

1 NEW YORK STATE SENATE

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3
4 THE STENOGRAPHIC RECORD

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7
8 ALBANY, NEW YORK

9
10 February 14, 2011

11 3:12 p.m.

12
13
14 REGULAR SESSION

15
16
17
18 SENATOR JOHN J. FLANAGAN, Acting President

19 FRANCIS W. PATIENCE, Secretary

1 P R O C E E D I N G S

2 ACTING PRESIDENT FLANAGAN: The
3 Senate will come to order.

4 I ask everyone present to please
5 rise and repeat the Pledge of Allegiance.

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

8 ACTING PRESIDENT FLANAGAN:
9 Today's invocation will be offered by the
10 Reverend Peter Young -- who is looking quite
11 sporting in his Valentine's sweater -- from
12 Mother Teresa Community in Albany.

13 REVEREND YOUNG: Let us pray.

14 Dear God, on this Valentine's Day
15 You have given us the command to love one
16 another. God, by Your love You made a world
17 where we have become neighbors to each other
18 and we are enabled to love one another.

19 Grant that we too may be, in this
20 Senate, striving toward a way of life in
21 keeping with God's law of love.

22 Amen.

23 ACTING PRESIDENT FLANAGAN: The
24 reading of the Journal.

25 THE SECRETARY: In Senate,

1 Sunday, February 13, the Senate met pursuant
2 to adjournment. The Journal of Saturday,
3 February 12, was read and approved. On
4 motion, Senate adjourned.

5 ACTING PRESIDENT FLANAGAN:

6 Without objection, the Journal stands approved
7 as read.

8 Presentation of petitions.

9 Messages from the Assembly.

10 Messages from the Governor.

11 Reports of standing committees.

12 The Secretary will read.

13 THE SECRETARY: Senator Bonacic,
14 from the Committee on Judiciary, reports the
15 following nomination.

16 As a judge of the Court of Claims,
17 Stephen Mignano, of Cortlandt Manor.

18 ACTING PRESIDENT FLANAGAN:

19 Senator Bonacic.

20 SENATOR BONACIC: Thank you,
21 Mr. President.

22 I'm pleased today to put forth the
23 nomination of Judge Stephen Mignano to a seat
24 on the Court of Claims. He has presently been
25 a Court of Claims judge. We're going to have

1 him appointed for another nine years.

2 He was unanimously recommended for
3 reappointment by the New York State Judicial
4 Screening Committee. Today the Judiciary
5 Committee met on his nomination. He was
6 approved unanimously.

7 I met privately with the judge, and
8 I can tell you that his performance as a Court
9 of Claims judge has been exemplary in the
10 past.

11 He is a constituent of Senator
12 Ball, and Senator Ball wishes him well.

13 He resides in Cortlandt Manor, a
14 graduate of Fordham University and Seton Hall
15 Law School. He is joined today by his lovely
16 wife, Barbara, his son David, and
17 daughter-in-law Anylza.

18 I am pleased to move the
19 nomination, Mr. President.

20 ACTING PRESIDENT FLANAGAN: The
21 question is on the confirmation of Stephen
22 Mignano as judge of the Court of Claims. All
23 those in favor signify by saying aye.

24 (Response of "Aye.")

25 ACTING PRESIDENT FLANAGAN:

1 Opposed, nay.

2 (No response.)

3 ACTING PRESIDENT FLANAGAN: The
4 nomination is approved, and Judge Stephen
5 Mignano is confirmed as a judge of the Court
6 of Claims.

7 Congratulations, Judge.

8 (Applause.)

9 ACTING PRESIDENT FLANAGAN:
10 Reports of select committees.

11 Communications and reports from
12 state officers.

13 Motions and resolutions.

14 Senator Libous.

15 SENATOR LIBOUS: Mr. President,
16 would you please call on Senator Breslin.

17 ACTING PRESIDENT FLANAGAN:
18 Senator Breslin.

19 SENATOR BRESLIN: Mr. President,
20 on behalf of Senator C. Kruger, I move that
21 the following bill be discharged from its
22 respective committee and be recommitted with
23 instructions to strike the enacting clause.
24 That's Bill 2133.

25 ACTING PRESIDENT FLANAGAN: So

1 ordered.

2 SENATOR BRESLIN: Thank you,
3 Mr. President.

4 ACTING PRESIDENT FLANAGAN:
5 Senator Libous.

6 SENATOR LIBOUS: Thank you,
7 Mr. President.

8 For Senator Johnson, I move that
9 the following bill be discharged from its
10 respective committee and be recommitted with
11 instructions to strike the enacting clause.
12 And that's Senate Number 966, please.

13 ACTING PRESIDENT FLANAGAN: So
14 ordered.

15 Senator Libous.

16 SENATOR LIBOUS: Thank you,
17 Mr. President.

18 I believe that Senator Sampson has
19 a privileged resolution at the desk. I ask
20 that the title be read and we move for its
21 immediate adoption.

22 ACTING PRESIDENT FLANAGAN: The
23 Secretary will read.

24 THE SECRETARY: By Senator
25 Sampson, legislative resolution congratulating

1 Gavina Guadarrama upon the occasion of
2 celebrating her 100th birthday.

3 ACTING PRESIDENT FLANAGAN: The
4 question is on the resolution. All those in
5 favor signify by saying aye.

6 (Response of "Aye.")

7 ACTING PRESIDENT FLANAGAN:
8 Opposed, nay.

9 (No response.)

10 ACTING PRESIDENT FLANAGAN: The
11 resolution is adopted.

12 Senator Libous.

13 SENATOR LIBOUS: Thank you,
14 Mr. President. There will be an immediate
15 meeting of the Rules Committee in Room 332,
16 and I ask that the Senate stand at ease.

17 ACTING PRESIDENT FLANAGAN: There
18 is an immediate meeting of the Rules Committee
19 in Room 332, and the Senate will stand at
20 ease.

21 (Whereupon, the Senate stood at
22 ease at 3:17 p.m.)

23 (Whereupon, the Senate reconvened
24 at 3:42 p.m.)

25 ACTING PRESIDENT FLANAGAN: The

1 Senate will come to order.

2 Senator Libous.

3 SENATOR LIBOUS: Thank you,
4 Mr. President.

5 Can we go back to the reports of
6 standing committees so we can read the report
7 of the Rules Committee.

8 ACTING PRESIDENT FLANAGAN:
9 Reports of standing committees.

10 The Secretary will read.

11 THE SECRETARY: Senator Skelos,
12 from the Committee on Rules, reports the
13 following bill direct to third reading:

14 Senate Print 3216, by Senator
15 Martins, an act to amend the Election Law.

16 ACTING PRESIDENT FLANAGAN:
17 Senator Libous.

18 SENATOR LIBOUS: I move to accept
19 the report of the Rules Committee,
20 Mr. President.

21 ACTING PRESIDENT FLANAGAN: All
22 in favor of accepting the report of the Rules
23 Committee signify by saying aye.

24 (Response of "Aye.")

25 ACTING PRESIDENT FLANAGAN:

1 Opposed, nay.

2 (No response.)

3 ACTING PRESIDENT FLANAGAN: The
4 Rules report is adopted.

5 Senator Libous.

6 SENATOR LIBOUS: Thank you,
7 Mr. President.

8 May we take up the noncontroversial
9 reading of the calendar, please.

10 ACTING PRESIDENT FLANAGAN: The
11 Secretary will read.

12 THE SECRETARY: Calendar Number
13 19, by Senator Maziarz, Senate Print 256, an
14 act to --

15 SENATOR BRESLIN: Lay it aside.

16 ACTING PRESIDENT FLANAGAN: The
17 bill is laid aside.

18 THE SECRETARY: Calendar Number
19 21, by Senator Fuschillo, Senate Print 527, an
20 act to amend the Penal Law.

21 ACTING PRESIDENT FLANAGAN: Read
22 the last section.

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

1 ACTING PRESIDENT FLANAGAN: Call
2 the roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes, 59.

5 ACTING PRESIDENT FLANAGAN: The
6 bill is passed.

7 THE SECRETARY: Calendar Number
8 24, by Senator Marcellino, Senate Print 943,
9 an act to amend the Penal Law.

10 ACTING PRESIDENT FLANAGAN: Read
11 the last section.

12 THE SECRETARY: Section 2. This
13 act shall take effect on the first of January
14 next succeeding.

15 ACTING PRESIDENT FLANAGAN: Call
16 the roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes, 59.

19 ACTING PRESIDENT FLANAGAN: The
20 bill is passed.

21 THE SECRETARY: Calendar Number
22 42, by Senator Hannon, Senate Print 960, an
23 act to direct state agencies which apply for
24 federal medical assistance waivers.

25 ACTING PRESIDENT FLANAGAN: Read

1 the last section.

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

4 ACTING PRESIDENT FLANAGAN: Call
5 the roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes, 59.

8 ACTING PRESIDENT FLANAGAN: The
9 bill is passed.

10 THE SECRETARY: Calendar Number
11 43, by Senator Hannon, Senate Print --

12 SENATOR BRESLIN: Lay it aside.

13 ACTING PRESIDENT FLANAGAN: The
14 bill is laid aside.

15 THE SECRETARY: Calendar Number
16 44, by Senator Seward, Senate Print 2387, an
17 act to amend the Public Health Law.

18 ACTING PRESIDENT FLANAGAN: Read
19 the last section.

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

22 ACTING PRESIDENT FLANAGAN: Call
23 the roll.

24 (The Secretary called the roll.)

25 THE SECRETARY: Ayes, 59.

1 ACTING PRESIDENT FLANAGAN: The
2 bill is passed.

3 THE SECRETARY: Calendar Number
4 45, by Senator Martins, Senate Print 2339A, an
5 act to amend the Election Law.

6 ACTING PRESIDENT FLANAGAN: Read
7 the last section.

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

10 ACTING PRESIDENT FLANAGAN: Call
11 the roll.

12 (The Secretary called the roll.)

13 ACTING PRESIDENT FLANAGAN:
14 Senator Krueger, to explain her vote.

15 SENATOR LIZ KRUEGER: Thank you,
16 Mr. President.

17 I find myself needing to vote no on
18 this bill today even though I am empathetic
19 with villages who find that there are
20 challenges for them to deal with the new
21 optical scanning machines approved by the
22 State of New York.

23 But fundamentally, even if this is
24 only a two-year delay, disability advocates
25 from throughout the state have raised a

1 concern that their rights to a private vote on
2 a disability-accessible machine will not be
3 available because of this law.

4 And because I don't believe anyone
5 should ever have their right to vote
6 compromised, I find myself voting no.

7 Thank you, Mr. President.

8 ACTING PRESIDENT FLANAGAN:

9 Senator L. Krueger in the negative.

10 Announce the results.

11 THE SECRETARY: Those recorded in
12 the negative on Calendar Number 45 are
13 Senators Avella, L. Krueger and Oppenheimer.

14 SENATOR OPPENHEIMER: Mr.
15 President, I raised my hand to be recognized.

16 ACTING PRESIDENT FLANAGAN:
17 Senator Oppenheimer, would you like to explain
18 your vote?

19 SENATOR OPPENHEIMER: Yes, I
20 would like to explain my vote.

21 I agree with what Senator Krueger
22 has said, and I think all of us agree with the
23 intent of HAVA and trying to make certainly
24 our disabled citizens able to vote as easily
25 as possible, and we do believe in that.

1 But I can only recount what
2 happened in the County of Westchester where it
3 seemed like every possible machine that could
4 break did break. And so the villages are
5 saying if we go back to the lever, either just
6 for our village elections -- which are in just
7 a few weeks -- if we could go back to that for
8 one year, a maximum of two years, until we
9 straighten out what the problems are, because
10 they were horrendous.

11 So this is a temporary thing, and
12 it's to address a very immediate problem of
13 the village elections in the third week of
14 March. And I think many villages in our state
15 support this, but certainly I can tell you all
16 of Westchester would support it, because we
17 had quite a mess in Westchester.

18 ACTING PRESIDENT FLANAGAN:
19 Senator Oppenheimer to be recorded in the
20 affirmative.

21 The Secretary will announce the
22 results.

23 THE SECRETARY: In relation to
24 Calendar Number 45, those recorded in the
25 negative are Senators Avella and L. Krueger.

1 Also Senator Squadron.

2 Ayes, 56. Nays, 3.

3 ACTING PRESIDENT FLANAGAN: The
4 bill is passed.

5 THE SECRETARY: Calendar Number
6 54, by Senator Seward, Senate Print 2371, an
7 act to amend the Vehicle and Traffic Law.

8 ACTING PRESIDENT FLANAGAN: Read
9 the last section.

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

12 ACTING PRESIDENT FLANAGAN: Call
13 the roll.

14 (The Secretary called the roll.)

15 THE SECRETARY: Ayes, 59.

16 ACTING PRESIDENT FLANAGAN: The
17 bill is passed.

18 THE SECRETARY: Calendar Number
19 58, by Senator Robach, Senate Print 487, an
20 act to amend the Penal Law.

21 ACTING PRESIDENT FLANAGAN: Read
22 the last section.

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

1 ACTING PRESIDENT FLANAGAN: Call
2 the roll.

3 (The Secretary called the roll.)

4 ACTING PRESIDENT FLANAGAN:
5 Senator Robach, to explain his vote.

6 SENATOR ROBACH: Yes, just
7 briefly, Mr. President.

8 I want to thank my colleagues who
9 support this. I know everyone in this chamber
10 cares a great deal about protecting the
11 public, but especially when it comes to young
12 children.

13 And this bill really came from an
14 incident that happened firsthand in my
15 district in the City of Rochester, where
16 parents, who unfortunately their child was
17 involved in an incident once already, were
18 shocked to find out that the offender, who was
19 on probation, had violated more people.

20 And this bill simply will make sure
21 that sentences are not run concurrently,
22 they're run consecutively. And these people
23 that prey on a large number of children quite
24 frankly will get a fairer sentence and be
25 incarcerated longer to protect additional

1 numbers of our children.

2 I wish we had the magic bullet, but
3 we don't. We know the recidivism rate is very
4 high for pedophiles. And I think this bill
5 goes a long way not only to address the
6 concerns of my constituents who had to go
7 through this, but hopefully will protect
8 children and people all across New York State
9 as we move forward.

10 And I want to thank my colleagues
11 for their support in helping protect the
12 public.

13 ACTING PRESIDENT FLANAGAN:
14 Senator Robach to be recorded in the
15 affirmative.

16 The Secretary will announce the
17 results.

18 THE SECRETARY: Those recorded in
19 the negative on Calendar Number 58 are
20 Senators Hassell-Thompson, Montgomery and
21 Perkins.

22 Ayes, 56. Nays, 3.

23 ACTING PRESIDENT FLANAGAN: The
24 bill is passed.

25 THE SECRETARY: Calendar Number

1 59, by Senator Klein, Senate Print 1042, an
2 act to amend the Penal Law.

3 ACTING PRESIDENT FLANAGAN: Read
4 the last section.

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

7 ACTING PRESIDENT FLANAGAN: Call
8 the roll.

9 (The Secretary called the roll.)

10 ACTING PRESIDENT FLANAGAN:
11 Senator Klein, to explain his vote.

12 SENATOR KLEIN: Thank you,
13 Mr. President.

14 Unfortunately, one of the crimes
15 that continues to rise in many of our
16 communities is car theft. This legislation I
17 think is a very positive approach because it's
18 going to expand the list of predicate
19 misdemeanor convictions in the preceding
20 10 years that would bump up a charge of
21 unauthorized use of a motor vehicle in the
22 third degree.

23 One of the things that seems to
24 happen time and time again is the same people
25 committing these crimes over and over again.

1 So I think this is a very positive approach to
2 make sure that those who commit the crime of
3 stealing our cars are able to actually
4 eventually do jail time when they actually
5 commit these offenses time and time again.

6 I vote yes, Mr. President.

7 ACTING PRESIDENT FLANAGAN:

8 Senator Klein to be recorded in the
9 affirmative.

10 The Secretary will announce the
11 results.

12 THE SECRETARY: Those recorded in
13 the negative on Calendar Number 59 are
14 Senators Hassell-Thompson, Montgomery, and
15 Perkins.

16 Ayes, 56. Nays, 3.

17 ACTING PRESIDENT FLANAGAN: The
18 bill is passed.

19 THE SECRETARY: Calendar Number
20 61, by Senator Saland, Senate Print 1417A, an
21 act to amend the Penal Law.

22 ACTING PRESIDENT FLANAGAN: Read
23 the last section.

24 THE SECRETARY: Section 12. This
25 act shall take effect on the first of

1 November.

2 ACTING PRESIDENT FLANAGAN: Call
3 the roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes, 58. Nays,
6 1. Senator Montgomery recorded in the
7 negative.

8 ACTING PRESIDENT FLANAGAN: The
9 bill is passed.

10 THE SECRETARY: Calendar Number
11 62, by Senator Golden, Senate Print 1423, an
12 act to amend the Criminal Procedure Law and
13 the Executive Law.

14 ACTING PRESIDENT FLANAGAN: Read
15 the last section.

16 SENATOR MONTGOMERY: Explanation.

17 THE SECRETARY: Section 4. This
18 act shall take effect --

19 SENATOR MONTGOMERY: Mr.
20 President, I asked for an explanation.

21 ACTING PRESIDENT FLANAGAN:
22 Senator Montgomery, would you like the bill
23 laid aside?

24 SENATOR MONTGOMERY: Yes,
25 Mr. President.

1 ACTING PRESIDENT FLANAGAN: The
2 bill is laid aside.

3 THE SECRETARY: Calendar Number
4 64, by Senator Skelos, Senate Print 1826, an
5 act to amend the Penal Law.

6 ACTING PRESIDENT FLANAGAN: Read
7 the last section.

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

11 ACTING PRESIDENT FLANAGAN: Call
12 the roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes, 59.

15 ACTING PRESIDENT FLANAGAN: The
16 bill is passed.

17 Senator Libous, that completes the
18 noncontroversial reading of the calendar.

19 SENATOR LIBOUS: Thank you,
20 Mr. President.

21 Mr. President, at this time,
22 because Senator Rivera is a new member and he
23 was not in the chamber on a vote, I would ask
24 you for unanimous consent to allow him to
25 explain how he would have liked to vote.

1 This is a courtesy that I would ask
2 the chamber because he is a new member. It's
3 not something that I want to start getting
4 into a habit of, as we did before. But I
5 would like at this time to ask unanimous
6 consent for our new member to explain his
7 vote.

8 ACTING PRESIDENT FLANAGAN:
9 Senator Rivera.

10 SENATOR RIVERA: Thank you,
11 Senator Libous.

12 I was out of the chamber, but had I
13 been in the chamber I would have voted in the
14 negative on Calendar Number 45, and I would
15 like the record to reflect that.

16 Thank you, Senator Libous.

17 ACTING PRESIDENT FLANAGAN:
18 Senator Rivera will be recorded in the
19 negative.

20 Senator Libous.

21 SENATOR LIBOUS: Thank you,
22 Mr. President. Can we go to the controversial
23 calendar, please.

24 ACTING PRESIDENT FLANAGAN: Ring
25 the bells. The sergeant-at-arms will ring the

1 bells.

2 (Pause.)

3 SENATOR LIBOUS: Mr. President.

4 ACTING PRESIDENT FLANAGAN:

5 Senator Libous.

6 SENATOR LIBOUS: Are we going to
7 have the reading of the noncontroversial
8 calendar?

9 ACTING PRESIDENT FLANAGAN:

10 Senator Libous, I believe we are on the
11 controversial reading.

12 SENATOR LIBOUS: Or, I'm sorry,
13 the controversial calendar. Thank you.

14 ACTING PRESIDENT FLANAGAN: Thank
15 you.

16 The Secretary will read.

17 THE SECRETARY: Calendar Number
18 19, by Senator Maziarz, Senate Print 256, an
19 act to amend the Penal Law.

20 SENATOR GIANARIS: Explanation,
21 please.

22 ACTING PRESIDENT FLANAGAN:

23 Senator Maziarz, an explanation has been asked
24 for by Senator Gianaris.

25 SENATOR MAZIARZ: Thank you very

1 much, Mr. President.

2 This bill goes back to the
3 2005-2006 session. It's one that we have
4 passed here in the Senate twice before, by
5 unanimous votes.

6 This bill came to me from a
7 situation that actually took place in my
8 district. It creates a Class B misdemeanor of
9 surreptitious surveillance when, for no
10 legitimate purposes, a person intentionally
11 observes an individual with unaided eyes or
12 with an imaging device while an individual is
13 dressing or undressing and at a time and place
14 when the victim has a reasonable expectation
15 of privacy. These areas include a bedroom,
16 changing room, fitting room, restroom,
17 bathroom, washroom, shower, tanning bed or
18 booth, and any room assigned to a guest in a
19 hotel, motel, spa or inn.

20 In December of 2004 a
21 perpetrator -- it happened to be in my
22 district -- looked over the top of a tanning
23 booth wall to view a young girl who was
24 unclothed at the time. The defendant did this
25 purely for his own gratification. He was

1 charged with disorderly conduct but was later
2 acquitted because the appeals court held that
3 disorderly conduct was a public, not a private
4 matter.

5 Back in 2003 we passed a similar
6 law to make it a crime to videotape someone in
7 a similar situation. This was called
8 Stephanie's Law. However, it did not allow
9 someone to be charged if the images were not
10 recorded.

11 As we move into an age where there
12 are more and more opportunities for predators
13 to use technology to exploit others, a law
14 like this is needed, we think, now more than
15 ever.

16 Just some other examples. In July
17 of 2009, Erin Andrews, a popular sports
18 reporter, was viewed in her hotel room by a
19 perpetrator using a peephole camera. The
20 video was later sold and placed on the
21 Internet. While the FBI was able to charge
22 the perpetrator with interstate stalking in
23 this case -- because he crossed state lines --
24 he could not have been charged in New York
25 State because the footage was recorded. What

1 would have happened if it wasn't recorded, if
2 he was just there viewing it?

3 So I think this bill is very
4 important. I think this bill offers another
5 layer of protection for people who may be in a
6 situation where they for whatever reason --
7 and in this instance it was a tanning bed
8 where they are unclothed and someone uses some
9 type of recording device unbeknownst to them.

10 Thank you, Mr. President.

11 ACTING PRESIDENT FLANAGAN: Thank
12 you, Senator Maziarz.

13 Senator Gianaris, why do you rise?

14 SENATOR GIANARIS: Would Senator
15 Maziarz yield for a question.

16 ACTING PRESIDENT FLANAGAN:
17 Senator Maziarz, will you yield for a
18 question?

19 SENATOR MAZIARZ: Absolutely,
20 Mr. President.

21 ACTING PRESIDENT FLANAGAN:
22 Senator Gianaris.

23 SENATOR GIANARIS: Thank you,
24 Mr. President.

25 This bill creates a rebuttable

1 presumption that there is no legitimate
2 purpose for a surveillance under certain
3 circumstances. Would the sponsor agree that a
4 rebuttable presumption is something that is
5 treated as true under the law with respect to
6 the initial charging of a crime?

7 SENATOR MAZIARZ: No, I would not
8 agree to that.

9 SENATOR GIANARIS: Would the
10 sponsor continue to yield.

11 ACTING PRESIDENT FLANAGAN:
12 Senator Maziarz, will you continue to yield?

13 SENATOR MAZIARZ: Yes,
14 Mr. President, I would.

15 SENATOR GIANARIS: Would the
16 sponsor please explain to me what his view of
17 a rebuttable presumption under the law is?

18 SENATOR MAZIARZ: I don't --

19 ACTING PRESIDENT FLANAGAN:
20 Senator Maziarz.

21 SENATOR MAZIARZ: Through you,
22 Mr. President. I'm not sure exactly sure how
23 there could ever be a legitimate purpose of
24 surreptitiously recording someone without
25 their -- well, obviously, if it's

1 surreptitious, without their knowledge, in a
2 situation like this young woman was recorded
3 or like this newspaper reporter was recorded.
4 I don't know -- I guess I just don't know
5 under what circumstances that would be agreed
6 to.

7 SENATOR GIANARIS: Would the
8 sponsor continue to yield, Mr. President.

9 ACTING PRESIDENT FLANAGAN:
10 Senator Maziarz.

11 SENATOR MAZIARZ: Certainly,
12 Mr. President.

13 SENATOR GIANARIS: With respect,
14 I don't think that previous answer addressed
15 the question, which is what -- your
16 legislation creates a rebuttable presumption,
17 by its own words, on line 30 of page 2.

18 And I'm simply asking what is your
19 view of what a rebuttable presumption does
20 under the law, since you disagreed with how I
21 characterized it earlier?

22 ACTING PRESIDENT FLANAGAN:
23 Senator Maziarz.

24 SENATOR MAZIARZ: I think I've --
25 I feel I've already answered the question,

1 Mr. President.

2 ACTING PRESIDENT FLANAGAN:

3 Senator Gianaris, Senator Maziarz has already
4 answered your question. Would you like him to
5 continue to yield?

6 SENATOR GIANARIS: Yes, please,
7 Mr. President.

8 ACTING PRESIDENT FLANAGAN:

9 Senator Maziarz, will you continue to yield?

10 SENATOR MAZIARZ: Yes, Mr.
11 President.

12 SENATOR GIANARIS: Well, let me
13 say it this way. As I understand it, a
14 rebuttable presumption is something under the
15 law that is presumed to be true and can be
16 rebutted, but is presumed to be true as an
17 initial matter under the law. And in
18 subdivision 2, this legislation creates a
19 rebuttable presumption that surveillance, when
20 it's taking place in certain locations, is
21 conducted for no legitimate purpose.

22 So, for example, if it's in a
23 bedroom, a changing room, a fitting room, a
24 restroom, a toilet, bathroom, washroom, shower
25 or any room assigned to guests or patrons in a

1 spa, hotel, motel or inn, there is a
2 rebuttable presumption that such person did so
3 for no legitimate purpose.

4 My concern is that a law
5 enforcement officer who is conducting
6 surveillance for law enforcement purposes is
7 not exempted from those terms. So by mere
8 fact of where the surveillance is taking
9 place, this legislation creates a presumption
10 that it is taking place for no legitimate
11 purpose.

12 So a police officer or a detective
13 or anyone that's engaging in an investigation
14 who is surveilling someone will be doing it,
15 as a matter of law, for no legitimate purpose,
16 which would subject them to this new crime,
17 and that they would have to bear the burden of
18 disproving that that's the case. And I think
19 that's a burden we don't want to place on our
20 law enforcement personnel.

21 I guess I would ask whether you
22 agree with my characterization or not.

23 ACTING PRESIDENT FLANAGAN:

24 Senator Maziarz.

25 SENATOR MAZIARZ: Well, through

1 you, Mr. President, I would answer that by
2 saying that this bill has passed on two
3 different occasions. No law enforcement
4 agency, member of any law enforcement force
5 that I'm aware of has ever raised any
6 objections or raised that particular point.

7 And unfortunately -- I would hope
8 that this wouldn't happen, but perhaps that
9 perpetrator, the perpetrator, acting not in
10 his capacity -- or her capacity or his
11 capacity as a law enforcement officer, could
12 be breaking the law by doing this for their
13 own purposes, not for any legitimate law
14 enforcement purpose.

15 I assume that if it was a
16 legitimate law enforcement purpose, Senator
17 Gianaris, that they would have obtained the
18 necessary warrants or judicial approval to do
19 this.

20 SENATOR GIANARIS: Would the
21 sponsor continue to yield, Mr. President?

22 ACTING PRESIDENT FLANAGAN:
23 Senator Maziarz.

24 SENATOR MAZIARZ: Certainly,
25 Mr. President.

1 SENATOR GIANARIS: Senator
2 Maziarz may presume that if there's a warrant
3 that it would not be for a legitimate purpose,
4 but his legislation does not presume that.
5 His legislation presumes the exact opposite by
6 creating a presumption that it is not done for
7 a legitimate purpose.

8 Is Senator Maziarz aware that
9 Section 250.65 of the Penal Law creates
10 specific exemptions for law enforcement
11 personnel in very similar circumstances as it
12 relates to other crimes?

13 ACTING PRESIDENT FLANAGAN:
14 Senator Maziarz.

15 SENATOR MAZIARZ: I'm sorry,
16 Senator, could you repeat that? I was --

17 SENATOR GIANARIS: Yes. The
18 question is whether the sponsor is aware that
19 Section 250.65 creates specific exemptions for
20 law enforcement personnel engaged in
21 activities related to their duties for other
22 crimes, through the similar circumstance?

23 SENATOR MAZIARZ: Through you,
24 Mr. President, I am aware of that, yes. The
25 answer is yes.

1 SENATOR GIANARIS: And if the
2 sponsor would continue to yield, Mr.
3 President.

4 ACTING PRESIDENT FLANAGAN:
5 Senator Maziarz, will you continue to yield?

6 SENATOR MAZIARZ: I will continue
7 to yield.

8 SENATOR GIANARIS: The question I
9 have, because I understand the importance of
10 preventing inappropriate surreptitious
11 surveillance -- I think we can all agree on
12 that. But if the answer is as simple as
13 including this new section of law in the
14 exemptions for law enforcement personnel, why
15 was that not done?

16 It was something that was raised in
17 committee when it originally came up. It
18 seems to me to be a simple solution to the
19 problem.

20 ACTING PRESIDENT FLANAGAN:
21 Senator Gianaris, is there a question with
22 that or is it just a statement?

23 SENATOR GIANARIS: No, I'm sorry,
24 the question was why was it not included in
25 Section 250.65 of the Penal Law, where other

1 exemptions for law enforcement personnel are
2 also included.

3 ACTING PRESIDENT FLANAGAN:
4 Senator Maziarz.

5 SENATOR MAZIARZ: Well, through
6 you, Mr. President, thank you.

7 Because the simple answer, I guess,
8 Senator Gianaris, is that I didn't think it
9 was necessary to put it in this bill. I think
10 it's very comprehensive. I think that every
11 one of our colleagues in 2005-2006 felt that
12 this bill was sufficient in its current form.

13 SENATOR GIANARIS: Thank you,
14 Senator Maziarz.

15 SENATOR MAZIARZ: Just through
16 you, Mr. President, or on the bill --

17 ACTING PRESIDENT FLANAGAN:
18 Senator Maziarz.

19 SENATOR MAZIARZ: -- I wish we
20 could get your former colleagues in the other
21 house to agree to that, Senator Gianaris.

22 Thank you, Mr. President.

23 ACTING PRESIDENT FLANAGAN:
24 Senator Gianaris.

25 SENATOR GIANARIS: On the bill,

1 Mr. President.

2 ACTING PRESIDENT FLANAGAN:

3 Senator Gianaris, on the bill.

4 SENATOR GIANARIS: I would just
5 like to reiterate that this is a bill with a
6 worthy goal but one that is drafted in a way
7 that creates an undue burden on our law
8 enforcement personnel, who conduct
9 surveillance on a regular basis. There's an
10 easy fix which exists in the law for so many
11 other crimes where we realize that it serves
12 at cross purposes with -- or it would fringe
13 upon our law enforcement personnel doing their
14 duties, and there are exemptions.

15 This issue was raised in committee
16 as the bill went through the legislative
17 process. It would have been very easy to fix.
18 I have not heard an answer that specifically
19 addresses why this drafting issue was not
20 corrected.

21 I heard the sponsor talk about the
22 lack of opposition from law enforcement
23 organizations. I would argue it's because of
24 the second problem he raised, which is that
25 the other house hasn't shown any willingness

1 to consider or pass this bill, that it hasn't
2 hit their radar. That doesn't mean we should
3 pass legislation that's poorly drafted and
4 would hurt our law enforcement personnel, who
5 we should be helping rather than hurting.

6 And for that reason, Mr. President,
7 I'll be voting in the negative.

8 ACTING PRESIDENT FLANAGAN: Thank
9 you, Senator Gianaris.

10 Senator Saland.

11 SENATOR SALAND: Thank you,
12 Mr. President. Mr. President, on the bill.

13 ACTING PRESIDENT FLANAGAN:
14 Senator Saland, on the bill.

15 SENATOR SALAND: I would
16 respectfully submit, notwithstanding Senator
17 Gianaris's pointed questions, that in fact
18 what we're evidencing is -- or what we're
19 witnessing is a bit of sophistry.

20 If a presumption is rebuttable, in
21 fact what happens is it is presumed, under
22 Senator Maziarz's bill, that the person did so
23 for no legitimate reason, observed through the
24 naked eye for no legitimate reason.

25 Who determines whether or not to go

1 forward with respect to that rebuttable
2 presumption? Well, that would be the
3 prosecution, that would be a determination
4 that was going to be made by law enforcement
5 authorities, whether in fact that
6 individual -- who might be a member of law
7 enforcement, a policeman, a deputy sheriff --
8 whether in fact he was doing it for a
9 legitimate purpose.

10 If in fact he wasn't doing it for a
11 legitimate purpose, then the presumption would
12 be applicable. If he or she was a voyeur,
13 then why should they be treated any
14 differently than anybody else?

15 But were they doing it for
16 legitimate purposes, were they doing it
17 pursuant to some law enforcement
18 investigation, there is nobody who's going to
19 claim that in fact they're in violation of
20 this law. It is a bit of trying to figure out
21 almost like how many specious arguments can
22 you put together for purposes of creating a
23 problem where none really exists.

24 We're not talking about
25 surveillance here with the use of some kind of

1 technology or equipment, we're talking about
2 whether in fact a law enforcement official --
3 who may, under certain circumstances, be
4 called upon to observe -- is doing it lawfully
5 or unlawfully. That decision is going to be
6 made very simply. Either there's going to be
7 a criminal complaint that's going to be filed
8 by the district attorney's office because in
9 fact the individual exceeded their authority,
10 was doing for some prurient interest, or in
11 fact they're going to say there was a
12 perfectly legitimate reason for that person to
13 have done so.

14 I don't see the problem. As was
15 mentioned by Senator Maziarz, this bill has
16 passed unanimously previously. And I see no
17 reason why it shouldn't pass unanimously again
18 this afternoon.

19 Thank you, Mr. President.

20 ACTING PRESIDENT FLANAGAN: Thank
21 you, Senator Saland.

22 Is there any other Senator wishing
23 to be heard?

24 Hearing none, the debate is closed.
25 The Secretary will ring the bell.

1 Read the last section.

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

5 ACTING PRESIDENT FLANAGAN: Call
6 the roll.

7 (The Secretary called the roll.)

8 ACTING PRESIDENT FLANAGAN: The
9 Secretary will announce the results.

10 THE SECRETARY: Those recorded in
11 the negative on Calendar Number 19 are
12 Senators Gianaris, Hassell-Thompson, Huntley,
13 L. Krueger, Montgomery, Perkins, Rivera and
14 Squadron.

15 Absent from voting: Senator
16 Parker.

17 Ayes, 51. Nays, 8.

18 ACTING PRESIDENT FLANAGAN: The
19 bill is passed.

20 The Secretary will continue to
21 read.

22 THE SECRETARY: Calendar Number
23 43, by Senator Hannon, Senate Print 961, an
24 act to amend the Public Health Law.

25 SENATOR BRESLIN: Explanation,

1 please.

2 ACTING PRESIDENT FLANAGAN:
3 Senator Hannon, an explanation has been
4 requested by Senator Breslin.

5 SENATOR HANNON: Thank you.

6 This bill would provide that the
7 Department of Health must post on its website
8 the Medicaid state plan and any changes
9 thereto.

10 ACTING PRESIDENT FLANAGAN:
11 Senator Breslin, why do you rise?

12 SENATOR BRESLIN: Thank you,
13 Mr. President. Would the sponsor yield to a
14 question or two?

15 ACTING PRESIDENT FLANAGAN:
16 Senator Hannon, will you yield?

17 SENATOR HANNON: Yes.

18 ACTING PRESIDENT FLANAGAN:
19 Senator Breslin, before you -- Senator
20 Breslin -- if we can have a little order in
21 the chamber, it might make this go a little
22 more smoothly.

23 Senator Breslin.

24 SENATOR BRESLIN: Through you,
25 Mr. President. Under federal law, when does

1 an amendment to the Medicaid state law take
2 effect?

3 SENATOR LIBOUS: Excuse me,
4 Mr. President.

5 ACTING PRESIDENT FLANAGAN:
6 Senator Libous.

7 SENATOR LIBOUS: Senator Breslin,
8 if you would bear with me.

9 The conversations in the chamber
10 are supposed to be only of those who have the
11 floor, not of those who are not on the floor
12 or those who are sitting in the back seats.

13 If you have conversations you're
14 leading, please leave the chamber. The
15 conversations are supposed to be only among
16 the members on the floor called on by the
17 president.

18 Thank you, Mr. President.

19 SENATOR BRESLIN: And thank you,
20 Senator Libous.

21 ACTING PRESIDENT FLANAGAN:
22 Senator Breslin, have you finished your
23 question?

24 SENATOR BRESLIN: Well, I'll
25 repeat it. Under federal law, when does an

1 amendment to the Medicaid state plan take
2 effect?

3 SENATOR HANNON: When the CMS
4 division of the federal government approves
5 it.

6 SENATOR BRESLIN: And --

7 ACTING PRESIDENT FLANAGAN:
8 Senator Breslin, would you like Senator Hannon
9 to continue to yield?

10 SENATOR BRESLIN: If he would,
11 please. It's somewhat difficult having
12 Senator Hannon right behind me and to address
13 the floor.

14 ACTING PRESIDENT FLANAGAN:
15 Senator Breslin, if you address it through the
16 chair, it will go just fine.

17 SENATOR BRESLIN: Thank you very
18 much.

19 And, Senator Hannon -- through you,
20 Mr. President -- how long can that waiver
21 process take?

22 SENATOR HANNON: That can take
23 any number of months or years. It can be a
24 very extended period, unfortunately.

25 SENATOR BRESLIN: And through

1 you, Mr. President, will the sponsor continue
2 to yield.

3 ACTING PRESIDENT FLANAGAN:

4 Senator Hannon, will you continue to yield?

5 SENATOR HANNON: That I do.

6 SENATOR BRESLIN: When the state
7 budgets -- how are Medicaid changes budgeted
8 for?

9 SENATOR HANNON: Are you asking
10 how the state changes the Medicaid plan?

11 SENATOR BRESLIN: Yes.

12 SENATOR HANNON: And how it
13 budgets for the changes in that Medicaid plan?

14 SENATOR BRESLIN: Mm-hmm.

15 SENATOR HANNON: I would say by
16 passage of the appropriations bill that deals
17 with that specific matter and by the passage
18 of the Article 7 bill that deals with
19 implementation of that matter. And that's
20 done on an annual basis presumably by April 1
21 of each year.

22 SENATOR BRESLIN: Again through
23 you, Mr. President, will the sponsor continue
24 to yield?

25 ACTING PRESIDENT FLANAGAN:

1 Senator Hannon, will you continue to yield?

2 SENATOR HANNON: Yes.

3 SENATOR BRESLIN: I was really
4 referring to situations that involve
5 retroactivity. And does this bill in any way
6 complicate the possibility of retroactivity?

7 SENATOR HANNON: No. In fact,
8 this takes questions of retroactivity and
9 makes it simpler for the affected individuals
10 who will have to implement the changes in the
11 Medicaid plan. Because in a number of
12 instances it's not clear when CMS will grant
13 that approval.

14 But also it is not clear when the
15 state will submit amendments to the Medicaid
16 plan. There are amendments that have been
17 passed as statute by this body, by the other
18 body, signed by the Governor, and have yet to
19 be submitted to the federal government for
20 approval.

21 Now, this is a switch than just a
22 few years ago when the state had, as a matter
23 of right, the ability just to file changes to
24 the Medicaid plan and it was effected. The
25 federal government has changed the regulation

1 so that nobody -- nothing can be effective now
2 until it approves it.

3 Now, you're going to say
4 retroactivity. But what happens when a
5 provider -- a home healthcare agency, a group
6 of nursing homes, a group of hospitals, any
7 type of professionals that will be subject to
8 Medicaid -- when they are affected and they
9 don't know whether or not it's been submitted?
10 So that all of a sudden, as is the case that
11 CMS just approved on March 1, 2010, payments
12 for prenatal care assistance services --
13 which, by the statute that the state had, were
14 effective in 2007.

15 Unless you follow what my proposed
16 law would be, people who might be affected by
17 that don't have warning when it's been
18 submitted. So what I'm trying to do is have a
19 transparency.

20 Now, I will tell you this is not an
21 academic matter. The Governor, in his wisdom,
22 has said to the Legislature and to the
23 Medicaid Redesign Team the \$2.85 billion that
24 he proposes to cut from health services paid
25 for by Medicaid in this state for the next

1 year are subject to the Medicaid Redesign
2 Team's recommendations. So now we've moved
3 what would ordinarily be budget conferences
4 off to this team for at least a month, then
5 we're going to go through a very shortened
6 process of adopting a budget, hopefully
7 nowhere near last year's travesty when, in an
8 emergency spending bill towards the end of the
9 session, the budget for health was squeezed
10 into it, it was adopted, and people to this
11 day are still asking exacting what was passed,
12 what did it mean, how did it change Medicaid.

13 What I'm proposing to do is we're
14 going to take a system that has unfortunately
15 become murky and opaque over the past few
16 years, make it public and let everybody know
17 what is happening, what is pending, and when
18 it's approved.

19 SENATOR BRESLIN: Through you,
20 Mr. President, possibly if I -- would the
21 sponsor continue to yield.

22 ACTING PRESIDENT FLANAGAN:
23 Senator Hannon, will you continue to yield?

24 SENATOR HANNON: Yes.

25 SENATOR BRESLIN: I think if I

1 use an example, nursing homes, for instance,
2 have been waiting years to have the federal
3 government approve rates. If there was an
4 approval --

5 ACTING PRESIDENT FLANAGAN:

6 Excuse me. Senator Breslin, it would be very
7 helpful for the stenographer if you could face
8 your microphone so she can properly hear you.

9 SENATOR BRESLIN: And please
10 excuse me, Senator Hannon.

11 Nursing homes in New York State
12 have been waiting years for their rate
13 changes. They budgeted for these rates. They
14 are expecting these rates to be approved. If
15 your bill passes, will they have any problems
16 in receiving the approved rates because there
17 won't be a retroactive part of it?

18 SENATOR HANNON: First of all,
19 you're presuming there won't be a retroactive
20 part of it. People will deal with
21 retroactivity as they have always dealt with
22 it. We pass statutes, tax statutes and
23 reimbursement statutes, that are retroactive.
24 And they need to be clear.

25 Under my bill, what will happen is

1 there will be more clarity than there is at
2 present, and I don't believe that there will
3 be any problems whatsoever. And in fact,
4 since the time I've introduced this bill,
5 there have been no comments by any of the
6 affected entities to that effect.

7 SENATOR BRESLIN: Thank you,
8 Mr. President.

9 ACTING PRESIDENT FLANAGAN: Is
10 there any other Senator wishing to be heard?
11 Hearing none, the debate is closed.
12 The Secretary will ring the bell.
13 The Secretary will read the last
14 section.

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

17 ACTING PRESIDENT FLANAGAN: Call
18 the roll.

19 (The Secretary called the roll.)

20 ACTING PRESIDENT FLANAGAN: The
21 Secretary will announce the results.

22 THE SECRETARY: Those recorded in
23 the negative on Calendar Number 43 are
24 Senators Breslin, Huntley, L. Krueger and
25 Squadron.

1 Absent from voting: Senators
2 Adams, Parker and Stavisky.

3 Ayes, 53. Nays, 4.

4 ACTING PRESIDENT FLANAGAN: The
5 bill is passed.

6 THE SECRETARY: Calendar Number
7 62, by Senator Golden, Senate Print 1423, an
8 act to amend the Criminal Procedure Law and
9 the Executive Law.

10 SENATOR MONTGOMERY: Explanation.

11 ACTING PRESIDENT FLANAGAN:
12 Senator Golden, Senator Montgomery has
13 requested an explanation.

14 SENATOR GOLDEN: Thank you,
15 Mr. President.

16 This bill permits the disclosure of
17 arrests and prosecution records of applicants
18 for employment in the police department and
19 law enforcement agencies.

20 This has been passed in 2006 and
21 2008. It allows for disclosure of all
22 criminal histories of all applicants for
23 employment by the police department and other
24 law enforcement agencies.

25 It is vitally important that police

1 departments and other law enforcement agencies
2 have the ability to conduct those background
3 checks of potential employees. Current law
4 provides an ability to do so when an applicant
5 is potentially a police officer or a peace
6 officer. Law enforcement agencies may, in
7 that instance, receive criminal histories that
8 include sealed cases terminated in favor of
9 accused.

10 Employment by police agencies is by
11 definition sensitive in nature. Civilian
12 employees may have access to highly
13 confidential information and may occupy
14 positions of trust. Police agencies are
15 responsible for both conventional crime
16 fighting and counterterrorism efforts. Drug
17 task forces, gang task forces, organized crime
18 task forces, all of these different task
19 forces are available to the police department
20 and have highly sensitive material. And we
21 ask that a background check be made on all
22 employees similar to that of police officers
23 and peace officers.

24 ACTING PRESIDENT FLANAGAN: Thank
25 you, Senator Golden.

1 Senator Montgomery, why do you
2 rise?

3 SENATOR MONTGOMERY: Yes,
4 Mr. President. Would the sponsor, Senator
5 Golden, answer a question, clarification,
6 yield for a question?

7 ACTING PRESIDENT FLANAGAN:
8 Senator Golden, will you yield?

9 SENATOR GOLDEN: Yes,
10 Mr. President.

11 SENATOR MONTGOMERY: Senator
12 Golden, you mentioned in your remarks that the
13 law enforcement currently already is
14 authorized to make complete background checks
15 on those persons who are looking to become
16 uniformed police officers. Is that not
17 correct?

18 SENATOR GOLDEN: That's correct,
19 yes, Senator.

20 SENATOR MONTGOMERY: If Senator
21 Golden would continue to yield.

22 ACTING PRESIDENT FLANAGAN:
23 Senator Golden, will you continue to yield?

24 SENATOR GOLDEN: Yes,
25 Mr. President.

1 SENATOR MONTGOMERY: However,
2 this particular bill would now extend that
3 authority to have sealed records in
4 noncriminal convictions; is that not right?
5 Isn't that a change in this current law,
6 proposed?

7 SENATOR GOLDEN: It's not a
8 change, Mr. President. It is the same as the
9 2006 and 2008 bill.

10 SENATOR MONTGOMERY: Mr.
11 President, if Senator Golden would continue to
12 yield.

13 ACTING PRESIDENT FLANAGAN:
14 Senator Golden, will you continue to yield?

15 SENATOR GOLDEN: Yes,
16 Mr. President.

17 SENATOR MONTGOMERY: Senator
18 Golden, I'm afraid that you misunderstood my
19 question. I intended to ask you whether or
20 not this bill would open up sealed records
21 even for noncriminal convictions.

22 SENATOR GOLDEN: And the answer
23 is yes, Mr. President.

24 SENATOR MONTGOMERY: Okay. And
25 one last question, Mr. President.

1 ACTING PRESIDENT FLANAGAN:

2 Senator Golden, will you yield to one last
3 question from Senator Montgomery?

4 SENATOR GOLDEN: Yes,
5 Mr. President.

6 ACTING PRESIDENT FLANAGAN:
7 Senator Montgomery.

8 SENATOR MONTGOMERY: Yes. And is
9 it not correct that this legislation also now
10 includes or you are looking to include all
11 people who are seeking nonuniform positions,
12 civilian positions in law enforcement, to open
13 up, unseal all records?

14 SENATOR GOLDEN: Yes,
15 Mr. President.

16 If I may add, Mr. President, in the
17 memo, memorandum of support from the New York
18 City Mayor's office, it says, on the bottom of
19 the last paragraph on page 1: "Further, in no
20 cases are records of potential civilian
21 employees of law enforcement agencies made
22 available. Employment by a police agency is
23 by definition sensitive in nature."

24 So if the question is would those
25 records be unsealed and could people have

1 access to those sealed records, the answer is
2 no.

3 SENATOR MONTGOMERY: Thank you,
4 Senator Golden.

5 SENATOR GOLDEN: You're welcome.

6 SENATOR MONTGOMERY: On the bill,
7 Mr. President.

8 ACTING PRESIDENT FLANAGAN:
9 Senator Montgomery, on the bill.

10 SENATOR MONTGOMERY: Every year
11 we seem to be attempting to provide access to
12 sealed records by more and more agencies. And
13 certainly law enforcement agencies already
14 have the option to unseal records.

15 However, there is a reason for the
16 judicial system allowing for the sealing of
17 records. It is my understanding that the
18 purpose is to make sure that indiscretions
19 that end up being either nonviolent,
20 nonprosecutorial or that are done at a very,
21 very young age and we would like to see a
22 young person have access and an option to
23 continuing their lives, that we seal the
24 records.

25 However, law enforcement can unseal

1 all records. We understand that. Now what
2 Senator Golden is trying to do is to allow
3 records that are clearly noncriminal
4 convictions, they are considered violations,
5 they now want to unseal violations. And he
6 wants to give the same latitude to unseal all
7 records, including violations, for civilian
8 employees, for people seeking civilian
9 employment.

10 So I'm going to vote no on this
11 legislation. I think it has absolutely
12 nothing to do with homeland security,
13 notwithstanding the mayor's yellow and red
14 flags that he always raises.

15 I think that this is a violation of
16 the rights of people who really should not be
17 prevented from employment because they have a
18 noncriminal conviction sometime in their past
19 which has been sealed. And if they're looking
20 for civilian employment and they have
21 noncriminal violations that have been sealed,
22 we should not be preventing them from
23 employment even with law enforcement.

24 So, Mr. President, I vote no on
25 this legislation. And I ask that my

1 colleagues join me in rejecting this
2 legislation that is, on face, practically
3 unconstitutional.

4 Thank you, Mr. President.

5 ACTING PRESIDENT FLANAGAN: Thank
6 you, Senator Montgomery.

7 Senator Golden.

8 SENATOR GOLDEN: Just in
9 clarification --

10 ACTING PRESIDENT FLANAGAN:
11 Senator Golden, excuse me.

12 Senator Espaillat, why do you rise?

13 SENATOR ESPAILLAT: Yes,
14 Mr. President. Would Senator Golden yield for
15 a couple of questions?

16 ACTING PRESIDENT FLANAGAN:
17 Senator Golden, you have the floor. Are you
18 on the bill? Would you yield to Senator
19 Espaillat?

20 SENATOR GOLDEN: Well, for
21 clarification, then I'll take the question.

22 For clarification, unsealing a
23 record doesn't mean you're not going to get a
24 job. There are many police officers, when the
25 police department unseals their records,

1 they've have been arrested for misdemeanors
2 and in some cases felonies, and they go on to
3 become police officers on the New York City
4 Police Department and around the State of
5 New York. It does not deny you the ability to
6 get a job.

7 It does open up the ability for the
8 police department to see what type of
9 character you are, what type of person you
10 are, what is your background. And I think the
11 police department is entitled to that, and to
12 make sure that you are honest when you made
13 out your application and that you did
14 everything correctly. That's all that does.

15 Yes, sir. Yes, Mr. President.

16 ACTING PRESIDENT FLANAGAN:

17 Senator Espaillat.

18 SENATOR ESPAILLAT: Yes. These
19 cases would also -- would they include
20 civilian positions for folks that have been
21 arrested in the past and yet they have
22 concluded in a dismissal?

23 SENATOR GOLDEN: Yes, sir.

24 SENATOR ESPAILLAT: So would the
25 Senator continue to yield?

1 ACTING PRESIDENT FLANAGAN:

2 Senator Golden, would you continue to yield?

3 SENATOR GOLDEN: Yes,

4 Mr. President.

5 SENATOR ESPAILLAT: So if a young
6 person committed an infraction or was arrested
7 for an infraction or a misdemeanor charge and
8 that young person was -- later on the case was
9 dismissed, that person, if they apply for a
10 civilian position within the police
11 department, will now be subject to have that
12 record be shown, that dismissal be shown to
13 the police department?

14 SENATOR GOLDEN: That is correct,
15 Mr. President. It's done for police officers,
16 it's done for peace officers, and it would be
17 done for secretaries, it would be done for the
18 fingerprint technician, it would be done for
19 people that would have low-level and
20 high-level information. That we, I believe,
21 in this day and age should know who's on the
22 police departments and who's working inside
23 our precincts and in our cyber intelligence
24 divisions.

25 SENATOR ESPAILLAT: Would the

1 Senator continue to yield, Mr. President?

2 ACTING PRESIDENT FLANAGAN:

3 Senator Golden, will you continue to yield?

4 SENATOR GOLDEN: Yes,
5 Mr. President.

6 SENATOR ESPAILLAT: So if someone
7 was arrested as a youthful offender for car
8 theft and that person then went ahead and his
9 case was dismissed, and now ten years later he
10 applies to become a clerk within the police
11 department, that person will now have to
12 compete with someone else who perhaps has not
13 been arrested, although his case was
14 dismissed, that may be considered a factor in
15 deciding whether or not that person will get
16 the job?

17 SENATOR GOLDEN: Mr. President,
18 through you. Again, there are many people on
19 the New York City Police Department and in
20 civilian life within the police departments
21 that have had past felonies committed and are
22 still police officers and working as civilians
23 for the New York City Police Department.

24 The answer is yes. And it did not
25 deny them the ability to get that job.

1 SENATOR ESPAILLAT: Mr.

2 President, I believe this bill --

3 ACTING PRESIDENT FLANAGAN:

4 Senator EspailLAT, are you asking Senator
5 Golden to continue to yield?

6 SENATOR ESPAILLAT: No, no, no.
7 This is on the bill.

8 ACTING PRESIDENT FLANAGAN:

9 Senator Golden had the floor.

10 Senator Golden, are you finished
11 with your remarks?

12 SENATOR GOLDEN: Yes,
13 Mr. President.

14 ACTING PRESIDENT FLANAGAN:

15 Senator EspailLAT on the bill.

16 SENATOR ESPAILLAT: Yes,
17 Mr. President. Thank you.

18 This bill overreaches. I would
19 consider this if it was based on conviction.
20 I think that the police department, peace
21 officers -- the police department or anybody
22 else has the right to inquire into somebody's
23 past and determine whether or not that person
24 has been convicted of a crime -- a
25 misdemeanor, a felony.

1 But to have the police department
2 now determine the future employment of someone
3 based potentially on an arrest that resulted
4 in a dismissal is overreaching, and I will be
5 voting no on this bill.

6 ACTING PRESIDENT FLANAGAN: Thank
7 you, Senator Espaillat.

8 Are there any other Senators
9 wishing to be heard?

10 Hearing none, the debate is closed.

11 The Secretary will ring the bell.

12 The Secretary will read the last
13 section.

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

16 ACTING PRESIDENT FLANAGAN: Call
17 the roll.

18 (The Secretary called the roll.)

19 ACTING PRESIDENT FLANAGAN: The
20 Secretary will announce the results.

21 THE SECRETARY: Those recorded in
22 the negative on Calendar Number 62 are
23 Senators Adams, Espaillat, Hassell-Thompson,
24 Huntley, Montgomery, Peralta, Perkins and
25 Rivera.

1 Absent from voting: Senators
2 Parker and Smith.

3 Ayes, 50. Nays, 8.

4 ACTING PRESIDENT FLANAGAN: The
5 bill is passed.

6 Senator Libous, that completes the
7 controversial reading of the calendar.

8 SENATOR LIBOUS: Could we go to
9 the noncontroversial reading of the
10 supplemental calendar.

11 ACTING PRESIDENT FLANAGAN: The
12 Secretary will make the substitution.

13 THE SECRETARY: In relation to
14 Calendar Number 83, Senator Martins moves to
15 discharge, from the Committee on Rules,
16 Assembly Bill Number 3093B and substitute it
17 for the identical Senate Bill Number 3216,
18 Third Reading Calendar 83.

19 ACTING PRESIDENT FLANAGAN:
20 Substitution ordered.

21 The Secretary will read.

22 THE SECRETARY: Calendar Number
23 83, by Member of the Assembly Schimel,
24 Assembly Print Number 3093B, an act to amend
25 the Election Law.

1 ACTING PRESIDENT FLANAGAN: Read
2 the last section.

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

5 ACTING PRESIDENT FLANAGAN: Call
6 the roll.

7 (The Secretary called the roll.)

8 ACTING PRESIDENT FLANAGAN:
9 Senator Krueger, to explain her vote.

10 SENATOR LIZ KRUEGER: Thank you,
11 Mr. President.

12 A little earlier on the active list
13 we passed a variation on this bill and I rose
14 then to say why I would vote no, which is that
15 we will continue to be disenfranchising the
16 voters of various villages who may be too
17 disabled to be able to cast their vote in a
18 private manner on the old type of pre-HAVA
19 machines.

20 And it is for the same reason,
21 despite the fact this is a more limited bill,
22 that I will be voting no on this bill as well.

23 Thank you, Mr. President.

24 ACTING PRESIDENT FLANAGAN:
25 Senator Krueger, thank you.

1 Those Senators wishing to be
2 recorded in the negative, if you could please
3 raise your hands again.

4 SENATOR PERKINS: Point of order,
5 Mr. President.

6 ACTING PRESIDENT FLANAGAN:
7 Senator Perkins, why do you rise?

8 SENATOR PERKINS: I'm trying to
9 be clear about which bill we're voting on. I
10 thought this was -- we took this bill earlier
11 based on a substitution that we had a Rules
12 Committee meeting with. Is this the same
13 bill?

14 ACTING PRESIDENT FLANAGAN:
15 Senator Perkins, we are on Supplemental
16 Calendar 8A, Calendar Number 83. The bill has
17 been substituted, having already passed in the
18 Assembly.

19 SENATOR PERKINS: Am I to
20 understand this is the Rules version of that
21 bill?

22 ACTING PRESIDENT FLANAGAN: Yes.

23 SENATOR PERKINS: Okay, thank
24 you.

25 THE SECRETARY: In relation to

1 Calendar Number 83, those Senators recorded in
2 the negative are Senators Avella, L. Krueger,
3 Parker, Rivera and Squadron.

4 Ayes, 55. Nays, 5.

5 ACTING PRESIDENT FLANAGAN: The
6 bill is passed.

7 Senator Libous, that completes the
8 noncontroversial reading of the calendar.

9 (Applause.)

10 SENATOR LIBOUS: Thank you,
11 Mr. President. Before we -- I guess,
12 Mr. President, the excitement is on the floor
13 because I was about to announce that Senator
14 Martins passed his first and second bill
15 today.

16 Congratulations.

17 (Applause.)

18 SENATOR LIBOUS: Mr. President,
19 would you call on Senator Hassell-Thompson,
20 please, for an announcement.

21 ACTING PRESIDENT FLANAGAN:
22 Senator Hassell-Thompson for an announcement.

23 SENATOR HASSELL-THOMPSON: Thank
24 you, Mr. President.

25 There will be an immediate meeting

1 of the Democratic Conference in Room 312.

2 ACTING PRESIDENT FLANAGAN: Thank
3 you, Senator Hassell-Thompson.

4 Senator Libous.

5 SENATOR LIBOUS: Thank you,
6 Mr. President.

7 On behalf of Senator Skelos, I hand
8 up the following committee assignments and ask
9 that they be filed in the Journal.

10 ACTING PRESIDENT FLANAGAN: So
11 ordered.

12 Senator Libous.

13 SENATOR LIBOUS: Mr. President,
14 there being no further business, the Senate
15 will adjourn until Tuesday, February 15th, at
16 11:30 a.m.

17 ACTING PRESIDENT FLANAGAN: On
18 motion, the Senate stands adjourned until
19 Tuesday, February 15th, at 11:30 a.m.

20 (Whereupon, at 4:48 p.m., the
21 Senate adjourned.)

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