THE STENOGRAPHIC RECORD

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11:09 a.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: With us this morning to give the invocation is the Reverend Peter G. Young, from Blessed Sacrament Church in Bolton Landing.

REVEREND YOUNG: Let us pray.

Dear God, as we call on You for Your blessing to this Senate chamber, may we recall the heartache of those in India suffering from the consequences of an earthquake and be reminded of how fortunate we are here in New York State.

May we thank You and again honor today President Reagan for his 90th year of service and dedication.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, February 5th, the Senate met pursuant to adjournment. The Journal of Saturday, February 3rd, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator 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.

Senator Skelos.

SENATOR SKELOS: Madam President, now that we're under motions and resolutions, would you please recognize Senator Dollinger.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I have just given written notice, as required by Rule XI, that I will move to amend the Senate rules by adding a new rule, XV, in relation to the ethical standards for members, officers, and employees of the Senate. It's just for notice purposes.

THE PRESIDENT: It has been received, Senator, and will be filed in the Journal.

SENATOR DOLLINGER: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: May we please adopt the Resolution Calendar, with the exception of Resolution Number 374.

THE PRESIDENT: All in favor of accepting the Resolution Calendar, with the exception of Resolution 374, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Balboni.

SENATOR BALBONI: Yes, Madam President. If we could just hesitate for a moment before adopting the Resolution Calendar, as I know the very diligent staff are seeking to put the Resolution Calendar on the desks. Thank you very much.

Perhaps at this time we could take up the two privileged resolutions by Senator Goodman that are currently at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Goodman, Legislative Resolution Number 381, mourning the death of Reverend Dr. David H.C. Read, distinguished citizen and devoted member of his community.

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.

The Secretary will read.

THE SECRETARY: By Senator Goodman, Legislative Resolution Number 382, mourning the death of Samuel Riley Pierce, Jr., distinguished citizen and devoted member of his community.

THE PRESIDENT: All in favor of the resolution signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Balboni.

SENATOR BALBONI: Madam President, at this time could we please take up the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 28, by Senator Padavan, Senate Print 542, an

act to amend the Penal Law, in relation to possession of gambling devices.

SENATOR DOLLINGER: Lay that bill aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 33, by Senator Goodman, Senate Print 700, an act to amend the Penal Law, in relation to consecutive terms of imprisonment.

SENATOR DOLLINGER: Lay it aside, please, Madam President.

THE PRESIDENT: The bill is laid aside, Senator.

THE SECRETARY: Calendar Number 37, by Senator Balboni, Senate Print 861, an act to amend the Penal Law, in relation to establishing a new crime.

SENATOR DOLLINGER: Lay that bill aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 51, by Senator Saland, Senate Print 394, an act to amend the Social Services Law, in

relation to allowing regional state park police.

THE PRESIDENT: Read the last section.

SENATOR DUANE: Lay it aside, please.

SENATOR DOLLINGER: Lay it aside, please, Madam President.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 54, by Senator Skelos, Senate Print 421, an act to amend the Domestic Relations Law, in relation to parents or other persons.

SENATOR DOLLINGER: Lay that bill aside, please.

THE PRESIDENT: The bill is laid aside.

Senator Balboni, that completes the reading of the noncontroversial calendar.

SENATOR BALBONI: Yes, Madam President. At this time may we take up the noncontroversial calendar, which is in fact the controversial calendar. Thank you.

THE PRESIDENT: The Secretary

will read the controversial calendar.

THE SECRETARY: Calendar Number 28, by Senator Padavan, Senate Print 542, an act to amend the Penal Law, in relation to possession of gambling devices.

SENATOR DOLLINGER: May we have an explanation, please.

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

SENATOR PADAVAN: This bill deals with an anomaly in the current law that in effect says whether you have one or you have a hundred illegal gambling devices, the penalty is still a misdemeanor. We're providing a threshold of five devices and receipts of $5,000, changing it to a Class E felony at that level.

That's the bill.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, will the sponsor yield for a question.

SENATOR PADAVAN: Yes.

THE PRESIDENT: All right. Go

ahead, Senator Dollinger.

SENATOR DOLLINGER: Senator Padavan, with respect to the definition of gambling device, does this bear any relationship to computer-operated or computer gambling devices?

I know that you have been, I think with others in this chamber, one of those who has raised red flags and led the fight against computer gambling, where people are waging bets through the Internet and through the computer.

My question is, does this bill affect that at all?

SENATOR PADAVAN: We don't change the definition of a gambling device. Whatever the current law is -- and it's against the law today. The penalty, of course, being only a misdemeanor, as I indicated earlier. So we don't expand upon the definition.

Now, I'm not quite sure in my mind what's the particular device you were describing. Would you do that again?

SENATOR DOLLINGER: Through you, Madam President, if Senator Padavan will

continue to yield, I'll explain it in greater detail.

SENATOR PADAVAN: Yes.

THE PRESIDENT: The Senator continues to yield. Go ahead, Senator Dollinger.

SENATOR DOLLINGER: One of the things, Senator Padavan, that oftentimes happens in Internet gambling is that the center point is a server, an intermediary device that allows parties to communicate with one another and to place wagers and bets. You need a central facility that connects and allows the computers to communicate, which is the enabling device that allows computer-based gambling to occur.

My question is, is that considered a gambling device for purposes of this statute?

SENATOR PADAVAN: No.

SENATOR DOLLINGER: Okay.

SENATOR PADAVAN: Internet gambling, of course, is another issue which we intend to address in legislation this session, hopefully. And that has far-reaching

consequences, but that is not relevant to this particular proposal.

SENATOR DOLLINGER: Okay. And again, through you, Madam President, if Senator Padavan will continue to yield.

THE PRESIDENT: Does the Senator continue to yield?

SENATOR PADAVAN: Yes.

THE PRESIDENT: Go ahead, Senator Dollinger.

SENATOR DOLLINGER: Just so I understand, Senator, this says that if you - five devices, is it mentioned in there? I think you referenced five devices.

SENATOR PADAVAN: Five or more, yes. That's the threshold for the new penalty.

SENATOR DOLLINGER: Okay. So the possession of any five mixture of those devices would constitute the crime?

SENATOR PADAVAN: Yes. Correct.

SENATOR DOLLINGER: On the bill, Madam President.

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

SENATOR DOLLINGER: I think I voted for this bill before. And I want to commend Senator Padavan, who I think most of us recognize is at the forefront of leading the Senate's efforts against illegal gambling.

And I think his bill highlights an anomaly in the law, which is that there is no aggregation, as there is in many other instances in our Penal Law in which a repetition or the possession of a specific amount increases the penalty. This is similar to what we do in our drug laws, it's similar to what we do in aggregating petty larcenies.

And I think this bill was a good idea when I voted for it last year. I appreciate Senator Padavan's continuing clarification of it. And I would encourage him to take this to the next step, which is in dealing with the problem of Internet gambling -- which is becoming an epidemic, I think, in our state, and I believe it is in my own community in Rochester -- I would suggest that we look to ways that we can make the possession and the ownership of the server, of the electronic device that permits Internet

gambling to occur, to make that a crime as well.

I know -- and I say that fully understanding that that server could be located anyplace in the world to facilitate it. But it seems to me that we would send a clear message by including that within the definition of a gambling device. That is, a device which would otherwise have a benign purpose but which is used for gambling purposes.

And I would suggest that the extension of that into the new age would facilitate even further the goal that Senator Padavan's bill is seeking to obtain.

Thank you, Madam President.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. Would the sponsor yield, please.

THE PRESIDENT: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: I know that here

we've discussed the differences between gaming devices when they're being run by a church or a church group. I'm wondering whether there's any difference in the bill, any difference in treatment if the devices were to be found being used by a religious organization or by a secular organization.

SENATOR PADAVAN: "Las Vegas Nights," church-sponsored events that are legal, are not covered by this bill. This bill covers illegal gambling devices.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

Senator Balboni.

SENATOR BALBONI: Madam

President, I'd like to call a meeting in the Majority Conference Room of the Racing, Gaming and Wagering Committee.

THE PRESIDENT: A meeting of the Racing, Gaming and Wagering Committee will be held in the Majority Conference Room.

The Secretary will read.

THE SECRETARY: Calendar Number 33, by Senator Goodman, Senate Print 700, an act to amend the Penal Law, in relation to consecutive terms of imprisonment.

SENATOR DUANE: Explanation, please.

SENATOR PATERSON: Explanation.

SENATOR BALBONI: Madam President -

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Thank you. May we please lay that bill aside for the day.

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

SENATOR BALBONI: Thank you very much.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 37, by Senator Balboni, Senate Print 861, an act to amend the Penal Law, in relation to establishing a new crime of unlawfully dealing with a child in the first degree.

SENATOR PATERSON: Explanation.

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

SENATOR BALBONI: Thank you very much, Madam President.

This bill would amend Section 260 of the Penal Law to create a new crime, unlawfully dealing with a child, based upon the dealing of drugs by a parent while in the home with minor children present.

This has been a problem that has been identified by police agencies. They have executed warrants frequently in these types of situations where there is a drug-selling practice taking place at the residence. Oftentimes there is a possibility of gunfire.

And, very shockingly, parents who participate in this type of illicit behavior will try to place drugs in and around their children's rooms in an attempt to avoid

detection, which obviously is utilizing a child in a horrible fashion.

This bill would create a new crime as a deterrent for the parents to not sell drugs in the home, and also will allow authorities to take greater steps to prevent that from happening in the future.

Thank you, Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Balboni would yield for a question.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: Go ahead, Senator Paterson.

SENATOR PATERSON: Senator, is it the presence of children in the vicinity or the direct utilization that meets the threshold for treatment under the new Section 260 that you're proposing?

SENATOR BALBONI: If you read Section 7 -- I mean lines 7 and 8 of the bill

on page 1, it speaks to the children being in the dwelling where the custodial child resides.

So it does not specifically target the utilization of a child as a mule or the secreting of drug paraphernalia or drugs on the child itself, but rather just the fact that the children are in the residence at the time of the transaction or the possession of drugs.

SENATOR PATERSON: Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR BALBONI: I do, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: So therefore, Madam President, what I would assume is that we are taking what would be the regular penalty for the unlawful sale of controlled substances in the first place, and we are now going to add a penalty because, in addition to

the sale, there was exposure if not use of children, and that in a sense compounds what we consider to be the wrong.

SENATOR BALBONI: That is accurate.

SENATOR PATERSON: Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR BALBONI: Yes.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, I like the idea. And I think that if you could think of something very enlightening, I think that would -

SENATOR BALBONI: Madam President, could we have a little order in the chamber? I'm having trouble hearing the distinguished member from -

THE PRESIDENT: If members would take their conversations outside, please.

Go ahead, Senator Paterson.

SENATOR PATERSON: Madam

President, if the Acting Majority Leader would continue to yield.

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: Yes, he does continue to yield. You may proceed, Senator Paterson.

SENATOR PATERSON: I was going to suggest that if the Acting Majority Leader finds something of an enlightening way to put this, I think this will drive me over the top. I think I'll vote for this bill.

But I do have one last question, and that is, what is the practice right now? In other words, wouldn't the Family Court come in here? Because that actually meets the test that the bill is proposing, the exposure of children to drug dealing, to drugs on the premises, to perhaps being utilized by the seller to avoid capture by the police. All those have standing in the Family Court.

So I guess I would assume, Senator, that what -- the information that you've researched from law enforcement authorities is that maybe it could be, but it's not being

done, and so that's why you want to codify this element of the law, to cure the fact that there is no redress for the exposure to children of the drugs.

SENATOR BALBONI: Madam President, through you. I am not certain, Senator Paterson, what specific reference in the Family Court Act that you are referring to. To my knowledge, there is no specific - currently, there is no specific provision of law that authorizes an increased penalty as a result of the utilization of a child to secret drugs.

In addition to which, this addresses a broader aspect of the problem, and that is that the actual transaction, or the attempted sale of drugs in a premises where there are minor children that the drug seller has custody over, is an egregious situation, outrageous in its activity, and therefore should be punished by an increased penalty.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I accept that. And I'm going to vote for the bill, and I commend my colleagues

that this is a good piece of legislation.

But in answer to Senator Balboni's question, Madam President, child abuse, neglect of a child, endangering the welfare of a child, that's what the Family Court does. In other words -- and I can't think of a more prima facie case of this than the one that is before us right now.

And all I'm saying to Senator Balboni was I assumed that in writing this legislation that his information, or the complaint that he's getting from the police, is that though those statutes may exist, they're not really being practiced. And I don't have a problem with that. In other words, maybe the Family Court should be brought into these proceedings. Perhaps for some reason it's slipping through the cracks, and this legislation cures it. That's why I'll vote for the legislation.

But I did want to point out that there was another avenue of agency intervention that should have been triggered by this kind of an action, and I was just inquiring as to why it hadn't happened.

SENATOR BALBONI: Madam President, if I may just respond to Senator Paterson's comment. First of all, thank you for voting for the bill.

I do not believe -- I've not practiced in this area of law for many years. But I -- and perhaps, Madam President, you might know better about the state of the law than I. But I am unsure whether or not you could bring a prosecution for child abuse on the basis that drugs are being sold in the home and nothing more.

I think that you might need more to bring an actual case of child abuse. And I think what this does is it now focuses the additional penalty on the actual individual who owns the home. And that's really the point of the law.

Thank you very much, Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, on the bill.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: I guess to

some degree this is almost a semantic difference that Senator Balboni and I are having, and perhaps we shouldn't use the time here in the chamber to exercise it.

But if I'm not mistaken, I thought I heard Senator Balboni get up and say that the fact that you're selling drugs in the home almost automatically endangers the welfare of the child because of the high degree of assaults, violence -- at times, gunfire - that accompanies drug sales.

So, you know, if this were a sophisticated operation involving, you know, very wealthy and sophisticated people and they did this in a certain way, even in those situations you've seen situations deteriorate and people severely injured and children hurt because of drug sales even on the street.

And so I would think that if there were ever a case for endangering the welfare of a child, if not child abuse, it would be met by this type of circumstance. And that's why I gladly vote for the bill.

But I was just pointing out that if the Family Court doesn't see a need for

intervention on issues such as this, then I would hope that perhaps Senator Balboni and I need to sit down and talk about what establishes the criteria for intervention by the Family Court.

THE PRESIDENT: Read the last section.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. If the sponsor would yield for a few questions.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, I do.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. I want to address a different issue than the issue Senator Paterson was addressing.

I think this is a very difficult area, and I appreciate the sponsor's efforts to deal with it. I spent more than ten years representing a community anticrime program and trying to deal with situations like this.

My first question is, as far as I

can tell this bill doesn't actually require a child to be present or close to drugs or have any contact with the drugs, just the mere fact of residence. Is that correct?

SENATOR BALBONI: That is correct.

SENATOR SCHNEIDERMAN: So it's possible that this could add an additional penalty when there was actually no evidence of use or abuse of a child? It's just the fact that this was a family's home, the parent was dealing drugs, and a child was lawfully a resident there. Is that correct?

SENATOR BALBONI: That is correct.

SENATOR SCHNEIDERMAN: I have a question about that, because I'm not sure this makes a fine enough distinction between the really appalling conduct that you've spoken about where there are -- and I've been involved in cases with this, where parents absolutely would hide drugs in a child's closet or in a child's bed, even.

But this would just require that a child be a lawful resident. I'm not sure that

makes the fine distinction.

Have you considered dealing with this from the point of view of eviction proceedings? Because that's another very strong weapon against drug dealing in this sort of context, of making this an element in our emergency eviction proceedings or bawdy house proceeding laws that have actually been strengthened by this house in the last few years.

SENATOR BALBONI: Madam President, through you.

The choice of this attempt to amend the Penal Law so as to provide an additional penalty was made as a result of law enforcement's input that when they arrive upon the residence where there are children living, whether or not in fact the children are there at the specific moment in time, that this is where they were choosing to go with the system. Because the police, when they enter onto the premises, have no idea whether or not the child is actually home.

And from my days at the Nassau County Police Training Academy, when I was

involved in the County Attorney's office, I know that when -- either in response to a domestic violence call or in response to a drug sale call at a residence, it is probably the most dangerous moment for police officers in their job. They walk on the scene, they have no idea who's present, who are not present, and the potential for violence, the potential for gunplay is very real.

What this bill is choosing to do - I'm sorry, what this bill is trying to do is to try to make sure that individuals who would engage in this kind of behavior understand that if you do it from your home where your children live, you're going to go to jail for a longer period of time, so don't do it. Don't do it at all. Don't sell drugs at all. But you're if really going to be so outrageously insensitive to the risks you're placing your children in by doing this behavior, then you ought to go to prison for longer.

That's essentially the methodology behind this bill.

SENATOR SCHNEIDERMAN: Madam

President, through you, if the sponsor will continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Why do you make a distinction that -- I understand that intent. In that case, why do you make a distinction that it has to be a child of the drug dealer?

Isn't it also a problem -- in fact, perhaps more of a problem of a lot of people, and certainly in my neck of the woods, who are dealing drugs who aren't even the parent of the children who reside in a place? Why shouldn't the penalty extend equally to someone who deals from a place where a child resides if it's not that person's child?

SENATOR BALBONI: Madam President, through you, because it avoids the problems attendant to proving intent. In other words, the individual who is not the

custodial parent could say "I had no idea there were children in the house."

Whereas if you are in fact the custodial parent, it's very hard to prove that you don't know your own children have in fact resided in the home.

SENATOR SCHNEIDERMAN: Through you, Madam President, I think that drug dealers, I think, tend to have a good deal of knowledge about where their -- the locations in which they're dealing drugs. And my experience is that most law enforcement is not directed against someone who is a casual dealer of -- you know, here and there, but it's a more substantial operation. And in my experience, the dealers know pretty well who is a resident.

If we're talking about children being a resident, I'm just concerned that by leaving that out, you open up the possibility that a drug dealer could just go to someone else's house where they know children live and deal there without being subject to this. And it almost sort of penalizes the actual parent more than it does the people who tend to -

and I've encountered this quite a bit. People who go to places where there are other children take advantage of the parents, sometimes the parents have drug problems themselves, and deal out of that place which is even safer for them, because it's not their home.

So I would urge you that that perhaps should be a consideration.

SENATOR BALBONI: I'll certainly consider it.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Thank you for this fine statewide approach to this problem.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. If the Senator will yield to a question.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you.

My question has probably to do more with the Penal Law. Does this, in fact, by amending this, does the existing Penal Law - you have not added criminal activities to this. So obviously the Penal Law that is being amended, this will be added to that section of the Penal Law. And whatever penalties that are currently on the books for that particular level of crime, would that persist or would that change? That's what I'm not clear about.

SENATOR BALBONI: Madam President, through you. The bill does principally two things. The first is it would create a new crime of unlawfully dealing with a child in the first degree, as it relates to the sale of drugs in a residence. In fact, right now that is currently not a crime.

And, secondly, it would increase the penalty. It would make it a felony.

So that's essentially the two-prong attack.

SENATOR HASSELL-THOMPSON: Madam

President, through you, if the Senator will yield again.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: I'll continue to yield.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: If it then is a new crime, what is the penalty that is being proposed for this new crime?

SENATOR BALBONI: It would be a felony, Your Honor. I mean -- Your Honor. See that? I feel like I'm back in court.

It would be a felony, an E felony.

SENATOR HASSELL-THOMPSON: With the potential minimum sentencing?

SENATOR BALBONI: I'm sorry, I don't have the sentencing guidelines in front of me, and I would hate to be wrong on that.

SENATOR HASSELL-THOMPSON: Okay, that was my question. So that whatever the minimum sentence is for this particular penal law would then be imposed?

SENATOR BALBONI: Senator Dollinger has provided me with the

information, so if he's wrong, it's his fault. One to four years.

SENATOR HASSELL-THOMPSON: Thank you. That's my question.

THE PRESIDENT: Read the last section.

Senator Dollinger.

SENATOR DOLLINGER: Madam President, just if Senator Balboni will yield to one quick question.

THE PRESIDENT: Senator, will you yield?

SENATOR BALBONI: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Just so I understand the impact of this bill, what is the current penalty for possession of the lowest-level controlled substance?

SENATOR BALBONI: It's an A misdemeanor, upon advice of counsel.

SENATOR DOLLINGER: And again, through you, Madam President, if Senator Balboni will continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR BALBONI: Yes.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: So as I understand it, we're simply jumping it from an A misdemeanor if it occurs in the house to an E felony, we're moving it only up one grade; is that correct?

SENATOR BALBONI: Yes, that is correct. Upon advice of Senator Volker. I'm getting a lot of help today.

SENATOR DOLLINGER: Okay. My only question and my only concern is, is there any possibility that there could be either violations, possession of marijuana or B misdemeanors, in which we would be jumping this two grades or potentially three grades of crime simply because it occurs in the house in which a custodial child resides? That's my question.

I mean, I agree -- and I voted for this bill before. I'm just trying to focus on whether -- if the effect of this is to jump it one grade from an A misdemeanor with penalties

less than a year to a year and more, I understand how that affects the process. But are we running the risk that we're jumping a violation into a felony simply because of the location in which the drug dealing occurs?

SENATOR BALBONI: Madam President, through you. Senator Dollinger raises an important aspect of this. And for purposes of the legislative intent, should this bill become a chapter, it is my intent as sponsor that this bill only apply to crimes where there is a jump of one step.

However, as I read the bill -- and I'm not sure of the way that you could draft this differently -- I think it might be a possibility where you could have a substance such as marijuana that possibly could be jumped up.

But for purposes of the legislative intent, as espoused by the sponsor, it's only meant to apply to the category one jump.

SENATOR DOLLINGER: Thank you, Madam President. Just briefly on the bill.

I appreciate Senator Balboni, who I'm sure through not only his legal work but

his legal work in his numerous Law Review articles, which I've read and I think are topnotch jobs, he understands the importance of giving some direction to a court about what the sponsor's intention is.

And I agree with him, if the goal is to elevate what would otherwise be a misdemeanor to a felony because of where it occurs, that is consistent with the tradition that we have done both in this Legislature and in this house with respect to the sale or possession of drugs on school grounds, the sale or possession of firearms on school grounds, in the vicinity of a church, where we have taken the locale of a particular criminal activity and elevated the consequences to those who violate the law in those particular geographic areas.

And I also appreciate his clarification because I think that the notion that you could take a violation that occurs in a home where a custodial child resides and jump it to a felony would be uncharacteristic with what we have done, which is to significantly elevate the degree of criminal

consequences solely because of the location.

So I appreciate Senator Balboni's qualification, and I actually hope that someday not only does this bill become law but that some enlightened court looks back and says, The sponsor said it was only meant to apply in instances in which we were elevating Class A misdemeanor conduct into that of a felony.

Thank you, Madam President. I'll be voting in the affirmative.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 37 are Senators Hassell-Thompson, Montgomery, and Schneiderman. Ayes, 57. Nays, 3.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

51, by Senator Saland, Senate Print 394, an act to amend the Social Services Law, in relation to allowing regional state park police.

SENATOR DOLLINGER: May we have an explanation, please.

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

SENATOR SKELOS: Lay it aside for the day, please.

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

THE SECRETARY: Calendar Number 54, by Senator Skelos, Senate Print 421, an act to amend the Domestic Relations Law, in relation to parents or other persons.

SENATOR DOLLINGER: May we have an explanation of that, please.

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

SENATOR SKELOS: Madam President, this legislation was passed in the year 2000, 60 to zip. It will eliminate the need for the consent of a parent to the adoption of his or her child where such parent has previously

consented in writing to the other parent's surrender of the child or to the adoption of a child.

Basically, it puts back in the statute language that was taken out in 1997 by legislation passed by Senator Saland. And Senator Saland is supportive of this language being reintroduced to the chapter.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, if the sponsor will just yield to a couple of quick questions. Or just to one; I'll go at him in sequence.

SENATOR SKELOS: Yes, Madam President, I would yield.

THE PRESIDENT: You may proceed, Senator.

SENATOR DOLLINGER: Senator, you describe the legislation that Senator Saland passed in 1997. And my question is, does this bill arise because of complications that arose out of that statute? Could you just describe the particular circumstances? Was there a history of situations where this particular

legislation would be a problem?

SENATOR SKELOS: Yeah, there are situations where there is a putative father who is perhaps with the birth mother for a period of time and then disappears. That makes it very difficult to finalize the adoption when you cannot locate that individual.

And what this would allow is that he could consent to the adoption, as it says at the bottom of the legislation, "in the manner required to permit the recording of a deed." And that would be sufficient to go forward with the adoption if he is not present at the time it would be finalized.

SENATOR DOLLINGER: Through you, Madam President, if Senator Skelos will continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Again, I note

that, as oftentimes we do in the printing of these bills, you've taken the actual section, the subparagraph that you're amending, and added your new language.

My question is, is there anything that requires a tie in time between the time that the execution occurs and the time that the adoption occurs?

And the reason why I ask this question -- through you, Madam President -- is because I know, as Senator Skelos appreciates and is probably well familiar with, there can be a significant passage of time between the execution of the consent and the actual release of the child or surrender of the child for adoption.

Is there any provision that requires some temporal relationship between the consent, the signing of the consent and the actual adoption?

SENATOR SKELOS: The consent could be signed during the pregnancy. And certainly it would be effective for use to finalize the adoption. So you're dealing with essentially nine months, then the child would

be born, and for whatever period of time it takes to finalize the adoption.

SENATOR DOLLINGER: Again through you, Madam President. If the child -- if the consent is signed either on or about the time of the child's birth, is it effective forever during the period of the child's minority status?

I mean, if I gave the consent today and my child were ten years old and the mother agreed to surrender the child for adoption at that point, would that still be -

SENATOR SKELOS: In most of these cases, the adoption is finalized pretty much after the birth of the child. So that consent would be good, and it would be irrevocable.

SENATOR DOLLINGER: Okay. Through you, Madam President, if the sponsor will continue to yield for one more question.

THE PRESIDENT: Senator, do you yield?

SENATOR SKELOS: Yes.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Just looking

again at the language that you've inserted, is it your intention, as I asked Senator Balboni about his intention, that the consent shall be irrevocable, it shall not be just irrevocable denying the paternity of the child, but the consent itself shall be irrevocable?

SENATOR SKELOS: The consent shall be irrevocable.

SENATOR DOLLINGER: Okay. Through you, Madam President, on the bill.

THE PRESIDENT: You may proceed.

SENATOR DOLLINGER: In 1997 I think I was one of those who loudly praised Senator Saland's bill and law which eventually became a chapter which implemented changes at the federal level regarding the renewed emphasis upon adoption as an alternative for children who were being placed in foster care. And that what we were attempting to do was to accelerate the process by which children who are under the administration of the state and oftentimes placed in foster care are quickly made available for adoption.

While I appreciate Senator Skelos's description of a circumstance in which the

consent would be operable, I'm concerned about the situation in which a child is born, the child resides for a period of time with a custodial parent, the other parent has abandoned the child or has left, and it may be four or five years before the child is actually offered for adoption -- family circumstances have changed, something else has occurred, the child has been placed in foster care.

And that's why I raised the question to Senator Skelos about the passage of time, is it irrevocable for a certain period of time. I know that in Monroe County, in our Family Court, the question of terminating parental rights, which is something we discussed back in 1997 -- but in our Family Court, the question of terminating parental rights has become a huge and complicated issue.

And while I appreciate what Senator Skelos is going to do, and I'm going to vote in favor of it, I think we should go back and look again at what Senator Saland did in 1997. Because in 1997, largely pushed by Washington,

we abandoned our fifty-year commitment to try to keep families together in favor of accelerating the process by which parents could consent to release of their children.

And I think that that issue, which Senator Skelos has brought to the fore again by dealing with the consent provisions, comes back on the table.

And I would just suggest that while this is a bill that I'm going to vote in favor of because I think it does meet its goal, I would suggest that we go back and look at the termination of parental rights in the overall context of what we did for fifty years. We slightly changed it three years ago, and Senator Skelos's bill underlies the fact that we may have to go back and look at that change again to make sure that New York is doing everything it can to preserve families and to keep as many families together.

And therefore, even the question of how long the consent for an adoption or for the surrender of a child, how long it's going to be good for -- I understand it may be difficult to go back and get an absent parent

to consent to the release of their child, but I would suggest that there can be benefits to families for doing that and there can also be benefits to the government, because it may be an opportune time to go back and see if we can find the father or the mother to fulfill their child support obligations.

So I think this touches on a very complicated issue. I'm going to vote in favor of it. But I would urge both Senator Skelos, Senator Saland and those who are interested in the whole relationship between our laws for adoptions, the laws that we were told we had to pass to comply with our federal government and draw down our foster care money, I would suggest that we go back and look at that again.

Because this issue of whether New York supports families or whether we want to provide tools by which they can be more quickly divided or put asunder I think is something we should reexamine one more time.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: If the sponsor would yield, Madam President.

THE PRESIDENT: Senator, do you yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you.

Under this bill, would the birth father at any point have to sign something that says that they would allow the child to be put up for adoption, either -

SENATOR SKELOS: I answered that question earlier. And the -- it would require him to sign it in a form that would permit the recording of a deed. So it's a document that would be equivalent -- acknowledged as a deed would be.

SENATOR DUANE: And through you, Madam President, that would be before the birth?

SENATOR SKELOS: Before the birth.

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

SENATOR SKELOS: Yeah, it could be after the birth also, Senator Duane.

SENATOR DUANE: So through you, Madam President, it could be at any time the birth father could sign the deed.

And the way -- without this legislation, what happens is that the birth father has to sign something a second time?

SENATOR SKELOS: No.

SENATOR DUANE: How is it presently? I'm sorry I'm confused about this, but I -- what is this bill changing, then?

SENATOR SKELOS: This legislation basically, Senator Duane, will cover the situation where the birth parent, the birth father, disappears prior to the adoption being finalized but yet at some point gave the mother a document that says "I consent to my child being placed up for adoption if you so desire."

SENATOR DUANE: Through you, Madam President. Now the birth father has to sign sort of at the completion of the adoption process as well?

SENATOR SKELOS: This situation

would be where the birth father then disappears. This document could be used to finalize the adoption in the courts.

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

THE PRESIDENT: Senator, do you yield?

SENATOR SKELOS: Yes.

THE PRESIDENT: Go ahead, Senator Duane.

SENATOR DUANE: I noticed in the description in the memo in support it says that the birth father indicates that he has no desire to undertake support, et cetera.

I'm wondering who makes the - would a Family Court judge have to make the determination that the birth father is not interested in providing support? Or is it automatically assumed that the birth father doesn't want to support the child anymore?

SENATOR SKELOS: Essentially what would happen here, Senator Duane, is the birth mother would get a form from an attorney, get it signed, and then she would have it to go -

in the event he disappears and is not around when the adoption is sought to be finalized.

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

THE PRESIDENT: Senator, do you yield?

SENATOR SKELOS: Yes.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Then a Family Court judge isn't the one that would actually say "I agree, the birth father has disappeared"? In other words, there's an assumption made when the birth mother, for instance, presents this document that the birth father has disappeared?

SENATOR SKELOS: There's an assumption that he's disappeared?

SENATOR DUANE: If the birth mother presents -

SENATOR SKELOS: He's given her his irrevocable consent.

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

to yield.

Then the way it is today, without this, is that even though the birth mother had a signed consent form that said the father didn't want to participate in the support of the child, that the father then always had to sign another document saying that they continue to say that and that they wanted to put the child up for adoption, they consented to putting the child up for adoption?

SENATOR SKELOS: What would happen to a father today if you can't find them?

SENATOR DUANE: Without this legislation.

SENATOR SKELOS: I believe you have to go through publication in the newspapers, that there's some process that's set up to do this. And it's very, very costly and, quite honestly, not totally reliable.

SENATOR DUANE: Okay. So through you, Madam President, then the original document that's signed earlier on says that the father doesn't want to support the child, the document that would no longer be needed is

the document which actually says "and I agree with the adoption," so the original "I'm not going to support the child" document would now also convey that the father was willing to put the child up for the purpose of adoption?

In other words, the original document would now serve two purposes; is that correct?

SENATOR SKELOS: The document that he has signed -

SENATOR DUANE: That he is not going to support the child anymore would now serve two purposes -- one, that he doesn't want to support them, and also that he's willing to put the child up for adoption.

SENATOR SKELOS: I guess it could be interpreted that way. It really has to do with the consent to an adoption.

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

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: Those recorded in the negative on Calendar Number 54 are Senators Brown and Duane. Ayes, 58. Nays, 2.

SENATOR DUANE: To explain my vote, Madam President.

THE PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: You know, I'm torn about this. But I just think that we need to have a judge step in to agree that the father, in addition to saying that they're not going to pay support, has also said that they don't wish -- that they -- that it's all right with them to put the child up for adoption, and that a judge needs to make the determination that that kind of an abandonment has taken place.

THE PRESIDENT: Senator Duane, you will be recorded as voting in the negative on this bill.

The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing

committees, I believe there's a report of the Finance Committee at the desk.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations:

As a member of the Workers' Compensation Board, Frances M. Libous, of Binghamton.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Yes, Madam President. I'd like to yield to the Chairman of Labor, Senator Spano.

THE PRESIDENT: Senator Spano.

SENATOR SPANO: Thank you, Senator Johnson.

Madam President, it's my pleasure to stand in support of the Governor's nomination to the Workers' Compensation Board. Over these last number of years that I have chaired the Labor Committee, we've certainly heard a lot from injured workers across the state, from attorneys who represent injured

workers and claimants across the state, as well as from the insurance companies about problems within the Workers' Compensation Board in terms of backlogs, delays, the administration of the board, and moving forward with proper judgments with regard to injured workers in the future.

Today's nomination from the Governor gives us a person who has outstanding experience in each of those areas, having been trained as a public health nurse for over a decade, working in the health care industry, nursing homes, has the valuable health care education and background to make determinations with regard to injured workers in this state.

And the Governor's nominee has served as the district administrator for workers' compensation in an area where she has improved the delivery of services for the people in the Southern Tier, has made sure that the paperwork and the backlogs were caught up and that those 65 employees that were under her jurisdiction were working in an efficient and in a compassionate way towards

the injured workers.

So I have certainly known Fran Libous for a long time, and so on a personal note it's my extreme pleasure to stand here and to second her nomination -- but to second her nomination not because she is Fran Libous, but because she is a person who has dedicated her career to helping injured workers and people in the health care field, to a person who has got the credentials in the administration of the board, as well as making determinations in a compassionate way for people who need help and care who have been injured in this state.

So Governor Pataki once again has demonstrated his commitment to injured workers by recommending the appointment of Fran Libous as a member of the Workers' Compensation Board. And I'm very happy and proud to second -- offer her nomination to the members of the Senate today.

THE PRESIDENT: Senator Wright.

SENATOR WRIGHT: Thank you, Madam President. I join my colleague in seconding the nomination and congratulating the Governor

on putting forth Fran Libous as the nominee.

I think when one takes a look at the background of this candidate you find, as my colleague, Senator Spano, has pointed out, not only a background in health care, both as a direct care provider and in administration, one who has worked within the field of compensation, administering that at the district and regional level, but one who has also served as a community leader.

When you pull those attributes together of having served the community, having a knowledge of the health care arena and having a working knowledge of compensation, it's that combination of knowledge, skills, and ability that she uniquely brings to this position.

And for that, she is to be commended for her diligence in acquiring that unique combination, and the Governor is to be commended for selecting and recommending her to the board. Because that unique combination of credentials will help her provide the balanced, reasoned decisions that are essential in terms of meeting the needs of

injured workers as well as the balance necessary to meet the needs of the business community.

I too have known Fran for a number of years, so it's also from a personal perspective that we're very pleased to see her in the chamber today -- in a different capacity than she's been to this chamber before, but as the Governor's nominee and one I'm sure who will prove to be a great appointment to the Workers' Comp Board.

So, Fran, congratulations. I look forward to joining my colleagues in providing an affirmative vote this morning. Best wishes.

THE PRESIDENT: Senator Maziarz.

SENATOR MAZIARZ: Thank you, Madam President.

I too rise in support of Governor Pataki's nomination of Fran Libous. Fran has an extensive background. And I know that from having worked many times with the regional offices on workers' comp that I think one of the most organized and certainly the office that serves its clients with a great deal of

dignity and respect is the Binghamton office, where Fran has led that office now for several years.

And I think her qualifications as a health care worker certainly will lend well to the Workers' Compensation Board.

But on a more personal note, I want to tell you something about Fran Libous that I think probably very few people in this chamber know. Fran Libous is a hero. I was a witness one time in a very public place when an individual, a middle-aged man, had a very severe heart attack. And it was quite a distance from us, and Fran went over there and a lot of people -- there was a lot of commotion and people screaming, and a lot of people lost their composure.

And Fran went over there and immediately started to administer CPR to this individual. And he is alive today because of the work that Fran did on him. In front of, I might add, his two very young children.

So that's a side of Fran Libous that I think not very many people know. She's a caring person, and really what we need when

it comes to dealing with individuals that are going through the workers' comp system are caring people.

So, Madam President, I rise in support of this nomination. Thank you.

THE PRESIDENT: Senator Meier.

SENATOR MEIER: Thank you, Madam President.

The Secretary announced the nomination as Frances Libous of Binghamton. I would like to point out for the record that this is Frances Pianella Libous of Oriskany, New York, in the county of Oneida, in my district.

I don't know why Frances moved to Binghamton. But we do know -- we do know that a good part of the common sense, the dedication, the compassion, and the energy that caused the Governor to nominate her comes from her hometown.

God bless you, Frances. Good luck.

THE PRESIDENT: Senator Lack.

SENATOR LACK: Thank you, Madam President.

You know, the concept of modern

workers' compensation comes from Bismarck, and the Bismarckian principle was one of creating a bureaucracy so that people who worked within it could provide aid and comfort to those who couldn't work on the outside, to try to get them back to the job as soon as possible.

Unfortunately, prior to Governor Pataki that Bismarckian concept of how to run a workmen's compensation system had certainly changed in this state. With one exception, under Governor Cuomo we took people from outside the system and put them in to try to run the workers' comp system.

When Governor Pataki came along, he took Bob Snashall, who is an expert in workers' comp, and put him in charge of workers' comp, and people like Fran Libous went to work within the workers' comp system.

And we revived something now with the Governor's very good appointment of Fran Libous that we haven't seen since Governor Rockefeller, and that is a governor of this state going within the Workers' Compensation Board, taking people who have worked within that system, know how the system works, and

putting them as members of the Workers' Comp Board to make it even more efficient. Fran Libous is just that type of person.

So my congratulations to the Governor, my congratulations to Fran for the hard work she has done over the years in workers' compensation, and my congratulations to all the people of the state, because now we will have, as much as we have since Governor Pataki first came to office, a modern, efficient, well-working worker's compensation system.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Madam President, I too rise to join my colleagues in seconding the nomination of Fran Libous.

I met with her at the prior travel to Italy, and thank God we didn't need her services in any workers' comp cases over there.

But I have gone through her background; it's so extensive. And I really want to commend the Governor on this wonderful nomination, with her expertise in workers' comp.

And again, I ask her to assist me in enabling some further legislation regarding raising the welfare benefits of our past disabled workers in this state who have not gotten an increase since 1966 or earlier.

And again, I want to commend the Governor, and I join my colleagues in congratulating him on this wonderful nomination.

THE PRESIDENT: Senator Libous.

SENATOR LIBOUS: Madam President, I stand before this body with great personal pride. And it's because of that great personal pride, pursuant to Senate Rule IX, Section 1, I ask that I may be excused from voting on this nominee.

THE PRESIDENT: Without objection, Senator Libous, you are excused from voting on this confirmation.

SENATOR ONORATO: Is that a no vote?

(Laughter.)

THE PRESIDENT: The question now is on the confirmation of Frances M. Libous of Binghamton to an appointment as a member of

the Workers' Compensation Board for a term to expire December 31, 2007. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Frances M. Libous is hereby confirmed.

And as President of the Senate, I congratulate you and wish you the very best to continue your fine work with the Workers' Compensation Board.

(Applause.)

THE PRESIDENT: The Secretary will read.

THE SECRETARY: As members of the Port of Oswego Authority, David W. Buske, of Oswego, and Pamela Caraccioli, of Oswego.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Move the nomination.

THE PRESIDENT: The question is on the nomination of David W. Buske, of Oswego, as a member of the Port of Oswego Authority, for a term to expire September 1,

2002, and Pamela Caraccioli, of Oswego, as a member of the Port of Oswego Authority, for a term to expire September 1, 2004. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominees are hereby confirmed.

The Secretary will read.

THE SECRETARY: As a member of the Public Health Council, Susan G. Regan, of New York City.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Move the nomination.

THE PRESIDENT: The question is on the nomination of Susan G. Regan, of New York City, as a member of the Public Health Council, for a term to expire April 19, 2006. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is

hereby confirmed.

The Secretary will read.

THE SECRETARY: As a member of the Board of Visitors of the Finger Lakes Developmental Disabilities Services Office, Quentin J. Masolotte, of Dansville.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Move confirmation.

THE PRESIDENT: The question is on the nomination of Quentin J. Masolotte, of Dansville, as a member of the Board of Visitors of the Finger Lakes Developmental Disabilities Services Office, for a term to expire December 31, 2002. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

Senator Skelos.

SENATOR SKELOS: Madam President, with the consent of the Minority, if we could return to the calendar, Calendar Number 33, by

Senator Goodman.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 33, by Senator Goodman, Senate Print 700, an act to amend the Penal Law, in relation to consecutive terms of imprisonment.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Senator Montgomery. To explain your vote, Senator?

SENATOR MONTGOMERY: No.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President,

if we could return to motions and resolutions and adopt the Resolution Calendar in its entirety, with the exception of Resolution 374.

THE PRESIDENT: Motions and resolutions.

All those in favor of adopting the Resolution Calendar, with the exception of Resolution 374, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, may we please take up Resolution 374, by Senator Nozzolio, have the title read, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Nozzolio, Legislative Resolution Number 374, memorializing Governor George E. Pataki to proclaim March 10, 2001, as "Harriet Tubman

Day" in New York State.

THE PRESIDENT: 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, Senator Nozzolio has consented to opening up the resolution for sponsorship.

So why don't we put everybody on the resolution. And if anybody wishes not to be on it, they should notify the desk.

THE PRESIDENT: All those members who wish not to be included on this resolution please notify the desk.

Senator Skelos.

SENATOR SKELOS: Madam President, also, on Resolution 372, by Senator Sampson, Senator Sampson has consented to the resolution being opened for sponsorship. It memorializes the Governor to proclaim March 2, 2001, as "Read Across America Day" in the

State of New York.

So if anybody wishes not to be on the resolution, they should notify the desk.

THE PRESIDENT: All members who do not wish to be included on Resolution 372, please notify the desk.

Senator Skelos.

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

THE PRESIDENT: No, there is not, Senator Skelos.

SENATOR SKELOS: Madam President, if you'd recognize Senator Dollinger.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

Yesterday I gave notice of a motion to amend the rules with respect to joint conference committees. And I'd ask that I be permitted to speak on that proposed amendment at this time.

THE PRESIDENT: You may proceed, Senator Dollinger.

SENATOR DOLLINGER: Thank you,

Madam President.

This may be, at least in my judgment, the most important rule change that we've advanced in this house during the course of the last week.

As I'm sure everybody is familiar, we had a discussion about rules changes that would have taken the semiannual accounting of the Senate and made it into a permanent rule that would have facilitated public understanding of how we spend the $85 million to $90 million of the public's money.

Then we did a series of rules that dealt with video broadcasting. We talked about where we would put the cameras and creating the position of official videographer, and then of course requiring that the sessions be broadcast.

But today we voyage into a new territory that I believe is, although perhaps procedural in nature, is nonetheless more significant than any other. And that is to amend Joint Rule Number II by striking it and replacing it with a new joint rule relating to the creation of a Standing Committee on

Conference.

This committee would consist of five members of each house appointed by the Speaker and the Majority Leader. That's a critical aspect of the proposed rule, because there are those who have suggested that creating joint conference committees would somehow dilute the power of leadership in either this house or in the other house.

I would suggest that if the Speaker in the Assembly and the Majority Leader in the Senate have the ability to appoint the members of the conference committee, that actually facilitates that role and function of the leader of each house having the ability to control, to some extent, consistent with the mission of both houses or the majority in both houses, to provide direction to the Joint Committee on Conference.

The legislative minorities, as again is consistent with our practice in this Legislature, would be guaranteed at least one appointment on the joint committee, the Standing Committee on Conference.

The critical aspect of this

proposed rule change is that it would set - the Standing Committee on Conference would have guidelines for reviewing what is referred to in the rule as substantially similar legislation that has passed both houses. And they could do that under four sets of circumstances, four specific circumstances.

It could either be done at the request of both legislative leaders -- for example, yesterday we passed a bill that gives the City of New York the ability to remove a portion of the sales tax on home heating oil, natural gas, and in some cases steam-generated heat. That was done by Senator Goodman at the request of the mayor of the City of New York because of the substantial increase in the cost of home heating oil and other types of fuels to heat homes. Under those circumstances, we passed that bill.

It however is not the same bill that is sponsored by the Speaker of the Assembly and the Chairman of the Ways and Means Committee, Mr. Farrell. So we have two bills, each of which has passed the house. And to my knowledge, at this point there has

been no declaration under the current Rule II, Joint Rule II, that there will be a conference committee to iron out the differences between those two bills.

What this proposed amendment to our rules would provide is that the legislative leadership, Senator Bruno and Assemblyman Silver, could sit down and say, We want to refer this bill to the joint Standing Committee on Conference.

In addition, it would also give the power -- and to this extent, this bill does usher in a new era of thinking in this legislature, but not a new era of thinking in the history of other legislative branches in this nation. And that is this would also give the sponsors of each bill in each house the ability to require that the Joint Committee on Conference review the two pieces of legislation.

Third, it would provide that the chairs of the committees in which the bills originate -- in Senator Goodman's case, I believe his bill originated in Senator Goodman's committee on Corporations and

Authorities or Local Government or Cities. Whichever committee in which the bill originates, that chair, both in this house and in the other house, would have the ability to demand and insist that their version of the joint bill go to the Standing Committee on Conference.

And the last way to do it would be to allow the nonpartisan council appointed by the commissioners of the Legislative Bill Drafting Commission to make that referral.

So there are four paths by which bills, one-house bills, would be referred to a joint Standing Committee on Conference.

The reason why we have included, Madam President, the provision with respect to the nonpartisan council of the Legislative Bill Drafting Commission is because we're trying to set up a situation in which bills, similar bills, roughly comparable bills pass both houses, and they are referred to the council for an evaluation of whether they are sufficiently similar to be worthy of referral to a joint conference committee.

In addition, the bill provides

that -- and what I hope will happen is that a tradition of making decisions about the comparability of bills -- if you will, the common law of evaluations of comparability - would be made by the Legislative Bill Drafting Council, and we'd be in a position where we would establish over time a test or a series of tests to evaluate roughly comparable bills.

This Standing Committee on Conference, once a bill had been referred to it, would have 10 days to meet after the referral and 15 days from the date of referral to issue a report. That report would be delivered back to both houses of the Legislature in an attempt to iron out the differences between these two bills.

Also, the rule also provides that the Standing Committee on Conference would have to file with the Secretary of the Senate and the Clerk of the Assembly either a bill approved by a majority of the conference committee -- in other words, a mandatory referral back to the house of origination of a bill which had the ironed-out text of a bill acceptable to the Joint Conference Committee

for debate, referral, and vote by both houses.

It would also provide that the report of the Joint Conference Committee, if favorable, would immediately go to third reading in both houses so that it could be accelerated.

Madam President, this proposal actually has evolved from an informal governmental exercise between some of the members of this house and members of the Assembly. This proposal was originally suggested by Assemblywoman Sandra Galef, in the other house, from Westchester County.

She and I held a series of meetings of members of both houses, informal meetings, in an attempt to draft and iron out a bill that would establish a protocol for ideally eliminating what I believe is the scourge of both houses, and that is the famed, notorious, long-standing, often voted on, never becomes law one-house bill, which seems to occupy an enormous amount of this Legislature's time.

I don't think it's any coincidence that so often in January, February, and through the middle of March, and then through

late April, May, and halfway through June, we do bills that have legislative histories that are longer than my career in the Senate. It's always fascinating to be asked to vote on a bill for the seventh or eighth time and look back at the legislative history and realize that it's been before this house since 1985. I wasn't even involved in government. I barely had a law degree at that time.

But what happens is these bills traditionally pass one of the two houses, are never heard from again, or oftentimes a bill will be passed out of the Codes Committee that looks something like a bill passed by the Assembly, and those two bills never get a chance to be married into law.

There are -- and I appreciate all the work of the chairs on the other side of the aisle who get together and try to marry these one-house bills together through negotiations with their counterparts in the Assembly. But for some reason, only a handful of them seem to make the acceptable drafting changes in order to become a uni-bill, to become a single bill that eventually becomes

law.

So this joint Standing Committee on Conference would set up a protocol in which those one-house bills, either through the sponsor or through the chair or at the direction of the legislative leadership, would be sent off to a permanent negotiation process between the two houses.

This is patterned after a process that is most familiar to everyone in political life, and really devolves from the procedure used in the United States Congress, that there's a Standing Committee on Conference on Health, that bills that pass the United States Senate and pass the House are automatically referred to conference committee. It accelerates the process of negotiating differences between the two houses. And if you look at the Congressional Record, bills that pass the Senate and the House are never cursed with the identification of the one-house bill.

There are times when the conference committee may not be able to resolve differences between one-house versions. I

acknowledge that. And if so, the Standing Committee on Conference would issue a negative report that they hadn't been able to reach agreement.

But in the experience of the United States Congress, most of that negotiation starts before the bill leaves the house in the first instance. And it's oftentimes only a matter of detail that is resolved in the Standing Committee on Conference.

I would suggest that if we did that here, Madam President, the goal that Senator Bruno articulated of increasing the efficiency of the house and providing for the economy of the house -- which was the goal of the rules set that was passed by the Majority of this house over the objection of my Democratic colleagues last week -- if that's our goal, this amendment is the best way to get to that goal.

Because the bills that we've passed thus far, whether it's Senator Marcellino's bill on eliminating the regulation of natural gas in certain instances -- if that bill needs negotiation with the other house, that

negotiation could occur in a Standing Committee on Conference. The bill, at either Senator Marcellino's request or I believe he's also the sponsor as well as the chair, he would have control over that bill, he could send it to the house.

Or even if that was not his bill, if he determined that that bill was sufficiently similar to another bill, he could ask for the intervention of the nonpartisan council at the Bill Drafting Commission to try to get the process of negotiation going.

I know that a lot of our work seems to involve these dreaded one-house bills, and we seem to pass them year after year after year. We reach a point where we've asked all the questions, exhausted all the issues, and we still pass these bills.

I would suggest that by enacting this rule, which we could do as the Senate - we could pass this rule, we could send it over to the Assembly. It's a joint rule, it requires concurrence of both houses in order to become incorporated in our rules. But let the Senate set the standard. Let's convince

the other house that our form of economy is the best way to go.

I couldn't believe more that this is the change that will bring about a fundamental economy and efficiency in the Senate that all the other rules, all the other rules which we've characterized as stifling debate, which the Majority has suggested are designed to produce economy and efficiency - I would suggest that this is the rule that will get us to the goal of a more efficient Legislature, of a Legislature that contemplates, goes out and examines other opinions, devises legislation that solves the problems of this state or that the Majority of this house believes will solve those problems, and then we will facilitate negotiations with our counterparts in the Assembly. We will make more laws and less work. That's what this is all about.

I strongly urge that this joint rule, which strikes the current Joint Rule Number I and substitutes the new joint rule, that this be adopted by the house in the furtherance of economy and in the best

interests of the people of this state.

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

SENATOR PATERSON: Party vote in the affirmative.

SENATOR SKELOS: Party vote in the negative.

THE PRESIDENT: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 24. Nays, 36. Party vote.

THE PRESIDENT: The resolution is defeated.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business, I move we adjourn until Monday, February 12th, at 3:00 p.m., intervening days being legislative days.

THE PRESIDENT: On motion, the Senate stands adjourned until Monday, February 12, 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:26 p.m., the Senate adjourned.)