NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 8, 2004

3:39 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will please come to order.

May I ask everyone present to please rise and repeat with me the Pledge of Allegiance to the Flag.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT MEIER: In the absence of clergy, may we each bow our heads in a moment of silence.

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

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Friday, March 5, the Senate met pursuant to adjournment. The Journal of Thursday, March 4, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Mr. President, has the Senate received a resolution from the Assembly advising the members of the Senate that the Senate and Assembly will meet at noon tomorrow in the Assembly chamber to elect Regents of the University of the State of New York, pursuant to Section 202 of the Education Law?

ACTING PRESIDENT MEIER: Notice has been received, and it's on file with the Journal Clerk's office, Senator.

SENATOR SCHNEIDERMAN: Thank you very much.

ACTING PRESIDENT MEIER: Thank you, Senator Schneiderman.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Seward, from the Committee on Insurance, reports the following bills:

Senate Print 1279A, by Senator Saland, an act to amend the Insurance Law;

5918A, by Senator Seward, an act to

amend the Insurance Law;

And Senate Print 6208, by Senator Seward, an act to amend the Insurance Law.

Senator Hoffmann, from the Committee on Agriculture, reports:

Senate Print 616A, by Senator Hoffmann, an act to amend the Agriculture and Markets Law;

2777A, by Senator McGee, an act to amend the Agriculture and Markets Law;

5865, by Senator Larkin, an act to amend the Agriculture and Markets Law;

And Senate Print 5868, by Senator Larkin, an act to amend the Agriculture and Markets Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: All bills reported directly to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER:

Immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Volker, on page number 5 I offer the following amendments to Calendar Number 41, Senate Print Number 3508, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

SENATOR FUSCHILLO: On behalf of Senator Volker, on page number 25 I offer the following amendments to Calendar Number 376, Senate Print Number 4844, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MEIER: The

amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

SENATOR FUSCHILLO: Mr. President, on page number 25 I offer the following amendments to Calendar Number 379, Senate Print Number 5396, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received and adopted, and the bill will retain its place on Third Reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's a privileged resolution, 3757, by Senator Rath. Could we have the title read and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

SENATOR SKELOS: And I think Senator Rath would also like to open it up for cosponsorship.

THE SECRETARY: By Senators Rath and Bruno, Legislative Resolution Number 3757, memorializing The Honorable George E. Pataki

to designate March 2004 as "Women's History Month" in the State of New York, and commemorating the New York State Senate's "Women of Distinction" tribute.

ACTING PRESIDENT MEIER: Senator Rath.

SENATOR RATH: Thank you, Mr. Chairman.

I would like to thank the Governor for sending this message to us and for responding to our request to designate Women's History Month, and recommend to all of my colleagues that there is a new display in the Well area, with three new women from the historical repertoire of famous women in New York State, not the least of who is there recognized this year is the first woman ever to have served as a state senator.

So be sure and stop and enjoy it, and recommend the display to all of your friends.

I would like to open up the resolution for everyone to join me. And if there is no objection, we will do that accordingly. Thank you.

ACTING PRESIDENT MEIER: The resolution is open for cosponsorship. If you do not wish to be on the resolution, please notify the desk.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's a privileged resolution, 3758, by Senator Seward. Could we have the title read and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Seward, Legislative Resolution Number 3758, commending the Virgil Elementary School upon the occasion of receiving The Business Council's 2004 Pathfinder Award for Outstanding Educational Improvement.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Skelos.

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

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 20, by Senator Velella, Senate Print 112, an act to amend the Vehicle and Traffic Law, in relation to reporting of accidents.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Mr. President, briefly to explain my vote.

ACTING PRESIDENT MEIER: Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: I've supported similar legislation in the past.

I do want to note that any time we exempt police officers from accountability for their actions -- and in this case, for a very, very good reason, we don't want people worrying about their own personal insurance records when they're trying to respond to an emergency -- but any time we exempt police officers from responsibility, we have to do it with tremendous care that it not be taken as a license to act with impunity.

And the one thing that has been missing from this legislation that I hope we're going to be able to somehow add before it becomes law is some recognition that if there are police officers who are repeatedly

having accidents or some precincts that are generating an untoward number of accidents, that there be some mechanism in place to check that.

We all want police officers to get to the scene of an emergency as quickly as possible. We don't want to send a message, in this or any other circumstances, that the police are in any way beyond the law when it comes to the basic responsibility to conduct themselves in a manner that provides for safety, both when they get to the emergency and on their way there.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Schneiderman, you're voting in the affirmative?

SENATOR SCHNEIDERMAN: Yes.

ACTING PRESIDENT MEIER: Senator Schneiderman will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill

is passed.

THE SECRETARY: Calendar Number 27, by Senator Kuhl, Senate Print 1876, an act to amend the Vehicle and Traffic Law, in relation to appropriate reduced speeds.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 108, by Senator Bonacic, Senate Print 417, an act to amend the Vehicle and Traffic Law, in relation to allowing volunteer firefighters.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 121, by Senator Johnson, Senate Print 4468, an act to amend the Vehicle and Traffic Law, in relation to prohibiting.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 150, by Senator Saland, Senate Print 1917, an act to amend the Family Court Act, in relation to evidence of child neglect.

SENATOR LIZ KRUEGER: Lay it

aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 194, by Senator Maziarz, Senate Print 5834A, an act to amend the Highway Law, in relation to the Niagara Wine Trail.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 195, by Senator Maziarz, Senate Print 5837A, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 213, by Senator Alesi, Senate Print 59 --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 224, by Senator Rath, Senate Print 1681, an act to amend the Penal Law, in relation to aggravated harassment.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 249, by Senator Spano, Senate Print --

SENATOR LARKIN: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 276, by Senator Velella, Senate Print 4169, an act to amend the Workers' Compensation Law, in relation to the death benefits for police officers.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

392, by Senator Balboni, Senate Print 520, an act to amend the General Municipal Law, in relation to creating the Village of Westbury Community Development Agency.

ACTING PRESIDENT MEIER: There is a home rule message at the desk.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 393, by Senator LaValle, Senate Print 722, an act authorizing the Town of East Hampton, Suffolk County, to establish road and highway improvement.

ACTING PRESIDENT MEIER: There is a home-rule message at the desk.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 397, by Senator Larkin, Senate Print 5082, an act to authorize the Village of Walden, County of Orange.

ACTING PRESIDENT MEIER: There is a home-rule message at the desk.

Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 399, by Senator DeFrancisco, Senate Print 5888, an act to amend the Town Law, in relation to including the Onondaga Hill Fire

Department.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR LARKIN: Mr. President, can we now move to the controversial calendar.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 150, by Senator Saland, Senate Print 1917, an act to amend the Family Court Act, in relation to evidence of child neglect.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Saland, an explanation has been requested of

Calendar Number 150.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this is a bill which we've considered in this house on prior occasion. What the bill does is it takes that provision of the Family Court Act that currently provides that where a respondent -- which in another proceeding would be considered to be a defendant -- in an abuse or neglect proceeding is shown to have regularly participated in a rehab program, rehab with respect to drugs or alcohol, that that in effect amounts to a finding or an affirmative defense, more appropriately, whereby that person can in effect say that the alleged act of neglect or maltreatment should not proceed -- or the proceeding should not proceed any further, it being considered the ability as an affirmative defense to make the petitioner, which would be the Social Service Department, come forward and claim that in fact there are other -- there is other evidence that would warrant the continued -- continuation of the proceeding.

What this proposes to do is to take it out of the so-called fact-finding section and put it in the dispositional section. The result of that would be that, first and foremost, a determination would be made as to whether or not neglect or abuse had occurred.

That finding having been made, the court would then determine whether in fact the respondent was voluntarily participating in a drug rehab program and would then determine whether in fact that participation was in fact one which was being driven in good faith, not merely being used to shield the respondent from the potential outcome of the neglect proceeding.

And that would in effect be weighed by the court. The court would then determine if the child should remain with his or her family and whether, again, the parent or guardian was in fact acting in good faith by participating in the program.

The idea behind this bill is that neglect and abuse proceedings should not be able to be foiled by means of somebody using the artifice of a supposed involvement in a

rehab program when in fact that is being driven not by a desire for some type of rehabilitation but a desire to terminate the proceeding.

ACTING PRESIDENT MEIER: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. On the bill, please.

ACTING PRESIDENT MEIER: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I appreciate the Senator's explanation of his bill. And as I think we know, I've debated the Senator on this bill in previous years and discussed it in committee.

And so I just want to reiterate the reasons why I think while we both share the same intention -- to protect children and to make the Family Court process a sound one that does protect children -- my take on this bill is in fact that the opposite outcomes will happen from what Senator Saland hopes will happen in his bill.

Under this bill, the presumption becomes that if you go for substance abuse

treatment, if you volunteer, if you declare that in some way, that the court should, by definition, make an assumption of neglect and take your child.

In fact, a court, under the existing law, has perfect ability to follow through on investigations and remove a child because they believe there is neglect or abuse or evidence of, under existing law, where parents can voluntarily participate in substance abuse treatment.

Rather, under the proposed changes that he makes in S1917, it becomes a risk for parents to participate voluntarily in a substance abuse treatment program, in my opinion and experience discouraging parents from reaching out and getting the help when they need it, as they need it.

And in fact, people who voluntarily submit for substance abuse treatment have the highest outcomes for success, because they are self-motivated to seek help and to start it without a court order.

I am also concerned that this bill, I believe, has been introduced almost ten

years, I was told -- I've only been here now for two years -- and the Office of Court Administration has never actually asked for this legislation.

When I spoke with both substance abuse treatment providers in the City of New York and Family Court judges, I was told by both of them that they opposed this change in the law, and they actually thought it was going to tie their hands and limit their options under the existing model we have in the City of New York.

I also feel that our job is to make sure we protect children, that we get parents the help they need, but to not make a presumption that because you have a substance abuse problem, we should immediately take your children.

I don't think Senator Saland feels that way either. But I do believe that this legislation would translate into a model discouraging parents from participating in getting the treatment they need, making it too quick for the courts to pull children from their homes when there are better alternatives

and supports and services that could be offered.

And it will tie the hands of judges, given both the very crowded schedules we find in the Family Court system and the drastic shortage of qualified attorneys to represent particularly poor families in the Family Court system.

So while I recognize that Senator Saland proposes this bill in good faith, and I believe that I work in good faith for the same goals of protecting our children and improving our Family Court system and our court system, I would urge my colleagues not to vote for this bill. I don't think it will have the intended consequences.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the bill?

Senator Hassell-Thompson. We've got to move this lamp here, Senator Hassell-Thompson.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you. I appreciate it. I thought you were

overlooking me.

ACTING PRESIDENT MEIER: Never.

SENATOR HASSELL-THOMPSON: Thank you.

Mr. President, just on the bill.

Last year I debated this bill extensively with Senator Saland. And I had hoped that somewhere in the process of that discussion, we would have had some changes in the bill, which I don't see.

I still maintain the concern that, as the legislation presently exists, that it gives the kind of discretion to judges that are important and are necessary in such cases. And I would like not to have the Legislature -- I wanted to use the word "tamper," and that's not what's suggested -- but tinker with this, only from the perspective that "voluntary" means exactly what it says.

When you are dealing with persons who are substance abusers, as well as those with problems of alcoholism, the first thing that you understand is that we are talking about an illness. And from an illness

perspective, people do not get well or do not improve in their condition unless their participation in their treatment is voluntary. I think that anyone who does voluntarily participate automatically is making the first steps toward recovery.

And so until we begin to discuss this bill with some hope of seeing the families and the people that we are discussing and legislating about, we understand them as having normal human frailties compounded with problems of alcoholism and substance abuse that we have not begun to address from a budgetary perspective in these chambers, and certainly from a legal perspective.

And so therefore, I will continue to vote no. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Any other Senator --

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President.

I note that the current law vis-a-vis the bill that we're considering specifically states that the use of drugs and

alcoholic beverages and the voluntary participation, voluntary and regular participation in a recognized rehabilitative program, can be used as prima facie evidence that a person is not necessarily considered neglecting their child unless that child is in danger.

But what Senator Saland is doing is removing the voluntary and regular participation as evidence that a parent is genuinely trying to be rehabilitated, and there is -- in eliminating that language in this legislation, the parent is automatically assumed to be neglectful even though they are participating regularly in a rehabilitative program.

So I just think that I -- I'm puzzled as to why Senator Saland is so intent on removing this positive step on behalf of parents as a way of saying "I am trying to get my life together, I desperately want to keep my family together," and that should be a consideration up front before any disposition is made.

So I am certainly, once again, as I

have in the past, going to vote no on this. Because I think it's a step in the back direction as opposed to really being to protect children. It seems to me to be taking away an important aspect as it relates to parents who are in treatment for drugs and alcohol.

So I'm voting no, Mr. President.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I think that this is the tenth anniversary of this piece of legislation. And I hope that when we see it next, we may be able to see it in some modified form.

I think the problem that the sponsor is seeking to address is quite apparent. But I think that the language of this particular bill makes it equally apparent that this would have severe negative consequences.

And I'm reading from the first page of the bill, Section 1, paragraph B, which identifies a list of conduct that creates a

presumption of neglect, including unreasonably inflicting or allowing to be inflicted harm or a substantial risk thereof, corporal punishment, or -- and this is the key phrase -- or by misusing a drug or drugs.

Anything on that list creates a presumption that there is neglect. The investigation goes forward, counsel has to be there, parents are at risk of losing their children.

The problem here is we want people to go into drug treatment. And you are automatically admitting that you, in the language of this statute, are misusing a drug or drugs when you voluntarily enter drug treatment.

So there's no clearer evidence, in my mind, that this would create a disincentive for anyone who had any knowledge at all about the law in this area, or about the proceedings in Family Court, to enter drug treatment programs voluntarily.

I think there are ways that the issue of people who enter drug treatment just as a way of sort of avoiding things can be

addressed. Although I must say from my own experience, I think that -- and, you know, including working in a drug treatment program -- if you get people in the door, that's a lot of the struggle. And so I'm not sure how much work we should do to discourage anyone for any reason from entering into a drug treatment program and going to a meeting that might at some point help them on the road to recovery.

This bill, however, clearly creates a disincentive. It tells people if you enter a drug treatment program, you're essentially admitting to the type of conduct that creates a presumption of neglect.

These proceedings will go forward. We know the problem of counsel. We know the problem that most of these families can't afford counsel. And it is a severe burden to go through the proceeding as well as ultimately to face the disposition.

The proceeding is not something that should be treated as something that people can handle easily in the course of their lives. They are very troubled families,

by definition, many of them at severe financial risk as well as emotional or physical risk.

This legislation, well-intended as it is, clearly would have the effect of discouraging people from entering drug treatment. I vote no. I encourage everyone to vote no.

I would be happy, as I think many of my colleagues would be, to try and work with the sponsor so maybe we can start the next decade with a new and improved version of this bill that we could actually pass.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the bill?

Debate is closed, then.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 120th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 150 are

Senators Andrews, Dilán, Duane, Hassell-Thompson, L. Krueger, Montgomery, Parker, Paterson, Schneiderman, and M. Smith. Ayes, 52. Nays, 10.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Duane, why do you rise?

SENATOR DUANE: Mr. President, if I could have unanimous consent to be recorded in the negative on Calendar Number 20 and Calendar Number 108.

ACTING PRESIDENT MEIER: Without objection, Senator Duane will be recorded negative on Calendars 20 and 108.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 213, by Senator Alesi, Senate Print 59, an act to amend the Penal Law, in relation to the crime of false personation.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT MEIER: Senator Alesi, Senator Montgomery has requested an explanation of Calendar 213.

SENATOR ALESI: Thank you, Mr.

President.

This bill takes the requirement to give correct information to a police officer or peace officer when he or she asks someone for their identity, it removes the requirement that the police officer or peace officer inform the person being asked that if they give a false answer that there is a penalty for that, and it increases the penalty from a B misdemeanor to an A misdemeanor.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, if Senator Alesi would yield.

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

SENATOR ALESI: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Alesi, I think that we've had similar issues around the Miranda act. And I was just wondering why you feel that it is necessary to just remove this from the law, that a police officer simply has to say to one that they've

stopped or that they have come in contact with, "If you give me the wrong information, this is the penalty."

Is there a burden? Is that too burdensome for the police to do that? Or was there a particular reason why we needed to do this?

SENATOR ALESI: Well, in the first place, to remove the requirement, it doesn't necessarily mean that the police officer can't give a warning. It simply says that the police officer doesn't have to give the warning.

And in most instances, a situation like this, usually you'll find it's a one-on-one situation. And so you don't want to put the police officer or peace officer in a position where, later on, somebody uses the excuse that they weren't warned just to get out of a situation that they created for themselves by giving false information.

So you don't want to put the police officer in a situation of having someone lie as to whether or not he or she gave the truth.

SENATOR MONTGOMERY: Mr.

President --

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: If Senator Alesi would continue to yield.

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

SENATOR ALESI: Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Alesi, what is the implication in that you're changing from a B to an A misdemeanor? What does that mean in terms of the severity of the punishment related to that?

SENATOR ALESI: It stiffens it by bringing it to an A misdemeanor, at up to a year in jail and a $1,000 fine.

SENATOR MONTGOMERY: Okay. All right. Thank you, Senator Alesi.

SENATOR ALESI: Thank you.

SENATOR MONTGOMERY: Mr. President, just briefly on the bill.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes. I have voted against this in the past, and I will continue to oppose this just because of the implications of who would be likely to be charged and sentenced under this particular bill.

And I note that Senator Alesi refers to the issue of identity theft. But I don't believe this bill is related to identity theft. The bill is related to a situation where a police officer comes in contact with a person, for whatever reason, and under current law the police officer is required to say to that person: This is what can happen if you -- this is what you can be charged with if you give me false information.

Senator Alesi wants to remove that requirement and, furthermore, increase the penalty. And this is going to impact, especially on teenagers, who probably are the most likely people that would be in this situation where you are doing something and the police officer stops you and there's not really a crime, necessarily, involved, but you give the wrong information. Because that's

what teenagers do.

And if the police can say to them or is required to say to that young person -- or that person, whoever it is -- that "If you give me the wrong information, this is the penalty," that person, young or old, but especially if they're a teenager, and they realize that if they lie to the police, they are going to be charged, they're less likely to do it.

I see nothing wrong with that. It's not a burden on anybody. And it takes a fraction of a second and a little breath for the police to give that warning to that person.

So I -- and I think that certainly I would not want to see teenagers in my district penalized just because the police officer does not have to tell them anything, and once they say something that is not truthful, the police can charge them with a misdemeanor -- an A misdemeanor, no less -- and they can receive a year in jail and have to pay a $1,000 fine because the police officer didn't warn them, and now the police

officer is immune because he doesn't have to warn them.

So I am going to continue to oppose this legislation because I think it represents a potential problem for people in my district.

Thank you, Mr. President.

SENATOR ALESI: Mr. President.

ACTING PRESIDENT MEIER: Senator Alesi.

SENATOR ALESI: I can think of any number of cases where someone who is lying to the police, regardless of their age, poses an imminent threat to that police officer when he has confronted the person.

It could be a teenager, yes. It could be a teenager who just burglarized a place. It could be a teenager who has warrants out for his arrest or her arrest. And when the police officer doesn't get the correct information, that police officer's life could be imperiled. It's vitally important to recognize that.

It's vitally important to recognize that there probably is a reason that the police officer stopped that person in the

first place. They just don't stop people in America on the streets. There's usually something that leads up to that.

And without that knowledge, without knowing that maybe there is a warrant out, without knowing that this is someone who might possibly have just left the scene of some other crime, then the police officer's life is imperiled.

And I think if you're going to make a judgment call on that, then you have to make a judgment call on behalf of those people that day in and day out put their lives at risk to protect our society, especially in a day when knowing who someone is is so vitally important, when we're at war with terrorism all across the world.

And without regard to the person's age, let me just say that there already is a penalty for misinforming a police officer of your identity.

So I would urge the rest of my colleagues, at least, to understand that this is an important piece of legislation that protects society and, most immediately, the

police officer when he or she is doing their duty.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, just briefly to explain my vote.

I certainly understand all of the points that Senator Alesi has made. However, this legislation doesn't address any of that that he has just talked about, terror and terrorism and all of this other stuff.

What it simply does is removes the requirement that the police notify a person of what he's being charged of. And it also, in addition to that, increases the penalty.

So I will continue to oppose this legislation.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 60. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR LARKIN: Mr. President, can we return to reports of standing committees.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Robach, from the Committee on Civil Service and Pensions, reports:

Senate Print 1057B, by Senator Spano, an act in relation to allowing;

2429A, by Senator Wright, an act in relation to granting;

6189, by Senator Maltese, an act to

amend the Civil Service Law;

And Senate Print 6300, by Senator Robach, an act to amend the Retirement and Social Security Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: All bills directly to third reading.

Senator Larkin.

SENATOR LARKIN: Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: There is no housekeeping, Senator.

SENATOR LARKIN: Please let's stand at ease for a couple of minutes.

ACTING PRESIDENT MEIER: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:16 p.m.)

(Whereupon, the Senate reconvened at 4:17 p.m.)

SENATOR LARKIN: Mr. President, would you recognize Senator Ada Smith.

ACTING PRESIDENT MEIER: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. President. I request unanimous consent to be recorded in the negative on Calendar Number 150.

ACTING PRESIDENT MEIER: Without objection, Senator Ada Smith will be recorded in the negative on Calendar 150.

SENATOR ADA SMITH: Thank you.

ACTING PRESIDENT MEIER: Senator Larkin.

SENATOR LARKIN: Mr. President, there being no further business, I move we adjourn until Tuesday, March 9th, at 3:00 p.m. sharp.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Tuesday, March 9th, at 3:00 p.m.

(Whereupon, at 4:18 p.m., the Senate adjourned.)