NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 24, 2000

3:15 p.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.

Will everyone please rise and repeat with me the Pledge of Allegiance to the Flag.

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

ACTING PRESIDENT MEIER: In the absence of clergy, may we bow our heads in a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Friday, January 21st, the Senate met pursuant to adjournment. The Journal of Thursday, January 20th, 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.

The Secretary will read.

THE SECRETARY: Senator Morahan, from the Committee on Veterans and Military Affairs, reports the following bills:

Senate Print 681A, by Senator Larkin, an act to amend the Real Property Tax Law;

1479B, by Senator Wright, an act to amend the Real Property Tax Law;

4866A, by Senator Meier, an act to amend the Town Law;

And 5842, by Senator Morahan, an act to amend the Tax Law.

Senator Meier, from the Committee on Social Services, reports the following bills:

863, by Senator DeFrancisco, an act to amend the Social Services Law;

3237, by Senator Farley, an act to amend the Social Services Law;

5800, by Senator Morahan, an act to amend the Social Services Law;

And 5853, by Senator Meier, an act

to amend the Social Services Law.

Senator Hoffmann, from the Committee on Agriculture, reports the following bills:

1725, with amendments, by Senator Kuhl, an act to amend the Agriculture and Markets Law;

3541, by Senator Hoffmann, an act to amend the Agriculture and Markets Law;

4265, by Senator Hoffmann, an act to amend the Agriculture and Markets Law;

And 6175, by Senator Hoffmann, an act to amend the Agriculture and Markets Law.

Senator Farley, from the Committee on Banks, reports the following bills:

3554, by Senator Farley, an act to amend the Banking Law;

4704, by Senator Farley, an act to amend the Banking Law;

And 5281, by Senator Farley, an act to amend the Banking Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: All bills will be reported directly to third

reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator Maltese, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Bill Number 4445.

ACTING PRESIDENT MEIER: So ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, on behalf of Senator Wright, there will be an immediate meeting of the Energy Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: There will be an immediate meeting of the Energy Committee in the Majority Conference Room.

Senator Skelos.

SENATOR SKELOS: Mr. President,

if we could have the noncontroversial reading of the calendar.

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

THE SECRETARY: Calendar Number 35, by Senator Hoffmann, Senate Print 4259A, an act to amend the Penal Law and the Criminal Procedure Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 5. 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, 49. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 37, by Senator Rath, Senate Print 5787, an act to amend the Penal Law.

SENATOR SKELOS: Lay it aside for

the day, please.

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

THE SECRETARY: Calendar Number 49, by Senator Lack, Senate Print 1143, an act to amend the Labor Law, in relation to direct sellers.

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. Nays, 2. Senators Duane and Stavisky recorded in the negative. Also Senator Montgomery.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 50, by Senator Stafford, Senate Print 1509, an act to amend the Labor Law, in relation to licenses.

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, 47. Nays, 3. Senators Duane, Montgomery, and Stavisky recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 52, by Senator Maltese, Senate Print 3704, an act to amend the Labor Law and the Penal Law, in relation to certain employment.

SENATOR DUANE: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 54, by Senator Alesi, Senate Print -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number

58, by Senator Johnson, Senate Print 1531, an act to amend the Domestic Relations Law, in relation to visitation rights to infant grandchildren.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 60, by Senator Skelos, Senate Print 130, an act to amend the Criminal Procedure Law, in relation to evidence of identification.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 5. 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, 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 61, by Senator Volker, Senate Print 145, an act to amend the Criminal Procedure Law, in

relation to preclusion of evidence.

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, 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 62, by Senator DeFrancisco, Senate Print 548, an act to amend the Criminal Procedure Law, in relation to applications.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 92, by Senator Padavan, Senate Print 6274, an act to amend the Education Law, in relation to disciplinary procedures.

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, 50.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos, that completes the reading of the noncontroversial calendar.

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

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

THE SECRETARY: Calendar Number 52, by Senator Maltese, Senate Print 3704, an act to amend the Labor Law and the Penal Law,

in relation to certain employment.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT MEIER: Senator Maltese, an explanation has been requested of Calendar Number 52 by Senator Duane.

SENATOR MALTESE: Mr. President, this is an act to amend the Labor Law in relation to certain employment of minors under 16 years of age. It is sponsored in the Assembly by Assemblyman Seminerio.

The bill would prohibit the employment of a minor under 16 years of age in a performance in which the minor engages in sexual conduct, as defined in the Penal Law, which is harmful to said minor. It also makes the possession or viewing of materials containing obscene depictions of the nudity of a child or of an obscene sexual performance by a child a class E felony.

The bill follows the United States Supreme Court case of Clyde Osborne versus the State of Ohio in which the court ruled, in the decision by Justice White, "Prohibition against possession and viewing of child

pornography complies with the First Amendment and is not unconstitutionally overbroad."

The bill follows the definition actually spelled out in the Penal Law of "sexual conduct," which is actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals. It also spells out the definition of "harmful to minors," which means that -- the quality of any description or representation in whatever of nudity, sexual conduct, sexual excitement, or abuse.

And I believe it complies with the First Amendment according to the Supreme Court.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Would the sponsor yield to a couple of questions?

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: Sponsor yields.

SENATOR DUANE: I'm wondering why plays and dances have been -- well, let me

first say, before I ask the question, that I certainly believe that the intent of this legislation is laudable, and I don't disagree with its intent. But I'm wondering why it is that plays and dances were included.

SENATOR MALTESE: You're wondering why what, Senator?

SENATOR DUANE: Plays and dances are included in this legislation.

SENATOR MALTESE: Well, Mr. President, in response, the -- I believe it's because certain plays and dances -- and I believe it also includes performances -- would seek to shield themselves under the constitutional protections that would be given to performances or art.

It would be, I suppose, an attempt to specifically exclude performances that would be sexual in nature by children and that they would be considered obscene by any criteria.

SENATOR DUANE: If I may ask the sponsor another question.

ACTING PRESIDENT MEIER: Senator Maltese, do you yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: Sponsor yields.

SENATOR DUANE: Can you name any dances that -- or plays in which this is occurring now where children are dancing obscenely? Or if there's a specific -- is the Macarena potentially an obscene dance? I'm just -- I'm not aware of these lewd children's dances that -

SENATOR MALTESE: Mr. President, neither am I. But probably the reason we're not aware of them is because maybe some of the producers were aware that this legislation, when it was before the Senate in 1998, passed unanimously. And they were perhaps frightened that this would become law and they would be engaging in an unlawful act.

SENATOR DUANE: Through you, Mr. President, if I may continue to ask.

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: Sponsor yields.

SENATOR DUANE: Just a clarification, it didn't pass unanimously. I voted in the negative.

But I'm wondering what plays and children's dances precipitated this legislation, then, in '98, since Senator Maltese believes the problem has now been solved. But I'm still trying to find what the children's dances were prior to 1998 that were causing this legislation to be put on the floor.

SENATOR MALTESE: Mr. President -- I'm sorry, Senator Duane, I didn't hear the question.

I was corrected that you did in fact vote in the negative in '99. I was looking at the '98 roll call, when you were not yet in the Senate. And that was 85 [sic] to 0.

I'm sorry, could you repeat the question?

SENATOR DUANE: I'm wondering what was the children's obscene dance which was occurring prior to 1998 -- though I know you've solved the problem since then, but what

was the problem before 1998? What was the obscene children's dance that was going on?

SENATOR MALTESE: Mr. President, I don't think this bill was in reply or in reaction to any specific obscene children's dance.

I think that it is obvious that there is pornography circulating widely in some parts of the United States, and in other areas, that depicts children in obscene performances. What this legislation seeks to do is to stop such performances and criminalize such performances and make it obvious that perpetrators who would produce or direct such performances would be in defiance and in violation of the law and be subject to criminal penalties.

This is not in reaction to some specific performance, of which I am not aware of. That perhaps Senator Duane would be aware of. But I certainly would not be aware of it.

And this is not in reaction, Senator, to any specific performance or any specific dance. It's in reaction and as a result of numerous outcries by parents and

educators all across the United States to enact a law that would stop such performances, which everybody, or all -- the vast majority of people feel is obscene, is wrong, and a perversion of children and minors who have no right to make -- who do not have the ability to make their own judgments.

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

ACTING PRESIDENT MEIER: Senator Maltese -

SENATOR MALTESE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I understand, and I believe that we all want to stop child pornography. That's not what is at issue here. And I -- I don't think anyone has even raised the possibility that anyone in this body would want to do anything but to try to stop child pornography. It's a terrible thing. I certainly salute your efforts to try to stop child pornography.

That said, I am not aware, as you

are not aware, of any obscene dances for children going on. And my questions have had to do with why dances and plays are included in this, even though I can't imagine any kind of venue where anyone would go to watch - that there would be any audience for people to watch children dancing obscenely or a play which would include children behaving in an obscene manner.

I'm concerned and want to know the reasoning behind that, because in the absence of having a good reason to include playing or dancing -- plays or dances, it seems to me that this could have perhaps a chilling effect, in that it is such an overblown, overdrawn, broad set of categories for legislation -- which I certainly concur has, you know, an excellent intent.

SENATOR MALTESE: Mr. President, I believe the wording of the legislation was in response to -- or taking into consideration Section 263, Article 263, where not only the definitions of sexual conduct are contained, but also it specifically speaks of performance, the definition of "performance,"

which includes, pursuant to statute, any play, motion picture, photograph, or dance. "Performance" also means any other visual representation exhibited before an audience.

So I believe it was in -- not in response to a specific performance or play, but it's seeking to clarify the law so that it would not include perhaps a play or performance which would not in fact be obscene and which would be protected by the First Amendment.

SENATOR DUANE: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: Just in response to the last comment, I think actually the definition has not been made any clearer or better, but in fact it's become way too overbroad by including dance or play.

And though, again, I'll say again that I think we all in this body, and certainly I, share the goal of what this legislation is. But I believe that we've put too much into it and have instead perhaps

really not -- not drafted it in an appropriate enough way to solve the problem which it seeks to solve, and it in fact may have a chilling effect in other areas.

So I'm intending again this year to vote no on the legislation and hope that at some point we'll see a more tightly crafted piece of legislation to vote on.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. 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, 49. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Paterson.

SENATOR PATERSON: Mr. President, on January 18th Senator Mendez passed a

privilege resolution honoring the Duarte Institute. And she couldn't get the Duarte Institute here on that particular day. She got them here today, but she's not here.

So on behalf of Senator Mendez, although we never recognize anyone in the chamber -- it's clear that I can't recognize them from where I'm standing. But I do recognize Assemblyman Espaillat, who is here. And his district, along with Senator Mendez' and mine, are areas that the Duarte Institute operates. They're an affiliate of the original Duarte Institute from the Dominican Republic.

This is the 187th birthday of Juan Pablo Duarte. We wish him continued good health.

And we'd also like to point out that John Sheppard, who is the president of the Duarte Institute, along with other members, is here today, and we welcome them to the chamber.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Would you please

take up Senator Alesi's bill.

ACTING PRESIDENT MEIER: The Secretary will read Calendar Number 54.

THE SECRETARY: Calendar Number 54, by Senator Alesi, Senate Print 4124A, an act to amend the Workers' Compensation Law, in relation to liability for compensation.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MEIER: Senator Alesi, an explanation has been requested of Calendar 54 by Senator Paterson.

SENATOR ALESI: Thank you, Mr. President.

This simply would allow that any worker injured in the course of an illegal act, if he or she were convicted of an illegal act, would not qualify for benefits under the law.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, I would ask if Senator Alesi would yield for a question.

ACTING PRESIDENT MEIER: Senator

Alesi, do you yield?

SENATOR ALESI: Yes.

ACTING PRESIDENT MEIER: Sponsor yields.

SENATOR PATERSON: Senator Alesi, obviously if someone were robbing the premises at which they worked and during the commission of the crime they fell down the stairs and hurt themself, it would be ridiculous and quite imprudent for them to then apply for workers' compensation.

But I wonder if the legislation as proposed by you is a little overbroad in its interpretation, because I can think of some examples, with which I wish you would comment, where the employee's action might be illegal in the sense that it's not lawful, but it probably doesn't constitute any more than a violation, and, when balanced against the damage that might be accrued that would result in workers' compensation, I wonder if it would be fair.

For instance, an employee who's smoking a cigarette in an elevator, which is illegal, but then the elevator crashes and the

employee is seriously hurt.

Or an employee, for instance, that might come into a building late at night, using their key, but it is a point where the premises are closed, and so the employer might say, in order to fight the workers' compensation, that "We are going to charge the employee with trespass," which technically might be what the employee did, although it might be a custom that people come in the office with their keys after hours all the time.

My question, Mr. President, is whether or not these not speculative but certainly possible examples might not defeat the purpose for which the legislation has been drafted.

SENATOR ALESI: Well, Mr. President, I don't think that they would defeat the purpose at all.

First of all, as you know, the Workers' Compensation Board does have some latitude in determining these cases.

And, secondly, it would be a determination of the level of crime by the

courts as far as a conviction would be concerned.

But most importantly, I think that you have to deal with the fairness of this issue, and the fairness of this issue is fairly plain to me. The Senator points out that if someone came onto a workplace and exploded a bomb, then he would embrace the concept that's in this legislation. But if it were something of a lesser nature, then he would not. At least as far as what I interpret his comments to say.

So I would simply say that anyone who is caught and convicted of an illegal act and injured as a result of that illegal act should not qualify for compensation. But in a case where it's a minor issue, then it would be the Workers' Compensation Board's domain to determine that, and that would probably prevail.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Alesi would continue to

yield.

SENATOR ALESI: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator, I hope you would correct me if I'm wrong, but my reading of the Workers' Compensation Statute, and just perusal of the information there, reveals to me that it would appear that the same latitude that you described that the Workers' Compensation Board possesses might be used to defeat a cause of action resulting in the granting of workers' compensation to a convicted criminal. In other words, that we have the dicta in the statute right now to actually stop that.

And it would seem to me that therefore, further legislation would open the door to the examples that I was giving rather than the one that you gave.

SENATOR ALESI: Mr. President, was the Senator asking me to respond, or is he making a statement?

ACTING PRESIDENT MEIER: You want

a ruling on that point, Senator?

Senator Paterson, do you have a question for Senator Alesi?

SENATOR PATERSON: Senator Alesi, what did you think of that?

(Laughter.)

SENATOR ALESI: I think we - through you, Mr. President, I think we had the same debate last year. So I'll try to give an answer that's in the same vein.

I believe that if you look at the disability portion of workers' comp, it already would preclude anybody from collecting under the circumstances that are described in the bill. So this just brings that into a parallel set of circumstances.

But more importantly, I think if you just simply look at the nature of this bill and what it is designed to do, it is recognizing that no one should be rewarded, financially or otherwise, if they've been convicted of a crime and they've been injured as a result of the crime that they've been convicted of.

SENATOR PATERSON: Thank you,

Senator Alesi.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: There are many times in the law, Mr. President, where we are forced to go back and restate the law. Because even though it might exist in print or interpretation under the existing statute, there becomes a need, because of a lack of adherence to the legislation, to then go back and relegislate -- and we've done that many times in history -- to make the point of public policy that something is wrong and we implore those who carry out the law to follow it.

So I can understand why, if Senator Alesi were to believe that there were a number of crimes being committed and the victims were seeking and receiving workers' compensation, that we would have to go back and do this.

I don't think, with the exception of one exception that was cited in this legislation, that that has been a regular occurrence, or even one that occurs so much

that it would even be disturbing. That did it happen in a case where probably the ineptness of the Workers' Compensation Board, more than the legislation, contributed to it? I would grant that it probably happened.

But what I think is more important is Senator Alesi's answer to my last question revealed a desire to make sure that people who had committed crimes and were convicted as such would not receive workers' compensation. We heartily agree.

But this legislation goes beyond that. It says "illegal acts." And I don't always know what illegal acts are, or what, just by the fact that something is unlawful, would draw it into the ambit of what might be classified as an illegal act.

There are a number of things that people could be doing that are in a sense wrong, or not right, under the statute, such as the examples of smoking or if an employee is driving a car that's not registered. It might not have actually been registered under the employer's negligence, but the employee, because they are driving the car, could be

held culpable.

What about an employee who's exceeding the speed limit by a couple of miles an hour but then gets hit by another car? They didn't cause the accident, but because they exceeded the speed limit, that's an illegal act.

And that's what my primary objection to this legislation is, that it's basically what we call overbroad. It covers too many instances that would really be appropriate for the legislation.

Let's just remember that in the last few weeks a case was handed down by the Court of Appeals relating to an incident in Brooklyn where a rape victim was unable to sue her employer even though the facility was - had absolutely no safety or security, allowing the rapist to come in and commit a horrible act. She was unable to sue because, under the Workers' Compensation Statute, you cannot sue an employer for negligence on these types of issues.

Well, the fact is that what's good for the goose is good for the gander. If we

can't sue the employer for his or her potential illegal acts, I don't think that we should be able to hold the employee culpable for those illegal acts unless they are a conviction for a serious crime, which we think the flexibility of the Workers' Compensation Board provides for, as such, now.

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: Those recorded in the negative on Calendar Number 54 are Senators Connor, DeFrancisco, Dollinger, Duane, Farley, Marcellino, McGee, Montgomery, Onorato, Paterson, Schneiderman, Seabrook, Smith, and Stavisky. Also Senator Kruger. Also Senator Morahan. And also Senator Stachowski.

Ayes, 35. Nays, 17.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I'd like consent to be recorded in the negative on Calendar 49, Senate 1143.

ACTING PRESIDENT MEIER: Without objection, Senator Schneiderman will be recorded in the negative on Calendar 49.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. Without objection, I would like to be recorded no on Calendar 35.

ACTING PRESIDENT MEIER: Without objection, Senator Montgomery will be recorded in the negative on Calendar Number 35.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 58, by Senator Johnson, Senate Print 1531, an act to amend the Domestic Relations Law, in relation to visitation rights to infant grandchildren.

SENATOR MONTGOMERY: Explanation, please.

ACTING PRESIDENT MEIER: Senator

Johnson, an explanation has been requested of Calendar 58.

SENATOR JOHNSON: Mr. President, this is a minor change in the law which would extend the same opportunity to petition for visitation rights to a step-grandparent as those now enjoyed by a biological grandparent.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes. Mr. President, I just wanted to ask the sponsor if he would yield for some questions.

ACTING PRESIDENT MEIER: Senator Johnson, do you yield?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Yes, thank you.

Senator Johnson, your bill would open up the visitation rights or the standing of grandparents to step-grandparents to petition the court for visitation rights?

SENATOR JOHNSON: That's right.

SENATOR MONTGOMERY: And for what reason are we providing this opportunity for step-grandparents? Do grandparents already have this right to petition?

SENATOR JOHNSON: Grandparents do. But one of the grandparents may be dead, that grandparent may have married someone else who raised this child who is now the parent of the grandchild and so forth, but they have no rights.

I mean, right now some courts permit step-grandparents to visit as well as grandparents. But some courts have not, have misinterpreted the law to say if you are not a biological grandparent, you have no right to petition for visitation.

We're just saying that as a step-grandparent who's essentially been part of the family for probably decades, that this step-grandparent stands in the same place as the biological grandparent who is no longer there.

Nothing -- nothing radical about it at all.

SENATOR MONTGOMERY: So now,

Mr. President, if Senator Johnson would continue to yield.

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: Sponsor yields.

SENATOR MONTGOMERY: It is my understanding, Senator Johnson, that there is a case currently before the Supreme Court, Troxel versus Granville, in which the court has to decide whether or not grandparents - even grandparents, biological grandparents - have this right.

They have -- so if your bill is passed, would it not possibly be that based on this decision, it could be ruled unconstitutional?

SENATOR JOHNSON: Well, I think this is a difficult case for the court. But actually, that case you referred to provided that anyone who has any interest in visiting the child without any relationship at all may also petition the court for those visitation

rights.

I think Wisconsin, which had a grandparents law, went too far when they passed a law like this saying essentially anybody can visit the child who chooses to do so.

All this would say is whatever rights grandparents would have in our state, the step-grandparent would have the same right.

SENATOR MONTGOMERY: Mr. President, if Senator Johnson would continue to yield for just one last question.

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR MONTGOMERY: Senator, could you give me a specific scenario example of how your bill would work and under what circumstances? I'm trying to figure out what would -- why would a step-grandparent be forced to or interested in going into court to

get visitation rights for a child.

SENATOR JOHNSON: Well, I mean, there are many circumstances. As you know, many children have stepparents now, due to the fact of divorce, and that's a great number of our people.

Now, if that is the family that really raised the child -- and suppose that, for argument's sake, the father dies, the stepmother who raised the child would like to visit, but under the law it could be interpreted that she could not visit. I'm saying if she essentially raised the child who marries and is the parent of another child, they have the same right as if the family had stayed together, there had been no death in the family. She would have the same right as an existing biological grandparent.

I think it's appropriate, and it's only in response to some cases where some judges have interpreted it to mean only biological. I'm saying any grandparent that's really a legitimate grandparent, whether biological or by marriage, could have that same right to visit.

And all we're doing is letting them petition the court. The court doesn't have to grant it. As you know, Wisconsin is a radical case, where they say anybody who wants to visit this kid can just file papers to the court and maybe visit the child. That may be someone not really acceptable to the family at all. But a relative would, I think, most times be acceptable. But that's for the court to decide, not us.

We're just saying whatever rights remain after the Supreme Court case for grandparents would also remain for the step-grandparent. That's all.

SENATOR MONTGOMERY: Okay, thank you.

Mr. President, briefly, on the legislation.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Thank you.

I'm just reminded, as Senator Johnson is talking, that we now have a classic grandparent -- biological grandparent versus people who are not as closely related to a

child, in the Elian Gonzalez case. That the father would like to have that child returned to him, the biological grandparents on both sides would like to have that child returned to them. But in fact, it's relatives who are much further removed from that child who are petitioning to in fact retain custody of that child.

And I think in all of this, the basic interests of the child gets lost. And so I voted no in committee, I'm going to continue to vote no. I think there is a question of the best interests of a child.

And I'm not always sure or clear that grandparents or cousins or uncles or aunts or et cetera have absolutely the best interests of the child in -- whenever they decide that they would like to enter into the child's life.

And also, there's the question of constitutionality.

So I'm going to continue to vote no on this bill, Mr. President.

SENATOR JOHNSON: Mr. President.

ACTING PRESIDENT MEIER: Senator

Johnson.

SENATOR JOHNSON: Just so that no one is confused here, we're not talking about custody. We're merely talking about visitation granted at the wishes of the judge who entertains the petition.

So I don't think it's identical at all to anybody trying to take a child from the parents at all. It's merely visitation. I'd just like to clear that up.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, just a point of clarification, if Senator Johnson would yield.

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator, is the step-grandparent the parents of the stepparent? Or is the step-grandparent where the stepparent's stepchild then has children?

SENATOR JOHNSON: You'd better off that stair stepper, that's all I can tell you. You're getting too confused here.

We're talking about, if you'd like an answer, the person who is now a member of the family, by marriage, of the child who has had a child or has been the father or mother of a child. We're not getting too far removed.

Like your grandpa married somebody else, that's your step-grandmother. If you don't want to see her, that's okay with me.

Are you okay, David? Senator?

SENATOR PATERSON: All right, let me try that again. If the grandparent remarries, that's the step-grandparent?

SENATOR JOHNSON: Yes. But the grandparent may not remarry when he's a grandparent, he may have married when he was only a parent. And this person may have been part of the family 10, 20, 30, or 40 years.

SENATOR PATERSON: Right.

SENATOR JOHNSON: Just subsequent to the birth of the child who's the parent of the child in question for visitation.

SENATOR PATERSON: Then I can simplify the question to this. If you were a stepparent and that child grows up and then has a child, are you now a step-grandparent? Or are you removed?

SENATOR JOHNSON: I guess you are.

I think you've clarified it, yes. It's perfectly clear. Everyone understands it, and it's a good bill. I hope you support it.

SENATOR PATERSON: Well, now we've all learned something. Thank you, Senator.

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, 51. Nays, 2. Senators Montgomery and Morahan recorded in the negative.

ACTING PRESIDENT MEIER: The bill

is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Energy Committee at the desk. I ask that it be read.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Senator Wright, from the Committee on Energy and Telecommunications, reports the following bills:

Senate Print 188, by Senator Trunzo, an act to amend the Public Authorities Law;

2421, by Senator Wright, an act to amend the Public Service Law;

2422, by Senator Wright, an act to amend the Public Service Law;

2423, by Senator Wright, an act to amend the Public Service Law;

And 3900, by Senator Wright, an act to amend the Public Service Law.

All bills ordered direct to third

reading.

ACTING PRESIDENT MEIER: All bills directly to third reading.

Senator Skelos.

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

ACTING PRESIDENT MEIER: Yes, we have a motion, I believe.

Senator Morahan.

SENATOR MORAHAN: Mr. President, I offer the following amendment on Calendar Number 107, Senate Bill 5842, and I ask that the said bill retain its place on Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we adjourn until tomorrow, Tuesday, January 25th, at 11:00 a.m. sharp.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Tuesday, January 25th, at 11:00 a.m.

(Whereupon, at 4:00 p.m., the Senate adjourned.)