ALBANY, NEW YORK

MARCH 11, 1996

3:05 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

Would everyone please rise and join me in the Pledge of Allegiance to the Flag.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

May we bow our heads for a moment of silence.

(A moment of silence was observed.)

Reading of the Journal, please.

THE SECRETARY: In Senate Sunday, March 10, the Senate met pursuant to adjournment. Senator Hoblock in the chair. The Journal of Saturday, March 9th, was read and approved. On motion, the 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 Trunzo, from the Committee on Civil Service and Pensions, offers up the following bills:

Senate Print 1976, by Senator Levy, act to amend the Education Law and the Local Finance Law, in relation to refinancing of payments by certain employers;

4131A, by Senator Trunzo, an act to amend the Education Law, in relation to World War II military service credit for certain members;

5072A, by Senator Holland, an act to permit the reopening of the optional 20-year retirement plan;

5440, by Senator Lack, an act to amend the Retirement and Social Security Law in relation to membership in a public retirement system.

All bills directly for third reading.

THE PRESIDENT: Without objection, all bills will go directly to third reading.

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 Cook, on page 18, I offer the following amendments to Calendar Number 362, Senate Print 4246A, and I ask that that bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

Senator Bruno, are you ready to go to the calendar?

SENATOR BRUNO: Madam President, in the absence of Senator Wright, I

would like to inform the members that there will be a meeting of his committee, Alcohol and Substance Abuse, at 3:15 in Room 332, 3:15, p.m., Senator Gold.

SENATOR GOLD: Thank you, sir.

SENATOR BRUNO: Thank you.

THE PRESIDENT: We have some substitutions, Senator Bruno.

The Secretary will read.

THE SECRETARY: Senator Volker moves to discharge from the Committee on Education, Assembly Bill 7801A and substitute it for the identical Senate Bill, 5209A.

THE PRESIDENT: The substitution has been ordered.

THE SECRETARY: Senator Babbush moves to discharge from the Committee on Education, Assembly Bill 3438 and substitute it for the identical Senate Bill 2234.

THE PRESIDENT: The substitution has been ordered.

Senator Farley.

SENATOR FARLEY: Thank you,

Madam President.

On behalf of Senator Seward, 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 Number 5345A.

THE PRESIDENT: Enacting clause will be struck.

Senator Santiago.

SENATOR SANTIAGO: Madam President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause, and it's Senate Number 6327.

THE PRESIDENT: The enacting clause will be struck.

Senator Bruno, are you ready for the noncontroversial calendar?

SENATOR BRUNO: Madam President, can we at this time take up the non controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 237, by Senator Rath, Senate Print 1535, an act to amend the General Municipal Law, in relation to authorizing -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 239, by Senator Leibell, Senate Print 3384A, an act to amend the General Municipal Law, in relation to participation in certain health insurance plans.

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 46.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar 260, by Senator LaValle, Senate Print 2136, an act to amend the Education Law, in relation to registration of a pharmacy.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 294, by Senator Johnson, Senate Print 6010, an act to amend Chapter 492 of the Laws of 1993, amending the Local Finance Law relating to installment loans.

THE PRESIDENT: Read the last

section, please.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE SECRETARY: Ayes 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 317, by Senator Farley, Senate Print 1378, an act to amend the Penal Law, in relation to restitution reparation.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 318, by Senator Saland, Senate Print 1417, an act to amend the Criminal Procedure Law and the Family Court Act, in relation to access to records.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 320, by Senator DeFrancisco, Senate Print 1966A, an act to amend the Criminal Procedure Law in relation to application for bail.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 321, by Senator Defrancisco, Senate Print 1971, an act to amend the Criminal Procedure Law, in

relation to compliance with orders of fixing bail.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Oh, lay it aside, please.

THE SECRETARY: Calendar Number 322, by Senator Saland, Senate Print 2335A, an act to amend the Criminal Procedure Law, in relation to expanding the limited list of offenses concerning which a vulnerable child witness may testify.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 3. This act shall take effect on the first day of the calendar month next succeeding the 30th day.

THE PRESIDENT: Call the roll, please.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 324, by Senator Volker, Senate Print 3132A, an act to amend the Criminal Procedure Law, in relation to peace officers employed by Canisius College.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50, nays 1, Senator Leichter recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 325, by Senator Volker, Senate Print

3180A, an act to amend the Civil Practice Law and Rules and the Public Authorities Law, in relation to personal service upon public authorities and commissions.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 335, by Senator Libous, Senate Print 3858, an act to amend the Mental Hygiene Law in relation to conversion of already admitted patients for involuntary status.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2.

This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 337, by Senator Libous, Senate Print 4630, an act to amend the Mental Hygiene Law, in relation to limiting the use of state funds for payment of compensation.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MARCELLINO:

The bill is passed.

THE SECRETARY: Calendar Number 340, by Senator Velella, Senate Print 2764C, an act to amend the Insurance Law, in relation to reciprocal insurers.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 180th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos, that -

SENATOR SKELOS: Mr. President, can we take up the controversial calendar?

ACTING PRESIDENT MARCELLINO: Yes, we can.

Secretary will read.

THE SECRETARY: Calendar Number 318, by Senator Saland, Senate Print 1417, an act to amend the Criminal Procedure Law and the Family Court Act, in relation to access to records.

SENATOR SKELOS: Lay it aside temporarily.

ACTING PRESIDENT MARCELLINO: Lay it aside temporarily.

THE SECRETARY: Calendar Number 320, by Senator DeFrancisco, Senate Print 1966A, an act to amend the Criminal Procedure Law, in relation to application for bail.

ACTING PRESIDENT MARCELLINO: Senator DeFrancisco, an explanation has been asked for by Senator Paterson.

SENATOR DeFRANCISCO: Yes. Calendar Bill 238 is a bill that basically authorizes the court to have a defendant submit information to the court upon which the court can determine whether -

ACTING PRESIDENT MARCELLINO: Excuse me, Senator.

Ladies and gentlemen, we can just about hear this. Can we, please?

Thank you very much. I'm sorry, Senator.

SENATOR DeFRANCISCO: It authorizes the court to obtain information from a defendant in order to determine whether bail is appropriate in the circumstance where bail is applied for.

The present statute indicates that the court has to determine -- in determining bail, has to determine whether the person -- has to determine questions about character, reputation, habits and mental condition but there's no provision presently for the court to actually obtain information about the individual's mental condition if the defendant does not choose to participate in such an examination.

What this does is basically allow the court to order a mental examination so the factors upon which the court has to decide bail will be based upon information

rather than speculation, and that's the purpose of the statute.

And it's important to note that there's a protection here. Any of the information that's obtained concerning the individual's mental condition cannot be used against the defendant in the criminal proceeding, it is only permissible to be used in a determination on the question of bail.

ACTING PRESIDENT MARCELLINO: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, if Senator DeFrancisco would yield for a question.

ACTING PRESIDENT MARCELLINO: Senator DeFrancisco, would you yield for a question from Senator Paterson.

THE SECRETARY: Yes, I would.

ACTING PRESIDENT MARCELLINO: Senator yields.

SENATOR PATERSON: Senator, although the information derived from a psychiatric evaluation may not be used in the

actual criminal proceeding, could it be used in a determination of the defendant's fitness for trial, since basically the information that would be derived out of that proceeding which would determine whether or not this individual would make themself available for trial or would leave the jurisdiction, would, in a sense, be connected with whether or not they actually would be capable of assisting their attorney in their defense.

SENATOR DeFRANCISCO: It cannot be used for that purpose. The statute -- the bill specifically states, "Any evidence derived from the defendant's compliance with such order shall not be used against him in any criminal action or proceeding, other than a proceeding commenced pursuant to the provisions of this section for purposes of fixing bail." So that would not -- it could not be used for that purpose, either.

SENATOR PATERSON: So, therefore, Senator, the only information that the evaluation would enlighten us is to

determine whether or not the defendant would be available for the trial or would, in any way, be harm to themself preventing the trial from occurring.

SENATOR DeFRANCISCO: It only has to do -- the only purpose for the information, and it's specifically limited by the bill, is so the court can determine whether or not this individual should be released on bail, it can be used for no other purpose.

SENATOR PATERSON: Okay, thank you. The only other concerns I may have had were actually amended in your bill this particular year, and so thank you for the response.

ACTING PRESIDENT MARCELLINO: Read the last section -- I'm sorry, Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President, if Senator DeFrancisco would yield.

ACTING PRESIDENT MARCELLINO: Senator, do you yield to Senator Leichter?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT MARCELLINO: Senator yields.

SENATOR LEICHTER: Senator DeFrancisco, I'm somewhat surprised that the authority does not presently exist or is not being exercised because I can remember a number of cases reading where the defendant in a high profile case has been brought in and the court has directed that a mental examination be conducted. So, you know, I see no harm in having this provision, but I wonder whether, in point of fact, judges, maybe they didn't have the specific statutory authority or they felt that it was implied or inferred authority, but I do believe they've been doing this.

SENATOR DeFRANCISCO: Is that a question? I don't believe -- I don't know each specific case, but I do know that, number one, they may be ordering it for the purposes of determining whether or not the individual is capable of standing trial.

Some judges in my jurisdiction will not do it because there's no specific

statutory authorization. A defendant will say, "You can't make me, there's no court -- there's no procedure to require me to take a mental examination or my client to take one, either," and some judges are reluctant to do it, and that was the reason I put the bill in.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Senator, just as a matter of clarification.

ACTING PRESIDENT MARCELLINO: Senator, do you yield to Senator Paterson?

SENATOR DeFRANCISCO: Yes.

SENATOR PATERSON: On the issue of parole, is there any case law determining whether or not there has been a psychiatric evaluation before parole is granted by a court?

SENATOR DeFRANCISCO: Parole is granted by a court?

SENATOR PATERSON: No, I'm sorry. I meant probation. I'm sorry.

SENATOR DeFRANCISCO: You

know, I'm not certain of that at all. It would depend -- I imagine it would be under the control of the probation department whether or not -- that would be part of the pre-sentence report that the probation department would put together as to whether or not -- what they recommend as far as probation, whether they recommend it or not. They would go into their own investigation, but I don't believe they can require a defendant to undergo a mental examination if they think one is necessary.

What happens, the way I understand the process and having been part of it on both sides is that the judge will order, after a plea, a presentence report, and the pre-sentence report will be an investigation by the probation department.

I don't believe that the probation department can require a defendant to take a mental examination in the course of that process. The probation department might not recommend probation, but I don't think there's any provision that will allow the probation

department to require that or the court to require it, either.

SENATOR PATERSON: I feel the same way, Senator, that's why I was wondering that in view of that, if the court has any jurisdiction, because I was trying to see if your legislation matched up with anything else in any other type of proceeding that would have been similar, and that was the one that came to mind, that in these types of situations where you're having probation being granted and there is a report, that without the examination, if the court as a last remedy would want to examine them, that's something that we may look into later.

Thank you.

SENATOR DeFRANCISCO: Yes, I'm sure we could. The only -- as I say, the reason that this struck me is the fact that one of the -- one of the factors the court has to determine in setting bail is mental condition, and there's no way that they could, up to this point in time, legally inquire into that mental

condition if the defendant said that the defendant did not want to, because in this case, the defendant is initiating the proceeding by requesting to be put out on bail and that's why it makes it different, I think, than the probation situation; but, I will definitely research that.

ACTING PRESIDENT MARCELLINO: Read this last section, please.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 321, by Senator DeFrancisco, Senate Print 1971, an act to amend the Criminal Procedure Law, in relation to compliance with orders regarding fixing bail.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Can we take up Senator Saland's bill, Calendar Number 318, Senate 1417.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Calendar Number 318, by Senator Saland, Senate Print 1417, an act to amend the Criminal Procedure Law and the Family Court Act, in relation to access to records.

ACTING PRESIDENT MARCELLINO:

Senator Saland, an explanation has been asked for by Senator Paterson.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, the purpose of this bill is relatively simple. It's intended to provide the Crime Victims Board with the ability to access information that would otherwise be sealed as part and parcel of their doing their investigation for purposes of providing an award to a victim. Those records -- the seal would be removed, the records contained in those files would continue to remain confidential, would not be used for any other purpose other than permitting the Crime Victims Board to do the job that it's been designated to do and determine whether or not, under the circumstances in a particular case, someone claiming some type of compensation for their crime-related injuries is, in fact, entitled to that compensation.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Senator, I'm just really trying to establish, did this -

ACTING PRESIDENT MARCELLINO: Excuse me, Senator. Senator, do you yield to Senator Paterson?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator yields.

SENATOR PATERSON: I'm really just trying to make sure that there's a limited purpose to the strength of your law, that it doesn't actually wind up being abused, and so it would be fair to say it's just limited to the proceedings that you've described and would not go beyond that, because there would be somewhat of a danger of abuse of these types of records becoming too public.

SENATOR SALAND: I believe that the bill is specific, and it certainly is not my intention, in drafting this legislation, to expand it beyond the parameters defined in

the bill. It talks about certain YO proceedings; it talks about, I believe, certain PINS and JD proceedings.

The bill, again, is specific.

SENATOR PATERSON: In the spirit that it will limit itself to crime victims' compensation, I want to thank Senator Saland for his response.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

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

ACTING PRESIDENT MARCELLINO: Senator Skelos, at this point in time, we are

waiting for a committee report, but we do have Senator Kuhl behind you.

May we recognize Senator Kuhl.

SENATOR KUHL: Thank you, Mr. President. I'd like to have unanimous consent to be recorded in the negative on Calendar Number 260, Senator LaValle's bill, Senate 2136.

ACTING PRESIDENT MARCELLINO: Without objection, Senator Kuhl will be held in the negative for Calendar Number 260.

SENATOR KUHL: Thank you, Mr. President.

SENATOR SKELOS: Mr. President, we'll just stand at ease pending the report of the Committee on Alcoholism and Drug Abuse.

ACTING PRESIDENT MARCELLINO: The Senate will be at ease pending the report from the Committee on Alcohol and Drug Abuse.

(The Senate stood at ease.)

ACTING PRESIDENT MARCELLINO: Senator Saland.

SENATOR SALAND: For purposes

of housekeeping, Mr. President, I'd like to place a sponsor's star on Calendar 391, Senate 2595, and similarly, Calendar 392, Senate 3596.

ACTING PRESIDENT MARCELLINO: The bills are starred.

(The Senate continued to stand at ease.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: I believe there is a report of the Alcoholism and Substance Abuse Committee at the desk; I ask that it be read.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: Senator Wright from the Committee on Alcoholism and Drug Abuse, offers up the following bills:

Senate Print 6299, an act to amend the Mental Hygiene Law, in relation to creating a single advisory council on

alcoholism and substance abuse;

Also Senate Bill 6300, by Senator Wright, an act to amend the Mental Hygiene Law, In relation to the provision of chemical dependent services.

All bills directly for third reading.

ACTING PRESIDENT MARCELLINO: Without objection, all bills will be reported directly to third reading.

Senator Skelos.

SENATOR SKELOS: Is there any other housekeeping at the desk?

ACTING PRESIDENT MARCELLINO: No, sir.

SENATOR SKELOS: There being no further business, I move we adjourn until Tuesday, March 12, 1996 at 3 p.m. Sharp.

ACTING PRESIDENT MARCELLINO: Without objection, the Senate stands adjourned until Tuesday, March 12 at 3 p.m. Sharp.

(Whereupon, at 3:35 p.m., the Senate adjourned.)