NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 12, 1999

11:03 a.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 come to order. Please rise and join me in reciting the Pledge of Allegiance to the Flag.

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

ACTING PRESIDENT MEIER: The invocation will be offered by the Reverend Dr. Ernest E. Drake of the Metropolitan New Testament Missionary Baptist Church in Albany, New York.

Reverend Drake.

REVEREND DRAKE: May we bow our heads.

Oh, God, of our weary years, God of our silent tears, thou has brought us this far on our way. Thy will cast by the night and let us into the light, keep us forever in the path, provide guidance for the legislators as they debate, deliberate major entries for the daily use of our 18 million residents of our great State.

Bless each legislator one by one and give them the desires of their own heart.

We ask these blessings in Thy son, Jesus Christ's name, and for his sake.

Amen.

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, May 11th, the Senate met pursuant to adjournment. The Journal of Monday, May 12th, 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.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator McGee.

SENATOR McGEE: Thank you, Mr. President. On behalf of Senator Saland, please place a sponsor star on Calendar Number

935 and 936.

ACTING PRESIDENT MEIER: So ordered.

SENATOR McGEE: Again, Mr. President, on page number 30, I offer the following amendments to Calendar Number 666, Senate Print Number 4287, and that said bill retain its place in Third Reading Calendar, on behalf of Senator Larkin.

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

SENATOR McGEE: On behalf of Senator Bonacic, on page number 31, I offer the following amendments to Calendar Number 686, Senate Print Number 3905, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR McGEE: Thank you Mr. President.

ACTING PRESIDENT MEIER: Thank you, Senator McGee.

Senator Skelos.

SENATOR SKELOS: If we could take up the non-controversial calendar, please.

ACTING PRESIDENT MEIER: The Secretary will read the non-controversial calendar.

THE SECRETARY: Calendar Number 286, by Senator Skelos, Senate Print 2271-A, an act to amend the Executive Law, in relation to requiring.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 180 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 396, by Senator Skelos, Senate Print 972, an act to amend the Correction Law and the

Executive Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 21st day of January.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 36, nays 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Excuse me. Also Senate Schneiderman. Ayes 35, nays 2.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 574, by Senator Alesi, Senate Print 1512, an act to amend the Correction Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 578, by Senator Nozzolio, Senate Print 3776-A, an act to amend the Executive Law.

SENATOR SMITH: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 639, by Senator Trunzo, Senate Print 4201, an act to amend the Transportation Law and Chapter 279 of the Laws of 1998.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 748, by Senator Volker, Senate Print 3790, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 787, by Senator Seward, Senate Print 1847-A, an act to amend the Education Law, in relation to making maintenance contracts.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 788, by Senator Trunzo, Senate Print 2420-A, an act to authorize payment of transportation aid.

ACTING PRESIDENT MEIER: There is a local fiscal impact note at the desk. Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 791, by Senator Stafford, Senate Print 3928, an act in relation to validating the establishment of certain requirement funds.

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 38.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 793, by Senator Rath, Senate Print 4390, an act to authorize payment of -

SENATOR RATH: Lay the bill aside for the day.

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

THE SECRETARY: Calendar Number 804, by Senator Leibell, Senate Print 2662, an act to amend the Civil Service Law.

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 38.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 833, by Senator Bonacic, Senate Print 4379, an act to amend the Real Property Tax Law.

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 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 858, by Senator Seward, Senate Print 5064, an act in relation to adjusting certain state aid payments.

ACTING PRESIDENT MEIER: There is a local fiscal impact note 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 40.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 861, by Senator Alesi, Senate Print 4507, an act to amend the State Administrative Procedure Act.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 886, by Senator Marchi, Senate Print 2039, an act to amend the Highway Law, in relation to designating.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 900, by Senator Lack, Senate Print 1526, an act to amend the County Law, in relation to permitting.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

905, by Senator Bonacic, Senate Print 3925, an act to legalize, validate and confirm the establishment of a water district.

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

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 923, by Senator Volker, Senate Print 1593, an act to amend the Mental Hygiene, Law the Correction Law and the Criminal Procedure Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 12. This act shall take effect on the first day of January.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the

bill aside.

THE SECRETARY: Calendar Number 984, by Senator Skelos, Senate Print 974, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1038, by Senator Spano, Senate Print 5571, an act to amend the Education Law, in relation to the apportionment for pupil transportation.

ACTING PRESIDENT MEIER: There is a local fiscal impact note at the desk. Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42. Excuse me. Ayes 41, nays 1.

Senator Hevesi recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1056, by Senator Larkin, Senate Print 2043-B, an act to amend the Education Law, in relation to the practice.

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 43.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos, that completes the reading of the non-controversial calendar.

SENATOR SKELOS: Mr. President, if we could take up Calendar Number 923 by Senator Volker at this time.

ACTING PRESIDENT MEIER: The Secretary will read Calender 923.

THE SECRETARY: Calendar Number 923, by Senator Volker, Senate Print 1593, an act to amend the Mental Hygiene Law, the Correction Law and the Criminal Procedure Law.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator Volker, an explanation has been requested of Calendar 923.

SENATOR VOLKER: Mr. President, this is a bill that essentially is the same bill as last year that relates to civil commitment of sexually violent predators. One thing I would quickly point out, when the bill was initially submitted to this house several years ago and I had the original bill which was patterned after a court case that was involved a civil commitment statute out of the west, it frankly did not have as much of what I call complication as this, but it is complicated because what the Governor's people

did was to do something that we had talked about doing and that was to change the way in which the system worked and frankly made it, I think, more fair and although it is somewhat more complicated it sets up a process by which a person who is either civilly committed under the Mental Hygiene Law or in prison, the process by which that person is adjudged whether he or she would be a problem for society is in effect what it is and a determination made as to whether that person should be either detained in a criminal setting or in a mental hygiene setting, and the bill provides that that person must be separate from the ordinary people as the saying goes who are either in the prison setting or in the mental health setting.

So it provides by the way, let me make clear that eventually a jury trial at which time the person must be adjudged beyond a reasonable doubt to in effect be a danger to society and to be a sexually violent predator who is not in a position to be released back out to society.

Let me just say in all candor

probably the way this process is set up there seems to be some thought that there would be a lot of people who would probably be involved in this. The likelihood is that there would be a limited number of people who would eventually go through this process. And because there are various levels that are set up where determinations can be made whether to proceed or not. So I think that probably the numbers of people who would be actually adjudged under this system would be more limited, I think, than some people think.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will Senator Volker yield just for a couple quick questions?

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: This is the same bill we did last year?

SENATOR VOLKER: Essentially the

same bill. There is a few changes but they are virtually all programmatic and drafting improvements, but they are virtually the same bill.

SENATOR DOLLINGER: Again, through you, Mr. President, if Senator Volker will continue to yield.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The Senator continues to yield.

SENATOR DOLLINGER: How does the civil confinement under this bill end? Could you briefly describe for me the process by which, and I know we debated this last year, we debated it before, but go through the civil commitment.

SENATOR VOLKER: What do you mean by end? The person is adjudged to be a sexually violent predator after a jury trial the person is then committed. That person must be reviewed.

SENATOR DOLLINGER: Serves that criminal time and are now at a point where

they are out, the are eligible for release from criminal confinement. Then as I understand it, there is a separate determination, a jury determination that they have served their criminal sentence, they still however are a dangerous predator and therefore beyond a reasonable doubt a jury concludes that they will be confined.

My question is, is there a point, I mean it is obviously not a confinement for life.

SENATOR VOLKER: Right.

SENATOR DOLLINGER: It is a confinement subject to at some point either the defendant slash civil confinee can file a petition or someone can file a petition on their behalf to ask that that designation be removed. I'm just interested in how that process works.

SENATOR VOLKER: They can file a petition but actually the way the legislation reads they must be reviewed every year. Annually they must be reviewed and evaluated by a psychiatric examiner to determine whether that person is, I don't want to say, cured but

is -- that person's stability is enough that he or she could be released back to society. And by the way, as part of that there can be a -- a person can ask for a psychiatric evaluation he or she self and if the review finds that the person is or has got to a point where it is determined that he or she would not be a threat to society then they can authorize a petition to discharge that person from commitment.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Volker will continue to yield.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: My question is, when that petition is filed to and the civil confinement, is there then a trial under which the same burden of proof is used, or who has the burden of proof to end the civil confinement?

You are obviously civilly confined

on the basis of a finding of beyond a reasonable doubt that you continue to be a predator. What are the tests for then subsequently releasing? Does the petitioner have to prove beyond a reasonable doubt that he is no longer a predator?

SENATOR VOLKER: No, the petitioner -- the attorney general, according to the process, must once again prove beyond a reasonable doubt, and by the way, of course if the attorney general agrees with the psychiatrist then that person they can just adopt it, that petition can be accepted and the person obviously can be released. But if there are objections to it then once again the attorney general has to prove beyond a reasonable doubt that that person is not capable of managing in society and in fact would be a danger.

SENATOR DOLLINGER: Thank you, Mr. President. Thank you, Senator Volker.

I voted for this bill in the past. I just wanted to go through again that portion of it which I think was a source of concern for myself and others, and that is for those

of us who agree that even after criminal confinement ends, after the sentence has been served and someone has paid their debt to society, do they exhibit those psychological characteristics which allow us to determine or to make some judgment about their propensity to continue to be a predator. And I am satisfied that beyond a reasonable doubt status, the requirement to prove beyond a reasonable doubt, gives the defendant who has now paid his debt, it gives him the protection that the government will have to show by overwhelming if not conclusive evidence that he continues to be a problem, he or she. And then the issue of whether, at what point that ends. At some point, if we belive in rehabilitation we do believe that this can change. And it seems to me that the procedure outlined by Senator Volker creates a reasonable possibility that someone, if they do achieve rehabilitation, will be allowed to be freed and their confinement will not continue for an unreasonable period of time after they achieve that goal.

I would just urge that if this bill

does get to conference or does become the negotiation, the source of negotiation with the Assembly that everybody continue to look at that provision. I know that the Kansas statute, which was upheld by the Supreme Court, did give us the power in those, and I agree with Senator Volker, I believe these will be somewhat limited circumstance. But I believe that we really should be vigilant to make sure that the post confinement remedy to be able to be freed if you demonstrate as best as we can given the limitations of psychology and psychology and everything else, once we - once the experts are satisfied that rehabilitation has taken place to a point where a person can be free, that they have not only paid their debt to society bu that they had been rehabilitated, that we accelerate and we give them as quick and as easy a path so that they can reenter the general population.

I would note that that probably does not come with any guarantees or any absolute risk free, but I certainly think that it will give us the opportunity to insure that our system is fair, that due process is served

and at the same time that we eliminate dangerous predators for whom rehabilitation has not occurred from our streets.

So I voted in favor of this in the past. I am going to vote for it again today. I do so with some cautions, but I think the bill addresses many of those, and my hope is that if we get this to committee we can grind out all those details and come up with a bill that does the job, protects our neighborhoods and is fair to the accused.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: Senator, let me just say to you that we debated this bill I believe, you and I debated it and Senator Leichter and a number of others here when the statute first was drafted and my counsel at the time is now counsel to DCJS, Ken Connolly, actually drafted the original bill.

It was one of our concerns too as to how you, the so-called end game. In other words, what happens after a person is in. And we drafted, we did put language in it to try to provide a process, but this bill, the

Governor's people had worked long and hard, I think, to improve that section as to what happens afterwards. And this bill, which is basically the same as last year, one of the major changes I think was that they did improve the section post the time that a person is found initially to be kept in as a sexually violent predator to what happens after that and they set up this process, a much more inclusive process after that happens, so I think it was a concern to us and I think it was a concern obviously to the Governor and to everyone as to what would happen and to make sure that there was a review after that because you don't want to have the situations that apparently occurred in the Mental Hygiene Department years ago where you had people who were determined to be incompetent or whatever and stayed in and disappeared and frankly got lost. And now there is -- but in this bill there is a provision, even if nobody brings any petitions automatically they must be reevaluated at least annually and then the process is set up in this bill as to how that person would be

determined as to whether they should stay in or whether they should be released or not.

ACTING PRESIDENT MEIER: Senator Hoffmann.

SENATOR HOFFMANN: I would like to compliment Senator Volker on taking the initiative to bring this bill to the floor today. Senator Volker has worked on this many years and Governor Pataki has embraced the concept of sex offender action. He deals with the issue of sexual predators in a very different way than was dealt with in years past and with his leadership and Senator Volker's we have this excellent bill on the floor today and I am very happy to have my name on it as a co-sponsor.

Some members of this chamber will remember that this was an issue that I worked on more than ten years ago. And at that time it was very difficult to get people to discuss the issue in a forthright manner. It makes everyone squeamish. Quite frankly, it is hard to have people talk about the details of incarceration much less the actual science of treatment for predicate sex offenders. I

learned this when I worked with a small task force and a director of Criminal Justice Services in this State and conducted a nationwide survey of programs for sex offenders which were designed to treat them while incarcerated and turning them loose to society as somewhat less of a risk than if they were merely warehoused in the prison system. And at the same time we studied, at that time only a couple of states had a bill requiring civil commitment for sex offenders. The two states that were in the forefront of this are Washington State and Kansas. Of the two it was Kansas that had its statute go to the Supreme Court first and it was upheld.

Based on the fact that the Supreme Court has ruled that we are able as a state to make the determination that some sex offenders are such a risk to society upon completion of their sentence it behooves us, it compels us to pass into law, this particular measure, so that we have the ability to protect the citizens of this State.

Let me just give one analogy that I think has troubled me throughout the years

when I have discussed this subject. Here in government in virtually any other policy area we have references to avoided cost. The avoided cost of solid waste by using a recycling concept and using recycling even when mandated justifies government actions because the taxpayers will benefit.

We have all kinds of ways where we attempt in social services, through the finger imaging to reduce the cost to government by doing something with our authority as legislators. But when it comes to avoided victimization we have been way too timid.

What we will do with this measure is avoid the crime of rape for thousands of women and children in this state and we'll probably also avoid murders. It is difficult to calculate, but I tried in the late eighties to actually put some numbers together, and when you sit around in a room full of sex offenders in a prison and ask them to write quietly on a little piece of paper that no one else sees, the actual number of their victims it is startling to discover afterwards that the number may go into several dozen. In some

cases it could come close to a hundred. It always exceeds the number of victims for which an individual sex offender was actually sentenced.

There are many, many sexual offenses that are never punished. There are many that are never reported, and there are some for which the sentence is way too small because the simple concept of forcing a child or even adult victim to testify and relive the agony of that experience is so horrendous that frequently in the interest of fairness to the victim the charges are reduced, some kind of a plea bargain occurs and a serious rapist or child molester is sentenced to much less time than would happen if the crime had been a burglary or any other felony.

So what we have had is a system where sex offenders tend to be the ones who can cycle in and out of the prison system or never experience the prison system at all until their victim populations goes way up.

We need a two pronged approach in this State. We must be much more aggressive about the treatment of sex offenders at the

early stages of their offense. Many of them can learn to identify with their behavior in such a way that they will control it. We do not use the word rehabilitate when we talk about sex offender treatment. It is much too soft and mushy and it is the "L" word that I think we would want to avoid. And it really does not matter how it is you get them to change their behavior. If it is for their own zone self-interest that they change it, that is good enough for us, because we must get them to change their behavior, keep them supervised upon release to be closely monitored, and if they are not able to change their behavior and they are violent sex offenders, they should remain incarcerated.

We can have them, under civil commitment, reviewed annually while they can continue the treatments. And I was amazed when I conducted the study in the late eighties and the early nineties at the wide range of treatment options that are out there. Some of them, the one that we use in New York State now, are largely traditional; psychoanalysis and a much more basic concept

of education and analysis of the root causes.

When you get out to the west coast and in a few other states, they actually have programs that involve use of chemicals, treatment involving electric shock, a number of things that are designed to stimulate a different type of urge or reduce the urges that these sex offenders suffer from.

As this science changes, as it expands, we need to be aggressive in identifying what will work and we need to try it in this state. In the meantime we need to insure that those violent sexual predators that have preyed on the women and children of this state remain incarcerated under a civil commitment statute for as long as is reasonably appropriate and that they should continue to receive all available treatment in a hope that their behavior can be controlled upon release.

The other part of this whole issue is what happens with parole. And I worked with a previous parole commissioner, Raoul Russi, some years ago, to arrange for a dedicated sex offender case load and

specialized training for parole officers. I have since met with some of the parole officers and their supervisors and they tell me now that with the training they have received and with the ability to supervise a smaller number of parolees that they are better able to anticipate the recidivism signs of a sex offender who was paroled. They know now that there are certain things that an individual will do when he or he is beginning down that downward spiral and is looked to molest a young child or commit the crime of rape. And with the training of our parole officers we have also made New York State a somewhat safer place, but it is only a beginning and we must do more of that as well.

So again, my compliments to Senator Volker for his long leadership in this area. My thanks to the Governor for making it one of his priorities, and I ask all of my colleagues to make us proud of what New York State is doing in this area and make this a unanimous vote today.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 12. This act shall take effect on the first day of January.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52, nays 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 578, by Senator Nozzolio, Senate Print 3776-A, an act to amend the Executive Law, in relation to eligibility for counseling.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT MEIER: Senator Nozzolio, an explanation has been requested of Calendar Number 578, by Senator Duane.

SENATOR NOZZOLIO: Thank you, Mr. President.

The measure before us is introduced at the request of the State Crime Victim's

Board and amends the law to add to the list of those able to receive compensation from the Crime Victim's Board the spouse or child or step-child of a victim of a crime who has sustained physical injury.

Particularly the area of those crimes where sex offenses were the nature, those who are very closely connected to the victim may have the need for counseling and other service that the Crime Victims Board can authorize and pay for.

The attorney general stated that under current law only a sex offense victim who had suffered traumatic shock is eligible to be reimbursement for the cost of counseling services. And obviously, Mr. President, my colleagues, because of the nature of these crimes the trauma that could perpetrate to not just the direct victim but the indirect victim, scarred none the less by the crime. Certainly to open up this process to those closely connected to the victim would make sense and justice.

SENATOR DUANE: Mr. President.

ACTING PRESIDENT MEIER: Senator

Duane.

SENATOR DUANE: Mr. President, would the sponsor yield to a question.

ACTING PRESIDENT MEIER: Senator Nozzolio, do you yield to a question?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR DUANE: Thank you, Mr. President.

Under this legislation, if my domestic partner were to be murdered would I be eligible to receive counseling?

SENATOR NOZZOLIO: There is no impact on the present law. This does not change the scope under present law and it is my understanding that present law may be applicable under the circumstances you site.

SENATOR DUANE: I'm sorry, Mr. President, I didn't catch the last sentence of the sponsor's response.

SENATOR NOZZOLIO: It is my understanding, Mr. President, that the situation described by Senate Duane, that requesting -- Senator Duane's question can be answered in Article 22 of the Executive Law,

Section 624 "1" sub "i". That a surviving spouse of a crime victim who died would be listed. But it is my understanding those sections may -- I reference those sections of law for Senator Duane to see if the theoretical example which he asked for complies under that section.

It would be up to Senator Duane's interpretation, not mine.

SENATOR DUANE: Mr. President, would the sponsor yield to another question?

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

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I'm not sure what you are talking about. I mean, I would like it that every law was open to my interpretation, but tragically the State doesn't operate that way yet.

As I read it, it explicitly says that that is not the case. If you look at the way the law originally was in section whatever, line 11, it is number "1c", "Any

other person dependent for his principal support upon a victim of a crime who died as a direct result of such crime." However in this legislation it does not say that.

SENATOR NOZZOLIO: Senator Duane, Mr. President, if I may, the eligibility for those who could receive compensation from the Crime Victim's Board is listed in Article 22 of the Executive Law, Section 624.

I dare say if Senator Duane wishes to see who is eligible and who is not he only needs to refer to that section of the statute.

SENATOR DUANE: Mr. President, if I may continue, through you.

If that is the case then can we amend the bill so as to actually reference that section of the law in the bill because I am afraid that while we may be discussing it in that way now that in the future our discussion on this matter is not something that is legally going to be referenced either by the board, or if it were to go to courts, by a court of law.

SENATOR NOZZOLIO: This measure before us expands the eligibility of those who

are entitled to receive compensation under the Crime Victim's Board procedures. That entire eligibility section is in Article 22 of the Executive Law, Section 624. If Senator Duane or any other Senator has a question regarding who is eligible or who is not, I refer them to Article 22, Section 624 of the Executive Law, which lists the eligibility of those who could receive compensation from the Crime Victim's Board.

SENATOR DUANE: Mr. President.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: I one hundred percent agree that that is part of the old law, but the new language in this law, "J", says, "A spouse, child or step-child of a victim of a crime." It is a very specific. It is not as unspecific as is, for instance, the section that already exists that says any other person dependent for his principal support, which would be a domestic object partner. But this does include those categories of persons who would be entitled to the counseling. In fact, by its omission in

the phrase, "A spouse, child or step-child," indeed they would be precluded from getting counseling, or I would be precluded from getting counseling if my domestic partner were murdered. And I'm not sure that that of course was the intention, but it does seem to be that's the way the bill is written and I would request that maybe we could go and clarify that language so that in such a tragic circumstance I would be able to receive counseling upon the death through crime of my domestic partner.

I think I was making a request, if we go back and do that with this bill.

ACTING PRESIDENT MEIER: Just to clarify what we are doing here, are you asking the sponsor a question, Senator Duane?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT MEIER: Senator Nozzolio, do you yield to the question that has been put to you.

SENATOR NOZZOLIO: Mr. President, as you know, I would be happy to yield to any member of this august body. If Senator Duane

has a question I would be glad to be responsive to it.

ACTING PRESIDENT MEIER: Senator Duane, the sponsor has indicated he would be willing to yield for a question.

SENATOR DUANE: Mr. President, perhaps you could guide me. I believe I asked a question and I was wondering if you could rule whether or not it is a question. It feels like a question.

ACTING PRESIDENT MEIER: Senator Duane, why don't we -- we try to deal in a little more than feelings. Lets see if we can get this done.

Senator Duane, the sponsor has indicated that he would yield to a question. Would you like to restate your question?

SENATOR DUANE: I was wondering if the sponsor would perhaps lay aside the bill just so that we could clarify this and revisit it with a clarification on the issue which we have been discussing today regarding domestic partners being able to get counseling when their partner has been murdered through a crime.

SENATOR NOZZOLIO: Mr. President, in response to Senator Duane's question, it is my belief that this measure before us today is explicit, clear, direct in trying to care for those victims of crime. That if Senator Duane has an amendment, has a modification or other appropriate additions to this statute, I recommended to Senator Duane to follow the procedures of this house and present those amendments.

This bill stands. It does a good job in expanding help to those who need it under the crime victims compensation statute and the bill is properly before this house. I ask for it to be considered.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Mr. President, if the sponsor will yield to another question.

ACTING PRESIDENT MEIER: Senator Nozzolio, do you yield to another question?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR DUANE: I one hundred percent agree that the intent of this legislation is wonderful and I wholeheartedly agree with it. What I am concerned about is, you know, because the concept of domestic partners is a relatively new one, I don't ever really expect that it is a matter upper most on anyone's minds unless perhaps they happen to have a domestic partner.

So I'm not in any way trying to say anything negative about this legislation. I think it is excellent legislation. I am trying to make sure as best as I can that it explicitly includes all of the categories of people that I very much believe was the intent of the legislation.

And in that the language in the bill, in the original law that has not been amended is actually more inclusive, I was hoping that because there is still time to do so that we could make it in fact and indeed be as inclusive as I do believe it was intended and meant to be. And I was wondering if the -- and I, you know, I certainly take

responsibility for not having had flagged this earlier on. You might find this hard to believe because I have been gay now longer than I have not been gay in my life and I'm pretty used to it, but even for someone like me, it is not always the first thing I think about. It may have something to do with, you know, I live in the general society and so I don't always think of these things that don't include issues that are important to me, and sadly this happens to be one of the cases where it didn't really occur to me until I - because the way I originally looked at the language that included the board it did seem to include everyone, but when I took a closer look at this this morning before coming onto the floor I did think that there was an omission.

I am not trying to do this as some kind of surprise attack. It truly did not occur to me that I would not be included in this if my domestic partner should be the victim of a violent crime.

So I apologize for not having had thought of its sooner, but in that it did

occur to me I was hoping that we could go back and clarify it in a manner that was acceptable to the sponsor and that would, you know, take into account my concerns as well.

SENATOR NOZZOLIO: Mr. President, would Senator Duane repeat the question?

SENATOR DUANE: I basically was apologizing for not having noticed what I feel is an exclusion of what could be my personal circumstances or circumstances of other people around the state prior to this. But in that I did flag it this morning I was wondering if the sponsor would consider just holding back momentarily on the legislation so that we could clarify the language to include those New Yorkers, including myself, who I feel are at risk of being excluded by this legislation for absolutely terrific provision of counseling which I support wholeheartedly.

SENATOR NOZZOLIO: Mr. President.

ACTING PRESIDENT MEIER: Senator Nozzolio.

SENATOR NOZZOLIO: I believe the bill is properly before this house. It addresses a need that needs to be addressed

and that certain modifications to this measure are always inopportune. That Senator Duane or any other Senator could present additional amendments to the statute at any time, but frankly I belive we should move on with this measure and that should Senator Duane or other Senators wish to modify it at a future time, that certainly is their prerogative.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Mr. President, on the bill then.

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: I plan on voting for this because I don't want to hold up the ability of other spouses and close family members to receive counseling after a traumatic effect, but I would request of my colleagues that we revisit this and the sponsor as well, in the most collegial way so as to modify the language perhaps in a way that would make it as inclusive as for instance Brochi and other cases have shown.

I am concerned, just generally, in

that as many of you know, domestic partners are not covered in this body, are not able to get health benefits for instance as is every other domestic partner of a state employee every where in state government and even in quasi government bodies, the Metropolitan Transportation Authority, etc, have all provided domestic partnership. We don't have it here for members or employees of the state Senate, and I think that it is important for us to remedy that situation so that all New Yorkers are treated equally.

As you know, I believe very strongly that it is discrimination for those who are not able to be married, therefore do not get the same level of benefits as those who are able to be married. That is what the discrimination is, even in so far as it goes to the issue of equal pay for equal work, if I got married tomorrow my spouse would immediately be entitled to get health benefits, but -- and therefore would be being compensated at a higher rate. That means because I can't cover my domestic partner I am actually being compensated at a lower rate and

that is not fair.

Benefits are something you get as a benefit of being employed or being elected a State Senator, not something that you get as a benefit of being married. The benefit is tied to the profession, not to whether you are married or not, and it is unfair. And it seems to me that, as is the case in this, that while if I got married tomorrow and my spouse were murdered I would be entitled to get counseling because of that terrible tragedy, but because I would have a domestic partner and if he were to be murdered tomorrow I would not entitled to get the counseling and that is just not right, that is just not fair. And that is what my objection is.

So again, Mr. President, I plan on voting in the affirmative on this, but I am hoping that we could come back soon, very soon, and revisit this to make it so that every New Yorker, every Senator, every staff member is treated equally under the laws of the State of New York.

Thank you.

ACTING PRESIDENT MEIER: Senator

Hevesi.

SENATOR HEVESI: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: I rise briefly to concur with the sentiments of Senator Duane. The lack of domestic partnership in this legislation is, in my opinion, a glaring omission. As it is a glaring omission in other facets of the law in New York State.

This is a good piece of legislation. Inclusion of that provision, that protection, that service to other individuals who deserve it as much as any other crime victims would make this a much better piece of legislation. I support it but would like to draw attention to this issue hopefully raise the awareness of this institution of the feeling that this is necessary at this point to address issues which have not been addressed such as Senator Duane brings to our attention.

Domestic partners deserve the same rights and privileges and services that are

offered to other individuals, and until such time as we recognize that we will have failed in effectuating policy which serves all New Yorkers.

I vote in favor of this bill.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Balboni, that concludes the reading of controversial calendar.

SENATOR BALBONI: Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: Senator Fuschillo. I'm sorry, Senator Hoffmann.

SENATOR HOFFMANN: We are frequently confused.

ACTING PRESIDENT MEIER: Not really, but go ahead.

SENATOR HOFFMANN: Mr. President, on page 37, I offer the following amendments to Calendar 775.

ACTING PRESIDENT MEIER: The amendments are received.

SENATOR HOFFMANN: Thank you.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President, certainly on a lighter note than the legislation that was discussed and voted on, I rise to discuss what I think will go down as one of the greatest days in the State's history, that is May 12th, 1959. And on every Tuesday we pass resolutions recognizing individual accomplishments in this house, but I want to recognize an individual in this chamber who was born on that day. And many of you under estimate his wit, his humor, his good looks, his intellect and his charm. And my next statement may cause a debate in this house. I know Senator Schneiderman has jumped to his feet out of his chair, but I believe in the last 40 years he has grown to be a legend in his own mind, and that is none

other than the great Senator, geographically from my district, from the north, Senator Balboni.

Now, I see a hand being raised on the other side of the aisle.

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

SENATOR SCHNEIDERMAN: Would the gentleman yield to a question?

ACTING PRESIDENT MEIER: Senator Fuschillo, will you yield to a question?

SENATOR FUSCHILLO: Can you explain to me the Senate rules if I say no on that question that Senator Schneiderman has asked?

Mr. President, it would be an honor for me to yield to a question from one of my colleagues.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Mr. President, I would like to ask the gentleman if he has any back-up documentation to support his contention here. Because we have obtained documentary that in fact Senator Balboni is

43, and has been concealing his age for quite sometime and the file also reveals the draft speech nominating Senator Skelos as Nassau County Executive.

We'll make a full disclosure of this at a later date, but I would just like to see if Senator Fuschillo has, in fact, ascertains the actual date of birth of the gentleman at issue.

SENATOR FUSCHILLO: I think my colleague to the left said it best, the usual flaw and over reaction from the other side of the aisle. I had spoken with the distinguished Senator's mom last night and asked for some documentation. She offered video tapes. I said no thanks. But that documentation will be forthcoming. I would be happy to provide it to my colleagues.

SENATOR SCHNEIDERMAN: I appreciate that. Although the Senator's mom is a good source I have in fact spoken to Norman Adler and I think I will be glad to produce the real documentation at a later date.

Thank you, Mr. President. I allow

the gentleman to proceed.

SENATOR FUSCHILLO: No further comments.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: Will Senator Fuschillo yeld to one more question?

ACTING PRESIDENT MEIER: Senator Fuschillo, will you yield to a question from Senator Stachowski?

SENATOR FUSCHILLO: I would be happy to.

ACTING PRESIDENT MEIER: He would be happy to, but he doesn't mean it. Go ahead.

SENATOR STACHOWSKI: When you were talking about Senator Balboni's growth, were you speaking about his girth or his accomplishments?

SENATOR FUSCHILLO: I just want to thank my colleagues for allowing me to rise on this occasion and I wish my colleague a wonderful day and happy birthday.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: Two comments, Mr. President. The first is, you think I talk a lot? Fuschillo, what has gotten into you? And the second is, I am reminded of Macbeth's quote, "Tomorrow, and tomorrow and tomorrow creeps at this petty pace." Except it has been a wonderful pace. Thank you for your kind wishes.

Having no other business to come before the Senate today I move that we adjourn until Monday, May 17th at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MEIER: Senator Balboni, happy birthday. And on motion the Senate stands adjourned until Monday, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:58 a.m. the Senate adjourned.)