NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 24, 2006

3:16 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 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, Sunday, April 23, the Senate met pursuant to adjournment. The Journal of Saturday, April 22, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Messages from the Governor again.

The Secretary will read.

THE SECRETARY: The Governor returned, without executive approval, Senate Bill Number 6460C, Veto Number 208, entitled "an act to amend the Tax Law."

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I move to lay said bill as vetoed by the Governor upon the table.

THE PRESIDENT: So ordered, Senator Skelos.

The Secretary will read.

THE SECRETARY: The Governor returned, without executive approval, Line Items 22 through 73 of Senate Bill Number 6455C, Chapter 55, entitled "an act making appropriations for the support of government: Transportation, Economic Development and Environmental Conservation Budget."

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President,

I move to lay said line items as vetoed by the Governor upon the table.

THE PRESIDENT: So ordered.

The Secretary will read.

THE SECRETARY: The Governor returned, without executive approval, Line Items 188 through 207 of Senate Bill Number 6457C, Chapter 57, entitled "an act to amend the Social Services Law and others."

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I move to lay said line items as vetoed by the Governor upon the table.

THE PRESIDENT: So ordered.

The Secretary will read.

THE SECRETARY: The Governor returned, without executive approval, Line Items 74 through 77 of Senate Bill Number 6459C, Chapter 59, entitled "an act to amend the Environmental Conservation Law."

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I move to lay said line items as vetoed by the Governor upon the table.

THE PRESIDENT: So ordered.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Golden, Madam President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. That's Senate Print 2212.

THE PRESIDENT: So ordered.

SENATOR FARLEY: Madam President, I wish to call up my bill -- this is on my own behalf -- Senate Print 6396, which was recalled from the Assembly and it's now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 595, by Senator Farley, Senate Print 6396, an act to amend the Public Officers Law.

SENATOR FARLEY: Madam President,

I now move to reconsider the vote by which this bill was passed.

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

SENATOR FARLEY: Madam President, I now offer the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR FARLEY: Madam President, amendments are offered to the following Third Reading Calendar bills:

By Senator Young, page 12, Calendar Number 62, Senate Print 5685;

On behalf of Senator Golden, on page 30, Calendar Number 524, Senate Print 4458B;

And on behalf of Senator Morahan, on page 40, Calendar Number 686, Senate Print 7169.

Madam President, I move that these retain their place on the Third Reading Calendar.

ACTING PRESIDENT LITTLE: Thank

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

Senator Skelos.

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

ACTING PRESIDENT LITTLE: Yes, there is.

The Secretary will read.

THE SECRETARY: On page 37, Senator Volker moves to discharge, from the Committee on Codes, Assembly Bill Number 10339 and substitute it for the identical Senate Bill Number 7072, Third Reading Calendar 653.

ACTING PRESIDENT LITTLE: The substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a resolution at the desk by Senator DeFrancisco, 4758. Could we have the title read and move for its immediate adoption.

ACTING PRESIDENT LITTLE: Thank you.

The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 4758, commending Christopher Cruz of the Hampton Boys & Girls Club of Syracuse, New York, upon the occasion of his designation as the recipient of the Boys & Girls Club of Syracuse's "Youth of the Year Award."

ACTING PRESIDENT LITTLE: On the resolution, all those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT LITTLE: Those opposed, nay.

(No response.)

ACTING PRESIDENT LITTLE: The resolution is passed.

Senator Skelos.

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

ACTING PRESIDENT LITTLE: Thank you.

The Secretary will read.

THE SECRETARY: Calendar Number 175, by Senator Alesi, Senate Print 6365, an

act to amend the Public Health Law, in relation to demonstration programs.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 390, by Senator Seward, Senate Print 6420B, an act to amend the Highway Law, in relation to designating.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT LITTLE: The

bill is passed.

THE SECRETARY: Calendar Number 613, by Senator Maltese, Senate Print 5684A, an act to amend the Executive Law, in relation to obtaining fingerprints.

ACTING PRESIDENT LITTLE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 60th day.

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 625, by Senator Maziarz, Senate Print 7132, an act to amend the Labor Law, in relation to performance.

ACTING PRESIDENT LITTLE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect April 1, 2007.

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 638, by Senator Morahan, Senate Print 237, an act to amend the Penal Law and the Criminal Procedure Law, in relation to fixing sentences.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 638 are Senators Andrews, Duane, Montgomery and Parker.

Ayes, 51. Nays, 4.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: In relation to

Calendar Number 638: also in the negative, Senator Dilan.

Ayes, 50. Nays, 5.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 651, by Senator Maltese, Senate Print 7054, an act to amend the Penal Law, in relation to adding a prior conviction.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT LITTLE: Senator Duane, to explain your vote.

SENATOR DUANE: Thank you, Madam President.

I'm voting against the bill today because I believe it's too harsh. It adds a prior conviction for aggravated criminal contempt to a list of predicate offenses for

criminal contempt.

And I do applaud the attempt here to better protect victims of domestic violence. However, as this bill proves, there is a terrible cycle to domestic violence, and anyone involved in these terrible situations certainly needs mental health services.

People in these situations need and deserve the help that they would get if we passed Timothy's Law. If we had Timothy's Law, we might be able to stem the tide of this issue or this problem of domestic violence and domestic problems. But so far the Senate has refused to pass Timothy's Law, and that's just wrong.

I'm voting no on this bill, Madam President, but I absolutely believe that we have to get Timothy's bill out here on the floor and vote in favor of it.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you. Senator Duane will be recorded in the negative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 54. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 652, by Senator Maltese, Senate Print 7055, an act to amend the Penal Law, in relation to penalty.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 653, substituted earlier today by Member of the Assembly Lentol, Assembly Print Number 10339, an act to amend Chapter 689 of the Laws of 1993.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54. Nays, 1. Senator A. Smith recorded in the negative.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 656, by Senator Trunzo, Senate Print 425, an act to amend the Vehicle and Traffic Law, in relation to dealers and dealer registration.

ACTING PRESIDENT LITTLE: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 90th day.

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 659, by Senator Marcellino, Senate Print 1310, an act to amend the Vehicle and Traffic Law, in relation to operation of a motor vehicle.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 660, by Senator Trunzo, Senate Print 1684, an act to amend the Vehicle and Traffic Law, in relation to the penalty for operating certain commercial motor vehicles.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 663, by Senator Winner, Senate Print 2746, an act to amend the Highway Law, in relation to the designation.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 665, by Senator LaValle, Senate Print 3149, an act to amend the Vehicle and Traffic Law, in relation to requiring a licensee's residential address.

ACTING PRESIDENT LITTLE: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 680, by Senator Morahan, Senate Print 7061A, an act authorizing.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT LITTLE: The bill is passed.

Senator Skelos, that completes the

reading of the calendar.

SENATOR SKELOS: Thank you, Madam President.

Is there any further business at the desk?

ACTING PRESIDENT LITTLE: No, there is not.

SENATOR SKELOS: Would you please recognize Senator Montgomery for a motion to petition.

ACTING PRESIDENT LITTLE: Thank you.

Senator Montgomery.

SENATOR MONTGOMERY: Madam President, I have a motion at the desk. I would like to have it called up at this time.

ACTING PRESIDENT LITTLE: The Secretary will read.

THE SECRETARY: Senate Print 6895, by Senator Montgomery, an act to amend the Correction Law.

SENATOR MONTGOMERY: Yes, Madam President, I would like to explain the bill.

ACTING PRESIDENT LITTLE: Thank you. For an explanation, Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you.

This is legislation which would prohibit the use of mechanical restraints, including handcuffs and shackles, on any pregnant female prisoner who is about to give birth in our correctional system, unless the officer in charge has determined that such an inmate would be a flight risk while she is in the process of having labor and delivering her baby.

According to Amnesty International, only two states, California and Illinois, have laws forbidding the use of restraints on inmates during labor. The corrections departments of five other states and the District of Columbia have written policies prohibiting this practice. New York State is not among the small number of states that prohibit the shackling of these inmates.

Currently, healthcare standards that are set by the State Commission on Correction state that prisoners should be placed in restraints only if other means are insufficient. We should be -- we can do

better. We should do better. We must ban this abhorrent practice, since there are obviously no overriding concerns about a woman taking flight, breaking out of prison while she is in labor and the process of having a baby.

In 1990, a federal judge prohibited the New York City Corrections Department from shackling inmates during childbirth. The use of mechanical restraints on a pregnant inmate constitutes a cruel and inhumane form of punishment. It poses a serious risk to both the mother and her unborn child.

Madam President, I invite my colleagues -- all of us in this room, I'm sure, can relate to the fact that during childbirth it is a very vulnerable moment in a woman's life, especially as it relates to not only her but the baby. And babies should not be forced to pay a price to be put in the unreasonable position of jeopardy because their mother happens to be in prison.

Physical restraints have interfered with the ability of physicians to safely practice medicine by reducing their ability to

assess and evaluate the physical condition of the mother and the fetus, and have similarly made the labor and delivery process more difficult than it needs to be, thus overall putting the health and lives of women and unborn children at risk.

Madam President, I ask that my colleagues join me in voting yes on this bill because it is the most humane thing that we could do in this Legislature today.

Thank you for listening.

ACTING PRESIDENT LITTLE: Thank you, Senator Montgomery.

All those Senators in favor of the petition out of committee please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Coppola, Diaz, Dilan, Duane, Gonzalez, Klein, L. Krueger, C. Kruger, Montgomery, Onorato, Parker, Paterson, Sabini, Sampson, Savino, Schneiderman, Serrano, A. Smith, M. Smith, Stachowski, Stavisky and Valesky.

ACTING PRESIDENT LITTLE: The petition is not agreed to.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business to come before the Senate, I move we stand adjourned until Tuesday, April 25th, at 11:00 a.m.

ACTING PRESIDENT LITTLE: Thank you. There being no further business, the Senate stands adjourned until Tuesday, April 25th, at 11:00 a.m.

(Whereupon, at 3:36 p.m., the Senate adjourned.)