NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 21, 2012

11:19 a.m.

REGULAR SESSION

SENATOR JOHN J. FLANAGAN, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FLANAGAN: The Senate will come to order.

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

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

ACTING PRESIDENT FLANAGAN: In the absence of clergy, I would ask everyone to bow their heads in a moment of silence.

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

ACTING PRESIDENT FLANAGAN: The reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 20th, the Senate met pursuant to adjournment. The Journal of Monday, March 19th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT FLANAGAN: 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 Libous.
SENATOR LIBOUS: Mr. President, I believe that Senator Breslin has a motion.
ACTING PRESIDENT FLANAGAN: Senator Breslin.
SENATOR BRESLIN: Thank you, Mr. President.
On behalf of Senator Peralta, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Number 129A.
ACTING PRESIDENT FLANAGAN: So ordered.
SENATOR BRESLIN: Thank you, Mr. President.
ACTING PRESIDENT FLANAGAN: Senator Libous.
SENATOR LIBOUS: Mr. President, would you call on Senator Larkin for the

purposes of an announcement, please.

ACTING PRESIDENT FLANAGAN: Senator Larkin.

SENATOR LARKIN: Thank you, Mr. President.

You know, today is a startling day in the State of New York. For a number of years many in this chamber on both sides of the aisle fought to get a death certificate for stillborn. And we fought it, we fought it, and finally last year in this house we passed it, the other house passed it, the Governor signed it.

Today is one year of the enactment, and we have friends in the gallery, friends of a lot of us here.

Paige, stand up, will you, please? This is the lady that communicated to me more than my wife did in the last six years about an issue that is very near and dear to us.

We have a young couple, married, stillborn child. Someone says, Oh, we'll issue you a certificate of death, but not birth. But yet there was a stillborn

certificate in the hospitals, but nothing issued by the State of New York.

Over 30 states have this bill. I'm proud to say that New York stood tall last year to enact this bill and give relief and respect to the families of those who were stillborn.

Paige, to you and your families across the state, thank you for all the comments that came yesterday. And we now look forward to seeing this carried out so that people can put a final rest to a very serious problem of every family. Thank you, and God bless you all.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Larkin.

Senator Kennedy.

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

Like Senator Larkin, I want to recognize the folks that drove the issue, both here in New York State, in your respective communities, and quite frankly across the nation.

Senator Larkin, to you, a tremendous amount of credit goes to you and your leadership on this important issue.

We all know families that have suffered the tragic loss of a child through stillbirth. And whether they talk about it or not, there are many families that suffer internally and intrinsically over the loss of their child at stillbirth.

Just until last year New Yorkers unfortunately and unfairly didn't get to grieve appropriately through the recognition of the birth of their child. So mothers would have to go through the laboring and the carrying of that child, unfortunately, in losing that child. And New York State had not recognized the child with a certificate of death.

Now, because of Senator Larkin's leadership, because of your leadership and community groups and families and mothers and fathers across this state, those families are getting appropriate recognition through the form of a certificate of birth resulting in stillbirth.

So thank you for your advocacy. I look forward to continuing to work with you on this movement across the nation.

Thank you. Thank you,

Mr. President.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Kennedy.

Paige, we welcome you and your colleagues to the Senate chamber. And you should take great comfort in knowing that as persistent as you are, Senator Larkin is even more persistent and more dogged when he deals with us as colleagues. So you have a very strong ally there.

Welcome to the chamber.

Senator Libous.

SENATOR LIBOUS: Mr. President, there will be an immediate meeting of the Rules Committee in Room 332, immediate meeting of the Rules Committee in Room 332.

The Rules Committee meeting should be quick, and then we'll come right back here and get into session.

ACTING PRESIDENT FLANAGAN: Rules Committee meeting in Room 332.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 11:25 a.m.)

(Whereupon, the Senate reconvened at

11:42 a.m.)

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: Mr. President, I believe there's a report of the Rules Committee at the desk.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Senator Skelos, from the Committee on Rules, reports the following bills direct to third reading:

Senate Print 2004, by Senator Skelos, an act to amend the Penal Law; and

6755, by Senator Nozzolio, an act to amend the State Law.

ACTING PRESIDENT FLANAGAN: Senator Libous.

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

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

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Opposed, nay.

(No response.)

ACTING PRESIDENT FLANAGAN: The Rules report is adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, may we please now take up, on the supplemental calendar, Senate Bill Number 6755.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 441, by Senator Nozzolio, Senate Print 6755, an act to amend the State Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Announce the results.

THE SECRETARY: In relation to Calendar Number 441, those recorded in the negative are Senators Adams, Addabbo, Avella, Breslin, Diaz, Dilan, Duane, Espaillat, Gianaris,

Hassell-Thompson, Kennedy, Krueger, Montgomery, Peralta, Perkins, Rivera, Sampson, Serrano, Squadron, Stavisky and Stewart-Cousins.

Ayes, 37. Nays, 21.

ACTING PRESIDENT FLANAGAN: The bill is passed.

SENATOR LIBOUS: Mr. President, would you lay aside the remainder of the Supplemental Calendar 25A for the day.

ACTING PRESIDENT FLANAGAN: The remainder of Supplemental Calendar 25A is laid aside for the day.

Senator Libous.

SENATOR LIBOUS: Mr. President, at this time if we could have the noncontroversial reading of the regular calendar.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 265, by Senator Golden, Senate Print 1407B --

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT FLANAGAN: The bill is laid aside.

THE SECRETARY: Calendar Number 266, by Senator Golden, Senate Print 2169A, an

act to amend the Penal Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 273, by Senator Young, Senate Print 6554, an act to amend the Private Housing Finance Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number

303, by Senator Libous, Senate Print 2467B, an act to amend the Tax Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT FLANAGAN: The bill is laid aside.

THE SECRETARY: Calendar Number 306, by Senator Young, Senate Print 4758C, an act to amend the Tax Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 314, by Senator Krueger, Senate Print 886, an act to amend the Banking Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator O'Mara recorded in the negative.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 336, by Senator Nozzolio, Senate Print --

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT FLANAGAN: The bill is laid aside.

THE SECRETARY: Calendar Number 341, by Senator Lanza, Senate Print 4373, an act to amend the Penal Law.

ACTING PRESIDENT FLANAGAN: Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT FLANAGAN: The bill is passed.

Senator Libous, that completes the noncontroversial reading of the supplemental calendar.

SENATOR LIBOUS: If everybody would be patient, Mr. President, in a couple of seconds here we'll get started with the controversial reading.

But why don't we ring the bell so members will come into the chamber.

ACTING PRESIDENT FLANAGAN: The Secretary will ring the bell.

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: Could we have the controversial reading of the calendar.

ACTING PRESIDENT FLANAGAN: Controversial reading of the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 265, by Senator Golden, Senate Print 1407B, an act to amend the Penal Law.

ACTING PRESIDENT FLANAGAN:

Senator Breslin, why do you rise?

SENATOR BRESLIN: Mr. President, I believe there's an amendment at the desk. I ask that the reading of the amendment be waived and that Senator Peralta may be allowed to speak on the amendment.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Breslin.

Senator Peralta, I have reviewed your amendment and ruled that it is not germane to the bill before the house and therefore is out of order. The amendment is nongermane.

Senator Peralta.

SENATOR BRESLIN: Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Breslin.

SENATOR BRESLIN: I would appeal the ruling of the chair and ask that you allow Senator Peralta to speak on the appeal.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Breslin.

Senator Peralta on the appeal.

SENATOR PERALTA: Thank you, Mr. President.

Now, I don't know why it was ruled

nongermane. I would like to know why it was.

But being that it was, my amendment to Senator Golden's bill is germane for the following reasons.

The amendment deals with the same subject matter as the underlying bill in the following respect. Both Senator Golden's bill and the provisions of my amendment propose changes to Section 265 of the Penal Law.

Senator Golden's bill proposes to expand the scope of first-degree criminal use of a weapon to include the display of a firearm in the commission of any felony. The purpose of this measure is to deter the commission of violent crimes while respecting the rights of law-abiding gun owners.

The amendment I offer today, contained in a bill already introduced in the Senate, seeks to deter the use of guns in felony crimes by making the risk of apprehension unacceptable to criminals. Like Senator Golden's bill, it is designed so that only violent criminals will be adversely affected while the rights of law-abiding collectors, sportsmen and hobbyists will be unimpaired.

Both the proposed legislation and my amendment are about crime control, not gun control. Senator Golden's legislation targets criminals who use the threat of gun violence to commit felony crimes. My amendment complements this aim by helping bring to justice criminals whose threats escalate to tragic violence.

My amendment is already included in the Assembly's one-house budget bill and is supported by more than 100 mayors and 80 police departments. I have spoken many times about this, but I speak now to correct some misinformation about the microstamping costs.

Like Senator Golden's bill, this is a criminal justice tool that comes at negligible cost to the state. I also want to be clear that it will never go into effect if it costs more than $12 per gun.

Like Senator Golden's bill, my amendment should give law-abiding gun users no reason for concern. The worst-case scenario for your average gun owner is that he might have to pay a couple more dollars next time he buys an automatic pistol.

A vote for microstamping means

standing up against criminals, not against guns. This is a rare opportunity to do a great deal of good for police and crime victims for very little cost. It is time to forget our political differences and think of those we can help. And it's time to make microstamping a reality in New York.

There is nothing dissimilar about Senator Golden's interest in sponsoring this legislation and mine in offering this amendment to deter the use of firearms in the commission of felony crimes. This amendment neither unreasonably expands the object or subject of the underlying bill. Nor does it change the purpose and scope of the bill.

If amended as I propose, this would amend the penal code so as to reduce the number of violent gun crimes by making the associated risks unacceptable to criminals while leaving the rights of law-abiding gun owners intact.

Had this bill been originally introduced as I propose it now to be amended, it would still have required consideration by the same standing committee that reported the underlying bill. Either form of the bill, in its

original print or as I would have amended it, would have been considered by the Standing Committee on Codes.

For the foregoing reasons, the amendment I'm offering today I believe is germane to Senator Golden's bill currently under consideration.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Peralta.

All those in favor -- Senator Breslin.

SENATOR BRESLIN: Yes, thank you, Mr. President. I request a show of hands on the vote.

ACTING PRESIDENT FLANAGAN: Senator Breslin has requested a show of hands on the vote on the appeal of the ruling of the chair.

Those in favor of overruling the ruling of the chair raise their hands.

(Senators raised their hands.)

ACTING PRESIDENT FLANAGAN: The Secretary will announce the results.

THE SECRETARY: Ayes, 22.

ACTING PRESIDENT FLANAGAN: The

ruling of the chair stands.

On the bill, the debate is closed. The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first of November.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: The Secretary will announce the results.

THE SECRETARY: In relation to Calendar Number 265, those recorded in the negative are Senators Duane, Montgomery and Perkins.

Absent from voting: Senators Alesi and Parker.

Ayes, 55. Nays, 3.

ACTING PRESIDENT FLANAGAN: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President, on the calendar, if we could jump to 336 next, please.

ACTING PRESIDENT FLANAGAN: The

Secretary will read.

THE SECRETARY: Calendar Number 336, by Senator Nozzolio, Senate Print 464, an act to amend the Penal Law.

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT FLANAGAN: Senator Breslin has requested an explanation, Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President and my colleagues, there is no finer group of heroes in America than those who each and every day lay their lives on the line and protect person and property in dangerous circumstances -- those police officers, those emergency medical personnel, those firefighters and the brave correction officers that each and every day are entrusted with putting their lives in jeopardy because they are dedicated to keeping us safe.

The bill before us, Mr. President, establishes the crime of aggravated harassment of police officers, peace officers, emergency medical technicians, paramedics. And those who are guilty of such a crime will be those who use

their bodily fluids as weapons.

A few years ago this house, along with the Assembly and Governor Pataki, decided that those who walk one of the toughest law-enforcement beats in America, those brave men and women who are correction officers, were seeing a vile and not just humiliating attack on their person by those who are behind bars but a very dangerous one, one that could communicate many serious diseases, in many cases deathly diseases.

And that it was the wisdom of this house to establish that those who committed the crime against correction officers, those who committed those types of vile acts using their bodily fluids as weapons, would in fact be subject to felony criminal conduct.

This measure, Mr. President, expands the protection zone of those who are receiving this type of harassment, making it a felony for those who commit such vile conduct against paramedics, police officers, peace officers, court officers and other emergency medical personnel.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN:
Senator Gianaris, why do you rise?
SENATOR GIANARIS: Would the sponsor yield for a few questions, Mr. President.
ACTING PRESIDENT FLANAGAN:
Senator Nozzolio, will you yield to a question?
SENATOR NOZZOLIO: I'd be happy to yield, Mr. President.
ACTING PRESIDENT FLANAGAN:
Senator Gianaris.
SENATOR GIANARIS: Thank you.
I heard the sponsor discuss the need to protect people who put their lives in danger, and I certainly agree.
This bill also covers peace officers. And I wanted to ask the sponsor, isn't it true that peace officers include a wide variety of professions, including dog control officers?
SENATOR NOZZOLIO: Is that a question, Mr. President?
ACTING PRESIDENT FLANAGAN:
Senator Gianaris.
SENATOR GIANARIS: Yes, it is a question.

SENATOR NOZZOLIO: I didn't hear it in the form of an interrogatory, Mr. President. Would Senator Gianaris be so kind as to repeat the question.

SENATOR GIANARIS: I'll be happy to.

The question is, isn't it the case that peace officers include a wide variety of professions, including dog control officers?

SENATOR NOZZOLIO: Mr. President, peace officer status extends to a number of law-enforcement-oriented officials. Whether there be some dog control officers, not many through the state have that status.

I should also add that parole officers are within the category of police officer status. And I think by all measures parole officers are in harm's way each and every day.

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

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN:
Senator Gianaris.
SENATOR GIANARIS: Thank you.
I don't dispute that there are many worthy professions that would be covered by this. My concern is its breadth.
And in raising the question of dog control officers specifically, I wonder if it is actually the sponsor's -- let me make sure I ask this in the form of a question. Is it the sponsor's intent to have someone be subject to a felony conviction for allowing saliva or urine to come into contact with a dog control officer?
SENATOR NOZZOLIO: That, Mr. President, I understand certainly the nature of the question but must describe the behavior that each and every one of those who have police officer status engage in. Each and every segment of the police officer status are there to protect the public.
That I'm sure there are legions of dangerous circumstances where even as -- and I don't want to characterize it as even dog control officers, but every police officer status who are given that status for the pure reason of

protecting the public put themselves in harm's way of some sort.

And that yes, this legislation does try to protect and shield from heinous behavior every enterprise that has a police officer status.

SENATOR GIANARIS: Mr. President, would the sponsor continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: I certainly don't disagree with the intent to protect every category of individual referenced in this legislation, including dog control officers, because they do perform an important function. But my concern, again, is that we are potentially making felonies actions that do not justify being called felonies.

So I would like to ask the sponsor a hypothetical question as to whether the facts I'm about to outline would potentially subject

someone to a felony conviction under this statute.

And that is in a circumstance where a dog owner is dealing with a dog control officer and the dog itself urinates on the dog control officer, does that constitute allowing that peace officer to come into contact with urine which would then subject the owner to a felony?

SENATOR NOZZOLIO: No, Mr. President.

SENATOR GIANARIS: Mr. President, if the sponsor could continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: I would ask the sponsor if he could elaborate on that last answer. Because as I read the plain text of this bill, it says that a person is guilty of this crime if they cause a peace officer to come into contact with urine. And it seems to me the

hypothetical I indicated would be covered by that.

SENATOR NOZZOLIO: Mr. President, the very first section of legislation lists a number of items, including blood, saliva, urine or feces, as elements of potential weapons that could be used. But a predicate or condition of that felony is that the perpetrator throw, toss, or take steps to engage in a course of conduct expelling such fluid.

That I think the example is -- certainly the hypothetical Senator Gianaris raises has nothing to do with the perpetrator of the crime, which is the individual human being who is being held accountable for that human being's conduct. And that I think it's very clear that the human being engaging in that conduct does not deserve such characterization. Frankly, they fall into the category of those who are committing extremely vile acts and should be sanctioned for such behavior. And that's exactly what this legislation does.

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

ACTING PRESIDENT FLANAGAN:

Senator Nozzolio, will you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: Following up on my previous question, does the sponsor not agree that it is possible for the intent of the dog owner in that hypothetical to have -- to be transferred if he gives a command to the dog, if he sics the dog on the dog control officer or in some way displays an intent for the dog to expel, throw or toss those fluids onto the dog control officer? Is it not possible that the owner would be subject to felony conviction in this case?

SENATOR NOZZOLIO: Mr. President, I don't know what hypothetical Senator Gianaris has in his mind. Frankly, it would have to be, I think, a pretty trained animal under this hypothetical -- I'm not going to engage in that type of hypothetical analysis.

The fact of the matter is we have very dangerous conduct that we're trying to prevent and we have very important people who are the true heroes of America each and every day

laying their lives on the line, each and every day taking steps to keep us safe. That's the intention of this legislation, and I refuse to continue to be sidetracked on its intent.

The fact of the matter is this is terrible behavior, it's terrible behavior against police officers, paramedics, emergency medical personnel. That's the focus.

Every county does not have granted peace officer status to dog control officers. I think this hypothetical is a track that is on the sidecar of this legislation. I'm refusing to continue to engage in such types of hypothetical discussion.

SENATOR GIANARIS: Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Gianaris.

SENATOR GIANARIS: On the bill, please.

ACTING PRESIDENT FLANAGAN: On the bill.

SENATOR GIANARIS: I'm saddened that the sponsor refuses to engage in further debate on this bill.

The fact is, what he calls a

sidecar I think is actually very relevant. Because if we don't draft our bills properly, if we don't take great care to make sure they're limited to exactly the scope that we're trying to effect, these bills when they become laws can have a very detrimental impact due to the law of unintended consequences.

And I think the hypothetical I raised is not inapt to the situation. In fact, if an owner of a dog currently commands the dog to bite an officer, that owner is held liable for assaulting that officer because of the injury. So I think applying that same legal principle to what this bill is trying to do would in fact make that hypothetical very apropos.

My concern is that, you know, we have protections like this for correction officers. They certainly deserve it, I support that law, and I'm very glad we have it. But in the rush to try and expand that to -- bless you -- in the rush to try and expand that to entire categories of people without thinking through when and how people might be liable for them, I think we're rushing into something without thinking it through, and that is a big

mistake.

Again, I'm saddened that the sponsor is unwilling to continue engaging in debate on this issue -- frankly, part of a pattern that's been disturbing in this chamber over the last several weeks. But I will be voting no until this bill is amended to more accurately reflect the limited scope that we're trying to effect, and I encourage my colleagues to do the same.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Gianaris.

Any other Senator wishing to be heard? Hearing none, debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Senator Nozzolio to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President and my colleagues, I hope that every member of this body supports this legislation and sends a clear signal that they will not tolerate the heinous behavior directed at those who are dedicating their lives to keep us safe.

I also wish to say that the legislation is clear. It does not extend to having pets as accomplices, it extends only to those who are focused and provide that criminal behavior directly in attack of those who are meant to keep us safe.

As such, Mr. President, I hope this house takes the positive step in making sure that we do all we can to protect those who are helping to protect us.

I vote aye, Mr. President. Thank you very much.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Nozzolio.

Before we go to other explanations, we should give each other the courtesy of listening to what people have to say.

Senator Adams to explain his vote.

SENATOR ADAMS: Thank you,

Mr. President.

I want to thank Senator Gianaris because he raised an important point on the bill.

I recall when I was a police officer, we had a barricaded person who made a concoction of bodily fluids and threw it on the officers who were responding. And I think Senator Nozzolio, the spirit of his bill is to go after those who intentionally attempt to do this form of action.

We do need to clean up the bill so we don't catch in a wide net those who are charged with a felony for something that's accidentally done. But I'm going to vote aye on the bill because it's a serious issue of those who use bodily fluids on police officers.

So I'm going to vote aye, but I think that Senator Gianaris raised a very important point that you don't want to use the strongest arm of our criminal justice system, which is a felony, on someone with an accidental action. But I'm going to vote aye.

ACTING PRESIDENT FLANAGAN: Senator Adams to be recorded in the affirmative.

Senator Krueger to explain her vote.

SENATOR KRUEGER: Thank you, Mr. President.

I rise to explain my vote that I think that Senator Gianaris opened up an important set of issues. I wish there had been an opportunity for more debate on it.

As I read the bill, it's pretty much one paragraph. And the concern I have is that to simply broadly state someone has the intent to harass, the intent to annoy, the intent to threaten, the intent to harm, the intent to alarm a person is not an adequate detailed justification for finding someone guilty in court at a later date.

I believe that this house should ensure that when we pass legislation we are clear and we are sending messages to the courts and law to the courts that they can actually in good faith implement.

I don't believe, if this were to become the law of New York State, a court would know how to use this law because it is too broad and not detailed enough in the specifics of whom

would be guilty of what, and so I'm voting no. Thank you.

ACTING PRESIDENT FLANAGAN: Senator Krueger to be recorded in the negative.

Senator Stavisky to explain her vote.

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

And thank you, Senator Gianaris, for making the point, I think, that this is a serious issue and nobody is trivializing the problem.

But we have to be especially careful as we craft legislation, because a few words can make a great difference in the intent, in the enactment of the legislation. We obviously care about our correction officers and the law enforcement personnel. And at the same time, I will vote no because I think the legislation is far too broad.

While Senator Gianaris was speaking, it's chilly in the chamber and I sneezed. And my intent was not to violate the law.

But if you think about it, there

are ramifications to the bills that we enact, and the language is important. And for that reason I vote no.

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

Senator Robach to explain his vote.

SENATOR ROBACH: Yes, Mr. President. I rise to support this measure.

And I always enjoy the dialogue, but a little bit surprised, quite frankly. I think judges, I think people in the system know exactly what we're talking about here. And what this is is to try and stem the very unfortunate tide of people who have already broken the law in many cases, of really violating the men and women who work and are that thin line between us and safety.

And while I hear the things about specificity, I really think this bill does it. I think this will go a long way for trying to deter people from doing bad things and putting people in harm's way, exposed to diseases, germs and other things that no one would want anybody in their own family having to endure as part of

their working conditions.

It makes a lot of sense. I applaud Senator Nozzolio for putting this forward and just ask, before people make up their mind, if they haven't, what would you want to do to deter those conditions if you or a loved one had to work in those conditions? It seems to me clearly the balance should go to the people who are trying to uphold the law, not those who are trying to break it.

So I very strongly vote in the affirmative, Mr. President.

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

Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: I heard some of the vote explanations about how the law was vague because of the word "intent" and what you mean by the word "intent."

In fact, "intent" is a limiting word for this particular bill. If you happen to sneeze and you just sneeze but you don't have the criminal intent or the intention to actually cause this particular problem, then it's not a

crime.

The law always distinguishes between a criminal intent and a noncriminal intent. The whole criminal law is based upon that. There is criminal negligence where you are not aware of a risk but you cause a harm, like criminally negligent homicide. There's recklessness, when you're aware of a risk and you ignore it and cause injury. That's a much higher standard.

But the highest standard is intent. And the intent is if you have an intent to do something wrong, then it could be criminal. And it's the most serious type of criminal charge.

So to suggest this is vague basically says, if you argue that, that the entire penal law of the State of New York is based on a false premise and false language, because this is exactly how it's built.

So the bill is not vague, it's very clear, and it specifically prescribes certain types of conduct. And I vote aye.

ACTING PRESIDENT FLANAGAN: Senator DeFrancisco to be recorded in the

affirmative.

Senator Squadron to explain his vote.

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

And listening to the debate and the vote explanations, I think it's such a shame. Because when we talk about the folks who the sponsor and others voting in favor of this bill say this bill is meant to protect, you know, the reality is this is a one-house bill. It's a one-house bill written in a way to create a partisan divide and to make a point and say things about respect for certain folks without actually delivering respect for those folks.

We should be protecting the officials who are talked about in this bill. We should be doing whatever we can to deal with the sort of situation Senator Adams talked about.

But to just come here and just have a political conversation, get worked up, refuse to finish the debate is such a shame. Because what would be so much better would be a really thoughtful process to get a reality, to get a new law that actually protects these folks we want to

protect so much, rather than just a political conversation about it.

So I am absolutely eager to do whatever I can to work to protect these folks and to pass an actual law to do so. But in the meantime I'm going to vote no on this bill.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Squadron to be recorded in the negative.

The Secretary will announce the results.

THE SECRETARY: In relation to Calendar 336, those recorded in the negative are Senators Breslin, Dilan, Duane, Gianaris, Hassell-Thompson, Huntley, Krueger, Montgomery, Perkins, Rivera, Sampson, Serrano, Squadron and Stavisky.

Absent from voting: Senator Parker.

Ayes, 45. Nays, 14.

ACTING PRESIDENT FLANAGAN: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President, can we now go back to Calendar 303.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 303, by Senator Libous, Senate Print 2467B, an act to amend the Tax Law.

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT FLANAGAN: Senator Libous, an explanation has been requested.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President and my colleagues, this house knows over the number of years my concern about the Dedicated Highway Trust Fund and how the fund continues to get raided and our roads and bridges continually deteriorate.

What this would do is it designates one cent per gallon of gasoline to go to the Dedicated Highway and Bridge Trust Fund from the sales tax, which would then be used for roads and bridges.

We are in a position right now where we're negotiating a budget and we have no five-year plan, as we've always had, for roads and bridges throughout this state. One of the

reasons is because, since the inception of the Dedicated Highway Trust Fund, a higher percentage of spending has gone to state operations and debt service and then more than they spend on capital projects.

And capital spending from the Dedicated Highway Trust Fund has dropped from 50 percent to 25 percent, resulting in what reports have said is the worst infrastructure in the nation.

So what this would do is help to build up the fund. It takes a penny a gallon, puts it in for road and bridge construction.

ACTING PRESIDENT FLANAGAN: Senator Squadron.

SENATOR SQUADRON: Thank you, Mr. President. If the sponsor would yield.

ACTING PRESIDENT FLANAGAN: Senator Libous.

SENATOR LIBOUS: Mr. President, I would be pleased to yield to Senator Squadron.

ACTING PRESIDENT FLANAGAN: Senator Squadron.

SENATOR SQUADRON: About how much in each of the next couple of years would this

mean for the Highway and Bridge Trust Fund? Through you, Mr. President.

SENATOR LIBOUS: Mr. President, through you, in response to Senator Squadron's question, the first year would be $64 million, the second year $128 million, the third year $193 million, the fourth year $257 million, and in the fifth year $321 million.

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

ACTING PRESIDENT FLANAGAN: Senator Libous, do you continue to yield?

SENATOR LIBOUS: I will, sir.

ACTING PRESIDENT FLANAGAN: Senator Squadron.

SENATOR SQUADRON: Thank you.

And in that period of time, those amounts, if this bill wouldn't pass, where would those dollars go to? If this bill does not become law.

SENATOR LIBOUS: If the bill does not become law? It would go to the General Fund.

SENATOR SQUADRON: Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN:

Senator Libous, will you continue to yield?

SENATOR LIBOUS: Mr. President, I will.

ACTING PRESIDENT FLANAGAN:

Senator Squadron.

SENATOR SQUADRON: Thank you.

And based on the change in the MTA payroll tax and the funding from this Legislature to the MTA in recent years, where has funding for the capital program for the Metropolitan Transportation Authority -- where is it scheduled to be coming from?

SENATOR LIBOUS: Well, Mr. President, through you. I can tell you that a couple of years ago when, Senator Squadron, you were in power, you did have a capital fund for the MTA, but there was no parity or capital fund for roads and bridges.

And we have always in this house, working together bipartisanly, come up with, in the 23 years I've been here, come up with a five-year plan for both the MTA and the road and bridge program. However, in the last several years the dedicated fund continues to be

shortchanged as it pertains to roads and bridges.

So at this time, to be specific to Senator Squadron, I don't believe as we roll forward in this budget there's a capital plan moving forward for either the MTA or the road and bridge program. That's why I think it's very important, moving forward, to have this penny continue to go into the dedicated fund so we have something for roads and bridges.

SENATOR SQUADRON: If the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Libous, will you continue to yield?

SENATOR LIBOUS: I would be pleased to yield to Senator Squadron.

ACTING PRESIDENT FLANAGAN: Senator Squadron.

SENATOR SQUADRON: Thank you.

And just as a -- for just basic clarification, neither five-year capital plan is funded currently and the modification of the MTA payroll tax is made up for currently out of the General Fund?

SENATOR LIBOUS: (Nodding.)

SENATOR SQUADRON: Thank you.

On the bill, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Squadron on the bill.

SENATOR SQUADRON: Senator Libous's point about funding the Highway and Bridge Trust Fund is an important one. It's something that I am supportive of. Capital programs with parity and with sufficient investment both in roads and bridges and also in transit is something I've been a long supporter of since before I held office. And it's an important method of ensuring that our infrastructure is maintained over time.

Unfortunately, to simply solve one of those things or start to deal with one of those issues without the other leaves a huge portion of the state -- the entire MTA region -- at risk of having enormous economic costs, enormous costs to their transit infrastructure all the way from the eastern end of Long Island up into the northern counties around New York City.

And the idea that additional dollars would be taken from the General Fund only

for this purpose without also thinking about buses and subways -- in my district in Brooklyn and Lower Manhattan, we've had bus service cut like crazy. And we've had express bus service cut from the different boroughs of New York City. And we've had subway cuts that are just devastating.

There used to be a bus -- I used to be able to take the bus across from Brooklyn to Manhattan. You no longer can. You can't across the Manhattan Bridge, you can't across the Williamsburg Bridge. And that's because this Legislature has not stood up sufficiently and funded transit in the way we should.

This is not about whether we should fund roads and bridges -- we should. It is about whether we have an obligation to do something to keep buses and subways running as well, and commuter transit in addition to that, both Long Island Bus, Long Island Railroad, and Metro North. Those are arteries to the community.

And, you know, the truth is the revision of the MTA payroll tax, which does continue but in a revised form, is the right

thing to do. But we need to have a funding stream at the time that we do that.

The idea of gasoline taxes, which is what the sponsor suggests here, is certainly one way to fund transit and roads and bridges, and I appreciate very much the sponsor using gasoline taxes as a way to fund one piece of that. But we just can't continue to move forward, turning our back on buses, subways, and commuter rail, the way that this Legislature has now for the last few months.

So I support the instinct strongly. I think it's an important one. To do it without parity, to do it without the kind of funding I've talked about doesn't make sense. So I urge the sponsor to work on a bill that reaches the conclusion that this one does and also reaches the conclusion that allows our transit infrastructure to move forward.

Simply taking money away again and again and again and not having a responsible funding stream isn't good policy. It may be good politics, but that's not a reason to do it.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN:

Senator Libous.

SENATOR LIBOUS: Mr. President, in all due respect to my colleague Senator Squadron, I think maybe he's a bit confused.

The MTA has taxes that go to supporting subways. It goes to supporting the MTA region. There's sales taxes, there's business taxes, there's surcharges on licenses that already go to the MTA.

This is not about the MTA, this is about the Dedicated Highway Trust Fund that deals with roads and bridges in the entire State of New York. It's not just one region, it's the entire State of New York that the Dedicated Highway Trust Fund deals with.

So we're not shortchanging the MTA at all here. They still have their fees that transit and mass transit has. And obviously upstate we don't have subways, but we have roads and bridges. And those roads and bridges are not being taken care of by any kind of flow right now. They're deteriorating and falling apart.

So in all due respect to my colleague, I'm not here to create a debate between the MTA and roads and bridges. As a

matter of fact, we have been very supportive over the years. When I chaired the Transportation Committee we had legislation that -- I think it was $17.5 billion to the MTA, $17.5 billion over five years to the roads and bridges in New York State. And it was parity, and it worked together.

All I'm trying to do here, Mr. President, is not take a thing away from the MTA. They have their fees. What I'm trying to do is build up the Dedicated Highway Trust Fund. Which as I said, only 25 percent is resulting in infrastructure today, because most of it is capital, most of it is going to running state agencies. And I just think roads and bridges need their fair share.

And it's not just the upstate region, Mr. President and Senator Squadron, but it's throughout the State of New York. The Dedicated Highway Trust Fund was supposed to, was supposed to fund infrastructure throughout the entire State of New York. And I know in the MTA region they have roads and bridges.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Libous.

Senator Krueger, why do you rise?

SENATOR KRUEGER: Thank you. Would the sponsor please yield, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Libous, will you yield?

SENATOR LIBOUS: Of course, Mr. President, thank you.

ACTING PRESIDENT FLANAGAN: Senator Krueger.

SENATOR KRUEGER: Thank you.

I think Senator Libous, Senator Squadron and I all agree that the roads and bridges need funding throughout the State of New York. And Senator Libous referenced that that was the intent of the Dedicated Highway and Bridge Trust Fund.

Could Senator Libous let me know what year it was that we started not committing direct funds to the Dedicated Highway and Bridge Trust Fund? What year was that?

SENATOR LIBOUS: Mr. President, I don't know what year it is, but it came up in debate on the floor last time. And it was -- it could have been late '90s, it could have been early 2000s.

But to my point, I want to change the past, and that's what I've been trying to do for the last five years. So in all due respect to Senator Krueger, I'm sure she has the year, and I'm anxious to learn when it was. But I'm trying to move forward. I'm trying to change any mistakes that may have been made in a positive direction for roads and bridges.

But, Mr. President, I am quite anxious to learn what that year was. And if Senator Krueger could be helpful in informing me.

SENATOR KRUEGER: Through you, Mr. President, I sincerely didn't know the year. I was quite sure it was a year Senator Libous and that side of the aisle was in leadership, because that's pretty much all the years, but I actually don't know the year. It wasn't a trick question.

SENATOR LIBOUS: Mr. President, I'm disappointed.

(Laughter.)

SENATOR KRUEGER: But I made my point there.

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

ACTING PRESIDENT FLANAGAN:

Senator Libous, will you continue to yield?

SENATOR LIBOUS: I will, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Krueger.

SENATOR KRUEGER: Thank you so much.

So in answering Senator Squadron's question, you explained that if this became law it would add 64-point -- I think you said 64-point-something million and then it would grow from there because it's 8 percent growth. And this would then be sales tax that would go directly to the Highway and Bridge Trust Fund and not to the General Fund, as I understand it. That's not the question, I just want to make sure we're in agreement on that.

Does the Senator know how much money now and planned for future years the General Fund already puts into the Dedicated Highway and Bridge Trust Fund?

SENATOR LIBOUS: I'm sorry, Mr. President, could she just repeat the question one more time?

SENATOR KRUEGER: Does the sponsor

know in current and proposed future years how much General Fund money is going into the Highway and Bridge Trust Fund?

SENATOR LIBOUS: Actually, Mr. President, I can give Senator Krueger the projections on the gasoline sales tax.

But I can also state that we raid the fund right now. I believe almost a billion dollars comes out of that fund for snow and ice removal and for running the Department of Motor Vehicles.

So I don't believe there's a ton of revenue going in there. And if anything, the fund continues to diminish because of the bonding limit and we're running out of money. And that's the whole point of trying to replenish it by putting a penny from the sales tax on motor fuel again. And let me stress that, it's motor fuel.

So, Mr. President, through you and to Senator Krueger, I believe the fund continues to be depleted each year.

SENATOR KRUEGER: Through you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Libous, will you continue to yield?

SENATOR LIBOUS: Absolutely.
ACTING PRESIDENT FLANAGAN: Senator Krueger.
SENATOR KRUEGER: I guess I'm answering a question as opposed to asking a question, so I want to make sure I get the context right. Is it both of our understanding I'm going to answer Senator Libous's question? Is that all right through you, Mr. President?
ACTING PRESIDENT FLANAGAN: I don't recall Senator Libous asking a question. But are you -- would you rather speak on the bill?
SENATOR KRUEGER: Okay. I think I will speak on the bill, thank you, because I don't want to misspeak.
I understood Senator Libous asked me if I knew that the --
ACTING PRESIDENT FLANAGAN: Senator Krueger on the bill.
SENATOR KRUEGER: Thank you so much, Mr. President.
As I heard Senator Libous, he was asking me if I knew that the trust fund was continuing to move into the red. And the answer

is yes, I do, because I have the data from the Department of Budget.

And I'm not disagreeing with Senator Libous. At one point in history this Legislature, both houses and the Governor reneged on the commitment it had to have an ongoing funding stream for the Dedicated Highway and Bridge Trust Fund.

And I'm not disagreeing with Senator Libous that this is important money for important roads and bridges, capital work throughout the State of New York, upstate, downstate, his district, my district -- not so much my district, but even my district. The FDR is actually a state road along the east side of Manhattan, certainly throughout Long Island.

And I'm not disagreeing with the Senator that we need to come to a solution. I would argue that the solution needs to be within the context of the budget, not as individual one-house bills that simply say we'll take money from this funding stream and put it over there and not explain what happens without that money going to the General Fund.

But I think it's particularly

interesting for all of us to realize that because of the situation where the Dedicated Highway and Bridge Trust Fund has been shorted money for many years, each year the State of New York actually transfers General Fund money into the Highway and Bridge Trust Fund -- and a much greater amount than Senator Libous is proposing they could receive through the gas tax even at the highest year outyear of his five-year plan.

And in 2010-2011 the General Fund transferred $587 million into the Highway and Bridge Trust Fund. In 2011-2012, an estimated $453 million. And projections going up through 2016-2017 are as high as $710 million per year.

So I simply stand to point out that looking at this piece of legislation in a vacuum, as opposed to in a holistic way with MTA capital fund concerns and within the context of the budget, probably doesn't get Senator Libous what he's hoping for, more money for the bridge and transit fund or a security that more money would be there each year because it would be some formula of the sales tax.

Because I would hypothesize -- that's all I can do, because we're not having a

discussion on the budget -- that the General Fund would simply reduce the amount it was transferring to the Highway and Bridge Trust Fund each year as there was growth in the sales tax revenue moved in.

So that from the perspective of fungibility of dollars -- I love the word "fungibility," it's an important lesson from economics -- the fungibility of dollars, unfortunately I don't think Senator Libous's bill will get him the outcome that he's hoping for. Which I actually think is all of our hoped-for outcome, that we can actually come up with a long-term solution to adequate capital funding for roads, bridges, highways and mass transit.

And so I think my point today is saying that I could vote yes on this bill or no on this bill; it will pass. I just don't think it's getting us any closer to where we want to go.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Thank you, Senator Krueger.

The debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 8. This act shall take effect April 1, 2013.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Senator Squadron to explain his vote.

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

Just to respond to the sponsor's response to my questioning, you know, I think it's critically important that we're all very clear. Roads and bridges exist in all 62 counties. Investing in them is important in all 62 counties. That's true in the deepest urban counties, the most rural counties, and it is something that we have not done sufficiently as a state for a number of years, and it's something that we need to solve. And relying on gasoline taxes as a way to do it is certainly part of the solution.

But to do it at the same time that the MTA is being disinvested from, at the same time that commuter rail and buses and subways are

struggling -- and frankly, that solution has not been found, and so the General Fund depends on it. And to just leave buses, subways and commuter rail hanging out there yet again doesn't make sense.

So I would love to see this provision mixed with another one. I think until we do that, I can't support it. Roads and bridges, funding them with gasoline taxes the way Senator Libous talks about is very important. I'm going to vote no today, and I hope to see this again at a time we can also invest in the MTA.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Squadron to be recorded in the negative.

The Secretary will announce the results.

THE SECRETARY: In relation to Calendar 303, those recorded in the negative are Senators Adams, Addabbo, Duane, Espaillat, Huntley, Krueger, Montgomery, Perkins, Rivera, Serrano, Squadron and Stavisky.

Absent from voting: Senator Parker.

Ayes, 47. Nays, 12.

ACTING PRESIDENT FLANAGAN: The bill is passed.

Senator Libous.

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

ACTING PRESIDENT FLANAGAN: Senator Libous, there is none.

SENATOR LIBOUS: Before we adjourn, I have an announcement. There will be a Republican conference, Republican majority conference at 2:00 p.m. in Room 332.

There being no further business before the Senate today, I move that we adjourn until Thursday, March 22nd, at 11:00 a.m.

ACTING PRESIDENT FLANAGAN: On motion, the Senate stands adjourned until Thursday, March 22nd, at 11:00 a.m.

(Whereupon, at 12:44 p.m., the Senate adjourned.)