THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 13, 2001

11:05 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: In the absence of clergy, could we each bow our heads in a moment of silence.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, February 12, the Senate met pursuant to adjournment. The Journal of Friday, February 9, 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 Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Velella, please place a sponsor star on Calendar Number 71.

THE PRESIDENT: So ordered.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I hereby give 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 ethical standards for members, officers, and employees of the Senate.

THE PRESIDENT: The notice has been received, Senator, and it will be printed in the Journal.

SENATOR DOLLINGER: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, may we please adopt the Resolution Calendar, with the exceptions of Resolutions 442 and 443.

THE PRESIDENT: All in favor of adopting the Resolution Calendar, with the exception of Resolutions 442 and 443, 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 442, by Senator Morahan, have the title read, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Morahan, Legislative Resolution Number 442, memorializing Governor George E. Pataki to proclaim February 11 through 17, 2001, as

"Salute to Hospitalized Veterans Week" in the State of New York.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Senator Morahan.

SENATOR MORAHAN: Yes, Madam President. I'd like to open that resolution to all members of the Senate, those who would care to be on it, and would they please notify the desk if they care not to.

Thank you.

THE PRESIDENT: Senator Skelos, is that agreeable to you?

SENATOR SKELOS: Yes. Put everybody on the resolution. Anybody that does not wish to sponsor it, they should notify the desk.

THE PRESIDENT: Any member who does not wish to be on this resolution, please notify the desk.

The resolution is adopted.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If we could take up Resolution Number 443, by Senator Kuhl, which is at the desk, have the title read, and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Kuhl, Legislative Resolution Number 443, commending the New York Association for Continuing/ Community Education and the 2000 Students of the Year.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Yes, Madam President. Thank you for giving me the opportunity to speak briefly on this resolution.

THE PRESIDENT: You're welcome.

SENATOR KUHL: This body, every year for the last several years, has taken the time to adopt this resolution and commend not only certain members of an organization but the students that they honor.

The New York State Association of

Continuing/Community Education is comprised or compromised of adult education programs operated by school districts and BOCES operations and not-for-profit corporations. The Association has 400 members statewide.

And each year, the Association recognizes students who have used state-funded adult education programs to make very, very positive changes in their lives. These are individuals who in fact -- they're not following the normal education program, but students who in fact have found difficulty in their life situations but have overcome them and certainly who have taken these educational programs and proved their independence, their self-reliance, and their self-sufficiency.

So this body, as it has in years past, is here adopting this resolution honoring all those people who we're joined by in the galleries on the right and on the left, so I'm told, and in fact wants to wish them well.

We know that they have had some difficulty in their past, but certainly they have been challenged and have overcome those

difficulties and met those challenges. And we know that they will be fine and outstanding and terrific citizens for this state, not only today but tomorrow and for many years to come.

So we welcome those people who have participated in these adult education programs, and we congratulate you on your successes, because you are certainly role models for all of us and for many people in the state of New York.

Thank you, Madam President.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, I'd like -- where are they? Okay.

I'd like to rise and also give my congratulations to all of you for really doing an incredible job, and all of the people that participated in their education.

It's just an amazing thing to see people going from an inability to understand and read the English language and write the English language to full literacy and success.

I want to just mention one individual, since she's from my district,

Boguslawa Churawska. Pretty good? It's an amazing situation. She came to this country, could not speak English. She had a desire to study architecture. She's now at OCC doing a formal education after her training with this group. And also, she is reaching her dream: She's actually working for an architectural firm. And the success is going to be even much, much greater.

And we're very proud of her in our 49th Senate District, and we're proud of everyone else who has participated in this program.

And I've also met other members of this group who are being honored, and I believe other Senators are going to speak on their behalf.

THE PRESIDENT: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President.

I too am pleased to be able to cite the wonderful work that this program has done with one of my constituents. And, as with Senator DeFrancisco, I'm touched to see the remarkable personal progress that a person can

make, but also how she has been able to influence other people and to guide them and inspire them to make similar changes in her life.

The lady that I'm proud to recognize today as one of the recipients of this award is Ellen Kerce. And I hope I'm pronouncing her name correctly. But Ms. Kerce was born in Georgia in 1943, the third of 13 children. And in a large family, she was taken out of school by her parents to care for her younger siblings and never completed the kind of education that most of us in this chamber would take for granted.

And after moving to Syracuse some years later and raising her own family, she endeavored to make those personal changes in her life so that she could develop real literacy.

But she's done more than that. She's become a spokesperson for adults going back to school, has written extensively passages from her own life story. She's attended one National Literacy Conference and one State Conference for Adult Learners.

So this program does more than just help an individual acquire the skills to survive. It provides the ability for them to share those tools with other people and serve as an inspiration for a much larger community.

So once again, I would like to commend everybody here today with the New York State Adult Continuing Education program and again say how proud I am of our constituents for what they have achieved personally.

THE PRESIDENT: Senator McGee.

SENATOR McGEE: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR McGEE: I am very pleased to rise today to introduce to this group two people who come from my district, one from Allegany County and one from Cattaraugus County. I'd just like to speak, if I could, a little bit on these people.

Both of them have in fact obtained a GED, which is a general equivalency diploma. You know, I say to people that I talk with the fact that all of us go to school and all of us have the opportunity to graduate from high

school, but I think it takes a certain point of determination, a certain drive to have those individuals who do drop out of school go back and get a general education diploma. And to me, their star shines even brighter. It shows the gumption, it shows the strength, it shows the commitment to education.

And I'm very pleased to see Harold Lockwood and Katherine Pearsall up there.

Harold is an outstanding person, I want to tell you, because Harold is an active member of the Voices for Adult Literacy Education. He started as a client, he then moved to a tutor. He is a board member, and he is a popular local speaker for advocating this adult literacy education.

Katherine, Katherine is a fine example of a parent who has moved on, who has gone to get her GED, who has in fact now obtained employment and is working in the field of food management, I believe, at this point.

And I'm just absolutely pleased to have these two people here and to show off, if you will, show them off to my colleagues and

the fact what a great job they have done and what a drive and commitment they have in their further education.

To them I say congratulations for being named the outstanding people, and thank you for being here and sharing a moment with me and with my colleagues in the New York State Senate.

Thank you.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you.

THE PRESIDENT: You're welcome.

SENATOR OPPENHEIMER: Well, I too am astounded by some of the successes of people who have come from either very disadvantaged backgrounds or backgrounds where they were not brought up in this country.

And I am here to recognize Hever Santizo, who is the New York State Adult Student of the Year. And he's in my district; he's here in the chamber with us.

And it's just extraordinary what some of these folks can do. It absolutely floors you. He came here of course not

speaking a word of English, nor reading English, and had to surmount those problems. He learned English, he then had to learn to read English.

And one of the main things that motivated Hever is that he wanted to be available to and knowledgeable to help his sons. His children were moving along through the education system and speaking English well, having come here very young -- in fact, they were born here. And he felt that as a parent, he wanted to participate.

And this is one of the wonderful attributes of this program. I think it's inspired by the children inspiring the parents and the parents inspiring the children. And I think this family education concept is the one that we really have to promote the most.

Also, I think this particular program does not at the present time reach out to the children who are age 18 -- the young adults, 18 through 21. And I think we have to see that that particular segment of our student population also receives the benefits of this program.

But Hever came here from Guatemala, and now he has four siblings who have come also. And he is an inspiration to his family, to his children, and I think to all of us. Because we are the melting pot, and Hever proves it and proves how successful you can be when you put your mind to it and your will to it.

Congratulations, Hever.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Skelos.

SENATOR SKELOS: Mr. President, I'm going to have to call an immediate meeting of the Finance Committee in the Majority Conference Room.

And since I have to attend that meeting, I just want to congratulate all who are honored by this resolution.

And I know that we're not supposed to mention individuals, by the rules of the Senate, but sometimes we bend the rules a little bit.

So I'd like to congratulate Juan Mendez, from my district. He's attended the

Long Beach Adult Learning Center, which is covered by this resolution. But even more important, he's going to be a lawyer.

(Laughter.)

SENATOR SKELOS: And Senator DeFrancisco congratulates you. He would just urge that you be on the plaintiff's side when you do become a lawyer.

But congratulations to you.

ACTING PRESIDENT MARCELLINO: There will be an immediate meeting of the Finance Committee in Room 332. Remember, please, go to Room 332 immediately so we can conduct the business of that committee.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I rise in support of this resolution as well. I appreciate that the Deputy Majority Leader has suggested that sometimes we do have to bend those rules a bit. And I'm going to bend them just a little bit as well, because I want to talk to you about a woman that I met today named Zahida Kotoric.

And my first reaction when I met her was that's an unusual name, an unusual first name and an unusual last name, Mr. President. But I couldn't help but think, as I sat in my office and remembered that there probably was a time when someone said to my great-grandfather, John Finnegan: That is an unusual name. Or my other great-grandfather, William Bassett: That's an unusual name. Or, frankly, when my own Great-Grandfather Dollinger came here, and said: That's an unusual name.

It seems to me that the American experience is filled with the notion that although you may come here with an unusual name, it's a name that becomes part of the warp and woof, the fabric of American culture.

And Zahida's experience is perhaps the American experience condensed in a single lifetime. She was born and raised in Bosnia. She was displaced by war, as many of, frankly, all our own generations were displaced by war in Europe, brought here -- or excuse me, in our case, we may have come directly here. She didn't have that ability. She went to

Germany, where she was an immigrant for a period of time.

But because the German government for some reason says that you can only have immigrant status for five years, for a period of time, and because they are less welcoming to immigrants than the United States, she couldn't stay. And so she came here, she came to Rochester, New York. Frankly, just like my great-grandfathers came, in a different time.

But I would suggest that the American experience about melting and the melting pot couldn't be truer. And Zahida, I see you up there, and I want to congratulate you again for your great success and your passage through American history by coming here.

But I would suggest, as I suggested to you in my office, that the chair that I sit in today, my prayer for you is as perhaps someone said to my great-grandfather: I hope someday your great-grandchild has a chance to sit in a chair in this chamber. I give you the same blessing.

ACTING PRESIDENT MARCELLINO: The

question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Could we open that resolution up to all the other members also.

ACTING PRESIDENT MARCELLINO: Be pleased to, Senator Kuhl.

Any member not wishing to be on the resolution, please signify to the desk as such, and everyone else will be placed on the resolution.

Senator Stavisky, why do you rise?

SENATOR STAVISKY: On my Resolution, Number 431, Mr. President, honoring the accomplishments of my constituent Tommie Agee, I offer anybody who wishes to be on the resolution, I open it up for cosponsorship.

ACTING PRESIDENT MARCELLINO: Senator Velella, is that okay with the chair, we open up the resolution?

It's okay with the chair that we'll use our normal procedure. Anybody not wishing to be on the resolution, please indicate such to the chair.

Senator Velella.

SENATOR VELELLA: Mr. President, may we now proceed to the noncontroversial reading of the calendar.

ACTING PRESIDENT MARCELLINO: The Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 52, by Senator Saland, Senate Print 395, an act to amend the Family Court Act, in relation to evidence of child neglect.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 59, by Senator Skelos, Senate Print 426, an act to amend the Education Law, in relation to

drug testing.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 62, by Senator Skelos, Senate Print 385, an act to amend the General Business Law, in relation to the sale of laser pointing devices.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: The bill is laid aside.

THE SECRETARY: Calendar Number 70, by Senator Trunzo, Senate Print 763, an act to amend the Vehicle and Traffic Law and the Public Authorities Law, in relation to authorizing cities.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 73, by Senator LaValle, Senate Print 1042, an act to amend the Education Law, in relation to the terms of community college trustees.

SENATOR PATERSON: Lay it aside,

please.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

Senator Velella, that completes the reading of the alleged noncontroversial calendar.

SENATOR VELELLA: Mr. President, can we proceed to the controversial calendar.

ACTING PRESIDENT MARCELLINO: The Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 52, by Senator Saland, Senate Print 395, an act to amend the Family Court Act, in relation to evidence of child neglect.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MARCELLINO: Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, what this bill does is to take a section of the existing law under the Family Court Act that effectively provides something in the nature of an affirmative

defense, where a parent of a child that has been alleged to have been abused or neglected and is currently before the court, and remove from the fact-finding phase to the dispositional phase the participation of that parent in some type of drug or alcohol rehabilitation program.

The purpose of this is to deal with those situations in which there have been multiple applications for an order finding either neglect or abuse, and the respondent has alleged that he or she has participated or is in the process of participating in some type of a rehab program, thereby effectively stimying the ability of the petitioner to go forward.

By putting it in the dispositional phase, what we would hope would be accomplished and we would reasonably expect would be accomplished would be that the court would then have the ability to weigh the conduct of the parent, his or her participation in the program, and make a determination in the best interests of the child by retaining continuing jurisdiction.

And should that parent seek to drop out of the alcohol or drug abuse program, the court would have the ability to effectively use that as a lever to keep that person in the program.

We believe that this responds to what is a shortcoming in the existing law. And I would merely suggest it might not be unlike a situation in which somebody who might be driving while they're intoxicated is stopped by a policeman and whips out a card saying, I'm participating in an alcohol program, therefore, do not give me a ticket or therefore do not arrest me, because I am participating in this program, and it is effectively an affirmative defense.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If the sponsor would yield for a question.

ACTING PRESIDENT MARCELLINO: Senator Saland, do you yield?

SENATOR SALAND: I always yield to Senator Paterson.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR PATERSON: Thank you, Mr. President.

My understanding of the current law is a little different than that of Senator Saland's. So perhaps if he's able to enlighten myself and anyone who may feel the way I do, we might be able to be in agreement on this.

But the affirmative defense, as I understand it, is contingent upon the proof that the person is not just registered but is actually attending one of these particular situations.

And the reason that I wouldn't compare it to the case of a person who is stopped on the highway while intoxicated is that the reason we're having the hearing in the first place is to determine whether or not there's child abuse. Is that correct, Senator?

SENATOR SALAND: Senator Paterson, in the definitional section and the evidentiary section -- the definitional

section being 1012, the evidentiary section being 1046 -- there's nothing in that language that says that the ability to merely allege your participation does not in and of itself effectively -- allege and establish your participation does not in and of itself effectively serve as that buffer or that affirmative defense that effectively brings the neglect proceeding to an end.

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

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields, sir.

SENATOR PATERSON: Is it not the case that the establishment of this law would actually provide what would really be a disincentive to the party to participate in this type of a program that they very much need? If in fact it doesn't have any effect, really, on a proceeding where certainly what's in the state of mind of the accused is very

important.

SENATOR SALAND: Senator Paterson, while I don't know if you and I have debated this particular point, that issue has come up in prior debates on this bill.

And I start from the vantage point of what is of concern in this proceeding is what's in the best interests of the child, there has been an allegation of neglect or abuse, and what are we going to do to best serve the interests of that child.

And the fact that a parent or a guardian has the ability to come in and effectively stop the proceeding by alleging his or her participation, and showing his or her participation in the program, may in a number of instances be genuine, but, very similarly, in a number of instances we have reason to believe -- and our information, I must confess, is anecdotal, based on things that have been reported to us -- but it has been used, if not as a subterfuge, then certainly as a less than good-faith effort.

The reality is is that our interest is in the child. We would love nothing better

than to make the family whole. But we think the best way to do that is with the ability to have redress -- not merely termination of a proceeding, but redress in the form of a court continuing jurisdiction over the person who has opted to claim that their functioning was impaired by drugs or alcohol. They should not be able to unilaterally get out of that program with no consequences.

If that's a disincentive, I would say that that is a disincentive only to those who are not making a good-faith effort to try and either reunite with their child or do what's in the best interests of their child.

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Paterson, on the bill.

SENATOR PATERSON: On the bill.

When I come to look at these types of legislation, I come with the presumption that when they're introduced by Senator Saland that they have been carefully studied. And really, in the greater majority of these situations, I would almost be willing to just

defer to his judgment because of his work on this issue.

In this particular case, I actually see that a person would be bereft of their faculties in many respects as being a fact-finding issue. And that the attention to that issue is very important in terms of determining whether or not at this point going forward, this parent should be properly designated by the court to supervise the child.

And if there is abuse, certainly then the court has to make another determination. And I don't know that we would -- although it's an affirmative defense, it's not an affirmative defense against the abuse, it's an affirmative defense against the actual issue of whether or not there was this kind of action in the first place.

So this is a very close call on this situation. It may actually be the right thing for this particular proceeding, but it really does not, in my opinion, follow the law, because this is really an issue of fact.

I don't see it as an issue of the

disposition, because even in the disposition phase of the hearing, the question now is how long this is going to be the case, what the parent has to do to become eligible to supervise the child again.

And I don't even know that it relates to the disposition of the case. I think it relates to the facts or the elements that make up whether or not there was abuse in the first place. And it's consistent with our laws governing crimes and other aspects of the law where the use of alcohol or substances impinging upon the ability of an individual to make a decision is part of our law.

So I think that actually, if we were going to be consistent, we would have to change several layers of legislation that we've compiled over a long period of time.

Do we make an exception in this case? It's very close on this issue. I maintain that we do not.

SENATOR SKELOS: Mr. President, if I could just interrupt for a moment.

ACTING PRESIDENT BALBONI: Yes, Senator Skelos.

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

ACTING PRESIDENT BALBONI: Thank you.

There will be an immediate meeting of the Environmental Conservation Committee in the Majority Conference Room.

Senator Hassell-Thompson, you wish to be recognized?

SENATOR HASSELL-THOMPSON: On the bill.

ACTING PRESIDENT BALBONI: On the bill.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

I listened to the questions and the answers. And the thing that I think I'm concerned about is that we are, in this bill, my estimation is that we're dictating to the courts.

And I think that from my experiences in working with Family Courts around these issues -- and that's a 25-year

history of working with this population in the courts -- it has been my contention that Family Courts for the most part take into advisement any kind of rehabilitation that the plaintiff may be involved in.

But I have never had as an experience, and I think my experience is somewhat vast, that this is the only position that they -- that this is the primary reason for intervention.

Once the protective services is involved with the family around substance abuse, be it alcohol or drugs, the tendency is for these persons to be involved in a series of different programs, and of course substance abuse being primary.

But one of the things that I think concerns me is rather than legislating, I think that from a policy perspective we ought to be giving as much support in a regulatory fashion to the courts as possible, ensuring that they have the widest jurisdiction that they have and can have in making these kinds of decisions.

But I think that one of the things

that we fail to do here is look at the programmatic intervention. And I will continue to raise this as a concern and as an issue as I come before this body, primarily because we're looking at the courts, the weaknesses of the courts, but we're not looking at the weaknesses of the cases that are being brought to the courts and why the courts are making the decision to allow the participation in drug rehabilitation programs to have such weight in their decisions.

And mainly it's because most of the workers who are involved in Child Protective Services are so overloaded that they bring very weak cases and they are not able to fulfill their monetary and enforcement responsibilities prior to coming to court. So that the cases that they bring weakens the hand of the court.

And so that mandating without enforcement and without the monies to support the court is what's going to cause the primary problem. We have caseworkers with cases as large as 60 and 80. And when you have families with seven and 10 children that are

involved, it is very difficult for the monitoring that ought to happen prior to court to come about.

And so if the person is in a program, many times the courts will weigh the fact, on-face fact of their participation. And they don't just take the word of the client. What they usually do is ask for and receive records of participation, attendance, and some form of evaluation before dispositions are made.

So I'm not necessarily sure that I need to vote for something that will give the courts powers that I think that they already have. I think that we need to be looking, as we debate our budgets, at how do we support the courts, how do we support the court agencies before it comes to court to ensure that the participation for people is as successful as it can possibly be.

So I will be voting no on this bill.

ACTING PRESIDENT BALBONI: Thank you, Senator.

Senator Duane, do you wish to be

recognized?

SENATOR DUANE: Thank you, Mr. President. Would the sponsor yield?

ACTING PRESIDENT BALBONI: Senator Saland, would you yield to a question?

SENATOR SALAND: Certainly, Mr. President.

SENATOR DUANE: Thank you.

In an effort not to repeat last year's debate, last year the sponsor indicated that this change in the law was based on anecdotal evidence.

I'm wondering whether there's any hard data or if there's been any advocacy on the part of child welfare agencies or child advocates regarding this issue.

SENATOR SALAND: This not the type of information that would normally be retained either by Family Courts or by the Office of Court Administration.

I can tell you that I handled cases like this for nearly seven or eight years. I experienced it firsthand. So whether that qualifies, I do not know.

I would respectfully suggest that

what this is about is whether or not an act of neglect or abuse has occurred, not whether the parent or guardian should receive some type of initial or preliminary shield from going through an abuse or neglect proceeding.

We would very much encourage and support parents or guardians who would participate in drug or alcohol rehab programs, substance abuse programs, but we don't think that that should be an automatic shield to (a) a determination of whether neglect or abuse has occurred, or (b) the continuing jurisdiction of the court so as to ensure that the parent is making a good-faith effort and not merely attempting to dodge what might be otherwise the impact of his or her conduct as determined by the Family Court.

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

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT BALBONI: The

Senator yields.

SENATOR DUANE: As I understand it, what this legislation does is it makes the participation in a program something which is most heavily weighed at the end of a proceeding, and at the beginning of the proceeding involvement in a drug or alcohol treatment program is really sort of neutral, that the judge doesn't have to weigh it strongly one way or the other. Is that correct?

SENATOR SALAND: It would not - while it would be an element to be introduced by way of whatever it was that the respondent would be introducing in the course of making his or her case, that would not occur unless and until there had been a finding of neglect or abuse.

Then, before the court could make a determination as to what disposition would occur, the respondent would maintain: I have enrolled in a substance abuse program, I am regularly participating in a substance abuse program.

And the court then would weigh that

participation in the course of rendering its disposition as to how they were going to -- I wouldn't use the word "sentence," because we don't sentence in a Family Court proceeding - but dispose of the case or resolve the case.

And the court, I'm sure, would have the ability to in effect monitor the continued participation in that program. Because what we want is the participation in the program, but we don't want it to be used merely as a stopgap or not a good-faith effort. We want to, wherever possible, reunite the parent and/or guardian with the child, but only under circumstances where it's in the best interests of the child.

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

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT BALBONI: The Senator continues to yield.

SENATOR DUANE: I'm looking at

the proceeding as sort of a beginning -

SENATOR SALAND: Mr. President.

ACTING PRESIDENT BALBONI: Senator Saland.

SENATOR SALAND: I have -- behind me, I'm having a little bit of a din. And Senator Duane's voice doesn't carry as well.

ACTING PRESIDENT BALBONI: Let me please remind people in the chamber there is an active debate going on. Please extend the courtesies to the members on the floor.

Thank you.

Please proceed, Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

You know, I think it's that the acoustics in this spot are not as good as they were in my old spot.

(Laughter.)

SENATOR DUANE: Because certainly the passion hasn't changed.

SENATOR SALAND: You'll have to excuse me. I had the same problem when Senator Waldon was over there. I found it difficult to hear him as well.

SENATOR DUANE: I'm putting my name on the list for a change.

Anyway, through you, Mr. President, since the sponsor has already indicated he'll yield, I look at the proceeding as a continuum, beginning to its final determination. And I also look at if a mother has decided to undergo treatment also as a continuum, maybe even before the proceeding began to when the judge makes a final determination.

In the course of the proceedings, in a perfect world -- and maybe what needs to be fixed by us -- is the monitoring of compliance with a treatment program throughout. But the actual voluntary decision to enter a treatment program I believe should be considered a positive element.

And I still -- and I've heard the answer on this, but I just want to go through it again, why it is if a case is not being monitored, if a mother and a family are not being -- if they are being monitored, then why can't the mother's involvement in a treatment program be considered, you know, on its face

an affirmative action on her behalf?

SENATOR SALAND: Well, to in effect make it the final determinant when the underlying proceeding is about whether there's been neglect or abuse, to make it the final determinant may well be appropriate in some cases where you know that person is genuinely committed to the program and will continue in that program.

There is no way of knowing that, however, at the fact-finding stage if you're going to accept -- which the law substantially requires us to do now. Then the proceeding comes to an end and you don't deal with that family again, at least in the context of neglect or abuse, unless or until there's another abuse or neglect petition that's been brought before the court.

And if that person comes in again and says, I'm in a substance abuse program, you're back to square one and you get the same response.

What we're saying is as much as you want parents or guardians to enroll in substance abuse programs, we want parents or

guardians to enroll in substance abuse programs. We however would like to make sure that there is some mechanism that controls their participation.

And we feel the only way you establish that mechanism is not to terminate the proceeding at fact-finding by showing that you're regularly involved in the program, but to hang onto it into disposition, where the court then determines upon disposition, yes, Mr. or Ms. or Mrs. So and so is in this program, and that's wonderful, we are not going to remove the child as long as you are participating in the program, and perhaps there will be some other programs that they would encourage participation in as well.

I happen to think, after eight years serving as chairman of the Children and Families Committee, and having, as I mentioned in my earlier remarks, handled I don't know how many of these cases when I was doing this for my county, that that is better not only for the child in protecting his or her interests, but really better for the family, more constructive.

We may have an honest difference of opinion on that, Senator Duane.

SENATOR DUANE: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT BALBONI: On the bill.

SENATOR DUANE: Thank you.

I actually was going to say exactly the same thing that the sponsor says. I think we just disagree on this particular issue.

I think that the stress of either having lost your children or being at greater risk of losing your children serves as somewhat of a disincentive to recover. It almost, for many mothers who lose custody of their children, it becomes somewhat of a hopeless situation. And in hopelessness, there isn't really as much incentive to recover.

Whereas if the family is kept together, I believe that there's a stronger incentive to keep that family together and do anything you can to keep it together. And I think that a mother's, in most cases, desire to protect the well-being of their children is

in fact one of the things that's stronger than the pull of addiction.

I also think that in many cases, not everybody recovers right away. Some people relapse. Being a mom and perhaps working too is a stressful thing, and I think that for some moms it takes a little while to get the hang of doing all that sober. But I think that most women in that situation will try to do that.

And that's why I'm concerned about not allowing just being enrolled in a treatment program to be an affirmative reason to keep the family together. As I say, in a perfect world, if we had monitoring in these situations and if we made it so that the proceeding didn't have to start all over again, that might be a better way to go.

But I know that we don't have that kind of monitoring available in most cases, and that's a shame. But I don't think we should penalize the mothers because we're not able to provide the kind of support to them that they need to have.

I also think that one of the things

that we're missing in this state is there's an incredibly small number of beds available for mothers who are trying to recover to be with their children. And in fact, the only ones that exist are only for women who have infants and not older children. I mean not even, you know, pre-K-age children. And that's something where I think we really need to invest the money.

Because in fact I think the best way for recovery to be achieved for these families is not just for the mother to be in recovery but for the whole family to recover together, so that some of the damage that's been done because of drugs and alcohol can be addressed as well with the children when they're younger. Because I think that the manifestations of that are more likely to be shown when the child is older, although sometimes also when they're younger.

I wish that in this state we invested in that kind of treatment that keeps families together when one of them has succumbed to alcohol and drug abuse.

I certainly understand the

sponsor's desire to protect children, and I share that. I think we just disagree on the best avenue to do that. I share his frustration, but I don't think that -- I disagree that the way to address what's so frustrating about these cases coming back and coming back is to put a mom at greater risk of losing custody of her children through the process.

It's a difficult problem and one that I hope we'll continue to work on. But at this point, I would have to recommend not to support this legislation.

Thank you, Mr. President.

ACTING PRESIDENT BALBONI: Thank you, Senator.

Senator Skelos.

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

ACTING PRESIDENT BALBONI: There will be an immediate meeting of the Local Governments Committee in the Senate Majority Conference Room.

Senator Brown.

SENATOR BROWN: Yes, Mr. President. Would the sponsor yield for a question.

ACTING PRESIDENT BALBONI: Senator Saland, do you yield to a question?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT BALBONI: The Senator yields.

SENATOR BROWN: Thank you, Mr. President.

I'm trying to understand, under the current law, in an abuse or a neglect proceeding a child cannot be removed from a household if the parent or guardian is in treatment; is that correct?

SENATOR SALAND: Under the current law, if an allegation is made that the subject of the petition, the respondent, is in a -- regularly participated in some type of substance abuse program, that effectively constitutes an affirmative defense. And the burden then is on the petitioner to go forward.

It is like any other affirmative

defense. It is not always a firewall. It can be a firewall.

SENATOR BROWN: Through you, Mr. President, would the sponsor continue to yield.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT BALBONI: The Senator yields, Senator Brown.

SENATOR BROWN: Under the proposed new legislation, it appears -- as I read it, it appears that treatment can be taken into consideration in an abuse or a neglect proceeding. Am I correct in my reading of that?

SENATOR SALAND: What we're proposing to do is to move it from the initial stage -- it will always be a consideration.

The existing law says you make that consideration in the initial or fact-finding stage. And if you establish your affirmative defense and that affirmative defense cannot be overcome by the petitioner, then that

effectively concludes the proceeding and there's no finding of neglect or abuse.

What we're attempting to do here is to say that this is a neglect or abuse proceeding and, while we deem the involvement of the respondent in his or her regular participation in a substance abuse program to be very, very important -- and, yes, we very much want it to happen -- we think it's more appropriately a consideration at the end, if there has been a finding of neglect or abuse, and that the court consider the parent's or guardian's participation and then have the ability to oversee that continued participation so as to make sure that there's the continuum and hopefully the improvement of the situation within the household which we would like to think would be in the best interests of the child and of the family.

SENATOR BROWN: Mr. President, would the sponsor continue to yield.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT BALBONI:

Senator Brown.

SENATOR BROWN: So as I hear Senator Saland's explanation, it sounds like the proceeding would go forward, a determination would be made. At the end of the determination, then the judge could take into account the parent's or guardian's participation in the program, and that would not necessarily result in the removal of the child from the household. Am I correct?

SENATOR SALAND: No, it would not necessarily result in the removal of the child.

I would think that as part of that dispositional hearing, once you establish that you are -- and I couldn't speak for the court, but once you've established that you were regularly engaged in the program and the program obviously was a certified and appropriate program, that that would result either in no removal or perhaps in some type of structured situation until such time as the court would deem it appropriate to remove that structure.

SENATOR BROWN: Mr. President, I thank Senator Saland for his explanation.

ACTING PRESIDENT BALBONI: Thank you, Senator.

Read the last section.

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

ACTING PRESIDENT BALBONI: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 52 are Senators Duane, Hassell-Thompson, Montgomery, Paterson, and Santiago. Ayes, 52. Nays, 5.

ACTING PRESIDENT BALBONI: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT BALBONI: Reports of standing committees. The Secretary will read the report of the Finance Committee,

please.

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

As Commissioner of Motor Vehicles, Raymond P. Martinez, of Baldwin.

ACTING PRESIDENT MARCELLINO: Senator Skelos, please.

SENATOR SKELOS: Mr. President, I'm very pleased to move the nomination of Ray Martinez as the next Commissioner of the Department of Motor Vehicles, and to congratulate the Governor on this wonderful, wonderful nomination. He truly is an excellent choice.

Ray has tremendous experience. I've known Ray for probably about twenty years -- when he was a mere child -- but he has served as a special assistant to the regional administration for the U.S. Department of Housing and Urban Development. He served on the White House staff as the scheduling and advance person for the former First Lady Nancy Reagan.

A fine attorney, he served as the

deputy chief of staff for former Attorney General Dennis Vacco and assistant general counsel now for the Long Island Power Authority.

Ray has a -- and he said this in the Finance Committee -- a deep commitment to public service. And I know, as I said in the Finance Committee, he will understand that our constituents are his consumers and to make sure that those who have to use the Motor Vehicles Department will be treated in a courteous and a responsive way.

He's joined today by his wife, Jill, who is a fine attorney in her own right, and a public servant, and my dear friend Maggie, who's also with us today, Ray's sister.

So I'm delighted at this time to move the nomination of Raymond P. Martinez to be the Commissioner of the Department of Motor Vehicles.

ACTING PRESIDENT MARCELLINO: Senator Balboni.

SENATOR BALBONI: Thank you, Mr. President.

It gives me great pleasure to rise this afternoon on this floor and support this nomination. If any of you know Ray Martinez, you understand my pleasure. If you do not know, permit me briefly to put a face on the man.

Teddy Roosevelt once remarked, "The first requisite of a good citizen of this republic of ours is that he shall be able and willing to pull his weight." Ray has always been willing to pull his weight. He has accepted every job, every duty, every request with professionalism, dedication, and intelligence, and also sensitivity.

Whether it was heading up the advance team for the President of the United States, guiding the office of the State Attorney General, or helping a lowly candidate for town supervisor office, Ray has contributed enormously to every task he's undertaken. And it is through these positions that Ray has developed his greatest asset.

Oftentimes in our society the people who we represent feel out of touch with their government officials. They feel a sense

of distance that the person who represents them does not understand their daily lives. Ray, through his experiences, has developed a deft touch with people. You see it in the way he looks at people, the way he talks to them. All at once you have a counselor, a trusted advisor, and a friend.

Ray is someone you feel very comfortable calling in the middle of the night to come and give you assistance. And in fact, I have done that with Ray, and he has answered. And you know he's going to be there.

The appointment today might be seen by some as a plum appointment. And certainly the position of the Commissioner of the Department of Motor Vehicles is a very important office, and it comes with the trappings of power that are appropriate to that office. But it is also encumbered by enormous responsibilities and duties and obligations and is arguably one of the most visible offices in the Executive. If Ray's policies are not appropriately carried out, he will surely hear it immediately.

But today we have an opportunity to put somebody into an office that truly understands the nature of what it is to be human, of what it is to be a friend, and what it is to be part of our community.

Ray is married to a wonderful woman. Jill Sandhaas Martinez is probably one of my closest friends in the world, and of my wife, Stephanie. She is the godmother -- this is a disclosure item, my colleagues -- she is the godmother of my last child, Michaela. That is an indication of the friendship and also the trust that we have in both of them.

Mr. President, this is an enormous opportunity again to give the people of the State of New York a true champion in an office that affects their lives on a daily basis. I would ask all of you to support this nomination.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Maziarz.

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

Commissioner Martinez, you've

already accomplished something. You have people standing up on the floor to support this nomination from Nassau County and Long Island and the most beautiful area in all of New York State, Niagara Falls, New York. And it's rare that we have such agreement on a nominee between upstate and downstate.

But as a former county clerk, as an individual who's had to deal with the Department of Motor Vehicles to a very great extent, I met, Mr. President, on several occasions with Commissioner Martinez and fully support his nomination, support his outreach programs to the county clerks of this state, particularly as it deals with the Department of Motor Vehicle local offices. And I look forward to working with the Commissioner.

I commend Governor Pataki on what I think is an excellent nomination and an individual who's going to do a great job for all the people of the State of New York and work extremely closely with the county clerks.

So congratulations, Commissioner, and good luck.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Goodman.

SENATOR GOODMAN: Mr. President, I've known this candidate for many, many years and have always found him to be a man of extraordinary capacity and ability.

I think it's a very fine thing indeed that he's being proposed for this very sensitive post, which is probably the one area in which most constituents come into contact with government. If they're mishandled by the Department of Motor Vehicles, this leaves a very unfortunate taste and gives them the impression that their government is unresponsive and irresponsible.

With Ray Martinez I think we can guarantee the kind of sensitivity and mature, deliberative capacity which is essential to a Commissioner of Motor Vehicles.

His government experience is extensive. I've known him since his days at HUD in New York County, which was a long, long while ago. He served in the White House splendidly in the years '86 to '89. He was a banker, he's been in various aspects of

governmental experience.

He brings both maturity and great ability to this post, and I think without question he'll be one of the outstanding commissioners in the current administration.

I salute him most warmly and commend him to this house for a unanimous vote of approval.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

I am delighted to rise, as my other colleagues from Nassau County and throughout the state -- and my colleague behind me from upstate New York, for recognizing the immense talent pool that we have from Nassau County.

Ray Martinez is a terrific guy, and I've known him for many years. In his capacity as acting commissioner, he has served admirably. But he possesses three qualities which I admire most in him: youth, experience, and the ability to get a job done.

And he's walking into shoes from

Commissioner Jackson, who has really made the Motor Vehicles and the offices consumer-friendly. And you and I have had the opportunity to chat in the Transportation Committee about the horrors of spending a day on Pravado [ph] Road and what it used to be like in Westbury.

But that's all changed, and I hope you continue on with the changes that the DMV has made over the years. And I congratulate your family and your wife, and I wish you the best of luck. And I congratulate the Governor for such a fine appointment.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, I rise to join my colleagues' enthusiastic support of this wonderful nominee, although I do separate my comments a bit from my great friend Senator Fuschillo. I'm not sure exactly how young our nominee here is anymore, because I certainly have known him for a number of years. He's

not as young as he used to be.

But he certainly is as enthusiastic as ever. And I'm confident he will handle these challenges with the great acumen that he has handled every other professional responsibility entrusted upon him.

I would certainly add that there is no greater agency in state government that touches the lives of individuals than the Department of Motor Vehicles. Where it is closer to the people, it is part of many - particularly upstate, the only state agency that individuals have any contact with.

And that's why the appointment is such an important appointment to head this agency. Governor Pataki could not have found a more people-oriented individual than our new commissioner.

And I certainly wish to join enthusiastically with the great praise given to him today, and look forward to working with him in the months and years ahead.

An excellent nomination. I move its acceptance.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Are there any other Senators wishing to be heard on this nomination? Are we sure there are no other Senators wishing to be heard on this nomination?

The question is on the nomination of Raymond P. Martinez, of Baldwin, to serve as Commissioner of Motor Vehicles. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Nay?

(No response.)

ACTING PRESIDENT MARCELLINO: Congratulations, Commissioner.

(Applause.)

ACTING PRESIDENT MARCELLINO: Commissioner, we wish you well. We wish your wife, Jill, who is a saint, well. And Maggie, good luck. And God bless, good to see you. Be well.

The Secretary will read.

THE SECRETARY: As a member of the State Board for Historic Preservation,

Elizabeth L. Watson, of Cold Spring Harbor.

SENATOR SKELOS: Move the nomination.

ACTING PRESIDENT MARCELLINO: The question is on the nomination of Elizabeth L. Watson, of Cold Spring Harbor, for a term as member of the State Board for Historic Preservation. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: Elizabeth L. Watson is confirmed.

The Secretary will read.

THE SECRETARY: As Commissioner of the State Insurance Fund, John F. Carpenter, of Elmira.

As a member of the Fire Fighting and Code Enforcement Personnel Standards and Education Commission, Peter A. Caruso, of Utica, and Kevin Seamus Malley, of the Bronx.

As a member of the Saratoga-Capital District State Park, Recreation and Historic

Preservation Commission, Carl V. Wortendyke, of Upper Nyack.

As a member of the State Harness Racing Commission, Joseph V. Angiolillo, Esquire, of West Harrison.

As Major General of the New York State Air National Guard, Archie J. Berberian, II, of Schenectady.

And as a member of the State Board of Visitors of the New York State Home for Veterans and their Dependents at Batavia, Linda M. Janelli, of Amherst.

ACTING PRESIDENT MARCELLINO: The question is on the nominees as read by the Secretary to be confirmed for the positions designated. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: All opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The nominees are confirmed and issued our congratulations.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to the controversial calendar.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 59, by Senator Skelos, Senate Print 426, an act to amend the Education Law, in relation to drug testing.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Skelos, an explanation has been asked for.

SENATOR SKELOS: This bill, which has passed 1997, '98, '99 and 2000 unanimously, would require the State Education Department to promulgate rules and regulations to be used as guidelines for public and nonpublic schools wishing to institute a drug testing program for its athletes.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Mr. President, in the years '97, '98, '99, and 2000, I don't think I was paying enough attention around

here. Somehow, upon closer review, if Senator Skelos would yield for a few questions.

ACTING PRESIDENT MARCELLINO: Senator Skelos, do you yield so that Senator Paterson can be brought up to speed on this significant piece of legislation?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields, sir.

SENATOR PATERSON: Thank you, Mr. President.

In the system when the school district is voluntarily allowing for drug testing of its student athletes, my question relates to how the student and his or her parent are informed and in which way they can opt out of the drug testing.

And, in addition to that, whether or not you feel that there's a presumption or a stigma that would come from someone that says they don't want to be tested for drugs. Doesn't that beg the question "then you must be using drugs"?

SENATOR SKELOS: I think what

we're talking about with this legislation is having the Department of Education promulgate rules and regulations which would be a guideline to have uniformity throughout the entire state for any school district that actually decides to do drug testing.

The issue right now is not how drug testing is administered, it's do we want to have nondiscriminatory and uniform standards throughout the State of New York for any school district that wishes to opt into having drug testing.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MARCELLINO: Yes, Senator Paterson.

SENATOR PATERSON: Would Senator Saland yield for another question?

ACTING PRESIDENT MARCELLINO: Senator Saland is not in the room, but Senator Skelos might yield.

SENATOR SKELOS: Yes.

ACTING PRESIDENT MARCELLINO: He does, sir.

SENATOR PATERSON: Yeah, we'll go with Senator Skelos on this one.

ACTING PRESIDENT MARCELLINO: I thought you might.

SENATOR PATERSON: Student athletes. Why are we targeting student athletes as opposed to any other student?

SENATOR SKELOS: Well, again, I'm not targeting them with this legislation.

What we're saying is the Supreme Court of the United States -- I think it's the Lavonia case -- held drug testing of student athletes to be constitutional, especially when it involved the use of steroids and other types of enhancing drugs, to be able to protect them.

So it's not a matter of targeting. The United States Supreme Court has said that it is constitutional. And all we're doing with this legislation is saying if the United States Supreme Court has held it to be constitutional and school districts are doing it unilaterally within the state, then there should be some guidelines throughout the state if a school district opts into it.

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

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He continues to yield, Senator.

SENATOR PATERSON: Actually, Senator, you answered my question when you pointed out the use of steroids and different types of substances that enhance athletic performance. Because prior to that, I was just thinking about the regular testing for illegal substances, and I wanted to know why we would distinguish students from any other group.

But from your answer, while I don't know that -- see, I think there is a misperception based on some high-profile cases, cases such as Dwight Gooden and Darryl Strawberry, where there was drug use by athletes. I maintain that the drug use by athletes is less than the regular population.

But the issue of stimulants that enhance performance is something that was engaged in a great deal of time during the

'80s and was certainly, I would imagine, the intent of this legislation. Because it did injure several individuals that didn't know at the time that they were letting themselves in for that type of health risk by taking these substances.

So actually, I withdraw the question. And on the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Paterson, on the bill.

SENATOR PATERSON: I find that when I read the legislation, I come to the same point of view as when I don't read it.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect 180 days.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MARCELLINO: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number

62, by Senator Skelos, Senate Print 385, an act to amend the General Business Law, in relation to the sale of laser pointing devices.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Skelos, an explanation has been asked for by Senator Paterson.

SENATOR SKELOS: Mr. President, this bill would -- just to point out, if Senator Paterson was listening in 1999 and 2000, that it also passed unanimously in those two years.

It would prohibit the sale of laser pointing devices to persons under 18 years of age, prohibit students from possessing laser pointers in schools, and make the use of a laser pointing device in a manner to cause harassment aggravated harassment in the second degree.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Skelos would yield for a couple of questions.

Because in 1999 and 2000, they weren't particularly good years for me. Most of my family members and these staff members and other colleagues felt that I wasn't paying enough attention to them.

ACTING PRESIDENT MARCELLINO: Senator Skelos, do you yield to Senator Paterson?

SENATOR SKELOS: We would never accuse you of not paying attention, Senator Paterson. Maybe your colleagues on the Minority would, but not, certainly, the Majority.

ACTING PRESIDENT MARCELLINO: Senator Paterson, I believe he yields.

SENATOR PATERSON: I'll take that under advisement, Senator Skelos.

Many of the school districts right now have policies relating to the use of these laser pointing devices and actually have penalties for students who bring them to school. And in one of the school districts in my district, a student is actually suspended for a period of time if they bring one of these objects to school.

If we are forbidding the sale of these devices to these students, wouldn't we then want to really be penalizing the parents in these types of situations more than the students?

Because since we're limiting the sale, which I like in this bill, what we're really saying is that these individuals are not of requisite knowledge and experience to handle them properly. So to then, in another aspect of government, to be penalizing them when it's really the duty of the parent, I would think, to come in and admonish this type of behavior, would that be an extension of what would be the principle of this legislation?

SENATOR SKELOS: What this legislation would do is that laser pointing devices can be very dangerous when possessed -- well, by anyone, if they want to use it improperly -- but in particular a minor, where often they will dot police officers where a police officer will think it's a high-tech-type pistol and put the minor in danger. Sometimes they will shoot the

laser pointer in another person's eye, which can cause blindness.

So what we're saying here is, number one, you can't sell; that the laser pointing devices have to be placed in a secure area, I think similar to what we do with cigarettes; that you cannot possess it on a - in a schoolyard or in a school building; and if you use it in a way to harass somebody, it could be a criminal penalty.

Although possession on school property would not be a crime, you could be fined a hundred dollars, plus the school district can do whatever they wish in terms of discipline if a person under 18 brings it to the school, and the local municipality can enact a more stringent law if they so desire. So, for example, if the City of New York wants to have more stringent legislation, they can.

SENATOR PATERSON: A final question for Senator Skelos, Mr. President, if the Senator will yield.

ACTING PRESIDENT MARCELLINO: Senator Skelos, do you yield to the final question?

SENATOR SKELOS: Absolutely.

ACTING PRESIDENT MARCELLINO: Would you like a lifeline?

SENATOR PATERSON: Then I guess my question simply is in other legislation would you suggest that now that we are limiting the sale to those individuals over the age of consent, which we've established as being 18, that the school districts really should probably focus more attention to the custodian rather than the child when it finds that the child is using these devices?

Because we as a Legislature have made a law and the Governor, we assume, approves, that the child is not really of the age of responsibility to even be determining whether or not they should have this device in the first place, the child shouldn't be holding the device.

SENATOR SKELOS: I think if you're saying that because we restrict the sale, that that's the only way a child can get it, from a parent, I think it's incorrect. It can be purchased on the street, it can be purchased from a friend, it can be purchased

from anybody, just like an illegal handgun could also.

SENATOR PATERSON: Thank you, Senator.

ACTING PRESIDENT MARCELLINO: Senator Onorato, why do you rise?

SENATOR ONORATO: Mr. President, will the sponsor yield to a question?

SENATOR SKELOS: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR ONORATO: Senator Skelos, how does this apply to a student that is over 18 in a secondary school?

SENATOR SKELOS: Well, it wouldn't apply to them in terms of possession unless they misused it.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MARCELLINO: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 70, by Senator Trunzo, Senate Print 763, an act to amend the Vehicle and Traffic Law and the Public Authorities Law, in relation to authorizing cities.

SENATOR PATERSON: Explanation.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MARCELLINO: Lay the bill aside for the day, please.

THE SECRETARY: Calendar Number 73, by Senator LaValle, Senate Print 1042, an act to amend the Education Law, in relation to the terms of community college trustees.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator LaValle, an explanation has been requested.

SENATOR LAVALLE: Senator Paterson, this is a very simple bill -- I

believe it was reported from the Senate Committee on Higher Education unanimously - in which we are changing the terms of the SUNY community college trustees from nine-year terms to seven-year terms. That's what the legislation calls for.

The feeling has been, both in our committee and in this body, that terms -- and we've changed the terms of the Board of Regents from a point in time when I was director of the Senate Committee on Higher Education. The terms of the Board of Regents were 14-year terms, consistent with the terms of a Supreme Court judge. And today, those terms are five years.

We initially, in this legislation, wanted the terms to be the same. The committee -- some of the committee members thought that they should be the same as the SUNY Board of Trustees, seven-year terms.

So we changed that legislation as it is before us, to seven years. And I think that's a responsible thing and a good compromise that the committee achieved.

ACTING PRESIDENT MARCELLINO:

Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator LaValle would yield for a question.

SENATOR LAVALLE: But of course.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: Senator, I was going to ask you if this was consistent with the terms served by SUNY board members. And you answered that question in your explanation.

My question is, what was the view of the trustees of SUNY when this was proposed, so I can get an idea if it was consistent with the view of the Regents board members themselves and the department.

SENATOR LAVALLE: I haven't - Senator, that's a good question. I have not received any input. We have not had a memorandum in opposition to this.

But having said that, my sense is that no one likes their terms reduced, even by two years. And so I am sure that neither those individuals that serve on a community college board or the SUNY trustees -- because

if you're a SUNY trustee, you're saying to yourself, Well, if the Legislature is reducing the terms for community colleges, and our term is seven years and the Regents are at five, could the Legislature at some point in time say maybe we should reduce the terms of the SUNY trustees to five years.

That is mere conjecture on my part, Senator. I do not have a crystal ball. But I just am making these remarks as conjecture, being consistent with what human nature might be on the parts of people elsewhere in the process.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: A final question for Senator LaValle, if the Senator yields.

ACTING PRESIDENT MEIER: Senator LaValle, do you yield for a final question?

SENATOR LAVALLE: Sure.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator, if I'm not mistaken, that perhaps the reason for

this whole discussion is that when there's poorer performance on the part of any board members or legislators or, I would assume, members of the Board of Regents or the Board of SUNY, that it comes later in the term. People lose interest. Rather than resigning or just recognizing that they don't have the time or the energy to put into the tasks, they just kind of are dormant in their service.

And so I would assume that the reason that the Regents was truncated by half and now a two-year reduction in these services to accommodate the seven-year time factor, which would make it consistent in all areas, is basically because people who served in those capacities found that many of their colleagues, toward the end of their terms, were not as active as they'd been in the beginning.

Is that correct?

SENATOR LAVALLE: Senator, the answer to that is yes.

And I think it's consistent with individuals that serve on boards. Sometimes people may run out of steam in the fifth year,

and they say, Well, I have a seven-year term, and their colleagues on the board say, Well, why don't you just hang around, it's another two years, and just finish out your term.

In some cases, revisiting a term energizes people. It gives them a second wind because they say to themselves, you know, if I'm going to serve another term, I need be responsible, I need to come up with new ideas and so forth. And some people find that new energy and new enthusiasm.

Others, as you have indicated, when they reach the end of their term simply say they've had enough, they've done their community service, and they will move on.

What we're really doing, we've done this legislation before, is we're simply saying that we want both the individuals to ask themselves whether they still have the enthusiasm for the job that they have been appointed to or whether they should step down. We want that process to take place not at the end of nine years, but at the end of seven years.

ACTING PRESIDENT MEIER: Read the

last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Kuhl, that completes the controversial calendar.

SENATOR KUHL: Yes, Mr. President. Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: There is no housekeeping, Senator.

SENATOR KUHL: Well, there being no further business to come before the Senate, at this time, Mr. President, I move we stand adjourned until Monday, February 26th, at the normal time, 3:00 p.m., with intervening days to be legislative days.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Monday, February 26th, at 3:00 p.m.,

intervening days being legislative days.

(Whereupon, at 12:30 p.m., the Senate adjourned.)