

1 NEW YORK STATE SENATE

2
3
4 THE STENOGRAPHIC RECORD

5
6
7
8
9 ALBANY, NEW YORK

10 April 17, 2012

11 3:18 p.m.

12
13
14 REGULAR SESSION

15
16
17
18 SENATOR JOSEPH A. GRIFFO, Acting President

19 FRANCIS W. PATIENCE, Secretary

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

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

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

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

9 ACTING PRESIDENT GRIFFO:
10 Today's invocation will be offered by
11 Rabbi Michael White, from Temple Sinai in
12 Roslyn Heights.

13 Rabbi?

14 RABBI WHITE: Thank you.

15 And I want to thank Senator
16 Martins for this great honor.

17 I come here today with a group of
18 teenagers who came from our community to work
19 with you to address the scourge of bullying
20 and cyberbullying.

21 And so I ask that you hear their
22 eloquence and their passion and their urgency,
23 theirs and all teenagers, and that you work
24 with them to end this corrosive epidemic
25 that's destroying our youth.

1 I also humbly ask that God endow
2 you all with wisdom, with courage, and with
3 compassion. I ask that God enable all of you
4 to act only in a way that affirms justice for
5 all New Yorkers, that exalts dignity and human
6 decency for all New Yorkers, and that enables
7 empathy among all New Yorkers. Because if you
8 do, then you will certainly act according to
9 God's will.

10 Amen.

11 ACTING PRESIDENT GRIFFO: Thank
12 you, Rabbi White.

13 The reading of the Journal.

14 THE SECRETARY: In Senate,
15 Monday, April 16th, the Senate met pursuant to
16 adjournment. The Journal of Saturday,
17 April 14th, was read and approved. On motion,
18 Senate adjourned.

19 ACTING PRESIDENT GRIFFO:
20 Without objection, the Journal stands approved
21 as read.

22 Presentation of petitions.

23 Messages from the Assembly.

24 The Secretary will read.

25 THE SECRETARY: On page 21,

1 Senator Valesky moves to discharge, from the
2 Committee on Codes, Assembly Bill Number 3964A
3 and substitute it for the identical Senate
4 Bill Number 657A, Third Reading Calendar
5 464.

6 ACTING PRESIDENT GRIFFO:

7 Substitution so ordered.

8 Messages from the Governor.

9 Reports of standing committees.

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 on behalf of Senator Flanagan, on page 6 I
17 offer the following amendments to Calendar
18 Number 125, Senate Print 5650B, and ask that
19 the bill retain its place on the Third Reading
20 Calendar.

21 ACTING PRESIDENT GRIFFO: So
22 ordered.

23 SENATOR LIBOUS: On behalf of
24 Senator Young, I move that the following bills
25 be discharged from their respective committees

1 and be recommitted with instructions to strike
2 the enacting clause: Senate Print Numbers 865,
3 3208, 5578, and 5744.

4 ACTING PRESIDENT GRIFFO: So
5 ordered.

6 Senator Libous.

7 SENATOR LIBOUS: Mr. President, at
8 this time I'd like to recognize Senator Carlucci
9 for a brief announcement.

10 ACTING PRESIDENT GRIFFO: Senator
11 Carlucci.

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

14 Today I rise to acknowledge and
15 congratulate the Suffern High School Boys Varsity
16 Hockey Team for their victory this season in
17 becoming New York State Division I champions for
18 New York State.

19 Later this week the Senate will
20 pass a resolution commemorating and honoring
21 their achievements.

22 And this journey, they went on a
23 long road -- started in the rinks in
24 Rockland County and went on to travel around the
25 state. They went on to win 21 games this

1 season.

2 And perhaps the most notable of
3 their victories was their four-overtime win in
4 the semifinal game against West Genesee. Shortly
5 thereafter, the Mounties of Suffern High won a
6 much-deserved championship over Pittsford by a
7 score of 3 to 2.

8 And really at the helm, to get this
9 far, you've got to have strong leadership. And
10 under their coach, Rob Schelling, they went on to
11 receive this victory, the first hockey
12 championship for the State of New York from
13 Suffern High School in over 20 years. And
14 rightfully so, Rob Schelling was named New York
15 State Division I Coach of the Year for his
16 excellence in coaching.

17 So really we're so excited to have
18 you here today to honor you, your achievements.
19 And really we want you to remember that the
20 victories that you've seen on the ice, by having
21 strong teamwork, dedication, a commitment to
22 yourselves, to the members on your team, you can
23 really achieve whatever you want to achieve.

24 So we're expecting great things
25 from you guys, not only in athletics, but in the

1 classroom, in the boardroom, in the community.
2 And we look forward to seeing you guys prosper in
3 the future.

4 Thank you, and congratulations for
5 your victory.

6 (Applause.)

7 ACTING PRESIDENT GRIFFO: We'd
8 like to welcome and congratulate the Suffern High
9 Boys Hockey Team.

10 Congratulations on that victory
11 that you won in the great city of Utica. And we
12 extend to you all the privileges and courtesies
13 of the house.

14 Let's hear it for these fine
15 athletes.

16 (Applause.)

17 ACTING PRESIDENT GRIFFO: Senator
18 Libous.

19 SENATOR LIBOUS: Mr. President, I
20 would ask you to recognize Senator Espaillat for
21 a brief announcement at this time.

22 ACTING PRESIDENT GRIFFO: Senator
23 Espaillat.

24 SENATOR ESPAILLAT: Thank you,
25 Mr. President.

1 It is a privilege and an honor to
2 welcome a distinguished delegation of
3 Russian-Americans from Northern Manhattan here
4 today visiting the chambers.

5 I want to thank namely all the
6 Russian-Americans that are in New York State --
7 not just in Northern Manhattan, but they are in
8 Brooklyn and in other parts of the state
9 contributing to the well-being of our state.

10 Specifically, I want to recognize
11 the Honorable Andrey Yushmanov, Consul General of
12 the Russian Federation in New York City, and
13 Maxim Vladimirov, Vice Consul, Consulate General
14 of the Russian Federation in New York City.

15 And I also recognize His Eminence
16 Archbishop Vladika Justinian, of the Russian
17 Orthodox Church, who is also Administrator of the
18 Patriarchal Parishes in the USA, and Igor Kochan,
19 chairman of the Youth Committee of the Moscow
20 Patriarchy Parishes in the USA.

21 They are a very strong and growing
22 community. There is a great presence not just in
23 Northern Manhattan, but across the state. And we
24 are very happy that they continue to contribute
25 to our state.

1 Today is a very special moment. I
2 believe this may be their first visit here to
3 Albany. And as we do with other groups across
4 the state, we want to make sure that you're
5 welcome here in this chamber.

6 And many of the folks that are
7 here, including the American Association of
8 Russian Women, we have the director of the Arts
9 on the Hudson, the president of Days of Russia,
10 New York State, and a few groups and journalists
11 that are here with us celebrating the rich
12 culture of Russian-Americans in New York State.

13 So I would like, Mr. President, for
14 you to extend to them the courtesies of this
15 chamber.

16 And I wish you all the very best in
17 your visit here in the State Legislature. And we
18 recognize your contributions to this great state
19 and to our country of many, many years, not just
20 now.

21 Very often we take for granted that
22 many famous and important Americans even in the
23 arts, such as Yul Brynner, Kirk Douglas and
24 Natalie Wood, are of Russian descent. Many
25 artists and athletes and scientists and important

1 Americans are of Russian descent.

2 So we welcome you, we thank you for
3 your hard work and the contributions that you
4 make to our great state. Thank you so much for
5 coming to Albany.

6 ACTING PRESIDENT GRIFFO: On
7 behalf of the Senate, we extend to all of our
8 visitors, in celebration of Russian-American
9 Heritage Month, our warm and sincere best wishes
10 to all of you. And we extend the courtesies of
11 the house. Congratulations, and have a great
12 celebration.

13 (Applause.)

14 ACTING PRESIDENT GRIFFO: Senator
15 Libous.

16 SENATOR LIBOUS: Mr. President,
17 there's a resolution at the desk by Senator
18 LaValle, Number 3131. It was previously adopted
19 by this house on March 20th. May we have the
20 title read and please call on Senator LaValle.

21 ACTING PRESIDENT GRIFFO: The
22 Secretary will read.

23 THE SECRETARY: Legislative
24 Resolution Number 3131, by Senator LaValle,
25 memorializing Governor Andrew M. Cuomo to

1 proclaim April 15 through 21, 2012, as
2 Osteopathic Medicine Week in the State of
3 New York, in conjunction with National
4 Osteopathic Medicine Week.

5 ACTING PRESIDENT GRIFFO: Senator
6 LaValle.

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

9 As Senator Libous indicated, this
10 resolution has passed designating April 15th to
11 21st as Osteopathic Medicine Week.

12 Let me say that there are two
13 schools of osteopathic medicine in New York
14 State. One is in Old Westbury, part of the NYIT
15 program, and the other one is at Touro College in
16 Harlem.

17 The doctors that are trained in
18 both primary care and specialty care, there are
19 over 100,000 throughout the country that are
20 either students or practicing physicians.

21 I would say I had the opportunity
22 to visit the school in Old Westbury, and it was
23 the first time and the last time, I think, that I
24 saw a cadaver. And it was a very vivid
25 experience.

1 So with us today we have students
2 in the gallery. Good luck, and congratulations
3 on your careers.

4 ACTING PRESIDENT GRIFFO: Thank
5 you, Senator LaValle. And welcome to all of
6 you.

7 And again, the resolution was
8 adopted on March 20th.

9 Senator Stavisky.

10 SENATOR STAVISKY: May I just add
11 my welcoming to the group that is here today, and
12 to indicate that these are the folks who go into
13 the primary care services.

14 These are the folks who have the
15 residency programs that are increasing in
16 numbers. And historically these are the students
17 who tend to practice in the areas where they live
18 and where we live and represent.

19 So again, welcome to Albany. And I
20 met with a number of the students earlier today,
21 and we welcome you once again to Albany.

22 Thank you.

23 ACTING PRESIDENT GRIFFO: Thank
24 you, Senator Stavisky.

25 And again, we welcome you all and

1 extend the courtesies of the house.

2 (Applause.)

3 ACTING PRESIDENT GRIFFO: Senator
4 Libous.

5 SENATOR LIBOUS: Mr. President, at
6 this time may we have the noncontroversial
7 reading of the calendar, please.

8 ACTING PRESIDENT GRIFFO: The
9 Secretary will read.

10 THE SECRETARY: Calendar Number
11 177, by Senator Lanza, Senate Print 5282, an act
12 to amend the Highway Law.

13 ACTING PRESIDENT GRIFFO: Read the
14 last section.

15 THE SECRETARY: Section 8. This
16 act shall take effect immediately.

17 ACTING PRESIDENT GRIFFO: Call the
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes, 55.

21 ACTING PRESIDENT GRIFFO: The bill
22 is passed.

23 THE SECRETARY: Calendar Number
24 209, by Senator LaValle, Senate Print 1756, an
25 act in relation to permitting the County of

1 Suffolk.

2 ACTING PRESIDENT GRIFFO: Read the
3 last section.

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

6 ACTING PRESIDENT GRIFFO: Call the
7 roll.

8 (The Secretary called the roll.)

9 THE SECRETARY: Ayes, 55.

10 ACTING PRESIDENT GRIFFO: The bill
11 is passed.

12 THE SECRETARY: Calendar Number
13 257, by Senator Hannon, Senate Print 1920, an act
14 to amend the Real Property Tax Law.

15 ACTING PRESIDENT GRIFFO: Can I
16 have some order, please, in the house.

17 Read the last section.

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

20 ACTING PRESIDENT GRIFFO: Call the
21 roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes, 55.

24 ACTING PRESIDENT GRIFFO: The bill
25 is passed.

1 THE SECRETARY: Calendar Number
2 274, by Senator Marcellino, Senate Print 2631, an
3 act to amend the Tax Law.

4 ACTING PRESIDENT GRIFFO: Read the
5 last section.

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

8 ACTING PRESIDENT GRIFFO: Call the
9 roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes, 53. Nays,
12 2. Senators Duane and Parker recorded in the
13 negative.

14 ACTING PRESIDENT GRIFFO: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 333, by Senator Lanza, Senate Print 3549A, an act
18 to amend the State Finance Law.

19 SENATOR SQUADRON: Lay it aside.

20 ACTING PRESIDENT GRIFFO: Lay it
21 aside.

22 THE SECRETARY: Calendar Number
23 343, by Senator Saland, Senate Print 6548 --

24 SENATOR LIBOUS: Lay it aside for
25 the day.

1 ACTING PRESIDENT GRIFFO: Lay it
2 aside for the day.

3 THE SECRETARY: Calendar Number
4 370, by Senator LaValle, Senate Print 3148, an
5 act to amend the Real Property Actions and
6 Proceedings Law.

7 ACTING PRESIDENT GRIFFO: Read the
8 last section.

9 THE SECRETARY: Section 2. This
10 act shall take effect on the 30th day.

11 ACTING PRESIDENT GRIFFO: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes, 54. Nays,
15 1. Senator Parker recorded in the negative.

16 ACTING PRESIDENT GRIFFO: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 371, by Senator Young, Senate Print 6553, an act
20 to amend the Private Housing Finance Law.

21 ACTING PRESIDENT GRIFFO: Read the
22 last section.

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

25 ACTING PRESIDENT GRIFFO: Call the

1 roll.

2 (The Secretary called the roll.)

3 THE SECRETARY: Ayes, 54. Nays,

4 1. Senator Parker recorded in the negative.

5 ACTING PRESIDENT GRIFFO: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 381, by Senator Little, Senate Print 341, an act
9 to amend the State Finance Law.

10 ACTING PRESIDENT GRIFFO: Read the
11 last section.

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

14 ACTING PRESIDENT GRIFFO: Call the
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes, 55.

18 ACTING PRESIDENT GRIFFO: The bill
19 is passed.

20 THE SECRETARY: Calendar Number
21 415, by Senator Skelos, Senate Print 1539, an act
22 to amend the Penal Law.

23 SENATOR SQUADRON: Lay it aside.

24 ACTING PRESIDENT GRIFFO: Lay the
25 bill aside.

1 THE SECRETARY: Calendar Number
2 426, by Senator Huntley, Senate Print 6406, an
3 act to amend the Penal Law.

4 ACTING PRESIDENT GRIFFO: Read the
5 last section.

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

8 ACTING PRESIDENT GRIFFO: Call the
9 roll.

10 (The Secretary called the roll.)

11 ACTING PRESIDENT GRIFFO: Senator
12 DeFrancisco to explain his vote.

13 SENATOR DeFRANCISCO: Yes, I'm
14 going to vote no. Not because I want to condone
15 stealing four bicycles, but the problem with the
16 bill is that we currently have a law that
17 determines what the penalties are for various
18 thefts depending upon value.

19 And there's a dangerous precedent
20 this would make by one particular item being
21 considered a felony, if you steal four bicycles,
22 or maybe four other things that are as equally
23 valuable are not felonies.

24 And I think it's a better procedure
25 what is already in the law; namely, that we're

1 penalizing thefts and imposing punishments based
2 upon value of the items, whatever they may be.

3 For that reason, I'm voting no.

4 ACTING PRESIDENT GRIFFO: Senator
5 DeFrancisco to be recorded in the negative.

6 The Secretary will announce the
7 results.

8 THE SECRETARY: In relation to
9 Calendar Number 426, those recorded in the
10 negative are Senators DeFrancisco, Duane, Farley,
11 Hassell-Thompson, Marcellino, Montgomery, O'Mara
12 and Perkins.

13 Ayes, 47. Nays, 8.

14 ACTING PRESIDENT GRIFFO: The bill
15 is passed.

16 THE SECRETARY: Calendar Number
17 432, by Senator Skelos, Senate Print 1825, an act
18 to amend the Correction Law.

19 ACTING PRESIDENT GRIFFO: Read the
20 last section.

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

23 ACTING PRESIDENT GRIFFO: Call the
24 roll.

25 (The Secretary called the roll.)

1 ACTING PRESIDENT GRIFFO: Announce
2 the results.

3 THE SECRETARY: In relation to
4 Calendar Number 432, those recorded in the
5 negative are Senators Hassell-Thompson,
6 Montgomery, Parker and Perkins.

7 Ayes, 51. Nays, 4.

8 ACTING PRESIDENT GRIFFO: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 445, by Senator Young, Senate Print 6164, an act
12 to amend the General Municipal Law.

13 ACTING PRESIDENT GRIFFO: Read the
14 last section.

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

17 ACTING PRESIDENT GRIFFO: Call the
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes, 54. Nays,
21 1. Senator Parker recorded in the negative.

22 ACTING PRESIDENT GRIFFO: The bill
23 is passed.

24 THE SECRETARY: Calendar Number
25 464, substituted earlier today by Member of the

1 Assembly Magnarelli, Assembly Print Number 3964A,
2 an act to amend the Public Health Law.

3 ACTING PRESIDENT GRIFFO: Read the
4 last section.

5 THE SECRETARY: Section 3. This
6 act shall take effect on the 180th day.

7 ACTING PRESIDENT GRIFFO: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes, 54. Nays,
11 1. Senator Parker recorded in the negative.

12 ACTING PRESIDENT GRIFFO: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 474, by Senator Griffo, Senate Print 4193A, an
16 act to amend the Banking Law.

17 ACTING PRESIDENT GRIFFO: Read the
18 last section.

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

21 ACTING PRESIDENT GRIFFO: Call the
22 roll.

23 (The Secretary called the roll.)

24 THE SECRETARY: Ayes, 54. Nays,
25 1. Senator Parker recorded in the negative.

1 ACTING PRESIDENT GRIFFO: The bill
2 is passed.

3 Senator Libous, that completes the
4 noncontroversial reading of the calendar.

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

7 Before we do the controversial
8 reading, if we can go to Calendar Number 333 and
9 lay it aside for the day, please.

10 ACTING PRESIDENT GRIFFO: Calendar
11 Number 333, by Senator Lanza, will be laid aside
12 for the day.

13 SENATOR LIBOUS: And before we do
14 the controversial calendar, at this time could
15 you please call on Senator Perkins for an
16 announcement.

17 ACTING PRESIDENT GRIFFO: Senator
18 Perkins.

19 SENATOR PERKINS: Thank you very
20 much. Thank you for this opportunity to briefly
21 speak on my resolution that is scheduled for
22 adoption later this week, and the opportunity to
23 recognize members of the New York State Youth
24 Leadership Council joining us today up in the
25 gallery.

1 My resolution recognizes the 105th
2 anniversary of the busiest day in Ellis Island's
3 history, when nearly 12,000 individuals arrived
4 there to begin new lives here in America.

5 From 1892 to 1954, over 17 million
6 immigrants entered the United States through
7 Ellis Island. Today, the approximately
8 100 million living descendants of these
9 Ellis Island immigrants account for more than
10 40 percent of the country's population.

11 Leaving behind the lives they knew
12 for hopes of a better tomorrow, many immigrants
13 underwent numerous hardships in order to start
14 better lives here in America and achieve the
15 American dream.

16 Today, just as 105 years ago, there
17 are thousands of immigrants living, working, and
18 contributing to this great country and state who
19 continue to yearn for the American dream.
20 Unfortunately, the dream has fallen short for
21 many who are unable to access financial aid
22 needed to afford higher education.

23 On April 9, 2012, a group of 15
24 undocumented youth and supporters from the
25 New York State Youth Leadership Council began a

1 long journey 150 miles on foot from New York City
2 to Albany in support of the New York DREAM Act, a
3 bill which would provide access to state-funded
4 financial aid, TAP, and scholarships to
5 qualifying undocumented youth.

6 These dedicated and passionate
7 youth are here today with us in the gallery, and
8 I'd like to take this opportunity to recognize
9 them for their tireless and unwavering advocacy
10 of this vital issue. These youth are a shining
11 example of the American initiative and dedication
12 for which we should all strive.

13 Thank you very much.

14 ACTING PRESIDENT GRIFFO: We'd
15 like to extend a warm welcome to the New York
16 State Youth Leadership Council in attendance
17 today. Welcome to the chamber.

18 (Applause.)

19 ACTING PRESIDENT GRIFFO: Senator
20 Libous, that completes the announcements and the
21 reading of the noncontroversial calendar.

22 SENATOR LIBOUS: How about if we
23 go for the reading of the controversial calendar,
24 Mr. President.

25 ACTING PRESIDENT GRIFFO: The

1 Secretary will ring the bell.

2 The Secretary will read.

3 THE SECRETARY: Calendar Number
4 415, by Senator Skelos, Senate Print 1539, an act
5 to amend the Penal Law.

6 SENATOR RIVERA: Explanation.

7 ACTING PRESIDENT GRIFFO: An
8 explanation has been requested, Senator Nozzolio.

9 SENATOR NOZZOLIO: Thank you,
10 Mr. President.

11 The measure before us by Senator
12 Skelos -- I'm proud to be a cosponsor --
13 establishes a persistent violent felony offender
14 statute of anyone convicted of at least two
15 previous and separate occasions of violent felony
16 offenses.

17 Those are enumerated, but let me
18 just outline what the major ones are:
19 Kidnapping, first-degree rape or sodomy, first or
20 second-degree robbery, burglary, assault or
21 aggravated sexual abuse.

22 Those prior violent felonies,
23 Mr. President, must have been committed after the
24 sentence for which the previous violent felony
25 was imposed. And that the three violent felonies

1 must have been committed within a 10-year period,
2 not counting time served.

3 ACTING PRESIDENT GRIFFO: Excuse
4 me, Senator Nozzolio.

5 Can we have some order in the
6 chamber, please.

7 Senator Nozzolio.

8 SENATOR NOZZOLIO: Thank you,
9 Mr. President. That concludes my explanation.

10 ACTING PRESIDENT GRIFFO: Senator
11 Rivera.

12 SENATOR RIVERA: On the bill.

13 ACTING PRESIDENT GRIFFO: Senator
14 Rivera on the bill.

15 SENATOR RIVERA: Thank you,
16 Mr. President.

17 I rise today to vote in the
18 negative on this piece of legislation for a
19 couple of basic reasons.

20 While I certainly agree with
21 Senator Nozzolio as well as Senator Skelos that
22 there are certain offenses which people should be
23 held accountable for at a higher level than other
24 ones, I believe, number one, that we have already
25 done -- by many laws that we have passed in this

1 chamber over the years, we have already created
2 certain punishments for a lot of these people.
3 That's number one.

4 Number two --

5 SENATOR SQUADRON: Mr. President,
6 I'm having trouble hearing.

7 ACTING PRESIDENT GRIFFO: Senator
8 Squadron, thank you.

9 Again, I will ask for order in the
10 chamber. Please take conversations outside the
11 chamber. If the Sergeants would close the doors.

12 Senator Rivera, you may continue.

13 SENATOR RIVERA: Thank you,
14 Mr. President.

15 But the second and most important
16 reason why I oppose this piece of legislation and
17 encourage all of my colleagues to do the same is
18 that the list that this creates -- first of all,
19 the penalty that it creates, putting someone in
20 jail for the rest of their lives without the
21 possibility of parole, is too serious a
22 punishment for many of these crimes. And I think
23 that we have already, as I stated, established
24 punishments for a lot of these crimes.

25 Now, Senator Nozzolio did point out

1 a couple of the ones that are already -- that are
2 on the list, but I'd like to mention a couple of
3 other ones.

4 Criminal possession of a weapon in
5 the first or second degree. Intimidating a
6 witness, a victim or a witness in the first or
7 second degree. Menacing a police officer or a
8 peace officer. Stalking in the first degree.
9 Aggravated unpermitted use of indoor pyrotechnics
10 in the first degree.

11 Now, in any of these crimes that
12 already exist on the books -- and punishments for
13 them already exist. What we're talking about
14 here is creating a very broad category which
15 would ultimately lead to what I like to call
16 three strikes and you're in: Three strikes and
17 you're in jail for the rest of your life.

18 Now, in the last 10 years or in the
19 last 20 years the prison population has actually
20 decreased. We've been able to, by judicious use
21 of law enforcement, been able to, in different
22 parts of our state been able to control crime,
23 been able to actually take the population that is
24 prison, which I still believe is too high, but
25 we've actually brought that down. There's a

1 couple of prisons that had to close last year
2 because of this.

3 Now we're saying that we want to
4 put a lot of people back in there. And the only
5 thing that I would say to my colleagues is that
6 if you would observe what happened in California,
7 where a similar piece of legislation was approved
8 and taken to its ultimate extreme, ultimately
9 what ended up happening was that the federal
10 government ordered the California government to
11 actually take people out of prison because their
12 civil rights were being violated, they were being
13 stacked on top of each other.

14 I'm not saying that we should not
15 be putting laws on the books that punish people
16 who have committed crimes. And again, I believe
17 that these are crimes that are already punished.

18 ACTING PRESIDENT GRIFFO: Senator
19 Nozzolio, why do you rise?

20 SENATOR NOZZOLIO: Mr. President,
21 will Senator Rivera be so kind as to yield to a
22 question?

23 ACTING PRESIDENT GRIFFO: Senator
24 Rivera.

25 SENATOR RIVERA: Yes,

1 Mr. President.

2 ACTING PRESIDENT GRIFFO: Senator
3 Nozzolio.

4 SENATOR NOZZOLIO: Mr. President,
5 I was intrigued by Senator Rivera's
6 characterization that the court in fact struck
7 down California's three-strikes law. Is Senator
8 Rivera aware that California's courts have not
9 stricken down such a law?

10 ACTING PRESIDENT GRIFFO: Senator
11 Rivera.

12 SENATOR RIVERA: Through you,
13 Mr. President, yes. But that was not the point I
14 was making.

15 Through you, Mr. President, the
16 point that I was making was the only reason why
17 the federal courts ordered the State of
18 California to actually decrease its prison
19 population was because of the dramatic increase
20 in prison population. Which I would argue was
21 directly a result of the "three strikes and
22 you're out" law.

23 SENATOR NOZZOLIO: Mr. President,
24 will Senator Rivera continue to yield.

25 ACTING PRESIDENT GRIFFO: Senator

1 Rivera, would you yield?

2 SENATOR RIVERA: Absolutely,
3 Mr. President.

4 SENATOR NOZZOLIO: So to clarify,
5 Senator Rivera is not stating that the
6 three-strikes law of the State of California was
7 stricken down by a court directly; that law is in
8 fact still on the books.

9 SENATOR RIVERA: Through you,
10 Mr. President, yes, that is correct.

11 But my point still stands. The
12 population of the State of California's prisons
13 became so unbearable, not only to the system
14 itself but to the people that are incarcerated,
15 that the federal government ordered the
16 California government to set loose a great number
17 of people -- I don't remember the exact number.

18 But, Mr. President, still on the
19 bill.

20 ACTING PRESIDENT GRIFFO: Senator
21 Rivera still on the bill.

22 SENATOR RIVERA: Thank you,
23 Mr. President.

24 The point that I am making, my
25 colleagues, is that this law, ultimately what it

1 does is it imposes what I believe is too much of
2 a punishment. We already have, for many of these
3 crimes -- as a matter of fact, for all of these
4 crimes, because they are already considered
5 felonies, we already have punishments for them.

6 I believe that what has happened in
7 the last 10 years, where the prison population
8 has actually decreased, demonstrates that many of
9 the efforts that we have taken to control crime
10 and to keep our state safe have been successful.

11 To create something like this,
12 which would only open up the door for many people
13 to go to prison forever, would make us not only a
14 little bit like California but, for my more
15 fiscally conservative colleagues, a state which
16 will spend millions and millions more dollars in
17 putting people in prison, incarcerating them, and
18 not making sure that they are productive members
19 of society.

20 So ultimately I believe this piece
21 of legislation is not only unwarranted and
22 unnecessary, but it is unjust and it does not --
23 I do not believe that it should be passed in this
24 body.

25 Thank you so much, Mr. President.

1 I will be voting in the negative.

2 ACTING PRESIDENT GRIFFO: Senator
3 Rivera, thank you.

4 Senator Marcellino.

5 SENATOR MARCELLINO: Yes,
6 Mr. President, on the bill.

7 ACTING PRESIDENT GRIFFO: Senator
8 Marcellino on the bill.

9 SENATOR MARCELLINO: What we're
10 talking about here is everyone's quality of
11 life.

12 We're talking about career
13 criminals. We're not talking about people who
14 get involved in petty theft or anything like
15 that. We're talking about career, hard-core,
16 violent criminals who have proven time and time
17 again that they are unfit to walk the streets
18 with normal human beings.

19 This is not a good thing, this is
20 not something we want to encourage. These people
21 in many cases have committed many more crimes
22 than they've ever been caught for or convicted
23 of, and will continue to.

24 There is no possible chance of them
25 ever being remediated or in some way returned

1 back to society or changing their lifestyle.
2 They've proven that they cannot or they've proven
3 that they will not change their lifestyle. They
4 like, quote, unquote, the criminal life.
5 Therefore, they're in it and they stay in it.

6 Every one of us suffers because of
7 it. You can't walk down streets, you must lock
8 your doors, you must be careful. You put your
9 car on the street, it could be stolen, it could
10 be damaged. Your children are out playing late
11 at night, you've got to usher them indoors now.

12 This is not what anybody wants.
13 It's putting the normal citizen, it's putting the
14 good citizen in jail while we leave the felons on
15 the street to run wild and do what they please.

16 This is not what I want to live
17 with, this is not what anyone here wants. It's
18 certainly not what my constituents want. If you
19 have proven that you cannot and will not obey the
20 laws of society, then perhaps you don't belong on
21 the street.

22 And I think this bill goes a long
23 way towards making the statement that our society
24 is a society of laws from which no one is exempt
25 and no one has a right to presume that they can

1 just go about doing anything they please whenever
2 they please because they're capable of it.

3 I say this bill needs to be
4 passed. We need to send a strong message to the
5 criminal element they're not going to be
6 tolerated. It simply will not be tolerated. And
7 until they get the message, stronger tactics need
8 to be taken.

9 Mr. President, I intend to vote aye
10 and encourage all of us to vote aye. Let's send
11 a message to the criminal element in our society
12 that they're not going to be tolerated, that
13 there's no place for them here.

14 Mr. President, I intend to vote
15 aye. Thank you.

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

18 Seeing none, hearing none, the
19 debate is closed. The Secretary will ring the
20 bell.

21 Read the last section.

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

24 ACTING PRESIDENT GRIFFO: Call the
25 roll.

1 (The Secretary called the roll.)

2 ACTING PRESIDENT GRIFFO: Senator
3 Nozzolio to explain his vote.

4 SENATOR NOZZOLIO: Thank you,
5 Mr. President.

6 Mr. President and my colleagues,
7 let this be clear. These convictions are not
8 minor offenses. We are not talking about
9 jaywalking. We are not talking about a small,
10 petty offense. We are talking about those who
11 have been convicted on three occasions of violent
12 felony offenses: Kidnapping, first-degree rape,
13 sodomy, second-degree robbery, burglary, assault,
14 aggravated sexual abuse. These are very serious,
15 violent actions.

16 And if this body is serious about
17 stemming the tide of violent crime, they will
18 support this measure. It's something I'm honored
19 to support, and I hope it's adopted.

20 Mr. President, thank you very much.

21 ACTING PRESIDENT GRIFFO: Senator
22 Nozzolio will be recorded in the affirmative.

23 Senator Montgomery to explain her
24 vote.

25 SENATOR MONTGOMERY: Yes, to

1 explain my vote.

2 I'm voting no on this legislation.

3 And no matter how much it's portrayed as stemming
4 the tide, this really is a tremendous burden on
5 the state's budget. And it is not really going
6 to make a big difference in protecting the public
7 from crime.

8 But this is a "three strikes and
9 you're out." It has killed the budget of the
10 State of California. It is the reason why the
11 State of Texas has backed away from this mass
12 incarceration, unlimited, without reason, without
13 result, because it is killing the state's
14 budget.

15 And this is just one more
16 opportunity for a statement to be made that is
17 totally not necessary and certainly is a terrible
18 direction for New York State.

19 So I'm voting no, no, no.

20 ACTING PRESIDENT GRIFFO: Senator
21 Montgomery to be recorded in the negative.

22 Senator Golden to explain his vote.

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

25 I heard it mentioned on the floor

1 that this will put an awful lot of people into
2 jail and it will be an extreme cost to the State
3 of New York.

4 I've heard my colleagues Senator
5 Marcellino and Senator Nozzolio explain the types
6 of crimes that we're talking about. We're
7 talking about forcible rape, sodomy, robbery with
8 a gun, burglary. We're talking about serious,
9 serious crimes. Serious, persistent, violent
10 felonies.

11 If we have many people in this city
12 or state, in this great State of New York that
13 are persistent violent felons, they belong in
14 jail. The only way we're going to get crime and
15 keep crime under control is by putting those that
16 commit the crime where they belong, in jail.

17 In 1990 there were 2145 homicides
18 in the City of New York. The City of New York
19 changed and wrote an SOP, a standard operating
20 procedure, that helped the state and helped the
21 nation to turn crime around across this great
22 country and to bring that crime down.

23 This bill would help us to keep
24 crime down. It would take the worst of the worst
25 and get them off of the streets of our cities,

1 our towns and our villages and put them where
2 they belong, in jail.

3 I vote aye, Mr. President. And I
4 would hope that all of my colleagues here in this
5 room and in the Assembly would see the value in
6 putting persistent violent felonies convicted
7 three times where they belong, in jail.

8 Thank you, Mr. President.

9 ACTING PRESIDENT GRIFFO: Senator
10 Golden to be recorded in the affirmative.

11 Senator Krueger to explain her
12 vote.

13 SENATOR KRUEGER: Thank you,
14 Mr. President. I rise to vote no and explain my
15 vote.

16 I have listened to my colleagues on
17 both sides of the aisle. This bill has come up
18 several times in this house. Although, for the
19 record, it doesn't come up in the other house, at
20 least not for the last 15 years. So I'm not sure
21 we're really debating whether this bill becomes
22 law or not.

23 But I think it is important to
24 remember the importance of judicial discretion.
25 There are reasons why judges might decide that

1 there must be a finding of mandatory life
2 imprisonment. And there are also reasons why
3 judges might find there are alternative options
4 and there are different scenarios.

5 So fundamentally, I need to vote no
6 on this bill because I think we've made a
7 terrible mistake moving further and further down
8 the road of not allowing judicial discretion, not
9 recognizing that not everybody is a square peg in
10 a square hole, even when they appear to be very
11 bad people, and that this long list of violent
12 felony offenses may in fact be different
13 scenarios for different people at different
14 times.

15 So one of my colleagues just said
16 we don't want "three strikes and you're out" laws
17 in New York State. And I have to agree that
18 based on the states that went down this road and
19 the research findings of what has happened when
20 you take away judicial discretion, when you
21 mandate life sentences without other options, I
22 don't believe you are doing either the right
23 thing in criminal justice policy, nor are you
24 necessarily doing anything to protect the public
25 interest.

1 So I'll be voting no,

2 Mr. President. Thank you.

3 ACTING PRESIDENT GRIFFO: Senator
4 Krueger to be recorded in the negative.

5 Senator Robach to explain his vote.

6 SENATOR ROBACH: Yes,
7 Mr. President. I rise to support this measure
8 for two simple reasons.

9 One, in my district I constantly
10 hear from not only victims of crime but other
11 people that follow this, constantly wondering how
12 can people, first of all, be out of jail who have
13 sexually assaulted people, robbed people at
14 gunpoint, assaulted people, only to do it again.

15 We have a huge amount,
16 unfortunately, of youth-on-youth violence in the
17 city of Rochester, mostly in the urban core. And
18 almost every single one of the shooters has a
19 rap sheet this long. And the public wants to
20 know why they're not in jail.

21 So going to the comment about
22 discretion and what happens in court, I quite
23 frankly think the public is furious and fed up
24 with it.

25 But even more important than that,

1 I'm going to support this measure because
2 whatever that cost is, I can assure you the cost
3 is gigantic to the victims and families.

4 I, for one, am tired to going to
5 funerals of young people and other people being
6 killed almost every single time by some habitual
7 criminal. They're not first-time offenders,
8 they're not new to the game, so to speak, as they
9 say on the street.

10 And I really think it's a little
11 bit concerning to me to hear people putting a
12 dollar value on people's lives or other things.

13 Though I respect everyone's
14 opinion, I think we should not only pass this
15 bill, but we should make sure that Senator
16 Nozzolio has a sponsor in the Assembly and get
17 this passed for the protection of everybody,
18 especially those people who constantly are
19 victimized in dealing with the hurt of those
20 crimes firsthand and frequently across our state.

21 I vote aye.

22 ACTING PRESIDENT GRIFFO: Senator
23 Robach to be recorded in the affirmative.

24 Announce the results.

25 THE SECRETARY: In relation to

1 Calendar Number 415, those recorded in the
2 negative are Senators Dilan, Duane,
3 Hassell-Thompson, Krueger, Montgomery, Parker,
4 Perkins, Rivera, and Squadron.

5 Absent from voting: Senator Adams.

6 Ayes, 46. Nays, 9.

7 ACTING PRESIDENT GRIFFO: The bill
8 is passed.

9 Senator Libous, that completes the
10 controversial reading of the calendar.

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

13 ACTING PRESIDENT GRIFFO: There is
14 no further business before the desk.

15 SENATOR LIBOUS: There being no
16 further business, I move that the Senate adjourn
17 until Wednesday, April 18th, at 3:00 p.m.

18 ACTING PRESIDENT GRIFFO: On
19 motion, the Senate stands adjourned until
20 Wednesday, April 18th, at 3:00 p.m.

21 Senate adjourned.

22 (Whereupon, at 4:04 p.m., the Senate
23 adjourned.)

24

25