NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:08 p.m.

REGULAR SESSION

SENATOR CARL L. MARCELLINO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MARCELLINO: The Senate will come to order.

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

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

ACTING PRESIDENT MARCELLINO: The invocation today will be given by Reverend Robert Quick, pastor of the First Baptist Church of North Tonawanda.

REVEREND QUICK: Thank you. Let's pray.

Our Heavenly Father, we thank You for the opportunity we have to come before You and do Your business. Father, we thank You that this is a place where those who minister for You minister to us. We pray, Father, for wisdom upon this body, and give them great guidance. We ask, Father, in Jesus' name.

Amen.

ACTING PRESIDENT MARCELLINO: Thank you, Reverend.

May we have the reading of the

Journal.

THE SECRETARY: In Senate, Monday, January 29, the Senate met pursuant to adjournment. The Journal of Friday, January 26, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MARCELLINO: 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 Skelos.

SENATOR SKELOS: Mr. President, if we could adopt the Resolution Calendar, with the exception of Resolutions 246 and 247.

ACTING PRESIDENT MARCELLINO: All in fave of adopting the Resolution Calendar, with the exception of Resolutions 246 and 247, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up --

ACTING PRESIDENT MARCELLINO: Excuse me, Senator.

Could we have some order here. Thank you.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up Resolution 246, by Senator Griffo, have the title read, move for its immediate adoption, and open it up for cosponsorship.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Griffo, Legislative Resolution Number 246, honoring the memory and celebrating the life of the late New York State Senator William H.

Hampton.

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

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: If we could put all members on the resolution. If anybody wishes not to sponsor the resolution, they should notify the desk.

ACTING PRESIDENT MARCELLINO: So ordered, Senator Skelos.

SENATOR SKELOS: If we could take up Resolution 247, by Senator Seward, have the title read, and move for its immediate adoption.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senator Seward, Legislative Resolution Number 247,

mourning the untimely death of Shawn Falter of Homer, New York, and paying tribute to his courageous actions as a member of the United States Army.

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

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, Senator Seward would like to open up the resolution for cosponsorship. If anybody wishes not to sponsor the resolution, they should notify the desk.

ACTING PRESIDENT MARCELLINO: So ordered.

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

ACTING PRESIDENT MARCELLINO: The

Secretary will read.

THE SECRETARY: Calendar Number 22, by Senator DeFrancisco, Senate Print 99, an act to amend the Penal Law, in relation to the crime of aggravated harassment.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 38. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 25, by Senator Alesi, Senate Print 163, an act to amend the Penal Law, in relation to the crime of false personation.

SENATOR MONTGOMERY: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay

the bill aside.

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

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

THE SECRETARY: Calendar Number 28, by Senator Morahan, Senate Print 246, an act to amend the Penal Law, in relation to providing.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 41.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 31, by Senator Alesi, Senate Print 278, an act to amend the Penal Law, in relation to establishing.

ACTING PRESIDENT MARCELLINO:

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 36, by Senator Volker, Senate Print 650, an act to amend the Mental Hygiene Law and others.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 25. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Klein, why do you rise?

SENATOR KLEIN: Mr. President, I'd like the opportunity to explain my vote.

ACTING PRESIDENT MARCELLINO: Senator Klein, to explain his vote.

SENATOR KLEIN: I rise in support of this legislation. And I know there's been some changes since the last bill, which we passed on special session. And I certainly believe that the time is now to finally pass a civil confinement law in New York State.

When we open up our newspapers, both our daily and our local newspapers, we constantly see localities across the state of New York trying to pass what I consider to be piecemeal laws. They're trying to ban Level 2 and 3 sexual predators from living within 200 feet of a school; in essence, preventing these individuals from living anywhere in a city or town. That's not the answer.

I think we're also seeing that Megan's Law is merely a Band-Aid approach, after years and years of using that as a way to protect our children and our families from dangerous sexual predators.

So I think it's important now that we finally pass civil confinement, because quite frankly I think it's the only answer to

make sure that someone is not released until they're ready to join society once again safely.

I conducted a study last year where I looked at all the zip codes in the City of New York as well as Westchester County. And when looking at those zip codes, we found that on average there were seven Level 3 sexual predators living in each of those zip codes.

Just this past weekend, Congressman Anthony Weiner released a study which found that 85 percent of the Level 2 and 3 sexual predators presently living in New York City are living within five blocks of a school; 38 percent are living within a block of a school. That's a serious problem.

And I think what we're doing now is we're giving residents all over the state of New York a false sense of hope that they're actually safe from a violent sexual predator.

When you look at the statistics, it becomes even more apparent that we need to pass this law. First, a Level 3 sexual predator or a dangerous sexual predator is four times more likely to commit the same or

similar crime when they're released from prison. It's also the only type of criminal where there's a greater propensity to commit this crime as they get older and older.

So I'm hopeful that we'll quickly reconvene our conference committee, work out I believe the minor differences in the two pieces of legislation, and, finally, keep the residents and especially our families of New York State safe from violent sexual predators.

I vote yes, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Klein will be recorded in the affirmative.

Senator Volker, to explain his vote.

SENATOR VOLKER: Mr. President, very quickly.

This bill is essentially the same bill as we passed in 2006 in January and then again in December, in the special session. There's a couple of differences, though, that should be noted. And frankly, we added a lot of language here relating to treatment.

One of the arguments that the Assembly made -- which frankly we thought was rather interesting, because we were never opposed to treatment -- was that they wanted strict intensive supervision. So in this bill we have defined strict and intensive supervision. In fact, one of the questions we asked was, What the hell is that? Excuse me: What is that? And we defined it sort of in this bill.

The defendant would be subject to six face to face-to-face and six collateral visits with a parole officer each month. And there are other restrictions on monitoring and approval of the offender's residency, which also would be conditions of transitional parole.

These would occur when a person was released from the intense supervision internally; that is, in a facility. And that facility, by the way, is already ready to open very shortly, and it's going to be a totally separate facility in the grounds of the St. Lawrence Psychiatric Center in Bridgeview.

The interesting thing is that a

couple of the opposition memos say they want to make sure that the site is run by OMH -- it is -- and it's separate -- it is. Clearly, the trial lawyers are opposed because any -- they want litigation. And we understand that.

But what this bill does, in my opinion, is very close to what the Assembly wanted. And we firmly believe -- and we've been talking with the Governor, and I think the Governor -- let's just say this. I think within a week or two I think the Governor will come out with a bill pretty close to ours.

And whether we need a conference committee to go on -- because there's just a couple, in my opinion, a couple of changes which can be done, and we may not even need a conference committee. That is, we can just agree.

I feel very strongly that this agreement is going to come within the next month. I think it would have happened in December except that other issues got in the way, so to speak, in my opinion. And those other issues meant that we couldn't come to an agreement between a Governor and a Speaker who

detested each other.

So at any rate, this is basically the same bill, with additions to it that I think make it more palatable to the Assembly and, frankly, I think make it more palatable to many of the people who have opposed it.

The main opposition to this bill is just the idea of civil confinement. And I understand that. None of us like it. On the other hand, if we're going to deal with people that we can't anywhere else -- any which other way else to deal with, this is something we need to do.

I vote aye.

ACTING PRESIDENT MARCELLINO: Senator Volker will be recorded in the affirmative.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President. I rise to request permission to explain my vote.

Mr. President and my colleagues, this is a very important measure. That Senator Volker is to be given yeoman credit for consistently driving this issue.

This is an extremely important measure to protect our families in New York State. The Senate has continually led with legislation to establish a zero tolerance for violence and a zero tolerance for sexual predators in New York.

With Senator Skelos many years ago focusing on Megan's Law, during that process it became clear, time and again: Once a sex predator, always a sex predator. And that regardless of how much incarceration time, that that individual has demonstrated a clear danger to society and needs to be constantly monitored.

Megan's Law, zero tolerance for violence, zero tolerance for sexual predating, that's what this Senate has stood for. And we in this measure before us will continue to stand tall to ensure that those who are not becoming rehabilitated do not come out into society and become a danger to children and families.

I congratulate my Senate colleagues for supporting this measure. That it is the next step in ensuring that our children are

safe and that we have a system of laws in this state that is clearly to protect victims before they become victims.

Thank you, Mr. President. I vote aye.

ACTING PRESIDENT MARCELLINO: Senator Nozzolio will be recorded in the affirmative.

Senator Thompson.

SENATOR THOMPSON: Thank you, Mr. President.

First I'd like to congratulate one of my colleagues, Senator Volker, for his effort on this bill.

I just have two things that are of concern. One is that cities like Buffalo and Niagara Falls are very cash-strapped, and they have a problem with people who would be impacted by this law, particularly those predators. But part of the challenge we face is that these cash-strapped communities cannot afford to disseminate the information on who these predators are.

And hopefully sometime this year we'll be able to address that so that we can

get information on some of the government websites, the school districts, and we'll have the capacity to notify many of the local residents.

We also have seen study after study across the state where people are living right next to schools. And many of our urban school districts don't have the resources that are necessary to empower the parents, to empower the residents. And I believe that that loophole needs to be addressed and corrected, and hopefully we can work to address that issue in the near future.

Thank you. I'm in support of the bill.

ACTING PRESIDENT MARCELLINO: Senator Thompson will be recorded in the affirmative.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I rise to commend my colleagues on trying to deal with this very, very difficult issue.

I just -- one of the attempts that has been made in this house, and I support

that attempt, is that I think it's Senator LaValle's bill which calls for, I believe, chemical castration.

And since this seems to be such a very, very difficult situation to deal with -- some people apparently just cannot control their sexual addictions and the problems that they have that's associated with it -- and I believe we should really consider, very, very seriously, passing Senator LaValle's bill.

People who have a need for that should be able to get it. And then some people -- maybe we won't have to spend all of this money on civil confinement if people are able to access this. And in some instance they may even want physical castration. That's fine with me too, as long as it's voluntary.

So I offer that because I think Senator LaValle has tried that legislation, and I urge him to reintroduce that. And that should really be a part of our package, that people should be able to receive, on a volunteer basis, at the least chemical castration services.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator Montgomery, how shall I record your vote? In the negative?

SENATOR MONTGOMERY: Yes.

ACTING PRESIDENT MARCELLINO: Senator Montgomery will be recorded in negative.

Senator Golden.

SENATOR GOLDEN: Thank you, Mr. President.

I too rise to commend Senator Volker for reintroducing this bill again this year.

And I hope that the Governor is sincere in his approach in allowing this not only for discussion, but to bring it forward and to pass it as a law of the state that those that would go after our children here in the state of New York, causing them harm, that they would be placed and kept placed in jail if in fact they were found at a psychiatric hearing not to be fit to be allowed to be returned to the community.

There are over 550,000 convicted

sex offenders here in this nation, of which we cannot find 100,000 of them. One hundred thousand cannot be found here in this nation.

I dare to say -- we had Mr. Lunsford up here last year. His daughter Jessica, she was killed by a registered sex offender, Evander Couey. And I dare to say in my community on a regular basis I talk of those that come in from around the country and hide within the city of New York because it's great to be able to hide in plain sight and walk through the city of New York and not be found.

And in my community, we had a gentleman not too long ago that came in from New Jersey -- never told Jersey he was leaving, never told New York he was coming -- and came and had molested many of the children in the 6-1 precinct area. This was only six months ago, another sex offender that had served time that had been released to the communities.

And we have studies, studies from the Washington State Institute. After six years after release, 57 percent of the

subjects were convicted of a new felony offense. Forty percent were convicted of a new felony against a person offense, including sex offense. Almost one-third committed a new felony sex offense, and 16 percent failed to register as sex offenders.

The Center for Sex Offender Management: Recidivism depends on how the population is defined. Child molesters have a recidivism rate of 52 percent over 25 years, and rapists, 39 percent.

In Brooklyn, there are 1555 registered sex offenders, of which 345 of them are Level 3 sex offenders. And just looking at the Level 3 sex offenders in Brooklyn, recidivism statistics indicate that somewhere between 18, or 5.3, and 113 or 33 percent of these people will commit another sex crime within six years. And as many as 172 may reoffend over a 25-year period.

This law is long overdue here in this state. Our children and our families deserve it. And hopefully, God willing, we will move Senator Volker's bill and we will get it passed this year, unified with the

Assembly, the Senate, and the Governor so that we can protect our children in this great state.

I vote aye.

ACTING PRESIDENT MARCELLINO: Senator Golden will be recorded in the affirmative.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

And I too want to applaud Senator Volker for bringing this legislation up again and passing this house almost unanimously time and time again.

The frustration that I have, and actually the frustration that my constituents have, is that this is common sense. Why can't we put legislation together that both houses can agree on and that the Governor can sign?

Every day in my district, at the local level, there are town ordinances, city ordinances to try to make changes to protect citizens and particularly young children from these dangerous sex offenders and predators who are released from state facilities. I

think it's just common sense that we enact this law and put it on the books to protect our children.

Mr. President, I guess what's frustrating is that if you look at the bills in both houses, they're fairly similar, with just minor changes here and there. And it just doesn't make sense that the Assembly just fails to move forward on the provisions, as in Senator Volker's bill, to make sure that before dangerous predators are released that the hearing take place.

It makes no sense to me and it makes no sense to the constituents that I serve when I explain to them the hangup or the difference is that what the Senate is trying to do is make sure, before a dangerous predator is released, that the hearing take place, that they're not on the streets, that they're not preying on our children. They feel that that's common sense.

I would hope that members of the Assembly are listening today. I would hope that Governor Spitzer is listening today. The time has come that we have a unanimous piece

of legislation that passes in both houses, that's signed by the Governor, to protect the children of the state.

I vote aye.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Libous. You will be recorded in the affirmative.

Senator Bonacic, to explain his vote.

SENATOR BONACIC: Thank you, Mr. President.

I stand also and I thank Senator Volker for drafting this legislation and passing it in the Senate.

Level 3 sexual predators are the worst kind of felons that prey on our children and our families and our community. When we talk to the police and the prosecutors, there was one statistic that always knocked my socks off, and it's horrifying. And that is before a sexual predator is caught, he would have committed somewhere between 100 and 113 acts upon children or adults before they nail him.

It is an illness, and it is an evil. And when we incarcerate this felon

after he is -- he or she is convicted, and they serve their time, you can argue, Well, they've served their time, they should be allowed to go back into the community.

But you've heard my colleagues speak to this issue. There are studies that the recidivism rate is over 50 percent that they will commit the same horrendous acts of assault, rape or murder of children and mainly women.

Another reason for civil confinement is certainly the first priority is to protect our families and our communities. But in a humane way. They could be treated with medication, with counseling, to give them a fighting chance to see if they can ever overcome this horrible addiction to evil and commission of a crime.

So let's not let this delay -- you know, there was an incident unrelated to this particular crime of sexual predators, and we had an incident occur this weekend with cell towers. Remember, up in the Adirondacks? Two people were in a car accident. They couldn't get out of the car, they couldn't use their

cellphones because there was no service because there was a fight going on, the environmental community versus the people that wanted cell towers. And two people died for inaction.

How long has the Assembly and the Senate not acted on civil confinement? And when you look at the statistics -- because we can chart what these Level 3 sexual predators are -- you know where most of them are? They're in the metropolitan area. They're in New York City, they're in the Bronx, they're in Brooklyn, they're in Queens.

So as we play with language and don't do a bill, how many of these sexual predators who are now out of jail, are not civilly confined, are committing multiple, repeated assaults, rape and murder on children and women?

For those reasons, I vote yes. And I thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Bonacic will be recorded in the affirmative.

Senator Liz Krueger, to explain her

vote.

SENATOR LIZ KRUEGER: Thank you.

I think we're actually on the bill still, Mr. President.

ACTING PRESIDENT MARCELLINO: No, we're explaining the vote. We're on a roll call.

SENATOR LIZ KRUEGER: Oh, we're explaining the vote. I thought it seemed to be longer than a few minutes.

ACTING PRESIDENT MARCELLINO: The chair has been lenient in enforcing our two-minute rule, but --

SENATOR LIZ KRUEGER: That's why I lost track. Thank you.

ACTING PRESIDENT MARCELLINO: You have the floor, Senator.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

Well, I have some dilemmas here. I spoke to some experts who came to speak to me, and I thought that they would tell me, because they were professionals in the field, that they had concerns about this bill and civil confinement.

And what they told me surprised me, because they said: No, you're looking at this wrong. There are people who should just have longer terms in prison because they are dangerous and they are predatory and they are recidivists. And unfortunately, there may not be mental health services out there that can address their problems.

So they raised the concern to me, one, that the costs of civil confinement could be as high as a quarter million dollars a year per person, compared to prison costs, which are about $40,000 per year.

They raised concerns that mandating people into civil confinement was going to drain money that is desperately needed in the mental health care system within prison and within communities that is already so desperately short. We are so short on funds for community-based mental health care services, for institutional-based mental health care services.

And they said they think we're doing this wrong, but they're not disagreeing with Senator Volker or anyone who already

articulately raised the fact that we have to protect our society from violent sexual predators. There's no one who would debate that point.

But they were saying there's still a better way for us to think this through, which is to ensure longer prison terms for people who are found guilty of these crimes, to ensure that we have adequate mental health care services before people end up, I think as Senator Bonacic just described, as addicted in some way to evil.

That we should have upfront mental health services for people who appear to be at risk of going down the road where they end up in this situation. That we should also face the fact that if you look at the studies from every other state, once you've put somebody into civil confinement, apparently they never get out, statistically.

And one might argue that that might be protecting people from the dangers of violent predators, and I'm not sure I would argue that one, but at a cost of up to $250,000 a year for life.

Senator Montgomery talked about Senator LaValle's bill on chemical castration and the question of if it's a voluntary setup, might that be a way to address some concerns. And we don't address that in this bill.

I talked to professionals who technically would be the people making the decisions within Senator Volker's bill about whether someone was civil confined or let out, and they said, "Let's be honest. None of us are ever going to vote to let them out. We're not going to want to take that heat."

So they're admitting that once we make a civil confinement decision, that's it forever. And you ask have to ask the question -- because once we pass laws, it's tough for us to go back and change them later, especially on an issue that is so sensitive and so press-driven as sexual predators -- do we want to have life imprisonment, life civil confinement for sexual predators when they're in their 70s, when they're in their 80s, when they're in their 90s, where the data shows that in fact they are not statistically at risk of continuing to be predators?

So I will vote for the bill. And frankly I think it would be hard for us not to vote for the bill today. But I hope as we go forward in negotiations with the other house and with the new Governor, we think through not my analysis that we don't be this tough -- because these are scary people. I know I'm scared for my constituents -- but that we think through what is best practice, what are our options here, and are we not thinking as broadly as we should about what we can do to protect our communities.

So I will vote yes, but I hope we will expand on this bill before it becomes law.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Krueger. You will be recorded in the affirmative.

Senator Robach, to explain his vote.

SENATOR ROBACH: Yes, Mr. President.

I rise to support this bill and applaud my colleague Senator Volker, who has

done a great job of not only framing this issue but keeping it alive.

And while I would agree with Senator Krueger that I do think that these people should get much, much longer sentences, sometimes in the realm of government we only have our vote or our issue, we have to get things through all sides.

And I know, coming from the Assembly, that oftentimes many of the bills I supported over there that would have given longer sentences were not able to pass that house.

And I think that frustrates us because -- or at least me, because when I'm dealing with the public what they want is not politics, they want protection. This is about children, about families, about victims. And they're really asking us, in any way we can, can we better protect their kids.

Now, I don't think it's going to cost a quarter of a million dollars. I do believe that's a fear, not a fact. And we should probably try to do it in the most cost-beneficial way. But I don't know if we

in this house want to not vote for a bill because of a price tag when it comes to less victims in this area.

I had the opportunity earlier in my life to work with crime victims, and I can tell you the stories are not only tragic, hurtful, but they are the kind of wounds that, more than the physical offenses, are things that stay with these people for a lifetime.

So I think this is a very, very important bill off of anybody's politics. I do hope sincerely that we do come to some three-way agreement and that we get this done, first step. Then I would agree, second step, and I would support those things from chemical castration to longer sentences or anything we could do, again, to be preventive but balance those scales of justice back to the offended, not the offenders.

And I'll end with this. It's very, very frustrating -- I've seen it firsthand -- of people coming out of jail, off probation, who say right to the very authorities that are supposed to be protecting the public: Hey, look, this is just what I do. Don't be mad at

me. Don't expect anything different.

When you have that kind of person and those kind of statements, there really is only one choice for us as lawmakers. That's to change the policy that's not going to let them out to prey.

So I gladly cast my vote in the affirmative, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Robach. You will be recorded in the affirmative.

Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Mr. President. I have to explain my vote, which I'm voting yes.

Mr. President and ladies and gentlemen, I am reading the legislative history of this bill. And it shows that in 1998, the bill came, Senate Bill Number 70659 [sic] and passed this Senate, this chamber, 59 votes to 1, being Senator Leichter, the one that voted against.

In 1999, Senate Bill 5093 passed the Senate 56 to 1, Senator Duane voting against.

In 2000, Senate Bill 5093 again passed the Senate 59 to 1. Senator Duane voted against.

In 2001, Senate Bill 5385 passed the Senate 56 to 0.

In 2003, Senate Bill 5556 passed the Senate 59 to 2, Duane and Montgomery.

In 2004, Senate Bill 5556 passed the Senate 59 to 2 again, Duane and Montgomery.

In 2005, Senate Bill 3273 passed the Senate 58 to 2, Duane and Montgomery.

In 2006, Senate Bill 6325 passed the Senate, Duane and Montgomery. In 2006 again, in extraordinary session, Senate Bill 6325 passed 60 to 0.

What am I doing and what am I saying? I'm saying that every year we come here and the Majority has the opportunity, being the majority, to be the one to introduce the bill.

Then we have to take and to listen to each and every one of the 33 or 34 members of the Majority standing in front of the cameras lecturing us and talking like the bill

has any opposition. And they get up and they stand there and they -- owoo, owoo -- lecturing us like we are opposing the bill.

Why are you going through this mockery and this game? You have no opposition here. We have been supporting the bill every time. The only reason, that you are the ones that introduce the bill. But we -- the most, the most negative votes that this bill has gotten is two. We Democrats have been in favor of this bill.

So why every year you have to start trying to lecture us so people on the camera can see you and say, Oh, the Democrats don't want the bill? We have no problem with the bill. We're supporting the bill. Every single year you have our support.

Please don't lecture us anymore. Stop the game. This bill has no reason to be discussed in here. We have no opposition. This is a bill, easy thing to do. Go talk to the other side of the hall and lecture them. But please stop that game.

I'm voting yes, Mr. President.

ACTING PRESIDENT MARCELLINO:

Thank you for voting yes, Senator Diaz.

Senator Little, to explain her vote.

Can we have a little order, please, in the house. Please.

Thank you.

SENATOR LITTLE: Thank you, Mr. President.

As I sit here, I too can't help but think about the cellphone issue, as Senator Bonacic mentioned. This is -- getting cellphones on the Northway is something that I have worked on for about -- since 2000.

We have a general agreement that yes, we need to have cellphones there. What kind and how to go about doing it has been a debate. But to tell the Langners that we are working on it and that we know it's an issue that needs to be done is little consolation.

And as we sit here and talk about civil confinement, I think I'm correct in saying that the Assembly agrees it needs to happen, the Governor agrees it needs to happen, the Senate agrees it needs to happen. Let's just hope that it happens and that we

get an agreement so that this is not a work in progress and some other child or adult is killed or whatever by a person who would have qualified for civil confinement and should have been civilly confined.

On this bill, I vote aye. Thank you.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Little. You will be recorded in the affirmative.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I will be also supporting this bill. And I appreciate the fact that there have been some positive changes made.

I would like to suggest, though, that the single major problem remaining with the bill that I'm not sure would withstand a legal challenge, quite honestly -- and the problem, I told Senator Volker this before, I don't think is with the United States Supreme Court, I think it would be with the Court of Appeals of our own state.

The problem is you have great

due-process protections provided for people going -- being -- before they are civilly confined. And this is something that has been developed over a course of years and there have been hearings held. I think Senator Klein held hearings that really jump-started this process in our house to move this along. It has something that members of the Assembly and of the Senate in both parties, as Senator Diaz points out, have supported for a long time.

The difficulty from my point of view comes from the fact that after all this due process, before people are civilly confined, the burden is all put an OMH commissioner to -- and this is the language of the statute -- get a psychiatric report and make a determination in writing as to whether the person is no longer a sexually violent predator.

Ladies and gentlemen, what OMH commissioner is going to put their career on the line by letting someone out, given the standards that have been set here?

I think we have to pass a statute

that does not essentially sentence everyone put into this program to lifetime incarceration, which is the functional effect, I believe, as currently structured.

There are ways to remedy this. And I am going to vote in support of it in the hopes that as we move forward towards actually passing a law we can change this. But there has to be something more in the nature of a presumption, some more process, some provision of legal services for the annual evaluation, some way that someone who is already in the program has a realistic chance of someday getting out. I'm not sure you're going to survive a constitutional challenge if you don't provide that.

With the hope that that change will be made, and commendations to everyone who continues to work on improving this bill, I will be voting in support of it.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Schneiderman. You will be recorded in the affirmative.

Senator Griffo, to explain his

vote.

SENATOR GRIFFO: Thank you, Mr. President.

As we have this discussion today and we talk about how we have to have this law, it's even more important to say that we must have this law. This is a good piece of legislation, and it's also an essential piece of legislation.

I defy anyone to go out into their community to talk to their constituents and to ask them how they feel -- and I know that from talking to people in my community, no one would sit here today and tell or express to any of us as representatives that we should not do something and that we should not do something right now. Because there is no greater opportunity that we all have as a body to do something to protect society, to have a tremendous impact in making this a safer community.

So I think this -- I want to also applaud Senator Volker for his persistence, and this entire body. Because now we need to really come together to bring that message,

Senator Diaz, to the other house and to ensure that they understand and appreciate the sensitivity of this bill, the timeliness of this bill. And let's get something done to make a difference to protect our communities across the state.

Thank you. I vote aye.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Griffo. You will be recorded in the affirmative.

Senator Lanza, to explain his vote.

SENATOR LANZA: Thank you, Mr. President. I rise also to support this bill and thank my colleague Senator Volker for putting it on the floor.

Senator Diaz, thou protest too much. You talk about the fact that there's unanimity of support here. And I hear questions being raised, I hear problems being talked about with respect to this bill.

We hear talk about the costs of civil confinement. Well, I tell you the cost of doing nothing is something that we can't afford to do.

We talk about the fact that perhaps

civil confinement is a de facto life sentence. I say good, so be it.

We hear that there may be other alternatives, longer prison sentences. I agree. How about a lifetime sentence? Why don't we put that on the floor and see what kind of support we have?

Senator Diaz, you hit it perfectly, I think, with respect to why this hasn't moved. You seem to understand and appreciate why it's not law. I suggest to you that you convince your Democratic colleagues across the hall to see it the way you see it, to support this measure, to make sure that we protect our children.

If we -- and I speak not as a member of the State Senate, but a member of the state government -- if we cannot protect our children from being sexually molested, assaulted and raped, then we have no business being here. Going to fold up the tent and go home.

We owe that to them. As a civilized, decent society, we should do no less.

And so I thank you again, Senator Volker, for putting this on the floor. And I vote aye.

ACTING PRESIDENT MARCELLINO: Senator Lanza will be recorded in the affirmative.

Senator Duane, to explain his vote.

SENATOR DUANE: Thank you, Mr. President.

I also want to commend Senator Diaz and the comments that he made, and to point out to members that are less familiar with the New York State Senate that it's always appropriate to debate and critique in this body, that that's what the people of the State of New York expect us to do every day that we're here.

And as we work to pass substantive legislation, we need to make sure that we in a civil and a collegial way make sure that every point of view is heard and that questions are answered. And I think the people in the state expect no less.

And I'll be voting in the negative, as you know, Mr. President, but I want to

commend my colleagues on both sides of the aisle and, as a former member of the conference committee, both sides of the aisle in the other house on their hard work on trying to come together on consensus on this legislation.

And I'm confident that, along with the Governor, soon we will have legislation that will pass with the majority of the members of both houses.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Duane. You will be recorded in the negative.

Announce the results, please.

I'm sorry. Senator Perkins, to explain his vote.

SENATOR PERKINS: Thank you so much.

I'm not going to be able at this time to vote on this legislation. I want to thank Senator Krueger and Senator Schneiderman for their arguments, which helped to be convincing for me, even though they may have taken the other position.

I want to thank Senator Volker for the work that he's done on this legislation. I think it's a step in the right direction.

I'm glad to hear that this process is evolving. Because while I strongly identify with the intentions of this legislation, I am looking forward to those changes that will come as a result of the discussions between the two houses, the Congress -- I mean the Governor, as well as ourselves, so that I can find myself more comfortable in a position that I feel is the right position for me to take.

So I want to be recorded in the negative.

ACTING PRESIDENT MARCELLINO: Senator Perkins, you will be recorded in the negative. Is that correct?

SENATOR PERKINS: Yes.

ACTING PRESIDENT MARCELLINO: Thank you.

Is there any other member wishing to be heard on this piece of legislation?

Seeing none, announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 36 are Senators Duane, Montgomery, and Perkins.

Ayes, 55. Nays, 3.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, is there any further business to come before the Senate?

ACTING PRESIDENT MARCELLINO: There is none, Senator. The house is clean.

SENATOR SKELOS: There being none, I move we stand adjourned until Wednesday, January 31st, at 11:00 a.m.

ACTING PRESIDENT MARCELLINO: On motion, the Senate stands adjourned until Wednesday, January 31st, at 11:00 a.m.

(Whereupon, at 3:56 p.m., the Senate adjourned.)