NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

January 17, 2006

3:16 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

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 bow our heads in a moment of silence, please.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, January 15, the Senate met pursuant to adjournment. The Journal of Saturday, January 14, 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 Robach.

SENATOR ROBACH: Yes, 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 Bill Number 4736, please.

THE PRESIDENT: So ordered, Senator Robach.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 32, by Senator Volker, Senate Print 6325, an act to amend the Mental Hygiene Law and others.

SENATOR GONZALEZ: Lay it aside.

THE PRESIDENT: The bill is laid aside.

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

SENATOR SKELOS: Time flies when you're having fun. But if we could now go to the controversial reading of the calendar.

THE PRESIDENT: The Secretary will again read.

THE SECRETARY: Calendar Number 32, by Senator Volker, Senate Print 6325, an act to amend the Mental Hygiene Law, the Correction Law, the Criminal Procedure Law, the Executive Law and the Family Court Act.

SENATOR GONZALEZ: Explanation.

THE PRESIDENT: Senator Volker, an explanation has been requested.

SENATOR VOLKER: Madam President, this is -- I'm trying to think about how many years -- initially this bill or a bill, a very similar bill was introduced by me in 1994 after the Kansas vs. Crane decision in the Supreme Court. What this bill provides for, and we have passed a similar bill on many occasions, is for civil commitment of sexually

violent predators.

Now, this bill is the Governor's program bill for 2006. And the reason I mention that is the bill that we passed last year, in 2005, was extremely similar except that we've had some additions and corrections, so to speak.

In fact, I noticed that one of the oppositions to this bill is the Coalition for the Homeless. I think the Coalition for the Homeless really doesn't understand this bill, as a lot of people don't, very honestly. In fact, one of the things that we did this year was to strike out a reference in the bill to hospitalized patients. And really that was talking about people who either were in jail or were in a hospital situation in jail. Because a lot of the mental health people thought that that meant that we might be putting sexually violent predators in local hospitals. Well, of course, that was never the intention.

The process that's involved here, by the way -- and I read in the paper a lot of people say, well, it's unconstitutional. No,

it's not. The process is constitutional. It's been challenged several times. The Kansas law has been upheld twice. In several other states they have a very similar process.

The process involves psychiatrists, it involves -- the Attorney General is the precipitator. He gets the notice of who is a potentially sexually violent predator that is somebody who's about to leave jail.

One of the things I think that has happened here is that the Governor, using Article 9 of the Mental Hygiene Law, has actually kept in people who are considered mentally ill and has tried to use the Mental Hygiene Law. The only problem with that is it does not provide, in fact, the process and the protections that are involved in this bill.

This bill provides all sorts of protections, including counsel, psychiatric evaluations by the person involved, review every year of a person's status.

And what just happened with the Governor was to me very, very important. And I've spoken on this issue on a national -- in national conferences. One of the arguments

against it is that we just do not have enough mental health counseling and that we just do not have the ability to deal with some of these people.

The way you do it, and the only way you're really going to deal with sexually violent predators to try to deal with their problem, is to spend a lot of money. And I'm the first to say that. In fact, the New York Times, in its usual candid style, was criticizing civil commitment by saying it's just too expensive, sort of.

Well, the Governor of this state has ponied up. He's put up $192 million, $130 million for a facility at Pharsalia, which is now a minimum facility, and which is part of the tremendous drop in inmates.

By the way, I noticed the Governor's press release said that there's 63,100 inmates in the system. That was last week. This week there are under 63,000 for the first time. The New York corrections system has gone from 74,000-plus to now 62,900 and something. The reason that's significant is we're the only prison system in the country

that has a falling inmate rate and a falling crime rate at the same time. I only mention that because I think that's important.

My own personal opinion has been for some time that what we should do in New York is make ourselves a model for the rest of the country in dealing with sexual predators. And what the Governor has proposed is just that. We're talking about a lot of money and a lot of employees who are targeting these people. In other words, once this whole system is in place, we probably will be able, in New York, to look at sexual predators and their problems and try to deal with them in a way in which no state in the union has been able or willing to do. And that is critically important, I think, if we're going to deal with this kind of issue.

(Electronic noise interruption.)

SENATOR VOLKER: I just want to point out something -- am I being bugged?

Anyways, I just want to show that I have here the Level 3 sexual predators from my district. This is the compilation of the Level 3 sexual predators. One of them lives

within about three blocks of me.

The reason I mention this is -- and of course Senator Dean Skelos here has been working on Megan's Law, and we're very hopeful that he can come to an agreement on that extension. But the reason this is significant is that some of these people are going to end up in a situation where they may well need civil commitment.

You know, where I figured out, by the way, that this issue, if you look at the development of the sexual predator issue, I first found out when a young Senator from Harlem, whose father was very close to me and my father, asked me to go down to Harlem and do a hearing on sexual predators. He shall remain nameless, but I can only say that he sits right in front of me now as the Minority Leader. He asked me to do a hearing as part of a series of hearings across the state.

And we went to Harlem and we sat there and listened to people talk about abuse, mostly children, but also abuse of women and men. We had a women-hating psychologist, man, and right after him we had a woman-hating

psychologist -- or a man-hating psychologist, woman. I mean, it was the most incredible hearing we had ever had. I remember there were 32 witnesses. And Senator Paterson said to me, "You know, we need psychologists right now ourselves," after that was done.

And the reason I say that was significant is you must remember society only very, very recently has realized how serious this problem is. We still haven't come to grips, for instance, with clergy abuse. We think it's the Catholic Church. We all know that's not true. All the major religions have a problem with it. We all know that, but no one has really got into it yet. It's a very serious problem that has been coming for probably 30, 40 years.

But the civil commitment issue is something -- we're talking about people, mostly people that attack young children. They're very sick people. This bill will allow us a process -- not violation of civil rights or anything of that nature -- a process to be able to keep people in a place where mental hygiene people can review them on a

regular basis and give them intensive treatment that may lead to a breakthrough in finding out how to deal with people who are sexually violent predators. Because we're not succeeding. There is no question we're not succeeding well at all.

There's no question that this issue, even though it involves a comparatively small number of people -- and I keep this in mind, obviously the violent people in this state are much greater. But the numbers of people who are being sexually abused is extremely frightening.

And I will guarantee you this, that we are and we have been a leader in criminal justice. And whatever you can say about George Pataki, he has been an enormous leader in criminal justice. We have probably the most respected criminal justice system in the nation right now. We don't realize it because of course the media in this state doesn't like us and they don't want to tell that there's anything good going on in New York. But that's just the way it is. The rest of the states look at us and they marvel.

I would hope that this mental hygiene criminal justice initiative that we're doing here with the hospital, with the mental health money that we're setting up and so forth, will become a model for the country and that we will learn how to deal with people who are sexually violent predators so that we can find some cure for it but, in the meantime, keep them where they belong, which is in a place where they can't hurt anyone else.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. If the sponsor would yield, please.

THE PRESIDENT: Senator Volker, will you yield for a question?

SENATOR VOLKER: Oh, sure. I'm sorry. I apologize. Yes.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Thank you, Madam President.

Does the bill allow for the civil commitment of juveniles?

SENATOR VOLKER: The bill is not

specifically set up to allow for civil commitment of juveniles. However, we do have a process, as you know, for reviewing juveniles. But it does not specifically deal with the issue of juveniles.

What you mean by "juveniles" is juvenile offenders?

SENATOR DUANE: Yes.

SENATOR VOLKER: No, it does not.

SENATOR DUANE: However, they could be -- a juvenile offender, as opposed to a youthful offender, could be committed under this bill?

SENATOR VOLKER: Could be. But you must -- I think, you know, like anything else, you'd have to be an awfully bad offender. It's possible it could happen, but very unlikely.

The history, by the way, of civil commitment is you really are looking for the worst of the worst. Of course, we have 14-year-olds -- one 14-year-old murdered, what, 16 people, I believe, at one time in New York City and brought on the law that was changed to lower some of the ages. So I think

we have to realize that some young people are probably worse than all the adults put together. But it's a rare occasion.

SENATOR DUANE: But youthful and juvenile, I should say, as well as.

SENATOR VOLKER: Yeah. I don't believe in Kansas that any -- I'm not aware that anybody -- in fact, I'm not aware of anywhere in the country that any juvenile has been committed, civilly committed.

And I don't expect that's going to happen in New York unless you have somebody that's so dangerous -- and, by the way, that could happen now. I mean, under Article 9 of the Mental Health Law, technically speaking, if a person is that mentally ill, even a juvenile could be held even now in a mental facility. They wouldn't be held in a prison, but in a mental facility.

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

ACTING PRESIDENT LITTLE: Thank you. Senator Volker, do you continue to yield?

SENATOR VOLKER: Yes, I certainly do.

ACTING PRESIDENT LITTLE: Thank you. The sponsor continues to yield.

SENATOR DUANE: Thank heavens the switch was to another "Madam."

But I'm going to actually move on. What are the requirements -- if a person who's incarcerated is being considered for commitment, what are the -- what's the notification to that person?

SENATOR VOLKER: Well, what happens is that 120 days before the release, the Attorney General is to be notified that this person is considered, by the Correction Department and Mental Health or whatever, to be a dangerous person. You then set up a process that goes on for some time. You have psychiatrists, you have a multidisciplinary group that gets together.

Go ahead.

SENATOR DUANE: Through you, Madam President, just for clarification, I understand that the notification to the Attorney General is 120 days before.

SENATOR VOLKER: Yes. Right.

SENATOR DUANE: But I'm wondering, when is the person who's being considered notified?

SENATOR VOLKER: Well, as soon as that person is targeted -- that person, by the way, now has the right to counsel. That person has the right to have a psychiatrist of his own choosing review his case.

The protections, the due process ability is in this bill. And there is no way that a person could be civilly committed without a thorough review. He is entitled to a jury trial if he so chooses. And as I say, he's entitled to his own psychiatrist and his own counsel.

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

How is the person notified? What is the process by which that person would receive word that they are being considered?

SENATOR VOLKER: Well, I would assume that it would traditionally be the Attorney General, who is in charge of the

whole proceeding, would notify this person and obviously notify -- make the formal notification to this person. And he would then be apprised of his right to counsel and would be apprised of his right to a psychiatrist.

Remember that, in the meantime, the multidisciplinary group or whatever, Mental Health and all the rest of them, have the right to review him and actually have a psychiatrist review him. He can then, as I said, have his own psychiatrist.

He then would go before a judge and they would advise him of all his rights, and he can then move on to do what he wants to do. He can ask for a jury trial, he can do whatever he wants.

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

SENATOR VOLKER: Yes. Yes.

ACTING PRESIDENT LITTLE: Thank you. Senator Volker, do you continue to yield?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT LITTLE: Thank you. The Senator yields.

SENATOR DUANE: I'm actually going to ask this question sort of as a -- to see if it's factual.

A person could be incarcerated and the day after, potentially, the review could begin even if that person was not even close to their release point; is that correct?

SENATOR VOLKER: No, that's incorrect. It's incorrect because the only way you would do it is if the person was within 120 days of his release.

SENATOR DUANE: So through you, Madam President, if the sponsor would continue to yield.

ACTING PRESIDENT LITTLE: Thank you. Senator Volker, do you continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT LITTLE: The sponsor yields.

SENATOR DUANE: So the sponsor is saying that for everybody, the whole thing starts for the incarcerated person and for the

people who will be preparing to make a decision about what to do, for everybody it's 120 days; nothing happens before that?

SENATOR VOLKER: You see -- probably could. I guess the issue really is, why would you do it? I mean, if they're already in a mental facility -- and by the way, they could be in a mental facility also -- or in a correction facility, what drives the process is the possibility that the person is going to get out.

Now -- so I would suppose you could do it beforehand. But you would -- I guess you would ask why would you do it. Unless the person exhibits such problems -- and one of the issues that has been brought up is that we do have some pedophiles and some people that are in the prison system now that could be, for instance, reviewed before their sentence is up to determine where to put them. But that could be technically done now.

It's just that, interestingly enough, this would possibly provide more rights to those people -- in other words, they couldn't be put in this facility until they

went through a process.

In other words, you've got somebody, for instance, who's in -- well, let's say Attica. I'm just using that for a -- and that person is a dangerous pedophile and he creates a problem for the prison system. One of the interesting issues is if you were going to put him at this facility in Pharsalia, for instance, I would assume the only way you could do that would be to go through a process of some kind to make sure that that person would have to go there.

Because one of the things, Tom, that's important here is -- we have one facility, for instance, right now for just DWIs. Which I happen to -- I had a part in doing, because I thought it was a great idea to keep them isolated. One of the things we want to do with these people that are sexually violent predators is give them the best treatment we can but also isolate them, because they're very dangerous people. And they could be dangerous even to the inmate population, which is something that I think some people never think about.

SENATOR DUANE: The committee that reviews the petitions for commitment, is there a requirement that any of the members of that committee have expertise in mental health?

SENATOR VOLKER: The multidisciplinary team is the commissioners of correctional services, mental health, and anybody that is -- and mental retardation. Because, remember, mental retardation is also involved here.

Quite clearly, these people have to be expert in the mental health area, which is, you know, the -- what you're doing here is when you say "the commissioner," obviously you mean the department itself has their people there to review these people and be part of this team that reviews the people that are going for civil commitment.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

ACTING PRESIDENT LITTLE: Thank you. Senator Volker, do you continue to yield?

SENATOR VOLKER: I do, yes.

ACTING PRESIDENT LITTLE: Thank you. The Senator yields.

SENATOR DUANE: Where would I find the language in the bill about the expertise in mental health for the reviewing committee?

SENATOR VOLKER: Well, since you have the people from Mental Health, when you say "expertise," the Department of Mental Health and the Department of Mental Retardation are the people that are the experts in the field.

And remember, you're also in a situation where you're going to have psychiatrists involved, you're going to have -- in fact, the person himself is entitled to have his own psychiatrist.

And presumably an attorney could ask for its own -- the own expert, that is, the person's -- an expert to review himself. Because the jury trial is a situation where the attorney could ask for his own experts, if he wished, to talk about this person's status. So that is really inherent in the bill itself.

SENATOR DUANE: I guess the -- through you, Madam President, if the sponsor would continue to yield.

SENATOR VOLKER: Yes.

SENATOR DUANE: Is it not possible that you could have, for lack of a better term, a civilian from the department as opposed to a professional from the department?

SENATOR VOLKER: The answer to that is no. I think the problem is, what's the difference? I mean, remember what we're doing here -- wait a minute, Tom. You know, I know what you're saying. You're assuming that this is some sort of a process on a local level.

This is a process involving some of the -- the biggest experts we have in the field are going to be involved in this. And you're going to have an attorney who could protest, obviously, if the people involved are not the people that should be reviewing these people.

I mean, the whole idea of this is to protect society at the same time you're protecting the people themselves who are

involved here. And, you know, so you don't have to say, hey -- at least it doesn't seem to me -- tell mental hygiene they got to have good people.

Well, they better have good people. First of all, the attorney is going to make sure that they -- that he knows if they don't have good people, or the person. And the psychiatrist for the individuals involved is going to do that.

I mean, this is not a -- this is not a process taken lightly. This is a very serious process. So the answer is, quite obviously, this is intended to make sure that the person gets every possible consideration when you're dealing with people who are going to be kept for a long period of time.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

SENATOR VOLKER: Sure.

ACTING PRESIDENT LITTLE: Thank you. Senator Volker, do you yield?

SENATOR VOLKER: Yes, I do.

ACTING PRESIDENT LITTLE: The

Senator yields.

SENATOR DUANE: Thank you, Madam President.

And I want to preface my next question by saying that I absolutely agree with the sponsor and know his commitment to this issue and the seriousness with which he and other members of his conference and, frankly, our conference as well have approached this.

But it's a new area; that's why I'm asking such specific -- and I apologize in advance for how many questions, but I just want to clarify as much as possible.

The issue the sponsor raised about that it's a good thing to have a jury trial is something that I wanted to ask why that is a good thing, instead of having the person ask to see a judge, who might have more experience in the issue than lay -- well, I shouldn't say laypeople, but potentially laypeople on a jury. Why are they prohibited from having that choice?

SENATOR VOLKER: I am not aware that they are prohibited.

By the way, the answer, the multidisciplinary panel and so forth, is on page 7 of the bill. And it relates to the process that is taken -- the person has a right to a jury trial. He will go before a judge. That's assumed. No one is saying that he has to have a jury trial. But he has the right to go before a judge.

And if you look on page 7 and page 8, you'll see that there's a prosecutor review committee, there's all sorts of standards here that are set up to determine probable cause and to determine whether the person should then be reviewed to be able to be determined whether that person -- in fact, if you see 10(d), I'm just looking here, the jury or the court, if a jury is waived, shall determine beyond a reasonable doubt whether the respondent is a sexually violent predator, and so forth and so forth.

That's the applicable section. I apologize, I didn't --

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

SENATOR VOLKER: I do, yes.

ACTING PRESIDENT LITTLE: Senator Volker yields.

SENATOR DUANE: When New York State had a death penalty in effect, we had a special group of attorneys whose responsibility it was to be involved in the defense of those who were eligible to be given the death penalty.

And if I argued that this issue almost rises to the level of the death penalty -- I know it doesn't quite go there, but if it almost rises to that level, why isn't there a requirement that the appointed counsel have that kind of training, expertise in this field?

SENATOR VOLKER: Well, first of all, Mental Health has a series of attorneys who deal in this sort of thing.

The problem that you've got to realize here is you're not going to have anything close to the number of people that is involved with the death penalty and the issues that are involved there. And the protections that are in this bill clearly are far greater

than anything that is involved in jury trials and so forth involving normal criminal proceedings.

You have the Correction Department and the Mental Health Department involved here, the people who treat people plus the people that incarcerate them. You have the attorney general involved. You've got all sorts of different protections involved, which frankly you don't have -- I suppose you have local district attorneys and so forth. This process is a different kind of process than with criminal justice issues, of course.

And the appeal is already internal; that is, the probable cause hearing and that sort of thing. So all the evidence is there. And you have psychiatrists on both sides.

I guess I have trouble -- the attorney's job really is to make sure that the person simply gets the correct procedures. And, you know, it seems to me that there's hardly any other area of the law where we provide as many protections as we do here.

SENATOR DUANE: Through you, Madam President, if the sponsor would continue

to yield.

SENATOR VOLKER: Sure. Yes.

ACTING PRESIDENT LITTLE: Thank you. Senator Volker yields.

SENATOR DUANE: When I went through the bill, I didn't see training anywhere, whether it was judges or appointed counsel. And so I'm just trying to pin down whether there is any requirement for any specific training for anyone who might be involved in this civil commitment.

SENATOR VOLKER: I guess I'm not sure what kind of training we would require.

Remember, Senator, we're in -- sexual predator treatment, like so much in mental health today, is sort of in its infancy. One of the problems, by the way, with equating physical and mental health is that we -- we do the best we can in mental health.

And the professionals are in the Office of Mental Health and the Office of Mental Retardation. Those professionals are probably better than anybody outside the agencies. How you would -- the people who

would train these people would be the same people who are dealing with these sexual predators. So I'm not exactly sure what kind of training you could do.

And the lawyers that are used in this are generally lawyers who do mental health defense and all that anyways. Because they're people who would want to, and are paid for, to do this sort of thing. Remember, the person has the right -- unless he's independently wealthy, which is a little bit rare -- the person has the right to the state paying for these lawyers.

So the people that would do this would obviously be people who were involved in mental health cases and in the expertise that's involved here.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT LITTLE: Thank you. Senator Volker does yield.

SENATOR DUANE: Would I find anywhere in the bill a requirement for an

independent psychiatric evaluation of the respondent?

SENATOR VOLKER: Yes, absolutely. That's in the bill. It says that the person has the right to his own psychiatrist. And it's specifically in the bill -- I can't identify exactly where it is, but that's in the bill ever since, by the way, we first introduced it back in 1994. And one year I passed three different civil commitment bills.

And I can assure you that the requirement of a psychiatrist of your choice is in this bill, as it's been in all the bills.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT LITTLE: Thank you. Senator Volker yields.

SENATOR DUANE: Shockingly, when I asked that question, I actually didn't mean that the respondent's psychiatrist would be independent. I would assume they would have the agenda of wanting to be for the

respondent, and the psychiatrist for the other side would want to be against the respondent.

I'm wondering if there is an independent independent person in the middle that could take each side with a grain of salt.

SENATOR VOLKER: The requirement is that the attorney general and the multidisciplinary people and so forth have the right and the duty to submit a psychiatric evaluation. The other side then has the right to their own psychiatric -- the person of their choosing, they can be examined.

That really is -- I suppose if there was some conflict, the attorney could probably ask for another psychiatric evaluation. But it seems if you had psychiatric evaluations from the proponents and the opponents, or whatever you could say, it would seem to be enough. But I would suppose there's nothing in here that says you can't have a third party, but it only provides for two psychiatric examiners.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue

to yield.

ACTING PRESIDENT LITTLE: Thank you. Senator Volker, do you continue to yield?

SENATOR VOLKER: Sure. Yes.

ACTING PRESIDENT LITTLE: Yes.

SENATOR DUANE: Is there a standard of care for the treatment of those who are committed?

SENATOR VOLKER: This is a mental health facility and basically a mental health statute. Which, by the way, this is why it didn't come out of my committee, because it came out of Mental Health. Because the facility that the Governor is putting the money up for, although it is presently a correction facility, it will really be run by Mental Hygiene.

And anyone who is committed to the care of mental health people has a standard of care that is required. And as the former chairman of Mental Health to my right reminds me -- and by the way, Frank Padavan and I are the only two people that were on the Mental Health Committee since its inception, if I

remember right, way back when -- there is a Mental Health Bill of Rights, there's all sorts of protections, a quality of care commission, as the creator of that reminds me, to look at these kind of things.

And I can assure you one of the thing that the quality of care commission will probably be -- once this is operating, they'll be looking at this -- these, because this is going to be -- admittedly, this is breaking new ground. And I would be willing to bet any money that the quality of care commission is going to be reviewing these facilities on a regular basis.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

SENATOR VOLKER: Yes. Sure.

ACTING PRESIDENT LITTLE: Thank you. The Senator yields.

SENATOR DUANE: On that issue of the standards of care, is the parallel similar to the Department of Corrections has oversight over the health facilities in correctional facilities, similarly the Office of Mental

Health would have oversight over its mental health facilities?

SENATOR VOLKER: Yes. Yes.

The way this -- as I understand the way this operates, the facility is going to be built by separate money. And it's built on a corrections site. But the actual operation of the facility is going to be done by Mental Health and by mental health professionals.

The reason this is going to be expensive is because we are going to have a lot of intensive care at these facilities -- and the Governor well knows that -- that this is going to be and hopefully will be a class setup that will deal with these people in a way that no other state in the union has ever done.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

SENATOR VOLKER: Yes. I do.

ACTING PRESIDENT LITTLE: Thank you. The Senator yields.

SENATOR DUANE: Is there different grades of the environment, or is

everyone thrown into the same -- like within the facility, will there be less dangerous, more dangerous, or will everyone just be considered equally dangerous?

SENATOR VOLKER: Well, you know, at this point, like anything else, I think, these are people that are considered to be sexually violent predators. And as to their treatment in the facility, there may well be a grade depending on how serious the offenders are. But initially they'll all be confined, they'll all have -- in one facility.

Keep in mind that we're separating the sexually violent predators who are civil committees, so to speak, they're separate from anybody else. There's no other people that are going to be in this facility but these people. And they will have the best treatment.

And obviously, if you have somebody that's going to be violent or potentially violent, you're probably going to have more restrictions on those kinds of people because they could be dangerous to everyone else also.

So I would assume that there will

be grades set up. But at this point it's a matter of common sense as to what you're going to do in this facility.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

SENATOR VOLKER: Sure.

ACTING PRESIDENT LITTLE: Thank you. The sponsor yields.

SENATOR DUANE: As part of this bill, I don't see that there's any kind of additional resources or commitment to providing treatment for those inmates who are presently incarcerated.

Is there some kind of companion legislation or budget item which would provide for additional mental health services and treatment for the -- for those who are -- for sex offenders?

SENATOR VOLKER: The answer to that is yes.

The Governor, in fact -- I'm just looking for it here. Of the $192 million that the Governor proposed, $130 million is for the actual facility. The rest of the money is to

provide for beefing up facilities in the meantime and to keep people separated and to provide additional employees for both OMRDD and Mental Health.

That amounts to, let's see -- 35 million will be made available for renovation of current OMH facilities to meet the short-term needs, and 27 million in new operating for OMH in connection with the treating and housing of these people while the new facility is being built.

So these people will be separated. In the meantime, keep in mind, of course, that this process will take a little bit to get up and running anyways, so that there won't be a lot of people that are going to be involved here initially.

So the Governor is providing 35 and 27, which I think is $62 million in additional money to deal with these people initially until the new facility is up and running.

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT LITTLE: Thank you. The Senator yields.

SENATOR DUANE: So the new money is specifically -- the new treatment money is specifically for those who are, for lack of a better expression, on the road to being civilly confined?

SENATOR VOLKER: Yes. These are for people who are going to be or could be civilly confined.

The idea is this is entirely separate money. One of the problems OMH was concerned about is that they would have been asked, with their present budget, to deal with some of these people. And the Governor has committed that in his budget bill -- in fact, there's a budget bill that has this language in it -- that the Governor will provide the money to handle these people in the meantime until the new facility is up and running.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

SENATOR VOLKER: Yes.

ACTING PRESIDENT LITTLE: Thank

you. The Senator continues to yield.

SENATOR DUANE: The other states that do this, have a similar civil commitment law are Kansas and Washington State; is that correct?

SENATOR VOLKER: Yeah, I think there's one other that's tripping in. My counsel tells me there's a couple more too. But the ones that have been operating are Kansas and Washington State, because those were the oldest pieces of legislation involved.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

SENATOR VOLKER: Yes, I yield.

ACTING PRESIDENT LITTLE: Thank you. The Senator continues to yield.

SENATOR DUANE: Thank you. Has anyone ever -- well, I guess maybe there's two or three that have been released from Kansas.

SENATOR VOLKER: Yes.

SENATOR DUANE: Any from Washington?

SENATOR VOLKER: I really don't

know. There's not a lot of people, if I'm not mistaken, in Washington.

And Kansas is -- the story in the New York Times told about how some Kansas legislators were complaining because it was costing them too much. Of course, you have to keep in mind the whole Kansas correction budget is one facility --

SENATOR DUANE: I just want to correct something. It's actually, I think, Kansas, no one has gotten out. Washington State, maybe a couple of people have been released.

SENATOR VOLKER: Yeah, could well be.

I think the people that are in Kansas -- this is just from what I understand -- are really such people that they really never envisioned they would ever get out. I mean, they don't have a lot of people, and I think they -- and, by the way, they don't have the kind of treatment, I do not believe, that we're talking about doing here.

So we would certainly be hopeful that we could get some real progress in mental

health and sexual predators with the proper treatment.

SENATOR DUANE: Thank you. Thank you.

Madam President, on the bill.

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

SENATOR DUANE: My concerns about this bill are several, frankly. And I would like to get them on the record in the hope that if there's more discussion about this bill, in the unlikely case the Assembly doesn't pass this exact bill, that some of these things might get into the discussion about another bill.

I'm very concerned about the possibility of the commitment of young people, youthful and juvenile offenders. And I would like to see language which would differentiate what would happen between adults, youthful and juvenile offenders, because in my mind they're all different -- although, in my mind, juvenile and youthful are similar, but I realize that's not how New York's law is written.

I am very concerned about the requirements for notifying someone who's being considered for commitment. In a criminal case, well, the police and even the DA can do an investigation and then an indictment happens and then the defendant knows they better get an attorney.

However, this is not a criminal situation, this is a mental health issue. And it seems to me that everyone should be able to start together, the person who's liable to be civilly committed at the same time that the state is thinking about civilly committing them. It strikes me that it would be fairer and level the playing field.

And I know that's an odd thing to say when you're talking about who the people are who are falling under this. But for lack of better terminology, that's what I'm going to call it, that both sides should have the same notification to prepare.

I also think that we need to be more specific about the training for those who are going to adjudicate and those who are going to, frankly, on both sides prosecute, if

you will, or fight for civil commitment and those who are going to be on the side of the person who is liable to be civilly committed.

And I also think that it may be better to -- and I understand that it doesn't say that you can't -- that it seems like a good thing that you get a jury. But I'd like to see language which makes it clearer that you could just have it go before a judge. Particularly if, at the end of the day, the judge is the person who has more training in this issue, similar to the special way that we treat or we had been treating death penalty cases.

And I think we have to put all of this, the requirements about what happens when someone is incarcerated as the preparations are made for the civil commitment process -- there is no public sympathy, obviously, for sexual predators. And I think then we have -- as legislators, even if it's distasteful, it is our job to make sure that in an atmosphere of no public sympathy at all, that the rights of the person who's going into this process are protected.

Because I don't think there would be -- there will be very little public scrutiny of making sure that that person has adequate representation and defenses, et cetera. So even if the public does know, it's probably not helpful. So I think we have to be extra careful to make sure that we build in those protections, even if it seems like a distasteful thing for us to do.

I also think that -- and again, this is, you know, I'm not -- I wouldn't be a hundred percent trustful of the psychiatrist who is speaking for the respondent, and I wouldn't be a hundred percent confident in the psychiatrist for the agency. I'd like to have an independent person.

And I also think that it puts the psychiatrist -- it puts both psychiatrists on both sides in a difficult position, because neither one of them would like to be responsible for allowing someone to be released who could turn out to have not been rehabilitated.

So having an independent person who is more -- who could take the heat I think

would make for a fairer process, as well as just having an independent evaluator to be skeptical of what both sides have to say.

I also -- you know, the Department of Corrections' health facilities are -- there is no outside monitoring agency. In other words, the Department of Health doesn't monitor it. Corrections monitors its own health facilities, which I think is very problematic. And to have OMH monitor itself on this I also think is problematic.

I think we always need to have an outside monitor, an outside auditor, because it's unlikely that an agency is going to find a lot of fault with itself, certainly in a public way.

And then just a few final points. You know, it does look to me like Article 9 of the Mental Health Law already has provisions for the confinement of the dangerously mentally ill. And even if that hasn't always worked, it still does exist in the law.

In one of the visits I made to one of our correctional facilities, I had the opportunity -- it was at Green Haven -- I had

the opportunity to speak with the deputy commissioner in charge of all addiction services, and I asked him about if there was treatment in the facilities, in addition to alcohol and drug treatment, for sexual addiction treatment. And tragically, that was considered to be a big joke.

So if we think that these people are addicted to violent sexual behavior or sexual behavior towards children, if we believe that these are behaviors similar to addiction behaviors, then we need to provide treatment in facilities as well. And that is not happening. Maybe with the new money it will happen, but I am skeptical about that.

Also -- and I'm sorry, I forget whether it was Woodbourne or Sullivan -- I saw a group of inmates who were developmentally disabled, mentally retarded, who were basically children with adult bodies. Some of them had been convicted of inappropriate sexual behavior because, frankly, they had no one really to watch over them to make sure that when they -- that they didn't sexually act out inappropriately because they didn't

know any better.

They have no place to go. There's no place to release them to. It was pretty tragic to watch who were very -- who were basically extremely gentle, mentally retarded or developmentally disabled people be locked up in their cells with no hope of ever being released because there's no place for them to go.

And I know that we're going to do something in this legislative session on civil confinement, but I still think that we have to provide treatment. There is no data that says that all sexual predators are incurable. In fact, there's data that shows that some are. And yet no difference is made in this bill between that.

You know -- and I guess, finally -- and again, I know we're going to do something on civil confinement. I hope it's not this. I hope it's a different bill, obviously. But I think we need to keep in mind that 90 percent, maybe 95 percent of the sex offenses that are perpetrated -- and I know that, you know, one in the public eye is too

many. But all of the others are never recorded, never treated.

I mean, for instance, we underfund rape crisis centers. The most recent tragedy, which, you know, I can barely get through the articles in the paper about what happened in Brooklyn -- there's nothing that we're doing to prevent those things, only things to prevent them from happening in the future.

And there's nothing, actually, that would prevent -- there still isn't enough that would prevent the recurrence, for instance, of what happened to that little girl after the first time that it happened. And I think that that happens way too often.

And if we're going to do this, which will take care of a small percentage of people so that they won't reoffend, our work has not even -- it's just the tiniest bit of our work is accomplished.

Because all of those cases that are not reported, all of those cases of, you know, adults in the family, family friends, uncles, people in positions of authority who perpetrate these crimes against children, or

what happens in homes between married couples or people who are living together, we're only touching the tip of the iceberg with what we're trying to do here.

And it's my hope that, even after the public focus is off this legislation, when we do pass something this session that we will not forget to go back and take care of the tremendous number, the exponentially larger number of cases that we have done woefully little to prevent.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you, Senator Duane.

Is there any other Senator wishing to be heard?

Senator Klein.

SENATOR KLEIN: On the bill, Madam President.

ACTING PRESIDENT LITTLE: Thank you. On the bill.

SENATOR KLEIN: First, I'd like to commend and congratulate Senator Volker for his commitment to this very, very important issue.

And I think it's certainly appropriate that we're passing a civil commitment bill today at the same time that we're taking up Megan's Law. I have been saying that for some time now, that over the last ten years I think Megan's Law is giving us sort of a false hope that we're truly protected in our community.

And I think time and time again what we're reading about is that we're releasing Level 3 sexual predators after they serve very long jail times, they register on the Megan's Law registry, as they're required to do under law, and that's it. But what we're really doing is releasing ticking time bombs into our community, waiting for them to commit another crime.

Unfortunately, that's happened several times in areas that I represent. Earlier in the year, back in June, at the Galleria Mall in White Plains, a young woman named Connie Russo was murdered by a Level 3 sexual predator named Philip Grant. Unfortunately, I think Mr. Grant has the dubious distinction of sort of becoming the

poster boy for civil confinement.

Philip Grant was someone who served 25 years in prison. He was serving a prison term for rape, a rape which he committed in the Bronx. He served 23 years for the rape; they tacked on another two years because he tried to kill someone, when he was in prison, with an ax. This was someone who was denied parole nine times. So clearly the parole board knew that this was someone who was not ready to join society once again.

But yet Mr. Grant was released into the community. He went from homeless shelter to homeless shelter. He refused any type of medical treatment or evaluation. Believe it or not, he did register, as he was supposed to under Megan's Law, even reregistered after the 90-day requirement, again under the law. He snuck into the Galleria Mall, stole a knife out of a store, waited in the parking lot of the mall, and killed the first person that came in.

Again, another horrible example which happened a little more recently, in the Throgs Neck section of the Bronx that I

represent, is a man named Sheldon Becker. Sheldon Becker also served a very long prison sentence for rape. He was released back in June. He went to live with a very good friend of his. Just a couple of weeks ago, this man raped and killed his friend's daughter.

Again, someone who was released into the community. This was someone who was so not being rehabilitated and so not ready to join society that he didn't even show up at his own parole hearing. But finally they let him out because he just refused to show up and the time elapsed and he was just released again onto the streets of the Bronx.

What I'm saying here today is that I think we really need to have a civil confinement law. I think we tried every other avenue. Longer prison sentences seem not to work in this situation. And I think it's incumbent upon us, before we release these people back into society, they're evaluated.

You know, I heard some of the debate so far today, and I know I've read some of the memos by the groups who oppose this legislation. And I personally don't

understand why. The psychiatric community, I know, had some opposition memos. I know that I would want someone on the field of psychiatry to evaluate this person to determine whether or not they're safe to go back into society before they're released. They're going to be one of the final says in this, and I think this is important.

After these horrible instances, I held a hearing in Westchester earlier in the year and I had people really from both sides of the issue testify. But I must say that overwhelmingly the people who testified at this hearing were in favor of civil confinement.

One of the people who testified was a gentleman by the name of Kip Cornwell. He's a law professor at Seton Hall University and he's director of New Jersey's Institute for Law and Mental Health. He is really one of the foremost experts on civil confinement and helped draft the New Jersey law.

And what he said was very, very interesting. And I remember one of the questions that was posed to him: Well, do you

really believe that many of these individuals, especially a Level 3 sexual predator, can be rehabilitated? And his answer was no, that in some cases you can have all the treatment there is, and all of the best doctors, and sometimes you're not going to actually cure this person.

So I think, unfortunately, the only answer is that a person like this has to be civilly confined after they serve their prison sentence. I think if you look at the numbers, it bears out what I'm saying. A Level 3 sexual predator is four times more likely to commit the same or similar crime when they're released from prison. It's one of the also horrible crimes that as these individuals get older, in many cases, they even have a greater proclivity to commit these crimes.

So I think the only answer is to have a constitutional process. And everyone knows, and I know Senator Volker talked about it earlier, the seminal case in this area was the Kansas law. They were the second in the nation to pass civil confinement. They've become the most famous because their law was

challenged twice by the United States Supreme Court, and it was found constitutional, as not a violation of double jeopardy.

Because what's happening is after someone serves a prison sentence, I think the safeguards are in place to determine whether or not that person is civilly confined certainly is something that's going to pass constitutional muster. So I'm hopeful that I think the politics is gone. The bantering back and forth between the Senate and the Assembly also will come to an end. Because I think it's high time that we pass civil confinement in New York State.

I vote for this bill. I urge my colleagues to do the same. And I'm hopeful that the Assembly will follow through and pass civil confinement as well.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Sabini.

SENATOR SABINI: Thank you, Madam President. On the bill.

ACTING PRESIDENT LITTLE: On the bill.

SENATOR SABINI: I want to congratulate Senator Volker and say that I support this bill, as I have in the past, but with a new fervor.

And that is that I had the privilege of attending the public forum that Senator Klein sponsored in Bronxville. And to witness the relatives, the sons and nephew of Connie Russo, and obviously the sorrow they had and obviously the anger they had that this was allowed to happen to someone just going home from work at night -- as millions of New Yorkers do -- but, further, that this sleeper agent, this ticking time bomb, was within feet of tens of thousands of respectable New Yorkers and even driven there by the County of Westchester every day from his homeless shelter. Because they have a policy of bringing people, after the shelter experience, to a more populated area where they feel they can better fit in and eat and stay warm. That, in effect, Westchester supplied car service for him to commit this crime.

And to see their anger -- it's not

the same kind of case, but, you know, we have Kendra's Law in New York now. Many of us from Queens remember that Kendra Webdale was a woman who, when she got out of college, was a reporter at the Queens Tribune and interviewed some of us who were in public life. And then to read about what happened to her -- different set of circumstances, different kind of crime. But again, to think that there are people in our society who are, in effect, in our neighborhoods who are just waiting for the opportunity to do this.

Now, I believe I'm a civil libertarian. But when you go through the levels of actions that are required to be civilly confined, between a multidisciplinary review, an attorney general's review, a hearing, a jury trial -- this is after you've committed a crime and served your sentence. If you've gotten that far and that many people think that maybe you're a danger to society, I'm going to side with them.

That may sound simplistic, and I don't like to be simplistic on these matters. But the fact of the matter is that we all have

a right to sort of conduct our lives and expect the government to protect us. And if the government knows, in our heart of hearts, that there are people out there who are capable of these things that we're letting do these things because we as lawmakers haven't set up a framework to protect its citizenry, then shame on us.

So as I said, I've supported this before, but I want to comment Senator Volker and also Senator Klein for having that forum and bringing the Russo family there to sort of underline why this is important and why it's important that as New Yorkers we're allowed to live our lives on a day-to-day basis and be protected from people that experts will tell us, and experts will review under this law, shouldn't be in the street.

Thank you, Madam President. I'll vote aye.

ACTING PRESIDENT LITTLE: Thank you, Senator Sabini.

Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. On the bill.

ACTING PRESIDENT LITTLE: Thank you. On the bill.

SENATOR LIZ KRUEGER: Thank you.

Well, I suppose I want to point out that I agree both with Senator Duane's concerns and Senator Klein's support for Senator Volker's bill. Because we know, as Senator Volker articulated and Senator Klein has continued to articulate both in the Assembly and the Senate, that the state has needed to do something more to protect its citizens.

But it is also true that Senator Duane highlighted, in his questioning of Senator Volker, many of the concerns that I have that we should not walk away in passing this bill -- and I will vote for this bill -- with the illusion that we really ended a problem if we pass this bill.

And the fact is what we don't hear anything about this week with this legislation, although questions have been raised, is where is the additional services that are needed. What do we do with the fact that, while this might address a problem for

some number of people who are found guilty of sex offense crimes, those in the area of working with victims will tell us that up to 90 percent of the young people who are victims of sex crimes know their perpetrators, they are the victims of incest, and those perpetrators are not being found guilty and they're not going through our criminal justice system or our treatment or civil confinement system. And perhaps most disturbingly, those victims are not getting treatment. And we are doing very little to prevent the continuing rate of attacks on them.

And as some of us have raised before, we are not addressing the problems of going after, in an effective way, prosecution of people who we know are committing these crimes. I support ending the statute of limitations on rape, and we have not moved through the Legislature on that bill. We don't have the money, at least in my city, to provide adequate treatment for victims of sexual attack. We have rape centers that are closing their doors. We have hospitals that are saying they don't have the resources to

treat the victims of sexual assault who are coming to them. And we have the ongoing problem, of course, that people don't come forward and report that they have been the victims of sexual offense.

So I worry that with this legislation we should not do announcements we have solved the problem. We have addressed, and perhaps not eloquently enough, one subissue for one subuniverse of offenders who have been caught and are considered such extreme predators that there should be a process that is gone through that hopefully meets our constitutional standards and assures equal treatment under the law for everyone.

But we heard just, I believe, last week in the city about the caseloads for parole officers being so high that they argue we are not monitoring the criminal justice system at all near what the expectation is of the public when people do get out of prison.

We know that we are not, in fact, doing everything we can to prevent sexual assault, although I understand that the Capital District Center for Sex Offender

Management in the district of Albany has some excellent models that we should be exploring and replicating statewide.

I know that we aren't training our staff well enough. I know we aren't providing the services in our hospitals, in our police systems to ensure we decrease the number of victims. We encourage victims to come forward, we get them help, and we provide treatment in jails.

And I also know, as Senator Duane just said, that we risk very seriously in the State of New York, unless we do this right -- and this bill I don't believe gives us the funding to do it right -- we risk having civil confinement in a mental health system which already has unbelievably vulnerable people living there. Senator Duane described his visit to, I believe, two sites where, if we simply put our most dangerous predators in our institutions, we risk doing greater harm to people in the institutions and pretending that we solved the problem when we simply moved a problem.

So I will vote for the bill. But I

will hope that, in conference between the Senate and the Assembly, that we will move forward with some of the issues that are not addressed in this bill that I believe our colleagues in the Assembly have attempted to address through a series of bills that may or may not have moved through their house yet.

But as we had one conference committee off of last week's bill, I hope that we will continue to work together in both houses to ensure that we simply don't pass freestanding one-house bills and say there's a victory for the people of New York, but, rather, we ask the very tough questions about very tough issues.

Because of course this is one of those very, very difficult issues. And it's a scary issue. And so we have to make sure that we don't simply pass one one-house bill and say we've taken care of the problem, because with this bill we will not have taken care of the problem, we will have dealt with one complex piece of a very, very large and complex set of issues.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you, Senator Krueger.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Very briefly.

I also -- I do intend to support this bill. I think that having the option to continue confining the most dangerous sex offenders after they get out of prison with appropriate due process should make our communities safer. But you have to do it properly. You have to do it carefully. And I have some concerns about this bill that I want to voice.

I do commend those who have moved it forward to this point, and I am hopeful -- in fact, I'm quite optimistic that we're going to see the Assembly pass a set of bills and move forward hopefully to a conference committee, as Senator Krueger has indicated.

I particularly want to single out Senator Klein, who held the first public hearing last year, before the Assembly held its hearings, to really jump-start the process and bring us, I believe sincerely, to where we

are today.

It is important that we pass a bill that can pass both houses, and it's important that we pass a bill that can withstand a legal challenge. So I don't think that any of these concerns that are being voiced here should be trivialized. I think this is a very difficult area of law. The law in this country, and one of the reasons for the founding of this country, is the principle that you do not lock people up for things that they may do, you only lock people up for things that they have done.

And when we get into an area of prediction, it's always difficult. There are exceptions to this. There are other commitment statutes, as Senator Volker has articulated. But I think there are some things that need to be noted.

First of all, I realize some people in this house believe that you have some sort of a moral obligation to put a poison pill relating to civil litigation into every piece of legislation. But let's get this poison-pill anti-trial-lawyer provision out of

this legislation. It's not going to pass the Assembly. Everyone in this state, whether you're working on civil-commitment issues or you're working on law-enforcement issues or medical issues or mental health issues, should be held to the same standard of care.

This bill creates a good-faith exception for the actions of public officials. That's not going to fly. Let's stop kidding around with that and get it out of here.

I would urge my colleagues here that we can learn from the Governor's example. You don't hear me say that a lot. But the Governor realized that his bill could be better. He's introduced a bill since 1997, and he realized it could be improved. And one of the things that was on display this morning was his commitment to separate those who might be confined under this legislation from the general mental health population. As Senator Duane and Senator Krueger have pointed out, this is a serious concern.

So let's follow the Governor's example. There are ways we can make this bill better. Some of them were in the package of

bills that the Assembly rolled out at the end of last year. Again, I take nothing away from those who would take credit for forcing the Assembly to act on this issue. But let's look at what they've done and see if we can improve our bill.

I mean, one of the provisions in the Assembly bill deals with longer prison terms for the worst sex predators. That's something that is actually in a bill by Assemblyman Gianaris. One of the provisions that the Assembly deals with that we don't deal with is talking about where you get the money for counsel, talking about where you get the money for treatment, providing for sexual abuse prevention curriculums in the school and sex abuse prevention training videos for parents.

There is more we can do. As Senator Duane has noted -- and if you take one thing away from this, let's be honest with the people of the State of New York -- we are not doing anything about the overwhelming majority of those who cause these traumatic experiences for our children, for our families, for our

constituents. This bill does not provide the treatment money, this bill does not provide resources for parole and probation officers who are overburdened, this bill does not deal with the overwhelming portion of this problem. It deals with a narrow portion. We should address that.

But let's look at some of the bigger issues that it raises. If we go to a conference committee, let's go to a conference committee on the overall issue of what we do about sexual predators in this state, not just passing a narrow bill to take the very worst offenders and put them in civil confinement.

Finally, I want to note that I do think there's a due process problem with the bill. And, Senator Volker, this is meant in all good conscience to advise you, because obviously, if we pass a bill that won't pass the other house, we're not doing anything. If we pass a bill that's get struck down in the courts, we aren't doing anything.

And your problem -- you know, with all due respect to some people who've opined on whether this proposed legislation complies

with the prohibitions of Kansas v. Hendricks, I don't think your problem is the U.S. Supreme Court, ladies and gentlemen. I think you've got the highest court in the state to get past on this issue before you get to the U.S. Supreme Court. I don't think the Supreme Court has gotten more liberal since 1996. So I think the U.S. Supreme Court is not the issue.

I do, however, think you might have an issue with the Court of Appeals of this state, for the following reason. I agree with Senator Sabini that there are substantial protections in place in this legislation before someone gets civilly confined. You have a panel, you have a hearing, you have a right to a trial by jury, you have the attorney general reviewing the file. I think you have a good argument that you have adequate protections before people go in under this bill.

I would note, however, the dramatic gap between the procedures approved in Kansas v. Hendricks and the procedures provided in this bill to let someone out if they can

demonstrate that they are no longer in need of civil confinement.

The Supreme Court said very, very clearly in Kansas v. Hendricks, in approving the Kansas statute, this is approved because, among other things, this statute permitted immediate release upon a showing that the individual is no longer dangerous or mentally impaired. There is a provision in the Kansas statute that you immediately get out.

Now, in the New York statute that is being proposed here -- and Senator Volker discussed this, but very, very briefly -- you don't get an immediate relief if you can demonstrate this. What you get is every year you have to be evaluated and then, after the evaluation, the commissioner, whichever commissioner has jurisdiction, determines whether or not -- and this is the language of the statute -- "The commissioner shall review such records and reports, along with the findings of the psychiatric examiner, and make a determination in writing as to whether the person no longer is a sexually violent predator. The commissioner's written

determination shall be provided to the court that committed the person under this article."

The actual psychiatric evaluation doesn't go to the prisoner, doesn't go to the court. You have the commissioner holding the keys. The commissioner once a year has to read a psychiatric evaluation and determine if a person is a sexually violent predator. That means this all comes down to, essentially, a discretionary act of the commissioner.

The only remedy for this, if a commissioner wouldn't let someone out -- and I note that the immediacy which was specifically noted in the Supreme Court decision is not provided here. This just provides that once a year someone gets examined and the commissioner decides if he or she believes this person is a sexually violent predator.

If the commissioner does not decide that, you can't get out. You can make a petition; you can file, I guess, an Article 78 proceeding that this was wrongfully decided. It is a very, very steep climb. It is not anything like the substantial due process considerations that are given to the person

who would be confined on the way in.

I would urge you, my colleagues, that we have to have a better system for letting people out who can demonstrate that they no longer pose a threat to society, as was done in Kansas.

So under this statute as proposed by Senator Volker, it's hard to get someone in to civil confinement, but it is virtually impossible for anyone civilly confined to get out. It's very, very difficult, and it's very much subject to the discretion of the commissioner.

So in addition, this statute provides that once your initial petition to get out is denied, if a person has previously filed a petition for discharge, then the court shall deny the subsequent petition unless the petition contains facts upon which a court could find that the person's mental abnormality has so changed as to warrant an evidentiary hearing.

So again, there's a steep slope for the public authorities to go through to get someone in, but there's a steeper slope for a

confined person to go through to get out. I thinks that's a constitutional infirmity. I think that's something that has to be cleaned up if we want the statute to actually become law, survive a legal challenge, and do anything to protect the people of this state that it is intended to protect.

Many of us have heard the stories of what's happened, we have children ourselves, we are concerned about the issue of sexual predators. We'd like to do something. Most of us, I think, in our candid moments acknowledge that this does not solve the problem, this deals with a very narrow group of people. We need more funding, we need more treatment, we need a better way to deal with people.

And Senator Duane was right on when he noted that the most recent scientific evidence is that in fact a significant number of people who fall into this category can be cured, over time, with treatment. And with advances in science, we can only hope for more.

So let's look at the issue broadly.

Let's get out the poison pills. Let's take an honest look at the Assembly's proposals to see if we can improve as we hopefully go into conference committee.

And let's not pass a bill that has an unconstitutional prohibition on people being able to immediately get out on a showing that they're no longer dangerous. That is not in the New York statute, ladies and gentlemen, and that has to be changed before a final bill is passed.

I hope I will have the chance to vote on a final bill during this session. I hope we will get the Assembly to a conference committee on this. It's the right way to go. I will vote for this bill, subject to all of these concerns, in the hope that we move the process along and that we're able to actually reach agreement on this.

Again, I commend all those who are struggling with this very, very difficult area, those who favor this and those who oppose it, for raising these issues. This is not an easy area of law or policy. But I am going to vote aye.

Thank you, Madam President.

ACTING PRESIDENT LITTLE: Thank you, Senator.

Senator Savino.

SENATOR SAVINO: Thank you, Madam President.

First, I'd like to commend Senator Volker for bringing this bill. You know, about a week ago there was an article in the newspapers, in all the newspapers, which showed the results of a poll by the Sienna College that said that the people of the State of New York were very dissatisfied with their state government. They felt that we were not responsive to them, that we did not address their needs, and we were not acting in their interests.

And I would say that perhaps today we are taking a step in changing that opinion, because I think we are addressing a need that the people of the State of New York for many years have felt was a serious threat to their life and/or health.

I hear the concerns of my colleagues, Senator Schneiderman, Senator

Krueger, and Senator Duane, and their eloquent discussion here about what's not being addressed. And they're absolutely right that more needs to be done. But I think for too long we have looked at this particular arena of the criminal justice system and the meatal health system and erred on the side of caution with respect to the predator and not to the victim.

And while we struggle with how we find the funding to provide the mental health services and how we address those issues, the first thing we have got to do is protect the future victims so that they are not victims at all. So if we have to begin by civilly confining people who we have seen in the past have demonstrated that they are a danger to others, then that is where we start as we grapple with the other issues that have been raised here today.

As I said, this is an ever-evolving area of the mental health and criminal justice area. And it is a mental health issue, but it is a mental health issue that results in criminal behavior, and we cannot continue to

ignore that.

So I stand in support of this legislation. And I think we can continue the discussion on how we provide more mental health services, provide more money, deal with this issue as this continues to evolve.

We've come a long way. When Senator Marchi first came to the Legislature fifty years ago, if a man was arrested for sexually assaulting a woman, the woman was as much on trial as the man was. She had to prove that she hadn't done something to entice that man into attacking her. We know better now.

Twenty years ago we would have looked at some of these sexual predators and thought that there were things that provoked them. We know better now. We know it's not about sex, we know it's about violence, we know it's about power over your victim. And we've got to protect the people who are the potential victims and provide justice to those who have already been victimized.

So I stand in support of this legislation. Thank you.

ACTING PRESIDENT LITTLE: Thank you, Senator Savino.

Is there any other Senator wishing to be heard?

The debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 22. This act shall take effect immediately.

ACTING PRESIDENT LITTLE: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT LITTLE: Senator Volker, to explain his vote.

SENATOR VOLKER: To explain my vote.

I just want to thank my colleagues for their comments, and especially Senator Schneiderman.

This is a bill -- quite obviously, this is not the final bill, although we'd like to think we could finish up quickly. But I expect that we probably will go to a conference committee within the next -- depending on how this works out. From the

beginning, we had talked about the fact we needed to do Megan's Law first and get that out of the way, get that done, and then we believe civil confinement must be dealt with.

I think Senator Schneiderman makes a point, and we're certainly going to look at the exit issue. This is the Governor's bill. And although there have been considerable changes in it, it's something we will look at.

I just want to point one thing out that Senator Duane said. Senator Duane, there is treatment in prisons for sexual problems. In fact, the prison you were in, there isn't any. But I can tell you from experience -- I have been in a number of prisons, as you can imagine, and we do have treatment for people that have sex problems. In fact, some of them can't get out on parole until they do have treatment.

In fact, I had one individual whose mother came to me and asked me why her son was not allowed out. And the reason was he refused to do a program in the prison system as regards to trying to help them with certain sexual evaluation problems.

We do have them. They're not in every prison. But frankly, New York has done a great deal more in both drugs and alcohol and in dealing with sexual problems.

But I'm the first to admit to you the problem is I question whether there's hardly enough money in the world to do all the things that we should really do. And it's easy to say that we're not dealing with the problems. But what we are really doing, I think, is trying to deal the best we can. And that's what this bill is all about as far as civil commitment is concerned.

I vote aye.

ACTING PRESIDENT LITTLE: Thank you. Senator Volker will be recorded in the affirmative.

Senator Nozzolio, to explain his vote.

SENATOR NOZZOLIO: Thank you, Madam President and my colleagues. I ask permission to explain my vote.

First, I wish to congratulate Senator Volker for again putting this measure before this house. That the measure is indeed

needed. And, Senator Volker, thank you for your consistent leadership.

The Senate Committee on Crime Victims, Crime and Corrections conducted hearings on this important matter this year and during the past 12 months took testimony from a lot of individuals. But the individual I'd like to thank the most for helping us with this particular legislation was not a New Yorker but a man by the name of Mark Lunsford.

Mark Lunsford is a truck driver from Florida who lost his daughter at the cruel hands of a sexual predator. And that grief that Mark Lunsford had helped channel through this legislation. And that before he helped us, though, he helped Florida establish this very same type of civil confinement for sexual predators.

Sixteen other states have supported this type of legislation. New York, don't kid yourself, is not at the forefront; we're behind the curve. But thanks to Senator Volker's persistence, we will be establishing the proper procedures to ensure that those who

are committing sex crimes and crimes against children don't get out in the street to do it again.

Senator Skelos said this many years ago when Megan's Law was first established: Once a sex predator, always a sex predator. And that measure certainly is something that is recognized by this legislation, this needed legislation. And that I certainly am pleased this house is supporting it.

Thank you, Madam President. I vote aye.

ACTING PRESIDENT LITTLE: Thank you. Senator Nozzolio will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 32 are Senators Duane and Montgomery. Ayes, 56. Nays, 2.

ACTING PRESIDENT LITTLE: The bill is passed.

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

SENATOR MAZIARZ: Thank you very much, Madam President.

Is there any further business at the desk?

ACTING PRESIDENT LITTLE: No, there is not.

SENATOR MAZIARZ: In that case, Madam President, there being no further business, I move that we adjourn until Wednesday, January the 18th, at 11:00 a.m.

ACTING PRESIDENT LITTLE: On motion, the Senate stands adjourned until Wednesday, January 18th, at 11:00 a.m.

(Whereupon, at 4:55 p.m., the Senate adjourned.)