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ALBANY, NEW YORK

January 26, 1998

3:04 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEVEN M. BOGGESS, Secretary

1 P R O C E E D I N G S

2 (The public address system was
3 completely inoperative.)

4 THE PRESIDENT: The Senate will
5 come to order. Would you please rise and join
6 me in the Pledge of Allegiance.

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

9 The invocation today will be
10 given by Reverend David Selzer, from the
11 Episcopal Church of the Good Shepherd in
12 Buffalo.

13 Reverend Seltzer.

14 REVEREND DAVID SELZER: Let us
15 pray.

16 Bless to You, O Holy One,
17 Creator and Sustainer of the universe.

18 Bless to You, O God, for
19 creating us women and men in your holy image
20 and for giving us the gifts of memory, wisdom,
21 skill and compassion.

22 Bless to You for this day and
23 for the Senate of this great state of New York
24 with its gifts of being able to respond to its
25 citizens in need and its concern for all the

1 people of New York.

2 Bless to You, Allah, for the
3 work You have given us to do, to govern Your
4 people with justice and equality under the law
5 and to discern the needs of our citizens,
6 women and men, old and young, people of color
7 and white, native and immigrant, gay, lesbian
8 and straight, for the health and well-being of
9 all.

10 Bless to You for the heritage
11 of the women and men of New York who helped
12 our society become more just for all, for
13 Elizabeth Cady Stanton and Amelia Jakes
14 Plummer, for Margaret Sanger and the founders
15 of Planned Parenthood, for those who continue
16 the struggle for equality and equal rights for
17 women, especially giving thanks to the gifts
18 of family planning and reproductive choice.
19 Help us to learn from their experience and
20 continue their heritage.

21 Be present with the Senate as
22 it meets today, guide and secure the concerns
23 of all its citizens and to preserve their
24 liberties and the dignity of all, helping to
25 move beyond legislation for pure political

1 gain only, to legislation that seeks to do
2 justice for all.

3 Bless to you forever and ever.
4 Amen.

5 THE PRESIDENT: Amen.

6 Reading of the Journal.

7 THE SECRETARY: In Senate,
8 Saturday, January 24th. The Senate met
9 pursuant to adjournment. The Journal of
10 Friday, January 23rd, was read and approved.
11 On motion, Senate adjourned.

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

15 Presentation of petitions.
16 Messages from the Assembly.
17 Messages from the Governor.
18 Reports of standing
19 committees.

20 Secretary will read.

21 THE SECRETARY: Senator Rath,
22 from the Committee on Local Government,
23 reports the following bills:

24 Senate Print 527, by Senator
25 Present, an act to amend the General Municipal

1 Law;
2 532, by Senator Present, an act
3 to amend the General Municipal Law;
4 1182, by Senator Seward, an act
5 to amend the County Law;
6 1419, by Senator Cook, an act
7 to amend the Real Property Tax Law;
8 2305, by Senator Larkin, an act
9 to amend the Real Property Tax Law;
10 5960, by Senator Present, an
11 act to amend the Real Property Tax Law, and
12 6025, by Senator Stafford, an
13 act to amend the Real Property Tax Law.
14 Senator Volker, from the
15 Committee on Codes, reports:
16 Senate Print 70, by Senator
17 Levy, an act to amend the Penal Law;
18 244, by Senator Johnson, an act
19 to amend the Penal Law;
20 251, by Senator Rath, an act to
21 repeal section 241;
22 253, by Senator Skelos, an act
23 to amend the Penal Law;
24 337, by Senator Skelos, an act
25 to amend the Penal Law;

1 539, by Senator Present, an act
2 to amend the Criminal Procedure Law;
3 816-A, by Senator Saland, an
4 act to amend the Penal Law;
5 882, by Senator Spano, an act
6 to amend the Penal Law;
7 948-A, by Senator Alesi, an act
8 to amend the Penal Law;
9 1292, by Senator Saland, an act
10 to amend the Criminal Procedure Law;
11 1467-A, by Senator Volker, an
12 act to amend the Criminal Procedure Law;
13 1914-A, by Senator Libous, an
14 act to amend the Penal Law;
15 1918, by Senator Libous, an act
16 to amend the Penal Law;
17 3532, by Senator Volker, an act
18 to amend the Penal Law;
19 4347, by Senator Maltese, an
20 act to amend the Penal Law;
21 4644-A, by Senator Cook, an act
22 to amend the Criminal Procedure Law;
23 5421, by Senator Velella, an
24 act to amend the Criminal Procedure Law;
25 5691, by Senator Volker, an act

1 to amend the Penal Law and others.

2 All bills reported direct for
3 third reading.

4 THE PRESIDENT: Without
5 objection, all bills direct to third reading.

6 Reports of select committees.

7 Communications and reports from
8 state officers.

9 Motions and resolutions.

10 Senator Skelos.

11 SENATOR SKELOS: Madam
12 President, take up the non-controversial
13 calendar.

14 THE PRESIDENT: Secretary will
15 read.

16 THE SECRETARY: Calendar Number
17 9, by Senator Rath, Senate Print 3636, an act
18 to amend the General Municipal Law, in
19 relation to alternative methods.

20 THE PRESIDENT: Read the last
21 section, please.

22 THE SECRETARY: Section 3.
23 This act shall take effect on the 160th day.

24 THE PRESIDENT: Call the roll.

25 (The Secretary called the

1 roll.)

2 THE SECRETARY: Ayes 45.

3 THE PRESIDENT: The bill is
4 passed.

5 THE SECRETARY: Calendar Number
6 13, by Senator Leibell, Senate Print 3626, an
7 act to amend the Executive Law, in relation to
8 allowing designees of certain members.

9 THE PRESIDENT: Read the last
10 section, please.

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

13 THE PRESIDENT: Call the roll.
14 (The Secretary called the
15 roll.)

16 THE SECRETARY: Ayes 45.

17 THE PRESIDENT: The bill is
18 passed.

19 THE SECRETARY: Calendar Number
20 18, by Senator Saland, Senate Print 1143, an
21 act to amend the Penal Law, in relation to
22 including the intentional preventing of
23 hospital emergency department personnel.

24 THE PRESIDENT: Read the last
25 section, please.

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

4 THE PRESIDENT: Call the roll.
5 (The Secretary called the
6 roll.)

7 THE SECRETARY: Ayes 46.

8 THE PRESIDENT: The bill is
9 passed.

10 THE SECRETARY: Calendar Number
11 20, by Senator Volker, Senate Print 1717, an
12 act to amend the Penal Law, in relation to
13 aggravated harassment of an employee by an
14 inmate.

15 THE PRESIDENT: Read the last
16 section, please.

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

20 THE PRESIDENT: Call the roll.
21 (The Secretary called the
22 roll.)

23 THE SECRETARY: Ayes 49.

24 THE PRESIDENT: The bill is
25 passed.

1 THE SECRETARY: Calendar Number
2 22, by Senator Wright, Senate Print 3814, an
3 act to amend the Penal Law, in relation to
4 assault with a noxious material.

5 THE PRESIDENT: Read the last
6 section, please.

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

10 THE PRESIDENT: Call the roll,
11 please.

12 (The Secretary called the
13 roll.)

14 THE SECRETARY: Ayes 49.

15 THE PRESIDENT: The bill is
16 passed.

17 THE SECRETARY: Calendar Number
18 23, by Senator Larkin, Senate Print 3869, an
19 act to amend the Civil Practice Law and Rules,
20 in relation to authorizing.

21 THE PRESIDENT: Read the last
22 section, please.

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

25 THE PRESIDENT: Call the roll.

1 (The Secretary called the
2 roll.)

3 THE SECRETARY: Ayes 49.

4 THE PRESIDENT: The bill is
5 passed.

6 THE SECRETARY: Calendar Number
7 24, by Senator Nozzolio, Senate Print 3924, an
8 act to amend the Penal Law, in relation to
9 allowing an 11-year-old person to take a
10 hunting safety course.

11 THE PRESIDENT: Read the last
12 section, please.

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

15 THE PRESIDENT: Call the roll.

16 (The Secretary called the
17 roll.)

18 THE SECRETARY: Ayes 49.

19 THE PRESIDENT: The bill is
20 passed.

21 THE SECRETARY: Calendar Number
22 25, by Senator Padavan, Senate Print 4589, an
23 act to amend the Penal Law, in relation to
24 including police officers.

25 THE PRESIDENT: Read the last

1 section, please.

2 THE SECRETARY: Section 2.

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

5 THE PRESIDENT: Call the roll.

6 (The Secretary called the
7 roll.)

8 THE SECRETARY: Ayes 53.

9 THE PRESIDENT: The bill is
10 passed.

11 THE SECRETARY: Calendar Number
12 26, by Senator Volker, Senate Print 5280, an
13 act to amend the Penal Law, in relation to
14 causing the death of a peace officer.

15 THE PRESIDENT: Read the last
16 section, please.

17 Oh, Senator Holland.

18 SENATOR HOLLAND: To explain my
19 vote.

20 SENATOR HOLLAND: When New York
21 City Police Officer Vinnie Guidice died in the
22 line of duty in May of 1996, it was a loss
23 that hit home for me.

24 Though he worked in New York,
25 Officer Vincent Guidice lived in Stony Point

1 in Rockland County and was a vibrant member of
2 our community, having served as a volunteer
3 fireman and had a variety of other community
4 involvement.

5 As we all know by now, the
6 circumstances of Officer Guidice's death were
7 unusual. There was no gun, no knife; yet the
8 consequences of Anthony Rivers' actions were
9 just as deadly and the results just as tragic,
10 the loss of one of New York's finest.

11 Officer Guidice died on May
12 22nd, 1996 from injuries he sustained while
13 responding to the second domestic violence
14 request of the day involving Anthony Rivers.
15 Rivers resisted arrest, resulting in a
16 struggle during which Officer Guidice fell on
17 a broken mirror and bled to death from the
18 resulting injuries.

19 When a jury failed to find
20 Anthony Rivers criminally responsible for
21 Vincent Guidice's death, it was clear that
22 this Legislature should be responsible for
23 addressing shortcomings in the law.

24 Officer Guidice was not the
25 only victim of this crime.

1 His family, our community and
2 every law-abiding New Yorker was victimized
3 when Anthony Rivers who, in trying to prevent
4 Officer Guidice from upholding the law, was
5 not held responsible for his death.

6 Rivers has a very, very bad
7 record.

8 Passage of this legislation
9 would provide greater protections for our
10 public servants who put their lives on the
11 line every day.

12 Vinnie Guidice made the
13 ultimate sacrifice in the performance of his
14 job.

15 It is only proper that we honor
16 his memory with legislation that will, in the
17 future, hold criminals more accountable for
18 their actions.

19 I hope our colleagues in the
20 Assembly will see fit to join the Senate in
21 passing the Police Officer Vincent Guidice
22 Memorial Act.

23 We must end parole for violent
24 felons!

25 I vote yes.

1 THE PRESIDENT: Read the last
2 section, please.

3 THE SECRETARY: Section 4.
4 This act shall take effect on the first day of
5 November.

6 THE PRESIDENT: Call the roll.
7 (The Secretary called the
8 roll.)

9 THE SECRETARY: Ayes 53.

10 THE PRESIDENT: The bill is
11 passed.

12 THE SECRETARY: Calendar Number
13 36, by Senator Farley, Senate Print 3803-A, an
14 act to amend the Banking Law, in relation to
15 the voluntary and involuntary liquidation of
16 investment companies.

17 THE PRESIDENT: Read the last
18 section, please.

19 THE SECRETARY: Section 18.
20 This act shall take effect immediately.

21 THE PRESIDENT: Call the roll.
22 (The Secretary called the
23 roll.)

24 THE SECRETARY: Ayes 53.

25 THE PRESIDENT: The bill is

1 passed.

2 THE SECRETARY: Calendar Number
3 50, by Senator Spano, Senate Print 4143, an
4 act to amend the Workers' Compensation Law, in
5 relation to exemption from coverage for
6 executive officers of certain entities.

7 THE PRESIDENT: Read the last
8 section, please.

9 THE SECRETARY: Section 3.
10 This act shall take effect in 90 days.

11 THE PRESIDENT: Call the roll.

12 (The Secretary called the
13 roll.)

14 THE SECRETARY: Ayes 53.

15 THE PRESIDENT: The bill is
16 passed.

17 THE SECRETARY: Calendar Number
18 80, by Senator DeFrancisco, Senate Print 480,
19 an act to amend the Social Services Law, in
20 relation to transportation.

21 SENATOR STACHOWSKI: Lay aside.

22 THE PRESIDENT: Laid aside,
23 please.

24 THE SECRETARY: Calendar Number
25 87, by Senator Present, Senate Print 538, an

1 act to amend the Penal Law, in relation to
2 lawful possession.

3 SENATOR STACHOWSKI: Lay
4 aside.

5 THE PRESIDENT: Lay it aside,
6 please.

7 THE SECRETARY: Calendar Number
8 96, by Senator Maziarz, Senate Print 2525, an
9 act to amend the Criminal Procedure Law, in
10 relation to period of limitation.

11 THE PRESIDENT: Read the last
12 section, please.

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

15 THE PRESIDENT: Call the roll.

16 (The Secretary called the
17 roll.)

18 THE SECRETARY: Ayes 53.

19 THE PRESIDENT: The bill is
20 passed.

21 SENATOR SKELOS: Madam
22 President, could you take up the controversial
23 calendar.

24 THE PRESIDENT: Secretary will
25 read.

1 THE SECRETARY: Calendar Number
2 80, by Senator DeFrancisco, Senate Print 480,
3 an act to amend the Social Services Law, in
4 relation to the transportation of certain
5 persons in need of medical assistance.

6 SENATOR PATERSON: Explanation,
7 please.

8 THE PRESIDENT: Senator
9 DeFrancisco, an explanation has been
10 requested.

11 SENATOR DeFRANCISCO: Yes, this
12 bill basically -- well, not basically, is
13 identical to the bill that passed last year
14 which would require all individuals on
15 Medicaid who are physically able and
16 emotionally able to take public transportation
17 to non-emergency appointments.

18 THE PRESIDENT: Senator
19 Paterson.

20 SENATOR PATERSON: Thank you,
21 Madam President.

22 If the sponsor would yield for
23 a question.

24 SENATOR DeFRANCISCO: Yes.

25 THE PRESIDENT: Senator

1 DeFrancisco? Senator Paterson.

2 SENATOR PATERSON: Senator
3 DeFrancisco, this measure designed for cost
4 saving, I wonder if you have any data as to
5 how much it would save the state and how one
6 would consider maybe how this wonderful term
7 "physically able" is defined and so,
8 therefore, I ask you (inaudible).

9 SENATOR DeFRANCISCO: We say it
10 would be a justified benefit not only to save
11 the costs, but it drives more dollars to
12 public transportation each year. I was
13 approached by CENTRO, our local transportation
14 agency, who we have provided emergency funding
15 for the last three years, and they told me not
16 only the saving but that transportation
17 dollars would be driven to those public
18 transportation systems that we had to use
19 other tax dollars for to provide emergency
20 grants since their ridership wasn't as high as
21 it would have to be to be financially stable.
22 So I don't know the exact dollars, but to tell
23 you there's a double benefit saving the
24 transportation costs and driving dollars to
25 public transportation.

1 THE PRESIDENT: Excuse me,
2 Senator Paterson. There is no microphone
3 today, so if everybody would refrain from
4 talking too much and ask the speakers who are
5 debating to magnify their voices.

6 Senator Paterson.

7 SENATOR PATERSON: Thank you,
8 Madam President.

9 Could Senator DeFrancisco yield
10 for another question?

11 THE PRESIDENT: Senator?

12 SENATOR DeFRANCISCO: Yes.

13 SENATOR PATERSON: Senator, do
14 you happen to have the -- how many individuals
15 would actually be affected and would, in fact,
16 this whole scenario played out for some amount
17 of savings, involve a lot of burden on senior
18 citizens whose ability to travel any distance
19 from the public transportation center to where
20 they may live would probably vary almost on a
21 monthly basis with the elderly. How many
22 people, in other words, would this actually
23 really assist?

24 THE PRESIDENT: Senator
25 DeFrancisco.

1 SENATOR DeFRANCISCO: Once
2 again, I don't have any numbers but it's just
3 the basis of the bill is common sense. If the
4 person is physically capable of public
5 transportation, then an individual should be
6 required to take public transportation just
7 like any individual on a fixed income that may
8 not be able to purchase a vehicle would need
9 public transportation to go to work and pay
10 their own money for that public
11 transportation. We should use the same theory
12 if they're physically capable, to use our
13 taxpayer money more efficiently, but I can't
14 give you numbers. It just makes to me common
15 sense to provide the same standard for those
16 using public money as they would have to use
17 with their own money.

18 THE PRESIDENT: Senator
19 Paterson.

20 SENATOR PATERSON: Thank you,
21 Senator DeFrancisco.

22 Madam President, on the bill.

23 I think that what Senator
24 DeFrancisco is suggesting makes sense to me as
25 well. If we had a group of people who are

1 physically able to travel at a cost savings to
2 the state, we certainly would want to
3 encourage that travel. However, lacking
4 sufficient evidence and documentation as I
5 tried to elicit from Senator DeFrancisco, we
6 have to arrive at the conclusion that
7 conditions are not always as they seem.

8 In the sense of trying to come
9 to a determination as to what actually is
10 "physically able" under what we would
11 consider to be the standard that would make
12 someone eligible to engage in this kind of
13 transportation, it's our opinion that it would
14 possibly hurt far more individuals than would
15 actually help us in terms of the cost
16 savings.

17 The desire to direct more
18 people to public transportation is good; the
19 desire to have those who are physically
20 capable not take too much advantage of social
21 services by taking taxis to services is also
22 good, but in the absence of (inaudible) that
23 the evidence would bear out, we are making
24 individuals travel great distances from the
25 center at which the public transportation

1 begins, and there is also concern for the
2 public safety of those individuals, often
3 elderly, who are placed in the position of
4 having to travel like that and lacking the
5 physical capability to do it a few times over
6 a period of time, their overall physical
7 condition and out of concern for their
8 physical condition and their overall health
9 and safety, I think it would make better sense
10 not to pass this legislation and would
11 probably bear on the factors of public safety
12 and also of difficulty to the individuals who
13 are not trying to really in many ways take
14 advantage of the system but are probably
15 having trouble living under the conditions as
16 they are now.

17 I would suggest that we not go
18 this route and pass this legislation.

19 THE PRESIDENT: Thank you,
20 Senator Paterson.

21 Read the last section, please.

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

24 THE PRESIDENT: Call the roll.

25 (The Secretary called the

1 roll.)

2 THE SECRETARY: Those recorded
3 in the negative on Calendar Number 80 are
4 Senators Abate, Connor, Gentile, Gold, Kruger,
5 Lachman, Markowitz, Montgomery, Paterson and
6 Santiago. Ayes 45, nays 10.

7 THE PRESIDENT: The bill is
8 passed.

9 THE SECRETARY: Calendar Number
10 87, by Senator Present, Senate Print 538, an
11 act to amend the Penal Law, in relation to
12 lawful possession of weapons.

13 SENATOR PATERSON:
14 Explanation.

15 ACTING PRESIDENT MEIER:
16 Senator Present, an explanation has been
17 requested.

18 SENATOR PRESENT: Mr.
19 President, it's been many years since we
20 passed (inaudible) Boy Scout summer camp
21 program, where they teach the boys how to
22 ensure the safety, and to allow 11-year-olds
23 to obtain (inaudible). It's a very popular
24 program among the scout campers and it's
25 limited to taking place under the control and

1 supervision of a certified Boy Scout
2 instructor on a range that's certified. That's
3 all it does.

4 ACTING PRESIDENT MEIER:
5 Senator Paterson.

6 SENATOR PATERSON: Thank you,
7 Mr. President.

8 Just a point on the bill
9 itself. I'd just like to comment that
10 sometimes I think we bring a terrible
11 confusion by these programs particularly for
12 the younger people such as this permitting
13 possession of a rifle. In other words, we're
14 advocating against the overuse of tobacco, but
15 at the same time we're publicizing the use of
16 tobacco. We might have sexual problems and we
17 suggest abstinence from sex, but again we
18 publicize the process. Here again, we have
19 the problem with the discussion of safety of
20 firearms at the same time we're bringing up
21 the discussion of the use of firearms
22 themselves and, at this point, particularly at
23 age 11, I don't know that it's the greatest
24 idea to actually be publicizing what would be
25 the use of firearms which has contributed to

1 so much violence in our society today.

2 Other than that, I'm not going
3 to say anything about the fact that my brother
4 shot me with his B-B gun many years ago
5 (inaudible) and I think he was somewhere
6 around age 11, and that is only a minor
7 consideration in casting my vote against this
8 particular piece of legislation.

9 ACTING PRESIDENT MEIER: Read
10 the last section.

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

14 ACTING PRESIDENT MEIER: Call
15 the roll.

16 (The Secretary called the
17 roll.)

18 THE SECRETARY: Those recorded
19 in the negative on Calendar Number 87 are
20 Senators Kruger, Montgomery and Paterson.
21 Ayes 53, nays 3.

22 ACTING PRESIDENT MEIER: The
23 bill is passed.

24 SENATOR OPPENHEIMER: Mr.
25 President.

1 ACTING PRESIDENT MEIER:

2 Senator Oppenheimer.

3 SENATOR OPPENHEIMER: I would
4 like unanimous consent, please, to be recorded
5 in the negative on Calendar Number 8.

6 ACTING PRESIDENT MEIER:
7 Without objection, Senator Oppenheimer will be
8 recorded in the negative on Calendar Number
9 8.

10 Senator Skelos, that concludes
11 the reading of the controversial calendar.

12 SENATOR SKELOS: Mr. President,
13 if we could return to motions and resolutions,
14 I believe there is a privileged resolution at
15 the desk by Senator Markowitz. I would ask
16 that the title be read and move its adoption.

17 ACTING PRESIDENT MEIER: We
18 will return to the order of motions and
19 resolutions. Secretary will read the title.

20 THE SECRETARY: By Senator
21 Markowitz, Legislative Resolution recognizing
22 the week of January 25 through January 31,
23 1998 as Catholic Schools Week.

24 ACTING PRESIDENT MEIER:
25 Question is on the resolution. All in favor

1 signify by saying aye.

2 (Response of "Aye.")

3 Opposed nay.

4 (There was no response.)

5 The resolution is adopted.

6 Senator Skelos.

7 SENATOR SKELOS: Would you
8 recognize Senator Montgomery, please.

9 ACTING PRESIDENT MEIER:
10 Sorry. Senator Montgomery.

11 SENATOR MONTGOMERY: Yes, Mr.
12 President. I would like unanimous consent to
13 be recorded in the negative on Calendar Number
14 96.

15 ACTING PRESIDENT MEIER:
16 Without objection, Senator Montgomery will be
17 recorded in the negative on Calendar Number
18 96.

19 Senator Rath.

20 SENATOR RATH: Yes, Mr.
21 President. I move the following bill be
22 discharged from its respective committee with
23 instructions to strike the enacting clause:
24 Senate Bill Number 1744 and 2120.

25 ACTING PRESIDENT MEIER: So

1 ordered.

2 Senator Skelos.

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

5 ACTING PRESIDENT MEIER: No,
6 Senator Skelos, there is none.

7 SENATOR SKELOS: There being no
8 further business, I move we adjourn until
9 Tuesday, January 27th at 12:00 noon.

10 ACTING PRESIDENT MEIER: There
11 being no further business, the Senate will
12 adjourn until January 27th, Tuesday, at 12:00
13 noon.

14 (Whereupon at 3:30 p.m., the
15 Senate adjourned.)

16

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