NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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May 13, 2003

3:17 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: In the absence of clergy, may we each bow our heads in a moment of silence, please.

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

THE PRESIDENT: Reading of the Journal.

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

The Secretary will read.

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

As a member of the Port of Oswego Authority, Thomas W. Schneider, of Oswego.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Move the nominations.

THE PRESIDENT: The question is on the confirmation of Thomas W. Schneider, of Oswego, as a member of the Port of Oswego Authority, for a term to expire September 1st in the year 2006. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

The Secretary will read.

THE SECRETARY: As a member of the State Racing Commission, Lorraine Power

Tharp, Esquire, of Saratoga Springs.

THE PRESIDENT: Senator Larkin.

SENATOR LARKIN: Thank you, Madam President.

I am honored and privileged to put forth the nomination of Lorraine Power Tharp to be a member of the Racing and Wagering Commission.

One just has to take look at her resume and has to be very, very impressed. She has held every office within the legal profession, from the state to the national level. She has authored many books concerning what should and what shouldn't be done. She's just published a book on the guidance for lawyers that's over a thousand pages long. I'll read it sometime.

But when you look and see her ability to discuss the issues of racing -- at a meeting this morning that we had at the Racing and Wagering Committee, many questions were asked. And her enthusiasm of not just a title but of being able to be a partner with the state to ensure that what we're going to do with Racing and Wagering was a credit not

only to herself but to the State of New York.

I place her name in nomination.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

I rise to second the nomination of Lorraine Power Tharp.

You know that Saratoga Springs is the epicenter of racing for the world. And I think it was rather significant that yesterday this entire Senate was honoring a constituent of Senator Bruno's up there called Funny Cide. And we were thrilled to see that a New York-bred won that.

And I think it's so significant that we have somebody so eminently qualified to be a member of the State Racing Commission as Lorraine Power Tharp. And it is with enthusiasm that I support her nomination.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Thank you, Madam President.

I rise to echo my fellow Senators in praise of Lorraine Power Tharp. Lorraine has been a friend for over 25 years, a fellow

lawyer, and someone who has the utmost respect of the entire legal community, which resulted in her being elevated to the position of president of the New York State Bar.

So I look forward to seeing Lorraine many times in the future in her new capacity and also in her capacity as a lawyer.

Thank you, Madam President.

THE PRESIDENT: The question is on the confirmation of Lorraine Power Tharp, of Saratoga Springs, as a member of the State Racing Commission, for a term to expire February 1st in the year 2004. All those in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

And on behalf of the Senate and as a colleague and member of the state bar, congratulations. We are indeed privileged to have you on the Racing and Wagering Board. Congratulations.

(Applause.)

THE SECRETARY: As a member of the Mental Health Services Council, Edgar R. Scudder, of Mohawk.

As a member of the Advisory Council on the Commission on Quality of Care for the Mentally Disabled, Dale R. Angstadt, of Gansevoort.

As a member of the Board of Visitors of the Central New York Developmental Disabilities Services Office, Margaret W. Abbott, of Rome.

As a member of the Board of Visitors of the Helen Hayes Hospital, David G. Welch, M.D., of Queensbury.

As a member of the Board of Visitors of the Metro New York Developmental Disabilities Services Office, Fredricka J. Pol, of the Bronx.

And as a member of the Board of Visitors of the New York State Home for Veterans and Their Dependents at Oxford, Beverly P. Gardinier, of Amsterdam.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Move the nominations, Madam President.

THE PRESIDENT: The question is on the confirmation of the nominees as read by the Secretary. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominees are all hereby confirmed.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

THE PRESIDENT: Excuse me, Senator Farley. I see Senator Skelos standing.

SENATOR SKELOS: Thank you, Madam President.

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

THE PRESIDENT: There will be an

immediate meeting of the Investigations Committee in the Majority Conference Room.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of myself, on page 17, Calendar Number 203, Senate Print 2263, I offer the following amendments.

Also on page 17, one of my bills, Calendar 205, Senate Print 2265, I offer amendments.

And to the following bills I offer amendments:

On behalf of Senator LaValle, on page 23, Calendar 337, Senate Print 288A.

On behalf of Senator Golden, on page 42, Calendar 650, Senate Print 3974.

On behalf of Senator Maziarz, on page 36, Calendar Number 567, Senate Print 930.

On behalf of Senator Libous, on page 37, Calendar 580, Senate Print 3023.

And on behalf of Senator Hannon, on page 15, Calendar Number 143, Senate Print 1089.

I ask that these bills retain their place on the Third Reading Calendar.

THE PRESIDENT: The amendments are received and adopted, and the bills will retain their place on the Third Reading Calendar.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

On behalf of Senator Parker, I would move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clauses: Senate 4260, 4261, 4263, 4266, and 4267.

And Senator Parker promises to get it right next year.

(Laughter.)

THE PRESIDENT: So ordered, in its entirety.

Senator Skelos.

SENATOR SKELOS: Madam President, are there any substitutions at the desk to be made at this time?

THE PRESIDENT: Yes, there are,

Senator.

SENATOR SKELOS: If we could make the substitutions, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 6, Senator Hoffmann moves to discharge, from the Committee on Agriculture, Assembly Bill Number 8295 and substitute it for the identical Senate Bill Number 4979, First Report Calendar 788.

On page 22, Senator Volker moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 1874A and substitute it for the identical Senate Bill Number 2325A, Third Reading Calendar 325.

On page 40, Senator Spano moves to discharge, from the Committee on Transportation, Assembly Bill Number 6634 and substitute it for the identical Senate Bill Number 3814, Third Reading Calendar 638.

And on page 47, Senator Robach moves to discharge, from the Committee on Civil Service and Pensions, Assembly Bill Number 7913 and substitute it for the

identical Senate Bill Number 4108, Third Reading Calendar 707.

THE PRESIDENT: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, I move we adopt the Resolution Calendar in its entirety.

THE PRESIDENT: All those in favor of adopting the Resolution Calendar in its entirety please 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, if we could go to the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 222, by Senator Hannon, Senate Print 454, an act to amend the Public Health Law, in

relation to providing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 223, by Senator Little, Senate Print 1838, an act to authorize certain health care professionals licensed to practice.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on July 23, 2003.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 309, by Senator Saland, Senate Print 1913A, an

act to amend the Social Services Law, in relation to abandoned infants.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 12. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 318, by Senator Skelos, Senate Print 1015, an act to amend the Family Court Act and the Domestic Relations Law, in relation to abandoned infants.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 10. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 372, by Senator Balboni, Senate Print 2498B, an act to amend --

SENATOR LIZ KRUEGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 474, by Senator LaValle, Senate Print 2067, an act to amend Chapter 668 of the Laws of 1977, amending the Volunteer Firefighters Benefit Law.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 496, by Senator Spano, Senate Print 3766, an act to amend the Labor Law, in relation to making the failure to post a statement of wage.

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 501, by Senator Velella, Senate Print 4177, an act to amend the Labor Law, in relation to requiring the special task force.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 12. 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 502, by Senator Volker, Senate Print 623, an act to amend Chapter 672 of the Laws of 1993, amending the Public Authorities Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 517, by Senator Kuhl, Senate Print 2295, Concurrent Resolution of the Senate and Assembly proposing an amendment to Section 4 of Article 8 of the Constitution.

THE PRESIDENT: The Secretary will call the roll on the resolution.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 547, by Senator Robach, Senate Print 3903, an act to amend the General Municipal Law and the Retirement and Social Security Law, in relation to increasing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect July 1, 2003.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 555, by Senator Leibell, Senate Print 4476, an act to amend the Retirement and Social Security Law, in relation to the receipt of full pension benefits.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Thank you, Madam President.

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

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

SENATOR SKELOS: And if we could go to the controversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 372, by Senator Balboni, Senate Print 2498B, an act to amend the Penal Law, in relation to establishing.

SENATOR LIZ KRUEGER: Explanation.

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

SENATOR BALBONI: Thank you, Madam President.

This bill is a bill that we have discussed on several different occasions, but this bill is a newer and improved version, thanks to the input of none other than Senator Schneiderman, who last year -- yes, Senator Schneiderman.

And you think he doesn't contribute to this process. Of course he does. He contributes in every way, shape, and form. And certainly it is today.

Senator Schneiderman, last year after our discussion about this bill -- which, to refresh the people's recollection, this is a bill which would criminalize the sale of drugs in a home from the perspective of having children in the home at the time of the drug sale.

And many people in law enforcement have pointed to the fact that when drugs are being sold in any type of facility that there is a potential for violence. Certainly there is a potential for police and law enforcement officials breaking into the apartment. And there is also a potential for child abuse in this situation.

So the thing that we must criminalize and focus on when it comes time to get the defendants into court is the fact that they would be so brazen and so negligent in their care of children, or their concern for children, that they would continue to sell drugs notwithstanding the fact that children are present in the home.

Last year, Senator Schneiderman brought up the fact that the bill back then

had the phrase custodial parent or custodial -- I'm sorry, it had a custody relationship, the adult had a custodial relationship with the child. And therefore that would be the nexus by which we would prosecute someone.

And Senator Schneiderman pointed out the fact that you shouldn't limit it to just being in a custodial role. Rather, you should say any parent or any adult should be aware and cognizant that there are children in the home and therefore, if they choose to do it notwithstanding that, they should be penalized.

And we make, in this statute, this particular offense an E felony.

Thank you, Madam President.

THE PRESIDENT: Senator Krueger.

SENATOR LIZ KRUEGER: Madam President, if the sponsor would yield, please.

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

SENATOR BALBONI: Yes, I would, Madam President.

THE PRESIDENT: You may proceed,

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

Senator Balboni, you stated that this bill would make it illegal to sell drugs in the home if a child was there. Is it not already illegal to sell drugs in your home?

SENATOR BALBONI: It sure is. And what this bill does, furthermore, is focus on the aspect of the drug sale as being done with reckless disregard.

This is almost a -- this could be akin to someone who injures somebody but does so in a way that they could have injured a lot more people. And therefore, it's that reckless nature of the act that we've chosen to penalize and increase the penalty for.

SENATOR LIZ KRUEGER: Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator Balboni, will you yield?

SENATOR BALBONI: Yes, Madam President, I will.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Senator, I would agree with you that selling drugs in a home with children in it is clearly bad public policy. And you used the term "reckless," and I wouldn't disagree with that.

It's my understanding that from a child-protective perspective, we also already have the right to remove children from the home if their parents are selling drugs in that home, even before your law is in effect.

So we already have a law that says it's illegal to sell drugs in your home, and we have a law that says we can remove children from the home if parents are selling drugs in the home.

What does your bill do different than those existing laws by adding this additional category?

SENATOR BALBONI: This bill now would allow prosecutors to include in the indictment or in the prosecution an additional crime and penalty of selling drugs in the home while children are present.

SENATOR LIZ KRUEGER: Madam President, through you, if the sponsor would

continue to yield.

THE PRESIDENT: Will you yield, Senator?

SENATOR BALBONI: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

So if I understand you correct, this would add an additional penalty, you could face two felonies for one charge of dealing, as opposed to currently the one felony.

SENATOR BALBONI: Madam President, through you, it would of course depend upon the amount of drugs that you were selling in order whether or not it would reach a felony classification.

But this would be a felony, an E felony, no matter what amount of drugs are being sold.

SENATOR LIZ KRUEGER: Madam President, if, through you, the sponsor would continue to yield.

THE PRESIDENT: Senator?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: He does yield. You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

I appreciate all of the answers, but that one in particular, because it brings up my next question.

So I could be selling -- it's always dangerous, I suppose, to use yourself as an example in a drug case, but I could be selling marijuana in my home in front of my child at a small amount that would not reach a felony charge but could, under your law, still face a second charge, a felony charge, because I was, quote, dealing marijuana in my home with a child there. Is that correct?

SENATOR BALBONI: First of all, is it a controlled substance?

SENATOR LIZ KRUEGER: I believe that marijuana is -- I don't think your bill said "controlled substance." Did it?

SENATOR BALBONI: I think that would be -- Senator Krueger, I believe that that would be for the prosecutor to determine

as to whether or not to bring the original indictment or prosecution.

In other words, it would be fact-dependent.

SENATOR LIZ KRUEGER: Madam President, through you.

THE PRESIDENT: To proceed on the bill?

SENATOR LIZ KRUEGER: No, I'm sorry, it's another question for the sponsor.

THE PRESIDENT: Excuse me, Senator Skelos has risen.

Senator Skelos.

SENATOR SKELOS: If you'd excuse the interruption, Senator Alesi has asked me to call an immediate meeting of the Commerce Committee in the Majority Conference Room.

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

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. I was asking whether Senator Balboni could continue to yield.

THE PRESIDENT: Senator Balboni,

will you yield for an additional question?

SENATOR BALBONI: Yes, Madam President, I do.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

So perhaps I didn't understand your answer, I'm sorry. So I could be -- whether or not I am charged with a felony for selling marijuana may be discretionary upon the prosecutor, but it would also be discretionary whether I got charged for -- under your new law?

SENATOR BALBONI: No. Madam President, perhaps -- let me add some clarification to the debate. Perhaps this would be helpful.

SENATOR LIZ KRUEGER: Thank you.

SENATOR BALBONI: I think that your -- the example you're using is perhaps problematic, since marijuana is not a controlled substance for the purposes of this debate. Crack cocaine, you're selling crack cocaine.

SENATOR LIZ KRUEGER: Okay.

SENATOR BALBONI: That's a much better example for the purposes of this. And so therefore, yes, if you -- you cannot sell crack cocaine and not commit a felony.

So that is the example that's a better fit for this particular bill.

SENATOR LIZ KRUEGER: Madam President, if, through you, the sponsor would continue to yield.

THE PRESIDENT: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

I'm sorry, I still -- I don't -- I accept that we could use crack cocaine versus marijuana, although I don't see where in your bill you clarify that.

SENATOR BALBONI: I don't. It's in the statutes.

SENATOR LIZ KRUEGER: So in fact it could be low-level drug dealing of marijuana --

SENATOR BALBONI: No, it wouldn't be involved in this.

SENATOR LIZ KRUEGER: It wouldn't be involved.

Because this says dealing with a child in the first degree when a person sells drugs in the presence of a child under 18, it's not clear to me that it says it's a -- that it couldn't be a marijuana charge. It says selling or using.

SENATOR BALBONI: There is a -- the issue is the -- is the phrase "controlled substance." "Controlled substance" is a term of art within the Penal Law and therefore has a specific definition. And the definition is that it does not include marijuana.

So it's by reference that that's why your example would not be appropriate.

SENATOR LIZ KRUEGER: Okay. Thank you.

Madam President, if, through you, the sponsor would continue to yield.

THE PRESIDENT: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, Madam

President, I yield.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

So I do correct myself. My counsel was pointing out the same thing you were at that time, and I hadn't seen that correctly.

So let's say it is a different kind of drug, depressants. I'm selling depressants. Or antidepressants, in that case.

SENATOR BALBONI: Or crack cocaine.

SENATOR LIZ KRUEGER: Or crack cocaine, right.

My concern here is that if you're setting up a bill where you'd have potentially an additional felony charge at the same time as you already had the drug charge, that you were setting up a scenario where people who may in fact, still, even though they are dealing -- and I am not supporting that, and I am certainly not supporting their selling drugs in front of their children -- they may lose their opportunity to actually be able to

go into a drug rehab program rather than do jail time or an ATI program, because now they face both the criminal drug charge and a second felony charge that is associated with it being a drug charge but is not per se a drug charge itself.

So I was wondering whether you had thought through what the impact might be on discouraging people who, again, might be first-time offenders, low-level -- even though it's controlled-substance dealing in their home, not something you want to defend -- that we're actually setting up a situation where people end up with no option but to go to jail and lose their children when that may not be in the best interests of anyone.

SENATOR BALBONI: Madam President, through you -- and in fact, Madam President, you probably know more about this debate than most people in the chamber.

The fact that there are two felonies that would be charged at the same time would not act as a preclusion. You can charge someone with ten felonies. That's not the operative issue. What is the operative

issue is if you have felonies over time.

So this would not, in and of itself, act as a preclusion to any type of other programs that you might otherwise be eligible for. So there won't be any -- there's not a possibility of the situation you describe.

And I know of your concern generally that we shouldn't, as the old saying goes, throw the baby out with the bathwater. In other words, you know, sever parental relationships by too harsh a penalty.

But let me tell you what the law enforcement community has spoken to me about. And, you know, you have to rely on their expertise, because they deal with this every day. And I would daresay that no one in this chamber, nor none of our staffs, deal with this issue every day.

They tell me that if you have somebody who's selling crack cocaine in their residence -- not on the street corner, not in some burned-out building, but in their residence -- and if children are present, that they don't have any concern or regard for

their children.

And if I were sitting as a Family Court judge, that alone would be enough to sever parental relationships. You're gone. Because maybe it's not this time, but maybe it's the next time that somebody comes in with a gun and sprays the apartment with bullets, and now you're putting that child right in the line of fire.

Or when you're selling this kind of substance, you now get so hopped up and high yourself that you abuse the child. This is what the law enforcement community is telling us. This is what they're asking for, with their expertise that they get on the streets every day.

So I think that though any time you take a child away from a parent it's such a difficult thing to consider, in this circumstance, where you're trying to make money, it's not -- remember, we're not just saying possession, Senator Krueger. We could have said possession. We're not saying that. We're saying sale.

And within our jurisprudence and

with our expertise in the law enforcement community, a sale is a much different animal than mere drug possession and use. And if you're selling it, you're bad. You're going to go to jail and you ought to really go to jail even longer if you do it while there are children in the facility.

That's really what the bill talks about.

SENATOR LIZ KRUEGER: Madam President, on the bill.

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

SENATOR LIZ KRUEGER: Thank you.

I appreciate Senator Balboni's analysis of the arguments for law enforcement. And truly it is not an easy thing to stand on the floor of the Senate and say: Wait a second, are you trying to defend the rights of a parent who would sell drugs in their home with children there? I don't think any of us would accept that as a justification for actions.

But I also think that Senator Balboni lays out a scenario that, while it may

be accurate in some situations, is also one extreme example.

Perhaps the more common example -- and it's why I'm so in a dilemma about this legislation, I do believe that we are putting too many people into jail for drug use in the state of New York. I say over and over again in every opportunity I have on this floor that we should be addressing the unfairness of the Rockefeller Drug Laws, that we should be putting more people into drug treatment and putting more funding into drug prevention than into putting people into jail under drug laws.

And so it does concern me that this would be one more felony charge to add to the category of things that we put people in jail for related to their drug use. Although it is true, this is only on drug sales. And it's controlled-substance sales.

But I still think it's an oversimplification of the world that you can't imagine a scenario where a woman with a drug habit ends up selling a small quantity of drugs out of her house in order, frankly, to not leave her child alone in the house and hit

the streets, and could find herself then facing double charges of felonies and go to jail for a longer period of time because of your law.

And yet I also can't condone the idea that society or our government wouldn't say if somebody is selling drugs, if somebody is using drugs, if somebody is selling drugs in a home with a child, that there is a role for government to make sure should that child be there, should we remove that child, should we make sure we are doing, of course, everything we can to protect that child.

My confusion is I think we have the tools to do so already in our Penal Law. We can already charge people for selling drugs, and we can already remove children from their homes if their parents put them in a dangerous situation. And I believe that our social service and child welfare laws would certainly define selling drugs in your home as a reason to remove children from the home.

And so I am worried that what your bill may do, although it might not have been the intention, is to increase the chances that

we will put people into jail for a longer period of time without other options.

Having said that, I will vote yes, but with real hesitancy about the impact.

Thank you.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Very briefly on the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR SCHNEIDERMAN: I appreciate the concerns that Senator Krueger has expressed and others have expressed in the past debating this piece of legislation.

I do have to say, though, that I think Senator Balboni has targeted something here that is a legitimate law enforcement problem. I have brought quite a few proceedings -- when I was a private lawyer, I represented community groups on many occasions trying to evict drug dealers. And in New York, unlike many other places, drug dealing is run primarily out of residential housing.

And it in fact is a strategic move on the part of many drug dealers to try and deal out of places where there are children, because it makes it less likely that a judge will actually evict the tenant of record.

This is not something that has just been cooked up out of thin air by Senator Balboni. This is an actual problem that law enforcement faces. It is a very difficult thing to do to put an end to a drug dealing enterprise. Even if you arrest some of the lower-level participants in the enterprise, if you don't close down the drug operation, it can renew itself for many, many years.

And I found that it was particularly frustrating in bringing these proceedings to have a judge turn to you and say: "Well, yes, this guy was dealing drugs out of the apartment, but we don't want to actually bring an eviction proceeding because there are children living there." That was a part of the strategy of the drug dealers, I realized, after a certain period of time.

So I do think this improves the law. I think it adds an additional element

that maybe, perhaps on one or two occasions, will discourage someone from dealing drugs out of a location where there are children present.

I appreciate Senator Balboni's amending the bill to deal with the issues that I raised in our previous debate, and I appreciate him giving me credit. I'm not now willing to drop out of any future races, but I appreciate the beginnings of a campaign of sucking up.

(Laughter.)

SENATOR SCHNEIDERMAN: But I do think that this is something that is really a serious concern, and I would urge all of my colleagues not to look at this as something that's just piling on -- you know, adding more penalties to people without regard for the course of their conduct and making things harder.

This is a very serious issue that comes up when you actually try and shut down a crack house. I think it's a good bill. I think the Senator has made a good effort to make it a better bill. And I am going to

support it, and I urge everyone to do the same.

Thank you.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, I would ask if the sponsor would yield for a couple of questions.

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

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Senator Balboni, I'm holding a bill dated February 28th. Was it amended since -- was your legislation amended since that date? Or do I have an outdated version?

SENATOR BALBONI: It's 2498-B.

SENATOR MONTGOMERY: Okay, I have the A version.

SENATOR BALBONI: Would you like the B version?

SENATOR MONTGOMERY: Yes, I

would.

SENATOR BALBONI: Here you are.

SENATOR MONTGOMERY: Thank you.

All right. In the A version, I note that you did have criminal possession, but you removed that. Is that correct?

SENATOR BALBONI: That's correct.

SENATOR MONTGOMERY: Okay, thank you.

Also in the A version, Senator, you included -- and I believe it's also in the B version -- it's a dwelling where at least one child resides.

Through you, Madam President, I wonder, Senator Balboni, does that mean that you are including any situation where a child resides, though that child may not even be present at the time of the arrest or the --

SENATOR BALBONI: Madam President, we have -- this is another layer of discussion that we've had in the past.

And I have tried to resolve this issue with law enforcement. We haven't been able to find a way to do this.

So the way that this proposal reads

and the intent behind it is that it is dependent upon the definition of "resides," and that does include people who are currently in the house and who have the potential to come back to the house.

Now, I believe, pursuant to our prior discussions, that you are concerned about the fact that there may not even be a child in the home at the time that this happens.

But, you know, again, in discussions with the law enforcement community, they say that, remember, it's not -- it never happens that it's the first sale that this happens. In other words, the sale has been going on for a period of time, then the intelligence has developed in the police community, and then they go in.

So it may not have been the time that the child was present when the first sale occurs -- I mean, when the arrest occurs, but I assure you, and so does the law enforcement community, that there was a time when the child was there, because that's where they live.

And I guess that also goes to the mens rea, to the mental component. You know, if a child lives in the home, you know that they're there. It's not like, you know, some neighbor's child comes in and is playing in the basement and you have no idea that they're in the home at the time that you conduct the sale. It doesn't work like that, at least that the law enforcement community is telling me.

So on the one hand, I understand your concern that there could be a conviction when there isn't even a child present. But at the same time, the word "resides" has importance in this context because of the nature of the crime. It's the sale of a controlled substance that occurs many, many different times.

And if a child resides there and you're the one doing the sale, you knew or should have known that they had the potential to be there. And that is what gives this the reckless nature to it, which is what we're trying to criminalize.

SENATOR MONTGOMERY: Okay. Thank

you again.

One further question, Madam President.

THE PRESIDENT: Senator Balboni, will you yield?

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR MONTGOMERY: Thank you.

Senator Balboni, the part of the law that you are amending seems to relate to unlawful -- it says --

SENATOR BALBONI: Unlawful dealing with a child.

SENATOR MONTGOMERY: With a child.

SENATOR BALBONI: Right.

SENATOR MONTGOMERY: But you're amending -- your amendment deals specifically with a situation where the child is present or a child resides, but that it's not necessarily in relationship to dealing with a child.

SENATOR BALBONI: At the same time.

Again, your concern relates to the specific instance of the arrest. And again, it's a broader concern that if you're selling, it's not the one time you're selling. You're selling over time. And so therefore, you know, you should know that a child resides there.

SENATOR MONTGOMERY: Okay. Thank you.

Madam President, briefly on the bill.

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

SENATOR MONTGOMERY: Yes. I'm pleased to see that Senator Balboni has tightened up the legislation, to some extent, in terms of removing the possession and making it purely based on the selling.

I do continue to have a concern, as has been expressed by Senator Krueger and others, that we are continuing to cast the net wider and wider to make it much easier for -- for instance, if the law enforcement enters the home and they know that a child lives there, has lived there -- may be there, maybe

not -- but nonetheless, every adult in that household, including that child's parents, could become part of an arrest, which often happens.

And in fact, the parent of that child, or at least one of the parents, may not have anything to do with the drug selling but rather just may, unfortunately, be living with people who are involved in criminal activity.

So I have opposed this legislation in the past. It's a very -- it's a double-edged situation. I certainly am interested in protecting the interests of children in particular. I also want law enforcement to have the capacity to arrest and for the district attorney to have as much leverage as possible.

But on the other hand, the district attorney, it seems to me, has as much leverage currently as they need to send people away for long periods of time, barring the fact that there is a child present or not.

So I do have great concerns about that, because our prisons are filled up with people who, for lack of other possibilities,

are there because of their involvement with drugs.

And I know that it's going to get worse very soon, because we're going to see the impact of our financial, fiscal crisis -- our state and federal fiscal crisis is going to impact on people who will end up being arrested and sentenced based on this law.

So, Madam President, I'm going to continue to oppose it. I probably will be just the only vote this year. I know that Senator Balboni and I often agree on these types of bills, because I think he's -- generally, he goes in the right direction.

But just to be certain, I'm going to continue. I won't change my vote this time. But maybe if I continue to talk to him, he'll convince me eventually to vote yes with him.

Thank you.

THE PRESIDENT: Senator Diaz.

SENATOR DIAZ: Thank you, Madam Chairlady. On the bill.

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

SENATOR DIAZ: Madam President, excuse me.

I just would like to congratulate Senator Balboni for this kind of legislation and also express my admiration to Senator Eric Schneiderman for supporting such legislation. Child abuse is child abuse. Whether it be physical, whether it be sexually or mentally, whatever kind, child abuse is child abuse.

Yes, we have a problem with the Rockefeller law. We have a problem. However, we should not let the problem that we have with the Rockefeller law allow us to stop protecting children and to stop sending a heavy message to drug dealers and criminals.

The Rockefeller law is an atrocity, but we have to deal with it. However, children are very important, and children are very, very important for us to be sure that in everything we do we send a message that we care about children. We cannot come here and say because the Rockefeller law is too hard, let's keep children subject to these kind of abuses and these kind of education.

I sympathize with people that have

drug habits. I'm very familiar with those kinds of sickness. I'm very familiar with them, believe me. When I say that I am very familiar with that, I am very familiar with drug-habit sickness.

However, children are more important. Because we, when we are adults and we make decisions and we make choices to use drugs, sometimes it's our decision. Children, sometimes they don't have the time and the knowledge to make the decision. And anything that we do to stop children from being subjected to this kind of life or environment, I go for.

So I again congratulate Senator Balboni, and I will be voting for this bill.

Thank you very much.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. On the bill.

Senator Balboni has again gone up in my Dow Jones. When I first came here, we argued a lot of different bills and we discussed a lot of issues and I felt that

there was not the sense of cooperation that allowed people to take a look at the bill and really decide that there were changes that needed to be made.

But I have to tell you that this is not the first occasion when Senator Balboni has done that, and for that I am appreciative.

But I too, like Senator Montgomery, am not quite ready to vote yes. I need to work harder on you, Senator Balboni. Primarily because I think one of the things that we continue to do is we don't look at families holistically. We look at children separately, we look at adults separately, but we don't look at the interrelationship that happens between children and their families.

In our failure to do that, then, we do not, in our budgetary process, begin to discuss not just the Rockefeller Drug Law -- because that's only a small part of a very large, major problem that we have with substance abuse in the State of New York.

But there is nothing reflective in our budget and in any of the legislative initiatives that we have done since I have

been here that says that we have a better understanding that while people may make the initial choice to do drugs, that addiction is no longer about choice. And that we have done nothing beyond "say no." Saying no to an addictive habit is not the answer.

But education is a part of the answer, and we have done little to nothing, in my opinion, to bring the two pieces of this together. And so until we work as hard to educate the public and to heal our public as we do to incarcerate them, I will continue to vote no.

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 4. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 2. Senators Hassell-Thompson and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 474, by Senator LaValle, Senate Print 2067, an act to amend Chapter 668 of the Laws of 1977.

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, 59.

THE PRESIDENT: The bill is passed.

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

SENATOR MORAHAN: Yes, Madam President.

If we could go back to motions and resolutions, previously we voted on Resolution 1579, by Senator Golden. We would like to open that up to all other members of the Senate.

If they don't wish to be on the resolution, they should notify the desk.

THE PRESIDENT: Any member who does not wish to be a sponsor of that resolution please notify the desk.

Senator Morahan.

SENATOR MORAHAN: Is there any housekeeping at the desk?

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

SENATOR MORAHAN: Okay. We'll just stand by for a few seconds.

Madam President.

THE PRESIDENT: Senator Morahan.

SENATOR MORAHAN: Madam President, there being no further business to come before the Senate, I move that we stand adjourned until Wednesday, May 14th, at 11:00 a.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Wednesday, May 14th, at 11:00 a.m.

(Whereupon, at 4:05 p.m., the Senate adjourned.)