NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 8, 2002

3:11 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please 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 afternoon to give the invocation is the Reverend Charles Harris, from Bethel Community Church on Staten Island in New York.

Reverend Harris.

REVEREND HARRIS: Let us pray. Father and all-wise God, once again we come humbly before Thy throne of grace.

O, Father God, we come this evening asking that You smile on this Senate chamber today, Lord. Father God, we pray that You open everybody's understanding, Lord, that they will be of one accord as they go about the affairs of this state.

O, Father God, we pray, Lord, that You give them the wisdom, the knowledge, and the understanding to guide this great state in

the way that You would have it go. But we ask that You bless them individually, one and all, for having the gumption and the something in them, Lord, that will let them care about the mankind and care about the people of New York State. Lord, bless them and their families. We pray that You watch over and keep them.

And, Lord, we ask that this group of legislators stand firmly with the federal legislators, that we stand behind Israel and keep them from falling, because that is the will of God.

We ask these things in Jesus's name. Amen. Amen. Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, April 7, the Senate met pursuant to adjournment. The Journal of Saturday, April 6, 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.

The Secretary will read.

THE SECRETARY: Senator Nozzolio, from the Committee on Crime Victims, Crime and Correction, reports:

Senate Print 442A, by Senator Maltese, an act to amend the Correction Law;

1110, by Senator Morahan, an act to amend the Executive Law;

1134, by Senator Alesi, an act to amend the Correction Law;

1141, by Senator Alesi, an act to amend the Correction Law;

1264, by Senator Skelos, an act to amend the Correction Law;

And 3776, by Senator Nozzolio, an act to amend the Correction Law.

Senator Meier, from the Committee on Social Services, reports:

Senate Print 1325, by Senator Lack, an act to amend the Social Services Law;

1857, by Senator Maltese, an act to amend the Social Services Law;

6287, by Senator Morahan, an act to amend Chapter 631 of the Laws of 1997;

6391, by Senator Meier, an act to amend Chapter 534 of the Laws of 2000;

And Senate Print 6406, by Senator Meier, an act to amend Chapter 906 of the Laws of 1984.

Senator Bonacic, from the Committee on Housing, Construction and Community Development, reports:

Senate Print 3838, by Senator Nozzolio, an act to amend the Executive Law;

6556, by Senator Bonacic, an act to amend the Private Housing Finance Law;

6640, by Senator LaValle, an act to amend the Public Housing Law;

And Senate Print 6671, by Senator DeFrancisco, an act to amend the Public Housing Law.

All bills ordered direct to third reading.

THE PRESIDENT: Without objection, all bills are reported direct to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President. Amendments are offered to the following Third Reading Calendar bills:

Sponsored by Senator Rath, page number 6, Calendar Number 78, Senate Print Number 3644.

By Senator Alesi, page number 7, Calendar Number 99, Senate Print Number 2218B.

By Senator Skelos, page number 21, Calendar Number 380, Senate Print Number 6133.

And by Senator Maltese, page number 9, Calendar Number 160, Senate Print Number 2591A.

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

THE PRESIDENT: The amendments are received, and they will retain their place on third reading, Senator.

SENATOR FUSCHILLO: Thank you.

THE PRESIDENT: Senator Skelos, we have a substitution.

SENATOR SKELOS: Please make the substitution, Madam President.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 29, Senator Velella moves to discharge, from the Committee on Labor, Assembly Bill Number 9311 and substitute it for the identical Senate Bill Number 6398, Third Reading Calendar 472.

THE PRESIDENT: The substitution is ordered.

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: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: There's a privileged resolution at the desk by Senator DeFrancisco. May we please have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 4763, recognizing the White Ribbon Campaign, sponsored by Vera House of Syracuse, New York, to take place April 5 through April 14, 2002.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, this is the eighth annual White Ribbon Campaign put on by the Vera House, a domestic violence organization that provides shelters, provides education, and provides support for those who have been victims of domestic violence in my Senate district.

I've distributed the white ribbons to all the senators, and I would hope that everyone could find time at least over these next few days to wear them, at least a short time, to point out that this is a serious problem and also that we are all in support of efforts like those of Vera House.

Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, would you please recognize Senator Marcellino.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

It is with great pleasure that I introduce to this chamber some guests of ours from across the Atlantic. I'd like us to welcome David McLetchie, Roseanna Cunningham, and Sylvia Jackson, all of whom are members of the Scottish Parliament.

They are joined by two members of the British Consul General's office, Dr. Ray Raymond and Duncan Taylor, who are also with them.

Madam President, for the past week this group has been attending a series of political and cultural events throughout this country. And they are here in a very interesting way, because they're the first of their generation of legislators -- the Scottish parliament was only formed in 1999 - and everything they do is both setting

tradition and making history at the same time.

So I kind of envy them their position as being the first in a long series, I'm sure, of Scottish legislators.

But they are welcomed to our chamber and welcomed to our country. And we know we can learn from you, and certainly we hope you'll learn something and take it back with you to our friends across the sea.

So welcome and God bless you and safe home.

(Applause.)

THE PRESIDENT: On the privileged resolution by Senator DeFrancisco, all in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator McGee.

SENATOR McGEE: Madam President, may we please have the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary

will read.

SENATOR McGEE: Thank you.

THE SECRETARY: Calendar Number 38, by Senator LaValle, Senate Print 6042A, an act to amend the Education Law, in relation to the disclosure of gifts.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 192, by Senator Velella, Senate Print 3408, an act to amend the Penal Law, in relation to multiple convictions.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 295, by Senator Seward, Senate Print 6132, an

act to amend the Insurance Law, in relation to nonforfeiture.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 314, by Senator Volker, Senate Print 3093A, an act to amend the Real Property Tax Law, in relation to providing a tax exemption.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 322, by Senator Rath, Senate Print 6048, an act to amend the General Municipal Law and the Insurance Law, in relation to the delegation.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 372, by Member of the Assembly Gantt, Assembly Print Number 6571C, an act to amend the Vehicle and Traffic Law, in relation to the maximum speed limit.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 375, by Senator Trunzo, Senate Print 5025A, an act to amend the Public Authorities Law, in relation to claims.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 390, by Senator Saland, Senate Print 2976, an act to authorize the Town of Poughkeepsie in the County of Dutchess.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 419, by Senator Balboni, Senate Print 861, an act to amend the Penal Law, in relation to

establishing a new crime.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 420, by Senator Saland, Senate Print 1341, an act to amend the Criminal Procedure Law, in relation to expanding.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of the calendar month next succeeding.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 422, by Senator Padavan, Senate Print 2574, an act to amend the Penal Law, in relation to the piercing and branding.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 2. Senators Duane and Schneiderman recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 423, by Senator Trunzo, Senate Print 3558, an act to amend the Penal Law, in relation to the unlawful sale of tobacco products to a child.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 426, by Senator Nozzolio, Senate Print 3936, an act to amend the Penal Law, the Vehicle and Traffic Law, and the Insurance Law, in relation to criminal aggressive driving.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 9. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 433, by Senator Morahan, Senate Print 5595, an act to amend the Penal Law, in relation to authorized dispositions.

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, 54. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 440, by Senator Bonacic, Senate Print 6458, an act to amend Chapter -

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 477, by Senator Larkin, Senate Print 1665, an act to amend the Real Property Tax Law, in relation to refiling an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 478, by Senator Kuhl, Senate Print 2122, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 479, by Senator Seward, Senate Print 2133, an act to amend the Executive Law, in relation to requiring.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 480, by Senator Wright, Senate Print 1087A, an act to direct the Department of Public Service.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

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

SENATOR McGEE: Thank you, Madam President. May we now have the controversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 192, by Senator Velella, Senate Print 3408, an

act to amend the Penal Law, in relation to multiple convictions for the criminal sale of marijuana.

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: Ayes, 54. Nays, 2. Senators Duane and Hassell-Thompson recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 314, by Senator Volker, Senate Print 3093A, an act to amend the Real Property Tax Law, in relation to providing a tax exemption.

SENATOR HEVESI: Explanation, please.

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

SENATOR VOLKER: Yes, Madam President. I was just being informed here

about the amendment. I didn't realize.

The bill in question is a bill that passed last year, I think unanimously, which provides for a tax exemption on real property that is owned by members of volunteer fire companies in the County of Erie.

I have sponsored legislation in the past, if I'm not mistaken, which is similar to what I think is going to be an amendment here.

The problem is that some of us are sponsoring legislation in local areas because, in all honesty, the difficulty is that we know there would be opposition to statewide bills of this nature, even though it's optional, because some of the counties look at it as if this is an indirect mandate; that is, if we pass this, that the county would then or the local municipalities would be forced to provide this. And some of them say that they can't afford the taxes that are involved in it.

So this legislation is legislation that involves simply Erie County.

SENATOR HEVESI: Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. I believe there's an amendment at the desk.

THE PRESIDENT: Yes, there is.

SENATOR HEVESI: I'd like to waive its reading and be heard on the amendment.

THE PRESIDENT: The reading is waived. You may proceed, Senator.

SENATOR HEVESI: Thank you, Madam President.

In bringing this amendment to Senator Volker's bill, what this amendment would do is it simply would take the provisions of this bill and similar bills that we've seen pass in this house and grant, at local option, the ability of a locality to offer to volunteer emergency service workers the 10 percent property tax reduction that has been offered in several different pieces of legislation.

And I guess I will commend Senator Volker: it's the first time that a sponsor of one of these bills has offered an explanation as to why these are being done piecemeal.

Though I would suggest that while there may be a locality that has a hard time resisting, if they're in financial straits, the political pull towards granting this option, that those independently elected individuals be able to say to their constituencies: "We'd like to afford this, we can't afford it right now. The state has allowed us to do it. When we're back on our feet, we will go ahead and do it."

So while I understand that argument, I dismiss it in this case and would like to simply reiterate the arguments for this amendment, which are that it's so good, it's so fair and just that it is good, fair, and just for everybody in the state, including the folks in New York City that I'm most concerned about.

And just, Madam President, I'd like to take this one opportunity. I misspoke a week ago, when I spoke on a similar bill, when I suggested that no member of a New York City volunteer ambulance corps had died in the September 11th tragedy. I was wrong about that. And I'm embarrassed to be wrong about

it, because it was an individual who came from my constituency.

And the reason I didn't know about it is because he didn't die while responding with his unit. They got the call, they responded, the Forest Hills Volunteer Ambulance Corps, right after the North Tower was hit, went down there, and the rig was crushed at 10:05 when one of the towers fell. The two volunteer ambulance corps workers from that ambulance corps escaped.

But there was a young man named Richard Pearlman, 18 years old, from Forest Hills. And this young man was running an errand down at 1 Police Plaza, and he called his family after the first plane hit the building, saying, "I'm going to give assistance to those who are injured." And when he went to give assistance, the tower fell and he was killed.

And this just highlights for everybody the heroic sacrifice that professionals and volunteers who are engaged in emergency services undertake. They're terrific.

They're terrific in Senator Volker's district, and I applaud him for bringing this bill that he's brought; they're terrific in Senator Saland's district, and he's got a bill in. Senator Rath has a bill in. Senator Kuhl has a bill in. And now I've got a bill in which would simply do this for everybody in New York State.

And I think localities can resist the temptation, if they are in financial straits, to at that time provide this benefit. But it should be offered to everybody in the state, and let the localities make the sometimes tough decisions that they need to make if it's inappropriate.

But this is fair and just to do for everybody. It's the right thing to do. And, Madam President, I request that all my colleagues support this amendment.

Thank you.

THE PRESIDENT: Does any other member wish to be heard?

Will the senators in agreement with the amendment please raise your hands.

The Secretary will announce the

results.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Connor, Dollinger, Duane, Gonzalez, Hassell-Thompson, Hevesi, L. Krueger, Montgomery, Onorato, Sampson, Schneiderman, A. Smith, Stachowski, and Stavisky. Also Senator Lachman. Also Senator Gentile.

THE PRESIDENT: The amendment fails.

On the bill, read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Hevesi recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 419, by Senator Balboni, Senate Print 861, an act to amend the Penal Law, in relation to establishing a new crime.

THE PRESIDENT: Read the last

section.

THE SECRETARY: Section 4 -

SENATOR MONTGOMERY: Explanation.

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

SENATOR BALBONI: Thank you, Madam President.

This bill would create an E felony for any individual that would sell a controlled substance in a home where a child resides.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: I was just trying to get the full essence of Senator Balboni's law. Would Senator Balboni yield for a question?

THE PRESIDENT: Senator Balboni, will you yield for a question?

SENATOR BALBONI: Yes, Madam President, I do.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Senator, I'm just trying to figure out what do you intend

to -- how does this benefit, in any situation, any child, Senator?

SENATOR BALBONI: Madam President, through you. Senator, the idea for this bill came from various law enforcement groups who, upon investigating or attempting to effect a search warrant or make an arrest in a premises where controlled substances are believed to be sold, would encounter outrageous situations.

They detailed for me several instances where they would come into the domicile of an individual where there were drug dealers, armed with drug paraphernalia all over the residence, in plain sight, and there were children in the next room either asleep or running through the house.

And as everybody knows, any time that there is an attempt to make an arrest, it is one of the most dangerous law enforcement situations that can be incurred. It is one of the issues that will rile a patrol officer, a detective the most when they walk into this type of situation and there are firearms and drugs and children present.

So what this bill says is if you are going to take that outrageous disregard for the health and safety of children in the place where you are conducting your business, then you should suffer an enhanced penalty, an E felony, for that situation, for the creation or the permissible -- for creating or permitting that situation to exist.

SENATOR MONTGOMERY: Madam President, would Senator Balboni continue to yield?

THE PRESIDENT: Senator, do you continue to yield?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR MONTGOMERY: Thank you.

Senator, does the bill also include instances where alcohol is found in the home? Or do you not consider alcohol a drug under your legislation?

SENATOR BALBONI: Madam President, through you. The bill specifically, on line 6, states "criminal sale

or criminal possession of a controlled substance."

So as defined within the Penal Law, that is the substance which would predicate the felony.

SENATOR MONTGOMERY: Through you, Madam Chair, I'd like to ask Senator Balboni for one more clarification.

THE PRESIDENT: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR MONTGOMERY: Yes, Senator. My assumption is that in the event that a home is raided under the circumstances as described in your legislation, in your memo, there would already be charges levied against the people in that situation.

So am I correct in understanding this legislation to give an additional charge on top of any others that would naturally be levied based on the presence of controlled substances and the selling of that going on in

the home?

SENATOR BALBONI: Madam President, through you. This bill would in fact create a new and separate crime that an individual could be charged with if they created the circumstances.

SENATOR MONTGOMERY: Okay. Thank you. The explanation is satisfactory.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Will Senator Balboni yield to a question?

THE PRESIDENT: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR DOLLINGER: Senator, you just mentioned, I think, in your response to Senator Montgomery that one of the dangers of the police entering a home was of course that they would have drugs or firearms.

Isn't that correct? Did I quote you correctly?

SENATOR BALBONI: I believe you did. We could ask for a readback from the reporter.

SENATOR DOLLINGER: Well, I think I'm close.

My question is, Madam President, is there anything currently in statute -- through you, Madam President -- Senator Balboni, that says if they enter a home with a firearm in it, whether it's displayed or not, that it increases the penalty upon the person who owns the firearm? Is there anything in our law that currently does that?

SENATOR BALBONI: Madam President, other than the Sullivan Law as it relates to the possession of a firearm, concealed or otherwise, I don't know of any other law.

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

THE PRESIDENT: Senator Balboni, do you yield?

SENATOR BALBONI: Madam President, I continue to yield.

THE PRESIDENT: You may proceed, Senator.

SENATOR DOLLINGER: Senator, I note that this bill says that the custodial child resides in the house. That bill doesn't require that they actually be physically present in the house at the time that the use of a controlled substance or the sale of a controlled substance occurs; is that correct?

SENATOR BALBONI: Madam President, through you, that is absolutely correct.

And the reason why we did this, again, was based on the recommendation of law enforcement personnel. As we've said so many times on the floor, Senator Dollinger, neither you nor I have to go into a building and try to make an arrest in these kind of violent circumstances. And therefore, the men and women who put on the badge and the gun and do this on a day-to-day basis, their recommendations I take with great seriousness.

And it is their feeling that to limit it only to when children are present is something that can neither be foreseen by them

or is an artificial requirement, in that if the children actually reside there, they can be coming home at any time. And that should be not the predicate for the application of this particular felony.

SENATOR DOLLINGER: Through you, Madam President, if the sponsor will continue to yield.

SENATOR BALBONI: Yes, Madam President, I continue to yield.

THE PRESIDENT: You may proceed, Senator.

SENATOR DOLLINGER: Does criminal possession of a controlled substance include marijuana?

SENATOR BALBONI: Madam President, I don't know. I believe it does, but I do not know.

I'll tell you what, though. If you want, after the debate and the passage of the bill, I'll go to the library with you and we can look it up.

SENATOR DOLLINGER: Ah, presumption, Madam President: the passage of the bill. That dangerous thing called

presumption.

(Laughter.)

SENATOR DOLLINGER: Through you, Madam President, if the sponsor will continue to yield just to one other question.

THE PRESIDENT: Senator Balboni?

SENATOR BALBONI: Madam President, I continue to yield.

THE PRESIDENT: He yields.

SENATOR DOLLINGER: Would you define the term "custodial child"? Is that a term of art in our Penal Law?

SENATOR BALBONI: That is a term of art only -- also in the Family Law.

SENATOR DOLLINGER: Is it a term of art -- through you, Madam President -- in our Penal Law?

SENATOR BALBONI: Once again, we're going to have to go right to that library and find out exactly what the statute says.

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

THE PRESIDENT: You may proceed,

Senator Dollinger, on the bill.

SENATOR DOLLINGER: This is the danger of drafting a bill that we -- I'm not quite sure -- I understand the point that Senator Balboni tries to make, but I'm not sure I understand the legal context.

I don't believe the phrase "custodial child" is used in the Penal Law anywhere. It is used in the Family Law. I would suggest that the drafter, to get accuracy, incorporate the definition of "custodial child" in the Family Law into this portion of the criminal law.

Secondly, everybody ought to realize I'm going to vote in favor of this bill because I'm going to presume, as Senator Balboni did, that this bill may pass. But I would suggest to him that the criminal possession of marijuana, which I don't think is necessarily -- it may only be a violation. If it happens in the house that an adult happens to be possessing marijuana, he's going to be charged with a Class E felony, which is one-to-four, instead of what I think is now purely a violation that would result in the

issuance of an appearance ticket.

And the last point, Madam President, is I think Senator Balboni has got a great idea here. I just don't think this statute will go close to solving the problem that he describes. I would suggest that if we want to set a standard that says if you've got a gun or drugs in the home with the child - let's say it's guns and drugs and other contraband materials -- let's establish a rule, let's get it well-defined and make it work.

I'm all in favor of this concept. Lord knows, I'll vote for the concept. But this bill doesn't do what Senator Balboni wants it to.

THE PRESIDENT: Does any other member wish to be heard on this bill?

Senator Schneiderman.

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

THE PRESIDENT: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, Madam

President, I do.

THE PRESIDENT: You may proceed, Senator.

SENATOR SCHNEIDERMAN: Through you, Madam President, the sponsor and I had a debate over this bill last year. My concern is quite different than Senator Dollinger's concern.

My concern is that by defining this provision as being limited to the presence of custodial children, the residence of custodial children, it excludes from the enhancement of the penalty anyone who is not a parent.

And so it really is not determining the enhancement of the penalty imposed by this statute based on the presence of a child, but rather on the relationship of the drug dealer to the child.

There are many, many situations in which there's someone dealing drugs in a home, they know that there are children residing there, but that person is not a custodial parent. The way this is drafted, that person would not get the enhanced penalty. So it's really more of a penalty for being a parent

than it is for dealing drugs in a home where a child resides.

Would the sponsor consider modifying this bill to deal with that situation and perhaps broaden it so that any time you're dealing drugs where a child resides, you'd be subject to the enhancement?

SENATOR BALBONI: Madam President, through you. Senator Schneiderman, I believe that you have an advantage over Senator Dollinger. You've actually done this for a living. You've actually tried to go in -

SENATOR SCHNEIDERMAN: Why don't you make it clear what I've done for a living that you're referring to.

(Laughter.)

SENATOR BALBONI: No, no, I'm sorry, you have not sold drugs. Okay, for the record, he has not.

You've actually tried to evict people from housing who have been selling drugs, and so you have some experience in this. And therefore, your insight into this bill is very constructive.

And I agree with you that the language you're talking about is a good thing to add into this bill. And what I'm going to try and do is get the Assembly sponsor, Tom DiNapoli, to include that language.

As you know -- this might come as a shock to some people here, but the Assembly is a little bit more liberal when it comes to these types of bills in this nature. And therefore, it's -- Tom Duane is not -- you're not surprised by that at all? They are.

SENATOR DUANE: I'm more liberal than they are.

SENATOR BALBONI: You're more liberal, okay.

Well, this bill itself has a good chance of getting through this house, I believe, with the language you have. But your language would broaden it. And therefore I don't think the Assembly would even consider it.

The original intent from the law enforcement community was to go with this language. And we narrowed it, actually, from the original discussion in an attempt to try

and get the Assembly to take a look at it. And unfortunately, Assemblyman DiNapoli has not had any success with that thus far. But hope springs eternal, and hopefully we can get that done this year.

But I think your point is very well taken.

SENATOR SCHNEIDERMAN: Madam President, on the bill.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

I understand the point of this. I think the problem is very real. We have - certainly in New York City, drug dealing, unlike most parts of the United States, takes place primarily out of residential housing. It is a very serious problem.

But the problems that I've encountered have largely not been those of people living in their own homes with their own children there dealing drugs, it's been the fact that drug dealers actually move around from place to place and take advantage of drug addicts or whatever and locate in

their homes.

So I'm concerned that the primary targets of this legislation are going to evade the enhancement unless we broaden the language. I will -- based on Senator Balboni's commitment to try and reason with the Assembly sponsor and move along, I will vote for the bill this year. I just think it is tremendously important to recognize that that is the heart of the problem we're talking about and to try and address it.

THE PRESIDENT: Does any other member wish to be heard on this bill?

Then the debate is closed.

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 PRESIDENT: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, briefly to explain my vote.

I'm going to continue to oppose

this legislation. I certainly understand and I respect Senator Balboni's attempt to offer a special protection to children in situations where drugs are sold.

But what I have experienced, certainly in my own district and in New York City in general, is that very often what happens is that because this kind of legislation sort of sweeps in everybody in the environment, we often end up with people spending very long prison terms who have minimum if any relationship to the actual problem, the sale of narcotics, but they just happen to be in some way connected with someone who is.

And so I will oppose this because I think that we do have substantial enough authority by local police enforcement to move and to address these kinds of situations where drugs are being sold in a home. We really don't -- this will not hinder them being able to carry out their work.

But I do think that we need to think much more carefully about how we sweep people into this whole drug arrest program who

are not in fact actually connected with it directly.

So I'm going to oppose this legislation, Mr. President.

ACTING PRESIDENT KUHL: Senator Montgomery will be recorded in the negative.

Announce the results.

THE SECRETARY: Ayes, 56. Nay, 2. Senators Hassell-Thompson and Montgomery recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read the calendar.

THE SECRETARY: Calendar Number 440, by Senator Bonacic, Senate Print 6458, an act to amend Chapter 447 of the Laws of 2001.

SENATOR DOLLINGER: Explanation, Mr. President.

SENATOR McGEE: Lay that bill aside for the day.

ACTING PRESIDENT KUHL: Lay the bill aside for the day.

Senator McGee, that completes the controversial reading of the calendar.

SENATOR McGEE: Mr. President, may we return to the reports of standing committees. I believe there's one from the Finance Committee at the desk.

ACTING PRESIDENT KUHL: We will return to the order of reports of standing committees. There is a report from the Finance Committee at the desk.

The Secretary will read.

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

Senate Print 6797, by the Senate Committee on Rules, an act making appropriations for the support of government.

ACTING PRESIDENT KUHL: Without objection, the bill is reported directly to third reading.

Senator McGee.

SENATOR McGEE: Mr. President, may we please take up Senate 6797, Calendar Number 497.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number

497, by the Senate Committee on Rules, Senate Print 6797, an act making appropriations for the support of government.

ACTING PRESIDENT KUHL: Senator McGee.

SENATOR McGEE: Is there a message of necessity and appropriation at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR McGEE: I move to accept the message of necessity and appropriation.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity and appropriation on Calendar Number 497. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The message is accepted.

The bill is before the house.

The Secretary will read the last section.

THE SECRETARY: Section 29. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Ayes, 56. Nays, 2. Senators Dollinger and Duane recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator McGee.

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

ACTING PRESIDENT KUHL: There is.

We will return to the order of motions and resolutions.

Senator Marcellino, for a motion.

SENATOR MARCELLINO: Thank you, Mr. President. On behalf of Senator Balboni, on page number 29 I offer the following amendments to Calendar Number 467, Senate Print Number 6594, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 467 are received and accepted. The bill will retain its place on the Third Reading Calendar.

That completes the housekeeping at the desk, Senator.

SENATOR McGEE: Mr. President, will you recognize Senator Hevesi for the purpose of a motion, please.

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

SENATOR HEVESI: Thank you, Mr. President. I believe there's a motion at the desk.

ACTING PRESIDENT KUHL: There is.

SENATOR HEVESI: I'd like to request to waive the reading and be heard on the motion.

ACTING PRESIDENT KUHL: The request for waiving of the reading is granted, it is waived, and you are afforded the opportunity, for within five minutes, to explain the motion.

SENATOR HEVESI: Thank you, Mr. President.

This is a motion to discharge a bill from committee, Senate 5210, which would remedy a problem that I believe is one of the -- and I don't want to be excessively dramatic, but one of the most egregious inequities in public policy today.

There exists a situation right now where a landlord who wants to rehab, rehabilitate, improve the quality of his property can get a major capital improvement in order to do that and passes along, with the acquiescence of DHCR, a rent increase which is perfectly just and fair.

The problem is -- and I don't believe the law was designed to do this, but there was a court case, Ansonia v. DHCR, in 1989 where the Court of Appeals ruled that the landlord could collect -- under the Rent Regulations Law, the landlord could collect the rent increase from an MCI forever, in perpetuity, having no relationship to when the MCI is paid off. For the remainder of time, that landlord would get the increase.

This is grossly unfair. This disenfranchises tenants, thousands and

thousands of tenants who are already struggling to make ends meet, and has absolutely no place in a society where we premise our public policy on equity. It's just wrong.

So what we have here is a Senate bill that I sponsored that was formerly sponsored by Senator Goodman -- Mr. President, could we get some order in the chamber, please. I'm having trouble hearing.

ACTING PRESIDENT KUHL: As soon as the Majority Leader takes his chair, we will continue the debate, Senator.

I think you have the order now, so continue.

SENATOR HEVESI: Thank you, Mr. President.

As I was saying, Senator Goodman, Republican colleague formerly of this house, for many years sponsored a piece of legislation which struck a balance, because there is a need to provide an incentive for landlords to go ahead and do major capital improvements so that their properties don't fall into disrepair. That's a negative impact

for everybody involved.

And his bill is essentially the bill that I am now carrying in this house, which does the following. It will allow major capital improvements to be recouped in their charges for seven years and then for the final five years after the seven years, with a declining scale, the landlords can recover a tax charge placed onto the rents of individuals in that development. And after that five years, it's gone, it ends.

And in doing that, to be perfectly candid with you, it is overcompensating the landlord. But we are willing to overcompensate the landlord (A) to get the bill passed, and (B) in consideration of the fact that there is some legitimate claim to having to provide the incentive to the landlord.

But understand what we're talking about here. Even by this bill we are saying we're going to pay landlords more money than they are deserving for a particular service that they're providing.

This is essentially the same,

folks, as me going to buy a car, making all the payments on my car year after year after year, finally, I have paid off the car, and for some reason I have to keep paying payments on the car, after I paid off my car.

This is exactly analogous to it, with the one caveat that in this particular case there is an incentive that we need to build into this system.

So, Mr. President, I would urge all my colleagues to support this bill. The fact that landlords currently get stuck paying forever for major capital improvements, the lifespan of which have their payments naturally end after seven years, they now have to pay it forever, is a hardship. It is grossly unfair. It was never the intention.

The Court of Appeals, in their '89 decision, didn't justify that, they simply said that under current law, we are not able to adjudicate otherwise, and that if we're to change this circumstance, it has to be done by statute.

Well, ladies and gentlemen, here's the statute. Here's our opportunity to

correct this injustice. And I urge all of my colleagues to support this bill.

ACTING PRESIDENT KUHL: Those in agreement with the petition please raise your hands.

Announce the results.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Brown, Connor, Dollinger, Duane, Gentile, Hassell-Thompson, Hevesi, L. Krueger, C. Kruger, Lachman, Montgomery, Onorato, Paterson, Schneiderman, A. Smith, M. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT KUHL: The petition fails.

Senator Andrews, why do you rise?

SENATOR ANDREWS: Mr. President, I'd like to request unanimous consent to be recorded in the negative on Calendar Number 192, Bill 3408, and Calendar Number 194 - 491 -- 419, I'm sorry, Bill 861.

ACTING PRESIDENT KUHL: Senator, that was Calendar Number 192 and Calendar Number 194 you wish unanimous consent -

SENATOR ANDREWS: 419.

ACTING PRESIDENT KUHL: 419. On

Calendar Number 192 and Calendar Number 419, you request unanimous consent to be recorded in the negative.

Without objection, hearing no objection, the Senator will be recorded in the negative on those two votes.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes, Mr. President, I would like unanimous consent to be recorded in the negative on Calendar 192.

Thank you.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 192.

Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President.

There being no further business to come before the Senate, I would move that in memory of the late Senator Marino, the former majority leader, that we adjourn this session and that we cancel tomorrow's session and adjourn until Wednesday at 10:30 a.m., with

the intervening day to be a legislative day.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until Wednesday at 10:30 a.m., in memory of the late majority leader, Senator Ralph J. Marino.

The Senate stands adjourned.

(Whereupon, at 4:03 p.m., the Senate adjourned.)