NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 16, 1999.

3:02 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President.

STEVEN M. BOGGESS, Secretary.

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. I ask everyone present to rise and repeat with me the Pledge of Allegiance.

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

THE PRESIDENT: With us today is Revered Peter G. Young from the Church of the Blessed Sacrament in Bolton Landing.

REVEREND YOUNG: Let us pray. Dear God, we join in prayer for Your guidance and inspiration. We pray that You may instill in us dedication to again assist all of the citizens of New York State. We ask You this now and forever. Amen.

THE PRESIDENT: Thank you very much.

Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 15th. The Senate met pursuant to adjournment. The Journal of Sunday March 14th was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without object, the journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator McGee from the Committee on Alcoholism and Drug Abuse, reports:

Senate Prints 560, by Senator Fuschillo, an act to amend the Vehicle and Traffic Law;

971, by Senator Skelos, an act to amend the Vehicle and Traffic Law;

1432, by Senator Johnson, an act to amend the Vehicle and Traffic Law.

Senator Maziarz, from the Committee on Aging, reports:

Senate Prints 927, by Senator Meier, an act to amend the Real Property Tax Law;

2963, by Senator Maziarz, an act to amend the Executive Law;

3080, by Senator Saland, an act to amend the Public Health Law.

Senator Trunzo, from the Committee

on Transportation reports:

Senate Prints 2589, by Senator Wright, an act to amend the Vehicle and Traffic Law;

2994, by Senator Trunzo, an act to amend the Vehicle and Traffic Law and the Public Authorities Law;

3012, by Senator Leibell, an act to amend the Highway Law;

3170, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

3244, by Senator Kuhl, an act to amend the Vehicle and Traffic Law;

3319, by Senator McGee, an act to amend the Vehicle and Traffic Law.

Senator Kuhl from the Committee on Education, reports:

Senate Prints 2213, by Senator LaValle, an act to amend the Education Law;

2577, by Senator Volker, an act to amend the Education Law;

2622, by Senator Skelos, an act to amend the Education Law;

2752, by Senator Saland, an act to authorize the city school district of the City

of Poughkeepsie;

3016, by Senator McGee, an act to provide the State to deduct; and

3113, by Senator Meier, an act to amend the Education Law.

Senator Marcellino, from the Committee on Environmental Conservation reports:

Senate Print 1917, by Senator Farley, an act to amend the Environmental Conservation Law.

All bills directly for third reading.

THE PRESIDENT: Without object, all bills directed and ordered directed to third reading.

Reports of select committees.

Communications and reports from State officers.

Motions and resolution.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Meier on page 7, I offer the following amendments to

Calendar Number 109, Senate Print 1480, and I ask that that bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendment is received. The bill retains its place on the Third Reading Calendar.

SENATOR FARLEY: Also on behalf on Senator Meier, Madam President, on page 13, I offer the following amendments to Calendar 214, Senate Print 925, and I ask that that bill retain its place at the Third Reading Calendar.

THE PRESIDENT: The amendment is so received and the bill will retain its place on the Third Reading Calendar.

Senator Hevesi.

SENATOR HEVESI: Madam President, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strict the enacting clause, Senate 2585.

THE PRESIDENT: So ordered, Senator.

SENATOR HEVESI: Thank you.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Are there any substitutions to be made?

THE PRESIDENT: Yes, there are, Senator.

SENATOR SKELOS: Please make them, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 8, Senator Lack, moves to discharge from the Committee on Consumer Protection, Assembly Bill Number 2597 and substitute it for the identical Senate Bill third reading 120.

On page 19, Senator Kuhl, moves to discharge from the Committee on Civil Service and Pensions, Assembly Bill 3097 and substitute it for the identical third reading 301.

On page 19, Senator Spano, moves to discharge from the Committee on Agriculture, Assembly Print 2333 and substitute it for the identical Senate Bill third reading 293.

THE PRESIDENT: The substitution is so ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time may we please adopt the Resolution Calendar with the exception of Resolutions 670 and 671.

THE PRESIDENT: All in favor of adopting the Resolution Calendar with the exception of Resolutions 670 and 671, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, can we take up Resolution 671 by Senator Nozzollio. I ask that it be read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Nozzollio, Legislative Resolution 671, congratulating the Auburn Doubledays on being crowned New York-Penn Baseball League 1998

co-champions.

Whereas, it is the sense of this Legislative Body to recognize and commend those who combined in a team effort to achieve a common goal reflecting the community spirit and representing their home towns with pride in accomplishment, attendant to such concern and fully in accord with its long standing traditions, this Legislative body is justly proud to congratulate the Auburn Doubledays upon the occasion of being crowned 1998 co-champions of the New York-Penn Baseball league.

Auburn, New York has proudly fielded professional baseball teams since the late 1800s. It is currently a minor league affiliate of the Houston Astros.

Spanning nearly 130 years of baseball in Auburn, the team has variously been known by 13 names, five have been reflected their major league affiliation while others have reflected the region and local businesses.

Among names by which Auburn baseball teams have historically been know, by

the Auburns, the Yankees, in 1889. The New York Yankees did not assume their famous name until 1913 when they changed their name from the Highlanders. Also, the Maroons, Falcons, Bulies, Cayugas, Auburn Americans, Red Stars and Sunsets.

In 1996 the Astros Auburn franchise adopted the name Doubleday in honor of the Civil War hero and former Auburn resident Abner Doubleday, who is widely credited with inventing the game of baseball. Auburns of the choice of the names Doubledays honors the rich history of the game and provides a unique identity for Auburns professional baseball club.

A member of the New York Penn league for nearly 30 years, the Auburn Doubledays completed the 1998 season with a winning record, 43 and 32, in their division and went on to be declared co-champions of the league.

Through their hard work, talents, persistence and determination, the Auburn Doubledays have distinguished themselves and brought honor to themselves and their

community.

It is with great pleasure that this Legislative Body recognizes the effort and dedication that makes championship teams and commends the Auburn Doubledays for achieving that goal, encouraging others to follow their example and strive to achieve excellence in their endeavors.

Now, therefore be it resolved that this Legislative Body pause in its deliberations to congratulate the Auburn Doubledays upon the occasion of being named 1998 co-champions of the New York-Penn Baseball League, and be it further resolved that a copy of this resolution suitably engrossed by transmitted to the Auburn Doubledays.

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

(Response of "Aye.")

THE PRESIDENT: Opposed nay.

(No response.)

THE PRESIDENT: The Resolution is adopted. Senator Skelos.

SENATOR SKELOS: Madam President, may be please have Resolution 670, by Senator Nozzolio read in its entirety and move for its immediate adoption, and then if you would recognize Senator Nozzolio

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Nozzolio, Legislative Resolution Number 670, commending Leo Pinckney upon the occasion of his designation as "King of Baseball" by the National Association of Professional Baseball Leagues.

Leo Pinckney has given not only of his time and his energies, but also of his competence, intelligence and leadership and consequently has been designated for a special honor.

Leo Pinckney has long been known as "Mr. Baseball" in the City of Auburn, New York. At baseball's winter meeting, Monday, December 14, 1998, Leo Pinckney picked up another title, "King of Baseball." Instrumental in bringing minor league baseball to Auburn 40 years ago, Leo Pinckney was

chosen for the award by the National Association of Professional Baseball Leagues for his lifelong dedication and service to the game. The award is given once a year.

Leo arrived in Nashville with no knowledge of the fact that he was to be honored. NAPBL officials contacted his wife of 55 years, Chris, and members of the Doubledays organization to insure that Leo would be coming to the meetings.

A 1936 graduate of Auburn High School, Leo was sports editor of the Citizen for forty-five years. He continues to contribute a weekly column. He has received a multitude of honors for his work as a writer and his contributions to a wide range of organizations on the local and national level.

In 1993 the New York-Penn league named one of its divisions after him. Three years later the Baseball Hall of Fame asked Pinckney to throw out the ceremonial first pitch of its annual game during induction weekend in Cooperstown. Among all of the accolades he has received, Leo said this one ranks right at the top.

NAPBL President, Mike Moore, presented Leo with a kings crown, a kings robe, a baseball diamond shaped glass trophy and a Louisville Slugger baseball bat inscribed, "Leo Pinckney, King of Baseball."

Rare indeed is the impressive dedication shown by an individual to the benefit of others which Leo Pinckney has displayed throughout his life; now, therefore, be it

Resolved, that this Legislative Body pause in its deliberations to honor Leo Pinckney upon the occasion of his designation for special honor; and be it further

Resolved, that a copy of this Resolution, suitably engrossed, be transmitted to Leo Pinckney.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President, on the resolution.

Madam President, my colleagues, these resolutions, first honoring the Auburn Doubledays on the occasion of their championship of the New York-Penn League, and in my view, more importantly the resolution

that this body is about to vote on are resolutions that are sponsored in the Assembly by Assemblyman Dan Fessenden, who is here with the board of directors of Auburn Community Baseball. And the board of directors of the Doubledays, the only municipally owned baseball team, I dare say, in the state if not the nation. I would like to welcome them to this body.

First, Chuck Mason, who is the Auburn city counsel representative on the board of directors, Jim Hutchinson, who serves as treasurer of the Auburn Doubledays, Charles Lynch, an attorney who represents them for many years in that capacity as well as a director and last but not least, the person who is being honored by this resolution, President of the Auburn Doubledays, Leo Pinckney.

I want to just mention a word about Leo Pinckney. That if it were not for the efforts of Leo there would be no Auburn Doubledays, there would be no New York-Penn Baseball League. Leo has given tirelessly of his time and energy to make sure that the

national past time born in New York State continues in the communities of New York State, not just in the cities, but in those small cities and towns across New York where baseball was born. Leo certainly deserves the title of "King of Baseball." We have a great deal to thank him for, not just in Auburn, but all across New York, for what he has done in keeping the flame of the New York-Penn league and baseball, professional quality baseball, in our communities alive.

Madam President, it is with great honor that I present these two resolutions on behalf of Assemblyman Fessenden and I welcome these distinguished guests to Albany and thank this Legislature for its consideration.

THE PRESIDENT: The question is on the resolution.

All in favor, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed nay.

(No response.)

THE PRESIDENT: The resolution is adopted and on behalf of the Senate I extend

to you all of our courtesies and congratulations and have a wonderful day.

(Applause.)

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up the non-controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 157, by Senator Johnson, Senate Print 2399, an act to amend the Education Law, in relation to requiring.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 161, by Senator Fuschillo, Senate Print 557, an act to amend the Real Property Tax Law, in relation to granting.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 208, by Senator Skelos, Senate Print 1075, an act to amend the Social Service Law and the Family Court Act.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 212, by Senator Saland, Senate Print 2722, an act to amend the Family Court Act, in relation to evidence.

THE PRESIDENT: Read the last section.

SENATOR DUANE: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 213, by Senator Saland, Senate Print 2724, an act to amend the Family Court Act, in relation to judicial notification.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 219, by Senator Meier, Senate Print 1910, an act to amend the General Construction Law, the Real Property Tax Law and the Public Officers Law.

THE PRESIDENT: Read the last section. I'm sorry, Senator Meier.

SENATOR MEIER: I would like to explain my vote, Mr. President.

THE PRESIDENT: We have to read the last section first. Read the last section.

THE SECRETARY: Section 14. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Meier, explain your vote.

SENATOR MEIER: Thank you, Madam President. This bill may seem a technicality to some. Essentially what it does is it puts in one place, in an easy form, the dates of various conflicts to make it easier to define

who is eligible for certain veteran's benefits, and that sounds dry, but the bill is impressive when you look at the catalog that it refers to of things that we in the State of New York do in order to protect the benefits of our veterans and in order to protect and honor their legacy in their service.

This is part of a package of bills that the Senate is acting upon today. It comes upon the heels of the announcement by Senator Bruno that we will be contributing in an appropriate amount of one dollar for every World War II veteran to the World War II Memorial in Washington, D.C.

And it is even more fitting that we take up this bill and others in the package today because today is American Legion day here in the Capitol and we are honored to have here today in the Chamber with us the Department of New York Commander of the American Legion, Bob Morrill, who is here today.

We thank the Commander for joining us today and his fellow Legionnaires and on behalf of the Senate we welcome you and are

proud to put forward this Legislative agenda for the veterans that you so capably serve.

I vote aye.

THE PRESIDENT: Senator, you are so recorded as voting aye. The Secretary will read the results.

THE SECRETARY: Ayes 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 233, by Senator Marcellino, Senate Print 831, an act to amend the Parks Recreation and Historic Preservation Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 247, by Senator Kuhl, Senate Print 3044, an act to amend the Military Law, in relation to the conspicuous service cross award.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: I would like to explain my vote.

THE PRESIDENT: Go ahead, Senator.

SENATOR KUHL: Thank you, Madam President.

Throughout the year 1999, as we count our way down to the year 2000 and the beginning of the new century, much of our celebration will involve reminiscing about the past century. As we recall the Twentieth Century our focus must fall on the prominent role that American servicemen and servicewomen have played in shaping the America that will begin the 21st Century, a nation defined by freedom, by promise and by strength. As we recall the 20th Century we will be given countless reminders of the debt of gratitude that America's veterans have earned. The Senate's action today, particularly on this bill, is one opportunity to express our gratitude.

This legislation, this bill expands

the list of those who are eligible to receive New York State's highest military award, the conspicuous services cross. Specifically it would expand the eligibility list to include deceased veterans who were killed in action. And just by way of information, there were 27,659 veterans from New York State killed in World War II. There were 2,249 veterans from New York State who were kill in the Korean War, and there were 3,380 individuals who were residents of the State of New York who were killed in Viet Nam.

Those state veterans who sacrificed their lives to preserve our nation's freedoms and ideals should be eligible for the conspicuous service cross. And I believe that they deserve our continued recognition and respect.

I voted aye. Thank you.

THE PRESIDENT: Senator Kuhl, you will be recorded as voting in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 275, by Senator Stafford, Senate Print 1849, an act to amend the Executive Law, in relation to designating September 11th as Battle of Plattsburgh Day.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I just rise and I regret that Senator Stafford isn't here, but if you recall last year during the middle of the debate about changing the name of the cemetery at Saratoga, Senator Stafford educated me on the importance of the Battle of Plattsburgh, so I rise. I will be voting in favor.

I still, however, dispute with Senator Stafford that the most famous battle ever fought within New York State is the

Battle of Saratoga that really provided the impetus for a winning American Revolutionary War, but nonetheless, the Battle of Plattsburgh deserves the recognition that Senator Stafford is according to it.

THE PRESIDENT: Senator, you will be recorded as voting in the affirmative. The Secretary will announce the results.

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 287, by Senator Larkin, Senate Print 175, an act to amend the Education Law, in relation to expanding.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 120th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

288, by Senator Meier, Senate Print 1250, an act to amend the Education Law and the Public Health Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 9. This act shall take effect on the 120th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Madam President, if we could take up the controversial calendar at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 157, by Senator Johnson, Senate Print 2399, an act to amend the Education Law, in relation to requiring.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam

President, on the bill, I think that we all would wish to observe the Pledge of Allegiance and we certainly do so here in this chamber as we have going back to 1987 when we passed a resolution to start reciting the Pledge of Allegiance before our deliberations. And I just hope that in the spirit of Senator Johnson's bill that the egregious cuts to higher education, a hundred fourteen million dollars, the cutting of the TAP hours from 90 to 75 and some of the other services that are being lost that may add up to finding 20,000 students that won't be able to recite very much since they won't be in school, I just hope that in our budget deliberations that we try to be as inclusive in all those, many of them who have fought through some of the problems in their lives an in the neighborhoods to get to college and to make it as possible for them to stand before their peers and graduate at certain ceremonies and celebrations to be able to recite that Pledge of Allegiance with the full assurance that they will have every opportunity to leave college, go out into the job market and become

productive tax paying citizens of this country.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I voted for this bill in the past and I am going to vote for it again, but I would just caution all of my colleagues that the one thing that I think that makes America worth fighting for, the one thing that we all should be proud of is that we live in a country where we do not require as a matter of law that people be patriots. That we give them a choice. That we let them exercise their own free will to decide what they want to do in this country and how they want to honor the flag and how they want to honor the nation in which they live. It seems that is the fundamental freedom that we had our first veterans enshrined for 220 years ago. And as I understand it that is the freedom that every veteran and every American has stood up for the last 225 years. And that is the occasional freedom to disagree with your government, or to choose not to be a patriot.

And I would just caution those that suggest that this is patriotism enshrined in law is that too often perhaps it becomes as one person once described it, the last refuge of a scoundrel.

I hope that as we ask and require as this bill does, the National Anthem and the Pledge of Allegiance at graduation ceremonies at State sponsored institutions, that we are not falling into that last place of refuge.

THE PRESIDENT: Read the last - excuse me. Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, just briefly on this bill, I have in the past voted no. And I guess symbolically I voted no because I don't like the fact that we order the young people to do the Pledge when at the same time with the other stroke of our other hand we cut programs for young people in our higher education institutions. But today I am going to change my vote. I am voting yes. But I want to just remind my colleague that the Pledge of Allegiance of to me, to the Flag, means that we are pledging allegiance to the basic

principle of democracy in our nation. And part of that is that there should be opportunity for people to enjoy the best of our nation and to be part of the building of our nation and the system that has made it possible for so many of us to become full participants in this, in the development of our nation has been public education. And the more we try to destroy public education or to undermine that system I think the more it goes against our Pledge of Allegiance.

So I hope that my voting yes is not taken that I am backing away in any way from what I believe to be the basic principles of democracy in our nation, but Madam President, I am voting yes.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act should take effect on the 120th day after it shall have become law.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56, nays one. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 208, by Senator Skelos, Senate Print 1075, an act to amend the Social Services Law and the Family Court Act.

SENATOR OPPENHEIMER: Ask for an explanation.

THE PRESIDENT: Senator Skelos, an explanation has been requested.

SENATOR SKELOS: This legislation has passed the Senate on numerous occasions, 1996, 1997, 1998. Votes varying from 54 to two, 54 to one.

Basically what it does is a 1995 Court of Appeals ruling decided that a positive toxicology test of a newborn was no longer sufficient to supported an indicated report of child abuse without more evidence of abuse and neglect.

With this legislation if an infant is born with an illegal substance in their system it is prima facie proof of neglect. Also the positive toxicology report raises a rebuttal presumption that the release of such

child to the parent presents an imminent danger to the child's life or health.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: Actually I have had no questions except I want to explain why I am changing my vote, which in the past has been a yes and I'm going to changing it to a no vote. And I think the thing that is so concerning to me is the making this single test the prima facie evidence of neglect.

In the past I did understand that the evidence of neglect did not mandate a finding of neglect and did not mandate that the child be taken away and I felt that was sufficient and that's why I had voted yes. But in thinking more about this, it sort of turns things upside down. It is sort of like you are not innocent until proven guilty, you are guilty until you prove yourself innocent.

And right now we have our existing law that requires a very thorough investigation. It can not just be the single testing of blood. And it does not even provide for a double checking of the accuracy

of the test and we all know that a single test can be inaccurate. And it just -- and it doesn't cover alcohol. That wouldn't make sense to me because alcohol fetal syndrome is every bit as bad as the drug syndrome. And it is impossible to envision a woman challenging this unless she had sufficient resources, monetary resources, and also physical resources. She might not feel very strong after having given birth.

And there is another worrisome thing about this that is causing me to change my vote in that it could, you could see a Pandora's box opening here that you could see criminalizing of unhealthy activities by pregnant women. It really does open the door for the possible criminal prosecution of pregnant women for behavior during their pregnancy that could be seen as endangering the fetus and it sort of is giving fetuses rights, which I feel very strongly should not be subjected to law.

I think this is just not an acceptable bill when you start to really examine it and I think that in changing my

vote I am now seeing this is bill more clearly and taking the right course.

Thank you.

THE PRESIDENT: Senator Sampson.

SENATOR SAMPSON: Madam President, would the sponsor yield for a couple of questions?

THE PRESIDENT: Senator Skelos?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: He so yields. Go ahead, Senator.

SENATOR SAMPSON: Yes, threw you Madam President, I would like to know who decides when these tests should be conducted?

SENATOR SKELOS: I didn't hear you.

SENATOR SAMPSON: Who decides when the tests should be conducted as to these newborns? Who makes the decision to test?

SENATOR SKELOS: The doctor would make a determination. Generally the doctor can tell, for example, when the birth mother is brought into the maternity ward and about to deliver, there are certain signs that he or

she will see that indicate that the birth mother is under the influence of drugs, plus there is certain things they can visually see from a child that is born that perhaps they are under the influence of drugs or from the birth mother.

SENATOR SAMPSON: Through you, Madam President, would the sponsor continue to yield?

SENATOR SKELOS: Yes, Madam President.

SENATOR SAMPSON: So you are saying the criteria is based upon his own personal judgment?

SENATOR SKELOS: Basically, Senator, what this legislation does it goes back to what the practice was prior to 1995 when the Court of Appeals held in a case in Nassau County that originated out of Nassau County that a test positive, a positive toxicology report in and of itself was not enough to find indicated potential abuse by the birth parent. We're basically going back to that pre 1995 decision.

When a child is born generally

there is no time within the hospital for a parent to abuse that child because they are being cared for. We're erring on the side of the child saying why sent them home to a home where drugs are being used to be perhaps killed or injured prior to social services stepping in, trying number one to protect that child, but also number two, trying to get the parents into drug counseling and help also.

SENATOR SAMPSON: I understand that point, but some concern is that we might, some doctors might deal with the issue of profiling certain individuals who come into that area. And my next question would be, what kinds of devices are we putting in to prevent those false positive tests, which can occur?

SENATOR SKELOS: You can always have the -- remember, it is a rebuttable presumption. You can always have it retested. But again, the basic premise of this bill is that we are erring on the side of caution for a newborn child.

Over one quarter of the children who died from abuse were known to have been

exposed to drugs before birth. So there is a high correlation to abuse, whether it is death or being seriously injured to a birth mother using drugs. And in many instances because of the short amount of time the drugs will stay in the system, the blood, you know, I used this example in previous debates, I mean, the birth mother is literally taking crack or smoking marijuana in the taxi or the car going to the hospital.

SENATOR SAMPSON: I understand that and I agree with you on certain points about that, Senator. We should be concerned about the welfare of the child. But once that individual is tested positive, is there a re-test within a certain period of time to just -- because in instances there will be cases where there will be a false positive. What's the turn around time that we have to re test?

SENATOR SKELOS: Well, the - first of all the test -- the turn around time on a test can be one hour, depending on the type of test.

I think we have to have some

discretion with the doctor if he feels for example that the test has not been correct that you can have another one. Or the birth mother can say, Look, I'm not using drugs, can you re-test me again.

But again, we are looking to protect that child. And we are going back to the way it was prior to 1995 when the courts basically said, without legislative authorization we can't do this any more.

SENATOR SAMPSON: No further questions.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, very much, Madam President. Would the sponsor yield to a couple more questions?

THE PRESIDENT: Senator?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Has any thought been given to also including the father in this legislation? And if not, why not?

SENATOR SKELOS: The drug at that

time will have been transmitted to the child through the mother.

SENATOR DUANE: I come at it at two angles, if I may continue. The first is that drug and alcohol contamination of sperm could be as dangerous as any toxicology in the mother, would you agree with that?

SENATOR SKELOS: No, that would have happened nine months ago. We're talking about the drugs to have the impact on the child that would indicate to a doctor that there is a problem would have occurred probably within a couple days prior to the birth of that child.

SENATOR DUANE: However, if we are looking at damage over all to a fetus, the damage could have begun even earlier than you are willing to look at but because it has to do with the father I think we are seeing a blind spot as to whether or not that should be a factor as well.

SENATOR SKELOS: Senator Duane, Madam President, if I could, what we're really looking at with this legislation is trying to avoid putting that child into an abusive

situation. Social services can always look at the household and find if the father is abusive and remove that child. But right now all we can deal with is the birth mother and the child that is born with perhaps drugs in their system.

SENATOR DUANE: Madam President, if I may continue along this line for a bit?

THE PRESIDENT: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Absolutely.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: However, if that is the concern, although frankly I'm not that concerned -- I mean, I am concerned, but I don't think that is the way to approach the problem is what I am trying to say, but to follow your logic would it not be then better to go all the way back and see whether or not then the father and his sperm have been tainted by drugs and alcohol. What I think is that we're seeing a double standard, and I am wondering if you might not agree that by only focusing on the mother we're really only

dealing with half of what the problem is that you are trying to get at, though I may disagree with your method.

SENATOR SKELOS: You raise an interesting point, but the issue right now is keeping that child or getting that child into protective services as soon as possible.

SENATOR DUANE: To continue Madam President, if I may.

THE PRESIDENT: Go ahead, Senator Duane. Senator Skelos continues to yield.

SENATOR DUANE: Along the same lines then you also just raised a statistic to say that in twenty-five percent of these cases it is found that the child is a victim of abuse during the earlier part of their life. Would it not also be safe to assume that that is the case and in fact the vast majority of cases which I know of, although I would be interested to hear your statistics, actually involved abuse on the part of the father in one of these family situations, and not on the part of a mother.

SENATOR SKELOS: And I would guess, Senator Duane, that there are reams of

legislation out here that look to address that issue also.

SENATOR DUANE: Madam President, to continue on this line.

THE PRESIDENT: Senator Skelos, do you yield to an additional question?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator.

SENATOR DUANE: If that is the case Senator, then why is that not part of a whole package dealing with the issue of the impact of alcohol and substance abuse on families and on children? Would that not be a better avenue than to just focus this on a mother and, you know, a fetus, and potentially a newborn.

SENATOR SKELOS: I am sure throughout the legislative session you are going to see bills that address all these issues. This here is on its own as it has been for a last four legislative sessions.

SENATOR DUANE: Although as you know, Senator, I am a comprehensive a kind of

guy and I have been calling for comprehensive solutions to some of the things that we are facing.

I think that what I might do is because other issues having to do with the toxicology etc., and the way to check it have been brought up, if I may Madam President, on the bill.

THE PRESIDENT: Senator Duane, on the bill.

SENATOR DUANE: I also think that we're on a slippery slope when we start to recognize rights of fetuses at very early stages. I am very concerned about prenatal care. I think we all are concerned about prenatal care. I don't think that this falls into the category of where we need to be going on the public policy issue as it applies to prenatal care.

And the other issue is, I believe, and courts may agree or may not agree with me that this emphasis on testing is an invasion of privacy and it is particularly directed sadly and I think inappropriately towards women, and the more specifically towards women

who are pregnant or who may become pregnant. And I think that we need to rethink whether or not this is how we want to go in public policy as it impacts families and women and children and particularly prenatal care and probably more comprehensively the issue of alcohol and substance abuse. And in fact we will be voting later today on another issue which I think has a very negative impact on a mother's inclination to get treatment for alcohol and drug problems. Thank you, Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If I could just comment, just to make sure that you understand that the test is performed on the child and the drugs are transmitted from the birth mother to the child.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Thank you, Madam President. If the gentleman would yield to a question or two?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: Go ahead Senator.

SENATOR WALDON: Thank you, very

much, Madam President.

Senator Skelos, the National Organization of Women is very much opposed to your proposal and it would seem that an organization representing women, one might have a great interest in issues of this nature, but also may have some expertise. Can you illuminate us and tell us of organizations you may be aware of which are supporting the position you take in submitting this for our consideration?

SENATOR SKELOS: First of all, in terms of the National Organization of Women, I know they opposed. But they are also a group that referred to Nettie Mayersohn, who is the sponsor in the Assembly, as part of a right wing conspiracy and my understanding of Assemblywomen Nettie Mayersohn, certainly she is no part of any conspiracy and in fact she has worked very closely with Senator Velella on legislation that has benefitted children in this state. People that support it is New York City protective services, New York City Office of the Mayor, Association of Family Court Judges of New York State.

SENATOR WALDON: Madam President, may I continue, please? Would the gentlemen continue to yield?

THE PRESIDENT: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Waldon.

SENATOR WALDON: Thank you, very much, Madam President.

Senator, did you consider including in activities which might be injurious to the fetus alcohol and tobacco, and did you consider having a test of the fetus for being filled with nicotine at birth or being so much proof in terms of it blood from the imbibing of alcohol?

SENATOR SKELOS: This deals strictly with drugs, illegal drugs.

SENATOR WALDON: If I may continue, Madam President?

THE PRESIDENT: You may continue, Senator Waldon.

SENATOR WALDON: Thank you, very

much, Madam President. Senator, are you aware that we have had case law at the federal level which says that we have no right to intervene in the future of fetuses, that that is under the penumbral zone or under the -

SENATOR SKELOS: There is a little background conversation if we could.

SENATOR WALDON: Senator, you have to understand when veterans get together they sometimes do that kind of thing. My guys from the service days. I apologize for that. Let me be more specific if I may, Madam President.

THE PRESIDENT: Go ahead, Senator.

SENATOR WALDON: Thank you. There is a case, Automobile Workers versus Johnson Controls and Justice Blackman, the distinguished Justice who sat for 24 years, said decisions about the welfare of future children must be left to the parents. Don't you think we are being invasive by interfering with this process?

SENATOR SKELOS: Senator Saland pointed this is out to me just while Senator

Duane was explaining his vote that in domestic relation cases in areas of abuse, domestic violence, the State makes a decision that to some extent it is going to intrude within the privacy of the family to protect whether it is a woman being abused or a child being abused. That the State makes a decision that we will intervene and protect that individual.

SENATOR WALDON: May I continue, Madam President?

THE PRESIDENT: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Waldon.

SENATOR WALDON: Thank you, Madam President.

I have another question Senator, but it boggles my imagination that you would say to us after hearing of the Justice's decision that the State can make a decision to intervene even though the Federal government has said that in fact perhaps we shouldn't. But lets talk about burden of proof for a

moment, if I may.

SENATOR SKELOS: The courts - decision change as the make up of the courts also change.

SENATOR WALDON: I appreciate that insight and I will keep it with me for the rest of my life.

The burden of proof issue. Aren't we changing the burden of proof from the people to the person who has been violated by this process? We are saying to the dear mother who just gave birth, we don't have to prove you guilty, you have to come forward and prove yourself innocent. Isn't that contraindicated to what America's jurist prudence system is all about?

SENATOR SKELOS: First of all I wouldn't define it as a process that is violating somebody's rights as you defined it. I would define it as through a doctor in his professional judgment feeling that this child has been injected with drugs through the mother, that there should be urine tests taken to find out if there are illegal drugs within that child's system. And if there are that is

-- it is indicated for abuse and that social services should be notified, step in and protect that child and that it is then a rebuttal presumption as to whether in fact that child does or does not belong with the birth mother.

SENATOR WALDON: Madam President, may I ask another question of the learned gentleman?

THE PRESIDENT: Senator Skelos, do you yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed with an additional question.

SENATOR WALDON: Thank you, very much.

Senator, I thought I heard you say earlier, and I may have been mistaken, I was ruminating while you were talking and I apologize for that about what was happening with March madness and I saw my report today on the teams I had picked and I'm not doing well so I was a bit traumatized by that. I then quickly got into the process and what I

would like to know now more clearly is if the toxicology report comes back and the mother protests and then she wishes to appeal and eventually she does appeal and the toxicology report says it was false positive, what happened to the child during the interim?

SENATOR SKELOS: First of all the turn over in the test can be within a couple of hours. That child is in the hospital. And remember, the child, for the doctor generally to order the test has indicated certain symptoms that there are drugs within that child's system and most likely that child will be in the hospital for a period of time any way.

SENATOR WALDON: Madam President, if I may continue?

THE PRESIDENT: Senator Skelos, do you continue to yield?

SENATOR SKELOS: Yes.

THE PRESIDENT: Go ahead, Senator.

SENATOR WALDON: Senator, I never had the benefit of going to Arthur Murray, but that was a good dance. That didn't respond to

my question from my perspective. I may be wrong in my analysis, but I wanted to know was -

SENATOR SKELOS: We all dance differently.

SENATOR WALDON: That's good. Some of us -

SENATOR SKELOS: Some of us lead, some of us follow.

SENATOR WALDON: That's true, that's true. I want to know, I want to know in terms of the mother getting her test, this is a poor woman perhaps, an African American, Caribbean American, a Latino, a poor woman. Where is she going to get her test conducted and what is her turn around time going to be, and is it not, from what you are saying to us true, that once she has been perceived as a positive test the jurisdiction of her child is now out of her hands. Is that not correct or am I misunderstanding something?

SENATOR SKELOS: Again, the child gets tested and once again, we're just coming at it differently. I believe at that point we should err on the side of protecting that

infant. It is just like within the State of New York we have in domestic violence cases we have a pro arrest policy. If you would like to go back in the other direction you can always put in legislation to accomplish that. But I would rather lead when we are dancing and be proactive and protect that child.

SENATOR WALDON: Madam President, if I may ask another question?

THE PRESIDENT: Senator Skelos, do you continue to yield for one additional question.

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: Senator, you may proceed with one additional question.

SENATOR WALDON: Okay, I got the message, sub rosa, I got it. And I appreciate the aplomb which you display here in running this place. You have great style.

Senator, last question. Someone who is not pregnant, someone who is not pregnant, the doctor sees this person with the eyes dilated, pupils dilated, and if you have ever, as I have in my professional experience

watched people who are under the influence of drugs, they do different things. The heroin addict drops almost to the floor and comes back up, never touches the floor and you wonder how could this person physically respond in that way.

Would the doctor have the right to say to that women who is not pregnant, I want to test you to see whether or not you are filled with drugs as the doctor in your proposal can test the child just delivered by the woman he perceived is pregnant without any other indicia except his eyes told him that she was a drug abuser?

SENATOR SKELOS: First of all, again, in neither case are we testing the mother, we're testing the child. And it is based on the doctor's medical experience as what he visualized not only with the mother but also with the child.

SENATOR WALDON: Madam President, let me thank you for your gaveling us so well and let me thank the Senator for what he said, and if I may on the bill.

THE PRESIDENT: Senator on the

bill.

SENATOR WALDON: Thank you, very much, Madam President.

THE PRESIDENT: Your welcome.

SENATOR WALDON: Senator, with all due respect I understand what your attempting to do. I too worry about children, my daughter, and we are greatly appreciative of this, is now four months pregnant. Barbara and I will have another grandchild. We are happy about that. We have one who is twelve and we have begged them to give us more, and they have told us it is none of our business. But we are going to have another grandchild so I am worried about what happens when this child is born. I want this child to be as healthy as possible. But I think that what your proposing in regard to fetal rights one violates what the Federal government has said through its great court system is the appropriate approach to this issue. I think this is an invasion of privacy no matter what you say. We are forcing someone to divulge something that if not pregnant and if not in this situation couldn't be done otherwise.

I think that what this will do is to come down on those who are least able to defend themselves; poor, Black, Latino, inner city. They are the ones who will be abused by this process, and I think that in the wisdom of what we do sometimes we ought to consider that an organization as whatever it is in your eyesight, whatever it is in my very distinguished colleague in the Assembly Nettie Mayersohn's eyesight, the National Organization of Women has credibility on women's issues and with women's issues, and we should listen to them.

Their drummer beats the right rhythm with regard to women's issues and I think that we ought to listen to them, so I am going to encourage my colleagues and ask my colleagues to vote with me on this. We should do this bill in. We should run our own test and say it came back positive and we are going to vote negative.

Thank you, very much, Madam President.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, I would wonder if the sponsor would yield for a couple of questions?

THE PRESIDENT: Senator, do you yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Montgomery.

SENATOR MONTGOMERY: All right, Senator Skelos, the current law states that if the court makes a finding of abuse or neglect it shall determine based upon the facts adduced during the fact finding hearing and any other additional facts presented to it, whether a preliminary order is required to protect the child's interest before the judge makes a determination of neglect.

But your bill adds a part which says that except in the case of a newborn where that baby is test positive. So I am just wondering why is it that you are establishing a harsher determination for a woman whose just had a baby over any other situation where there is a suspicion of

neglect?

SENATOR SKELOS: Because I pointed out earlier in the debate, generally when a child is in the hospital there is really no opportunity for the birth mother to abuse that child in the hospital. I feel that rather than sent the child home where statistics show that there is such a high rate of abuse that protective services should come in, protect that child and then eventually hopefully get the birth mother into counseling and if the child is sent home that it is a relatively safe and secure environment that we are going to send that child home to.

SENATOR MONTGOMERY: Madam President, if I can ask my colleague to continue to yield?

THE PRESIDENT: Senator, do you continue to yield?

SENATOR SKELOS: Yes.

THE PRESIDENT: Go ahead.

SENATOR MONTGOMERY: Senator Skelos, in your sponsor's memo one of the last paragraphs on justification it says illegal drug use during pregnancy creates a high risk,

a high degree of risk that newborns will exhibit neurobehavioral and circulatory health complications that include neurological defects, learning disabilities, low cognition, physical and developmental delay and low birth weight. These are exactly the same neurobehavioral and circulatory complications that appear in newborns of mothers who have consumed alcohol. So why did we not include them if we're concerned about the newborns it seems to me in the same way.

SENATOR SKELOS: That could be a separate bill, and if -

SENATOR MONTGOMERY: I'm not advocating it but just wondering why that was left out.

SENATOR SKELOS: As I mentioned to one of the prior questioners, this just applies to drugs.

SENATOR MONTGOMERY: Just applies to illegal drugs under the current definition of illegal drugs.

Madam President, I want to just pursue one other issue with my colleague if you will and that is Senator Skelos, we know

that there are instances, there are examples of programs that are in place as we speak where, if drug treatment is offered to women during their pregnancy as well as immediately after the birth of their babies, and if they are allowed to have treatment while they can keep their babies there is a greater incentive for them to get off of drugs, number one, so it is more likely to be successful and that these work.

It is my understanding that at one time in our history New York State expressed a commitment to this kind of treatment as an answer to the issue that you are raising here, ie, newborns tested positive. What happened to that program and why aren't we talking about that as opposed to establishing a level of neglect which threatens the mother?

SENATOR SKELOS: Protective services could determine that the child could still go home. So if a mother is in one of the these programs, protective services could make a determination when the child is born, that that environment will be safe and the child can go home.

SENATOR MONTGOMERY: All right. Thank you, Senator Skelos.

Madam President, just briefly on the bill. Obviously I find this very troubling that we are once again moving in the direction of penalizing the mother. We're treating drug addiction as a crime rather than as a sickness that needs to be dealt with. And let me just say that I do view this as a slippery slope because we know that the fastest growing segment of the prison population is women and most of the reason why they are in there is related to some kind of drug activity and so now we're setting up a situations where a mother goes into the hospital, has a baby, the baby tests positive, and rather than treating that mother for the drug addiction and attempting to bring her back to health so that she can be a healthy good parent we're placing her in a position where, one, her child can be removed from her and two, where eventually that parent might be put in and categorized as having committed a crime. That is the way some states have addressed this issue by the way.

So I am opposed to this. I that think this is absolutely the wrong answer to a problem. There are many better ways to do it, and certainly we don't want to end up having women go to jail because their babies test positive. So I want to say again to my colleagues, I'm not changing my vote on this. I am voting no, once again.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: I appreciate your concern. But one day I spent the afternoon at Hale House with Lorraine Hale and her comment was basically that the child should never go back to the parent that has abused drugs during birth. So I think this is a very moderate approach and reasonable approach to dealing with this problem.

THE PRESIDENT: Senator Saland.

SENATOR SALAND: Thank you, Madam President.

I rise to commend Senator Skelos for what I would consider to be an absolutely excellent job well done in the course of bringing this bill before us. There certainly

seems to be some misinformation or some inappropriately drawn conclusions that are being bandied about with respect to this bill. One of my colleagues I heard refer to the class of people who were most at risk, I think he used the term being most vulnerable and least protected as being certain mothers. Well who is more vulnerable and less protected than a newborn? That is the person with whom we should be most concerned.

I heard several of my colleagues at one time or another or several comments make reference to fetal testing. There is no fetal testifying involved under Senator Skelos' measure, nor is there any testing required of any women under Senator Skelos' measure.

And I guess those who are opposing this bill are effectively advocating the continuation of a system which effectively cuts mother and child loose, unsupervised to become statistics, perhaps fatalities, to become statistics, perhaps a mother who will go onto yet additional drug use and perhaps get involved in the criminal justice system because really without this kind of a measure,

how in the world do you expect to try, even in the name of family reunification to get a mother into a program. There is absolutely nothing in the existing law that directs or pushes a mother of a child who is born with a positive toxicology into a program. And there is not a system in the world that you have in this state that could possibly require that mother to do it. She could basically thumb her nose at you and say kiss off, I'm not interested. And when she comes back again and again and again and you've had multiple incidents, and then when the child winds up becoming a statistic you can say the NOW memo told me, this shrill, ill informed piece of garbage told me that I should not support this measure. If you base it on this your committing one of the vilest inappropriate acts that anybody could commit because this is purely a piece of junk.

I would like to congratulate again Senator Skelos. He has labored long and hard and he has the interest of children at heart as he has shown time and again in many other instances of dealing with child related

issues.

I think we ought to get beyond what I would consider to be misinformation, look at the facts, how do we help children, how do we help the mothers who those who seem to be opposing this bill are concerned about. I can assure you with absolute certainty and challenge anybody on the other side of the aisle to tell me how a mother under the existing system who is abusing drugs and can not go through a positive tox test is going to be put into a program which will enable her to seek assistance and enable her child to have the opportunity to be nurtured and to grow with that mother in an environment in which that child will have at least a modicum of opportunity instead of perhaps a condemnation, a condemnation of a life of ill health, ill performance and perhaps even death.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President, on the bill.

I appreciate -- I appreciate the fact that this is a well intentioned measure

designed to address a very difficult problem, the problem of child abuse and child neglect is severe.

However I have to say as someone who, before I went to law school spent two years working in a prison and most of my time was setting up a drug and alcohol treatment program in a correctional facility and for those who just recently left the correctional facility, I find that the drug treatment policy of the present administration of the State of New York to be utterly incomprehensible to anyone who has ever worked in a system like this.

And I think that the problem I have with the bill in addition to several of the issues that have been raised, that I really have two points I want to make and I will try and be as brief as possible.

It is absolutely clear that where we have positive programs to encourage people to participate in drug treatment it has a tremendously beneficial effect. One of the great drug treatment programs in the history of the world, Phoenix House, is in my

district. I have worked closely with them. There are drug programs that work. And if you test a newborn, the drug use is already done, you are not helping a pregnant woman get into a program. There are programs that can accomplish that. We know what they are and yet we see in the budget proposals of the Governor and in his vetoes last year and in the reluctance I understand or our own house to restore funding massive cuts to funding for adolescent treatment programs because we are dealing with youthful mothers here. Massive cuts to funding for school and community based drug prevention programs.

So on the one hand we are telling poor women, predominantly members of minority groups, we are going do test you, we are going to get you, penalize you. We are not providing the funds before they get to the hospital to deliver their baby to help them and we know those funds can be effective if they are applied properly.

The second point I want to make is that this seems to be a part of a pattern that, again, I find somewhat incomprehensible.

We are making -- we are discouraging people from going to health care facilities in this state in a variety of ways. And I think it is astonishing that at the same time we are trying to deal with this issue and trying to be tough on those who might abuse the system, that I can not seem to get any progress on a bill to encourage and protect women trying to visit the very clinics where they get drug counseling; family planning and reproductive health clinics. We need to open up the doors so that people can get into the programs that will solve these problems and will actually prevent children from being born and testing drug positive.

I have to advise my colleagues, as I do every week, that we have two further reports of acts of violence and terrorism at family planning clinics and I sit here week after week hoping that the clinic anti-violence bill will come to the floor.

Planned Parenthood of Chicago had to be vacated yesterday when another anthrax threat was received. Planned Parenthood of Mexico at San Mateo was -- there was a bomb or

a fire, they are not clear which, that destroyed a portion of the clinic and they also had another chemical threat. So this a problem that we don't seem to be able to address and I would urge you that if you are concerned about pregnant women abusing drugs, we know the facilities where poor women seek counseling, where poor women get into drug treatment programs, and I hope we will get the clinic anti-violence bill to the floor so we can begin to encourage people and support people who want to get to see there doctors and hopefully take that step.

I will vote no and I encourage my colleagues to do likewise.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

I want to rise also to congratulate my colleague Senator Skelos in bring up this piece of legislation that is much needed.

Anyone who has had any dealings with drug addicts or has had to deal with drug addiction knows full well that the addict is a

very difficult person to deal with. They will lie, they will cheat, they will steal. They will do anything to get that god almighty drug. They don't care about anybody. They don't care about their parents, they don't care about their children, they don't care about their families, they don't care about their friends, and frankly they don't care about themselves.

The rate in the programs mentioned by some of my colleagues, talk about recidivism, they go back to it. They could be off the drugs for a few weeks and the inclination comes upon them, something happens in their lives, they go back to the drug. The drug is the almighty god, the drug is the leading factor, the drug drives their lives.

What this bill is striving to do is to take the children out of that lifestyle, out of that realm, out of that filth, if you will. You have to product the child. If the mother can go get treatment, god bless her, open up as many doors as possible for that. We would be happy to do that. But the child is there. That is a living creature and we

have a responsibility to protect it and keep it alive. We can not allow drug addiction to destroy that child's life. And addicted parents and an addicted mother who is taking drugs while she is pregnant is destroying or the potential to destroy that child's brain, impact that child's development while it is in the womb. Anything can happen to that child so we have a whole host of problems that are going to arise from this.

We must act to protect the child first. That is the primary responsibility. That's the new life. And that is what this bill so correctly attempts to do. All the rest that I am hearing about clinic access, everything that my colleague mentioned, is a crime now under current law, can be enforced now under current law. You brought up yesterday the bombing in North Carolina. To my knowledge, and I would like the chair to correct me if I am wrong, placing a bomb in someone's place of business is a crime under the current law when I last read it. I'm not a lawyer. I'll back off on that if you can correct me.

There are criminal penalties to pay for this. Catch the person who set the bomb, put them in jail for the rest of their natural lives, except we'll probably have someone on the other side of the aisle stand up and say, Wait a minute, we can't have a harsh penalty like that once we've caught him because we hear this debate over and over again when we try to extend the penalties for these criminal types of behavior. We can't do that, its too harsh, its too strong, we take too many liberties, we are taking away their rights, all this kind of garbage. Meanwhile people are dying, children are becoming addicts who are born of addicted parents. This has to stop. This society has to make a statement and a very firm statement. Drug addiction at any time is wrong. It is wrong. And risking a child's life has got to be stopped now.

I vote aye on this bill and I urge all my colleagues to vote aye. And I think you Senator Skelos. This is an excellent bill.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Madam President, in an effort to perhaps share

another perspective that has not been addressed today on this particular measure, I spoke with my father about this bill last year upon my arrival to the Senate because we never see this bill over in the State Assembly.

My father is a pediatric cardiologist. And he spent most of his career in ORs, but also in delivery rooms, particularly when it came time to address the needs of the child upon birth with a cardiac condition. To hear him talk about all of the tests that we require by law in this State to be performed upon infants upon birth, of all of the extraordinary means we utilize to try to preserve and protect the life of that infant, the life of that newborn, and then to hear on the floor that we are somehow concerned that if a test is done on a child, on a newborn, and it comes back positive that some how we are not going to act on it.

Put yourselves in the position of the physician who now has this newborn, someone he is trying to bring to life and make sure that the child survives and the child is addicted to drugs and is in withdrawal, is

showing symptoms of drug abuse. And you expect a physician not to do anything about it? That is ridiculous. Do you know right now under the Public Health Law there is a requirement that is a misdemeanor, is a misdemeanor penalty on the physician if the physician does not perform a blood test for Phenylketonuria. It is a misdemeanor for the physician not to perform that test. And the argument that this is some how against the rights of the mother because it presents evidence without her being able to refute it, hey folks, res ipsa loquitur -- the things speaks for itself. The child is not going to go out and get addicted to drugs. It shares a circulatory system with the mother. The reason why these drugs are so dangerous is because not all things pass the placental barrier, these drugs do.

Senator Skelos has had a history of taking on tough causes and things that begin as controversy but end as a law and common sense in this State. I commend you again for taking this effort up. I'm going to vote yes.

THE PRESIDENT: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President. I too stand in support of this is bill for the following reasons. It is troubling that we have to debate whether a child should go back into the home and preserve the family unit that is something that I grew up with as a kid. And now we're being told that some how when that child is born at birth it is not going to go back to the parents. That is troubling to me conceptually because that's the way I grew up. But society is not the same today. The standards of the preservation of the family unit is being challenged. And maybe it is a sad state of our society when we see children are being murdered in their homes, children are being maimed in their homes.

One of the incidents, the Christopher Gardner case in Sullivan County is classic example of -- and I will not tell you the details of it, but a child was literally brutalized. Every bone in his body was broken, thrown down a flight of stairs, burned with cigarettes by a family, a mother and boyfriends that were dysfunctional because of

drugs. It is not proven in a court of law yet, but that is the initial evidence.

Let me tell you what is happening today. It was interesting to hear Senator Waldon say the most vulnerable, I think, and I am quoting now, and if I am not quoting correctly you tell me, is the poor, the Black and the Hispanic, talking about the mother. Who could be more vulnerable than the baby, thats one day old or two days old and has drugs in their body.

There was -- these statistics are not accurate but they are close. There was a national study of children that were killed in their homes from abuse and it was like close to two million since 1996. And 75 percent of the children that were killed was by the spouses, maybe one or boyfriends in the home. So when we put children in the concept of the home it is not necessarily a safe environment any more. Things are changing. And although it may be an admission of a failure of society and the breakdown of the family unit, somebody -- somebody has to step up to the plate to protect that child. And Senator Skelos with

his bill starts that debate and I challenge you, who else is going do to for that child if we don't start.

And you know the other things you talk about are very legitimate. Maybe better drug treatments for the mother. Absolutely. That's another fight. That is another issue. But every time and every day we debate and we delay every hour there is going to be another death from a child that went back to the so called home, the safe environment that simply is not safe any more.

So I think it is a fact of life today of our society and it is a sad commentary, but we have to start soon and this is why I stand up in support of this legislation.

Thank you, very much, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I rise frankly not quite sure what to do with respect to this bill. I voted in favor of it in the past. I just want to

review some of what has been said and maybe look at the underlying nature of this bill and what exactly it does.

First of all, I hope I didn't misunderstand Senator Marcellino. I hope he didn't say, and maybe I misinterpreted, I hope he didn't suggest that taking away someone's rights suggesting that you were taking away someone's rights garbage. I would hate to think that in this chamber taking away rights granted to them by the New York State Constitution, the United States Constitution, that somehow taking away those rights, or those of us who suggest that government may be taking away someone's rights, that that argument is garbage. I would suggest that that instead is the principle for which this country was founded. That government is restricted in the ability of what it can do. And those who argue for individual rights, whether it is the rights of a pregnant mother or anyone else's rights, are simply seeking to preserve the principles that this country was founded on; the relationship between government and the individual.

Senator Balboni, with all due respect I don't think anyone in this chamber is suggesting that we shouldn't do anything upon a finding of a positive toxicology report. That is not what this bill is about. The bill isn't about whether we do nothing. This bill is about whether we create prima facie evidence of neglect upon a finding of a toxicology report that is -- that shows evidence of exposure to drugs. So I appreciate your comments, but we are not comparing doing nothing to this bill. In fact, that evidence can be used as some evidence of neglect in an abuse proceeding. What Senator Skelos' bill does, as I understand it, is it establishes a rebuttable presumption. And it also constitutes prima facie evidence of neglect. This alone could constitute neglect. So with all due respect to Senator Balboni, and I appreciate your bringing your father's experience because I think it is important, but we are not talking about a situation where we are saying do nothing. We have under the current system that can be used as evidence of neglect. What

Senator Skelos' bill does is it rises it from some evidence of neglect to become prima facie evidence. This alone may be sufficient to withdraw parental rights.

Senator Bonacic, I would simply comment to you that I agree with you about the importance of children. But remember what we are talking about doing. The bottom line of what Senator Skelos will do, and it may be warranted in some cases, is we are empowering government in certain instances to do one of the most critical things that we can ever do and that is to take a child away from its mother. That is the bottom line. And I would suggest to you, anyone who suggests, as some of my colleagues have indicated, that this is something we ought to be very sure we're doing the right thing as I think Senator Skelos would say. Senator Skelos' position on this bill is that evidence of a positive toxicology report is sufficient for the power of government to sever the parent relationship and take the child away from the mother. That is an enormous power for government to have, and I would just suggest that my colleagues

who have suggested that we should do this carefully and with good reason are well justified in their position.

My concern about this bill does not so much lie in what it does in its intent, but the science that under lies it. You have heard a discussion today about the nature of positive toxicology reports and what they mean. Let me give you some additional evidence that comes to you from the following sources: This from the Center on Substance Abuse Treatment, United States Department of Health and Human Services in a publication in 1998 entitled, Pregnant Substance Abusing Women, states, "A pregnant woman who is addicted to heroin faces a catch 22. If she stops cold turkey, as some advocates urge, the resulting withdrawal can cause fetal death. If she continues to use heroin, if she switches to methadone the child will still undergo withdrawal because both substances are addictive to the newborn.".

Let me quote an opinion from Sheriff v. Encore, a case from Nevada in 1994 in which substance abuse statutes were used

against women who tested positive for toxicology. The court found that the child abuse statute could not be used to against a pregnant woman because to hold otherwise would open the flood gates to prosecution of pregnant women who ingest such things as alcohol, that very addictive, very powerful, substance which impacts fetal health, which is not included in this bill, nicotine, that even more addictive and dangerous substance, which is also not included in this bill, and a range of miscellaneous otherwise illegal toxins.

There has been discussion about who is addicted to drugs. Who as a pregnant woman is addicted to drugs. Let me provide you with some information from the Southern Regional Projection Infant Mortality, A Step Toward Recovery in 1993 which says the following: "Newspaper reports in the 1980s sensationalize the use of crack cocaine and created a new picture of the typical female addict; young, poor, Black, urban, on welfare. The mother of many children and addicted to crack. In interviewing nearly 200 women for this study a very different picture of the typically

chemically dependent woman emerges. She is most likely White, divorced or never married, age 31, a high school graduate, on public assistance, the mother of two or three children and addicted to alcohol or one other drug. It is clear from the women we interviewed that substance abuse among women is not a problem confined to those who are poor, Black or urban, but crosses racial, class, economic and geographic boundaries.

Further evidence questions the science of the correlation between toxicology reports and a finding of -- presumptive finding of neglect.

THE PRESIDENT: Excuse me, Senator. Senator Saland, why do your rise?

SENATOR SALAND: Would Senator Dollinger yield to a question?

THE PRESIDENT: Senator Dollinger?

SENATOR DOLLINGER: I would be glad to Madam President, when I am finished.

THE PRESIDENT: He does not yield, Senator.

SENATOR DOLLINGER: The brief -

amicus curiae -- the brief of the California Medical Association and the American College of Obstetricians and Gynecologists filed in 1993 contained the following information. Identified drug exposed infants should be reported to child protective services only if factors in addition to prenatal drug exposure show that the infant is at risk for abuse or neglect.

A brief filed on behalf of those people who attend to children and who comment that that finding alone shouldn't be sufficient to show neglect.

And a couple more quick ones just for the record. In a survey the Center for Health Policy Research at George Washington University in their book -- their article entitled, Analysis of Resources to Drug Exposed Infants and their Families says, "A survey of women's attitudes regarding punitive laws found that substance abuse pregnant women would go underground and avoid treatment for fear of incarceration or loss of their children." The experts commenting on the fact that if the drug test is going to be positive

there is a danger that they will go underground and they will get away from the very treatment that we would like them to have.

From a report in the United State General Accounting Offices, Drug Exposed Infants, a Generation at Risk, it states, "Many women's treatment experts contend that as stigma, rejection and blame increase drug abusing women's feelings of guilt and shame increase. This leads to lower self esteem, increased depression, immobilization and isolation. As societal stigma increases, willingness to enter drug treatment decreases."

Finally from the Criminalization of Prenatal Use, "Punitive measures will be counterproductive." In 1990 from the National Association of Perinatal Addiction Research and Education. "If a woman does go to prenatal care or delivery she will be less likely to disclose her drug and alcohol use to her health care providers if she believes that she will be subject to criminal prosecutions or loss of her child. Thus her doctor and her

nurse will not have all the information he or she needs to treat the woman and her subsequently born child."

Again, this will only serve to impede the long term goal of insuring the health and well being of mothers and their children.

And lastly I would close with one other comment that my colleagues have made about tobacco use and nicotine. Understand that as dangerous as the ingestion of illegal drugs may be, there is no question that tobacco use is the prime killer of children who are born if their parents are addicted to nicotine. It says, "Tobacco use is also responsible for an estimated 1900 to 4800 infant deaths resulting from perinatal disorders and from 1200 to 2200 deaths from sudden infant death syndrome."

What does all that mean? It all means that if you look at the legislative declaration that underlies this bill you will find that the science it is based on is highly contested, highly contested. That the facts that they would have you draw in the

legislative declaration are really significantly debated throughout this country.

I don't believe that there have been any hearings on this bill. I would suggest that before we declare this to be the science of this state, we ought to hear from other experts who may know a little bit more about the problem. We ought to hear from other experts about the nature of this issue.

Given all that, Madam President, I close with one other thought. I'm not even sure as I sit here right now how I am going to vote on this is bill, but I will say one thing in conclusion. I believe that this bill continues a trend that I find very discouraging, and that is that we tend to put together solutions to problems without giving people the resources to make them work.

I would suggest, Senator Skelos, that this bill which will require prima facie evidence of -- would create prima facie evidence of neglect on the part of the mother will immediately lead to a significant increase in Family Court applications for neglect. In enormously difficult situations

where mothers have just given birth and are informed immediately after their birth within 48 hours before they got out of the hospital because we gave them 48 hours to stay, they are going to be told that their child is going to be removed from their custody.

I would suggest that before we put this bill into law, lets put our money where our mouth is. If we are going to do it, if we want to do this, lets put a 25 or 35 million dollar appropriation behind this bill for the Family Courts of this State so that we know that they can handle the neglect procedures that are going to -- that are inevitably going to follow from this bill.

Again, Madam President, I am still making up my mind, but at least at this point I think the science of it is suspect. I also think that the -- frankly the decision weighs in favor of voting against it.

THE PRESIDENT: Senator Saland.

SENATOR SALAND: I had asked a bit earlier if Senator Dollinger might yield. If he still has the floor?

THE PRESIDENT: He indicated he

would yield when he finished.

SENATOR DOLLINGER: I did Madam President. I apologize for concluding without recognizing Senator Saland.

SENATOR SALAND: Thank you, Madam President.

If Senator Dollinger yields through you, Madam President?

THE PRESIDENT: Senator Dollinger has already indicated he yielded at the end of his presentation, so you may proceed, Senator Saland.

SENATOR SALAND: Thank you. Senator Dollinger, in your earlier remarks I believe you said, and rightfully so, that this bill establishes a prima facie -- as prima facie where there is a positive toxicology report on an infant. And the question that I have of you is that, is it your understanding that based upon that positive toxicology finding that a child would then -- that that child would then summarily be removed from that child's mother?

SENATOR DOLLINGER: Madam President, are you asking about current law or

the effect of this bill?

SENATOR SALAND: Under this bill.

SENATOR DOLLINGER: It is my understanding that it would create prima facie evidence that alone would stand for a finding of neglect. A court would find neglect based on that fact alone. That is what a prima facie case is.

SENATOR SALAND: Madam President?

THE PRESIDENT: Senator Dollinger, do you continue to yield?

SENATOR DOLLINGER: Yes, I do Madam President.

THE PRESIDENT: Go ahead, Senator Saland.

SENATOR SALAND: It has been a long time since I have been in law school, but my understanding with respect to a prima facie case is that it is just that, prima facie. It gets you through the door. It does not necessarily amount to being dispositive. And depending upon what follows there will be determination as to whether or not you prevail or not.

So I would ask you the question

again. Is it your understanding that Senator Skelos' bill which yes, does establish where there is a pos tox a prima facie finding of neglect. Is that enough to summarily remove the child from its mother?

SENATOR DOLLINGER: And the answer I believe, according to law, Your Honor, is yes, it is. Once you establish a prima facie case, in the absence of evidence from the opposing party, you are entitled to judgment as a matter of law. You have established what is necessary to remove the child.

And what this does, as I understand it, unless I am mistaken, is this shifts the burden of proof from the government to the mother. And it says to the mother, we found prima facie evidence, we can take your child, tell us why we shouldn't. And I would suggest that that radically alters the system of burden of proof in this State and in the Family Courts before a child is removed from their mother.

May I add one other thing, Madam President, if I may. If I am mistaken I would

be glad to have a correction from Senator Skelos or someone else who better understands the bill.

SENATOR SALAND: Let me take it a step further and go back to your comments. I think your comments imply that there would be a hearing, correct? I mean, that was the gist of your comments, that the burden of proof shifts. Therefore if the burden of proof shifts, this has to be in a forum in which there is a presiding officer and there is hearing; is that correct?

SENATOR DOLLINGER: I assume so, Madam President. I do not know. I don't do this kind of legal work. But I assume there is a hearing, right.

SENATOR SALAND: And if Senator Dollinger will continue to yield?

THE PRESIDENT: Senator Dollinger, do you continue to yield?

SENATOR DOLLINGER: Gladly, Madam President.

THE PRESIDENT: Go ahead, Senator.

SENATOR SALAND: Thank you, Madam

President. And if that burden of proof is now shifted, the burden of proof has now shifted to the mother, and it is now her responsibility to go forward and show why there is no neglect in this case. And if you look at that section of the law, that is Section 1046, which is the section that deals with evidence, and if you look at Section 1051, which is the next section of the bill, that is the dispositional section and it deals with what occurs upon disposition. And what that section concludes with is, and I will read in part -

SENATOR DOLLINGER: Are you reading the bill? Excuse me, Madam President.

SENATOR SALAND: Yes, I am looking at lines 47 through 53 on page four of the bill, and it reads in part, "Such that if the child shall establish a rebuttable presumption that the release of the infant to the parent presents an imminent danger to the child's life or health." A rebuttable presumption. Again, at the dispositional hearing.

Now that burden of establishing an

imminent danger to the child's life or health certainly I think speaks for itself and what you now find yourself in a situation under the dispositional portion is you had a prima facie case which could be rebutted by the mother in a hearing. No summarily coming in the hospital, removing the child and saying you shall never see this child again. The same process that controls in any other neglect or abuse hearing, Family Court hearing, judge presiding, evidence taken and disposition. Upon disposition there has to be a finding that the release would present an imminent danger to the child's life or health. So the mother, I would think would have the ability to overcome that finding or that presumption, excuse me, by showing that she had the ability to supervise and plan for the well being of that child. If she couldn't it would fail as it would in any other situation presenting itself to the court as a neglect dispositional hearing.

So I would suggest to you that you have taken some liberties, perhaps inadvertently, with what this law actually

provides and I think there is nobody who is being denied due process and nobody who is having their child removed without the opportunity to be heard. What we have done is we have modified the standard to say first and foremost that the most vulnerable, contrary to what we heard earlier from Senator Waldon, the most vulnerable player in this whole mosaic is the child, and we think that we have to take extra special precautions where there is a positive toxicology to give the child the benefit of the doubt. Not to remove the mother's right to keep the child, but just to put an added layer of protection in the best interest of the child.

SENATOR DOLLINGER: Madam President, if I could just address Senator Saland's question via response, the way I read the bill, what it says is, if you have a pos tox report you establish a rebuttable presumption that the release of the infant to the parent presents an imminent danger to the child's life or health. Imminent. That the mere fact that they test positive means that that child is in imminent danger and therefore

the State can take the child away from -- has the ability to take the child away.

I understand that this bill creates a rebuttable presumption and that there would be a hearing in which that presumption could be rebutted. I would just suggest, what is the evidence that rebuts that finding?

Maybe I should even ask Senator Saland the question. What evidence could be permitted, through you Madam President, Senator Saland will yield?

THE PRESIDENT: Senator Saland, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: What evidence can be used by a mother who has a positive toxicology report to rebut the allegation that that fact alone is imminent evidence of danger do the child?

SENATOR SALAND: I would think that among the things that that mother could present in the course of a hearing would be by

way of illustration; A, I am currently in treatment, B, I have located an alternative caretaker, C, I am planning for the child's future, D, the some total of all these things show on my part that I have an on going and permanent interest in the well-being of my child and I am planning for his or her future and this conducted on my part that brought me before the court by reason of my being involved in illegal drugs is something which I am currently doing my best to show was an aberration and I am going to spend my life being devoted to my child. I think any or all of those things in concert would be enough for the mother to go forward.

SENATOR DOLLINGER: Okay. Madam President, I concur, and I want to thank Senator Saland. You are absolutely correct. I think that is the evidence that you would put forward.

I would simply suggest to all my colleagues though that if this bill passes, if 49 percent of the evidence shows all those facts that Senator Saland suggests, 49 percent of the weight of the evidence shows all those

facts, your child will still be taken away from you because there will be a presumption that the positive toxicology report creates an imminent danger to the child's life and health. Forget all what Senator Saland said. That may be persuasive, but the burden of proof is now going to be put on a mother, a mother to defend her interest in her child.

I would just suggest to you that as well meaning as this attempt is, and I appreciate its well meaning nature, as important as it is that we deal with the problem of women who abuse drugs during the period of their pregnancy, I would just suggest that before this government flips the burden of proof in these proceeding, and quite frankly as I sit here talking about it I become more convinced that I should vote no than before, but before we flip the burden of proof, before we put a women who is going through drug problems in a position where she has to prove to the state by a preponderance of the evidence that there is not imminent risk of danger to her child, before we do that, we should require something more than

simply a positive toxicology report because otherwise every woman in this State who is addicted to drugs, every time she is going to become pregnant she is going to have to consider some terrible, terrible, terrible choices. And unfortunately we may take the most desperate women and make them even more desperate by putting this in place.

Senator Skelos, I applaud what you are trying to do. I think this the wrong way to do it and I think this could unfortunately take the very people you are tying to help and put them in a position where they don't go to treatment, they don't get the right prenatal care, and their child that we're all concerned about will actually end up worse off trying to deal with not only the consequences of their mother's drug about, but without their mother or their father at their side.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

Similar to Senator Dollinger, I voted for this legislation last year and was very impressed to hear some of the questioning

that has gone on this afternoon, questions from Senators Oppenheimer, Sampson and Duane, Senators Waldon, Montgomery and Senator Schneiderman, who I think raised some issues that challenged my view as I voted last year and I kept hearing an answer from Senator Skelos that I heard last year and an answer that I thought was one that was very strong, very sincere and very hard to counter. And that was that if there was any mistake or if there was any err in the legislation that he wanted to err in favor of the child, that the child was the most vulnerable issue in these types of hearings.

I think that the questioning has very much been misunderstood. I think there were at times attempts to make it appear that somebody here is not interested in the welfare of the child and that these Senators who came forward with some information in this discussion were actually doing it to in any way deny the newborns that we aim to protect the apt treatment that they so rightly need to receive.

I think we all in this chamber

would concede that anybody who tests positive in this kind of situation would clearly be, if not addicted, suffering from some judgment that certainly was not in the best interest of the fetus this close to birth. And to test positive would be certainly something that would raise an eyebrow in a serious way as to the ability of the mother or whomever is in the home to properly care for the child.

However as Senator Skelos would certainly concede, he never was really asking that we immediately take the child away from the mother. His legislation speaks to the issue of the actual hearing that would determine whether or not there would be a removal of the child.

And it is really in that sense that I think I am persuaded by some of the issues that were raised earlier. Senator Sampson asked the question about the arbitrariness of conducting a test, a test at the time of birth based on the opinion of a doctor that there should be a toxicology study to determine whether or not the newborn tests positive for drugs. And in that respect it would seem to

me that since we take a test already automatically that tells us a lot of things about the infant including whether or not they test positive for HIV, that perhaps a solution that we need to consider is that we add the pharmacological study for toxicity to all of the tests that are taken by newborns which would relieve the question that Senator Sampson is raising.

Senator Duane mentioned that actually it was the existence of all situations in the home, not just the status of the mother that would really determine at the hearing whether or not it would be proper for the state to remove the newborn.

Senator Montgomery raised the issue of alcohol. Certainly a contributor to the violence in the home and child abuse when it is more frequently found in the system of mothers or in the test for newborns. And Senator Schneiderman raised the issue of tobacco. Well, these don't exist in this legislation.

So therefore what we have is a piece of legislation that certainly addresses

an issue, but is somewhat narrow in its perspective of how much we are going to actuality try to protect newborns from abuse. So I raise to my colleagues whether or not we are going to really try to find some workable, sensible, achievable remedies for what is a very serious this problem.

It is correct that Senator Skelos points out that there is a higher instance of violence against infants when there is a test of -- drugs found in a test conducted on newborns. But the fact is that we heard statistics presented by other Senators here that these are some of the many areas that are indicators for what could be certainly a foreboding situation for young people.

Senator Dollinger raised the issue of the 1994 Supreme Court case of Sheriff v Encore. And also raised the issue that in certain situations if the mother were under the care of a physician already that at that point it might not be a good idea to take the mother off the drugs right before the fetus is born because it could actually damage the health of the newborn. If that's the case

this could become some of the evidence that Senator Saland was referring to that would be presented as a response after a presumption was made at a hearing, a burden of proof presumption. And if that's the case, since the consultation with the physician came before the actual birth, the facts is that maybe we shouldn't be making a burden of proof switch if we have evidence that there are situations where the mother is put in a position of having to remain on substances to actually protect the child. It sounds a little bizarre, but medically it seems to be substantiated by what Senator Dollinger offered to us as reports from the California Medical Society and other places.

And so really after hearing these types of questions, I have come to the conclusion that there has to be a better way to write this bill. That what I was willing to accept last year and what Senator Skelos was willing to accept in terms of the legislation has been significantly challenged, not in a shrill way, not by anybody pedaling a bunch of simplistic exaggerations, but by some

real comprehensive information that was offered to us such as in the case of when Senator Schneiderman raised the fact that those who would be afflicted would not be likely to receive medical care because if they are addicted to drugs and they will do anything to stay on the drugs, as was suggested by Senator Marcellino, then it is likely they would stay away from the health care centers because they know they would probably be subjected to a test that would make them lose their newborn.

So I think that when we take a look at this whole situation we would be well advised to take Senator Dollinger's advise and conduct hearings on this legislation because I would suggest that it is not at this point comprehensive enough, and in some ways even far reaching enough to really satisfy the needs of the residents of this state.

And just my final comment is that I really benefited from this discussion today and I don't think that there was any attempt to in any way make excuses or in any way try to make the conduct of those who are engaging

in the use of substances during the critical time of their lives when they are about to give birth in any way, it does not excuse that, it just simply tries to support the effort that will inure to the benefit of newborns to try to preserve their lives in the first place, to give them the decent health care that they would need and to also try to put them in a situation where they would also be able to grow and not hopefully wind up in foster care or festering away in group homes as we have made so many others who were taken away from their mothers endure.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Madam President, on the bill.

I have a great respect for my colleagues who have articulated some serious concerns about the legislation proposed today and I too share a number of those concerns, including the concerns about testing of false positive and our commitment to funding programs which provide drug treatment. But it occurs to me, Madam President, that we are called upon every day in this institution

dissect legislation and perform an analysis of the potential policy implications of what comes before us and to assess the efficacy of that legislation, to weigh the good against the bad and to determine whether the negative implications of a piece of legislation out weight the positive.

And it is my belief that in terms of this piece of legislation that the negative implications pale in comparison to the potentially negative implications of not passing this piece of legislation.

It is my belief, Madam President, that a child that is born testing positive for narcotics when we know that the mother ingested those narcotics during her pregnancy, that that child has been neglected, that child has been abused. That child was not only placed in jeopardy in terms of its life, but potentially being born premature by having a low birth rate, by compromising the cognitive and developmental abilities of that child as a consequence of the narcotics in that child's system, but in addition and of equal importance, we know that a mother who has a

dependency on narcotics of some sort is likely, because of that addiction, because of that dependency, not to be paying one hundred percent attention to the care of the child and could possibly, because of some physiological, emotional, psychological impairment not provide the best care possible for that child. And so the environment that the child would be reared in is compromised, is dangerous. And Madam President, if a child is born with drugs in his or her system I want that child removed from the family immediately.

Are we shifting the burden in this case? Yes, we are shifting the burden. But I believe that this situation calls for a shifting of the burden. There are times when we need to protect the interests of children. This is one of those times. And although this is not a perfect piece of legislation, and I would suggest to the sponsor considering amending the legislation to take into consideration some of the concerns that have been raised, we would be failing as a governmental body if we did not seize upon the opportunity to prevent the potential for a

child to be born -- not to be born, to die prenatally or to be born seriously impaired, or as a consequence of somebody's drug use in the home pursuant to knowing that that child had drugs in his system because the mother took drugs while pregnant that we knew that and didn't do anything about it I believe that that would be an abdication of our responsibility and therefore I support this legislation.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Madam President, I believe that each and every member in this chamber has profited by the contributions that have been made and the insights that have been advanced on this very important question.

When we speak of a rebuttal presumption, we speak of a presumption that can be reputed, not on the grounds that toxicity was not in fact present, but it does open the door and encourage a manifestation and a determination to advance in the conduct of the respondent at the hearing that this will -- that the full consciousness of the gravity of the situation and a determination

to protect that offspring.

So the bottom line I think weighs in favor of taking this step because the hearing is provided based on a rebuttable - and a rebuttable presumption is one that can be rebutted, otherwise it does not make sense. We are not going to object on the grounds that it never took place and it was an erroneous finding. So the question really goes to what kind of conduct do we engender and the feeling that may be engendered by the conducted of the hearing offering ample opportunity as was so well demonstrated I believe in indicating that there is a firm determination to protect that child. And I believe this would be a very constructive step forward and other suggestions have been made about enriching the process by which that child can be protected in the future. Those are valid observations that maybe objectives legislatively. And also perhaps other kindred surreptitious toxic influences that maybe brought to bear. But on balance I believe that we have a fair statement attempting to elicit a determination on the part of someone that suddenly faced

with a rebuttable presumption to rebute by an indication and manifestation of intent on how to address this very serious responsibility.

So I do not term that as pejorative in characterizing this situation generally, but an encouragement to seek a better solution to the frightful prospects that that offspring may face.

So I would encourage a yes vote on this bill.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Senator Waldon. Call the roll first.

(The Secretary called the roll.)

THE PRESIDENT: Senator Waldon, to explain your vote.

SENATOR WALDON: Thank you, very much, Madam President. I will try to be brief.

THE PRESIDENT: Thank you.

SENATOR WALDON: Last year I voted up on this proposal and today the debate

was lively, it was substantive, it was moving. We did not address the mother from Scarsdale who has a private gynecologist. I believe this proposal applies mostly to the poor Black, Latino mother in a health clinic somewhere.

We didn't deal with the fetal rights of the child outweighing the rights of the mother. We didn't deal with what is truly fair in terms of how we apply laws to this particular situation. The reason that I'm going to vote no today is that we currently have laws on the books of the State of New York which allow when a positive test, toxicity test occurs in conjunction with other evidence to remove the child.

The gathering of the other evidence requires an investigation by social services. Social services budgets have been cut, which precludes a possibility of an investigation of follow-up. The law is on the books now. So what this proposal is an end run around the responsibility of the state to properly and appropriately do its job.

So what we out to do is to give the

money to DSS so that the investigation and follow up could be conducted and then rightfully so, other than a prima facie proof on the toxicity, rightfully so the child could be removed from the family.

So what we are dealing with in my opinion, with all due respect to Senator Skelos and this is not an accusation against you, Dean, please don't misunderstand what I am saying, but this is a canard, a gross canard. This is blue smoke and mirrors at its best. Law on the books right now allows us with other evidence to do exactly what this is saying we do with just prima facie proof. We should all vote no. This is a lie that we are conducting to ourselves.

Thank you, very much, Madam President.

THE PRESIDENT: Senator, you will be recorded as voting in the negative.

Senator Duane, next.

SENATOR DUANE: Thank you, very much, Madam President. If I may explain my vote, I first want to say that I applaud what is happening in society and even in this body

that our concern for the well being of children, I think it shows a great advancement in our society. And well intentioned, and I mean that from the bottom of my heart thought that this legislation is, I am still -- I continue to be struck that really the horse is out of the barn already in that when the testing occurs the substance abuse has already occurred and damage may or may not have been done to the fetus at that point any way and then of course there are the issues about the future. And it is a philosophical difference from my point of view that I don't look at the terrible problem of substance abuse in society only as a criminal justice issue but as in my mind, more importantly a public health problem and one that really deserves more concerted effort in research and treatment so that we can deal with this terrible scourge in our society.

I also think it is important to noted that it is not about -- it is not that the baby is addicted to drugs, it is that potentially the mother is addicted to drugs. All fetal -- I'm sorry, newborn testing is

about testing the mother. It is totally about testing the mother and we leave the other part of what it is that people talk about in families here today, which is the father that it in the family and it really does nothing to protect against potential for problems with either the biological parent or father or the custodial parent, whoever the father or the other parent, no matter what gender they may be who is in that family situation as well. And for that reason I am -- those reason, I am voting no.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, if I could, this has been an excellent debate and I am not looking to cut anybody short, but we do have a two minute rule, which as the session goes on and perhaps the conversations get a little bit longer, we should start abiding by the two minute rule.

THE PRESIDENT: Thank you, Senator.

Senator Montgomery.

SENATOR MONTGOMERY: Madam President, to explain my vote I just want to

correct one thing that was said regarding Hale House. It is my understanding, I have spoken added length, I have visited Hale House. And I am really very good friends with Dr. Lorraine Hale, and one of the things that she emphasizes always is that even while the mother is in treatment that mother is allowed to visited her child while that child is being cared for at Hale House.

There is every attempt to maintain a relationship between that mother and child even though the mother may not be -- may be unable to take care of that child while she is in treatment.

The second thing that I want to say is that despite the fact that we talk about this is as being a measure to protect the babies, and certainly I can well imagine that the interest of Senator Skelos and my colleagues who are voting yes on this is bill is that they want to protect the babies. But I just want to remind you that the central theme in this legislation is not a measure that ultimately would lead to creating a hole family, helping the parent, helping that

parent bond with that baby, helping that parent eventually get over that addiction. The central theme is that the infant, the newborn testing positive is prima facie evidence for establishing a possible criminal activity related to use of illegal drugs. That is what it says in the legislation, that's what it says in the justification, that's what it says in the memo supporting the bill. And eventually I want to remind you that this could lead to incarceration.

So it seems like a stretch but I warn my colleagues that it is not so far fetched. And the one positive thing in our discussion today is that Senator Balboni, I believe I heard him say that it was never debated in his house in the Assembly. So I am thankful for that. I hope it never will.

But I am voting no today in this house. Thank you.

THE PRESIDENT: Senator Montgomery, you will be recorded as voting in the negative. The Secretary will announce the results.

THE SECRETARY: Those recorded in

the negative on Calendar Number 208 are Senators Dollinger, Duane, Gonzalez, Markowitz, Montgomery, Oppenheimer, Paterson, Rosado, Sampson, Santiago, Schneiderman, Seabrook, Smith, Stavisky and Waldon.

Ayes 45, nays 15.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 212, by Senator Saland, Senate Print 2722, an act to amend the Family Court Act, in relation to evidence.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President.

Would the sponsor yield to a couple of questions?

THE PRESIDENT: Senator Saland, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Duane, with a question.

SENATOR DUANE: Thank you. I am concerned about this, and I first would like

to ask the question, through you Madam President, of the sponsor whether or not you believe that drug treatment and person's willingness to be in drug treatment is a good and positive step?

SENATOR SALAND: Certainly if you look at the existing law you will see that the law currently recognizes that that certainly is a very significant consideration in how these types of neglect cases should be disposed of. What this bill attempts to do is to avoid the situation in which by way of using as an affirmative defense your voluntarily participating in a drug rehab program and then dropping out of the program or not completing the program, effectively having shortcutted the proceeding that brought you before the court in the first place then requiring an order for the proceeding to in effect have its day in court for the proceeding to be reinitiated. All this is saying is we're taking the existing law and we are saying instead of it being a consideration as it is now as an affirmative defense, it is the very same consideration, only as part of

the dispositional hearing. No change other than -- let me rephrase that. Recognizing that being voluntarily in a drug rehab program certainly is something that augers well for an outcome, speaks well of the parent, but basically provides a device for greater oversight by the court to ensure that that parent will continue in the program and successfully complete it without the need to go back to court two or three or four times.

SENATOR DUANE: Madam President, follow-up question if I may if the sponsor if the sponsor will continue to yield?

THE PRESIDENT: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Duane, with a question.

SENATOR DUANE: I am respectfully disagreeing with what it is that is happening with this. I actually believe that this actually ratchets down from being a positive thing to a much more neutral consideration for the court and I am frankly concerned about

that in that I do believe, and I guess we agree, that a person being enrolled in a drug treatment program is a good thing and shows, you know, a good kind of initiative that to in any way diminish what is highly problematic, particularly in light of the discussion which we just had on the past, on the immediate past bill which we voted on.

SENATOR SALAND: I say this respectfully, Senator. You are free to believe as you would choose to believe, but certainly this bill makes more relevant the voluntary participation of a parent in a drug rehab program. It has been removed from fact finding and now become a consideration in disposition. And again, it can not be thwarted by a parent who would, for whatever reason, go in and out of drug rehab necessitating multiple applications to a court. This recognizes the importance of a parent participating in a drug rehab program and basically continues the jurisdiction of the court without burdening the court with multiple applications.

You may view it as you choose and I

won't take issue with you. Let me rephrase that. I will take issue with you 180 degrees apart from where you stand, but I certainly won't denigrate your position.

SENATOR DUANE: If I may just, through you respectfully, Madam President, just to follow up, I agree that potentially, potentially it could be as positive as exists in the law now, but also potentially it could be neutral or in fact potentially negative, though I think we would all hope that that wouldn't be the case. And that is really what my -- it just -- it changes something that I don't believe should be changed and beyond that I think it also runs the risk of disincetivizing of a mother particularly from being in a treatment program for fear that it might not make any difference as to whether or not they would be able to retain custody of their child. Is that correct?

SENATOR SALAND: I would respectfully, Madam President, ask if that was a question would it please be repeated?

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Is it not true

that with this legislation yes potentially a mom being enrolled in a drug treatment program could potentially then be considered a good thing, but it also could be considered not at all, that's at the judge's discretion, or it could potentially, and I think that we all hope that this isn't the case, be used in a negative manner if there was some kind of glitch in the treatment as opposed to the way it is now where, and I don't -- and because I don't think it should be changed, I think it should be considered a positive thing, is it not that this potentially makes it a neutral or in worst case scenario, negative situation?

SENATOR SALAND: Madam President, through you, what this effectively does is it precludes the abuse of a voluntarily enrolling in a drug rehab as in effect preemptively terminating the ability of the court to deal with the family because that affirmative defense has effectively cut the cord off at that point. What this does, it enables, again, by putting it in the dispositional section, it enables the court to have some continuing control over the situation,

hopefully to work with the family and hopefully to bring the family into some type of a positive conclusion as distinguished from, again, multiple applications being made with little or no intervention and in effect a continuum of what almost becomes a game.

SENATOR DUANE: Thank you, Madam President, on the bill, I just -- this bill makes me uneasy because it makes, from my point of view, drug treatment a factor as opposed to an affirmative action. And I am also concerned that it does take a step back from an incentive that a mom might have to stay in drug treatment based on the possibility that, oh, you know, what's the use, I'm going to lose my child any way. And I think that the present law, which has being in drug treatment as an affirmative thing and something which the court looks kindly on, which I do too is something that we should not be changing.

Thank you, Madam President.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This

act shall take effect in 120 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58, nays 2. Senators Duane and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 213, by Senator Saland, Senate Print 2724, an act to amend the Family Court Act.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: Your welcome, Senator.

SENATOR DUANE: Since this seems to be our day now, I was wondering if Senator Saland would yield to a couple of questions?

THE PRESIDENT: Senator Saland, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: I will try not to make it our evening. I am concerned about this bill. It seems that it assumes a person who is found guilty of having abused a child does not like all children as a class as opposed to the specific instance in which abuse may have been found.

And I am wondering if what the intent is to sort of make children a protected category that a person, if you will, would have a bias against and that is why we're concerned about the employment of such a person among children?

SENATOR SALAND: I would say that this bill certainly and clearly represents an effort to acknowledge that a person who has been found guilty of having committed abuse, now we are not talking about neglect, we are talking about abuse, certainly a far more severe form of maltreatment, and we're saying that where that person has substantial conduct with children the employer of that person who does have substantial contact with children should be notified. It is certainly a relevant consideration. I would not, were I

an employer, I would not want to be placed in a situation in which I had someone who had been established in a court of law to have engaged in abuse of child working in close proximity with children. That is an invitation to disaster.

SENATOR DUANE: Madam President, if I may ask another question through you, I want to preface what I am saying. First I believe that -- and I do not know whether the science is there yet, but I believe that neglect is virtually as bad as abuse, even though abuse is a pro-active thing, neglect is also a terrible thing, although it is of course a harder to prove neglect, you know, than affirmative abuse. And I think that is something that perhaps as a body but that science needs to look at in a bigger way because I think as much damage is done to children threw neglect as through abuse, though it never seems to compare, but in fact I think it is on the well-being of a child.

But I believe, and I am wondering if we could -- if you might cede some of this to me, that abuse usually deals with a deeper

motivating factor having to do with that specific situation, particularly if it is a family situation that the abusive parent or adult finds themselves in with a child having to predominantly with the dynamics of the adult, of course, but that it is not about - it is not easily a -- it is a leap, I believe, and I am wondering if you agree, to transfer that to all children and that adults interaction and with all children or even children in a, you know, in a school or a group or whatever.

SENATOR SALAND: Senator, I would call your attention to Section 1012 of the Family Court Act and the definition of an abused child, and when you look at the type of behavior that is by definition required before you can establish abuse it includes things such as inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death or serious or protracted disfigurement. I am reading in part from one of the subsections. Creates or allows to be created substantial risk of

physical injury to such child that would likely to cause death or serious protracted disfigurement or protracted impairment of physical or emotion health, commits or allows to be committed a sex offense against such child. Goes on to define certain sections of the penal law. Those are, I would think, pretty egregious acts committed against a child by a person in a position of great responsibility and authority, almost a fiduciary, a trustee. Somebody who is responsible, particularly for the needs of that child, a member of his or her household.

And it is not difficult for me to make the leap from the acts committed against someone who should be near and dear to you, not a stranger, not somebody who is one who may have for some reason or other incited your ire in a parking lot in a commercial endeavor or whatever, but a child in your own household, a child that you supposedly love and care for. You have committed these vile and heinous acts. I don't find it very difficult to say that if that person is a danger to his or her own child then it is

critical that people who -- such as that, if they are going to be placed in positions where they have substantial and regular contact with children that the appropriate persons, the employer, be notified. Because if that person could engage in that type of gross misconduct with his own children the potential is there for him or her to engage in similar conduct with other children.

And I guess it goes to the heart of some of the debates we have conducted today about really, if you are going to err, on whose side do you err.

We do not require anything more than notification. And what we're saying is that it is in the best interests -- this is bill is in effect making a policy statement, that it is in the best interest of children that there be this notice mechanism to ensure that in effect a potential fox is not put into a potential hen house.

SENATOR DUANE: Madam President, if I may follow up with a question through you.

THE PRESIDENT: Senator Saland,

do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Duane, with an additional question.

SENATOR DUANE: I find the whole discussion of child abuse is an incredibly difficult and horrendous one for us to be addressing. I am concerned because I don't believe that abuse in a household necessarily translates to abuse in the workplace. Just as I don't -- and I know it is not exactly the same thing, but has to do with say a husband or man who has been accused or convicted of spousal abuse then being able to have a job where they would have supervisory authority or control through whether it is through law enforcement or some other way over women.

I don't think that the abuse, you know, of a spouse and, again it is not exactly the same thing, but necessarily then translates into that this man would be a danger to be around all women, particularly if they were in some kind of a authority role or controlling role over the women.

So because I don't that's how it works. I don't that in the vast majority of cases that is how child abuse cases come about or what their case is or what they lead to in a larger world outside of the household. I guess I don't necessarily need a response to that. I'm sorry I just went on, but that's my -- but the other question I have is, I just wondering if there are statistics which point -

THE PRESIDENT: Senator Saland, do continue to yield for one more question?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Senator Duane, you may proceed.

SENATOR DUANE: If there are statistics or examples about this having had been a problem that someone who had how had been convicted of child abuse then somehow was guilty of that in an employment setting having to do with children if that exists? And if you could just point me there?

SENATOR SALAND: The genesis of this bill comes out of a Family Court case in

Westchester County.

SENATOR DUANE: Clarification, one case, Senator?

SENATOR SALAND: This is what brought it to our attention. As I am sure you can appreciate, there maybe unreported cases. And it has been only recently that the light in effect has been -- the sun has shown on Family Court. They to date they have been fairly closed proceedings. So if you don't find out about in a reported case, the likelihood of your finding out about it unless somehow or other the media brings it into the public realm, you are not going to know about it.

SENATOR DUANE: On the bill, Madam President, I just -- I am again very, very well intentioned though I think this legislation is -- -- I am skeptical that this is -- that the responses to this is to the concern merits this kind of legislative response.

Thank you, Madam President.

THE PRESIDENT: Read last section.

THE SECRETARY: Section 2. This acts shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59. Nays 1.

Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 233, by Senator Marcellino, Senate Print 831, an act to amend the Parks, Recreation and Historic Preservation Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act should take effect on the 120th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Duane to explain your vote.

SENATOR DUANE: Madam President, I am voting aye on this, but I am curious to why we are only mandating state parks fly the POW flag and why we don't then and I think we

should then fly it here at the Capitol.

And just as an aside think because I don't really know, I am too new exactly who to address it to, the State flag on top of the Capitol is a mess and we really should put a better flag there. It is torn, it just is - its a mess. So while we're on the topic of flags, I know someone will enlighten me as to how to take care of that. We need to either sew that flag up or put a new one on top of the Capitol.

Thank you, Madam President.

THE PRESIDENT: Senator Duane, you will be recorded as voting in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes 60.

THE PRESIDENT: Senator McGee.

SENATOR McGEE: Madam President, would you please return us to the reports of the standing committees?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator

Marcellino, from the Committee on Environmental Conservation reports:

Senate Print 3214, by Senator Leibell, an act to amend the Environmental Conservation Law.

Senator Leibell, from the Committee on Civil Service and Pensions, reports:

Senate Print 1494, by Senator Spano, an act to amend Chapter 677 of the Laws of 1977.

Both bills directly for third reading.

THE PRESIDENT: All bills, without objection are directed to third reading.

Senator McGee.

SENATOR McGEE: Madam President, is there any housekeeping at the desk?

THE PRESIDENT: No there is not, Senator.

SENATOR McGEE: There being no further business I move we adjourn until Wednesday, March 17, St. Patrick's Day, at 11:00 a.m.

THE PRESIDENT: On motion from

Senator McGee the Senate now stands adjourned until Wednesday, March 17th, St. Patrick's Day, at 11:00 a.m.

(Whereupon, at 5:31 p.m., the Senate adjourned.)