NEW YORK STATE SENATE

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REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

I ask everyone present to please rise and repeat with me the Pledge of Allegiance.

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

THE PRESIDENT: With us this afternoon to give the invocation is Reverend George Grace, senior pastor of First Bible Baptist Church, in Rochester, New York.

REVEREND GRACE: I had the privilege of being here about ten years ago. I don't recognize very many of you, so you're new on the block.

But I want to say hello to Senator Dale Volker, Senator Joe Robach, and Senator George Maziarz, three good men that I've had the chance to do business with over the years, and commend them very highly.

Join me, if you would, in a word of prayer.

Our Dear Father, we're very grateful for the privilege to be here today,

just for our lives. We treasure them so dearly, and we thank You for that gift.

Lord, right now we want to remember our young men and women in our armed forces and their families. Lord, we recognize that they are putting themselves between us and danger. We thank You for their spirit and willingness to sacrifice and to give for their nation, and we ask that You would guide them and protect them.

We pray for their families, for the fears, the fear of the unknown and what may happen tomorrow. Lord, I pray that You would be with them and still those fears. And God may all of us remember them and be in prayer for them.

I thank You for these men and women right here who serve us in Albany. Lord, their sacrifice -- and I recognize that every one of these people has a story behind them. They've seen certainly some defeats in their lives, but they've been victorious to this point. And Lord, through their struggles, they've come to this place to represent hundreds and thousands of people. God, I pray

that You would grant them wisdom.

I thank You for the privilege still today to be able to come and acknowledge You here in this Senate. I commend these people for that, and I pray that it will continue. Bless their meeting today.

Bless the great State of New York. And we pray this in the Lord Jesus' name, amen. Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 17, the Senate met pursuant to adjournment. The Journal of Saturday, March 15, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Johnson,

from the Committee on Finance, reports the following bill direct to third reading:

Senate Print 2935, by Senator Marcellino, an act to amend the Environmental Conservation Law and others.

THE PRESIDENT: Without objection, the bill is ordered direct to third reading.

Reports of select committees.

Communications and reports of state officers.

Motions and resolutions.

Senator Volker.

SENATOR VOLKER: Madam President, on page 9 I offer the following amendments to Calendar Number 74, Senate Print Number 662, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR SKELOS: Madam President, if you could recognize Senator Robach.

THE PRESIDENT: Senator Robach.

SENATOR ROBACH: Madam President,

I just wanted to take a moment to thank Reverend Motley [sic] from First Bible Baptist Church, in the heart of my district, for offering up the prayer today.

And not only he and his wife Penny, in his prayer and focus here for us today, but they really are holistic people who practice what they preach and do so much in our community for young and old alike, not only talking about the goodness of the Bible and being Christlike and caring about others, but they live that every day in so many of their ministries, in sports, in education, in so many things.

And I want to thank him officially, not only for his prayer, but really he and his congregation enhancing our community so greatly and being such great neighbors.

Thank you, Madam President.

SENATOR SKELOS: Madam President.

ACTING PRESIDENT LITTLE: Senator Skelos.

SENATOR SKELOS: If we could go to motion and resolutions, I'd like to at this time move that we adopt the Resolution

Calendar in its entirety. And then if you could recognize Senator Maltese on Resolution 774.

ACTING PRESIDENT LITTLE: All in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT LITTLE: Opposed, nay.

(No response.)

ACTING PRESIDENT LITTLE: The Resolution Calendar is adopted.

Senator Maltese.

SENATOR MALTESE: Madam President, a resolution is on the calendar today recognizing the 92nd anniversary of the tragic Triangle Shirtwaist Factory fire of March 25, 1911.

There will be an appropriate ceremony held on Monday at 1:00 p.m., at which all members of the Legislature and others are invited. It will be held in the concourse. And there will be a ceremony attended by local firefighters as well as officers of the fire departments.

The Ladder Company 20 and the officers of UNITE!, which is the successor to the International Ladies Garment Workers Union, will also hold an appropriate ceremony on March 25th at Washington Square, which was the site of the terrible fire.

Just a moment of history as far as the remembrance of this tragic fire and the 146 poor immigrants that perished in that fire.

At the turn of the century, urban working conditions were terrible in the new factories that were forming all over the country taking advantage of the new machines that were available, and nowhere in the country were conditions worse than in New York City.

Rows and rows of machines would operate in very crowded, congested areas, usually in slum conditions. Doors would be blocked to keep employees from taking a break or perhaps taking garments with them. All over and around the machines were piles of residue of the sewing machines.

The Gibson girls that were

glamorized by Charles Dana Gibson were coming into the fore, and the shirtwaist was adopted as a garment that was recognized all over America as the new garment of the "type-writers," as the young ladies were called who were beginning more and more to work in offices as they left the home.

The Triangle Shirtwaist Factory was an alleged fireproof building, which unfortunately did not apply so much to the interior of the building as to the brick exterior. Just shortly before the Triangle fire, a committee of owners had met and had met with officials of the city, pressing their point that sprinkler systems were really not needed.

The ladies --

ACTING PRESIDENT LITTLE: Excuse me, Senator Maltese.

Can we have order in the chamber, please.

SENATOR MALTESE: The Triangle Factory employed 600 people, the vast majority of them women, almost all of them poor Yiddish and Italian seamstresses. And the majority of

the girls that worked there were as young as 13 and ranged in age mostly up to 17 and 18. Many family units worked there, children, sisters working there together with their mothers.

On the afternoon of the 25th, everybody was getting ready to leave their working place after a long working day, from dawn to dusk, when, nobody knows, but a fire broke out on the eighth floor. The fire quickly spread to the tenth floor, where the executive offices were, and the executives on the tenth floor were able to flee the fire over the adjacent rooftops.

On the eighth floor, the majority of the employees were able to leave by the two small elevators and the two narrow staircases that could accommodate only one person at a time. There was an outside fire escape, which was very poorly built and which eventually crumbled under the weight of the fleeing girls.

The fire spread very quickly, and nobody told the people on the ninth floor. By the time they gathered -- thinking they had

more time because of the smoke, by the time they gathered their belongings and headed for the available doors, which opened inward, there was a crush of employees and frightened and panicked women.

They also headed for the two elevators, and the elevator operators were very brave and made eight and nine trips. But ultimately, the panicked employees forced open the doors and the young ladies threw themselves into the shaft and made it impossible for the elevators to come up.

Ultimately, the tragedy took 146 lives. And as a result of that fire, many names that are now famous became more famous. There was an investigation committee that was presided over by Robert Wagner, Sr., who became the United States Senator from New York. The vice chairman was Alfred E. Smith, who became the Governor. Frances Perkins was involved in the investigation, and she became the Secretary of Labor under FDR, as a result of the changes that they called for as a result of this fire.

Shortly after the fire, there was a

memorial march of 100,000 people, mainly immigrants, through the downtown area and in the Washington Square area, mourning the loss. It was a terrible fire, especially after it came so shortly after the General Slocum fire, which took so many lives in 1904.

The reason that UNITE!, as a successor to the International Ladies Garment Workers Union, remembers the fire is because it was the forerunner of new working conditions and new working regulations throughout New York and the United States of America.

It is a reminder to us of not only the tragic persons that lost their lives but also of the fact that new immigrants are again working in sweatshops in the City of New York and across various areas in the country in the urban areas. It is a warning to us not to repeat those horrendous working conditions.

And in remembrance of those 146 victims, we should not only say a prayer on March 25th but remember their sacrifice, as the immigrants of yesterday did so much to build the heritage and greatness of this

nation.

And, Madam President, I move the adoption of the resolution.

ACTING PRESIDENT LITTLE: Thank you. The resolution has been previously adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Crime Victims, Crime and Corrections Committee in the Majority Conference Room.

ACTING PRESIDENT LITTLE: Thank you. Immediate meeting of the Crime Victims, Crime and Corrections Committee in the Majority Conference Room.

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

ACTING PRESIDENT LITTLE: The Secretary will read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following nominations:

As a member of the Battery Park City Authority, James F. Gill, Esquire, of Rockville Centre.

As a member of the State Athletic Commission, Marc Cornstein, of New York City.

And as a member of the Long Island State Park, Recreation and Historic Preservation Commission, Barbara S. Bancroft, of Muttontown.

SENATOR SKELOS: Move the nominations.

ACTING PRESIDENT LITTLE: The question is on the confirmation of the nominations as read by the clerk. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT LITTLE: Opposed, nay.

(No response.)

ACTING PRESIDENT LITTLE: The nominees are hereby confirmed.

Senator Skelos.

SENATOR SKELOS: I believe there's some substitutions at the desk. If we could make them at this time.

ACTING PRESIDENT LITTLE: Yes, there are, Senator.

The Secretary will read.

THE SECRETARY: On page 9, Senator Velella moves to discharge, from the Committee on Labor, Assembly Bill Number 4697 and substitute it for the identical Senate Bill Number 1119, Third Reading Calendar 66.

And on page 15, Senator Alesi moves to discharge, from the Committee on Finance, Assembly Bill Number 4417 and substitute it for the identical Senate Bill Number 1805, Third Reading Calendar 180.

ACTING PRESIDENT LITTLE: Substitutions ordered.

Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

If we would just let the record know -- I know it was a voice vote -- that I vote no for the nominee for the State Athletic Commission, for many of the reasons that have been brought forth in Mr. Newfield's articles about that commission.

ACTING PRESIDENT LITTLE: Thank

you. The record will so reflect.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT LITTLE: The Secretary will read.

THE SECRETARY: Calendar Number 4, by Senator Alesi, Senate Print 46A, an act to amend the Penal Law, in relation to the crimes of unlawful failure.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT LITTLE: The bill is laid aside.

THE SECRETARY: Calendar Number 71, by Senator Balboni, Senate Print 524, an act to amend the General Business Law and the Penal Law, in relation to operating an aircraft while intoxicated.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT LITTLE: The bill is laid aside.

THE SECRETARY: Calendar Number 152, by Senator Padavan, Senate Print 1054, an act to amend the Vehicle and Traffic Law and

the Administrative Code of the City of New York, in relation to the conversion of abandoned vehicles by local authorities.

ACTING PRESIDENT LITTLE: Read the last section.

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

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

SENATOR PATERSON: I vote aye, Madam President.

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 168, by Senator Meier, Senate Print 1824, an act to amend Chapter 706 of the Laws of 1996 amending the Social Services Law.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 181, by Senator Maziarz, Senate Print 1819, an act authorizing the Commissioner of Transportation to transfer certain lands.

ACTING PRESIDENT LITTLE: Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 213, by Senator Saland, Senate Print 2947, an act to amend the Social Services Law, in relation to the reporting of child abuse.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT LITTLE: The bill is laid aside.

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

SENATOR SKELOS: Thank you, Madam President. If we could go to the controversial reading.

ACTING PRESIDENT LITTLE: The Secretary will read.

THE SECRETARY: Calendar Number 4, by Senator Alesi, Senate Print 46A, an act to amend the Penal Law, in relation to the crimes of unlawful failure to obey.

ACTING PRESIDENT LITTLE: Senator Paterson.

SENATOR PATERSON: Madam President, might we lay that aside for a moment. Senator Montgomery had a question on the bill, and she's in committee.

SENATOR SKELOS: Lay it aside temporarily.

ACTING PRESIDENT LITTLE: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 71, by Senator Balboni, Senate Print 524, an

act to amend the General Business Law and the Penal Law, in relation to operating an aircraft while intoxicated.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT LITTLE: Senator Balboni, for an explanation.

SENATOR BALBONI: Thank you, Madam President.

This bill is a bill that this house has addressed beforehand. It is an issue that truly is a loophole in the law itself. New York State has done a great deal in making sure that we get drunken drivers off the road, drunken snowmobilers off the snow, but we've done nothing to stop people from taking an aircraft, that can certainly be the most deadly of vehicles, and preventing people from flying while intoxicated.

And believe it or not, though the FAA regulates flying as it relates to administration and licensing, there are no criminal penalties for getting behind a cockpit or getting in a cockpit while intoxicated.

There have been several instances,

one of them originating in New York, where a pilot got in the cockpit of a plane, took off, was intoxicated, and landed in a roadway in Maryland, chasing cars off the road.

But another aspect of this, and I'm developing legislation on this now, that this bill is on the front end of an effort to try and change the way we view private aircraft in this state. In meetings with Jim Kallstrom, he's identified rural airports, local, rural airports as things of concern for us as it relates to security.

And I think this bill, though not exactly on that point, is a part of the changing of the culture and perspective as we view these recreational aircraft, that hopefully we can take steps to prevent from being turned into dangerous vehicles, and for the protection of everybody in the state.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Balboni would yield for a question.

ACTING PRESIDENT LITTLE: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, I yield.

SENATOR PATERSON: Senator, I'm honestly shocked to hear that there is no federal law as it relates to operating an aircraft while intoxicated.

Further, I just wanted to inquire from you, do the airlines themselves have a policy relating to the operation of air vehicles while under the influence of alcohol or some other substance?

SENATOR BALBONI: Yes. Madam President, through you, yes, they do, Senator Paterson. And in recent years, the major carriers have adopted a very strict policy where there's zero tolerance for anybody who would try to operate a aircraft after having consumed alcohol.

As you may recall, back in the '70s and '80s, it wasn't uncommon for pilots to come on even commercial aircraft and have had a couple of beers to relax before a flight. As strange as that sounds, that's in fact what went on for many years.

That has now changed. People understand the severity of that. And again, you know, after -- the world has changed from so many perspectives. And certainly after 9/11, that was another one of the aspects that has changed.

SENATOR PATERSON: Madam President, if Senator Balboni would yield for one last question.

ACTING PRESIDENT LITTLE: Senator Balboni, do you yield?

SENATOR BALBONI: Yes, Madam President, I yield.

ACTING PRESIDENT LITTLE: Thank you.

SENATOR PATERSON: Senator, because presumably the arrest would be made on the ground, then therefore it would be applicable in the state. This is not like some legislation that I've questioned on this floor where I can see the federal application but I can't see the state one.

But I would assume, because notice would be taken of the pilot's inebriated status while the plane is still on the ground,

then the state does have jurisdiction. Is that correct?

SENATOR BALBONI: Yes, that's correct. Obviously, it's a very different situation once the plane is airborne.

This is actually meant to be a preventive measure whereby if people observe individuals trying to operate aircraft on state airports, then they are able to detain, arrest, and then penalize that type of behavior. Currently, there's no provision to do that.

SENATOR PATERSON: Madam President, as I'm standing here, I did have one last question for Senator Balboni, even though I promised him the last one would be. But he looks like he can take it.

Will the Senator yield for one last question?

SENATOR BALBONI: Yes, Madam President, I yield.

ACTING PRESIDENT LITTLE: Thank you.

SENATOR PATERSON: Senator, in addition to the pilots, I would assume that

there's no federal law about the condition of the passengers, which has been a problem even since 9/11, people becoming unruly and dangerous because they're in an aircraft. And am I not correct that there's no federal law that covers that kind of behavior?

SENATOR BALBONI: No, Senator Paterson, I believe -- and I apologize, I don't have the citation for you. But I do believe that there are now federal rules in effect that regard passenger behavior and threatening of the safety of a flight.

And I know that those rules have been employed in several celebrity cases as of late, when there have been passengers who have gotten very unruly and attempted to disrupt the flight and they have then, as soon as the plane lands, the FBI is there to pick up the passengers and to remove them.

And I believe that in that case it is very appropriately a federal matter, since it is more often than not an interstate jurisdictional issue.

SENATOR PATERSON: The planes are flying.

SENATOR BALBONI: The planes are flying, that's right.

SENATOR PATERSON: Thank you.

SENATOR BALBONI: Thank you, Madam President.

ACTING PRESIDENT LITTLE: Is there any other Senator wishing to speak on the bill?

The debate is closed.

Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT LITTLE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, will you please call up Calendar Number 4, by Senator Alesi, at this time.

ACTING PRESIDENT LITTLE: Thank you. The Secretary will read.

THE SECRETARY: Calendar Number 4, by Senator Alesi, Senate Print 46A, an act to amend the Penal Law, in relation to the crimes of unlawful failure to obey.

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT LITTLE: An explanation, please, has been called for.

SENATOR ALESI: Thank you, Madam President.

This is a bill that has passed almost unanimously for the last several years, I think with only one negative vote. And it seeks to make it a Class B -- a Class A misdemeanor for failing to yield to an order by a police officer. It makes it a Class -- I'm sorry, a Class B misdemeanor -- a Class A misdemeanor for failing to yield when given an order by a police officer.

And it also makes it a misdemeanor for trying to evade a police officer when given an order to pull over at an excessive rate of speed.

And it also creates an E felony for a circumstance where, under those conditions I just described, someone has suffered a

personal injury.

And I'd be happy to yield to Senator Montgomery, as I anticipate a series of questions from her.

ACTING PRESIDENT LITTLE: Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you. Madam President, through you, if Senator Alesi would just clarify for me a question.

ACTING PRESIDENT LITTLE: Senator Alesi, do you yield?

SENATOR ALESI: I'd be happy to.

SENATOR MONTGOMERY: Thank you.

Senator Alesi, I just want to make sure. I believe that you -- this is an amended version. This is from the last bill, the language has been clarified in here?

SENATOR ALESI: Yes. Through you, Madam President, this bill, as superb as it was last year in its design to protect law enforcement and the motoring public, is even better. It's been enhanced, with a provision that creates an E felony for anybody who violates a section of the law as described in the bill in the event that there is a personal

injury involved.

SENATOR MONTGOMERY: I see. All right. Thank you.

Madam President, I accept the explanation and the amended version. I will be voting yes on it.

ACTING PRESIDENT LITTLE: Thank you, Senator Montgomery.

Is there any other Senator who wishes to speak on the bill?

Read the last section.

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

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT LITTLE: The bill is passed.

THE SECRETARY: Calendar Number 213, by Senator Saland, Senate Print 2947, an act to amend the Social Services Law, in relation to the reporting of child abuse.

SENATOR BRESLIN: Explanation,

please.

ACTING PRESIDENT LITTLE: Senator Saland, please.

SENATOR SALAND: Thank you, Madam President.

Madam President, this bill is a modification of a bill that we passed in this house last year dealing with the issue of clergy abuse as well as the expanded reporting of persons by currently mandated reporters.

What this bill does is it adds clergy to the definition of mandated reporters, thereby requiring clergy to respond, under the Social Services Law, by reporting incidents to the central registry where they aren't otherwise protected by confidentiality.

It also says that where in fact those incidents should come to the attention of a member of the clergy and yet not have come to them by way of a confession, that would require reporting.

It also creates a classification, "persons in position of trust." And the purpose of creating that classification is to

say that there are persons, persons who would seek to foist themselves on children and use their position of trust to accomplish getting into a close relationship with that child.

In fact, while many people may think of pedophiles as being people who lurk in doorways looking perhaps rather ominous and wicked, the fact of the matter is that most studies will tell you that that is really not the profile of a pedophile. A pedophile very often will be a person who is in a position of trust, a person of some repute in the community, a person whom a child has probably been given good reason to have a sense of comfort with.

This bill says that that person in a position of trust, where they have the real or apparent authority to exercise that undue influence, will be subject to reporting by those mandatory reporters, including clergy.

And what it says is that those persons in positions of trust -- and the bill defines, by way of illustration, who those persons in positions of trust are. It talks about athletic managers or coaches, talks

about babysitters, talks about members of the family outside of the household, talks about members of the clergy, talks about people who are really authority figures or people who have the ability to unduly influence.

And what the bill then says is those same mandated reporters who are listed under the Social Services Law in 413 would be required to report where a person in a position of trust was guilty of abusing a child. And child abuse is defined in the bill, as it has been previously, and it covers children up to and through the age of 17.

There is a requirement with regard to the clergy, and what we did was we defined religious institutions to include not only organized and recognized religious institutions under the Religious Corporation Law, but also unincorporated institutions, those that might be more in the nature of perhaps small ministries, storefront ministries, that might not formally be considered under the Religious Corporation Law.

What we then say is with regard to

instances of abuse by the clergy that there would be a 20-year look-back by clergy members of a religious institution. They would be required, within 90 days of the effective date of the bill, to go back through those records, determine whether or not there were any incidents of abuse, and report those incidents to the local district attorney or appropriate law enforcement.

It also says that where a member of the clergy is still engaged in the active ministry, that look-back would be longer. That look-back would be in effect for the duration of that ministry. Some have referred to it as a lifetime look-back.

What this is all about is protecting children. What this is all about is trying to expand the safety net. I think in large part it responds to some of the very tragic and heinous incidents that have been reported in our media and national media regarding abuse by the clergy. But it also seeks to protect children in a fashion that previously New York has not sought to do so.

The bill that we passed previously

in this house required reporting by all mandated reporters of all incidents of child abuse. And if my memory serves me correctly, that bill passed unanimously.

Some of you may recall at the end of the last session there were some feverish negotiations in which an agreement was reached between the Assembly and the Senate, between Assemblyman McEneny and myself. We quite literally shook hands and were prepared to advance the bill in the closing hours of our prior session.

At that time, an issue came to the front. That issue came through the New York Civil Liberties Union and was on behalf of Planned Parenthood and on behalf of rape crisis counselors. And the concern, as expressed at that time, was that there would be -- the bill as agreed upon would have a chilling effect on the willingness of teenagers to avail themselves of the services of these organizations, for fear that the mandatory reporting requirement would result in a teenage young lady being in a position where her teenage young man would wind up

being reported. And it came to be known as "the high school sweetheart issue."

When the session ended, there was a flurry of interest, certainly on the part of the media, as to what prevented this from closing, and everybody agreed that it was the so-called high school sweetheart problem.

This bill addresses the high school sweetheart problem, because those persons in positions of trust are by definition adults. And by definition, that eliminates the high school sweetheart situation.

Let me share with you that some approximately 15 states use a person in position of trust as a measure in determining some of their sexual offense or rape statutes, generally providing for stepped-up penalties where a person in position of trust has engaged in that type of heinous conduct. And in fact, I believe some 18 states require reporting by virtually anybody and everybody who has knowledge of abuse of a child.

This, I believe, is a measured approach that addresses the problems with last year's bill. And this bill really reflects,

with the exception of the person-in-position-of-trust response to last year's problem, a number of agreements that were made with the Assembly. And this bill, with the exception of that provision, probably will mirror -- in fact I do believe mirrors the bill that Assemblyman McEneny has introduced in the Assembly.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Duane, why do you rise?

SENATOR DUANE: Madam President, I believe you have amendments at the desk.

ACTING PRESIDENT LITTLE: Yes, we do.

SENATOR DUANE: Thank you, Madam President. I'd like to waive reading of the first amendment and with unanimous consent be heard on the amendment.

ACTING PRESIDENT LITTLE: Thank you. The reading is waived, and you have the floor, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

Last session I, like many others, was disappointed that this Legislature did not pass legislation dealing with the issue of clergy abuse. And I've been here long enough to know that things can happen very quickly here in the Legislature when there is the will to make it happen that way.

But that that did not happen, for a change, might have been -- not that it didn't happen for a change, because it doesn't happen a lot. But for a change, it might have been a blessing. Because as soon as our discussions on the issue made it into the media, I started to get a large number of phone calls from those who have been victimized by clergy abuse. And I don't think that anyone would disagree that this is a difficult issue to deal with.

I want to thank my colleague Senator Saland for not politicizing this issue, for not being harsh with those that may want the same end but may think that there are different roads that will get us to the same place of preventing clergy abuse in the future, and also for providing for redress for

those who have been victimized in the past.

The legislation that's before us today I think is a very good first step, and I commend the Senator for bringing it forward today.

However, I think that more needs to be done. I believe that more needs to be done both in terms of exactly what it is that this piece of legislation says when you look at both the penalties and the scope of reporting. And so the first amendment would go further, both in penalties and for -- penalties for failure to report as well as for the scope of reporting.

Now, the bill that we have before us today would provide that failure to report is a Class A misdemeanor. The difficulty with that is that there is no further incentive for someone who may not be reporting to start reporting. In other words, to only punish not reporting with a Class A misdemeanor over and over again I don't think is going to solve the problem that we have in nonreporting.

So what my amendment would do is it would continue to say that the first time that

you don't report it would be a Class A misdemeanor, the same as Senator Saland's bill. But my amendment would make it that for the second offense, that would be a Class E felony, so there would be an incentive not to not report again. And for the third offense, it would be a Class D felony.

Now, this penalty is for everyone, not just for clergy. And I think that that's something we need to look at in how it is that we treat all nonreporting, that as it impacts on children we can't just allow second and third offenses to be treated as misdemeanors, we need to step up the penalty to a felony.

Now, I also think that the scope of Senator Saland's legislation needs to be expanded. There is a loophole which I think could be very easily taken advantage of in Senator Saland's bill, which my amendment I think would be able to close. Under Senator Saland's bill, while a clergy member or whoever is alive and in active service, the reporting would go back forever. That is true. However, for a nonactive or deceased member of the clergy, the records would only

have to be opened for the past 20 years.

Now, first, it's easy to put someone on sort of a nonactive duty, and there isn't really a good definition of it. So, for instance, a clergy member, while they may no longer, for instance, in the case of the Catholic Church be hearing confessions and saying mass, they may still perform administrative duties, they may still, if you will, be employed by the institution. And it would be very easy to move someone from active duty to nonactive duty.

And I think that those persons, that we should be able to go back 50 years and see what has happened, not just 20 years. The same is true of those who might be deceased.

And the point of my amendment is not particularly to punish those who have abused children, but to provide redress for those who have been victimized and also to see if there may have been patterns that have not been disclosed.

Now, if you think back, 20 years is not such a long time ago. That would be 1983. And I think that we all know of cases where

children were abused more than 20 years ago. And chances are that an organization or an institution that kept records for the past 20 years probably has kept them for much longer, for much longer than that.

And again, if our goal is to provide for redress for those who have been victimized, 20 years seems like an awfully near-past cutoff. And I also think that whether the perpetrator is alive or dead should not make a difference. Because what so many victims need is a confirmation of what has happened to them, that they were not alone, that they weren't crazy, that this actually did happen to them. And one of the ways that we can find that out is by looking at records to see whether or not other victims, other children, came forward with the same perpetrator.

So if our goal is to provide redress for those who were victimized in the past and to learn from past patterns of abuse which may have been covered up, in an effort to make it so that it doesn't happen to a child again in the future, then we need to

extend back 50 years and find out what has happened.

And that is what my amendment seeks to do, that for those who are not on active duty, and even for those who records were kept who might be deceased, that it would not be enough just to go back 20 years, but we would go back 50 years. And, similar to Senator Saland's legislation, for those who are still in the active ministry, to go back as far as you can.

ACTING PRESIDENT LITTLE: Thank you.

Those Senators in agreement with the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Dilán, Duane, Hassell-Thompson, L. Krueger, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, A. Smith, Stavisky. Also Senator Lachman.

ACTING PRESIDENT LITTLE: The amendment is lost.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. I believe there's an another amendment at the desk.

ACTING PRESIDENT LITTLE: Yes, there is.

SENATOR DUANE: And I'd like to ask that the reading be waived and unanimous consent to be heard on the amendment.

ACTING PRESIDENT LITTLE: The reading is waived. You have the floor, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

The second amendment deals with the ability of a victim to bring forward a civil claim.

Under the current statute of limitations, adult victims of child molestation are barred from bringing a lawsuit. And so what this amendment would do would be to extend the statute of limitations for a civil claim to three years. In other words, there would be a three-year window. Now, after the three-year period is over, all claims that haven't been brought would again

be time-barred from being brought.

And this is to address what we now know, that many victims of child molestation don't come to terms with their abuse and to the psychological harm it may have caused until later on in life. And that often happens long after the current statute of limitations has expired. And so because of the way the current statute of limitations exists, victims don't get their day in court.

Now, California has extended its statute of limitations, and the courts have not been flooded in California with lawsuits. And so what this will do, under the guise of -- not under the guise, but under the ability to bring a civil claim, is to provide for the ability to get actual, whether it be financial or any other form of redress for the abuse that may have happened, or simply the recognition that it has happened under the threat of a civil claim.

And again, the experience in California, where the statute of limitations has been extended, has not been dramatic. There has been no rush to make claims. And I

believe that we should follow the lead of California in this area and allow victims to have their day in court.

ACTING PRESIDENT LITTLE: Thank you, Senator Duane.

Those Senators in agreement with the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Dilán, Duane, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, A. Smith, and Stavisky.

ACTING PRESIDENT LITTLE: The amendment is lost.

Senator Duane, for a third amendment.

SENATOR DUANE: Yes, thank you, Madam President. I'd like, with unanimous consent, to waive its reading and be heard on the amendment.

ACTING PRESIDENT LITTLE: The reading is waived, and you have the floor, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

This amendment would ban charities registered with the State of New York from using charitable dollars for closed or what we would call gagged settlement agreements.

A closed settlement agreement would be defined as any private agreement or court ordered agreement resolving a cause of action which limits the possession, disclosure, or dissemination of information about any part of the agreement.

Now, this amendment would have two benefits. First, when an individual or a government entity or any organization donates money to a charity, they should know where their contributions are being spent. And if charitable contributions are being made to provide assistance to people, that money should not be used to provide a financial settlement to someone for whatever reason.

Secondly, those who are engaged in basically covering up child sex abuse should not be allowed to hide behind a gagged agreement. I think the community deserves and

needs to know. And that would help to prevent these kinds of situations from happening in the future.

This amendment did grow out of the discovery -- unfortunately, here in the Capital Region -- where Catholic Charities paid a victim out of Catholic Charities funds. And even though, when discovered, that money was then quickly replaced in Catholic Charities by diocesan money, it should not have happened in the first place.

I don't think that that will happen again. But I do think we need to enshrine that in law to make sure that we are taking our responsibility as legislators seriously and protect those who contribute money to charitable organizations from allowing that money to be misused.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Those Senators in agreement with the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin,

Brown, Dilán, Duane, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, A. Smith, and Stavisky.

ACTING PRESIDENT LITTLE: The amendment is lost.

Senator Duane, for a fourth amendment.

SENATOR DUANE: Yes, for the fourth and final amendment, Madam President. If I could have unanimous consent to have the reading be waived and to be heard on the amendment.

ACTING PRESIDENT LITTLE: The reading is waived, and you have the floor, Senator Duane.

SENATOR DUANE: Thank you very much, Madam President.

This amendment would allow for criminal charges to be filed at the time close to the sex abuse or eight years within the time the child victim turns 18, or within three years of the date the child discovers or reasonably should have discovered that psychological injury or illness occurring

after the age of 18 was caused by the sexual abuse.

Now, this amendment deals with the ability to bring a criminal case forward, and a criminal investigation. Now, the reason for that is -- and we know this more and more from the psychological science of what has happened to those who were victimized in childhood, particularly by sexual abuse, particularly the trauma of sexual abuse. And that is that after years of not being in touch with or remembering or having full consciousness of the abuse happening, oftentimes later on in life, due to some other crisis or trauma or because of therapy to deal with personal issues, the memory of the abuse comes out.

And so this would allow for a criminal prosecution to proceed of the perpetrator.

Now, I recently had a press conference where many victims came forward. Sadly, there's such enormous pool that there could have been a much larger number of victims coming forward. Some are unwilling to be public about it, and I certainly and I

think we all can respect their choice not to do that.

Now, to a person, though, their coming forward about the abuse is not particularly about the money, it's not particularly about the criminal prosecution of the predator. It's really about the recognition of what happened to them and the acknowledgment of what happened to them and the desire for that not to happen to anyone in the future.

Now, all of the amendments, including this one, are tools which we would have at our disposal to try to uncover cases of past sexual abuse of children and also to uncover patterns of sexual abuse of children. But -- this is on a personal level, and not speaking for the victims -- my outrage is not about the perpetrators, is not about the individual predators. Because in addition to believing that what they did is criminal and needs to be recognized as such, I also believe that that kind of perpetration is a sickness, a mental illness which needs to be treated.

And I feel very strongly that all

of this legislation should be a guide towards sending people into treatment that works. Not treatment that just takes someone out of the public eye, and not treatment that clearly doesn't work, but treatment which I hope one day will have a much more -- a better success than the treatments that we now have seen in so many cases.

My outrage, though, is really centered on those who knew about the sexual abuse, who hid that sexual abuse, who allowed predators, who it seems many of whom seem to be unable to control themselves, to go back into positions where they could harm more children. And that is a terrible, terrible thing.

Now, this legislation has to do with and my amendments have to do with reporting and civil claims and criminal cases and how it is that payments may or may not be made.

But really what all of my amendments, and what I believe Senator Saland's legislation is trying to get at -- I think his incompletely, but I'm willing to

work with him. In fact, I would very much like to work with him on taking a more comprehensive approach -- but what it's really about is hearing the voices of the victims, acknowledging that what happened to them was real and tragic and something for which we all must take responsibility, and to make it so this doesn't happen to any more children.

And so we need to take swift and strong action on this terrible issue of clergy abuse of children and make it our responsibility as a Legislature that it will never, ever happen again.

ACTING PRESIDENT LITTLE: Thank you, Senator Duane.

Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

I want to thank Senator Duane for those amendments to the legislation, which is actually stronger than the legislation last year. And I want to commend Senator --

(Telephone.)

SENATOR PATERSON: Tell him I'm not here.

(Laughter.)

SENATOR PATERSON: I want to commend Senator Saland for his effort on this legislation as well.

Madam President, who do we trust most in our society? Our public officials, law enforcement officials, our clergy, teachers, health-care providers? Those are the people who most disappoint us when there is a malfeasance on their part, either specifically or the notice of behavior that's not reported.

And I think, though Senator Duane has spoken very admirably for himself today, that's what he puts forth and that's what many of us are asking for.

How much more foresighted would it have been if those in the highest decision-making capacities of all of these areas would at this point take a real self-reflected look at what our conduct has been as a society over the last 20 years, the last 50 years, maybe from the beginning of this country. Where there are crimes, it doesn't matter who committed them and in what

capacity. We have a duty to report them.

This is why I'm voting for the amendments, because they enhance protections. This particular amendments tolls the statute of limitations until eight years after the victim is age 18, giving them time to address the perpetrators, those predators who violated them, and also three years after the time the individual becomes aware. Almost like in a products liability case, you have three years after you realize that there's something wrong with the product.

Many people who have suffered from this type of abuse have a dissociative reaction in their personalities bringing on amnesia, multiple personality, other aspects of personality that shield or in many ways obfuscate their ability to remember the circumstance.

When a clinician has made it clear that that memory has been returned only at a later date, we want to give them three years to bring those actions against the individual who may have harmed them and may still be harming other people.

It's our view that regardless of what happens to these amendments, that it will send a message to those who in the past may have even been dispirited and confused by behavior they noticed that actually opens the door for their reporting and brings criminals to justice. That's what we've always said we want to do here in the Senate, and here's another opportunity for us to do it.

ACTING PRESIDENT LITTLE: Those Senators in agreement with the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Dilán, Duane, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, A. Smith, and Stavisky.

ACTING PRESIDENT LITTLE: The amendment is lost.

Senator Lachman, why do you rise?

SENATOR LACHMAN: Madam President, I would like, with your permission, to speak on the bill.

ACTING PRESIDENT LITTLE: Thank

you.

Senator Lachman, on the bill.

SENATOR LACHMAN: Senator Saland, after voting on the amendments, in all candor, I want to state that this is a precedent-setting bill. And I have to commend you not only for sponsoring it but for making it even superior to the bill we voted on and I voted on last year in this chamber, by opening yourself up to other groups, such as the New York Civil Liberties Union, that now there'll be a person of trust or authority involved and there won't be the fear that teenagers have.

And it's an excellent bill, there is no question about it. But I would like to also state that this bill does not refer to any particular religious groups. It refers equally to Roman Catholic priests, to Jewish rabbis, to Protestant ministers, to Eastern Orthodox priests, to Mormon elders. It cuts across the entire stream. And that is why I also think it is a superior bill.

So I'm proud to vote for this bill, and I hope the Assembly will make the same

changes in the bill that you have made.

Thank you.

ACTING PRESIDENT LITTLE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. On the bill.

ACTING PRESIDENT LITTLE: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON: To you, Senator Saland, with this bill I believe that you have helped all of your colleagues in this Senate to become enlightened, enlightened to a major problem that is really rampant. And I'm not really sure that many of us know how deeply this affects so many people in our society.

For the many years that I worked in the substance abusing population, the numbers of women and children that I've worked with who were second- and third-generation abused. Along with their own issues were deep-seated issues of sexual abuse by members of their family, by members of the clergy, by people that they trusted most.

And what we've begun here to do is

to say that we're going to put a stop to this and put a halt to it. And for that I am very grateful.

It is unfortunate that we were not able to accept the amendments that Senator Duane has offered us today, because for many of us who may have been affected by the behavior of those entrusted, it goes back more than 20 years. And closure needs to happen for people who have been victimized. And they need to know and need to understand that the fault is not theirs.

So therefore I commend you on the work that you've done, but we must go further. We must continue to look at this issue and not be afraid, not be afraid of the people who are perpetrating, but be afraid for our children, against whom these crimes are being perpetrated.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you.

Senator Diaz.

SENATOR DIAZ: Thank you, Madam President. I would like to speak on the bill.

ACTING PRESIDENT LITTLE: Thank you. Senator Diaz, on the bill.

SENATOR DIAZ: Madam President, fellow members, I rise to congratulate Senator Saland.

I had the honor of serving in the New York City Council for one year before I came here. And now I have the honor of serving in this State Senate. In both occasions, both occasions, Madam President, I got elected as a clergyman, as a pastor of a church. So I'm not only a State Senator, I'm a pastor. I'm a clergyman.

I'm the pastor of the Church of God in the Bronx, and I'm also the president of the New York Hispanic Clergy Organization. That is an organization composed of more than 150 Hispanic pastors and ministers in the city of New York.

Madam President, I'm saying these things because this is a piece of legislation that will affect me directly and will affect the members of my organization.

However, even though this piece of legislation will affect me directly, I would

like to congratulate Senator Saland for such a wonderful bill and to care for protecting our children. This is a piece of legislation that I will support blindfolded.

I only have one regret, Madam Chairlady, only one regret. It is that I would have loved, I would have loved to have my name added to this bill as a cosponsor. And I'm sad that my name is not there. And I know it's late at this stage of the game, but maybe, maybe, maybe -- who knows? -- my name could be put in there.

And congratulations, Senator Saland. On behalf of this Senator, on behalf of the members of the New York Hispanic Clergy Organization, we congratulate you.

Thank you.

ACTING PRESIDENT LITTLE: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. To speak on the bill.

ACTING PRESIDENT LITTLE: Thank you. Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I also rise in support of the

legislation, to thank Senator Saland for the work he has done to move this forward and to hope when we pass this bill today that we can quickly move to conference negotiations between the Assembly and the Senate to make sure that this becomes the law of New York State.

I do wish that we had been able to include Senator Duane's four amendments, because I think that they would in fact would strengthen the bill. But I hope that we will in the future continue to evaluate whether we could look at these four amendments as separate pieces of legislation, as this is a dynamic process.

And to follow up on Senator Diaz's comments about being a member of the clergy and supporting this, I also appreciate his comments because I think that sometimes, in some corners, this legislation has been perceived of as antireligious.

And clearly, I think, everyone in this house speaks with parallel voices in believing that if you want to assure the future of the right to freedom of religion in

this country, as we so often talk about on this floor, it means also assuring that when people participate in religion that their children have the same protections, and in any other situation in our society.

So I think that we actually move forward with legislation today that in fact increases our rights to freedom of religion in this country while increasing our rights of protection of our families and our children.

And I too wish that we had a structure in the Senate where members of both parties could sign on to bills that everyone supports and could be cosponsors, because in honesty I believe we would move more legislation forward more quickly to satisfactory end, and we would have more successful conference committees between houses, as I am sure we will have on your bill and the Assembly bill today.

Thank you very much, Madam President.

ACTING PRESIDENT LITTLE: Thank you.

Are there any other Senators who

wish to speak on the bill?

The debate is closed.

Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 60th day.

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT LITTLE: The bill is passed.

Senator Morahan, that completes the reading of the controversial calendar.

SENATOR MORAHAN: Thank you, Madam President. Is there any housekeeping at the desk?

ACTING PRESIDENT LITTLE: No, there is not.

SENATOR MORAHAN: Madam President, there being no further business to come before the Senate, I move that we stand adjourned until Wednesday, March 19th, at 11:00 a.m.

ACTING PRESIDENT LITTLE: On motion, the Senate stands adjourned until

Wednesday, March 19th, at 11:00 a.m.

(Whereupon, at 4:32 p.m., the Senate adjourned.)