NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:14 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 stand 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, may 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, Saturday, March 15, the Senate met pursuant to adjournment. The Journal of Friday, March 14, was read and approved. On motion, Senate adjourned.

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

Senator Skelos.

SENATOR SKELOS: Madam President,

there will be an immediate meeting of the Children and Families Committee in the Majority Conference Room.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Seward.

SENATOR SEWARD: Yes, Madam President. On page 13, I offer the following amendments to Calendar Number 129, Senate Print Number 1447, and ask that the said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendments are received, Senator, and the bill will retain its place on the Third Reading Calendar.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a privileged resolution at the desk by Senators Bonacic, Kruger, and Balboni. Could we have it read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senators Bonacic, C. Kruger, and Balboni, Legislative Resolution Number 780, paying tribute to the life and selfless heroism of Staff Sergeant Brian Pavlich of Port Jervis, New York.

"WHEREAS, It is with a heavy heart that this Legislative Body pays tribute to Staff Sergeant Brian Pavlich of Port Jervis, New York, and the ten other members of the United States Army 10th Mountain Division who lost their lives in the Black Hawk tragedy at Fort Drum on March 11, 2003; and

"WHEREAS, This Legislative Body extends its deepest sympathy to the families of each of these brave Americans -- Staff Sergeant Brian Pavlich; Sergeant John L. Eichenlaub, Jr.; Sergeant Joshua M. Harapko;

Private First Class Shawn A. Mayerscik; Private First Class Andrew D. Stevens; Private First Class Stryder O. Stoutenburg; Private First Class Tommy C. Young; Captain Christopher E. Britton; Chief Warrant Officer Kenneth L. Miller; Specialist Barry M. Stephens; and Specialist Lucas V. Tripp; and

"WHEREAS, This Legislative Body would also like to extend its heartfelt thoughts and prayers to the families of Specialist Dmitri Petrov and Specialist Edwin A. Mejia, as they cope with their injuries and grieve for their fallen comrades; and

"WHEREAS, No one can fully understand a tragedy such as this, but only know that prayers help us through the day and help us endure the night; there are prayers of friends and strangers that give us all strength, and there are prayers that yield our will to a will greater than our own; and

"WHEREAS, Staff Sergeant Brian Pavlich grew up in Port Jervis, New York, where he was a Boy Scout and a member of the volunteer fire department; he attended Port Jervis High School and played football for the

Red Raiders under the lights at Glennette Field; and

"WHEREAS, The son of a soldier and grandson of a soldier, Staff Sergeant Brian Pavlich signed up for the United States Army as soon as he received his high school diploma; he saw combat in Kosovo and was part of Operation Anaconda in the mountains of Afghanistan; and

"WHEREAS, An exemplary soldier, Staff Sergeant Brian Pavlich received the Expert Infantryman Badge, one of the United States Army's highest non-combat awards; and

"WHEREAS, Staff Sergeant Brian Pavlich is survived by his wife, Heather; parents, Edward, Sr., and May; sister, Elizabeth; and brother, Edward, Jr.; and

"WHEREAS, It is the sense of this Legislative Body to convey its grateful appreciation and heartfelt regret in recognition of the loss of these courageous individuals who dedicated their purposeful lives and careers to serve their country in the United States Army; now, therefore, be it

"RESOLVED, That this Legislative

Body pause in its deliberations to pay tribute to the life and selfless heroism of Staff Sergeant Brian Pavlich of Port Jervis, New York, and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the family of Staff Sergeant Brian Pavlich."

THE PRESIDENT: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President. On the resolution.

It's with a heavy heart of sorrow that I stand today to talk about this resolution and Brian Pavlich. Brian was from the city of Port Jervis.

And we -- since I've been in public service in Albany, I have seen three fallen heroes from the city of Port Jervis: 1990, Anthony Aversa, BCI investigator killed in a bad drug bust; September 11, 2001, Doug Miller, firefighter, who was lost in the terrorist attack; and now, on March 11th of this year, 13 soldiers went down on the Black Hawk helicopter accident. Eleven died, two survived. The only one that died from the

state of New York was a son of Port Jervis, Brian Pavlich.

He was a 20-year-old man, had a wife that was his sweetheart. He came from a family of soldiers. His love of country was his family creed. From the time he could talk, Brian Pavlich held tight to his father's and his grandfather's shirttails, both of whom were soldiers who fought in places like Normandy, Omaha Beach, and Vietnam. He was dedicated to his family. He was dedicated to being a soldier.

After joining the Army, he wanted to fly choppers just like the Black Hawk. And when he passed away, his young wife said he died an honorable and respectful death doing what he loved to do.

This New York State Senate extends our deepest condolences, not only to the Pavlich family but to all of the families of the other 10 soldiers who lost their lives serving our country.

He died protecting our freedoms, our country, and our community. He will always be remembered as one of our nation's

fallen heroes.

Thank you, Madam President.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Madam President, patriotism is a thing often spoken of but seldom exercised. But there's no greater demonstration of that patriotism than to put on one's country's uniform, to go and leave your family, to travel far away and put yourself in harm's way.

The soldiers killed and injured last week personified that patriotism. I bet if you'd asked them if they were patriots or heroes, they would have said: No, we're just doing our job.

But we know differently. All of us know that because they and their fellow soldiers do their jobs, we're able to live in freedom.

Last week the face of the deployment was shown to me when I went to speak to the deployment of 150 Marines in Albany. And there was family there. And there were the fathers with their families all around them, the kids running around, and the

wives crying, uncertain about the future, both physically, emotionally, and also about their financial security.

And I spoke to one of the colonels there, and we talked about this incident, and he said: "We train hard." And what people don't always recognize is training hard is dangerous. We don't always appreciate that.

Many people will argue about the best way to protect democracy. And I don't have an answer, but I know this one thing for sure. Democracy can only continue to flourish if men and women like those on that helicopter continue to take up the call of duty.

May they rest in peace.

THE PRESIDENT: Senator Wright.

SENATOR WRIGHT: Thank you, Madam President.

I too rise to join my colleagues in recognizing our fallen heroes. As the representative of the community that is host to Fort Drum, I was given the honor of joining the Governor and the Congressional delegation at the memorial service last Friday to recognize these individuals and to help share

in the grief with their families.

And I can tell you without reservation that it is probably one of the most difficult tasks that I've had in ten years in this position. It was a circumstance that you are impressed by their dedication and their commitment and their honor. You are also taken aback by their youth, their young families, their children.

It is a very serious business to serve in the military of one's country. And many of these young men return from Afghanistan, return from having successfully engaged in combat, to return unharmed, only to sacrifice and make the ultimate sacrifice for this nation while in what is considered a routine training exercise.

The routine business of defending this country is a very serious business. It is a very dangerous business for the young men and women who wear our uniform. And we are living in very serious times. And while we are here today, as we were there Friday to hear their commanders speak of them in the most eloquent of terms, to hear their

colleagues and their families share their remorse and their loss, and to some minimal attempt we to share our sympathy with their loss.

But more importantly, when the day is done, there is not a family member there, nor was there anyone that was in attendance that wouldn't recognize those 11 individuals and the two who have survived as true heroes, recognize their dedication and commitment to this country and without question recognize that they would do it all over again given the choices that they'd faced.

We can be proud as a nation that that's the caliber of young men and young women who have chosen to represent our nation. Our recognition here today is but a small tribute to what I hope we all do on a regular basis as we go forward and face the challenges that we are facing in the near future, to respect and recognize these young men and women and pray for their safe return. May God bless.

Thank you.

THE PRESIDENT: The question is

on the resolution.

Senator Paterson.

SENATOR PATERSON: I'm sorry, Madam President. If -- before we take the resolution up, if I might add a thought.

THE PRESIDENT: Please proceed.

SENATOR PATERSON: I want to join Senator Wright and Senator Bonacic and Senator Balboni and the feelings of everyone in this chamber, spoken or unspoken, of our support for our armed forces overseas and our particular grief at the death of 11 of them in the tragic accident last week.

Sometimes differing on policy and differing on procedure might lead those to feel that there isn't equal and overwhelming sentiment of respect, concern, and, in the end, love for Americans who volunteered for service to our country in the military and then perished in that service. There's nothing so noble or nothing so great.

And I'm always inspired and I'm always moved by the words of Senator Balboni when he said that probably if you asked them did they know they were heroes, did they know

how they moved the rest of us, they would say: We're just doing our jobs.

And well aware that Senator Balboni is an admirer of Shakespeare, it made me think of the Shakespearean admonishment in Sonnet 94: "The summer's flower is to the summer sweet, but to itself it only live and die."

I think that's emblematic of what those young men and women tried to give to this country, 11 of them perishing last week in a terrible accident. We can recognize them at this moment in time, but their families have lost them for every moment in time in the future.

We pray for their families, we wish their families our best, and we could only state and restate our heartfelt grief over their loss but our continuing adulation for their service to our country and to the example that they've set for all of us about what they were able to give for what they believed in and for our cause.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

I want to commend my colleagues on their very moving eloquence on this tragedy, and only add one addendum, that these young men were part of one of the most renowned and wonderful 10th Mountain Division, which is serving in Fort Drum. Tenth Mountain Division has been at the forefront of almost everything that this nation has been involved in as far as protecting our security, whether it be in Afghanistan, Kosovo, or in World War II.

And the 10th Mountain Division has been stationed at Fort Drum and has been very much a part of our defense, and certainly these young men. It's a tragedy that this happened to a group of young men that have really served our country so well. May God rest them.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, Senator Bonacic would like to put every member on the resolution. If any member does not wish to sponsor it, they should notify the desk.

And perhaps it would be appropriate if we adopt the resolution by the senators

standing in a moment of silence.

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

We'll observe a moment of silence.

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

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, I believe there's a substitution at the desk. If we could make it at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 4, Senator Morahan moves to discharge, from the Committee on Elections, Assembly Bill Number 390 and substitute it for the identical Senate

Bill Number 1320, First Report Calendar 207.

THE PRESIDENT: The substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could go to the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 75, by Senator Volker, Senate Print 664, an act to amend the Penal Law and the Vehicle and Traffic Law, in relation to endangering the welfare of a child.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 80, by Senator Padavan, Senate Print 845, an act to amend the Criminal Procedure Law, in relation to the defense of guilty but mentally ill.

SENATOR PATERSON: Lay that aside.

SENATOR PADAVAN: Madam

President.

THE PRESIDENT: The bill is laid aside.

Senator Padavan.

SENATOR PADAVAN: Madam President, would you place a sponsor's star on that bill, please.

THE PRESIDENT: The bill will be starred, Senator.

THE SECRETARY: Calendar Number 95, by Senator DeFrancisco, Senate Print 1485, an act to amend the Surrogate's Court Procedure Act, in relation to computation.

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, 56.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 151, by Senator LaValle --

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 154, by Senator Kuhl, Senate Print 1429, an act to amend the Vehicle and Traffic Law, in relation to exempting any child under the age of 14 years.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 167, by Senator Meier, Senate Print 1821, an act to amend the Social Services Law, in relation to reimbursement.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is

passed.

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

SENATOR SKELOS: Madam President, if we could go to the controversial calendar, starting with Calendar 154, by Senator Kuhl.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 154, by Senator Kuhl, Senate Print 1429, an act to amend the Vehicle and Traffic Law, in relation to exempting any child under the age of 14 years.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR KUHL: Thank you, Madam President.

This is a proposal that's been debated on the floor of this house in years past. To date, we've not had recognition of the problem that exists in the community out in my Senate district. And that is, several years ago we passed a requirement that young

people who ride bicycles actually wear a helmet. We mandated it.

In one particular community, a religious community known as the Mennonite community in my area, and most notably in Yates County, in the Penn Yan area, part of -- one of the religious tenets that's held by these people is that they wear wide-brimmed black hats or full-fledged bonnets.

And so what we have done is made criminals out of these people by forcing them to be put in a position where they discard their religious tenets and actually wear a helmet.

The modern means of transportation for most of these people is by bicycle. And so I don't think that that's -- there's an overwhelming safety concern. We've never had any reported accidents that resulted in death or serious injury to these people.

And so this bill would essentially allow them, under these circumstances, not to have to wear a helmet.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes, Madam

President, through you, I would like to speak on the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR LACHMAN: This bill, as we know, as Senator Kuhl has said, has come before us several times. I look upon it as a very important bill, not just because it's in aid of the Mennonite community in Senator Kuhl's district, but also the implications that this bill has.

Many people have said that the most important -- one of the most important things that the American democracy has produced is the First Amendment to the Constitution. And the First Amendment to the Constitution says two things: One, there shall be no establishment of religion, and, two, that no one should prevent the free exercise of religion from taking place.

Now, exactly 30 years ago, in 1973, the Amish population in Wisconsin was very upset and very concerned that their children were being forced to attend public school after the eighth grade. It was in opposition

to their religious beliefs. And yet it was part of state law.

And this is an example where religion and religious beliefs and religious principles come into conflict with laws of a state. And the State of Wisconsin ruled that an exception should be made to the Amish population of Wisconsin, that they did not have to attend any type of schooling, whether public or private, after the eighth grade.

Now, this was 30 years ago, and it's as important today as it was then. And not only is it important for the Amish, but it's important for all groups. The First Amendment has brought to American life a virtual greenhouse of religious growth.

I mean groups such as the Mormons, the Christian Scientists, the Disciples of Christ are rooted in American soil and came from America. And small groups like Baptists and Methodists, who came from Britain, flourished in the American environment.

And they flourished because of the great respect that Americans have had for freedom of religion and that no one should

interfere with the free exercise of religion.

I am proud to stand alongside of Senator Kuhl on this bill -- I'm not even sure the Mennonites in his district vote. Oh, they don't vote -- because it's an issue of religious principle, which to me is one of the great things that this country stands for.

Thank you kindly.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. Just briefly on the bill.

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

SENATOR MONTGOMERY: Yes. I have voted no in the past on this legislation. And the reason being, for me, is that I don't see this in any way associated with whether or not any group is able to freely worship.

And this has nothing to do with respect for religion or any of that. I just see this as being a bill which seeks to exempt a certain group of children from the requirement that children wear helmets when they are riding their bicycles or any other

such vehicle.

So I vote no because I think that whatever laws we enact to protect the interests of children are just specifically for their protection, and we should not exempt them simply because the adults who are responsible for them do not want them to be covered by the laws to protect them. So I am going to continue to oppose this legislation.

And I certainly hope that Senator Kuhl will understand the importance of the protection of children, one. And, two, that there are many other groups who wear headgear -- some of them are represented by me -- and they certainly do vote, for certain.

But I still believe that every child deserves to be protected by the laws of our state. So I'm voting no again.

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 2. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 154 are Senators Libous, Montgomery, A. Smith, and Stachowski. Ayes, 55. Nays, 4.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 75, by Senator Volker, Senate Print 664, an act to amend the Penal Law and the Vehicle and Traffic Law, in relation to endangering the welfare of a child.

SENATOR VOLKER: Madam President.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: This bill, which has been around for a couple of years --

THE PRESIDENT: Is there an explanation requested?

SENATOR VOLKER: Yes, Senator Paterson requested it. You probably didn't hear him. I heard him.

(Laughter.)

THE PRESIDENT: No, I didn't, his meek voice.

Thank you, Senator Paterson.

You may proceed, Senator Volker.

SENATOR VOLKER: He whispered to me.

(Laughter.)

SENATOR VOLKER: This bill actually has a history that goes back to the time when the Assembly and the Senate were attempting to come to an agreement on a series of bills relating to child endangerment.

At that time we were -- we thought we were well on our way to come, and we did come, to an agreement. Although the Assembly, frankly, did not want to move on as strongly as we did in doing bills that would waive the statute of limitations and would allow crimes against young people to be prosecuted on a more general basis.

There's been some stuff in the paper lately about the fact that we were the ones that had backed away, when in reality it was the Assembly that had really backed away because they did not want to go as far as the Senate was willing to do in protecting children, very honestly.

This bill is a bill that relates to

the issue of endangering the welfare of a child. It would create a new offense of endangering the welfare of a child in the first degree.

We have already had on the books for some time endangering the welfare of a child in the second degree, which is merely a Class A misdemeanor. And a person is guilty of that offense when he or she knowingly acts in a manner likely to be injurious to the physical, mental, or moral welfare of a child less than 17 years old. And there's some basis in the law for issues involving neglected children and persons in need of supervision.

The problem with that statute is that it's only a Class A misdemeanor, and it's become somewhat of catchall for all sorts of acts by parents and guardians and so forth.

And in fact, at the time we did a study that showed that there were 7,000 arrests in relation to endangering the welfare of a minor here many years ago. The problem was almost no one got convicted. Virtually all the cases ended up in probation and were

either for that or dismissed, and other charges were allowed to be furthered against the parents or whoever the endangering the welfare of the child was involved.

This bill says that if you have previously been convicted of endangering the welfare of a child or if a person -- let me read the statute here -- if a person has been previously convicted or when he or she knowingly acts in a manner which creates a substantial risk of serious physical injury or prolonged impairment of the mental or emotional condition of a child less than 17 years old, the charge would be a Class D felony.

Now remember, this is a -- what this would create is a charge. That would not necessarily mean that that would be the final conviction. Because what will probably happen here is many of these cases will end up being reduced back to a misdemeanor. Which will mean, very honestly, that at least you'll have something substantial in these cases.

But one thing I would remind everybody, that a Class D felony is punishable

by up to seven years in prison. And the real reason for this statute is to give, in particularly egregious cases -- remember, these are children under 17 years of age -- mostly by parents or persons in supervision, who one way or another in effect abuse these children, short of the actual physical abuse, but where they have been harassed or to a point where there could be serious implications for their physical and mental health.

And that's really what this is. In multiple offenses, it could be a D felony. Or in very serious offenses involving the health and welfare of a child under 17, you could be charged with a D felony.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, first I want to commend Senator Volker. I see Senator Padavan saw I was around today, put a star on his bill, and ran out of the chamber. Hopefully he'll come back sometime.

But Senator Volker is here. I wonder if he'd yield for a question.

SENATOR VOLKER: Certainly. Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR PATERSON: These situations, which is sort of a new theory of law where we're taking what would be an A misdemeanor charge and we're upgrading it to a D felony based on what could be identical circumstances, but a presumption based on a previous conviction -- similar to legislation calling for predicate misdemeanor cases to be regarded as felonies.

In this particular situation, if that's what we're actually doing, why would we choose the D felony, which is the second class up, rather than the E felony?

SENATOR VOLKER: Senator, I think the reason is because the attempt is being made here to point up the seriousness of these kinds of offenses.

And rather than go to an E felony, which is the lowest-grade felony -- because in certain cases, these could be very serious matters. And therefore, a D felony would be available for parents or guardians or whoever

it is who would commit these sort of offenses, not only for a second time but also where there is evidence of serious physical or mental pressure or whatever.

As you and I know, this would take considerable proof to allow this to happen. I'm the first one to say that. Because judges look at this and juries look at this very strictly when you're dealing with these kinds of offenses.

But remember, we are dealing here with children under the age of 17. And it could be, obviously, children who are much younger. That's -- we say under 17, but it could be children who are 13, 14, 15, whatever.

And -- but I think what the attempt is being made here is to make this clearly the potential for a serious offense here in certain cases that, frankly, have not been treated by the courts or, I must say, by the system in as serious a vein as they should be treated.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I would just like to ask a question of clarification.

SENATOR VOLKER: Sure.

THE PRESIDENT: Senator Volker yields.

You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Yes, Senator Volker, I like the section of the bill where you specifically talk about a person who's been previously convicted of a serious offense.

I'm just -- in the second part, where you say "he or she knowingly acts in a manner which creates a substantial risk of serious physical injury or prolonged impairment of the mental or emotional condition," I'm just wondering, that seems to be a rather subjective characterization, substantial risk of serious physical injury and prolonged impairment.

I'm not sure that that really is specific enough so that any number of possibilities could be defined based on this

law.

SENATOR VOLKER: Remember, Senator, let me just say back in, I think, '97, '98, we debated over that a great deal. And the problem was the more we tried to specify, the more we ended up in saying that we had to have a broad enough standard that would take in -- let me give you an example.

Someone puts a child or locks them up in a room for like two weeks, or something of that nature. Clearly, that would fall into a situation where the physical and emotional well-being of that child would be potentially impaired, where the parents just for no reason other than whatever it is.

And there's a series of -- we looked, in fact, at a series of situations that occurred. And when you think of that situation I just told you, all they could really find to charge a person in those cases was a Class A misdemeanor.

And we looked at other things, and we said: Well, what else would you charge them with? Neglect, I suppose. But then all that would happen to that person would be the

person might have the child taken away from them. But if the child was 17, probably not, or 17 or under, because they were old enough that very possibly the court would say: Well, we're going to monitor you, or whatever.

But because there were certain areas that appear to be so serious that they deserve a higher penalty and a threat to make sure that people don't, for instance, commit these situations again, that's why we came up with this language which in the law would require, I think, some unusual proof.

So that a lawyer, I think, would tell you that not too many cases would probably fall under this unless you had some pretty stiff evidence that the child was really severely potentially impaired, short of physical abuse, short of regular physical abuse, or in the case -- in certain cases where people harass kids and so forth, so that kind of mental abuse, unless it's on a very prolonged basis.

That's the real reason we used this language, which was about the best language, if I can remember, we came up with which would

deal with some of the situations that were occurring, especially in some of the major cities. It's not just New York City but a lot of the other cities in this state where some kids were being subjected to some horrendous problems by parents who were just unable to control themselves or whatever. And the feeling was that we had to have some way to deal with that, and that's what this is about.

We tried to come up with some even more definitive language, but in the end this is the best language we could come up with.

SENATOR MONTGOMERY: Okay. Just one further question, through you, Madam President.

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

SENATOR VOLKER: Sure.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Thank you.

I notice that your statistics are based on the 1995 year, and you had more than 7,000 arrests.

SENATOR VOLKER: Yeah. Yeah.

It's gotten worse.

SENATOR MONTGOMERY: That's what I was going to ask. In the last eight years, has this been a greater problem?

SENATOR VOLKER: And let me just say you're right. In fact, I just looked at this and I realize we have to update those. And I will do that, by the way. I'll get those from DCJS.

But from what I understand, it's now well into the tens of -- 10,000 to 15,000, whatever. It was, in fact, in 2000, if I remember right. But I will check into this.

But I can tell you that it's much worse.

SENATOR MONTGOMERY: Thank you, Senator.

THE PRESIDENT: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. If, through you, the sponsor would yield to a question.

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

SENATOR VOLKER: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

Senator Volker, I was also looking at the memo you described, which you mentioned may in fact be outdated. But you talk about a range of crimes, as extreme as torturing a child to as -- another category of exposing a child to drug use.

So as I understand it, while it seems clear that -- in the case of torture, that under this scenario, if a parent was caught smoking marijuana in front of their children more than one time, they could end up with a D felony, going to jail for up to seven years. Is that correct?

SENATOR VOLKER: No, that's not true.

I think the problem with that is that would end up as a Class A misdemeanor, most likely. Although what mostly happens with those kinds of things, for that kind of an offense, for the most part, the person isn't charged at all.

Because merely smoking in front of

a child, there's no forced -- forcing the child to smoke marijuana, I suppose. Or some sort of -- taking some sort of drug might be considered -- I would think would be considered endangering the welfare. But the mere fact of smoking drugs or anything in front of a child does not mean that you've necessarily endangered the welfare of the child.

Well, let me say that one of the frequent charges, if you allow a child to drive a car when they're underage, and you're in the car and there's an accident, whatever, that could constitute -- but that still would constitute, ironically, only a Class A misdemeanor. Because there's not necessarily anything in that that would strictly say that you intended to cause physical or emotional trauma.

But now if you are a drug user and you subject that child -- as I had a case, many years ago, we had -- and this was, unbelievable as it may sound, these were young kids who the mother and father -- and we tried to charge them with a felony and ended up with

a misdemeanor -- where, to quiet them down, the parents were giving them ether. Ether. And I admit that I got pretty upset. And we broke the door in and grabbed the kids and we -- what we did is we just took the kids away from them.

But in the end, we really couldn't get them. We tried to get them on a felony for that sort of conduct, but we really couldn't, because we couldn't prove that there was severe physical or any kind of injury to get just the misdemeanor, which is what it was at the time.

There's a classic example of what this D felony would cover. Because there's no question that if we went into court with that kind of evidence, we could certainly get a D felony.

But as far as any of the -- you know, the ordinary things, smoking or having someone, you know, involved in -- unless they were selling drugs. Now, if they're selling drugs in front of children or doing something of that nature, or, as sometimes has happened, where we had an incident in Western New York

where a fellow was a gun seller and was selling guns in the house where the children were. And one of the children -- the way they found them, the children grabbed one of the guns and went out and shot at somebody. There's the classic example.

SENATOR LIZ KRUEGER: Thank you.

Thank you, Madam President.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the first day of number of.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is passed.

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

SENATOR MARCELLINO: Thank you,

Madam President.

May we now return to reports of standing committees, for a report of the Children and Families Committee.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Rath, from the Committee on Children and Families, reports the following bill direct to third reading: Senate Print 2947, by Senator Saland, an act to amend the Social Services Law.

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

Senator Marcellino.

SENATOR MARCELLINO: Madam President, would you please recognize Senator Montgomery.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Madam President. I would like to be on record that had I been in the chamber when Calendar 102, Senate Bill 1034 was voted, I would have

voted no.

THE PRESIDENT: You will be so recorded, Senator Montgomery.

SENATOR MONTGOMERY: Thank you.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: And would you please recognize Senator Stachowski.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: Madam President, if there wasn't a rule preventing me from doing so, I would introduce the people from the West Seneca Christian School that are in the audience and have sat through the session, most of them staying awake.

(Laughter.)

THE PRESIDENT: Thank you, Senator.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, I'd waive the rule to introduce the one who's asleep.

(Laughter.)

SENATOR MARCELLINO: Is there any

housekeeping at the desk, please?

THE PRESIDENT: No, there isn't, Senator.

SENATOR MARCELLINO: That being so, I move we adjourn until March 18th at 3:00 p.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Tuesday, March 18th, 3:00 p.m.

(Whereupon, at 4:01 p.m., the Senate adjourned.)