NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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January 19, 2000

11:06 a.m.

REGULAR SESSION

SENATOR RAYMOND 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.

I ask everyone present to please rise and join me in repeating 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 given by the Reverend Peter Young.

REVEREND YOUNG: Thank you, Senator.

Dear God, as we assemble on this cold mid-January session day, we accept two resolutions that thank Marie Brennan and Bill Greer for their years of dedicated service to this chamber, and we pray for the people of this great State and for the Senators that serve it, in Your name, now and forever.

Amen.

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, January 18th, the Senate met pursuant

to adjournment. The Journal of Monday, January 17th, was read and approved. On motion, Senate adjourned.

SENATOR SKELOS: Mr. President.

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

Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Aging Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Aging Committee in the Majority Conference Room.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Rath, from the Committee on Local Government, reports:

Senate Print 1061, by Senator Seward, an act to amend the County Law;

2586, by Senator Meier, an act to

amend the Real Property Tax Law;

4314, by Senator McGee, an act to amend the Town Law;

4320, by Senator McGee, an act to amend the Municipal Home Rule Law;

And 5207, by Senator Seward, an act to amend the County Law.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 1323, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

3170, by Senator Marcellino, an act to amend the Vehicle and Traffic Law;

And 4572, by Senator Maltese, an act to amend the Vehicle and Traffic Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Without objection, all bills reported directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Volker, on page 10 I offer the following amendments to Calendar Number 71, Senate Print 3537, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR LIBOUS: And, Mr. President, again on behalf of Senator Volker, on page 10 I offer the following amendments to Calendar Number 65, Senate Print Number 725, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Mr. President, I don't believe the Resolution Calendar has been

distributed at this time. We'll take that up later.

But if we could take up Resolution Number 2775 and have it read in its entirety.

ACTING PRESIDENT MEIER: The Secretary will read Resolution 2775.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 2775, honoring William J. Greer upon the occasion of his retirement from the New York State Senate.

"WHEREAS, The State of New York takes great pride in acknowledging those esteemed residents who have distinguished themselves in service to their community and their profession; and

"WHEREAS, William J. Greer was honored at a party held at the University Club on December 20, 1999, upon the occasion of his retirement after 30 years of dedicated service;

"Bill began his distinguished career with the New York State Senate in 1969, in the Senate Post Office;

"Through hard work and dedication, he received several promotions and advanced

through Central Staff; and

"WHEREAS, Bill has served as Journal Clerk since 1995;

"Bill has worked diligently to ensure the integrity of the Senate Journal during his tenure;

"Bill has been a leader in guiding the operations of the Journal Clerk's Office into the 21st century; and

"WHEREAS, Bill worked under five Governors, seven Lieutenant Governors, and four Senate Majority Leaders;

"He announced his retirement from this position effective December 30, 1999;

"Bill and his wife, Carolyn, are the proud parents of two children, Deanna Greer Schoenborn, who is married to Bill Schoenborn, and William Greer, who is married to Kira Greer; and

"WHEREAS, He also served with honor in the United States Army for two years;

"Bill was an active board member of the Albany County Cooperative Extension;

"He has shared his extensive knowledge of the legislative process with

schools and community organizations; and

"WHEREAS, The State of New York, and in particular the New York State Senate, would like to express its sincere appreciation to Bill for his many years of faithful service; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate William J. Greer upon his well-earned retirement from the New York State Senate, and to wish him a healthy and happy future; and be it further

"RESOLVED, That a copy of this Resolution, suitably engrossed, be transmitted to William J. Greer."

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President.

If a person spends 31 years in public service, it really is a testimony to the commitment that that individual makes. To be in a position over these last several years at this desk in the Senate, out front, working sometimes days, nights, weekends, really is

above and beyond what would normally be expected of any individual in their work. But Bill was there; you could always depend on him. You could always count on him.

And I can remember weekends before I was Leader coming over and doing legislative days. And with the team that was there -- and some that were there with him for a lot of years -- he just made this place happen and hum, so that none of us had to be concerned that the procedure here would not be recorded properly, accurately.

So we're indebted to Bill for his service. And I'm sure that as he goes on, he's young enough in his life to be able to do a lot of productive and constructive things.

I wanted to just say how grateful I am for his friendship and for all the good things that he did for me personally as relating to my job and to my colleagues here in the Senate.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Can we suggest that we put everyone in the chamber on that resolution unless they specifically would rather be off it.

ACTING PRESIDENT MEIER: All members will be added to the resolution unless they notify the desk otherwise.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Resolution Number 2776, ask that it be read in its entirety, and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read Resolution 2776 in its entirety.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 2676, honoring Marie Brennan, Senate Personnel Officer, upon the occasion of her retirement after 26 years

of dedicated service to the New York State Senate.

"WHEREAS, It is the privilege of this Legislative Body to honor individuals who have faithfully served the people and government of the State of New York with dedication and conscientious service; and

"WHEREAS, December 30, 1999, marked the conclusion of Marie T. Brennan's 26-year career with the New York State Senate. For the past 15 years, she served diligently as the Senate's Personnel Officer; and

"WHEREAS, A lifelong resident of the Capital District, Marie T. Brennan was born in Troy, New York, the daughter of Joseph and Margaret O'Connell. She is the sister of Peggy Hanks and the late Joseph O'Connell;

"Marie T. Brennan is a graduate of Watervliet High School and attended the University at Albany;

"Marie T. Brennan began her professional career with Albany Medical College as a Medical Assistant to Dr. J. Lewi Donhauser; and

"WHEREAS, After joining the staff

of then-Senate Majority Leader Warren M. Anderson in 1973, Marie T. Brennan was selected in 1976 by the Secretary of the Senate, Roger C. Thompson, to assist in establishing a personnel operation for the New York State Senate. In conjunction with Richard S. Walter, the Senate's first Personnel Officer, Marie T. Brennan built the much-needed personnel operation from literally a box of index cards to a full-service Personnel Office that is automated with the leading edge of human resources technology;

"Marie T. Brennan, as the Senate's Personnel Officer, was fastidious for detail and demanded that records be kept in top-flight order and made no exceptions that a Senate staff person's personnel files and inquiries to the Personnel Office be kept confidential at all times;

"Marie T. Brennan loved working with people and made it a point to keep her office door open and was willing to talk with any Senate staff person coming to the office with a problem. Many times such problems were personal in nature, and Mrs. Brennan would

seek out applicable assistance for the staff person. She was many times called upon to resolve personnel disputes, and she was an advocate for making sure that no staff person was treated unfairly or inappropriately, regardless of their employment position; and

"WHEREAS, Marie T. Brennan was instrumental in the formation and operation of the Children's Corner Day Care Center, which operates in the Empire State Plaza Complex as a service to the New York State employees;

"Her Irish heritage is a source of significant pride for Mrs. Brennan. She has visited Ireland extensively and is a devout student of Irish ancestry.

"She is a parishioner of Our Lady of the Assumption Church in Latham and is a member of the Watervliet Elks Women's Auxiliary. Marie enjoys golf and is a member of the Watervliet Arsenal Pitch and Putt League; and

"WHEREAS, Mrs. Brennan has had the strength and endurance to overcome major health obstacles in recent years and is anxious to be an example for others to

persevere in not letting debilitating health problems limit one's ability to lead a productive life; and

"WHEREAS, She desired to retire to devote more time to her family: her husband of 37 years, Donald F. Brennan, her son, Darren, her daughter, Colleen, and their respective families; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to express its highest respect and deep appreciation to Marie T. Brennan, recognizing the significance of her contributions to the functioning of the State Senate over the past 26 years and the dedication she demonstrated as the Senate's Personnel Officer, and to extend to her a heartfelt wish for a long and rewarding future; and be it further

"RESOLVED, That a copy of this Resolution, suitably engrossed, be transmitted to Marie T. Brennan."

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President.

As you listen to this resolution outlining Marie's career, you can't help but just wonder how a person can almost start - and I know the history of that personnel office was literally one of the less information, the better, and taking it to the professional level that we enjoy here in the Senate today.

And that's thanks to Marie's diligence, her commitment, and her professionalism. She's a true professional.

And when you think about human resources, personnel, the records that are necessary to be kept, the accuracy, the confidentiality has been stated -- but the personal interface with employees when there are problems, and some problems that are serious, Marie was there on a human level, relating to people. Not in any bureaucratic way, but in a real, personal, warm, affectionate way. And there wasn't any person that was ever turned away for any reason.

So I've treasured my friendship and my personal relationship with Marie and with her husband, Don, and trust that given a

little less responsibility in life than looking after the 1600 people that you've been looking after here for so many years, that you will be able to enjoy some relaxation and do some of the things that I know that you would be inhibited from doing given the responsibility that you've had here.

So we thank you for all the good things that you have done for all of us. I thank you for what you have meant to me personally. And we look forward to staying in touch as you go on to do some of the other things that you'll be doing in your life.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: Mr. President, yesterday we had a resolution here for Jess Present, and we talked about institutionalism and about the institution. And we just did a resolution on Bill Greer, who has been here for so many years. And really, for some of us, we remember him back to almost a time that -- well, a few of us remember right when he was here. But he and Joe Cornell, who was his predecessor.

Marie Brennan, I must say, you know, that to have known her for many, many years, it will be hard to think of Personnel without Marie Brennan, who has been a rock of Gibraltar, in my opinion, in overseeing the Senate over the years.

And I don't think people realize the problems -- well, I know that some people don't realize the problems that have occurred with staff people, and some of them are very delicate. I've had a couple with staff people who have had health problems and various types of things that occur where what you need is - although the rules are there, and you certainly have to follow the rules, what you try to do is make sure that you have a government with a heart.

Because all the talk about fiscal responsibility is certainly critically important, and nobody wants to do that any more than we do. But on the other hand, we have to deal, I think, with a small family - maybe a large family here, really. And we try to do it in a way in which -- in the best interests, really, of this family.

And Marie Brennan has been a tower of strength in that area and has always had - not only taken her responsibility in a very dedicated way, but also, I think, has done it in a way in which the best interests of the Senate and the individual members are always at heart.

Finally, I just want to say -- and I guess Marie and I became particularly good friends when the both of us suffered some health problems here a few years ago. And at the time, in fact, I been operated on, and Marie was operated on fairly quickly after my surgery. And we talked with each other because we shared some of the same types of problems.

And Marie was a tower of strength and courage because she went through a very difficult period, came back here when a lot of people thought she would not do it, dedicated herself to the Senate, got us through some difficult times here in the Senate as well as herself.

And from my perspective, to her and her family, my very best wishes, because I

think she's a super person. And I know whatever she does in the future, why, wherever she goes, she'll distinguish herself.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: If I could, Mr. President.

Marie, it's wonderful to see your family with you and your extended family behind you. And I would be remiss if I just didn't say thank you to you for all that you've done on my behalf, on behalf of my staff. You made our lives a lot better here, and for that we'll be eternally grateful.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

Marie, I just wanted to say thank you. I haven't been in the Senate as long as some of the predecessors and some of the people who have spoken before me. But you made my introduction to this house a very positive one. You helped me out personally, you helped members of my staff out personally.

It was a great feeling of warmth. I felt almost guilty if I didn't ask questions, because you always were there for every question. And you always did a fantastic job for myself and the members of my staff and, I know, all our colleagues.

We have a tendency sometimes to overlook people who do these kind of jobs and support us and help us, and it's something that we have to remind ourselves, not only upon people's retirement, but on a day-to-day basis, because we have a tremendous support staff here that makes this house work, that makes government work. I know you've been a leader in that and been a very important part of that.

I have only one question to ask of Marie. Who gave you your advice? That's the only question. God bless.

ACTING PRESIDENT MEIER: Senator LaValle.

SENATOR LAVALLE: Thank you, Mr. President.

I rise along with the other members of this body to say that Marie Brennan has

been a wonderful professional, a great human being. And we sometimes don't realize that we are losing a piece of institutional memory, that memory that has kept both members and staff in compliance with so many rules. And a person who has the knowledge and we, when Marie would say such-and-such, this is the rule, that we would say yes, and feel very confident with her input and her recommendation.

But as so many other people have said -- Senator Volker -- that she is a person who always has a smile, regardless of what is involved in her life, and a very happy individual who will be missed.

And I want to say for the record, Marie, that Senator Stachowski has, as you know, his annual kielbasa luncheon, and that a group of us get together and have the good fortune of spending 15 minutes, half an hour together, at least that, once a year. And we fully expect that you will come back and visit with our group so that we can reminisce and talk about all the things that are relevant in our life.

Much good luck, health, and happiness to you.

ACTING PRESIDENT MEIER: The question is on the resolution. All those in favor -

I'm sorry, very sorry. Senator Mendez.

SENATOR MENDEZ: Thank you. Thank you, Mr. President.

I too want to rise to wish Marie the very best in the new station of her life of being retired. I think that it has been - in the 21 years that I have been here, it has been a pleasure working with her, always with a sunny disposition, always there to help, and a woman that is so competent.

And because of being so bright and competent and knowledgeable of the rules and regulations that we have to follow, then she makes our lives as public elected officials easier.

We love you, Marie. If I would have a good voice, I would sing that song "Oh, Marie." You know that one?

So we hate to see you leave, but

it's been wonderful working with you. And God bless you.

ACTING PRESIDENT MEIER: Does any other member wish to be heard?

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is unanimously passed, with the affection and respect of the Senate.

(Applause.)

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: I ask that all members be placed on the resolution. If you do not wish to sponsor it, please notify the desk.

ACTING PRESIDENT MEIER: All members will be placed on the resolution unless they indicate otherwise.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there are three privilege resolutions at the desk by Senator Bruno. I ask that the titles be read and move for their immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read the titles of the privilege resolutions.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 2801, commending Firefighter Harry G. Connerty, Jr., for 35 years of ceaseless dedicated service to the Hillcrest Volunteer Fire Department, Halfmoon, New York, on January 22, 2000.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

The Secretary will continue to read the privilege resolutions.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 2802, commending Firefighter Thomas M. McBride, Sr., for 35 years of ceaseless dedicated service to the Hillcrest Volunteer Fire Department, Halfmoon, New York, on January 22, 2000.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

The Secretary will continue to read.

THE SECRETARY: By Senator Bruno. Legislative Resolution Number 2803, commending Firefighter Arthur S. Miller for 60 years of ceaseless dedicated service to the West Sand Lake Volunteer Fire Department, on January 22, 2000.

ACTING PRESIDENT MEIER: The question is on the resolution. All those in

favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up the noncontroversial calendar.

ACTING PRESIDENT MEIER: The Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 2, by Senator Johnson, Senate Print 762, an act to amend the State Finance Law, in relation to allocations.

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, 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 4, by Senator LaValle, Senate Print 1745, an act to amend Chapter 554 of the Laws of 1996, relating to creating the Brookhaven National Laboratory.

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, 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 32, by Senator Rath, Senate Print 3689, an act to amend the Civil Practice Law and Rules and the Executive Law, in relation to extending the statute of limitations.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. 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, 45.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 33, by Senator Bonacic, Senate Print -

SENATOR CONNOR: Lay it aside for a question from Senator Duane, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 35, by Senator Hoffmann, Senate Print 4259A, an act to -

SENATOR CONNOR: Lay it aside for the day, please.

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

THE SECRETARY: Calendar Number 36, by Senator Bonacic, Senate Print -

SENATOR CONNOR: Lay it aside for

a question from Senator Duane, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 44, by Senator Alesi, Senate Print 3965, an act to amend the Economic Development Law, in relation to allowing the Commissioner of Economic Development.

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, 48.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 77, by Senator Volker -

SENATOR CONNOR: Lay it aside for a question by Senator Breslin.

ACTING PRESIDENT MEIER: Lay the bill aside.

Senator Skelos, that completes the

reading of the noncontroversial calendar.

SENATOR SKELOS: If we could take up the controversial calendar.

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

THE SECRETARY: Calendar Number 33, by Senator Bonacic, Senate Print 3715A, an act to amend the Penal Law, in relation to the crime of aggravated harassment of an employee.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT MEIER: Senator Bonacic, an explanation has been requested by Senator Duane.

SENATOR BONACIC: Thank you, Mr. President.

This is an act to amend the Penal Law in relation to the crime of aggravated harassment of an employee. This legislation expands the crime to include actions by persons against employees in mental health facilities and in offices of the Mental Retardation and Development Disabilities.

As you recall, we have passed

legislation that protects correction officers in correction facilities by inmates. In reading the statute under McKinney's, it also stated that the law could apply to juveniles. And that's why we make a technical change to the word "respondents," to cover juveniles who may engage in acts in throwing urine or feces at employees that work in those facilities.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Would the sponsor yield to some questions?

ACTING PRESIDENT MEIER: Will the sponsor yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you.

Are we looking into what the thinking is of an inmate in this bill?

SENATOR BONACIC: I don't think we do psychological profiles. We look more of the act.

And when an inmate -- we assume that, you know, he's probably in jail for

committing acts against society. When he engages in an act and breaks the law or rules in which they could inflict bodily harm on our employees that work in correction facilities or mental health facilities, that -- if urine might have, you know, the AIDS virus and that correction officer has to be tested and to make sure that there was no danger to that employee.

We do not do a psychological profile on that inmate if he was convicted of violating this Penal Law.

SENATOR DUANE: If the sponsor would continue to yield.

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

SENATOR BONACIC: I do.

SENATOR DUANE: But isn't that exactly why these inmates are in a mental health facility, so that they can have a psychological evaluation?

SENATOR BONACIC: Let me take a step back. I believe that we try to do rehabilitation to all inmates, mental patients, juveniles that are in the facilities

for one reason or another if it's crimes against society.

In order to be convicted of a crime under this legislation, you have to show that the person committing the act of throwing urine or other substances intentionally knew what they were doing. So in the case where I'm trying to expand, for someone that's mentally disabled, didn't know what they were doing -- accidental vomiting, say, on an employee -- under this statute, that's not punishable. There must be an intent.

And if you can show that intent, under our proposed legislation they would be guilty of this crime, regardless of what was meant -- what was -- the psychological problems for antisocial behavior.

SENATOR DUANE: If the sponsor would continue to yield.

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: Senator Bonacic continues to yield, Senator Duane.

SENATOR DUANE: But isn't that why they're being sent to a mental hospital, because the prison psychiatrist has deemed

that they are mentally ill and needing of mental health treatment? What more proof do you need?

SENATOR BONACIC: I don't disagree with you that people that are in mental institutions need rehabilitation and to try to get through the psychological and/or emotional problems so they can function in society.

SENATOR DUANE: I believe it was Senator DeFrancisco who pointed out in our committee meeting that it would be very difficult to tell in a mental hospital whether or not if -- if one of the -- if the inmate could actually tell who the mental health workers were. For instance, the janitorial staff wears pretty much the same white uniforms as everyone else does.

And yet if someone were to throw feces and urine at someone who wasn't a mental health caseworker, they wouldn't get charged under this legislation; is that correct?

SENATOR BONACIC: It's intended to cover any of the employees in these facilities.

What we're trying to discourage is the act of throwing feces or urine at any employees, whether they're a correctional worker or an employee. The risk of danger is just as great to all of those employees regardless of what their specific duties are in those institutions.

SENATOR DUANE: Through you, Mr. President, if the sponsor will continue to yield.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Then your bill is poorly drafted, because that's not what it says.

SENATOR BONACIC: Well, do you want to point out specifically where you claim it doesn't say that?

SENATOR DUANE: Yeah. It says employees -- it says -- although frankly I would think you would know better than I, but I'll look for it.

SENATOR BONACIC: I do believe - I have the bill. It's a short bill. And it refers specifically to "employee" without specific designation.

SENATOR DUANE: While it is true that -

ACTING PRESIDENT MEIER: Well, gentlemen, just so we can put some shape around this, do you want the sponsor to continue to yield?

SENATOR DUANE: Well, I'm not - I'm responding to his question. So he needs to ask me to yield now.

ACTING PRESIDENT MEIER: No, I don't think that's the way it works. If you have a question -

SENATOR DUANE: How does it work?

ACTING PRESIDENT MEIER: -- you want to pose, you would ask the sponsor to yield. If you want to speak on the bill, you would indicate that.

SENATOR DUANE: If the sponsor would yield so I could respond to his question to me.

ACTING PRESIDENT MEIER: Well,

would the sponsor yield so that Senator Duane can frame a question?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Does this bill cover contracted-out employees -- for instance, in the cafeteria or an outside janitorial service -- who would be performing functions in the facility?

SENATOR BONACIC: It's my understanding that it's specifically for employees of the facility and it would not cover what we call independent contractors that -- like a privatization, that come in and perform duties in those facilities.

SENATOR DUANE: Through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MEIER: Do you continue to yield, Senator Bonacic?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: And therefore, is

it your contention, then, that persons who are employees of OMRDD are entitled to special protections from feces and urine than independent contractors?

SENATOR BONACIC: I don't. But now that you brought that distinction up, perhaps I'll go back to this bill and look to expand it to cover employees that are engaging in privatization in these facilities. It's a good idea.

SENATOR DUANE: And then through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MEIER: Do you continue to yield, Senator Bonacic?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Then anyone who is actually working in an OMRDD facility you believe then deserves special protection, a higher level of protection than, for instance, people outside those facilities?

SENATOR BONACIC: I believe that anyone who works in those facilities deserves

equal protection against these kinds of acts of antisocial behavior.

SENATOR DUANE: So through you, Mr. President.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: He yields.

SENATOR DUANE: So they are entitled to a special protection under this law which you've proposed?

SENATOR BONACIC: When you say "special protection," we already give correction officers that work in correction facilities these protections. We now want to expand it to youth facilities, mental health facilities, and facilities of mental retardation and disability.

SENATOR DUANE: Through you, Mr. President.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR DUANE: And so you believe that people in all of these areas of employment deserve special protections?

SENATOR BONACIC: I do.

SENATOR DUANE: Thank you.

I have a further question if the sponsor will continue to yield.

ACTING PRESIDENT MEIER: Do you continue to yield, Senator Bonacic?

SENATOR BONACIC: I do.

I feel like I'm getting married, "I do." Several times.

(Laughter.)

SENATOR DUANE: If the sponsor would tell me how it is that this bill came about.

SENATOR BONACIC: Well, this bill came about because there were many instances originally where correction officers were being threatened and actually where there could be physical harm to them where urine and feces were thrown at them. And there was a concern that the HIV virus could have been contained in the urine or the feces.

A best-case scenario, the correction officer has to go through a series of tests, high anxiety, and worry that they may become afflicted with a disease that the inmate had. And that could occur and has occurred.

Now, those employees in the facilities that we've talked about, the mental health facilities, have said that they have these same kind of dangers and risks to them and could we extend the protection to them.

So the request came from workers who work in these facilities that want the same kind of protections that correction officers now enjoy in correction facilities.

SENATOR DUANE: Through you, Mr. President.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: He does.

SENATOR DUANE: As -- it sounds as if employees of OMRDD have asked for this -- although, frankly, I haven't gotten a letter from them requesting this legislation.

I'm wondering why it is, then, that when thousands and thousands of New Yorkers have requested protection in the form of a hate-crimes bill, the Senate has not deemed it necessary to respond to that request.

SENATOR BONACIC: I don't think that is appropriate.

I can tell you that as a member of the Assembly for almost nine years, I for one have supported that legislation. I know that this subject is being studied, and I'm sure that is a subject for another day.

But, you know, I don't want to be comparing apples and oranges. We're here today on the issue of the mental health facilities and trying to protect those workers. But I respect what you say, and it is something that I think deserves our attention in the future.

SENATOR DUANE: Thank you.

Thank you, Mr. President. If I may speak on the bill, please.

ACTING PRESIDENT MEIER: Of course. Senator Duane, on the bill.

SENATOR DUANE: Thank you very

much.

I want to go back to comments I made yesterday, because we are just in the middle of a whole feces and urine extravaganza here on the floor of the Senate today. But from -- my understanding is if it's anything like last year, we can look forward to many more feces and urine bills to discuss in the course of this session.

I think it would be more productive if we put all the feces and urine legislation into one big package and debated that one. But the Senate has not seen fit to do it that way. And as I said to -- asked Senator Volker about that in Codes, he said because people just all have their own feces and urine bills and they can't put them together. And I suggested that we should all try to get along on this issue, but that's just, I guess, not to be the case.

But specifically on this piece of legislation, it does strike me that this -- if this is a problem in OMRDD facilities, I believe that goes exactly to the point which I previously made on this floor, that the

throwing of feces and urine is in fact a mental health issue and not a criminal justice issue, should be treated as a mental health issue.

If we were going to be productive on this, instead of throwing of feces and urine being something which necessitates higher penalties, what instead it should necessitate is a higher quality of mental health services in all of New York State facilities.

And I would encourage my colleagues to vote no on this one, even more specifically because it does apply to mental health facilities. I believe that people that go into the field of mental health should be very well versed in the psychological issue of throwing of body fluids and feces and urine, and in fact this should not be treated as a criminal justice issue in those facilities but as a mental health issue.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: Mr. President,

will the sponsor yield, please?

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: Senator Bonacic, I'm a little confused about this. Isn't the simple fact of somebody throwing an object, whether it was urine, feces, or a book, whatever he may happen to have at his side to be throwing it, what difference does it make whether the object is feces? Maybe even the bandage that he had on his wound or something, and throwing it. It isn't it all covered by an assault?

SENATOR BONACIC: It is not. In order to have an assault, you must have physical injury to the person that receives it. So if I threw a bandage at you and you have no physical injury, that is not an assault.

So we're trying to get a category of aggravated harassment where inmates have been engaging in this at a higher level of

activity, in throwing feces and urine which may or may not contain the AIDS virus. That's what we're trying to discourage specifically.

In terms of broadening the legislation, we're not there yet. We're just concentrating on these dangers that the correction officers and the unions have come to this Legislature and said this is an area where they need help. And now it's been extended to the mental health facilities.

SENATOR ONORATO: Will the sponsor yield to one further question?

SENATOR BONACIC: I do. I do.

SENATOR ONORATO: What happens to a visitor at the facility, such as yourself or I who may be on the committee, and we go to that facility and have it thrown at us? Are we protected?

SENATOR BONACIC: That's a good question. Under this particular statute, you're not. But we're proposing it.

SENATOR ONORATO: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President. If the sponsor would yield for a -

ACTING PRESIDENT MEIER: Senator Bonacic, do you yield?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Thank you.

I would just like to ask you, your bill adds also respondents. That's juveniles; is that correct?

SENATOR BONACIC: It is.

SENATOR MONTGOMERY: Give me the ages of the respondents that you would be referring to that this would cover.

SENATOR BONACIC: It would be any individual that was in a youth facility. And my recollection is as young as 15. I'm not exactly sure, but this is -- I mean, I'm talking about my prior legal knowledge which I recall, and I think it goes up to 18. I think it's that age group, roughly 15 to 18.

SENATOR MONTGOMERY: Okay. So in other words, this does not cover all of the

respondents, only a certain number?

SENATOR BONACIC: No, it -- in these youth facilities, that's correct.

SENATOR MONTGOMERY: And the youth facilities don't have 12-year-olds, for instance, or 14-year-olds; is that the case?

SENATOR BONACIC: Well, the youth facilities that this legislation is directed against is that -- the teenager in the later years, the 15 through the 18.

SENATOR MONTGOMERY: Okay. But the legislation does not specify that -

SENATOR BONACIC: It does not.

SENATOR MONTGOMERY: -- it just says "respondents"?

SENATOR BONACIC: It does not.

SENATOR MONTGOMERY: Okay. So now I just would like to ask you, how -- do you have an idea how many respondents would be covered by this, how many youth in those facilities? Do you have some idea what that population is?

SENATOR BONACIC: I don't know the amount of respondents in all our youth facilities in the state of New York. I don't

have a handle on that number. But I would gladly get that information to you subsequently.

SENATOR MONTGOMERY: Okay. That would be helpful and interesting, to see just how many youth this bill would cover.

Now, you -

ACTING PRESIDENT MEIER: Senator Montgomery, do you wish the sponsor to continue to yield?

SENATOR MONTGOMERY: Yes.

ACTING PRESIDENT MEIER: Do you yield, Senator Bonacic?

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: He does.

SENATOR MONTGOMERY: Thank you. It's a little cumbersome process, but we've lived with it for many years.

Now, Senator, the -- your bill would include OMR and OMRDD.

SENATOR BONACIC: That's correct.

SENATOR MONTGOMERY: And you say that anyone who is convicted of this particular act -- that's a class E felony, I believe your bill says; is that right? Class

E felony. This is already in law.

SENATOR BONACIC: Yes. Yes.

SENATOR MONTGOMERY: So now what do you do with the mentally ill or the developmentally handicapped people? Do they now go into DOCS if they commit this act? What do we do with them?

SENATOR BONACIC: I think we have evidentiary problems. First of all, the mental patient, in order to be convicted of this crime, had to be one, sane, had to have an intent to do it. And they could all raise the defense of lack of mental capacity, that there was no intent. These are evidentiary problems.

But assuming, assuming for our discussion that there was evidence for conviction, it would be my understanding that when they got out of the mental facility, they would have to serve the time at a correctional facility if they were an adult.

SENATOR MONTGOMERY: I see. So -

SENATOR BONACIC: That's the way -

SENATOR MONTGOMERY: -- once they are well enough to come out of there, the OMRDD or the OMR, they now have to go into DOCS to serve the time based on this act.

SENATOR BONACIC: And if the reason they were in there in the beginning is because they lacked the mental capacity to commit the crime, then it wouldn't be a crime. It would be an affirmative defense.

SENATOR MONTGOMERY: Okay. All right. I would just like to comment on the legislation.

Thank you, Senator Bonacic.

SENATOR BONACIC: You're welcome.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I just want to -- we don't know how many respondents this bill would cover. And obviously I don't have that figure. Senator Bonacic doesn't have it.

But we can presume that it's - whatever the number, it would become a possibility that every young person in those facilities would also be covered by this law. So now we are very possibly including

12-year-olds, and possibly even younger, as part of the penal system.

So that's one issue. But -- and these -- all of these bills, 33, 35, 36 calendar numbers, seem to be moving in that direction. As Senator Duane has said, the feces and urine bills.

But I want to raise another kind of issue beyond the feces and the urine. And certainly I support the protection of employees in any institution where they are endangered and they are forced to be on the front lines. However, I want to just go on record here at this time as being in opposition to these kinds of bills which do nothing to protect -- it is my belief they do nothing to protect the safety of the employees in those institutions, but they do everything to expand this burgeoning, growing prisoner industrial complex.

It keeps people in longer periods of time. We now have a situation where inmates are extremely restless because they are not being allowed to be paroled out even at the time that they're eligible for parole.

Where we have a situation where there is no - practically no programs for rehabilitation. We've removed all educational and training programs from those institutions.

So we're essentially creating the most dangerous situation in our correctional system, which is very similar to what we had at Attica in 1971 and prior to that.

So we're not really moving to protect people who work in those facilities, and in fact we're creating a situation where they are more in danger than if we gave them some tools by which they could work to rehabilitate people there and to give them a sense that once they are out they would have something that they could use to keep them out.

So I'm just opposed to this. I think it's -- we now in our -- I have figures here. I've been collecting this information over the years. This is from an article in USA Today in 1998 where it was -- this writer calculated for us the number of people on probation and parole in New York State. At that time it was 245,551. There are 72,000

people in state prison now. So that's over 300,000 people who are in prison now, state prison, on parole or probation.

And that doesn't take into consideration the people who are in the local jails. And it also doesn't take into consideration the people who are going to be now covered by Senator Bonacic's bill, which is now going to cover all of the youth facilities.

So I just want to be on record to say that I will not participate in this process of expanding a prison system which, more and more, puts people in a situation where there is no hope of ever escaping. So it's a kind of enslavement, and we're doing it under the guise of protecting this group or that group. But the ultimate result and the ultimate goal is to just keep people in, incarcerated for longer and longer periods of time.

And I must stand up and say what I really feel, that is also disproportionately aimed at people of color. That's why I want to be on record.

I will not speak on all of these bills, even though I'm going to vote against all of them. They all do the same thing. They will be coming before us week after week, I understand that. And I understand what it's playing to. But I must say that I want to be on record to say to you that I object to this way of essentially removing the civil rights from a group of people in our society because they are poor, they are not educated well, and we are giving them absolutely no way out of that situation.

So, Mr. President, thank you for allowing me to make a statement on record.

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, 52. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 36, by Senator Bonacic, Senate Print 5706, an act to amend the Penal Law, in relation to aggravated harassment.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT MEIER: Senator Bonacic, an explanation has been requested by Senator Duane.

SENATOR BONACIC: Thank you, Mr. President.

This also is an act to amend the Penal Law in relation to the aggravated harassment of an employee by an inmate. It deals with similar subject matter, but it's specific for correction facilities.

And the statutes have been narrowly construed. In the past, it was very specific. Current law lists only throwing, tossing, and expelling as a prohibition means of attempting to cause a substance to come into contact with an employee.

And what we are trying to do with

this legislation is expand it as follows, where an inmate could place a substance on an employee. We had a specific case in Sullivan County where an inmate took a glass and he dipped it into a toilet and he took the substance that was in the toilet and he then placed it on an employee. Not throwing.

And you could say, well, isn't this ridiculous. If he just poured it on and didn't really throw it, shouldn't it be encompassed under the old statute? But what the judges have been doing, they have concentrated on the physical act by which the substance comes into contact with the employee.

And what this does, number one, it expands how the substance gets there besides throwing. And, second thing, it involves other bodily fluids such as saliva and any other bodily secretions other than urine or feces.

This bill passed the Senate last year by 58 to 1. But again, it's just tightening the existing statute. It's more geared to language changes in making it cover

the situations it was intended for. Basically you don't want an inmate putting any urine, feces, or any other substance on a correction employee, by any means. That's what the purpose of this statute is.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: I would just like to speak on the bill.

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: Thank you.

I believe that, in addition to my previously stated objections to this type of legislation, that I believe the word "placing" is very problematic. I think it could lead to a lot of unfairness and difficulty.

For instance if an inmate had an accident, could that not be used against him? The whole definition of "placing" is so nebulous that I think it could be used to unduly punish people who are incarcerated.

And I'm also very concerned that this bill will open up a slippery slope in terms of what we're doing in other feces and

urine bills, and that "placing" will become part of those bills as well. And I just think that we are creating terrible public policy as we continue to look at this as criminal justice in nature as opposed to mental health.

Thank you, Mr. President.

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, 52. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 77, by Senator Volker, Senate Print 6231, an act to amend the Tax Law, in relation to the imposition of sales and use taxes by the County of Erie.

ACTING PRESIDENT MEIER: Senator

Volker, an explanation has been requested - Senator Breslin, why do you rise?

SENATOR BRESLIN: I'd like to know if the sponsor would yield. I don't think an explanation is necessary.

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: The sponsor has been gracious enough to supply me with a home rule message, which would have been my question to the sponsor. So I withdraw any questions I might have.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 2. Senators Dollinger and Gentile recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Volker.

SENATOR VOLKER: Mr. President, can we go back to the Resolution Calendar and adopt the Resolution Calendar, with the exception of Resolutions 2775 and 2776 that have already been adopted.

ACTING PRESIDENT MEIER: All in favor of adopting the Resolution Calendar, with the exception of Resolutions 2775 and 2776, previously adopted, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The Resolution Calendar is adopted.

Senator Volker.

SENATOR VOLKER: Mr. President, I think there's a privilege resolution at the desk by Senator Mendez. Would you read the title, and I ask it be adopted.

ACTING PRESIDENT MEIER: The

Secretary will read the title of the privileged resolution.

THE SECRETARY: By Senator Mendez, Legislative Resolution Number 2804, honoring the Instituto Duartiano upon the occasion of a visit of a delegation representing its members to the New York State Capitol on January 24, 2000.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Volker.

SENATOR VOLKER: Can we return to reports of standing committees. I understand there's some committee agendas at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Senator Maziarz, from the Committee on Aging, reports the

following bills:

Senate Print 812, by Senator Johnson, an act to amend the Real Property Tax Law;

1836, by Senator Farley, an act to amend the Education Law;

And 3276, by Senator Trunzo, an act to amend the Real Property Tax Law.

Senator Kuhl, from the Committee on Education, reports:

Senate Print 1132A, by Senator Skelos, an act to amend the Education Law;

3532, by Senator Farley, an act in relation to the calculation;

5799, by Senator Morahan, an act to amend the Education Law;

5857, by Senator LaValle, an act to amend the Education Law;

6274, by Senator Padavan, an act to amend the Education Law;

6276, by Senator McGee, an act to amend the Education Law;

And 6286, by Senator Kuhl, an act to amend the Education Law.

Senator Hannon, from the Committee

on Health, reports:

Senate Print 1708, by Senator Trunzo, an act to amend the Public Health Law;

2157, by Senator Hannon, an act to amend the Public Health Law and the Education Law;

Senate Print 4870A, by Senator Hannon, an act to amend the Public Health Law;

And 6097, with amendments, by Senator Hannon, an act to amend the Public Health Law and the Insurance Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Without objection, all bills directly to third reading.

Senator Volker.

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

ACTING PRESIDENT MEIER: No, there is not.

SENATOR VOLKER: Would you recognize Senator Mendez, please.

ACTING PRESIDENT MEIER: Senator Mendez.

SENATOR MENDEZ: There will be an immediate conference of the Minority at Room 314.

ACTING PRESIDENT MEIER: There will be an immediate conference of the Minority in Room 314.

Senator Volker.

SENATOR VOLKER: There being no further business to come before the Senate, I move we adjourn until Monday, January 24th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Monday, January 24th, at 3:00 p.m. Intervening days will be legislative days.

(Whereupon, at 12:12 p.m., the Senate adjourned.)