NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 28, 2004

11:05 a.m.

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, April 27, the Senate met pursuant to adjournment. The Journal of Monday, April 26, 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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

Madam President, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate 6123 and Senate 6209.

THE PRESIDENT: So ordered, Senator.

Senator Skelos.

SENATOR SKELOS: Madam President, are there any substitutions at the desk?

THE PRESIDENT: Yes, there are, Senator.

SENATOR SKELOS: If we could make them at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 5, Senator Fuschillo moves to discharge, from the Committee on Consumer Protection, Assembly Bill Number 10866 and substitute it for the identical Senate Bill Number 6927, First Report Calendar 831.

On page 8, Senator Johnson moves to discharge, from the Committee on Tourism, Recreation and Sports Development, Assembly Bill Number 10002 and substitute it for the identical Senate Bill Number 6333, First Report Calendar 868.

And on page 13, Senator Golden moves to discharge, from the Committee on Social Services, Assembly Bill Number 2350 and substitute it for the identical Senate Bill Number 2223, First Report Calendar 919.

THE PRESIDENT: So ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a Resolution 4706, by Senator DeFrancisco, at the desk. Could we have it read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary

will read.

SENATOR SKELOS: Madam President, lay that resolution aside temporarily.

THE PRESIDENT: The resolution is laid aside temporarily.

Senator Skelos.

SENATOR SKELOS: And if we could now go to the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 147, by Senator Skelos, Senate Print 1015, an act to amend the Family Court Act and the Domestic Relations Law, in relation to abandoned infants.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 10. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 149, by Senator Saland, Senate Print 1913A, an act to amend the Social Services Law, in relation to abandoned infants.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 12. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 199, by Senator Marchi, Senate Print 1884A, an act to amend the Judiciary Law and the Education Law, in relation to creating the 13th Judicial District.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 362, by Senator Golden, Senate Print 6047, an act relating to constituting Chapter 35A of the Consolidated Laws in Relation to the Elderly.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Golden, to explain your vote.

SENATOR GOLDEN: On the bill, Madam President.

THE PRESIDENT: You may proceed.

SENATOR GOLDEN: I am -- I'm sorry, not on the bill, excuse me.

THE PRESIDENT: You may proceed to explain your vote, Senator.

SENATOR GOLDEN: Thank you.

It is a quiet bill, and I thank the conference and the Senators here -- and

hopefully, God willing, the Assembly will also pass this bill, and I think they will -- in getting a responsible elder law here in the State of New York so that we can codify and bring all of these laws that pertain to seniors around this state, the 3 million plus seniors, that we have one statute to look at that we can find the elder law throughout all the different laws.

We have age groups here that are amazing. We have the Section 536 of the Executive Law, where the age of a senior is 60. And frail and disabled adults, the person's age is 60. NORCs Advisory Committee and Green Thumb, the age is 55. And EPIC is 65 years of age. And looking further afield, in the Business Law a person is 65. And it changes throughout.

And hopefully, in the future, we can come underneath one law that describes what an elderly person is here in this state.

And I thank my colleagues for moving this bill and making it possible for us to create an elder law here in the State of New York.

THE PRESIDENT: Senator Golden, you will be so recorded as voting in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 431, by Senator Marcellino, Senate Print 761A, an act to amend the Executive Law, in relation to designating September 11th as "9/11 Remembrance Day."

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 432, by Senator Marcellino, Senate Print 762, an act to amend the Executive Law, in relation

to display of the flag on "9/11 Remembrance Day."

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 708, by Senator Velella, Senate Print 6759, an act to amend Chapter 831 of the Laws of 1981, amending the Labor Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

733, by Senator Rath --

SENATOR SKELOS: Lay it aside for the day, please, at the request of the sponsor.

THE PRESIDENT: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 735, by Senator Morahan, Senate Print 5391, an act to amend the --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 745, by Senator Kuhl, Senate Print 4907, an act to amend the Highway Law, in relation to cooperative agreements.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 758, by Member of the Assembly Cahill, Assembly Print Number 9935, an act to amend the Highway Law, in relation to the designation of the "New York State Troopers T. Michael Kelly and Kenneth A. Poormon Memorial Highway."

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 797, by Senator Trunzo, Senate Print 1000, an act to amend the Education Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 801, by Senator Volker, Senate Print 5556 --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 807, by Member of the Assembly DiNapoli, Assembly Print Number 6065B, an act to amend Chapter 143 of the Laws of 2002.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Madam President, if we could return to motions and resolutions, there's a resolution at the desk, 4706, by Senator DeFrancisco. If we could have it read in its entirety and move for its immediate adoption.

THE PRESIDENT: Motions and resolutions.

The Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 4706, congratulating the Skaneateles Mite Hockey Team and Coach John Miller upon the occasion of winning the 2004 Skaneateles Youth Hockey Mite Festival Tournament.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy

living, imparting a desire for success and developing a sense of fair play and competition; and

"WHEREAS, It is the sense of this Legislative Body to recognize and pay tribute to those young people within the State of New York who, achieving outstanding success in athletic competition, have inspired and brought pride to their friends, their family, and their community; and

"WHEREAS, This Legislative Body is justly proud to congratulate the Skaneateles Mite Travel Hockey Team, which consists of 7-, 8-, and 9-year-olds who attend school in either Skaneateles or Marcellus. Together, they have captured the 2004 Skaneateles Youth Hockey Mite Festival Tournament title; and

"WHEREAS, The 2004 tournament, which was hosted by the Skaneateles Mite Travel Hockey Team, attracted teams from throughout Central and Western New York State. The tournament was held on the weekend of March 6-7, 2004; and

"WHEREAS, As the result of team seeding, the Skaneateles Mite Travel Hockey

Team drew an especially challenging tournament schedule. To qualify for the championship round, Skaneateles had to defeat talented teams from Lysander, Rochester and Amherst. Skaneateles proved that they were able to rise to that challenge; and

"WHEREAS, Once having qualified for the championship game, Skaneateles then took to the ice against Valley, a team from Syracuse that had earned a reputation for playing a fast and physical game; and

"WHEREAS, The first period ended in a scoreless tie, the result of outstanding saves by goal tender Danny Sakal of the Skaneateles Mite Travel Hockey Team; and

"WHEREAS, In the second period, Team Captain Tyler Stanton put the puck in the net for the first Skaneateles score. An unassisted goal by the Valley meant the second period ended in a 1-1 tie; and

"WHEREAS, When the third period got underway and the end of regulation time was in sight, the Skaneateles Mite Travel Hockey Team rallied and clearly became the dominant team. A goal was scored by Tyler Stanton with an

assist from Justin Miller, another goal was scored by Jake Lilly with assists from Tyler Stanton and Justin Miller, and a third goal from Ty Strods was more than Valley could overcome. Skaneateles emerged with a victory and a final score of 4-2; and

"WHEREAS, While the above-named skaters were those who scored, hockey is a team sport, and no team can achieve success without every member doing their best; and

"WHEREAS, Other team members all contributed and excelled throughout the season, as well as during the tournament, and they include Thomas Bronk, who proved his worth as a utility player on offense, on defense, and in the goal; Tyler Haberstock, known as 'The Missile,' for the speed at which he accomplished transitions from offense to defense; Connor Hill, who forced opponent turnovers throughout the season; defenseman Connor O'Hara, who developed a keen sense of reading and reacting to the opponents' offense; Erik Pola, who earned a reputation for error-free play on defense; Alex Weiss, who will be remembered for the key goals he

scored during the tournament against Rochester and Amherst; and Max Weiss, who developed into an important anchor for the team's defense; and

"WHEREAS, Upon completion of the tournament, the Skaneateles Mite Travel Hockey Team can rightfully and proudly boast a season record of 30 victories, just nine losses, and four ties; and

"WHEREAS, The athletic talent displayed by this team is due in great part to the efforts of Coach John Miller and his assistant coaches -- Jeff Bronk, Bob Stanton, and Rich Stanton -- who together are skilled and inspirational tutors, respected for their ability to develop potential into excellence; and

"WHEREAS, The many successes realized this year by the Skaneateles Mite Travel Hockey Team would not have been possible without the never-ending encouragement and support of parents, friends, family, and the community at large; and

"WHEREAS, In addition to their excellence on the ice, members of the 2004

Skaneateles Mite Travel Hockey Team are known off the ice for being responsible members of their community, for their studies, and for their sense of good sportsmanship, thereby demonstrating to themselves and to others that they have an enviable combination of talent and character which reflects favorably upon them, their families and their communities; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Skaneateles Mite Travel Hockey Team on their successful season, overall team record, and capture of the Skaneateles Youth Hockey Mite Festival Tournament; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the members of the Skaneateles Youth Hockey Mite Travel Team and Coach John Miller."

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Madam President. I rise to congratulate the Skaneateles Mite Hockey Team, who got here

just in time, just in time for this resolution. And they're standing up now.

I just want to tell them very briefly that the people you're playing with now are going to be your friends forever. You're going to remember this event, I'm sure, for a long time. And the most important thing not only is your athletic endeavors, but one of the clauses in the resolution that talks about how well you're doing as far as your studies and your leadership in the community -- as much leadership as you can give as 7-, 8-, and 9-year-olds.

So congratulations, best of luck in the future, and I hope you have a great day here in Albany.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President.

I rise to congratulate the Skaneateles hockey team and thank Senator DeFrancisco for his leadership in recognizing such a wonderful group of young people.

Next to them in the gallery are neighbors in the gallery but also neighbors

just down the road from them in Auburn, the St. Peter and Paul School in Auburn. They're students, administrators, faculty and parents are here today. And I'm very pleased that they were able to see firsthand the success of their neighbors.

And I'm sure we can arrange a hockey game just for -- maybe even Senator DeFrancisco and I could witness and wager on such a performance.

But we're glad that they're here, and I'm very pleased that this great group of young people could be with us today. And congratulations again to the wonderful performance of Skaneateles's hockey team.

Thank you, Madam President.

THE PRESIDENT: All in favor of the resolution please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Congratulations.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 735, by Senator Morahan, Senate Print 5391, an act to amend the Penal Law, in relation to penalties for assault and manslaughter.

SENATOR SCHNEIDERMAN: Explanation.

THE PRESIDENT: Senator Morahan, Senator Schneiderman has requested an explanation.

SENATOR MORAHAN: I'll be very happy to give him one.

This bill amends the Penal Law, which really enacts Mathis' Law. As proposed, this bill would add a new crime of aggravated assault, Section 120.02, to the Penal Law. The person guilty of aggravated assault with intent to cause physical injury to another person, if he or she causes serious physical injury to such a person or a third person, the aggravated assault will be a Class E felony

punished by up to four years in prison.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I'd like to thank the sponsor for his explanation.

I believe there is an amendment at the desk, and I'd like to waive its reading and ask to be heard on the amendment.

THE PRESIDENT: The reading is waived, and you may proceed on the amendment, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

Senator Morahan's bill addresses what is essentially a loophole in the current criminal law. And it addresses a loophole that has existed for some time. I intend to support the bill.

But the purpose of the bill is to deal with the fact that many times in the state of New York people intend to cause injury but in fact cause far more serious injury than they intend. And there's no additional punishment in the current Penal Law.

This amendment would add to the bill that Senator Morahan is proposing today a requirement that we take away the primary vehicle by which physical injury becomes serious physical injury, and that is the plethora of guns that are not safely stored throughout the state of New York. This would add the "Safe Guns Storage Bill" to Senator Morahan's legislation.

It is absolutely undisputed that the failure to safely store guns results in thousands of serious injuries and deaths every year, that what could be a fistfight can turn into a very serious assault, precisely the type of thing Senator Morahan is seeking to address in this legislation.

We need to have a requirement in New York that guns are safely stored, that guns are locked up, that they're kept away from children, that they're kept away from people who in a moment of anger can turn a small assault into a deadly situation.

And this is a piece of legislation that I talk about a lot because it's passed the Assembly 11 years in a row. And I'm very,

very sorry is that our house is the barrier to a very common-sense bill that has overwhelming support throughout the state of New York that is the law in many other states.

Let's pass Senator Morahan's bill. Let's see that crimes of violence are punished appropriately. But let's also pass the safe storage bill. And this bill, I think everyone here has to acknowledge, will reduce the number of incidents in which someone is seriously injured in what could otherwise be a minor altercation.

I urge that we accept this amendment. I urge that before this session is out, we pass the safe storage bill. And I would encourage everyone to vote for this and to vote for Senator Morahan's bill as well.

Thank you, Madam President.

THE PRESIDENT: Those Senators in agreement with the amendment please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Connor, Diaz, Dilán, Duane, Hassell-Thompson, L. Krueger, Montgomery, Onorato, Oppenheimer,

Parker, Paterson, Sabini, Sampson, Schneiderman, A. Smith, Stavisky.

THE PRESIDENT: The amendment is lost.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 2. Senators Duane and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 801, by Senator Volker, Senate Print 5556, an act to amend the Mental Hygiene Law, the Correction Law, and the Criminal Procedure Law, in relation to civil commitment.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I don't request an explanation, but I would ask if the sponsor would yield for

a question.

Oh, he's not here.

THE PRESIDENT: Senator Skelos, we've been asked for an explanation or a -- you'd just like a question?

SENATOR MONTGOMERY: I'll just speak on the bill.

THE PRESIDENT: All right, Senator Montgomery, you may proceed on the bill.

SENATOR MONTGOMERY: All right, Madam President. I would have asked if there were any changes in this legislation. I don't believe there are. So I'll just say what my concern is, continues to be about this legislation.

We do not have a protocol that specifically defines what is -- when a person has been, so-called, cured of their problem. It's a mental illness, I believe. And so we treat them for the criminal aspect of it, but we really do not have in the Corrections Department the facility to treat people whoever the mental illness of inappropriate sexual behavior.

So I think that to say that we're now going to just lock them up for the rest of their lives, without having a program which specifically treats them as mentally ill individuals in addition to the criminal aspect, means that we're really giving a lifetime sentence to people in this particular category.

I think that this bill is premature, as I have said in the past. I think that we need to consider much more carefully and thoroughly and completely what it is that is involved with a person who exhibits this behavior that we call sexual predatory activity, and when that person may or may not be cured. It may be not possible to address it, but there is no way of doing that right now.

So I'm going to vote no on this legislation. I think that we should not be giving a lifetime sentence to people when we in fact don't really know how to treat them, and so we're not really making a judgment that is an educated judgment.

I'm voting no. Thank you.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: On the bill, Madam President.

THE PRESIDENT: You may proceed.

SENATOR FUSCHILLO: I will obviously be voting in favor of this. I want to thank Senator Volker and Senator Hoffmann for their leadership with this issue.

I recall back earlier this year when America was watching CNN and C-SPAN and they saw this angel, this little girl, this Carlie Brucia, 11 years old, down in Florida, who was lured away at a car wash. And they had a video camera, and we saw the tape on TV.

And I look at this case, and I look at this coward of a man -- I hate to even say human being -- who preyed on this little girl, who was arrested so many times prior, brutally raped and murdered the girl.

And today we're joined in the chambers by her father, Joe Brucia, and her grandfather, Joe Brucia as well, who came today to voice their support for this.

How many chances are we going to

give people? We're too forgiving. Here's an 11-year-old girl I characterize as an angel. Her face, beautiful. Her life was taken away from her, a life so promising. And the father's flying down to Florida, where she lived with her mother, tomorrow to dedicate an area at her elementary school in memory of her, with a picture and one of her poems.

Look at what we're talking about: A kid that was brutally raped and murdered. I can't ever properly state my support more than I do now as a member of this esteemed body, and I ask all my colleagues to do so. You know, Carlie can't speak anymore, but we can do something very powerful today.

And the only question I have is why not pass something like this, which is so simplistic in nature, to protect the public. I look at the eyes of the children above me here. And we all want our kids to live long and healthy lives. But we do have a responsibility to protect them in this state, to protect them throughout the nation. And their Congresswoman who represents them where Carlie lived is proposing this on a federal

level.

I just don't understand the forgiveness we give to criminals who prey on little children, so cowardly. Lure them away. Wow, big deal. Take somebody on your own size and see what the results would be.

Mr. Brucia, I thank you from the bottom of my heart on behalf of my children for making the journey up here -- Mr. Brucia is from my district -- getting up at 5:00 in the morning and coming up here to hear the discussion, lend your support for this.

And we do this in memory of Carlie. And we hope that someday we will have a law like this on the books where we will throw away the key. Because they don't have a right to walk out in society, because it's going to happen again. And the history has shown that, that it will happen again if we keep letting them out of the jails.

Madam President, I will be voting aye on this.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you,

Madam President.

Just a couple of days ago, in Syracuse, on the north side of the city in my district, a young 5-year-old girl, Brittany Fish, was abducted. Everyone responded, from the neighbors to 911 to the police departments. Every individual who could possibly help helped in that situation.

And miraculously, within 24 hours, she was found -- unfortunately, not unharmed. All of the details aren't out yet, but we've got a feeling that she was not treated humanely during that period of time and there may have been some type of sexual violence.

There are certain parts of this bill that give me concern. But on the other hand, there are sufficient safeguards, I believe, in the bill for an individual who would face this civil commitment to protect that individual.

But the greater protection, as Senator Fuschillo so eloquently mentioned, has got to be for our children. And I feel very strongly that this bill, despite some technical issues I may have with it, its time

has long come to be here at this point in time -- not only to pass the Senate, but also to pass the Assembly.

So I do support this bill, and in the name of Brittany, in the name of Mr. Brucia's daughter and every other victim that hasn't had the benefit of keeping these people off the street and protecting our kids.

Thank you, Madam President.

THE PRESIDENT: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Madam President.

I rise in support of this bill. And I would just like to offer, to some of my colleagues who may be wondering about its history, a little bit of background on what we have done in recent years in this area and why this is really the cornerstone of what needs yet to be done to make New York State a safe place.

It was many years ago when I asked a Commissioner of Corrections what was happening with the growing number of sex offenders who were being sentenced under New York law. At that time I had seen

statistics that showed that we had increased activities for treatment of offenders sentenced on drug charges, but sex offenders were also a growing category of inmates in our criminal justice system and yet there appeared to be no real awareness that they were somehow different from the rest of the inmate population.

And that began, for me, a many-year study of what is happening not just in New York -- or what was not happening in New York -- but what other states were doing to address the issue of sex offenders.

Sex offenders fall into several different categories. There is no simple explanation for why an individual becomes a sex offender. And it is often very difficult to ascertain how dangerous a sex offender could ultimately become. We needed information about what the history was on sex offenders, whether there were treatment options that could in fact provide some behavior modification, and what type of follow-up needed to be done upon release.

There's another very important

element when one is talking about sex offenders, and that's the fact that for the child molester it is often very difficult to have a criminal charge fit the crime, because it is difficult for the children to participate in the prosecution. And many times, out of respect for the child's youth or the trauma they've already experienced or for the family's suffering, plea bargains are made and sex offenders are sentenced to much lesser charges than they should have received because it would be too difficult or too painful for that child to endure a retelling of the story over and over again.

So what we have is a category of individuals. The large category is called sex offenders, but there are many different subgroups within that. And some of them have never been properly assessed for their true mental state of mind and their potential, because of abnormalities in their minds, to create more and more crimes.

The only way that we can really ensure that we have a safe society when it comes to sex offenders is on a multipronged

approach. First, they need to all be sentenced as early as possible to a program that requires treatment. Some of them, upon treatment, will sometimes, with the use of therapeutic drugs, some of them can become relatively -- and I use the word "relatively" -- safe to society upon release.

There has to be very careful follow-up by the Department of Parole so that, upon release, if continued treatment and extremely close supervision takes place, we have a higher level of comfort that they're not going commit additional crimes.

This has required in New York State dedicated caseloads for our parole officers, advanced training for our parole officers, new electronic information to be able to track their activities.

But there is a category of sex offender that defies any kind of supervision, any kind of adequate parole structure, any kind of therapeutic pharmaceutical help. There is a category of sex offender that is going to be clinically deemed to be so dangerous to society -- the term is presenting

a clear and present danger -- that this person needs to be committed civilly upon completion of the criminal sentence.

Now, the person is simply not warehoused. I understand some of the concerns raised by Senator Montgomery. And I caution Senator Montgomery that within this very, very complex piece of legislation, which, with our fine print, reads 14½ pages, within this piece of legislation there are many details spelled out about the process by which the person is deemed to be civilly committed and what happens with that sex offender upon civil commitment.

The person is going to be reevaluated repeatedly. And should there be a marked change in the risk the person poses to society, there is the potential that the individual could ultimately be released with many conditions.

But it's very likely that in New York State, if we pass this law that we have been trying to pass in the Senate for years and years, if we pass this law, every year there will be a handful of individuals who

will be subject to the civil commitment law, just as there have been in the other states where the law has been enacted.

And it is not an infringement on the civil liberties of those individuals who are committed. It is clearly defined how they will be treated and monitored for any change in their mental abnormalities. But the important message that we have to send to the people of this state is that we will hold them indefinitely if they are going to present that danger to the young children of this state.

It is high time that the Assembly joined with us and passed this measure. The Governor is prepared to sign it into law. We are way behind the curve. I started introducing this legislation in 1990. Eight other states have now passed this law. There is no reason why New York should be lagging behind.

And I too want to thank the Brucia family for their brave determination to turn Carlie Brucia's life into an important legacy of proper legal access. The right response for all of us has to be today to pass this law

in New York State.

Thank you, Madam President.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Madam President, I just would like to briefly explain my vote.

I certainly agree with Senator Hoffmann, and I think we share the same view on this issue, how absolutely complex it is. And certainly I think that this needs a lot more study and understanding.

But the other part of what we can't really deal with is the environment that people have to live in, where water and toothpaste and cars and furniture, everything is sold with sex. And, you know, if anyone has ever seen a Calvin Klein ad, you understand how difficult it is to say to young

people you should not care -- you should not be sexual, sex is bad, when everything that we encounter -- try getting on your computer and not having a sex ad pop up in your face. And this is available to children as well as adults.

But we can't control that. What we can do is be very, very careful and very clear about what it is we're dealing with. This is a very complex disease. And certainly I think we should not vote to commit people for a lifetime. It's going to overcrowd our prisons, and we have no way of dealing with it.

So I'm voting no not because I don't care about criminals who are also sexual predators, but I certainly do care about the fact that we have a major problem in just defining when does sex go from the normal category into the abnormal and what do we do about it.

Madam President, I will continue to vote no. Thank you.

THE PRESIDENT: You will be so recorded, Senator.

The Secretary will announce the results.

THE SECRETARY: Ayes, 58. Nays, 2. Senators Duane and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

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

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

THE PRESIDENT: Yes, there is, Senator.

Senator McGee.

SENATOR McGEE: Madam Chairman, on behalf of Senator Rath, on page number 48 I offer the following amendments to Calendar Number 733, Senate Print Number 3845, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR McGEE: Thank you, Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business to come before the Senate, I move we stand adjourned until Monday, May 3rd, at 3:00 p.m., intervening days being legislative days.

THE PRESIDENT: On motion, the Senate now stands adjourned until Monday, May 3rd, 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:46 a.m., the Senate adjourned.)