NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 21, 2000

3:07 p.m.

REGULAR SESSION

SENATOR THOMAS P. MORAHAN, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MORAHAN: The Senate will come to order.

Pledge of Allegiance.

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

ACTING PRESIDENT MORAHAN: In the absence of any clergy, we will bow our heads in a moment of silence.

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

ACTING PRESIDENT MORAHAN: The reading of the Journal.

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

ACTING PRESIDENT MORAHAN: Without objection, 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 Fuschillo, from the Committee on Consumer Protection, reports:

Senate Print 902C, by Senator Skelos, an act to amend the General Business Law;

4499, by Senator Bonacic, an act to amend the General Business Law;

4744, by Senator Fuschillo, an act to amend the General Business Law;

6242, by Senator Skelos, an act to amend the General Business Law;

And 6243, by Senator Johnson, an act to amend the General Business Law.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 1105A, by Senator Goodman, an act to amend the Vehicle and Traffic Law;

4412C, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

4413, by Senator Trunzo, an act to amend the Public Authorities Law;

4491, by Senator Trunzo, an act to

amend the Public Authorities Law;

5412A, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

And 6868, by Senator Trunzo, an act to amend the Vehicle and Traffic Law.

Senator Kuhl, from the Committee on Education, reports:

Senate Print 6241A, by Senator Velella, an act to amend the Education Law;

6584, by Senator Kuhl, an act to amend the Education Law;

6669, by Senator Farley, an act in relation to adjusting certain state aid payments;

6711, by Senator Bonacic, an act in relation to legalizing, validating, ratifying and confirming actions of the Liberty Central School District;

7002, by Senator Kuhl, an act to amend the Education Law;

And 7020, by Senator McGee, an act to amend a chapter of the Laws of 2000.

All bills ordered direct to third reading.

ACTING PRESIDENT MORAHAN:

Without objection, all bills reported direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Balboni.

SENATOR BALBONI: Mr. President, on page 26 I offer the following amendments to Calendar Number 408, Print Number 1564, and ask that said bill retain its place on the Third Reading Calendar, if you please.

Thank you.

ACTING PRESIDENT MORAHAN: The amendments are received. The bill will retain its place on the calendar.

Senator Skelos, we have a substitution.

SENATOR SKELOS: Please make the substitution.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: On page 29, Senator Trunzo moves to discharge, from the Committee on Transportation, Assembly Bill

Number 2189 and substitute it for the identical Senate Bill Number 2869, Third Reading Calendar 442.

ACTING PRESIDENT MORAHAN: The substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could adopt the Resolution Calendar in its entirety.

ACTING PRESIDENT MORAHAN: All those in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: At this time if we could take up the noncontroversial calendar.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number

19, by Senator Maziarz, Senate Print 3665A, an act to amend the Vehicle and Traffic Law, in relation to authorizing villages and towns.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 36. Nays, 1. Senator Kuhl recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 20, by Senator Trunzo, Senate Print 4408A, an act to amend the Public Authorities Law, in relation to the recovery of lost toll revenue.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 37, by Senator Rath, Senate Print 5787A -

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MORAHAN: Lay it aside for the day.

THE SECRETARY: Calendar Number 54, by Senator Alesi, Senate Print 4124B, an act to amend the Workers' Compensation Law, in relation to liability for compensation.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: Lay it aside.

THE SECRETARY: Calendar Number 71, by Senator Volker, Senate Print 3537A, an act to amend the Criminal Procedure Law, in relation to verdict sheets.

ACTING PRESIDENT MORAHAN: Read the last section.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MORAHAN: Lay it

aside.

THE SECRETARY: Calendar Number 89, by Senator LaValle, Senate Print 5857, an act to amend the Education Law, in relation to removing provisions.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of January.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 208, by Senator Saland, Senate Print 3815B, an act to amend the Family Court Act, in relation to dispositions.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first day of November.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 216, by Senator Bonacic, Senate Print 3908B, an act to amend the Public Authorities Law, in relation to the power of the State of New York Mortgage Agency.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 224, by Senator Bonacic, Senate Print 3664, an act to amend the Private Housing Finance Law, in relation to the powers of the New York

State Housing Finance Agency.

ACTING PRESIDENT MORAHAN: Call the roll.

I'm sorry, read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 230, by Senator Balboni, Senate Print 858, an act to amend the Insurance Law, in relation to eliminating the examination fee.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT MORAHAN: The

bill is passed.

THE SECRETARY: Calendar Number 238, by Senator Saland, Senate Print 2722, an act to amend the Family Court Act, in relation to evidence of child neglect.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: Lay it aside.

THE SECRETARY: Calendar Number 241, by Senator Skelos, Senate Print 4439A, an act to amend the Social Services Law, in relation to the charging of a fee.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 373, by Senator Marchi, Senate Print 6484, an

act to amend the Vehicle and Traffic Law, in relation to providing for a distinctive foreign organization license plate.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 425, by Senator Rath -

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MORAHAN: Lay it aside for the day.

THE SECRETARY: Calendar Number 432, by Senator Larkin, Senate Print 3035A, an act to amend the General Municipal Law, in relation to the operation of games of chance.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 41. Nays, 1. Senator Padavan recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 465, by Senator Johnson, Senate Print 7003 -

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MORAHAN: Lay it aside for the day.

Senator Duane.

SENATOR DUANE: I'd like unanimous consent to be recorded in the negative on Calendar Number 238, please.

ACTING PRESIDENT MORAHAN: Without objection, you will be recorded in the negative.

Senator Larkin.

SENATOR LARKIN: Mr. President, I request permission to be recorded in the

negative on Calendar Number 19, Senate Bill 3665A.

ACTING PRESIDENT MORAHAN: Without objection, you will be recorded in the negative.

Senator Duane, Calendar Bill 238 did not pass. Senator Duane.

SENATOR DUANE: (Nodding.)

ACTING PRESIDENT MORAHAN: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up the controversial calendar, please.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 54, by Senator Alesi, Senate Print 4124B, an act to amend the Workers' Compensation Law, in relation to liability for compensation.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MORAHAN: Senator Alesi.

SENATOR ALESI: I couldn't quite hear. Was I asked for an explanation?

Thank you.

Mr. President, this bill, as you know, was introduced a few weeks back. And what it does today is slightly different from what it did a few weeks ago when it was passed in this house. And that is it recognizes that anybody who is injured on the job as a result of an illegal activity would not be entitled to workers' compensation.

Thank you very much, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Paterson.

SENATOR PATERSON: Mr. President, I want to thank Senator Alesi for that brief but informative explanation. And if he would yield for a question, Mr. President, I have a few that I'd like to ask.

ACTING PRESIDENT MORAHAN: Senator Alesi, do you yield?

SENATOR ALESI: Gladly.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR PATERSON: Senator, the illegal conduct for which the employee is convicted, either as a misdemeanor or felony,

in your bill, as I understand it, would not necessarily relate to the conduct that caused the employee to be injured.

So in other words, it's not like an employee that's speeding in an employer's car that sustains an accident and then is convicted for some speeding or some vehicular offense, perhaps a car hitting another car, and then that would deny the workers' compensation.

In this case, it could be an employee working in a bank that embezzles money, where the ceiling of the bank falls on the employee's head, and because of the conviction for the embezzlement, the employee would be denied workers' compensation. Do I understand that right?

SENATOR ALESI: Through you, Mr. President.

You understand that correctly. And I might add that the amendment in this bill is to some extent owed in part to your compelling and impassioned debate when we originally introduced it. And so that by making it clearer for those who are opposed to it to

understand, I am hopeful that you'll fully embrace it this time around.

SENATOR PATERSON: Senator, I have one more question.

ACTING PRESIDENT MORAHAN: Senator Paterson.

SENATOR PATERSON: And based on that answer, it will make me know whether or not I can embrace you.

ACTING PRESIDENT MORAHAN: Senator, do you yield to another question?

SENATOR ALESI: I yield, Mr. President.

SENATOR PATERSON: Mr. President, my question is if the employer also breaks the law in the same situation -- say you have a situation where an employer is in violation of OSHA requirements by exposing the employee to toxic waste; say, mercury or something -- and the employee sustains injury as a result of the illegality of the employer's action, would the employee still be denied workers' compensation because at some other point the employee was convicted of a criminal violation?

SENATOR ALESI: No.

SENATOR PATERSON: No, they would not be denied?

SENATOR ALESI: No, they would not be.

SENATOR PATERSON: So the two criminal violations in a sense cancel each other out?

SENATOR ALESI: Mr. President, through you.

This deals specifically with the illegal act of an employee. But it stands to reason, although it's not visited in this particular bill, that an employee who is injured as a result of anybody else's activities, whether illegal or legal, would still be entitled to workers' comp. Provided they were injured on the job.

ACTING PRESIDENT MORAHAN: Senator Paterson.

SENATOR PATERSON: Mr. President, if I could ask a question one more time, I just want to try to clarify it for Senator Alesi.

ACTING PRESIDENT MORAHAN:

Senator, do you yield?

SENATOR ALESI: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR PATERSON: Mr. President, I'm taking the circumstances that Senator Alesi is setting forth in this bill, that the employee is convicted of a felony, let's say. However, the workers' compensation claim is made as a result of illegal activity on the part of the employer.

So now, since both the employer and the employee are in violation of the law, does the employer escape the coverage of workers' compensation even though it would be barred based on the passage of this legislation?

SENATOR ALESI: Through you, Mr. President.

As I mentioned earlier, this particular bill deals specifically with the illegal acts of the employee.

ACTING PRESIDENT MORAHAN: Senator Paterson.

SENATOR PATERSON: Thank you, Mr.

President.

I think I have to give Senator Alesi's bill a little more consideration. Perhaps he will be as gracious and willing as he was last year to revisit the legislation.

Specifically because I think that we should not allow the employer, based on the illegal acts of the employee, to escape responsibility based on illegal acts that the employer might trigger the workers' compensation claim. Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Paterson.

SENATOR ALESI: Mr. President, if I just may comment on the bill, I'd like to thank -

ACTING PRESIDENT MORAHAN: On the bill, Senator Alesi.

SENATOR ALESI: I'd like to thank Senator Paterson for his input a few weeks ago. And we acceded to his wishes.

And I would like to -- in response to the last point that he made, the injured employee still has recourse against the employer. So maybe the Senator would like to

reconsider his vote.

ACTING PRESIDENT MORAHAN: Senator Duane, do you wish to be recognized?

SENATOR DUANE: Yes, please.

ACTING PRESIDENT MORAHAN: Senator Duane.

SENATOR DUANE: Thank you very much. I was wondering if the sponsor would yield to a couple of questions.

ACTING PRESIDENT MORAHAN: Senator Alesi, do you yield?

SENATOR ALESI: I'd be glad to.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR DUANE: As I understand this bill, it seems that it's okay to take away workers' comp from an employee who may have committed a crime. I'm wondering how the sponsor feels about using workers' comp if you are an employee who is the victim of a crime at work.

ACTING PRESIDENT MORAHAN: Senator.

SENATOR ALESI: The bill, as I mentioned to Senator Paterson, has little to

do with my feelings and everything to do with what's contained in this section. And that is specifically dealing with someone who is injured as a result of an illegal act on the job, not receiving compensation.

ACTING PRESIDENT MORAHAN: Senator Duane.

SENATOR DUANE: Through you, Mr. President.

However, I'm wondering whether or not the sponsor believes that protection should be given to the victim of a crime in the workplace.

ACTING PRESIDENT MORAHAN: Senator Alesi, do you yield?

SENATOR ALESI: I yield, Mr. President.

And my response is that anyone who is a victim of any crime, whether it's on the workplace, in the workplace, off the workplace, anywhere in the United States or the state of New York, if they are a victim of a crime, they should be compensated in some form or another.

SENATOR DUANE: Through you, Mr.

President.

ACTING PRESIDENT MORAHAN: Senator Duane.

SENATOR DUANE: Through workers' compensation or -

ACTING PRESIDENT MORAHAN: Do you continue to yield, Senator Alesi?

SENATOR ALESI: I continue to yield.

SENATOR DUANE: Does the sponsor believe that should be through workers' comp, or should there be another way of receiving compensation through the justice system?

SENATOR ALESI: Through you, Mr. President.

I believe that anyone who is victimized in any way, shape, or form should be compensated through whatever vehicle is available through the law.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Duane.

SENATOR DUANE: And one final question for the sponsor, Mr. President.

ACTING PRESIDENT MORAHAN: Do you

continue to yield, Senator Alesi?

SENATOR ALESI: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR DUANE: Does the sponsor believe that the victim of a rape at work should have to go through workers' comp, or should they be permitted to have other access to justice?

SENATOR ALESI: Mr. President, although the question is irrelevant to the bill at hand, I would reiterate my response earlier. And that is that anyone who is victimized anywhere should be the recipient of assistance through whatever means are available through the law as it exists today.

SENATOR DUANE: Thank you.

On the bill, Mr. President.

ACTING PRESIDENT MORAHAN: On the bill, Senator Duane.

SENATOR DUANE: Thank you.

Tragically, what is being discussed today is taking away workers' comp for someone who may have committed a crime at work and not

letting justice take its course, but rather prohibiting a judge and a jury from looking at facts and making a decision.

What we are not doing today, but which we should be doing, is to make it so that a worker who is victimized by crime at work -- for instance, the most recent case of a woman who was viciously raped and assaulted at work, and yet she has no recourse but to go through workers' comp. She's unable to get redress in the court system. She's being forced to take her claim through workers' comp.

So I fail to see why it is that today we're saying it's okay to take away workers' comp from someone who may have committed a crime, but we are forcing a worker who was raped or viciously assaulted to go to workers' comp in order to get any kind of help or support for the terrible thing that happened.

I would also say that tragically, when workers' comp was first created, apparently there were too many men putting the law together. Because I believe very strongly

that if men were raped at work or if men were viciously assaulted at work that we would not be forcing people only to go through workers' comp, that we would allow people to have their day in court.

And so in addition to taking a look at this bill, which I'm not supportive of, I do think what we should be looking at is 3955B, the Protection in the Workplace Act, which would make it possible for a woman who has been viciously assaulted and/or raped because of negligence on the part of their employer to get their day in court.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Paterson, to explain his vote.

SENATOR PATERSON: Mr. President,

I think I have to take responsibility for the fact that I did suggest some changes to this legislation to Senator Alesi, and that the changes that I suggested were -- that my issues were heard by Senator Alesi.

And although I just thought of this other issue involving the criminality of the employer right here, I'm going to support this legislation and pledge myself to work with the Senator, because I think it will be an issue to getting it passed in both houses. And perhaps with a little further tweaking we can get the Assembly to see the merit in not allowing people who have committed crimes to recover just on face value because they have workers' compensation claims.

ACTING PRESIDENT MORAHAN: Senator Paterson will be recognized in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 54 are Senators Connor, Dollinger, Duane, Markowitz, Montgomery, Onorato, Rosado, Sampson, Schneiderman, Smith, and Stavisky.

Ayes, 43. Nays, 11.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 71, by Senator Volker, Senate Print 3537A, an act to amend the Criminal Procedure Law, in relation to verdict sheets.

ACTING PRESIDENT MORAHAN: Senator Volker.

SENATOR VOLKER: Mr. President, this is a bill that I believe we passed last year, if I remember right, that relates to verdict sheets. And it relates to the information submitted to a jury where there are multiple counts and where the court submits two or more counts charging offenses. This would allow notations to be given to the jurors as regards relevant information on the verdict sheets.

This has been suggested by various court cases. And it has been suggested in fact by a committee of the bar as a way of providing a better explanation of how the various counts are set up when they're submitted to the jury.

In all honesty, I can see probably where this would cut both ways. Some people would argue that it might be of more advantage probably to the defendant in many cases.

But it just seems to a lot of people in the Office of Court Administration that this presents a way of helping to simplify a juror's decision in a court case.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 238, by Senator Saland, Senate Print 2722, an act to amend the Family Court Act, in relation to evidence of child neglect.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT MORAHAN: Senator Montgomery has requested an explanation.

Senator Saland, an explanation has been requested.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this is a bill which recognizes that under the current law, where a person or respondent in an abuse or a neglect proceeding may have indulged excessively in or misused drugs or alcohol to the extent that they no longer are considered to be in control of their actions, that that person whereas under the current law would be able to assert as an affirmative defense voluntarily participating in some type of a rehab program, this bill would now say that that consideration would occur at the time of disposition.

The purpose being that far too often in any number of cases, in order to stop the proceeding which is underway to protect the well-being of a child in a neglect or an abuse proceeding, the allegation of having

entered a drug or alcohol program effectively tolls that proceeding.

The net result is that it's grossly inefficient to have multiple applications back and forth to the court before the child can be properly taken care of and some arrangements made to deal with the family.

What this bill would do would be to say we would go through the hearing, we would determine whether or not neglect or abuse had occurred, and if the respondent had a drug or alcohol problem which rose to the level of making him or her unable to really control their own actions, that person could then be directed to a rehab program and participation in that rehab program would be made part of the dispositional order.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Montgomery.

SENATOR MONTGOMERY: Yes. Mr. President, I would like to ask if Senator Saland would yield to a question or two.

ACTING PRESIDENT MORAHAN: Senator Saland, do you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR MONTGOMERY: Senator Saland, as I understand it, this bill would make it so that a judge would consider a person's voluntary participation in a drug treatment program only after they've been charged with child neglect.

So how does this bill justify criminalizing a person's behavior while they're actively seeking treatment for the drug problem?

SENATOR SALAND: I would very sharply take issue with your reference to criminalizing. If you look at the sections of the law, we're talking the Family Court. This is a civil proceeding, not a criminal proceeding.

And what we're contending with here is a child who is the subject of a petition who is alleged to have been neglected or abused, and that child's guardian or parent comes in and says "I have a drug problem, and

I'm checking myself into a rehab program."

Under the existing law, that effectively terminates the ability of the court to go further. And after that has happened two, three, four, five, and six times, there's been no ability or little ability to assist the child who is the concern of the application.

What we're saying is if that respondent genuinely is as concerned as they claim to be under the existing law, and not merely concerned with using this affirmative defense as a tool to avoid the consequences of neglect and abuse, we put it at the end of the disposition, at the end of the proceeding which is the disposition, and we enable to the court to make the determination where that person -- and the language remains basically the same: "The court shall consider whether the respondent has enrolled in a recognized rehabilitative program and is participating therein in a regular and satisfactory manner."

I think it's extremely relevant that they meet those qualifications and not use that ability as a subterfuge, as they do

under the existing law, to avoid being able to contend with all the underlying issues that are associated with a neglect or an abuse proceeding.

ACTING PRESIDENT MORAHAN: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. If Senator Saland would continue to yield.

ACTING PRESIDENT MORAHAN: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

SENATOR MONTGOMERY: So, Senator Saland, if, for instance, a parent is abusing -- is a substance abuser of some sort and that parent wants, genuinely wants to seek treatment -- however, under this bill, even if the person is seeking treatment, it's not an affirmative defense any longer under your bill; is that not correct?

In other words, the fact that I am now seeking treatment for my sickness, you will not consider -- the judge will not consider that until after the treatment.

SENATOR SALAND: No.

SENATOR MONTGOMERY: So then what happens to the child in that instance?

ACTING PRESIDENT MORAHAN: Senator Saland.

SENATOR SALAND: No, no, no, no, no. Not after treatment. The consideration of the treatment comes on the disposition - there's a fact-finding hearing in all of these cases which determines whether or not the alleged neglect has occurred.

Under the existing law, a person who alleges that he or she is in a recognized drug or alcohol rehab program has the ability, as an affirmative defense, to say, in effect, "The reason why I am before the court in this neglect proceeding is because of that condition, and I'm doing something about it." They establish that by their affirmative defense.

They then effectively terminate the proceeding, only, in far too many cases, to come back on any number of occasions thereafter continuing to allege the same affirmative defense.

If we are thinking in terms of a family, if we are thinking in terms of the child, whichever unit is the unit of concern to you, to permit the intervention of any type of therapy or counseling or assistance either to that child or to that family unit, because of the subterfuge of abusing this very easily accessed affirmative defense, does nothing for anybody.

Maybe in some small number of cases -- perhaps I've overstated. Perhaps in some small number of cases, there are people who allege the affirmative defense and are never heard from again. In a goodly number of cases, in a significant number of cases, these people repeat their appearances before the Family Court, alleging the same type of affirmative defense.

If your concern is making sure that somebody in effect can dodge the responsibility and leave their child at risk, then the existing system works well.

If your concern is that that person who is the alcohol or drug abuser gets into a program which can be monitored by a court so

that they will see it to a successful conclusion and not use it in times of perhaps self-imposed need to avoid the consequences of the court, and if your concern is what does this mean for the best interests of the child, then to treat this on disposition in the civil, not criminal, proceeding is certainly a far more reasonable and both child- and family-oriented way of dealing with what is a rather difficult problem.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Montgomery.

SENATOR MONTGOMERY: Yes. Senator Saland, I'm just trying to figure -

ACTING PRESIDENT MORAHAN: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR MONTGOMERY: At what point does the disposition take place, and under what circumstances? I mean, what in fact happens between the charge of neglect and

the disposition as you see it?

SENATOR SALAND: There has to be -- the fact-finding hearing, which again is a Family Court hearing, is one in which the petitioner -- which will in all likelihood be, in the City of New York, I would assume, HRA; in the counties outside of the City of New York, the Department of Social Services - alleges that there has been an act of neglect or abuse. They then have the burden of establishing their case by a fair preponderance of the evidence in court.

If they've managed to establish that, then the court has to make a disposition, an order of disposition determining what is it do we do now that we have found this neglect or abuse.

And what this bill says is where there has been an allegation that a respondent is in a drug program or an alcohol abuse program, that the relevant time to consider that is at the dispositional part of the hearing where you can integrate services and, instead of using the affirmative defense as a shield to avoid the consequences of the

intervention of services, accomplish more both for that individual -- however begrudgingly they're willing to participate, or perhaps even voluntarily -- but particularly for the child.

SENATOR MONTGOMERY: Thank you. Thank you, Senator Saland.

ACTING PRESIDENT MORAHAN: Thank you, Senator Saland.

SENATOR MONTGOMERY: Mr. President, I think I certainly understand -

ACTING PRESIDENT MORAHAN: Senator Montgomery, on the bill?

SENATOR MONTGOMERY: Yes, on the bill.

I understand Senator Saland's intent, and I want to support that.

I'm afraid, however, that the way that the legislation is set up, we may end up with consequences that we had not intended. And that is that we in fact discourage people coming forward for treatment because they may, in the disposition of their case, be charged with a crime. Rather than at the onset, when the charge is made, that the requirement for

treatment be established at that point rather than at the final stage, when it may be a little late for intervention.

So I'm going to be voting no on the legislation.

ACTING PRESIDENT MORAHAN: Thank you, Senator Montgomery.

Senator Duane.

SENATOR DUANE: Thank you. Would the sponsor yield to some questions, please?

ACTING PRESIDENT MORAHAN: Senator Saland, do you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

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

The sponsor has alluded to cases of moms repeatedly going to the Family Court to stop the petition to remove their children. I'm wondering if he could give more specific facts on the number of those cases.

ACTING PRESIDENT MORAHAN: Senator Saland.

SENATOR SALAND: The information is not information that's catalogued. It's the information that's been provided to me and to my staff, I would say, anecdotally.

SENATOR DUANE: Through you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

SENATOR DUANE: Is it not the case that drug treatment programs which are sanctioned by the courts actually have built into their program ways to deal with relapse? And is it not also true that a program that has enrolled a mom who's at risk of losing her child to neglect because of substance abuse and other reasons would not be very careful to not be even more -- what's the word I'm looking for -- to be very, you know, supervisory, to make sure that the mom did not relapse, or, if she did relapse, to do everything in their power to make sure that the child would not be endangered?

Do we not have that kind of faith

in drug treatment programs in the State of New York?

ACTING PRESIDENT MORAHAN: Senator Saland.

SENATOR SALAND: Mr. President, in the bill what we're talking about, by definition, is a person that repeatedly misuses a drug or drugs or alcoholic beverages.

Certainly in my responses to Senator Montgomery I indicated that there may well be situations, any number of situations in which somebody who voluntarily participates in a rehab program gets the benefit of that program and hopefully goes on to act in a manner that's responsible and not one which results in their being charged in any fashion under Article 10 of the Family Act.

Notwithstanding that, we do know that there are any number of circumstances in which people have availed themselves of an affirmative defense, basically as a shield to avoid the consequences of dealing with the issues that underlie a neglect proceeding, and have effectively clothed themselves in alcohol

or drug abuse as a means to avoid the outcome of the proceeding.

All we are saying is all of those souls who engage or participate in these programs certainly will have the ability to participate in those programs. And whether they will succeed I think will be amplified by doing it at the disposition stage, when there will be a far greater degree of court control, where it can't be used as a means to just merely avoid whatever the consequences of the court proceeding are.

It certainly is an approach which I think is far more holistic, therapeutic, any other term of that nature that you would like to use, with respect to dealing with the child and the issues surrounding why that family, that parent, that guardian is in court with that child.

SENATOR DUANE: Through you -

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Duane.

SENATOR DUANE: Mr. President, for a final question.

ACTING PRESIDENT MORAHAN:

Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MORAHAN:

Senator Duane.

SENATOR DUANE: Thank you.

But still, the whole justification for this legislation, which will really change the weight and the affirmative nature of entering into a drug treatment program, is actually based upon anecdotal evidence that this may have happened in a few cases.

So we're changing an entire section of the Family Law based on anecdotes and not on any hard evidence.

ACTING PRESIDENT MORAHAN:

Senator Saland.

SENATOR SALAND: If that's a question, I would merely say that for anybody who is engaged in such a program, if their desire is to successfully go through the program, as distinguished from participating in fits and spurts, if their desire is a concern to do something that will benefit

their child, if their desire is a concern to not only enhance the welfare of their child or the best interests of their child but to do something about reunifying with their child, then why in the world, under what justification, would they object to a program that the court could monitor and determine whether they in fact were appropriately participating, as distinguished from merely using it as a subterfuge to avoid the consequences of dealing with the charges that have been levied against them in the court?

Anybody who in good faith either has their own well-being, because of their addiction or their need for rehab, or the concerns for their child at heart could not possibly justify objecting to this change in the law.

ACTING PRESIDENT MORAHAN: Thank you, Senator Saland.

SENATOR DUANE: On the bill, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Duane, on the bill.

SENATOR DUANE: I actually am

going to justify being opposed to this change in the law.

I believe that what we need to be doing is to make sure and continue to make sure that regular and voluntary participation in a drug and/or alcohol rehabilitation program is an affirmative defense in a child neglect proceeding. I think that we have to keep that as an affirmative defense.

I've not been compelled by the evidence that we should be changing that. I think that's a very, very dangerous thing to do, to make involvement in a drug treatment program a neutral thing for a judge or a court to look at.

I also believe that drug rehabilitation programs -- whether they are freestanding, whether they are hospital-based -- when they're licensed by the State of New York, when they're sometimes even funded by members of the Legislature, are doing a good job, do have the best interests of children at heart, would not frivolously threaten the life or the well-being of a child. There would be no rational reason for

doing that.

And yet we are throwing all that away based on evidence which, as I say, has not been shown at all to us that there may be a parent who is using that they're going into a drug treatment program as a way to save their child.

I actually believe that most moms will do everything they can to keep custody of their children. That's true, and I would expect no less of them. And in fact I even think that's a good thing in many cases, though sometimes a mom will know that they're too overwhelmed or unable for whatever reason -- drug abuse or whatever -- to keep their child.

But I also believe that they do that, because those moms also will do what's in the best interests of their children, including giving them up if that's what they have to do to provide the best possible life for their child.

But I absolutely believe that a mom or a parent who voluntarily goes into a drug treatment program -- even if it doesn't take

the first time, even if it takes a couple of times to go through a drug rehab program - absolutely should be entitled to have that count in their favor.

And in fact, instead of doing this kind of punitive legislation, which takes away the affirmativeness of going into a drug rehab program, maybe what we should be looking at are more drug rehab programs where a mom could actually be with her children. Because now there's a tremendous lack of beds available for moms who are addicted to alcohol or drugs to be able to actually live in a community with their family while they're undergoing treatment.

And, in fact, the isolation of being away from one's family is one of the things that makes it difficult for some women -- not all women, but for some women to recover. Some do have to be removed from the stresses of what's happening in their home. But for others, the pain of not being able to be near or take care of their children in a monitored atmosphere is a very, very bad and negative thing.

But the bottom line here is I don't think we should be doing anything in this legislative body to ever make it that voluntary participation in a drug or alcohol rehabilitation setting is anything but a positive thing. It's not -- it certainly shouldn't be something which risks further criminalization. And it's not neutral to go into a drug rehabilitation program. It is a positive step, and the law should recognize it as such.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Duane.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect in 120 days.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 238 are Senators Duane, Montgomery, and Paterson. Ayes, 52. Nays, 3.

ACTING PRESIDENT MORAHAN: The

bill is passed.

Senator Hoffmann.

SENATOR HOFFMANN: I was out of the chamber when Calendar 19 was taken up, Mr. President. I would request unanimous consent to be recorded in the negative.

ACTING PRESIDENT MORAHAN: Without objection, Senator Hoffmann, you will be so recorded in the negative on Calendar Number 19.

Senator Seward.

SENATOR SEWARD: Mr. President, likewise, I was at a meeting when Calendar Number 19 passed earlier today, and I would ask unanimous consent to be recorded in the negative on Calendar Number 19.

ACTING PRESIDENT MORAHAN: Without objection, you are recorded in the negative.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, could I have unanimous consent to be recorded in the negative on Calendar Number 432.

ACTING PRESIDENT MORAHAN:

Without objection, you will be recorded in the negative.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like unanimous consent to be recorded in the negative on Calendar Number 241.

ACTING PRESIDENT MORAHAN: Without objection, Senator Montgomery will be recorded in the negative.

Senator Skelos, that completes -

SENATOR SKELOS: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT MORAHAN: -- the reading of the controversial calendar.

There is no housekeeping.

Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. I believe there's a motion to discharge at the desk. I'd like to call it up, please.

ACTING PRESIDENT MORAHAN: The

Secretary will read.

THE SECRETARY: Senate Bill Number 4401A, by Senator Hevesi, an act to amend the Education Law, in relation to adjustment of state aid for prior school years.

ACTING PRESIDENT MORAHAN: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President.

The motion to discharge that's before us, Senate Print 4401, is a piece of legislation that addresses in some small fashion the much more global and widespread problem of prior-year school aid claims that the Senate Democratic Conference and myself have been discussing for some time now.

And this is only a partial remedy, but it's important that we address this problem even in the smallest scope possible, in the name of equity, particularly in a fiscal climate where if no action comes now on this issue, then there really is just never going to be a chance or an opportunity where we're truly going to see a commitment on the

part of the state to remedy this problem.

So just a quick refresher for everyone, and to remind everyone in this body that this is an issue that not only affects legislators from New York City, but legislators in almost every school district in the entire state of New York that are owed millions of dollars -- and it really is millions -- in prior-year school aid claims.

But the biggest problem, the most acute problem, focuses on the City of New York, which, because of a unique set of circumstances, has totaled up roughly $600 to $800 million, depending on how you calculate it, in claims right now that are before the state, pending before the state, in legitimate school aid claims that have never been paid. And, because of the backlog, there are claims which have not been submitted totaling additional hundreds of millions of dollars.

And this is money that not just New York City schoolkids, but schoolkids in every other district that is owed money under this prior-year school aid claim problem -- they are being cheated, absolutely cheated.

In the case of New York City, just to show you why this problem has existed, because there have been some who have suggested -- some of my colleagues have suggested that it might have been the fault of the City of New York to have racked up this debt, when in fact it was about $400 million in building aid claims that are due the City of New York because the state created the School Construction Authority in 1988 but didn't create authorizing legislation which would have facilitated payment for building aid claims until 1995. And in that time, $400 million or so became owed to the City of New York.

In addition, high-cost aid of about $200 million to New York City was owed, and the state never passed authorizing legislation to facilitate the allocation of those resources.

And finally, because of retroactive tax certiorari claims, which had the impact of reducing property taxes in New York City, which then kicked in the wealth factor component of state law, thereby increasing the

money owed to New York City -

ACTING PRESIDENT MORAHAN: Excuse me, Senator.

Could we have a little order in the chamber, please.

Thank you, Senator.

SENATOR HEVESI: Thank you.

-- because of that, several hundred million additional dollars were owed to New York City.

So that's why the problem exists, and it exists with other school districts throughout the state for varying reasons.

And I'll remind everybody that this legislative body has in the past -- certainly did last session -- passed legislation which specifically reimbursed school districts other than the City of New York for school aid that was owed based on claims which had been submitted not in the current fiscal year but in previous fiscal years. So there is a commitment to addressing this, but not in an equitable fashion.

So here's the problem, and here's one of the remedies that we're going to ask

you to vote on today. And I believe that this is a really reasonable approach. Because there is a fundamental inequity in the law which says that whatever amount of money you allocate for prior-year school aid claims, that no school district can receive more than 40 percent of that allocation in any one year, irrespective of any other consideration. So if there's $10 million allocated for prior-year school aid claims, regardless of who's owed what, nobody gets more than $4 million, 40 percent of the 10 million. That is New York State Education Law, Section 3602.

The motion to discharge that's before us right now and that everyone is going to have to cast a vote on would simply eliminate that provision. And there is really no compelling reason why that provision should be in the law right now when you look at the following situation. The situation exists that New York City is owed upwards of 90 percent, 90 percent of all of the outstanding claims, yet is capped at 40 percent of whatever meager -- I'll make a

commentary here -- meager allocations the state has deemed necessary to provide in the past few years.

So that's what this motion to discharge would do. But I'd like to point out before I conclude here that this would not have a terribly negative impact on other school districts throughout the state that are also owed money, and it's a reason why we need to address this problem in the long term.

This is not a problem that is exclusive to New York City. There are currently $111 million in outstanding claims for school districts outside the City of New York. And according to the Governor's Executive Budget, only about 25 percent of those outstanding claims would be paid if the Governor's Executive Budget passed as he has presented it to the Legislature.

So here's the situation as it exists right now. Last year the Governor recommended $40 million for the state, statewide, to repay prior-year school aid claims. Because of the 40 percent cap, New York City got 16 percent. We then went

back in and added $24.3 million for the city, exclusively for the city, which brought the total amount that the city would get up to about 58 percent -- more than the 40, because we created a special pot of money for it.

The problem is that right now, here's the situation in terms of what is owed. New York City has 73 percent of the approved claims that have been approved by the State Education Department: $298 million out of 410 statewide, 73 percent. But we would only get 58 percent under the proposal. We have 82 percent of all the submitted claims, those not yet approved. And we have over 90 percent of all of the claims outstanding, those not even yet submitted.

So in addition to the amendment that we offered up last week as an amendment to the Senate's one-house resolution, which would have at least brought us up to the level of funding that the state provided last year in recognition of prior-year school aid claims -- in addition to that, which doesn't even address the more global problem that we will not repay these claims for about 50

years, at the going rate -- the motion to discharge before us, Mr. President, simply says if some municipality is owed 70 or 80 percent of those claims, you don't say "We're not going to pay you what you're owed in proportion to the amount of money that's allocated."

What we do want to have happen is if you have the most amount in claims, you get the most amount of money. If you have the oldest claims that have been submitted, you get first dibs on the claim money.

And not to sound bitter or sore here, but such partisanship exists whereby allegations of prior-year school aid claims in the last couple of years did not go specifically to pay the oldest claims to the City of New York, they went to pay claims for the school year '95-'96, because the Pataki administration felt "We're not responsible for what was done in 1990, '91, and '92, we're only paying for claims since we've been in the Governor's mansion."

You can't do that. It's absolutely wrong to do that. And the reason why it's

wrong to do that is New York City has to write off 10-year-old claims for accounting purposes. So last year the kids in the City of New York almost lost $40 million, which would have blown a huge hole in the Board of Education's budget. Because of our advocacy, our vigilancy on this issue, we got -- and I applaud the Majority for their acquiescence on this issue, and I'm being sincere when I say that. I'm not being sarcastic. I really applaud the Majority for sparing us that crisis at a time when we have such pressing problems in New York City for doing that.

But at the same time, this issue has to be addressed. You cannot continue to only pay the minimum payment due on your credit card debt. That's exactly what we're doing here.

So, Mr. President, I would urge all of my colleagues, both sides of the aisle, to support this motion to discharge on this Senate bill, which is absolutely fair and equitable. And if anybody doesn't think it's fair and equitable, I would sincerely urge them to rise and tell me and the rest of the

members of this house why it's not, why you wouldn't remove this cap. This cap is absolutely unfair.

And so this legislation is necessary. I urge everybody to support it.

ACTING PRESIDENT MORAHAN: Thank you, Senator Hevesi.

Senator Lachman.

SENATOR LACHMAN: It is fair and equitable, Senator Hevesi. I strongly commend and support your motion to discharge, this on education equity, as I did yesterday on your very strong proposal to discharge a bill on campaign finance reform.

Very briefly, within 30 seconds, if we can't do this in a time of plenty, when are we going to do it? We won't do it in a time of need. Now is the time to discharge this bill.

Furthermore, even though Senator Hevesi has said the emphasis is on New York City, it does impact upon the rest of the state. Who knows for whom the bell shall toll tomorrow? There might be people from Nassau, Suffolk, upstate New York who have a greater

problem than New York City has in a few years, and the shoe will be on the other foot.

I strongly recommend and commend my colleague in discharging this bill.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Lachman.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. I'll be very brief.

I also commend Senator Hevesi for his diligence in bringing this to the floor.

This is very simple. This is a failure-to-fund mandate. Not an unfunded mandate, but a failure to fund. This is where the State of New York -- and I've been told on the floor of this chamber that we ought to act like a business. Government ought to act more like a business, we should do things the way the free-market system does.

What possible free-market system works with people not paying their bills? We owe the City of New York 400 million, 200 million, and we're going to put our cap on what we're going to pay them for bills that we

owe them?

Now, I get this lecture all the time, that I'm one of those Democrats who's out of touch with the free-market system. Well, I would just challenge everybody in this chamber -- though there aren't many people. But I would just challenge everyone, come to the floor and let's debate the issue of whether we should pay our bills.

And I think now is the time to do it. This is the time to pay this bill. This is a failure-to-fund mandate. Let's pay our bills, let's act responsibly. Let's pay the City of New York, let's pay the City of Rochester, let's pay everybody who has back claims. It's the right, free-market thing to do.

I commend Senator Hevesi for bringing it to the floor.

ACTING PRESIDENT MORAHAN: Thank you, Senator Dollinger.

All in favor of accepting the motion to discharge signify by saying aye.

SENATOR PATERSON: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

ACTING PRESIDENT MORAHAN: Party vote in the negative, party vote in the affirmative.

The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 21. Nays, 36. Party vote.

ACTING PRESIDENT MORAHAN: Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT MORAHAN: No, there's no housekeeping. There's no further business.

SENATOR SKELOS: There will be an immediate meeting of the Majority in the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Majority in the Majority Conference Room.

SENATOR SKELOS: And there being no further business to come before the Senate, I move we adjourn until Wednesday, March 22nd,

at 11:00 a.m.

ACTING PRESIDENT MORAHAN: So ordered.

(Whereupon, at 4:07 p.m., the Senate adjourned.)