NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 17, 2000

3:13 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 please rise and repeat with me the Pledge of Allegiance.

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

THE PRESIDENT: Joining us this afternoon to give the invocation is the Reverend Peter G. Young, pastor of Blessed Sacrament Church in Bolton Landing.

REVEREND YOUNG: Let us pray.

Dear God, as we see the budding plants and the blossoming flowers, we're aware of our spring holidays and Your annual blessings of new life. We are grateful for all of Your gifts and the dedicated services of the Senate members to our New York State citizens.

We gather in Your name, asking Your guidance to all of our Senate members for good health as they exhaust their energy in creating a pride of New York State leadership. We ask You this now and forever.

Amen.

THE PRESIDENT: Reading of the Journal.

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

THE PRESIDENT: Without objection, the Journal stands approved as read.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Finance Committee in the Majority Conference Room.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from

state officers.

Motions and resolutions.

Senator McGee.

SENATOR McGEE: Madam President, amendments are offered to the following Third Reading Calendar bills.

Sponsored by Senator Volker, page 12, Calendar Number 260, Senate Print 1592A.

Sponsored by Senator Morahan, page 27, Calendar Number 556, Senate Print 6938.

Sponsored by Senator LaValle, page number 27, Calendar Number 571, Senate Print 6487A.

Sponsored by Senator Libous, page Number 32, Calendar Number 632, Senate Print Number 2100.

Sponsored by Senator Bonacic, page Number 32, Calendar Number 638, Senate Print 1913A.

Madam President, I now move that these bills retain their place on the order of third reading.

THE PRESIDENT: The amendments are received, Senator McGee, and the bills will retain their place on the Third Reading

Calendar.

SENATOR McGEE: Thank you, Madam President.

THE PRESIDENT: Senator Meier.

SENATOR MEIER: Thank you, Madam President.

I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clauses: Senate Bills 3222, 4431, 4916, 4919, and 5652A.

THE PRESIDENT: So ordered.

You may proceed, Senator Meier. Go ahead.

SENATOR MEIER: Thank you, Madam President.

I wish to call up Senator Lack's bill, Senate Print Number 6975, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 563, by Senator Lack, Senate Print 6975, an act to amend the Arts and Cultural Affairs Law.

THE PRESIDENT: Senator Meier.

SENATOR MEIER: Madam President, I now move to reconsider the vote by which this bill was passed and ask that the bill be restored to the order of third reading.

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: Senator Meier.

SENATOR MEIER: Thank you, Madam President.

I now move to discharge from the Committee on Investigations, Taxation and Government Operations Assembly Print Number 9075, and substitute it for Senator Lack's identical bill. And I now move -

THE PRESIDENT: The substitution is ordered.

SENATOR MEIER: Thank you, Madam President. I now move that the substituted Assembly Bill will have its third reading at this time.

THE PRESIDENT: The Senate bill having previously been unanimously passed, the

Secretary will read.

THE SECRETARY: Calendar Number 563, by the Assembly Committee on Rules, Assembly Print 9075, an act to amend the Arts and Cultural Affairs Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President.

On behalf of Senator Spano, please place a sponsor star on Calendar Number 288.

THE PRESIDENT: So ordered.

SENATOR MAZIARZ: Thank you, Madam President.

Also, on behalf of Senator Nozzolio, please place a sponsor star on Calendar Number 680.

THE PRESIDENT: So ordered.

SENATOR MAZIARZ: Thank you.

THE PRESIDENT: Senator Skelos, we have some substitutions.

SENATOR SKELOS: Please make the substitutions.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 6, Senator Hannon moves to discharge, from the Committee on Health, Assembly Bill Number 8071A and substitute it for the identical Senate Bill Number 4870A, Third Reading Calendar 98.

On page 25, Senator Wright moves to discharge, from the Committee on Health, Assembly Bill Number 1112 and substitute it for the identical Senate Bill Number 7042, Third Reading Calendar 527.

And on page 27, Senator Morahan moves to discharge, from the Committee on Veterans and Military Affairs, Assembly Bill Number 9672 and substitute it for the identical Senate Bill Number 6940, Third Reading Calendar 557.

THE PRESIDENT: The substitutions are ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution at the desk by Senator Lack. May we please have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Lack, Legislative Resolution Number 3770, honoring Philip M. Damashek upon the occasion of his designation as recipient of the 2000 "Lifetime Achievement" Award on April 18, 2000.

THE PRESIDENT: 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, if we could have the noncontroversial calendar

read at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 73, by Senator Saland, Senate Print 5583, an act to amend the Criminal Procedure Law and the Executive Law, in relation to entry of orders.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 76, by the Senate Committee on Rules, Senate Print 5740, an act to amend the Insurance Law, in relation to the authority of charitable annuity.

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 143, by Senator LaValle, Senate Print 2050, an act to amend the Education Law, in relation to the terms of community college trustees.

SENATOR DUANE: Lay it aside.

THE PRESIDENT: The bill is laid aside, Senator.

THE SECRETARY: Calendar Number 206, by Senator Skelos, Senate Print 1075, an act to amend the Social Services Law and the Family Court Act, in relation to proof of a neglected or abused child.

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 267, by Senator Rath, Senate Print 4206B, an act to amend the Real Property Tax Law, in

relation to the definition of the residential assessment ratio.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect September 1.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If I could interrupt for a moment, there will be an immediate meeting of the Racing and Wagering Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Racing and Wagering Committee in the Majority Conference Room.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 270, by Senator Seward, Senate Print 6316, an act to authorize the Village of Herkimer to

sell and convey.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: There's a home rule message at the desk.

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, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 459, by Senator Morahan, Senate Print 6240A, an act to amend Chapter 235 of the Laws of 1865 relating to incorporating.

SENATOR DUANE: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 497, by Member of the Assembly Grannis -

SENATOR SKELOS: Lay it aside for the day.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 536, by Senator Padavan, Senate Print 1398, an act to amend the Penal Law, in relation to making -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 602, by Senator Stafford, Senate Print 774, an act to amend the Public Authorities Law, in relation to authorizing the New York State Olympic Regional Development Authority.

THE PRESIDENT: There is a home rule message at the desk.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 604, by Senator Volker, Senate Print 6324, an act to amend Chapter 824 of the Laws of 1933.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 605, by Senator Velella, Senate Print 6494, an act to amend Chapter 465 of the Laws of 1994, amending Chapter 285 of the Laws of 1891.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 606, by Senator Alesi, Senate Print 6583, an act to amend the Public Authorities Law, in relation to authorizing and establishing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 671, by Senator Trunzo, Senate Print 6249, an act to amend the Town Law, in relation to making a technical correction.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 673, by Senator Marcellino, Senate Print 6707, an act authorizing the assessor of the County of Nassau to accept an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 674, by Senator Fuschillo, Senate Print 6723, an act authorizing the assessor of the County of Nassau to accept an application for exemption.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 676, by Senator Wright, Senate Print 6836, an act to amend the Real Property Tax Law, in relation to taxation of certain state lands.

THE PRESIDENT: Read the last section.

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

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 noncontroversial reading of the calendar.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number

143, by Senator LaValle, Senate Print 2050, an act to amend the Education Law, in relation to the terms of community college trustees.

SENATOR DUANE: Explanation, please.

THE PRESIDENT: Senator Skelos -

SENATOR SKELOS: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 206, by Senator Skelos, Senate Print 1075, an act to amend the Social Services Law and the Family Court Act, in relation to proof of a neglected or abused child.

SENATOR DUANE: Explanation, please.

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

SENATOR SKELOS: Thank you, Madam President.

This bill has been debated on numerous occasions in this house and has passed, and hopefully someday the Assembly

will see fit to pass it in their house. It's sponsored by Assemblywoman Nettie Mayersohn.

And basically there was a Court of Appeals decision in 1995 which changed the way the State protects its most vulnerable and innocent victims, newborn infants. Basically, the decision said that if there is a positive toxicology test of a newborn, it is no longer sufficient to support an indicated report without more evidence of abuse or neglect.

The child must now, under the case decision, be released back to the parent, potentially for further abuse and neglect, before Social Services can intervene.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you. If the sponsor would yield to some questions, please.

THE PRESIDENT: Will the sponsor yield?

SENATOR SKELOS: Yes, Madam President.

SENATOR DUANE: Thank you very much.

Through you, Madam President. If

this bill is concerned about the harm drug use would have on a child when they are at birth as well as a fetus while the mom is pregnant, shouldn't we also be testing the father of the child?

SENATOR SKELOS: Madam President, if I could respond. And I believe Senator Duane asked a similar question last year when we were debating the bill. And basically the drugs are transmitted to the child through the birth mother. And that's where the immediate danger, in my opinion, resides.

And again, as I'm saying, is the court decision changed the system, the way it was, back in 1995. And I think it's just appropriate to go back to protecting the child, resolving perhaps instances in favor of the child, and protecting the newborn infant.

SENATOR DUANE: Through you, Madam President, if the sponsor would continue to yield.

I'm wondering if the sponsor has any definitive scientific knowledge that drug and alcohol abuse may affect the quality of sperm.

SENATOR SKELOS: I have no personal knowledge of that, but I am sure there are studies that say it does.

SENATOR DUANE: And through you, Madam President.

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

SENATOR SKELOS: Yes.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: I'm trying to get to the point that I believe that a double standard is being made here.

If the issue is that there's concern that there's de facto abuse of a child if the mother is using drugs or alcohol, is that not also -

SENATOR SKELOS: Madam President, if we could just wait a minute here.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

If we are claiming through this legislation that substance abuse by a mother

in the home is a de facto reason to believe that the child is being abused, should we not also agree, then, that if a father is also using alcohol or drugs, and/or drugs, that that would constitute abuse as well?

SENATOR SKELOS: Madam President, I just want to go back to if you had a baby in the hospital and a nurse found the birth mother abusing the child in the hospital, the State would not send that child home.

If you have a birth mother who has ingested drugs, for it to show up in a child's -- in a newborn's system, she would literally have to have been taking those drugs on the way to the hospital for them to come up as a positive indication.

So I feel that if that is happening in that moment, the best thing that we can do for the child is not send them home. Because there is such a direct correlation between substance abuse and abuse of children at birth that we not should send that child home, have them perhaps abused, injured or murdered before the Social Service system steps in and tries to protect that child.

This makes sense to me. You may not think it makes sense. To me, it is very logical and commonsense to do that.

SENATOR DUANE: Through you, Madam President, if the sponsor would continue to yield.

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

SENATOR SKELOS: I sure do.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: I'm willing to acknowledge and follow the common sense that the sponsor is putting forward, though I may not agree with it and have my own common sense.

But if I follow the sponsor's reasoning on that, does it not also follow that we should rush and test the biological father -- or, for that matter, an adoptive father -- for alcohol and drugs at the moment of birth, if the concern is what's going to happen to that child when it leaves the hospital?

SENATOR SKELOS: Well, I think

under the law, number one, if you were an adopting parent, you would not have adopted at birth. So you'd have to exclude that class of individuals.

But again, we're dealing with a situation here with a birth mother on the way to the hospital literally taking drugs. And the high correlation between abuse of that child that exists is so high that, in my opinion, you protect that child. You err on the side of the child. I don't believe that you should send that child home and subject them to abuse.

Very similar to spousal abuse, where the State of New York has made a very definite decision that you're not allowed -- a male is not allowed one free punch of his life. We have a mandatory pro-arrest policy in this state. We act proactively, we intercede immediately, and we protect the battered spouse and err on that person's behalf.

In my opinion, you now err on the -- on behalf of protecting that newborn infant.

SENATOR DUANE: Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Does the sponsor continue to yield?

SENATOR SKELOS: Yes, I do.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Is it not true that more men than women are the perpetrators of domestic violence at home? And is it not also true that a history or a pattern of domestic violence in the home is generally also one that can be followed in terms of its being perpetrated on a child?

SENATOR SKELOS: If I could respond, Madam President, then you should be totally supportive of this bill, because we are protecting a child where there would be a study not only by Social Services of the birth mother but also any other male that would be living in that household, in terms of whether that is a proper household for that child to be returned to.

SENATOR DUANE: Through you,

Madam President, if the sponsor would continue to yield.

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

SENATOR SKELOS: Yes, I do.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: Is it not true, though, that we should do all we can to protect a child from abuse, whether it's from a mother or from the male adult that will be in that child's home? If we are to follow the logic of this bill, which only tests the mother, why is it that we again should not also be testing the father to ensure -- or whoever the guy is at home to ensure the safety of the child?

SENATOR SKELOS: Well, Madam President, again, if I could respond, this is a very important first step in protecting the child, and I think a very positive step.

If you wish to explore other pieces of legislation, we'd be happy to explore them.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: Read the last section.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. Would the sponsor yield for a question of clarification?

THE PRESIDENT: Senator Skelos, will you yield to a question?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Madam President.

Senator Skelos, through the President, I want to ask you a question. In the legislation, I'm reading on page 4, line 6, where it says -- this is current law, I presume -- in determining whether temporary removal of the child is necessary to avoid imminent risk, the court shall consider and determine in its order whether continuation in the child's home would be contrary to the best interests of the child.

And then on line 33, it says if the

court makes a finding of abuse or neglect, it shall determine, based upon the facts adduced during the fact-finding hearing, whether a preliminary order, pursuant to whatever, is required to protect the child's interests pending a final order of disposition.

So the court has some leeway in determining whether or not the child is in imminent danger, based on current legislation. Except with your bill, you now create a rebuttable presumption of imminent danger, so that it is now the burden of the mother to prove that the child is not in imminent danger.

So it seems to me that we create two classes of children or -- or you treat different parents differently.

SENATOR SKELOS: You're required to have a hearing.

Madam President, if I could respond, through you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: As you said, it is a rebuttable presumption. And the Social Services or Human Services is required to

respond within three days as to whether this is a potentially dangerous situation for the child.

SENATOR MONTGOMERY: All right. Through you, Madam President.

So, Senator Skelos, the evidence of imminent danger or the evidence of lack of imminent danger lies -- or the requirement to prove that there is not imminent danger to the child lies solely on the responsibility of the parent in the case of Senator Skelos's bill.

SENATOR SKELOS: It is a rebuttable presumption. Yes, it is a rebuttable presumption.

SENATOR MONTGOMERY: Okay. Yes, I just wanted to make sure that I understand that.

Madam President, if I may ask another question.

THE PRESIDENT: Senator Skelos, do you yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Montgomery.

SENATOR MONTGOMERY: Based on this legislation, since it is the mother who must prove in one way or another to the liking of the court, the satisfaction of the court, that the child is not in imminent danger, what happens when there is a glitch; i.e., there is a false positive and that parent is required to prove that that is a false positive and it takes longer than three days?

SENATOR SKELOS: It takes longer.

SENATOR MONTGOMERY: Okay. Madam President, just one last question, if the -

THE PRESIDENT: Go ahead, Senator Montgomery. You have the floor.

SENATOR MONTGOMERY: Thank you.

I would like to know from Senator Skelos, Madam President, what we have done in the cases where there is a problem with a mom who is a drug user who finds herself pregnant, with child, and who would in fact like to receive drug treatment. What -- how does this legislation make it possible for that mother to receive drug treatment while remaining intact with her infant?

SENATOR SKELOS: I think, Senator

Montgomery, one, this legislation has to do with the protection of the child. I don't believe that you need legislation to provide drug treatment for pregnant women or for any individuals. Because there are so many wonderful programs that exist out there that if you want to help yourself, you certainly can avail yourself of those programs.

SENATOR MONTGOMERY: Thank you, Madam President. Thank you, Senator Skelos.

Madam President, on the bill.

THE PRESIDENT: Go ahead, Senator, on the bill.

SENATOR MONTGOMERY: I just would like to inform my colleagues, those of them who are unaware -- and certainly to remind those of us who understand very, very personally how this whole problem works -- we are now setting ourselves up to criminalize women. And these are the most vulnerable, at-risk women.

There is not, in fact, notwithstanding Senator Skelos's understanding that there's a lot of these wonderful programs, there really are not programs for

women and their children.

So when a woman wants to have drug treatment for purposes of reclaiming her life and being able to be a productive parent, that woman has to give up custody. Even if it's temporary, she must give up the custody of her children in order to go into treatment, for the most part.

So we're not encouraging women, one, to go into treatment, especially if they have children, because they know that they are likely to lose custody. And, two, with this legislation, it pushes women further out of the realm of seeking help and, furthermore, puts them in a position of being accused of neglect. And there are criminal consequences of that.

So I would urge my colleagues to look at this legislation very carefully. While we want to protect the interests of children -- I certainly am all in favor of that. I understand Senator Skelos' wishes to do that. But we must not criminalize women. And I think there are much better ways of looking at protecting these children without

going to this extreme that Senator Skelos's bill would take us.

So I'm voting no on this legislation.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. If the sponsor would grant me the indulgence to ask just a few, very few more questions, I would appreciate it very much.

THE PRESIDENT: Does the Senator yield?

SENATOR SKELOS: Madam President, I would.

And if I could just comment on what Senator Montgomery said, we're not criminalizing anything. This is a Family Court matter. It's a civil remedy to protect the child. We are not criminalizing anything in this legislation.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

I am concerned in that the bill doesn't require drug testing on all newborns.

And I wouldn't support it if it did. But I'm wondering what checks and balances the sponsor envisions would be in place so that it's not just poor children or minority children or basically non-middle and upper-middle and upper-income children's moms who are being tested under this legislation.

SENATOR SKELOS: Madam President, if I could just point out to Senator Duane, the legislation does not mandate testing on all children. It is up to the discretion of the doctor. If he, through visual examination of a child -- and they're well-trained in this area -- feels that there is an indication of drugs within that child's system, then the doctor could have the specific tests taken.

But there's no mandatory testing of all newborns.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Does the sponsor yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: As you can see, I've given this particular legislation an awful lot of thought.

I am wondering whether or not the sponsor believes that there's a conflict with this legislation in terms of the Fourth Amendment, that this legislation could allow an illegal search and seizure and perhaps an invasion of privacy through the involuntary drug testing of a mom through her newborn.

SENATOR SKELOS: No. We're not testing the mother, we're testing the child. A test could be ordered on the child by the doctor, all -- as being medically necessary anyway.

And all we're saying is we're not going to send that child home immediately in light of the fact that generally, with pregnancies, the birth mother is sent home within, as we know, one, two, three days.

All we're saying is keep that child there, protect them, and don't send them back into a potentially abusive household. Protect

the child. Err on the side of the child.

SENATOR DUANE: Thank you, Madam President. On the bill.

THE PRESIDENT: You may proceed on the bill, Senator.

SENATOR DUANE: Thank you.

Just as I was last year, I remain concerned about this legislation and what its impact is and the doors it opens in our law.

I have enormous respect for the sponsor's goal of protecting children. It's a very, very laudable goal and one which I share. But I believe that there are some consequences of this legislation which are detrimental both in terms of the health as well as the legal rights of a mother, particularly her mental health.

I think that we tread into very dangerous territory when we start adding more and more protective rights for fetuses, particularly at the expense of women and mothers. I think that a double standard is being created here, one which is more punishing or potentially punishing and hard and provides a different standard for women,

pregnant women, than for fathers, who I believe need to share equal responsibility for what happens to a child.

And in addition, I very much think that in the absence of more drug and alcohol treatment for mothers or parents in general, there are very, very few residential treatment programs where a pregnant mother or a mother who has other children and wants to be in treatment and be with their family at the same time could go into. Our state is very, very lacking in providing that service to mothers who show willingness to go into recovery.

And I think that rather than just looking at this as a criminal justice issue, we need to look at all of the different elements of this difficult issue but absolutely not leave out the public health aspects of it.

And I think that that's what's happening here, is that we're only looking at the criminal justice elements of it and not at the public health ramifications and really good work that we could be doing in this area.

THE PRESIDENT: Senator Skelos,

why do you rise?

SENATOR SKELOS: Madam President, if Senator Duane would yield.

THE PRESIDENT: Senator, do you yield?

SENATOR DUANE: Yes.

SENATOR SKELOS: Senator Duane, do you feel that all birth parents should be tested for drugs?

SENATOR DUANE: Through you, Madam President. No, I don't.

In fact, Madam President, I think that by far the better way to go would be to -- in the prenatal stage of the birthing process that work and outreach and counseling be done to ensure that each and every mother and father is provided with options to get into recovery.

I also am concerned that this bill feels to me -- though I don't think it's the intention of the sponsor -- that it targets low-income and minority moms. And in fact, there is an enormous amount of substance abuse among middle- and upper-income Caucasian women -

THE PRESIDENT: Senator Skelos, why do you rise?

SENATOR SKELOS: I was going to ask a question, but I -

SENATOR DUANE: Let me just finish. Let me just finish my -

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: -- where, for instance, prescription drugs may be more a part of the abuse of drugs that those women may be involved with. And in fact, that that may not be so easily captured by a physician.

So I think that prenatal counseling and the resources that would go into that for each and every mom would be a better way to go to really attack this problem in an equal and forthright manner.

SENATOR SKELOS: If Senator Duane would yield -

THE PRESIDENT: Senator, do you yield?

SENATOR DUANE: Yes.

THE PRESIDENT: Go ahead, Senator Skelos.

SENATOR SKELOS: Of course, the initial contact essentially with the family is the discovering of the illegal drug within the newborn which is transmitted by the mother.

If we find that there is a positive toxicology report, would you then feel that we should mandate drug testing on the birth father?

SENATOR DUANE: May I respond, through you, Madam President?

I must say, it's great to be on this side, to be doing the yielding.

(Laughter.)

SENATOR DUANE: Actually, what I'm most concerned about is that the presumption changes for the mother, so now it's that she has to prove that she's not a neglectful or abusive mother and has to put the resources together to defend herself, rather than the State having the burden of proof about the mom having the drug abuse problem.

If it were still that the State had to prove that, I would not have an objection to the father or the male in the household -

or if there's a female in the household, for that matter, who's the other parent -- having to also undergo treatment or discover whether or not they're abusing drugs.

THE PRESIDENT: Senator Saland.

SENATOR SALAND: Thank you. Thank you, Madam President.

I rise in support of this bill and I rise to commend Senator Skelos for his continued advocacy of this measure.

And I've heard a number of things here on the floor today that I think are somewhat extraneous to this bill. And I'm certainly assuming that while they are extraneous, that there's nothing deliberate about it. I just assume it's a misunderstanding of what this bill does.

Clearly, as Senator Skelos mentioned in his earlier remarks in response to Senator Montgomery, there's absolutely nothing about this bill that criminalizes anything. This bill only deals with the Family Court Act. No criminal sanctions for anybody for any reason whatsoever under this bill.

There are no Fourth Amendment questions raised by this bill because, again, there is no criminal action that -- no conduct that's being criminalized by this bill.

There's not a criminal justice issue to be found anywhere in this bill unless you really don't bother to read it. Then you may find that there are criminal justice issues here.

Lastly, there's certainly no issues here regarding fetuses. This only occurs upon the birth of a child and if that child, he or she, shows some signs of positive toxicology.

And let me suggest to you that this is nothing imagined. I'm well aware from hearings that I've conducted of instances in which nurses have come and said, We did not have the ability to file a petition because there's nothing under the law that let us do so, and we had to return a child to parents, parents who gave birth -- or a parent who gave birth to a child with a positive toxicology. And that child subsequently thereafter was either, in one or more instances, severely abused -- and I'm talking about more than one

case -- and in some instances that child subsequently was killed.

So this is not something that's imagined, this is not something that's contrived. This is something that represents really an extraordinary effort on behalf of Senator Skelos to try and create a mechanism that's more responsive to the needs of perhaps the most vulnerable of vulnerable children, infants, newborns who are being returned to households which run the risk of subjecting them, if not merely to neglect, then perhaps to the most severe type of abuse and, in some instances, ultimately the victim of some fatal act.

So I again wholeheartedly support, endorse, and welcome Senator Skelos's efforts. And I would urge everybody in this house to support his bill.

THE PRESIDENT: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Madam President, I was rising to ask Senator Saland if he would yield for a question.

THE PRESIDENT: Senator Saland,

will you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Montgomery.

SENATOR MONTGOMERY: Yes. Senator Saland, what is the highest level of penalty, criminal penalty, for child neglect?

SENATOR SALAND: There is no penalty per se in this bill.

SENATOR MONTGOMERY: I understand.

SENATOR SALAND: This is purely a Family Court bill. Depending upon the nature of the act, depending upon the nature of the act -

SENATOR MONTGOMERY: Yes, okay.

SENATOR SALAND: -- if you're charged in a criminal court, you can be charged with an assault, you can be charged with endangering the welfare of a child. None of that is applicable under this section of the law.

SENATOR MONTGOMERY: All right. Thank you, Senator.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Madam President, to explain my vote, within two minutes or shorter.

There are a number of issues related to this legislation. Certainly one is the cost. This is going to be an extremely costly process for us without being a solution. So obviously that's one consideration that I think we all take very seriously.

The other is while my colleagues have assured me that this legislation, this particular bill in no way relates to a criminal charge, they also admit that there is, based on the level of neglect, the level of abuse, once that issue enters into criminal court, it is considered a crime.

So we are setting women up to ultimately be -- possibly be criminalized. So I think we need to think about that very seriously. And that is certainly why I'm voting no on this legislation.

THE PRESIDENT: Will those members voting in the negative please raise your hands again.

Senator Duane, to explain your vote.

SENATOR DUANE: Yes. Thank you, Madam President.

I just want to assure my colleagues that I actually have read this bill in great detail. And while there are -- and though explicitly in the bill are not some matters, implicit are some -- a couple of other issues of grave concern in addition to the ones that I raised.

The first is that I believe that if a mom tests positive for drugs, that it's hard to believe that a doctor or a nurse or a health care professional would not call the police into it and actually that mother would be entered into the criminal justice system.

So while that may not be explicitly written in the bill, implicitly I think that no one could deny that that's exactly what would happen.

And another area where the bill falls short, and the reason why it's such a good idea for us to actually debate these bills, is that if there's a finding of neglect because of the mother's having a positive toxicity or a negative toxicity, and even if she's able to prove that it's a negative - that it was not true that she had been using drugs, that it was a false positive, there's nothing in the legislation which then says that the mother's name should be taken off the child abuse registry, where her name would remain on for 18 years.

So again, this is -- it's a very good issue for us to raise and debate on the floor. And the goal of trying to stop child abuse is very, very laudable and one which I agree with enormously. I think that there is some more work to be done in terms of being as effective as we possibly can about making sure that children are returned to a safe

environment, and I vote no.

Thank you, Madam President.

THE PRESIDENT: Senator Schneiderman, to explain your vote.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

I don't think there's anyone who doubts the sincere intentions behind this bill. And I must say, listening to Senator Skelos and Senator Saland talk about it, this is obviously an effort to deal with a serious problem.

I think, though, that this approach really is almost an approach that seems to be based on kind of a blissful ignorance about the situation in the Family Courts in many parts of this state. That system is tremendously oppressive. The resources aren't there. The resources for a mother to defend herself against a charge that will stay with her for 18 years -- and it may, as Senator Duane points out, stay with her for 18 years even if she does rebut the presumption -- are just not there.

And I would urge that we take a

comprehensive approach to the problem of poor children in Family Court in New York State instead of doing something that raises a presumption that doesn't provide the resources or the wherewithal for us to deal with the underlying problem.

It's great to say we're on the side of the kids, but what these children really need is more funding for health care, more funding for child care, more funding for education, more funding drug treatment.

And until we're prepared to do that, instead of passing through expanding and exploding out your tax cuts that are going to prevent us from providing any money for these things in a few years, I don't think that it's fair for us to say that we're on the side of the children. I vote no.

THE PRESIDENT: The members will each be recorded as voting in the negative who have so spoken.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 206 are

Senators Duane, Gonzalez, Markowitz, Montgomery, Oppenheimer, Paterson, Rosado, Sampson, Schneiderman, Smith, and Stavisky. Ayes, 48. Nays, 11.

THE PRESIDENT: The bill is passed.

The Secretary will continue to announce the results.

THE SECRETARY: On Calendar Number 206, also Senator M. Smith. Ayes, 47. Nays, 12.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Civil Service Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Civil Service Committee in the Majority Conference Room.

SENATOR SKELOS: Madam President, if we could go back to reports of standing committees, I believe there's a report of the Finance Committee at the desk. I ask that it

be read.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bill direct to third reading:

Senate Print 2257, by Senator Padavan, an act to amend the Executive Law.

THE PRESIDENT: Without objection, the bill will be reported to third reading.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Senate 2257 at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 684, Senator Padavan moves to discharge, from the Committee on Finance, Assembly Bill Number 1162 and substitute it for the identical Senate Bill 2257, Third Reading Calendar 684.

THE PRESIDENT: The substitution is ordered.

SENATOR DOLLINGER: Explanation, Madam President.

THE PRESIDENT: The Secretary will read.

SENATOR PADAVAN: Thank you, Madam President.

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

SENATOR PADAVAN: Thank you, Madam President.

This bill establishes the "Cigarette Fire Safety Act."

THE PRESIDENT: First of all, the Secretary should read.

THE SECRETARY: Calendar Number 684, by Member of the Assembly Grannis, Assembly Bill Number 1162, an act to amend the Executive Law, in relation to establishing fire safety standards.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Thank you, Madam President.

This bill, which is called the "Cigarette Fire Safety Act," will require that manufacturers of cigarettes selling them in

New York State ensure that they will be of the type that are not slow burning, that will extinguish themselves when not being smoked.

And the reason for this is quite simple. The leading cause of fire-related deaths is the careless use of cigarettes. As an example, in New York City last year there were 112 fire-related deaths; 31 of them were directly caused by smoldering cigarettes. Thousands of people have been injured, millions of dollars of property lost, firefighters' lives taken in responding to these fires.

We will require that the manufacturers within the next year meet the standards that will be promulgated by the New York State Fire Safety Bureau in consultation with the State Health Department.

You should be aware of the fact that in 1984, the Congress of the United States passed a Fire Safety Act relative to cigarettes. It commissioned a study that was done over a three-year period, and that report was rendered in 1987.

The report was conclusive. It said

basically two things: That after testing and examining 41 different brands of cigarettes, that there was no reason in the world in terms of technology, from any practical viewpoint, that cigarettes could not be manufactured so that they would not be a fire hazard, they would not continue to burn when not smoked. They indicated that it was both feasible, practical, and should be done.

Well, that's 13 years ago. Other studies, other analyses have been done, other reports and opinions rendered, all confirming that judgment of 13 years ago.

This bill is supported by every leading firefighting organization in the state, all insurance companies, medical groups. The list is quite extensive.

THE PRESIDENT: Senator Gonzalez.

SENATOR GONZALEZ: Yes, Madam President. Will the sponsor yield for a couple of questions?

THE PRESIDENT: Does the sponsor yield?

SENATOR PADAVAN: Yes.

THE PRESIDENT: You may proceed,

Senator Gonzalez.

SENATOR GONZALEZ: This bill will result in two types of cigarettes available in New York. Licensed tobacco retailers will be permitted to sell only fire safety cigarettes, and the existing tobacco brands will be continued to be sold in bordering states, on Indian reservations, and on the black market.

Has the sponsor or the counsel made a determination as to the state's ability to impose regulation on a product such as tobacco under the commerce clause of the United States Constitution?

SENATOR PADAVAN: How many questions was that, Senator? At least three. Let me work backwards.

First, there's enough case law that you could write a volume on indicating that the states, and certainly New York State would qualify, have the right to regulate both products and processes where it relates to people's health and safety. We have that right and we exercise it in many, many different ways. So there is no constitutional prohibition as it relates to interstate

commerce.

Now, with regard to the selling of such cigarettes that would not comply with these regulations by Indian reservations, we understand the problem that relates to the nations in selling tobacco and fuel, particularly as it relates to collecting sales taxes.

And, yes, they could go outside this regulation. But I would suggest two things to you. First, within the body of this bill there lies a civil penalty that an individual would incur should he knowingly sell a cigarette that would not fall under the rules and regulations to be promulgated and that that cigarette would cause someone to lose a life, property or be injured.

Now, I don't think a retailer on an Indian reservation would want to subject himself to that possible liability.

Secondly, I don't believe that the Indian nations are irresponsible in terms of not only the safety of the general public but the safety of the members of their own nation, who obviously buy these cigarettes. Would

they want to jeopardize their lives?

And, third, one of the factors that came out of all these studies is that the cost associated with manufacturing this cigarette does not change. It's basically the same, because the tobacco is basically the same. What changes is the wrapper. And where wrappers today in some cases are laced with nitrate so they'll burn rapidly and hotter, that would be dealt with.

So for all those reasons, I don't believe any of these things are a problem.

SENATOR GONZALEZ: Would the sponsor still yield for a question?

THE PRESIDENT: Senator Gonzalez.

SENATOR GONZALEZ: Has the Department of Taxation and Finance or the Division of Budget provided any estimate of the fiscal impact on the state relating to the tax revenue laws to cross-border, Indian, black market sales? Has the impact of the department enforcement budget been calculated?

SENATOR PADAVAN: No, I'm not aware of any such studies.

But I would suggest to you,

Senator, if you look at the loss in property and the subsequent loss in tax revenues due to fires, if you look at the cost to insurance companies, the cost of lives, of a whole variety of things that have an economic factor to them that we will be helping to prevent, I think we're far ahead of the game. If you want to look at it purely from the point of view of dollars and cents.

But on the other hand, Senator, I think what we're basically setting about here to do is to save lives and prevent people from being injured.

SENATOR GONZALEZ: Mr. President, can -

ACTING PRESIDENT BONACIC: Senator Gonzalez.

SENATOR GONZALEZ: Has the Office of Fire Prevention and Control indicated it's prepared to develop standards mandated by the bill within the necessary time allotted?

SENATOR PADAVAN: They haven't indicated that they couldn't.

ACTING PRESIDENT BONACIC: Senator Gonzalez.

SENATOR GONZALEZ: Yes, Mr. President, one final question. I think basically you answered it.

Does the Department of Taxation and Finance intend to enforce any provision of this bill with regard to cigarettes sold on Indian reservations?

SENATOR PADAVAN: I think my answer earlier, Senator, would apply.

SENATOR GONZALEZ: Thank you.

Thank you, Mr. President.

ACTING PRESIDENT BONACIC: You're welcome.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield for a couple of questions?

ACTING PRESIDENT BONACIC: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes.

SENATOR DOLLINGER: Senator, what happens in your bill if for some reason the Office of Fire Prevention and Control does not meet the one-year deadline?

SENATOR PADAVAN: If they could

do it more quickly? We give them up to a year. We give the manufacturers up to a year beyond the effective date of this bill, which is next April.

SENATOR DOLLINGER: Right. But my understanding -

SENATOR PADAVAN: So therefore, we have more than a year, actually, for the implementation.

SENATOR DOLLINGER: Correct.

Through you, Mr. President, if Senator Padavan will continue to yield.

SENATOR PADAVAN: Yes.

ACTING PRESIDENT BONACIC: Senator Padavan will continue to yield.

SENATOR DOLLINGER: My understanding is that the Office of Fire Prevention and Control has one year to develop the standards for cigarette sales in New York State; is that correct?

SENATOR PADAVAN: That's correct.

SENATOR DOLLINGER: And my question is, what happens if for some reason they don't complete that process within a year?

And the reason why I ask, through you, Mr. President, is because we have at other times done things with HCRA and other agencies where we've taken complicated regulatory issues, given them to the agencies, and for some reason a year passes or a year and a half passes and we don't get a report or we don't get these standards.

As you know, I strongly support these standards. I'd simply like to know what happens if, for some reason, the agency for some reason doesn't complete it in a timely fashion.

SENATOR PADAVAN: First, Senator, there's so much work been done already on this issue. I mentioned earlier the previous three-year study done at the federal level. All of that information is currently available.

Some of the manufacturers have already gotten patents, cigarette manufacturers, on how to do this. There are several brands on the market which we believe already comply, although we can't say with definity, because the standards have not been

promulgated. But they seem to be.

So I don't believe that the year will be a problem. However, should it be, obviously they can come back to us and say, We need more time. And obviously we would comply if it was reasonable. But I don't see that as an eventuality.

SENATOR DOLLINGER: Through you, again, Mr. President, if Senator Padavan will continue to yield.

SENATOR PADAVAN: Yes.

ACTING PRESIDENT BONACIC: The Senator yields.

SENATOR DOLLINGER: Senator, at some point would you consider an amendment or a chapter amendment to this bill, if we get it -- because this is certainly a bill I would like to see signed -- that would require the Office of Fire Prevention and Control to report back to the Legislature on the standards that it's developed so that we get a chance to see those and analyze those and determine whether any kind of additional legislative action is required?

SENATOR PADAVAN: Well, Senator,

I can assure you that I and I assume many others in both houses will be closely monitoring what that agency does and sharing that information with everyone. And if at some point in time we find that that is not forthcoming, then obviously we'll take appropriate action.

If necessary, obviously we can produce any kind of chapter amendments or changes in the law that are needed then.

I don't foresee that as a problem, because I believe these agencies have just as much concern as we do, and I'm sure that they will approach this mandate, this requirement, with enthusiasm.

SENATOR DOLLINGER: Thank you, Mr. President. On the bill.

ACTING PRESIDENT BONACIC: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Mr. President, I want to commend Frank Padavan for his work on bringing this bill to the floor and his work for a long time on the issue of producing safe-burning cigarettes in New York.

This is an issue which the Senate

Democratic Conference, we attempted to bring to the floor several weeks ago through a motion to discharge. And I think I can speak for my colleagues on this side of the aisle, that this is an issue which I know Senator Padavan has supported for more than a decade. And I commend him for that.

My only disappointment, Mr. President, is that we had to wait 13 years for this to happen. And my further dismay or disappointment is that this year our movement on this bill also happens to coincide with the industry acknowledging that they are capable of producing fire-safe cigarettes, safe-burning cigarettes.

And while I know in Senator Padavan's mind this is a bill he's worked on for a long time, I hope that what this Senate is not doing is suggesting that we will only regulate industries that cause death and destruction, property loss, danger to our firefighters and public safety personnel - all very adequately described by Senator Padavan -- but I hope what we will not do is only act in the public interest when the

people we are seeking to regulate say, Okay, it's okay, you can do it now, we have figured out how to do it.

I would suggest, Mr. President, if that's our approach, we're abdicating our public responsibilities, and that the proper response on this issue should have been 13 years ago when the federal government said it can be done, the technology exists. It seems to me New York would have been fulfilling its obligation in the public interest then by saying it's time to pass safe-burning cigarette legislation.

And it seems to me that that would have been the time we could have stood up and said, Regardless of what the industry wants, we know that this is in the public interest. And we know that hundreds of lives will be saved for the next decade if they had passed safe-burning-cigarette legislation in 1987.

I understand perhaps why that didn't happen, but I find it disappointing nonetheless. Senator Padavan has persevered through those years with his determination to get this bill to the floor. And I commend him

for that, as I have before. But I couldn't go without stating my disappointment that we didn't do this a decade ago. We should have done it then. It was the right thing to do then. It is still the right thing to do. But I regret the fact that apparently hundreds of New Yorkers may have needlessly died while we waited.

And I would just strongly urge this house, let's do it now, let's do the right thing now. I wish that before I had come to the Legislature in 1992 this had already been done and we could stand here and celebrate the 10th anniversary or the 13th anniversary of safe-burning cigarettes. There would be fewer people who had died, there would be fewer people who were scarred, there would fewer property losses, there would be fewer firefighters who would have been imperiled because of carelessly discarded or burning cigarettes while people fell asleep.

It's still the right time to do it, Mr. President. I only wish we had done it more than a decade ago. I'll be voting in favor.

ACTING PRESIDENT BONACIC: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first day of April.

ACTING PRESIDENT BONACIC: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT BONACIC: The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, there will be an immediate meeting of the Election Committee in the Majority Conference Room.

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

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, can we return to the controversial reading of the calendar, please.

ACTING PRESIDENT BONACIC: We can.

SENATOR FUSCHILLO: Thank you.

ACTING PRESIDENT BONACIC: The Secretary will read.

THE SECRETARY: Calendar Number 459, by Senator Morahan, Senate Print 6240A, an act to amend Chapter 235 of the Laws of 1865.

ACTING PRESIDENT BONACIC: Senator Duane, why do you rise?

SENATOR DUANE: I just have a question for the sponsor.

ACTING PRESIDENT BONACIC: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes, sir.

ACTING PRESIDENT BONACIC: Senator Duane.

SENATOR DUANE: Why is this bill different than the bill we voted on a couple of weeks ago?

SENATOR MORAHAN: It's in the description of the bill, the act. The Assembly asked it to be recalled.

If you look at the two bills, Senator, we amended the descriptive paragraph on the original one that we passed that said

"in relationship to money appropriated." In the new bill, or the amended bill, it is now "in relation to monetary value of assets."

It's still the same million dollars.

SENATOR DUANE: Thank you, Mr. President.

ACTING PRESIDENT BONACIC: You're welcome.

SENATOR DUANE: Thank you.

SENATOR MORAHAN: You're quite welcome, Senator.

ACTING PRESIDENT BONACIC: Read the last section.

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

ACTING PRESIDENT BONACIC: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT BONACIC: The bill is passed.

THE SECRETARY: Calendar Number 536, by Senator Padavan, Senate Print 1398, an act to amend the Penal Law, in relation to

making unlawful immigration a Class C felony.

ACTING PRESIDENT BONACIC: Read the last section.

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

ACTING PRESIDENT BONACIC: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BONACIC: Senator Coppola.

SENATOR COPPOLA: I'd like to, Mr. President, ask a question of the sponsor.

ACTING PRESIDENT BONACIC: Withdraw the roll call.

Senator Padavan, would you yield to a question, please?

SENATOR PADAVAN: Yes.

SENATOR COPPOLA: In regards to this bill, Senator, can you just make a distinction between what's happening now in Florida as opposed to New York? Would they be fine to take this boy's raft from him?

SENATOR PADAVAN: I'm sorry. You know, I'm having trouble hearing you. You

said something about Florida. I didn't -

SENATOR COPPOLA: Elian, yes. I'm talking about the young boy.

If we had somebody come over in a raft like that, would we be putting this immigrant in jail and fining him? How would we handle a situation like that?

SENATOR PADAVAN: Senator, there's no relevance whatsoever to the situation of Elian in Florida -

SENATOR COPPOLA: I'm sorry, Senator.

SENATOR PADAVAN: There is no relevance whatsoever between this bill and the terrible tragedy that's going on in Florida relevant to a young boy named Elian.

What we're talking about are smugglers of illegal aliens. As a matter of fact, in 1998 there was a very extensive article in the New York Times telling us about just one ring alone that had smuggled people across from Canada, over 3600 Chinese. They charge for this; on the average, $47,000.

We have a problem that's much broader than that. That's just one place, one

group, one organization. It's far more pervasive than that.

But to answer your original question, it has absolutely nothing to do with a Cuban exile. As you know, under the Cuban Refugee Act, people coming from Cuba are given automatic asylum. That's not the case with the type of people we're talking about.

SENATOR COPPOLA: Mr. President, may I ask one more question, please?

ACTING PRESIDENT BONACIC: Mr. Padavan, do you continue to yield?

SENATOR PADAVAN: Yes.

SENATOR COPPOLA: Aren't there young immigrant Chinese men and women who come to this country?

SENATOR PADAVAN: Sure, there are thousands and thousands. Most of them come here legally. They come here, they seek green cards, they seek citizenship, they seek asylum. But they're not smuggled in over our borders illicitly. They come in in an appropriate way.

SENATOR COPPOLA: I'm still - one more question, please.

ACTING PRESIDENT BONACIC:

Senator Padavan, do you continue to yield?

SENATOR COPPOLA: Senator, I still think we have young immigrants -

SENATOR PADAVAN: Senator, what you don't understand is we're talking about illegal immigration, not legal immigration. This is smuggling of illegal immigrants.

SENATOR COPPOLA: Senator, how do you distinguish between illegal and the people who are oppressive and don't know?

SENATOR PADAVAN: How do we distinguish? We are certainly the fountain of immigration from the very beginning, of people who have fled foreign countries coming here seeking freedom and economic opportunity.

But they came in through Ellis Island, like my grandparents did, or they came in in other ways that were perfectly legal and appropriate. They weren't smuggled in the middle of the night across the borders from one nation -- namely, Canada -- to another. They weren't brought in on a boat that floundered off the coast of Long Island in the hands of -- being operated by illegal

smugglers.

So let us draw a distinction between those who come here seeking asylum, seeking opportunity, and those who are smuggled here for a price, which is clearly illegal. We are merely -- it's already illegal. What we're doing is providing a different penalty. And in this bill, we're providing for an opportunity to seize the assets of those smugglers. Which may be boats, planes, whatever they use.

That's what this bill is all about.

SENATOR COPPOLA: Just one more question, please, if the sponsor would yield.

ACTING PRESIDENT BONACIC: Do you continue to yield, Mr. Padavan, to Senator Coppola?

SENATOR PADAVAN: Yes.

SENATOR COPPOLA: How does this deal from the federal laws as opposed to what you are now proposing?

SENATOR PADAVAN: How does it what?

SENATOR COPPOLA: How does this deal -- how does this differ from the federal

laws -

SENATOR PADAVAN: Right now the federal government has statutes that allow it to seize assets in a variety of areas, such as in drugs.

In 1984, we adopted a statute which we worked on for a number of years -- it's now law -- that allows to us seize the assets, New York State to seize the assets of drug smugglers. I'm giving you a parallel here. We use half those assets for drug treatment and education programs. The other half goes back to local law enforcement so they can do their job better.

What we're doing with this bill is providing for local law enforcement the opportunity to seize those assets as we do in the case of other criminality.

SENATOR COPPOLA: Mr. President.

ACTING PRESIDENT BONACIC: Senator Coppola.

SENATOR COPPOLA: On the bill, please.

ACTING PRESIDENT BONACIC: On the bill, Senator Coppola.

SENATOR COPPOLA: I just feel that the federal government has enough law enforcement, enough agencies, enough manpower to enforce illegal immigration, and what we're doing is adding a burden to the State of New York.

And that's the reason why I'm voting against this.

ACTING PRESIDENT BONACIC: Read the last section.

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

ACTING PRESIDENT BONACIC: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BONACIC: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 536 are Senators Coppola, Duane, Gonzalez, Markowitz, Meier, Mendez, Montgomery, Rosado, Sampson, Schneiderman, A. Smith, M. Smith, and Stavisky. Ayes, 47. Nays, 13.

ACTING PRESIDENT BONACIC: The

bill is passed.

THE SECRETARY: Calendar Number 143, by Senator LaValle -

SENATOR FUSCHILLO: Lay it aside for the day.

ACTING PRESIDENT BONACIC: The bill is laid aside for the day.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I'd ask unanimous consent to be recorded in the negative on Calendar Numbers 673 and 674.

ACTING PRESIDENT BONACIC: Without objection.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, could we stand at ease for a moment.

ACTING PRESIDENT BONACIC: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:30 p.m.)

(Whereupon, the Senate reconvened at 4:35 p.m.)

ACTING PRESIDENT BONACIC:

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT BONACIC: Immediate meeting of the Rules Committee in the Majority Conference Room.

Senator Fuschillo.

SENATOR FUSCHILLO: The Senate will stand at ease.

ACTING PRESIDENT BONACIC: The Senate will continue to stand at ease.

(Whereupon, the Senate stood at ease at 4:36 p.m.)

ACTING PRESIDENT BONACIC: The Senate will come to order.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, may we return to reports of standing committees. I understand there are reports of some committees at the desk.

ACTING PRESIDENT BONACIC: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Larkin, from the Committee on Racing, Gaming and Wagering, reports the following bill direct to third reading:

Senate Print 6178, by the Senate Committee on Rules, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law.

Senator Maltese, from the Committee on Elections, reports the following bill direct to third reading:

Senate Print 7418, by Senator Maltese, an act to amend the Election Law.

Senator Leibell, from the Committee on Civil Service and Pensions, reports the following bills direct to third reading:

Senate Print 6540, by Senator Bonacic, an act to amend the Civil Service Law;

6543, by Senator Leibell, an act to amend the Retirement and Social Security Law -

ACTING PRESIDENT BONACIC: Excuse me.

Can we have a little order, please, show a little respect. Thank you.

THE SECRETARY: And Senate Print 7067, by Senator Leibell, an act to amend the Retirement and Social Security Law.

And Senator Bruno, from the Committee on Rules, reports the following bill direct to third reading:

Senate Print 7512, by the Senate Committee on Rules, an act to amend the Public Authorities Law and a chapter of the Laws of 2000.

ACTING PRESIDENT BONACIC: Senator Fuschillo.

SENATOR FUSCHILLO: Move to accept the report of the Rules Committee.

ACTING PRESIDENT BONACIC: The motion is to accept the report of Rules Committee. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BONACIC: All opposed, nay.

(No response.)

ACTING PRESIDENT BONACIC: The Rules report is accepted.

And without objection, all other

bills reported directly to third reading.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, could we stand at ease for a moment, please.

ACTING PRESIDENT BONACIC: The Senate stands at ease.

SENATOR FUSCHILLO: Thank you.

(Whereupon, the Senate stood at ease at 4:53 p.m.)

(Whereupon, the Senate reconvened at 4:56 p.m.)

ACTING PRESIDENT BONACIC: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, can we take up Calendar Number 685, Senate Bill 7512, please.

ACTING PRESIDENT BONACIC: The Secretary will read.

THE SECRETARY: Calendar Number 685, by the Senate Committee on Rules, Senate Print 7512, an act to amend the Public Authorities Law and a chapter of the Laws of 2000 amending the Public Authorities Law.

ACTING PRESIDENT BONACIC:

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT BONACIC: Yes, there is.

SENATOR FUSCHILLO: I move to accept the message of necessity.

ACTING PRESIDENT BONACIC: All in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BONACIC: Opposed, nay.

(No response.)

ACTING PRESIDENT BONACIC: The message is accepted.

Read the last section.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT BONACIC: Senator Dollinger.

SENATOR DOLLINGER: Can I just have a brief explanation from Senator Padavan, please.

ACTING PRESIDENT BONACIC: Senator Padavan, will you yield?

SENATOR PADAVAN: Yes. Yes.

Mr. President, two weeks ago this chamber, as well as the Assembly, passed a bill requiring that mentally disabled individuals on SSI receive the same treatment in traveling the subways, buses, and railroads of the State of New York; namely, that their fare be cut in half.

After that bill was passed, there were two problems that surfaced. One of them is that we determined that all other SSI recipients receiving half fare do not receive that half fare during the morning rush hour from 7:00 to 9:00. The other problem related to the amount of time the MTA would need to implement this new provision.

This chapter amendment places the mentally ill SSI recipient on a parity basis with all other SSI disabled individuals in terms of half fare. It also gives the MTA 90 days to implement it.

SENATOR DOLLINGER: Thank you, Mr. President. Explanation satisfactory.

ACTING PRESIDENT BONACIC: Read the last section.

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

ACTING PRESIDENT BONACIC: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BONACIC: Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Mr. President. I'd like to speak on the bill - to explain my vote.

ACTING PRESIDENT BONACIC: Senator Duane, to explain his vote.

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

I actually like things the way they are now with persons with mental illness getting half fare not just during non-rush hours but also during rush hours.

I actually think that we should let more people get half fares during more of the day, including rush hours, to the point where we're able to reduce the fare for everybody. Because, after all, the fares on public

transportation are really just a tax on working people.

I know in New York City very few people except for tourists just take the subways and buses for the fun of it. They actually take it because they have to, including and especially on their way to work.

I can see if we did this while at the same time we were raising the minimum wage to make it possible for working New Yorkers to be able to survive on a little bit more money in their pockets.

But in lieu of doing that, I'd like to keep things this way and have an eye towards making it possible for more people to have a reduced fare, including and especially during rush hour.

So I'm going to vote no, Mr. President.

ACTING PRESIDENT BONACIC: Thank you, Senator.

Senator Duane will be recorded in the negative.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you,

Mr. President.

I'm going to join my colleague, Senator Duane, in voting no. I think that we need to have a renewed commitment to our mass transit system and to broadening public transportation.

This issue has moved beyond the realm of transit advocates. This is an issue now where the most prominent organizations in New York City's business communities have come out saying we're not providing enough transit service, we're not providing the funds for our transit system.

We're going to have an $8 million hole in the MTA's budget. It is not acceptable to cut back programs for working people and to limit a fine program like, you know, allowing the mentally handicapped to travel at half fares based on budgetQary constraints and considerations when what we should be doing is investing in our transit system for the economic future of our city and our state.

And I think that we're about to, hopefully very soon, start debating a budget.

And we know, as we take this budget up, that there's not enough money there for the MTA. So I'm joining Senator Duane in voting no. We are not doing what it takes for the transit system. And I think shaving away at good programs like this one is not the answer to the problem.

Thank you.

ACTING PRESIDENT BONACIC: Senator Schneiderman will be voted in the negative.

Any other votes? The Secretary will announce the results.

Senator Padavan, why do you rise?

SENATOR PADAVAN: I'm rising to explain my vote.

The last comment from Senator Schneiderman just is appalling to me. What this bill does is it enables us to put in place in the City of New York and in the MTA region parity for the mentally disabled individuals who ride those systems, who today are paying full fare. This bill will give them half fare and put them on the same playing field as any other disabled person

receiving SSI.

Therefore, how you can say that this bill takes away from that population something which they've never had is beyond my ability to comprehend. I vote aye.

ACTING PRESIDENT BONACIC: Senator Padavan will be recorded in the affirmative.

Again, all negative votes please show by raising your hand.

The results, please, Mr. Secretary.

THE SECRETARY: Those recorded in the negative on Calendar Number 685 are Senators Coppola, Duane, Lachman, Rosado, Schneiderman, and Stavisky. Ayes, 54. Nays, 6.

ACTING PRESIDENT BONACIC: The bill is passed.

Senator Fuschillo.

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

ACTING PRESIDENT BONACIC: No, there is not.

SENATOR FUSCHILLO: Well, there

being no further business to come before the Senate -

ACTING PRESIDENT BONACIC: Senator Paterson, why do you rise?

SENATOR FUSCHILLO: Mr. President, will you recognize Senator Paterson, please.

ACTING PRESIDENT BONACIC: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

With unanimous consent, especially the consent of the distinguished Deputy Majority Leader in place at this time, I'd like to be recorded in the negative on Calendar Number 536.

SENATOR FUSCHILLO: Without objection.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT BONACIC: Without objection, Senator Paterson will be recorded in the negative.

SENATOR PATERSON: Because of the tremendous response I just got from all of my colleagues, I not only want to thank them but

I'd like to invite them to an immediate meeting of the Minority. There will be an immediate meeting of the Minority Conference in Conference Room 314 of the Capitol.

ACTING PRESIDENT BONACIC: There will be a Minority conference in the Minority Conference Room, Room 314.

Senator Lachman, why do you rise?

SENATOR LACHMAN: I'd like to be recorded yes on 685, without objection.

ACTING PRESIDENT BONACIC: Without objection, Senator Lachman will be recorded in the affirmative on said vote, on 685.

SENATOR HEVESI: Mr. President.

ACTING PRESIDENT BONACIC: Senator Hevesi, why do you rise?

SENATOR HEVESI: I rise to request unanimous consent to be recorded in the negative on Calendar Number 685.

ACTING PRESIDENT BONACIC: Without objection, Senator Hevesi will be recorded in the negative on Calendar 685.

SENATOR HEVESI: Thank you.

ACTING PRESIDENT BONACIC: Thank

you also.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, there being no further business to come before the Senate, I move we adjourn until Tuesday, April 18, at 3:00 p.m.

ACTING PRESIDENT BONACIC: On motion, the Senate stands adjourned until Tuesday, April 18, at 3:00 p.m.

(Whereupon, at 5:03 p.m., the Senate adjourned.)