -- the TV, and tell them not to show what they show. Tons of bags. The movies. So, you know, two bags, not too much for what they show.

So, Madam President, I'm voting yes and I am here fulfilling a call from the Catholic Conference. Even though I am a Protestant, I'm responding to the Catholic Conference with a yes.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz to be recorded in the affirmative.

The Secretary will continue the roll.

THE SECRETARY: Senator Dilan.

SENATOR DILAN: Yes.

THE SECRETARY: Senator Duane.

SENATOR DUANE: Yes.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Yes.

THE SECRETARY: Senator Farley.

ACTING PRESIDENT STEWART-COUSINS: Senator Farley, to explain his vote.

SENATOR FARLEY: Thank you very much.

Madam President, you know, as a lawyer and a law professor and somebody who's never been a prosecutor or really involved with the criminal law, I have to rely on my brethren who know this. And let me say I was deeply impressed by my colleague and seatmate Senator Lanza, and deeply touched by what he had to say on this.

But I do want to say that what really moved me on this issue was one of my district attorneys. And all four of them were against this, but Bob Carney, from Schenectady, one of the finest district attorneys in this state, a Democrat, who was so passionately opposed to this and told me that he had lobbied and spoken to a number of your conference and had commitments and agreements that they couldn't support this.

It's one of the reasons that I don't feel that this legislation would ever have stood on its own had it been not wrapped in and hidden in the budget. That's not right. That's not what the Senate has stood for over the years as a deliberative body. This bill would not have passed, Senator Schneiderman, this bill would not have become law.

I think it's a real departure. It saddens me. I think it's going to make an awful difference in this state. The unfortunate thing, it's going to be a detriment to the State of New York.

I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Farley to be recorded in the negative.

The Secretary will please continue.

THE SECRETARY: Senator Flanagan.

ACTING PRESIDENT STEWART-COUSINS: Senator Flanagan, to explain his vote.

SENATOR FLANAGAN: Madam President, to explain my vote.

I want to compliment my colleagues.

I think this has been a very enlightening debate.

I just have a couple of quick thoughts, one of which is looking at the substance of what we're talking about. But for a relatively short reference by Senator Schneiderman, we are underscoring how important the Rockefeller drug law issue is by virtue of the fact that nobody else has talked about anything that's in this bill. So it's almost as if we're having this debate outside of a budget bill, but it's unfortunately stuck in a budget bill.

So we all take this seriously. And I think respecting each other's opinions is exceedingly important. I listened to the people who are the professionals and my own district attorney, who has a stellar record, who is really -- he's a Democrat, but I look at him as a nonpartisan district attorney fighting for the people of Suffolk County, and I know that he is strongly opposed to this.

And the last thing I would say is looking back -- well, two points. A quick

thing is if you go back to the reforms of 2004, almost everybody in this chamber voted for it, because it was a bipartisan product of a commission that toiled over this for weeks and weeks and weeks. It's just a glaring example of what a missed opportunity we've had right here. Because who knows, maybe something else could have been accomplished.

And none of us stands, certainly, in our Republican conference as recalcitrant and being opposed to anything, because almost every one of us voted for the reforms in 2004.

Last thing to Senator Schneiderman, the collateral consequences. I believe, based on some of the things that I've seen, that there is a legitimate question as to whether or not those who are legal immigrants and illegal immigrants will petition the court and say because of the severe adverse consequences, I believe that I should not have to enter a guilty plea, and therefore they can escape the confines of this law.

It's a legitimate question. It hasn't been answered. I'm not comfortable

leaving it to the discretion of the judiciary, because I think we should have more of a --

ACTING PRESIDENT STEWART-COUSINS: Senator Flanagan, how do you vote?

SENATOR FLANAGAN: I vote no. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Flanagan to be recorded in the negative.

The Secretary will continue please.

THE SECRETARY: Senator Foley.

SENATOR FOLEY: Aye.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: To explain my vote, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Fuschillo, to explain his vote.

SENATOR FUSCHILLO: When you reform the criminal justice system and you take the prosecutor's advice out, there's a problem. My district attorney, who's the chief prosecutor in Nassau County, states, and I quote: "There is nobody more familiar with

the defendant's background and details of their current case than the district attorney's office. Exclusion of the most informed party from such an important process is ill-conceived."

This is the prosecutor of Nassau County, Kathleen Rice, who says you take us out of the system to prosecute individuals who peddle drugs on our streets, it's ill-conceived and it's going to cause our streets to be unsafe.

Madam President, I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Fuschillo to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Golden.

ACTING PRESIDENT STEWART-COUSINS: Senator Golden, to explain his vote.

SENATOR GOLDEN: Thank you, Madam President.

Life, liberty, and the pursuit of happiness as we know it for the residents of the State of New York has changed forever this

day. The quality of life for the people across this state will change forever for all the residents of this great state.

We fixed something that should not have been fixed. We went too far. Crime will go up, the cost of this bill will go up from hundreds of millions to billions of dollars. Families will be torn apart, people will suffer, people will die, children will be torn from their families, children gunned down in our cities for the almighty profits of the drug trade.

When will we ever learn? God help what we've done here today, and God help this great State of New York.

I vote no, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Golden to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Griffo.

ACTING PRESIDENT STEWART-COUSINS: Senator Griffo, to explain his vote.

SENATOR GRIFFO: Thank you, Madam President.

I also want to talk about two parts of this, the public safety and justice but also the process. I also had to turn to the individuals who have firsthand experience, day in and day out, in fighting crime, district attorneys, both Republican and Democrat.

I had two outstanding letters that I received from the sheriff and the district attorney of St. Lawrence County, who really spoke very passionately about this issue.

And I concur that some of the concerns that I would have is there needs to be a consequence for this type of drug crime. How about our concern for the victims of crimes by drug defendants? And what message are we demonstrating and showing to children? We should be talking about zero tolerance. And we have a situation here where we don't seal DWI for alcoholics, but we're going to seal drug and drug-related offenses by drug addicts.

So I think that these are serious concerns. And professionals indicated why, and we should listen. And apparently we

haven't.

But equally as important is this process has become a travesty, this budget process, because we say one thing but we don't show what we say. We say that we want to be open, and here we are putting into an omnibus bill this major debate where we should have had this debate alone, and now it's a part of this budget which has nothing to do in regard to the specific aspects of many components of the budget. It should have stood alone.

And I think that's where there's an erosion of confidence and credibility in the State Capitol, and I think that's unfortunate and unnecessary. We have heard people say that we should take budget hearings across the state. And I don't know why we wouldn't bring this type of an issue across the state to discuss and let it stand alone.

For those reasons, I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Griffo to be recorded in the negative.

The Secretary will please continue.

THE SECRETARY: Senator Hannon.

ACTING PRESIDENT STEWART-COUSINS: Senator Hannon, to explain his vote.

SENATOR HANNON: Thank you, Madam President.

Against the backdrop in the last year in my district where a young lady died at a party of a heroin overdose, and it turned out that in the -- it's the southeastern portion of my district, an area known as North Massapequa and Massapequa. It turns out there's a whole scourge of heroin coming in. And it has generated meetings where hundreds of parents have turned out.

And to me, it was an echo of what had happened when I was in law school and being familiar with when we were revising the criminal laws in the late '60s, that something new was happening that had not been in those neighborhoods for over 30 years. And with that backdrop, as this bill was introduced, I got calls from professional colleagues and different DAs' offices telling me how basically the presumptions that we build into the criminal system of having the

professionals prosecute the crimes, having the judge preside over the trials, has been reversed, has been inverted. And I began to realize how much we have cut the DAs out, and the professionalism that we have worked to instill in the system.

For those reasons, I don't believe this is the right law, I don't believe this is the right time. I was a cosponsor when we revised the Rockefeller drug law. This is not that type of reform.

I vote no, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Hannon to be recorded in the negative.

Secretary, please continue.

THE SECRETARY: Senator Hassell-Thompson voting in the affirmative earlier today.

Senator Huntley.

SENATOR HUNTLEY: Yes.

THE SECRETARY: Senator C. Johnson.

SENATOR CRAIG JOHNSON: Yes.

THE SECRETARY: Senator O.

Johnson.

ACTING PRESIDENT STEWART-COUSINS: Senator Johnson, to explain his vote.

SENATOR OWEN JOHNSON: It's quite evident from the discussion we've for the last several hours on this bill that it's a terrible bill, dangerous to our society, dangerous to our families. In fact, it was put into the budget deliberately so it would be hidden from view.

That's one of the reasons we don't have -- I guess we don't have conference committees, because they didn't want this explored, they didn't want us to find out the other things that are terrible about this bill.

The truth has come out now. I don't know how those people who put this bill in there knowing it's going to destroy our society and our families could ever possibly do it in good conscience. In fact, it must be a deliberate intention to contaminate our children and destroy families and create more crime and -- well, they have to answer to the

people why they put that in there.

But we're going to vote against it, and I did right now.

ACTING PRESIDENT STEWART-COUSINS: Senator O. Johnson to be recorded in the negative.

The Secretary will please continue.

THE SECRETARY: Senator Klein.

SENATOR KLEIN: Yes.

THE SECRETARY: Senator L. Krueger.

ACTING PRESIDENT STEWART-COUSINS: Senator L. Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you, Madam President.

I don't really think we did a very good job of hiding this in the budget. I think everybody in New York State knew we were talking about Rockefeller drug law reform. I actually think we've been talking about it most of my adult life.

Judicial discretion, that's what we're talking about, returning power to the judges and the courts to be able to make

decisions. Low-level, nonviolent drug offenders, not peddlers, not drug lords, not murderers, not abusers of children, not terrorists. I must admit the fear-mongering that was raised tonight led me to go back and read the bill. I was a little confused about what we were talking about.

I know what we're talking about. We're talking about offering drug addicts treatment instead of prison, at an enormous savings to the State of New York. I know we're talking about closing empty jails because there's no justification in bad economic times to spend money on empty jails.

I know that the empirical data for me is that there's a difference in this house between the Democrats running it and the Republicans running it, because after 30 years of failed Rockefeller drug law, in our first three months we're going to pass reform of the Rockefeller drug law.

And I am very proud to vote yes, whether it was a freestanding bill or in the budget bills tonight.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator L. Krueger to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator C. Kruger.

SENATOR CARL KRUGER: To explain my vote, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator C. Kruger, to explain his vote.

SENATOR CARL KRUGER: I guess my two colleagues and comrades in government, Senator Espada and, in his very special way, Senator Diaz, graphically illustrated and very succinctly pointed out why we're voting on this bill tonight.

In 1994, I joined this house, and in 1995 one of the most critical votes that I took, and quite frankly in defiance of the vast majority of the people in my conference at that time, was in support of the death penalty. Because I am today and I always was a very conservative Democrat.

And I felt that even though the death penalty may have been inappropriate, it sent out a very clear and compelling message, a message that said that the State of New York was in a desperate position. And there was virtually chaos that reigned our streets, and we had to do something to send that message.

Well, today the message evolves and it changes, because we're not static, but we're in a state of flux. And tonight we have a unique opportunity to refine what we built on in 2004 and to once again revisit the issue of the so-called Rockefeller drug laws and put a different spin so that we can once again make society part of an evolving process, a process that says that we have an open heart and an open mind and we want to rehabilitate.

We no longer have the Department of Prisons, we have the Department of Corrections. And OASAS has become an agency unto itself because it has a mission and a purpose, and that is to offer rehabilitation to those people that are afflicted with a drug problem.

I vote yes.

ACTING PRESIDENT STEWART-COUSINS: Senator C. Kruger to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Lanza.

ACTING PRESIDENT STEWART-COUSINS: Senator Lanza, to explain his vote.

SENATOR LANZA: Thank you, Madam President.

First let me thank my good friend and colleague Senator Adams. He, like my father, was a New York City police officer. I'm one of those people who believes we can never thank our police officers enough for the sacrifices and service they've given to our state.

And truth be told, he's become -- he and my dad have become friends, so I know if I don't live up to his remarks, I'd be letting down both he and his new friend.

There are a couple of things that I didn't talk about earlier on the bill. First, judicial discretion I believe is not a

panacea. Right now, there is a discretion. It involves the judge, the defense bar, and the prosecutor, those who have all the facts to use discretion with respect to these cases.

There was talk about black defendants not getting the same sentences as white defendants or upstate defendants not getting the same sentences as downstate defendants. That's precisely what I believe, sadly, we're guaranteeing here by giving judges discretion to do that which they believe -- and remember, there are judges all across the state that have different views on these issues.

I truly believe -- and again, I want to thank Senator Schneiderman. Although we disagree on the issue here, I think he brings great wisdom to the issue. But there's great talent on this side of the aisle, on both sides of the aisle, and there's great talent and wisdom with respect to this issue across the state. And I truly believe that even great wisdom can be enlightened by a better process and a thoughtful analysis. And

my fear now is that the process we have had has led to a bad result.

And, Senator Diaz, I have to tell you, we're going to have to agree to disagree, my friend. Because you said two bags are not too much? I think they're way too much, given the type of destruction and carnage and the ruination of lives that they will lead to. So we're going to have to agree to disagree on that one.

I have to say at this point now, I pry that I'm wrong and you're right. Otherwise, we're going to have a lot of explaining to do.

Madam President, I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Lanza to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Larkin.

ACTING PRESIDENT STEWART-COUSINS: Senator Larkin, to explain his vote.

SENATOR LARKIN: Thank you, Madam President.

You know, when I was elected to

this body in 1990, I thought I had joined a bunch of leaders. Having spent 23 years in the military, in leadership from a private to a colonel, I accepted responsibility. I didn't hide from it.

What are we doing here? We're taking a bill that everybody's scared to hell of, and they hide it. We have 62 district attorneys that are telling us, You're going to compound the problem. We're going to transfer the district attorneys out of it, we're going to bring a judge in, and then this individual who's accused can walk away from it.

If this bill would stand on its own, it wouldn't. Guess why? We had two amendments here; right? We had 30 votes. Other side of the aisle, they weren't there. Why weren't you there? Because you were hiding. I want you to go home and tell your people, I hid because I was afraid to vote on something that may affect your life.

How many of you in this room have ever run a company where there's troops that are involved with drugs and you have to take

it and correct it for them? Nobody in their right mind wants to see these young people into an addiction. We all want to help them.

But what we've done here is created a bill that's going to be called the "Drug Dealer's Protection Act." I'm ashamed of us, totally ashamed. Walk out of this, hide. I heard a couple of people say, "I'm not going in there, I don't want to be recorded." I think we ought to have everybody here that refused to vote on them -- I don't care how you voted, but have the decency to say no or yes.

I vote -- I think this is a disgrace, but I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Larkin to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator LaValle.

ACTING PRESIDENT STEWART-COUSINS: Senator LaValle, to explain his vote.

SENATOR LaVALLE: Thank you, Madam President.

In 2004, Senator Volker passed

reform to the Rockefeller drug laws. My recollection was people were quite satisfied by those changes. I sit here today, and I'm saying who wants these changes? Why are we here? Why are we voting on this bill?

I will tell you that as I mentioned, our county legislature and the county legislature in Nassau passed Natalie's Law, passed it because there's a crisis in both counties in terms of the dramatic increase in the use of heroin and other opiate drugs.

The DAs say this is bad. The law enforcement people say this is bad. I listened to Senator Schneiderman and he says this is a good bill, no problem. So all the DAs are wrong, all the law enforcement people are wrong. And some of the people on our side of the aisle who have great expertise in this area say stop.

I will tell you, Senator Golden said something tonight, because this is a public protection issue. And when we vote on these issues, I'll tell you, I usually lose

sleep. Because if I vote wrong, someone is going to die because I may have cast the wrong vote. This is serious, serious stuff that means life or death to people.

I vote no, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator LaValle to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Leibell.

ACTING PRESIDENT STEWART-COUSINS: Senator Leibell, to explain his vote.

SENATOR LEIBELL: Thank you, Madam President.

We will not debate a more significant piece of legislation during this session than what we are talking about this evening.

And I want to talk about the process for a moment, and I spoke about this earlier. It is wrong to put this legislation into the budget.

Senator LaValle commented earlier about the Brennan Institute. Where are they?

Do they still exist? Only a short time ago they were talking about openness in government, and sunshine. Where are they now? Under what mushroom do they reside? On whose payroll do they exist?

Let me suggest to you that I know something about this law. In 1975, I prosecuted under this law. Not perfect then, we reformed it, still not perfect. I did it in the Westchester DA's office. We handled most of our drug cases through the rackets bureau, of which I was a member.

And I can tell you at that time there was carnage in the streets. From our suburbs to our inner cities, there was carnage. That's why we had a tough law. Perfect? Not at all. That's why we reformed it only a couple of years ago.

And as Senator Lanza said, bring it to the table. We need do more, let's do more. Let's discuss it. But I will tell you what I remember from prosecuting. I remember those days very well. I remember that drugs and violence are synonymous. They are one and the

same. They are not distinct. I also remember the carnage within families. It was horrible.

ACTING PRESIDENT STEWART-COUSINS: Senator Leibell, how do you vote?

SENATOR LEIBELL: And I also remember picking juries. You couldn't pick a jury with a person from the inner city because no family was untouched. They had all been touched and were disqualified from juries.

I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Leibell to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Libous.

ACTING PRESIDENT STEWART-COUSINS: Senator Libous, to explain his vote.

SENATOR LIBOUS: Madam President, to explain my no vote, please.

As a legislator I get involved, as everybody in this chamber, in a number of areas. When I was in the private sector, I was in banking and I was in the printing business. And while maybe I wasn't an expert,

I thought I knew a little bit about those fields.

I'm not in law enforcement. As Senator LaValle said a few moments ago, this is a serious, serious stuff. I have to defer to the experts. Maybe there's one or two in law enforcement in this room, and I would say that there are folks here who have prosecuted and probably understand this better than I do.

But when all the district attorneys and the number of sheriffs who have written letters to us and told us that this is bad legislation, I have to defer to their expertise, just like when I sit down with the teachers and listen to what goes on in the classroom or I sit down with psychologists and psychiatrists when I chaired Mental Health and learned about mental health, or any area that -- I am generalist as a politician, because we get involved in a little bit of everything.

So, Madam President, I defer to the experts. And so many DAs and so many sheriffs and so many folks in law enforcement,

including those who are here on the floor with maybe some conflicting views -- but the majority have said don't vote for this legislation; this is bad policy, this is dangerous.

I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Libous to be recorded in the negative.

The Secretary to continue.

THE SECRETARY: Senator Little.

ACTING PRESIDENT STEWART-COUSINS: Senator Little, to explain her vote.

SENATOR LITTLE: Thank you, Madam President.

In 2004 I voted for the reform of the Rockefeller drug laws, and we eliminated the onerous 15-year mandated sentence. We did much then. But what we are doing today has really brought out our district attorneys, our prosecutors, to come to us to say, Do you realize what this bill does, what you will be voting for?

I had DAs down here a week ago who were passionate and passionately spoke to

anyone I could introduce them to from your side to try to talk to you about why they felt this is such a bad bill. They would have had an opportunity to speak at a hearing had you had such a thing.

And we do have a lot of hearings. We have no problem having hearings about wetlands and all kinds of different issues. This issue should have gone before the public. We should have had hearings. We should have made sure that if we get into this that we have enough drug rehabilitation programs, that we have enough probation officers.

And we ought to warn the counties, because many of these offenders will end up in county jails. First-time Class B felony drug offenders, nonviolent Class C, D and E drug offenders will be eligible for a local jail sentence. And that's after, in this budget, we also eliminated reimbursement to local correctional facilities for the parole violators or the state-ready inmates.

So yes, you may be saving money on the state prison scene, but you are dumping it

into the county jails and the cost to the county.

I don't regret what I voted on in 2004, but I truly believe that you're going to regret voting on this bill today if you vote yes. I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Little to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Marcellino.

ACTING PRESIDENT STEWART-COUSINS: Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: Thank you, Madam President.

We're all reading about a drug war that is going on just south of our border. President Obama is considering moving troops to the southern border of this country to print the spillover into our country of the cartel drug dealers who are trying to literally take over Mexico and make it a failed state.

In my district recently there was a

couple of shootings. Some innocents were killed as a result of it. The police investigated and found out that there are local gangs that are international gangs connected to these cartels who are pushing drugs in our communities. Heroin is on the rise on Long Island, in my district, in everybody else's district. It is all over this state. It is coming back.

I taught in the City of New York for twenty years. In the '70s, I was there in the schools, on the front line, watching kids fall down, die, commit suicide, and walk through schools like zombies because they were stoned out of their minds. We were beside ourselves, we were overwhelmed for a long period of time.

It kind of waned, but it's coming back. Heroin is coming back. Our kids are falling victim. If you think this is nonviolent, if you think that dealing in drugs is nonviolent, you are sorely mistaken. It will affect us all.

This is not the time to weaken our

laws. This is not the time to give the wrong message to the dealers, to our children, to anyone who thinks using drugs is okay at any level and using any kind of drug is okay at any level. Because it's dangerous. It hurts, it destroys families, it will destroy communities, and it will destroy our nation if we allow it.

Ladies and gentlemen, this discussion should be continued. This bill deserves better than this.

ACTING PRESIDENT STEWART-COUSINS: Senator Marcellino, how do you vote?

SENATOR MARCELLINO: I will vote no. But I'm hoping that I'll be joined by someone on the other side who will help us take this bill out and will do the right thing and carry it forward and open debate.

ACTING PRESIDENT STEWART-COUSINS: Senator Marcellino to be recorded in the negative.

SENATOR MARCELLINO: Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS:

The Secretary to continue.

THE SECRETARY: Senator Maziarz.

ACTING PRESIDENT STEWART-COUSINS: Senator Maziarz, to explain his vote.

SENATOR MAZIARZ: Thank you very much, Madam President.

Madam President, I am going to refer, as I know my colleagues Senator Volker and Senator Ranzenhofer had, to someone who is much more knowledgeable than me. That's the new district attorney of Erie County, Frank Sedita, III.

District Attorney Sedita called me the other day to tell me how frustrated he was to think that the Legislature would even consider passing this bill, that this bill, as he said, will have devastating, devastating consequences for public safety.

I was moved also by my colleague Senator Lanza's remarks. You know, I live in a small community of about 8,000 people. I don't know that I have ever been in public housing. I thought about that when Senator Lanza mentioned it.

And you know, I think today that I agree with Senator Lanza. I hope we're wrong and I hope you're right. Because if you're not right, generations of little boys and little girls that live in public housing are going to be exposed to the scourge of drug traffickers. Tomorrow morning at 7 o'clock I'm going to go down to St. Mary's for mass, and I'm going to pray that you were right.

I vote in the negative.

ACTING PRESIDENT STEWART-COUSINS: Senator Maziarz to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator McDonald.

ACTING PRESIDENT STEWART-COUSINS: Senator McDonald, to explain his vote.

SENATOR McDONALD: Thank you, Madam President.

I'd like to thank everybody here for their passion. Senator Lanza, I'd like to thank you for your experience. Senator Marcellino, I want to thank you for bringing up a group of people that have not been talked

about tonight enough, just innocent victims, just families, people walking down that street, driving that car, going to work every day. Not rich, not affluent, not hip, not living in a hip community. Just average folk who become victims to these crimes.

It could be a DWI, it could be a crime with drugs, I don't care anymore. I've heard enough therapy excuses. I care about these innocent people. I plead with you, protect innocent people, the average folk that make up the background of our community, the heart and soul.

They feel sometimes too much attention is directed to the criminal and not enough to the victim. We know that's not always true. We know we're trying to help people, reform them, correct them. But too often we have forgotten about these victims.

My DAs, both of them, different parties, in my two counties, are opposed to this, and they're good DAs. My two sheriffs, both of them are opposed to this. They're great men. All of those folks are good

people.

The challenge we have -- and maybe that's what we should have, is a challenge. Maybe some communities who don't want to change these laws should be allowed to keep them, and we will look 24 months from now for the communities who did want to change them, and compare the statistics and the human misery and tragedy.

Maybe that's the answer. Give us a chance. Maybe one size does not fit all. Maybe let my communities police and protect our people, and you do the same. I'd respect that --

ACTING PRESIDENT STEWART-COUSINS: Senator McDonald, how do you vote?

SENATOR McDONALD: I vote no. And thank you for the time.

ACTING PRESIDENT STEWART-COUSINS: Senator McDonald to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Monserrate.

ACTING PRESIDENT STEWART-COUSINS: Senator Monserrate, to explain his vote.

SENATOR MONSERRATE: Thank you, Madam Chair.

Let me say that I've had the opportunity for now well over five hours to hear many of the arguments both for and against this important piece of legislation. And I think the crux of it is basically the following. Do we treat addiction with intensive treatment, or do we treat those who are chemically dependent with prison?

And I think if you put that into that context, we could all agree that we want to fight drugs in our communities. No one knows that more than people of color who have lived in communities where crack sales and heroin sales have been a reality. That their families, including this humble Senator speaking in front of you, have been impacted directly by the scourge of drugs.

But I also understand that despite the animations of Reverend Diaz, that his point was succinct. In our communities, what

Rockefeller drug laws have done is created permanent families who were broken apart by a system that stated that they were trying to help them by putting their family members in prison.

And at the end of the day, ladies and gentlemen, that caused more harm to society, to our city, and to our state than the very drugs that were impacting those communities.

I want to just say the following. I've heard arguments about economics, about the impact of closing prisons. I've heard arguments about professionals and the experts. Well, just a few weeks ago we confirmed the top lawman in the State of New York, Justice Lippmann, who supports our position on Rockefeller drug law reform.

So I encourage my colleagues to stay strong. It is a difficult issue. And perhaps there even are some arguments from the other side that we can look at in the future. But if I had to err, ladies and gentlemen, I would err on the side of compassion. If I had

to err --

ACTING PRESIDENT STEWART-COUSINS: Senator Monserrate.

SENATOR MONSERRATE: -- I would err on keeping families together --

ACTING PRESIDENT STEWART-COUSINS: How do you vote?

SENATOR MONSERRATE: -- and treating chemical dependency as an illness and not a crime. I vote yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Monserrate to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Montgomery.

ACTING PRESIDENT STEWART-COUSINS: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, thank you, Mr. President -- Madam President, excuse me. Forgive me.

I would like to rise and just thank some people who have made this historical moment possible, who kept the hope alive even

when it appeared sometimes that we would never get to this day. And I wanted to call their names because I would like for some of them to be in the record.

And I would start by thanking my colleagues Assemblyman Aubry and Senator Schneiderman, who really brought us to this moment. This is extremely important to me and I think to many of us across this state.

And I want to thank Father Peter Young, who had had a vision many years ago, I think even before the Rockefeller drug laws, when he began working with people who were returning from prison and gave us a model for how we could help people successfully return home.

And I want to thank Oscar Jones, who was a young man who served over 20 years in prison and who came to testify here in the Legislature to point out to us how we had spent, during his 20 years, over a million dollars incarcerating him. And in the year and a half or so that he had been out and with Father Young's program, it was maybe $10,000,

$15,000 that we spent, but he now was a tax-paying citizen.

And I want to thank Charles Hamilton, who was a young man that I met in Green Haven many, many years ago. He was oh so young there in prison, but he was chair of the NAACP chapter there --

ACTING PRESIDENT STEWART-COUSINS: Senator Montgomery.

SENATOR MONTGOMERY: I'm going to take a little bit longer because everybody took my time and I want to thank some people, Madam President.

So Charles Hamilton remained -- he was chair of the NAACP chapter in Green Haven. He stayed in touch with me, he organized other people in prison. Unfortunately, he passed away on the day of the inauguration of Obama.

And I want to thank John David, who also was incarcerated, who came to me and in -- he was the embodiment of what we could do for people if we gave them an opportunity to be successful when they returned. And he convinced me that we should be supporting the

kinds of programs that would help people who had been incarcerated.

And I thank Bob Gangi and the Correctional Association for his leadership, and so many advocates who have followed us across the state. They are from all parts of the state, upstate, all of the counties --

ACTING PRESIDENT STEWART-COUSINS: Senator Montgomery.

SENATOR MONTGOMERY: They represent the soldiers in this army. They are the ones that we owe for the fact that they have --

ACTING PRESIDENT STEWART-COUSINS: Senator Montgomery.

SENATOR MONTGOMERY: -- kept the dream alive.

And so tonight we celebrate the victory for them, we celebrate the victory for all of those people who have been sucked out of their communities because they had an addiction, and now they can hopefully come back. And we want to be able to successfully to receive them so that --

ACTING PRESIDENT STEWART-COUSINS: Senator Montgomery, how do you vote?

SENATOR MONTGOMERY: -- they become successful citizens in our state, in our cities. A lot of them will come back to my district.

ACTING PRESIDENT STEWART-COUSINS: How do you vote, Senator Montgomery?

SENATOR MONTGOMERY: I vote yes, yes, yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Montgomery to be recorded affirmatively in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Morahan.

ACTING PRESIDENT STEWART-COUSINS: Senator Morahan, to explain his vote.

SENATOR MORAHAN: Thank you, Madam President.

You know, I heard a lot of words here tonight. First, the issue of folding this very important legislation within a budget bill, which I think it does a disservice.

I think, Senator Schneiderman, with all your passion and compassion for this issue, I think that you would have been better served and the state would have been better served had we a full and open discussion.

But we're talking about justice here. And it seems that we're talking about rehabilitation of addicts. And I don't know of anyone who's really against that. But we have to question, how do these addicts become addicts? How did they get the drug? Who gave them the drug? And who was making money while they were destroying that young life?

So justice for those who use it is one thing, but justice for the victims, justice for those who have been addicted by criminals and criminal acts, ought to be also considered.

And to fly in the face of all auto the experts and have a hidden bill -- I know Senator Krueger brought up the idea that this was out in the open. Well, we read about it in the newspapers. And 99 percent of what I read was negative. I didn't read too much, if

anything -- I can't recall it -- that was positive.

So I think it was the wrong approach. I'm not knocking the issue; it's something that has to be very, very seriously considered. And the compassion has to be for the victims and for our children and for the protection -- this says "protection" in the heading of this bill -- protection for those that we represent and who we serve.

Thank you. I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Morahan to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Nozzolio.

ACTING PRESIDENT STEWART-COUSINS: Senator Nozzolio, to explain his vote.

SENATOR NOZZOLIO: Thank you very much, Madam President.

I vote no on this outrageous proposal. While the Democrats on the other side of the aisle are praising the victory of drug dealers, addicts, and advocates of drugs,

I am mourning the defeat of employee rights in this state, employee rights for those brave -- thousands of brave men and women who work in our correctional facilities, who lay their lives on the line each and every day.

And secreted within this legislation is a proposal that takes away their rights and notice and says to the correction officers, We're going to close the facilities, SHUs and annexes, over a dozen of those SHUs and annexes in areas like Watertown and Cape Vincent, Riverview in Ogdensburg, Cayuga and Oneida. Those facilities can be closed now without notice to this Legislature, without consultation with this Legislature. They can be closed at the whim of the Corrections Department, all because you're voting now on this bill.

So the next time the correction officers come to this city and come to this Legislature and say "We need your help," they need to know that you said no in favor of others more important in priority to those brave men and women. That should not be

forgotten in this legislation.

It's another reason, yet another reason to defeat it, Madam President, and that's why I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Nozzolio to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Aye.

THE SECRETARY: Senator Padavan.

ACTING PRESIDENT STEWART-COUSINS: Senator Padavan, to explain his vote.

SENATOR PADAVAN: Very quickly, Madam President. I'd like to address several things that have been said here.

First, Senator Schneiderman said that these drug pushers are immediately subject to deportation. The reality of it is quite another matter. There are thousands of illegal immigrants in our state prisons. I

don't know how many are at Rikers Island and other local lockups. But they're not deported. They're arrested, they're arraigned, they're prosecuted, and they end up in our state prison. When they complete their sentence, some of them are deported.

So let's put that issue aside in your discussion with Senator Golden. You were wrong, he was right.

The statement here earlier that these are not violent acts, I can't think of anything more violent than selling drugs and sending some youngster into a path of addiction, ruining their lives. That's violence. If it was my kid, believe me, I'd become the one who was violent. And so would you. So would you.

Now, Senator Diaz, who held up these two packets before, symbolically -- I assume they were to replicate packets of some drug, crack, heroin, cocaine, whatever -- it would take no more than those two packets. And I can tell you this firsthand, by virtue of the parents and the children I met

face-to-face during hearings that I held years ago when I chaired the appropriate committee dealing with the subject.

All it would take is that to get them addicted, and many of them were. Some of them got into programs, thankfully, and had their lives turned around. Others ended up in an emergency ward ODing.

So don't hold those up, Senator, wherever you are, because that's death in your hands. I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Padavan to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Parker.

ACTING PRESIDENT STEWART-COUSINS: Senator Parker, to explain his vote.

SENATOR PARKER: Madam President, to explain my vote.

I rise in support of this public protection bill. And I have long been a supporter of the reform of the Rockefeller drug laws. And I want to just really thank

and congratulate Senator Eric Schneiderman for his work, Assemblyman Aubry, Ruth Hassell-Thompson, and others who worked really hard on this bill.

But let's get the record straight. And let's get the record straight particularly about what we are voting for and what you're voting against. Because you're not just voting on the Rockefeller drug laws.

Today, you decided to vote against legal services in all of our communities. You decided to vote against resources for domestic violence survivors. You have decided to vote against gun violence reduction programs. You have decided to vote against 1,391 more police from federal stimulus money. You have decided to vote against $150 million more for homeland security. You have decided to vote against the National Guard, many of which are serving right now, as we stand here, in Iraq.

You have decided to vote against -- and this is with no surprise -- a commission on public integrity. You have decided to vote against more funds for State Police. You have

decided to vote against veterans affairs programs which we need more than ever, particularly with many of our veterans coming back.

So with respect, New York right now, Madam President, is a safer, stronger and more secure place because of the vote that this Majority is taking right now today.

I vote aye.

ACTING PRESIDENT STEWART-COUSINS: Senator Parker to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Perkins.

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, to explain his vote.

SENATOR PERKINS: I want to first commend my colleague Senator Schneiderman and Assemblyman Aubry especially for this momentous occasion in which an injustice that has been perpetrated against our communities for so long is finally being lifted from us.

You know, I have a very personal relationship to the Rockefeller drug laws, not

only in terms of my family. Our communities have been the target of the drug trafficking and have been the victims of the drug trafficking in terms of enormous drug addiction.

This is a piece of legislation that will address the addiction, the addiction that has resulted in so many of our family members and our neighbors being put into those prisons that now others are calling for to remain open even as they need to be closed.

Let me just also point out, you know, the beginning of the drug trafficking era began with the Vietnam War, when the veterans of that war were coming home drug-addicted and when those veterans were not provided with the opportunity for rehabilitation.

And so this has been a very serious problem for our communities that has been aggravated by the lack of proper rehabilitation and proper appreciation for what actually was going on. This is not about supporting drug trafficking or drug laws.

This is about supporting rehabilitation for those who have been victimized as drug addicts.

And so, again, I think this is a very, very important piece of legislation. It's a historic piece of legislation. This is not about murders, rapists, and robbers, it's about drug addicts. It's about those who have not been given the opportunity to fix a problem and then begin to make contributions to society.

So this will help us in terms of --

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, how do you vote?

SENATOR PERKINS: -- making them productive members of society.

And so I want to obviously vote yes in support of this legislation, and realize that this is not the beginning. There's more that has to be done with this --

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins --

SENATOR PERKINS: -- and I look forward to making sure that that happens.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Ranzenhofer.

ACTING PRESIDENT STEWART-COUSINS: Senator Ranzenhofer, to explain his vote.

SENATOR RANZENHOFER: Thank you.

I get scared when I hear that this is not the beginning, because that to me means that the next step is to legalize all drugs, and that scares me.

I am very concerned about the process and the substance. Before I came here, I and many members in my community thought that Albany was one of the most dysfunctional places in America. They thought it was very secretive, there was no openness, there was no transparency. Then I arrived here, and I cannot disagree.

When you have budget bills that are put together in secret, when you have no

public hearings -- obviously, with the debate going on for five or six hours on a very important issue. And to make a point that Senator Parker said, when you combine changes in criminal and penal law and bury that in a financial budget bill, that's not transparency.

It's evident to me, based on the two stand-alone votes that were taken on the amendments, when many Senators in this chamber didn't have the courage to cast a vote but instead were absent, that tells me what the outcome of this bill would have been. It would have failed if it stood alone. And the reason it would have failed is because it's a bad bill.

On the substance, I also want to stand with the correction officers, with the sheriffs, with the police officers, with the DAs. I don't believe, as some of my colleagues do, that they are fear-mongering, that they are uninformed, that they have an ax to grind, that they are extremist.

I think that these people are

dedicated law enforcement professionals, as my DA is in Erie County, and who is a member of the other party. I think they have the best interest of their community at heart, as do I think the members on the other side have the best interest of their community at heart. And there is a --

ACTING PRESIDENT STEWART-COUSINS: Senator Ranzenhofer, how do you vote?

SENATOR RANZENHOFER: I'm just going to take another second, like Senator Montgomery, and finish the thought.

When my DA says to me that the proposed legislation will have devastating consequences for public safety, and in conclusion when my DA says to me that dangerous drug dealers will be released back in the neighborhoods they were destroying, and the residents of those neighborhoods will pay the price --

ACTING PRESIDENT STEWART-COUSINS: Senator Ranzenhofer, how do you vote?

SENATOR RANZENHOFER: -- I don't think that they are fear-mongering, I think

they're just trying to provide some guidance to all of us on this legislation.

I will vote no. Thank you for the extra time.

ACTING PRESIDENT STEWART-COUSINS: Senator Ranzenhofer to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Robach.

ACTING PRESIDENT STEWART-COUSINS: Senator Robach, to explain his vote.

SENATOR ROBACH: Yes, Madam President. Let me say again, this is certainly a complex issue. And I appreciate everybody's comments. But again, I have to go back to process, process, process.

I was hopeful -- I represent the heart of the City of Rochester -- that we could get to a place where we would expand opportunities and funding for treatment on demand in things that work, like drug court, where we are really quantifying who will work, who is really an addict, who is not a violent criminal, who may not have a history of

violence.

Because in the neighborhoods that many people on the other side of the aisle talked about, there's another constituent group there. Those are the mothers, the grandmothers who have never done a drug, who live in fear every day that their kid's going to get preyed on walking to school, walking to the bus stop, by those who have literally taken over complete neighborhoods.

And I think that if we had a little more time to talk about this, if it was a stand-alone bill -- again, a better process -- we might have been able to come to a better compromise and the vote might then be unanimous in this house. Everybody knows for people who really aren't preying on somebody else, I think for every reason we want them unaddicted so there's no recidivism rate, no more crime, and no more preying. But for the people who have made a decision that this is a way of life, a way to make money, a way to make sustenance, I can tell you, as much as people talked about how it was bad before, I

could put you in my car and take you to neighborhoods in Rochester, who unfortunately, when I walk Paetec with queen mothers and people in that neighborhood doing good things for a hundred years, those drug dealers are still running the neighborhood.

And I don't think this bill strikes that right balance where I can go back to them and say, We did something to help protect you. There's a fear in my mind that we didn't.

I wish there was a way that we had the time and the process to try and put the money in treatment and do that. And you know what?

ACTING PRESIDENT STEWART-COUSINS: Senator Robach --

SENATOR ROBACH: We still can. Let's take these rules out, leave the money in, let the people locally who are already doing this --

ACTING PRESIDENT STEWART-COUSINS: Senator Robach, how do you vote?

SENATOR ROBACH: -- who's not addicted to do that. I think that would be a

better way to go. I apologize for the extra second, Madam President. I vote in the negative.

ACTING PRESIDENT STEWART-COUSINS: Senator Robach to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Saland.

SENATOR SALAND: To explain my vote, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, to explain his vote.

SENATOR SALAND: Madam President, I have long subscribed to the belief that among government's principle responsibilities, first and foremost is public safety. Everything flows from public safety. Your communities are safe, your quality of life is improved. Without public safety, your community, your community's quality of life is jeopardized.

There's nobody on this side of the aisle who's opposed to abuse programs, substance abuse programs. What we're opposed to is the manner in which this has been

delivered. If this is described as open or nonsecretive, as I believe I heard Senator Krueger say, I think you fail Reform 101, simply because what we did in 2004 was open, it was clear, there were weeks of discussions.

This bill has in its title five pages. So I agree with Senator Parker, it provides plenty of cover to those who can now say, Well, I didn't like it, but I voted for it because.

Now, as Senator Ranzenhofer pointed out, there were two amendments that failed by 30 to 20 votes. I can recall from my days in the Assembly back in the '70s, believe it or not, when an amendment did pass, to everybody's surprise. It was a death penalty amendment.

And I would suggest to you that those who left the chamber and chose not to be recorded, including Senator Foley, Senator Johnson, Senator Savino, probably owe it to their constituents to let them know where they stand purely on the Golden bill, which would have repealed this language and given us the

opportunity to have an open and frank discussion. Because that would have been something that would have been far more meaningful.

Now, if you want judicial discretion, that's great. Think of the '70s, think of the judicial discretion of the '70s and what it did to the streets of New York. Think of that, remembering. Some of you perhaps aren't old enough to remember it. That discretion put people out on the streets. There was a judge who unfortunately for him became known --

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, how do you vote?

SENATOR SALAND: -- by "Let 'Em Loose."

How do I vote? I think you can surmise how I vote. But let me just conclude --

ACTING PRESIDENT STEWART-COUSINS: Senator, shall I surmise?

SENATOR SALAND: Let me conclude; I will tell you. I will conclude once again

by reading the quote that I read earlier in the New York Post --

ACTING PRESIDENT STEWART-COUSINS: Senator Saland --

SENATOR SALAND: -- making reference to the Assembly staff, the majority Assembly staff, in the context as was provided by Senator Klein of a civil confinement bill that --

ACTING PRESIDENT STEWART-COUSINS: Senator --

SENATOR SALAND: -- "Leadership is holding it up because you have some staff whose only reason for living" --

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, as you said, you did read that previously. So I think we need to move on.

Shall we record you in the negative?

SENATOR SALAND: Thank you, Madam President. I'll be recorded in the negative.

SENATOR ADAMS: Point of order.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Saland.

SENATOR GRIFFO: Point of order, Madam President.

ACTING PRESIDENT STEWART-COUSINS: There was a point of order to my left, and now to my right. Shall I take Senator Adams' point of order first?

SENATOR ADAMS: I just think it's important -- we all have passion, we all have position. And I even say to my colleagues on this side of the aisle, the only thing that separates us from those countries where there's disorder is order. We need to respect the chair.

Our passions are not more important than those across the aisle. It's two minute argument. I had more to say; I stopped it. We need to respect the chair. And that's on both sides of the aisle.

ACTING PRESIDENT STEWART-COUSINS: Point of order well-taken.

Senator Griffo.

SENATOR GRIFFO: Madam Chair, I rise to that very point of order. You set a precedent here by extending a courtesy to

Senator Montgomery to exceed the two-minute rule.

So I think you should apply that same courtesy to the remainder of the individuals who are speaking tonight under this particular vote. So let's be fair.

ACTING PRESIDENT STEWART-COUSINS: Senator Griffo, your point of order is well-taken. I think that, quite frankly, I have been fair. And think that as the hour gets late, we want to extend the same courtesy to everyone.

You heard what happened, the exchange between Senator Montgomery and myself. But what I will say is that Senator Montgomery did not speak on the bill. Many people have spoken on the bill.

And I think that this is part of trying to move this fairly. But I think that the point of order is that it is a two-minute argument, and we are almost towards the end.

Senator Griffo.

SENATOR GRIFFO: Then I would say, in accordance with what you just raised

then, Madam President, I would say that anyone who has not spoken on the bill would be extended the same courtesy that Senator Montgomery had. Correct?

ACTING PRESIDENT STEWART-COUSINS: I think I've been courteous to everyone, Senator Griffo.

SENATOR GRIFFO: Will you extend that same courtesy?

ACTING PRESIDENT STEWART-COUSINS: I think the courtesy has been extended from the chair, and I think that the courtesy we're asking for now is to each other. Okay?

SENATOR GRIFFO: Okay. You will extend that same courtesy. Thank you.

ACTING PRESIDENT STEWART-COUSINS: I continue to be courteous.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: Madam President, I'd like to speak on the bill. And I hope I'm extended the same courtesy as Senator Montgomery if I go over two minutes.

But I'll try to be quick and brief.

I'm not -- you know, I don't speak unless, you know, I hear issues that really impact. And you know, Senator Ranzenhofer, there is no cowards in this chamber, on this side of the aisle or that side of the aisle. So let's get that straight, there are no cowards here.

You know, I'm listening to the debate, and it was a very fruitful and spirited debate. But the issues I hear are basically it seems that there are no drug addicts, nothing but drug dealers. This state that we represent only consists of prosecutors, sheriffs, and correction officers, immigrants or criminals. Judges lack the ability to have discretion. Prisons are a form of economic development. And all of a sudden, because of the Democrats are in charge, prisons are going to open and the floodgates are going to open.

Senator DeFrancisco, you said you made those changes in 2004. You know, the same prosecutors that are sending these

letters against it in 2009 were the same prosecutors in 2004. Let me quote you from Bridget Brennan -- who, by the way, her child and our children go to the same school. But let me quote what she said in 2005.

"Most importantly, the signing of this bill" -- 2004 -- "would send the following message, that we did not take drug crime and its devastating effects seriously."

And we talk about -- we read letters from prosecutors. I haven't heard anybody pull up a letter from a victim or a letter from a constituent.

Let me read you a letter from the Upstate Pharmacists in Support of Rockefeller Drug Reform. "We are writing in today in full support of Senate Bill 2855 for real reform of the Rockefeller drug laws. For more than 35 years, the Rockefeller drug laws have increased our state's prison population and inflated the Department of Correctional Services' budget. As a result, New York State has prioritized its funding of the criminal justice system over other economic

developments which would better serve the upstate economy and its residents. Preserving farmland, building infrastructure for production and distribution of goods, investing in marketing and training are all necessary for a long-term" --

ACTING PRESIDENT STEWART-COUSINS: Senator Sampson.

SENATOR SAMPSON: I'm not -- I'm not --

ACTING PRESIDENT STEWART-COUSINS: I understand. Senator Sampson, how do you vote?

SENATOR SAMPSON: How do I vote? (Pause.) I vote aye.

(Laughter.)

ACTING PRESIDENT STEWART-COUSINS: Senator Sampson to be recorded in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Savino.

SENATOR SAVINO: Yes.

THE SECRETARY: Senator

Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. To explain my vote quickly.

I want to thank all my colleagues. This has been an extraordinary undertaking. I've been working on this for some years. I appreciate very much the debate we've had tonight.

I would like to say, though, that there are times when you have to recognize that the old ways don't work anymore. There are times you have to recognize that it's time to move in a new direction. And with all due respect to all of my colleagues on the other side of the aisle, I think that last fall, in this country and in this state, people voted for a new direction.

We can do better. We can do better than the mass incarceration of people who need treatment, not prison. This bill is designed to separate out those in need of treatment from those who cannot benefit from treatment. It is an absolutely well-thought-through, most sincere effort to make this a safer state.

And I would urge all of my colleagues, whatever your doubts, work with us to succeed in this new direction. We can have a safer state. We can make it safer for all of our children. That's everyone's goal.

And finally, if I can read very quickly, I want to read a portion of a letter, since there have been so many tonight.

"In case anyone has noticed, the last 36 years of this archaic, draconian law has created little pockets of hell for our urban areas. Hell is being a low-level nonviolent offender with a drug problem who is locked up in our prisons with violent offenders. Hell is having no access to jobs except for those in an illicit economy. Hell is living in a community that year after year faces increased incarceration rates but diminishing services and opportunities, all based largely on one's race and income.

"The Rockefeller drug laws don't work. We need a new approach. This legislation is a step in the right direction.

"The Honorable David Soares,

District Attorney of Albany County."

There are lots of prosecutors who support this bill. Half the people on the Sentencing Commission --

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman.

SENATOR SCHNEIDERMAN: -- were prosecutors and former prosecutors. Let's all work together as we go forward.

I vote yes, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Serrano.

ACTING PRESIDENT STEWART-COUSINS: Senator Serrano, to explain his vote.

SENATOR SERRANO: Thank you, Madam Chair.

I want to thank Senator Schneiderman, and I also want to thank all my colleagues here in this chamber for, I think, a wonderful debate, I think a very spirited debate. Considering the roller coaster of a

day that we've had, I think it was something worthy of this chamber.

And I agree with the passion on the Republican side of the aisle. And I agree with something very dear to me, that I hate drugs. And it's important to understand that. Those who are in favor of reforming these laws hate drugs. Hate drug use, hate drug dealers, hate what drugs has done to the community.

And when you consider that I represent East Harlem and the South Bronx, one only has to think of the 1980s in the South Bronx during the crack epidemic to realize that these laws unfortunately did not achieve their desired result.

So I say, in the spirit of wanting to eradicate drugs, let's try something else. Let's try something that might work. Let's agree that after 36 years of this experiment, unfortunately, it did not do everything. Because when you think of my neighborhood, it's obvious it did not work.

So I appreciate this debate. I think it was wonderful and healthy. But I

vote yes on reforming Rockefeller drug laws. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Serrano to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Seward.

ACTING PRESIDENT STEWART-COUSINS: Senator Seward, to explain his vote.

SENATOR SEWARD: Yes, thank you, Madam President.

I first of all want to say I agree with Senator Schneiderman, we are moving in a new direction this year. And that direction is backwards.

It's bad enough that we have seen a $132 billion state budget negotiated, discussed in secret behind closed doors. Three New York City Democrats presented us with a budget that spends too much, taxes too much, no reforms, that put our state in the position that once this federal money dries up, no property tax relief, no economic development initiatives.

That's bad enough. But it's quite a tragedy when we see a piece of legislation that so impacts the safety of our families, our children, our communities, also discussed only in secret, only in private except for occasional news leaks, Senator Krueger. That is a travesty.

Contrast that with the 2004 process which reformed Rockefeller drug laws. That was an open process. All the stakeholders had their say. It was wide open -- the press, the public. It reformed the Rockefeller drug laws and did in fact put us on a new direction in terms of drug laws and treating those who are addicted by drugs.

I am of opinion that when the district attorneys, the sheriffs, our law enforcement and prosecutors on the front lines of fighting drugs every day -- that raises a red flag with me when they say this is a bad bill, it's going to hurt our communities, it's going to hurt our families. That's a red flag which leads me to believe that this is a bad bill.

You know, this is in the public protection legislation. I think that's a very -- that's a misnomer. That's not the place to put this bill. It is anything but public protection.

ACTING PRESIDENT STEWART-COUSINS: Senator Seward.

SENATOR SEWARD: Madam President, I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Seward to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Skelos.

(Senator Skelos was recorded as voting in the negative.)

THE SECRETARY: Senator Smith.

(Senator Smith was recorded as voting in the affirmative.)

THE SECRETARY: Senator Squadron.

SENATOR SQUADRON: Madam President, to explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Squadron, to explain his vote.

SENATOR SQUADRON: Look, we have

a system in Albany that's not right, that doesn't work. It didn't work in previous years, it doesn't work this year, there's no question. I think any claim that we used to have some system that was great and suddenly we have some system that's not doesn't pass the smell test. And I think all of us deep down know that. I think everyone -- both of them -- watching at home still at this point know that.

The fact is this bill this year is the right thing to do. It is not based on the illusion that drugs are a minor problem. This bill is based on the knowledge -- on the knowledge in my district, in the Lower East Side of Manhattan, in the homes and the public housing developments and the neighborhoods across the City of New York and the State of New York, that drugs are a horrendous scourge.

Those who victimize children and others with drugs should be punished, should be sent to prison, should not be on our streets. Those who are victimized, those who are addicts need to be treated.

This bill is based on the knowledge that what we've been doing since the Rockefeller drug laws were first passed hasn't worked. It hasn't. It didn't work in the '80s, when crack came on and ruined neighborhoods, and it's not working today.

We need to try something different and better, something that gets this problem at its source, punishes those who deserve punishment, and treats those who need it. That's what we're doing today.

In a very flawed process, I am very proud to vote yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Squadron to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Aye.

THE SECRETARY: Senator Stavisky.

ACTING PRESIDENT STEWART-COUSINS: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Yes, let me

also add my thanks to Senator Schneiderman for his persuasive and compelling arguments. And to Ruth Hassell-Thompson, who was here earlier today, for her work. And to my colleague from Queens, Jeff Aubry, Assemblyman Aubry, who has been working toward these changes for many, many years. And to the gentleman who starts our session off on just the right tone, Father Peter Young, for all of the work that he has done over the years to help those who are less fortunate than we are.

I vote aye.

ACTING PRESIDENT STEWART-COUSINS: Senator Stavisky to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Stewart-Cousins.

ACTING PRESIDENT STEWART-COUSINS: Aye.

THE SECRETARY: Senator Thompson.

ACTING PRESIDENT STEWART-COUSINS: Senator Thompson, to explain his vote.

SENATOR THOMPSON: Yes. You

know, I listened today. I'm very, very concerned about it. And I just want to say that if some of us were not in the chamber at the time, a little guy like myself from the east side of Buffalo never ran from a fight. Some fights I may have lost, some fights I've won. But I've never run from a fight.

This bill continues to reform the laws that provided little success at reducing inner-city crime in neighborhoods. But at the same time throughout the years, the existing Rockefeller drug laws have destroyed families and communities. Many children growing up without fathers, mothers, or without husbands. And at the same time, taxpayers were left holding the tab, because many of these ex-offenders returned to prison within two years.

The cost of imprisoning drug users in New York State is out of control. These precious funds could be used to fund substance abuse programs and adult education and job training programs as well. We ought to be pushing for green jobs as opposed to prison

jobs that pay people 15 or 10 cents an hour.

We also need to focus on prevention, intervention, education, spirituality, and strong families. None of us are for people getting out of jail who tote AK-47s. I can tell you, as someone that came from the Buffalo City Council, I fought with gang leaders all the time, getting letters sent to my home, writing, going to Erie County Medical Center when people would get five or 10 shots in their face or in their bodies.

So many of us are not supporting letting hardcore gun-toting individuals out of jail. What we're talking about is individuals that have a substance abuse problem that we know the system has failed to be able to treat these individuals.

ACTING PRESIDENT STEWART-COUSINS: Senator Thompson, how do you vote?

SENATOR THOMPSON: I conclude by saying I vote yes. I have started a number of antiviolence programs. I fund a lot of antiviolence programs. And I walk the streets in hardcore neighborhoods. So I vote yes.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Thompson to be recorded in the affirmative.

The Secretary will continue.

THE SECRETARY: Senator Valesky.

SENATOR VALESKY: Aye.

THE SECRETARY: Senator Volker.

ACTING PRESIDENT STEWART-COUSINS: Senator Volker, to explain his vote.

SENATOR VOLKER: Madam President, I'm afraid I'm not going to do the political thing that's been going on here. And this is not the Rockefeller drug law. It absolutely is not. I'm the only person here who was there and helped to try to defeat the initial Rockefeller drug laws and worked and voted on the original drug laws.

The Rockefeller drug laws finished in 2004. I realize it's good politics to say, well, this is the Rockefeller drug laws and so forth.

The problem is I hope and pray that some of your districts don't get raped by the

very drug dealers that are going to be helped by this bill. What this bill does is allow not people who are under drugs, but people who sell drugs to get out of jail and get out on the street.

Not one person in the Governor's office, for the first time in my life, has said a word to me about supporting a bill that apparently is a Governor's bill. The only people I've heard from is parole officers, who tell me that this bill will cause a 1 to 161 ratio. In other words, they will be looking over 161 people.

And that doesn't even deal with the issue of sexual predators that we haven't even dealt with.

Finally, one more thing. There's nowhere near enough money in this bill for treatment. You know that, Eric, as well I do. Excuse me. Senator Schneiderman. My wife corrected me, by the way. She said, "Don't call him Eric, you should call him Senator Schneiderman." And I do. She's right; she watched before.

But let me just say there's just not enough money. And the problem with the idea of treatment is that what's going to happen here, you're going to have a lot of people that are going to go out and they're not going be able to be treated. So what's going to happen then, I don't know. What will probably happen is they'll go flying back to jail --

ACTING PRESIDENT STEWART-COUSINS: Senator Volker.

SENATOR VOLKER: -- either locally or to the state. So it's going to cost a ton of money.

I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Volker to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Winner.

ACTING PRESIDENT STEWART-COUSINS: Senator Winner, to explain his vote.

SENATOR WINNER: Thank you, Madam President.

You know, I want to thank one of

the previous Senators for verifying and confirming one reason why this process is so flawed and why we're doing this buried within the public protection bill when this bill should have been a stand-alone prospect. And one of the Senators pointed out that there were a lot of other things in this bill that we're ostensibly voting against. And, you know, certainly I can understand that. And I'm certainly prepared to defend it.

But it certainly was a great admission and a great demonstration of the fact that this was a deliberate attempt to hide this bill in this other public protection package and sort of attempt to avoid responsibility and accountability for your vote -- one of the things that we were hopeful that there was to be with the big reform mantra that was being touted by this house, both in its new committee on reform and also in its pronouncements over the rules that we were adopting and the new rules that we're attempting to adopt.

So once again, you know, the

hypocrisy reeks in this place when it comes to any kind of real, true accountability and putting forth what we really mean. And this is once again an attempt to try to hide responsibility.

You know, with respect to this bill in and of itself, you know, sorry if I don't trust you as much as I do trust the people who are accountable for public safety. I trust the district attorneys who have to stand for election and have to be responsible day in and day out to the public as to whether or not there's safety in the streets. And I trust the law enforcement people who are out there putting their lives on the line every single day to protect us and keep us safe, for they're the ones that have come to me. Nobody else has come to me with regard to this bill.

But those people who are entrusted with the duty of public protection and public safety have said, This is madness, don't do this. This will return us to the days of unsafe streets, harm our children, harm our communities and harm our families.

I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Winner to be recorded in the negative.

The Secretary will continue.

THE SECRETARY: Senator Young.

ACTING PRESIDENT STEWART-COUSINS: Senator Young, to explain her vote.

SENATOR YOUNG: Thank you, Madam President.

Our Comptroller, Tom DiNapoli, said that this budget is dangerous. He's right. It's dangerous to our taxpayers, it's dangerous to our economy, and it's dangerous to our safety. Because no community in New York State is safe from drug dealers.

When my children were in elementary school, they went to school with a little boy named James. His father lived two blocks from my house. One night, James' father was hacked to death with a butcher knife. A drug dealer ordered the hit. And James' life was never the same again.

For you to say, Oh, this is just for people who need treatment, that's not

true. This is to allow drug dealers to say, I don't want to go to jail. I'd rather go to treatment. No matter how many times I'm caught, I can repeat this behavior over and over and over again.

You will have victims like James in your communities, in your neighborhoods, because of this vote. And when that happens, and when you look into the eyes of those victims, I hope you remember this moment when you changed the laws in New York State and changed their lives.

I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Young to be recorded in the negative.

Announce the results.

THE SECRETARY: Ayes, 32. Nays, 30.

ACTING PRESIDENT STEWART-COUSINS: The bill is passed.

(Applause.)

ACTING PRESIDENT STEWART-COUSINS: Senator Klein.

SENATOR KLEIN: Madam President,

still on the controversial calendar, can we take up Calendar Number 130.

ACTING PRESIDENT VALESKY: The Secretary will read Calendar 130.

THE SECRETARY: Calendar Number 130, substituted April 1, Assembly Budget Bill, Assembly Print Number 150C, an act making appropriations for the support of government: Public Protection and General Government Budget.

SENATOR LIBOUS: Explanation, please.

ACTING PRESIDENT VALESKY: Senator Kruger, an explanation has been requested by Senator Libous.

SENATOR CARL KRUGER: Thank you, Mr. President.

For the purposes of explanation, Senator Schneiderman.

ACTING PRESIDENT VALESKY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Chairman Kruger.

Mr. President, this is the

appropriation bill for public protection and general government. It is the companion bill to the bill we just debated at length, and everything that I said at the beginning of the debate over the last bill is true about this bill.

This appropriates $5.623 billion for public protection. It does include $40 million, slightly more than $40 million from the federal stimulus package. And it does provide the funding for and requires the same measures as discussed in connection with the Article VII bill.

Among other things, this bill does provide for the closing of three prison camp facilities and some annexes, for a savings of $12.8 million and $9.2 million respectively. It does provide for a reduction in funding for local jails, probation and parole treatment, something that my colleagues and I regret, but it's a sign of the hard fiscal times we're in.

It does provide $3 million for civil and criminal legal services, $4 million for the innovative anti-gang-and-gun program,

Operation S.N.U.G. It provides for domestic violence programs and for an experimental program to use pistol cameras that was pioneered by Senator Eric Adams.

And finally, it does provide $1.5 million to increase and expand the District Attorney Tuition Loan Reimbursement Program so that program, for the first time, is open to assistant district attorneys but also to those who provide legal services for indigent defendants.

That is the overview summary. We really covered everything that this bill covers in the last six-hour debate over its companion bill. I hope that's sufficient, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Schneiderman.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT VALESKY: Senator Volker.

SENATOR VOLKER: Senator Schneiderman, could I ask you a question, please?

ACTING PRESIDENT VALESKY: Senator Schneiderman, do you yield?

SENATOR SCHNEIDERMAN: For Senator -- for Dale, always.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR SCHNEIDERMAN: Excuse me, for Senator Volker.

SENATOR VOLKER: Is the cut in DNA testing in this bill?

SENATOR SCHNEIDERMAN: No. Through you, Mr. President, no.

SENATOR VOLKER: The cut in DNA testing is not in this bill?

SENATOR SCHNEIDERMAN: No. No.

SENATOR VOLKER: Where is it, if I might ask?

SENATOR SCHNEIDERMAN: I'm not aware of a cut in DNA testing.

SENATOR VOLKER: Well, there is a cut in DNA testing. In fact, it's within the book here that, you know, was given to us, the plan.

SENATOR SCHNEIDERMAN: Through

you, Mr. President, perhaps the Senator is referring to -- there's a reduction in funding for crime labs.

SENATOR VOLKER: Okay. That is -- yes. Yes.

SENATOR SCHNEIDERMAN: Yes, that is in this bill.

SENATOR VOLKER: That's in this bill?

SENATOR SCHNEIDERMAN: Yes.

SENATOR VOLKER: Okay. Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Volker.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. Could I ask Senator Kruger a couple of questions? The chairman of Finance.

ACTING PRESIDENT VALESKY: Senator Kruger, do you yield to Senator DeFrancisco?

SENATOR CARL KRUGER: Yes, I do.

SENATOR DeFRANCISCO: Senator Kruger, on page 69 of this bill there's some

programs -- and I know we didn't have enough money to keep a prison open, or three prisons open in Republican districts. And I'm just trying to figure out what these programs are.

Line 19, the Sanctuary for Families. Can you tell me what that program is and who it benefits?

SENATOR CARL KRUGER: Through you, Mr. President, it's a domestic violence program.

SENATOR DeFRANCISCO: And where is that located?

SENATOR CARL KRUGER: Through you, Mr. President, I'm told it serves all of New York City.

SENATOR DeFRANCISCO: Okay. Would he yield for another question, please?

ACTING PRESIDENT VALESKY: Senator Kruger, do you continue to yield?

SENATOR CARL KRUGER: Yes, I will, Mr. President.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: And can you

provide me the part of the budget where there's a similar program in Central New York?

SENATOR CARL KRUGER: Through you, Mr. President, I assume -- have you gone through the budget, Senator?

SENATOR DeFRANCISCO: I'm asking you if there's a corresponding program for domestic violence in upstate New York.

SENATOR CARL KRUGER: Well, through you, Mr. President, there are monies in for various legal programs throughout the budget. And I assume, if you study it, you'll find them.

SENATOR DeFRANCISCO: Would Senator Kruger yield to another question?

SENATOR CARL KRUGER: Yes, I will.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: On the same page, on line 15, there's a program My Sister's Place. Is that located in New York City as well?

SENATOR CARL KRUGER: I guess --

through you, Mr. President, the chorus tells me Hudson River, Putnam County, obviously north of New York City, if my geography serves me well.

SENATOR DeFRANCISCO: South of Central New York?

SENATOR CARL KRUGER: North of the Bronx.

SENATOR DeFRANCISCO: Okay. There's also -- on the next page, page 70, line 36, there's also a program that is Sanctuary for Families, $250,000. What families are we providing sanctuary for?

SENATOR CARL KRUGER: Through you, Mr. President. Not to sound facetious, I imagine those that need it. But the same domestic violence programs.

SENATOR DeFRANCISCO: And is that Senate in the City of New York?

SENATOR CARL KRUGER: New York, Long Island. By the way, these are not -- through you, Mr. President, if you'll notice throughout the budget these are not broken down by geographical boundaries.

SENATOR DeFRANCISCO: And would Senator Kruger yield to another question?

ACTING PRESIDENT VALESKY: Senator Kruger, do you yield?

SENATOR CARL KRUGER: Yes, I will.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: Senator Kruger, were these items lined out by the Assembly in the budget?

SENATOR CARL KRUGER: Through you, Mr. President, yes, they were.

SENATOR DeFRANCISCO: Would Senator Kruger continue to yield?

ACTING PRESIDENT VALESKY: Senator, do you yield?

SENATOR CARL KRUGER: My pleasure.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: Senator Kruger, are there similar programs lined out by the Senate in this budget?

SENATOR CARL KRUGER: Through you, Mr. President, lumped and subject to a future appropriation.

SENATOR DeFRANCISCO: Would Senator Kruger continue to yield?

ACTING PRESIDENT VALESKY: Senator Kruger, do you yield?

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: Senator Kruger, can you tell me how much the lump is?

SENATOR CARL KRUGER: Through you, Mr. President, $609,000 for domestic violence and approximately $1.4 million -- I take that back, $4.4 million through the Secretary of State, to be divided.

SENATOR DeFRANCISCO: Would Senator Kruger continue to yield?

ACTING PRESIDENT VALESKY: Senator Kruger, do you yield?

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: Senator Kruger, isn't there a lump of about $85 million of undefined, unspecified projects to be designated later?

SENATOR CARL KRUGER: Through you, Mr. President, I don't understand the question.

SENATOR DeFRANCISCO: Well, are -- would Senator Kruger continue to yield?

ACTING PRESIDENT VALESKY: Senator Kruger, do you continue to yield?

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: Senator Kruger, what's affectionately been known as member items, it's my understanding from what I've been told about the budget that there's $85 million of member items for the Senate that is just one big lump in the budget to be designated later. Is that correct?

SENATOR CARL KRUGER: Through you, Mr. President. Yes, we're following the same procedures that was done in previous

budgets, Senator.

SENATOR DeFRANCISCO: Would Senator Kruger yield to another question?

ACTING PRESIDENT VALESKY: Senator Kruger, do you yield?

SENATOR CARL KRUGER: Yes, I would.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: Are you referring to budgets about four or five years ago before we lined out member items in the last several budgets that we had in this chamber?

SENATOR CARL KRUGER: Through you, Mr. President, I'm confused as to your question, Senator.

SENATOR DeFRANCISCO: Well, let me ask another question, Senator Kruger, if you would take one.

ACTING PRESIDENT VALESKY: Senator Kruger?

SENATOR CARL KRUGER: Yes, I do.

SENATOR DeFRANCISCO: Now,

Senator Kruger, by voting for this bill today, if we vote for this bill today, are you saying that we would be voting for $85 million of unspecified programs to be named by the Majority in this house at a later date?

SENATOR CARL KRUGER: Through you, Mr. President, if I can rephrase in my mind your question, Senator.

So what you're saying is that by voting against this budget today you are rejecting that lump sum; is that correct?

SENATOR DeFRANCISCO: Senator DeFrancisco, that wasn't my question. If I could ask the question again. I thought it was clear.

ACTING PRESIDENT VALESKY: Senator Kruger, do you yield to a clarification from Senator DeFrancisco?

SENATOR CARL KRUGER: Yes. Yes, Mr. President.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: My simple question is if I voted for this budget today,

this bill today, I would be voting for $85 million of projects to be named later?

SENATOR CARL KRUGER: Through you, Mr. President. And by voting against the budget today, you're voting against those projects, the $85 million worth of projects. Am I correct?

SENATOR DeFRANCISCO: Well, however you want to phrase it, the fact of the matter is we are supposed to take at blind faith, without lining these items out, that these items will be good for the State of New York. And by either voting for it and having that happen or voting against it is irrelevant. The point is if this bill passed today, we would be voting for something and leaving it up to the 32 Majority members what might be in that pot of money at a later date.

SENATOR CARL KRUGER: Through you, Mr. President. Senator, the pot that you're talking about of member items would be lined out also if the Minority would have given us their designation of their items as well.

SENATOR DeFRANCISCO: Would Senator Kruger yield to a question?

ACTING PRESIDENT VALESKY: Senator Kruger, do you yield?

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR DeFRANCISCO: Senator Kruger, what role did the Minority have in creating this document?

SENATOR CARL KRUGER: Through you, Mr. President, what document?

SENATOR DeFRANCISCO: The bill that we're voting on today, that's before us today.

SENATOR CARL KRUGER: Through you, Mr. President. What role? By, I would assume, reviewing it and voting on it.

SENATOR DeFRANCISCO: And you mean reviewing it since Saturday? I have -- I promised that would have been the last question. I'll withdraw that question.

And I have no further questions. Thank you, Senator Kruger.

ACTING PRESIDENT VALESKY: Thank you, Senator DeFrancisco.

Senator Libous.

SENATOR LIBOUS: Mr. President, would you call the roll, please?

ACTING PRESIDENT VALESKY: The Secretary will ring the bells, please.

I ask all Senators to proceed to the chamber so that we may proceed with the roll call.

Senator Libous.

SENATOR LIBOUS: Mr. President, are we going to call the roll, please?

ACTING PRESIDENT VALESKY: We are going to call the roll. First we have to have the Secretary read the last section.

SENATOR LIBOUS: Thank you, Mr. President.

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

ACTING PRESIDENT VALESKY: The Secretary will call the roll slowly.

THE SECRETARY: Senator Adams.

SENATOR ADAMS: Yes.

THE SECRETARY: Senator Addabbo.
SENATOR ADDABBO: Yes.
THE SECRETARY: Senator Alesi.
SENATOR ALESI: No.
THE SECRETARY: Senator Aubertine.
SENATOR AUBERTINE: Yes.
THE SECRETARY: Senator Bonacic.
SENATOR BONACIC: No.
THE SECRETARY: Senator Breslin.
SENATOR BRESLIN: Yes.
THE SECRETARY: Senator DeFrancisco.
SENATOR DeFRANCISCO: No.
THE SECRETARY: Senator Diaz.
SENATOR DIAZ: Yes.
THE SECRETARY: Senator Dilan.
SENATOR DILAN: Yes.
THE SECRETARY: Senator Duane.
SENATOR DUANE: Yes.
THE SECRETARY: Senator Espada.
SENATOR ESPADA: Yes.
THE SECRETARY: Senator Farley.
SENATOR FARLEY: No.

THE SECRETARY: Senator Flanagan.
SENATOR FLANAGAN: No.
THE SECRETARY: Senator Foley.
SENATOR FOLEY: Aye.
THE SECRETARY: Senator Fuschillo.
SENATOR FUSCHILLO: No.
THE SECRETARY: Senator Golden.
SENATOR GOLDEN: No.
THE SECRETARY: Senator Griffo.
SENATOR GRIFFO: No.
THE SECRETARY: Senator Hannon.
SENATOR HANNON: No.
THE SECRETARY: Senator Hassell-Thompson voting in the affirmative earlier today.
Senator Huntley.
SENATOR HUNTLEY: Yes.
THE SECRETARY: Senator C. Johnson.
SENATOR CRAIG JOHNSON: Yes.
THE SECRETARY: Senator O. Johnson.
SENATOR OWEN JOHNSON: No.

THE SECRETARY: Senator Klein.
SENATOR KLEIN: Yes.
THE SECRETARY: Senator L. Krueger.
SENATOR LIZ KRUEGER: Yes.
THE SECRETARY: Senator C. Kruger.
SENATOR CARL KRUGER: Yes.
THE SECRETARY: Senator Lanza.
SENATOR LANZA: No.
THE SECRETARY: Senator Larkin.
SENATOR LARKIN: No.
THE SECRETARY: Senator LaValle.
SENATOR LaVALLE: No.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: No.
THE SECRETARY: Senator Libous.
SENATOR LIBOUS: No.
THE SECRETARY: Senator Little.
SENATOR LITTLE: No.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: No.
THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: No.
THE SECRETARY: Senator McDonald.
SENATOR McDONALD: No.
THE SECRETARY: Senator Monserrate.
SENATOR MONSERRATE: Aye.
THE SECRETARY: Senator Montgomery.
(No response.)
THE SECRETARY: Senator Morahan.
SENATOR MORAHAN: No.
THE SECRETARY: Senator Nozzolio.
SENATOR NOZZOLIO: No.
THE SECRETARY: Senator Onorato.
SENATOR ONORATO: Yes.
THE SECRETARY: Senator Oppenheimer.
SENATOR OPPENHEIMER: Aye.
THE SECRETARY: Senator Padavan.
SENATOR PADAVAN: No.
THE SECRETARY: Senator Parker.
SENATOR PARKER: Aye.
THE SECRETARY: Senator Perkins.
SENATOR PERKINS: Aye.

THE SECRETARY: Senator Ranzenhofer.

SENATOR RANZENHOFER: No.

THE SECRETARY: Senator Robach.

SENATOR ROBACH: No.

THE SECRETARY: Senator Saland.

SENATOR SALAND: No.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: Yes.

THE SECRETARY: Senator Savino.

SENATOR SAVINO: Yes.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes.

THE SECRETARY: Senator Serrano.

SENATOR SERRANO: Yes.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: No.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: No.

THE SECRETARY: Senator Smith.

(Senator Smith recorded as voting in the affirmative.)

THE SECRETARY: Senator Squadron.

SENATOR SQUADRON: Yes.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: Yes.
THE SECRETARY: Senator Stavisky.
SENATOR STAVISKY: Yes.
THE SECRETARY: Senator Stewart-Cousins.
SENATOR STEWART-COUSINS: Yes.
THE SECRETARY: Senator Thompson.
SENATOR THOMPSON: Yes.
THE SECRETARY: Senator Valesky.
ACTING PRESIDENT VALESKY: Aye.
THE SECRETARY: Senator Volker.
SENATOR VOLKER: No.
THE SECRETARY: Senator Winner.
SENATOR WINNER: No.
THE SECRETARY: Senator Young.
SENATOR YOUNG: No.
(Pause.)
ACTING PRESIDENT VALESKY: The Secretary will call the absentee.
THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: Yes.

ACTING PRESIDENT VALESKY: The Secretary will announce the results.

THE SECRETARY: Ayes, 32. Nays, 30.

ACTING PRESIDENT VALESKY: The bill is passed.

Senator Klein.

SENATOR KLEIN: Mr. President, can we adjourn till tomorrow, April -- I'm sorry. Would you recognize Senator Libous, for an announcement.

ACTING PRESIDENT VALESKY: Senator Libous.

SENATOR LIBOUS: Thank you, Senator Klein. Thank you, Mr. President.

An immediate Republican conference in 315 right at the end of session. It will be brief.

ACTING PRESIDENT VALESKY: Immediate Republican conference in Room 315 in the Capitol.

Senator Klein.

SENATOR KLEIN: Mr. President, I

move we adjourn until tomorrow and finish the rest of the active list. And we will adjourn till tomorrow at 8:00 a.m.

ACTING PRESIDENT VALESKY: There being no further business to come before the Senate, on motion by Senator Klein, the Senate stands adjourned until Friday, April 3rd, at 8:00 a.m.

(Whereupon, at 10:46 p.m., the Senate adjourned.)