ALBANY, NEW YORK

February 13, 1995

3:03 p.m.

REGULAR SESSION

SENATOR JOHN A. DeFRANCISCO, Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT DeFRANCISCO: The Senate will come to order. I will ask everyone present to please rise and repeat with me the Pledge of Allegiance to the flag.

(The Senate joined in the Pledge of Allegiance to the Flag.)

The invocation today will be given by the Reverend Terry Troia from the Brighton Heights Church of Staten Island.

THE REVEREND TERRY TROIA: Let us pray.

Breath of Creation, whom we know by many names, Ala, Hashim, Lord, we honor You as a poor man honors his bread.

In the midst of these difficult days of budget negotiations, instill in Your legislators wisdom and deliberation and the courage to stand with those in need. May the lives of the widow, orphan, and stranger and the suffering of those among us fighting addiction and disease of mind and body, be foremost in the hearts and in the minds of Your servants

gathered here.

May the whisper of the weakest resound in our hearts and may the work of Your Senators be transformed into acts of living kindness, done for Your people's sake and in Your most holy name.

Amen.

ACTING PRESIDENT DeFRANCISCO: Thank you, Reverend Troia.

Reading of the Journal.

THE SECRETARY: In Senate, Sunday, February 12. The Senate met pursuant to adjournment. Senator Hoblock in the chair upon designation of the Temporary President. The Journal of Saturday, February 11, was read. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Levy from the Committee on Transportation reports the following bill directly for third reading:

Senate Bill Number 317A, by Senator Johnson and others, an act to amend the Vehicle and Traffic Law, in relation to maximum speed limits.

Senator Marchi from the Committee on Corporations, Authorities, and Commissions reports the following bills directly for third reading:

Senate Bill Number 769, by Senator DeFrancisco, Public Authorities Law, in relation to the Onondaga County Resource Recovery Agency.

1117, by Senator Skelos, an act to amend the Business Corporation Law and the Civil Practice Law and Rules, in relation to shareholders derivative suits.

All bills reported directly for third reading.

ACTING PRESIDENT DeFRANCISCO:

Without objection, all bills reported directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR BRUNO: Mr. President. I believe there is a resolution at the desk. May we please have the title read.

ACTING PRESIDENT DeFRANCISCO: The Secretary will read.

THE SECRETARY: Legislative Resolution Number 339, by Senators Hoblock, Bruno, and Farley, Legislative Resolution commemorating Hope Day on Monday, February 13, 1995.

SENATOR HOBLOCK: I move to adopt, please.

ACTING PRESIDENT DeFRANCISCO: On the resolution. All in favor signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The ayes have it, and the resolution is adopted.

Senator Skelos, are you ready for the calendar?

SENATOR SKELOS: Please recognize Senator DiCarlo and then Senator Velella.

ACTING PRESIDENT DeFRANCISCO: Senator DiCarlo.

SENATOR DiCARLO: Mr. President. On page 5, on behalf of Senator Rath, I offer the following amendments to Senate Print Number 208, and ask that the bill retain its place on Third Reading Calendar.

ACTING PRESIDENT DeFRANCISCO: Without objection, so ordered.

Senator Velella.

SENATOR VELELLA: Mr. President. On behalf of Senator Stafford, please place sponsor stars on Calendar Numbers 40 and 41.

ACTING PRESIDENT DeFRANCISCO: Sponsor stars will be so placed on -- 40 and

41?

SENATOR VELELLA: Yes.

ACTING PRESIDENT DeFRANCISCO: Without objection.

SENATOR VELELLA: Thank you, Mr. President. On page 4, I offer the following amendments to Calendar Number 32, Senate Print Number 22, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT DeFRANCISCO: Without objection, so ordered.

Senator Skelos.

SENATOR SKELOS: May we now have the noncontroversial calendar read.

ACTING PRESIDENT DeFRANCISCO: All right. We'll take up the reading of the noncontroversial calendar. The Secretary will read.

THE SECRETARY: Calendar Number 43, by Senator Maltese, Senate Bill Number 449.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DeFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 54, by Senator DiCarlo, Senate Bill Number 500, an act to amend the Criminal Procedure Law and the Penal Law, in relation to felony sex offenses.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DeFRANCISCO: Please lay it aside.

THE SECRETARY: Calendar Number 55, by Senator Present, Senate Bill Number 503, an act to amend the Penal Law, in relation to lawful possession of weapons by persons 11 years of age.

ACTING PRESIDENT DeFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 56, by Senator Cook, Senate Bill Number 561, an act to amend the Criminal Procedure Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DeFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 59, by Senator Present, Senate Bill Number 768,

an act to amend the Criminal Procedure Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DeFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 66, by Senator Kuhl, Senate Bill Number 2034, to amend Chapter 356 of the Laws of 1993, amending the General Municipal Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT DeFRANCISCO: Lay the bill aside.

THE SECRETARY: Calendar Number 67, by Senator Kuhl, Senate Bill Number 2081, in relation to exempting certain project of the city of Hornell.

SENATOR KUHL: Lay the bill aside for the day, please.

ACTING PRESIDENT DeFRANCISCO: The bill is laid aside for the day.

That completes the reading of the noncontroversial calendar.

SENATOR SKELOS: Mr. President. May we have the controversial calendar read now.

ACTING PRESIDENT DeFRANCISCO: The Secretary will read.

THE SECRETARY: Calendar Number 43, by Senator Maltese, Senate Bill Number 449, an act to amend the Education Law, in relation to instructions in the display, use and proper respect for the flag.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DeFRANCISCO: Explanation. Senator Maltese.

SENATOR MALTESE: This bill amends the provisions of the present law and requires that the Commissioner of Education prepares for the public schools a program providing for specific instruction regarding respect for the flag, its display and use, as provided by federal statute and regulations.

This bill has been debated at prior years, at least a minimum of the last three prior years, and last year passed the Senate 54 to zero.

Basically, what we have attempted to do with this bill is incorporate the

provisions of Section 802 of the Education Law and incorporate the provisions of Sections 170 to 177 of Title 36 of the United States Code, and those sections relate to the National Anthem and conduct during play, the Pledge of Allegiance and conduct during recitation, the display and use of the flag by civilians, the time and occasions for display, the position and manner of display, respect for the flag and conduct during hoisting, lowering and passing of the flag.

This is an attempt on the part of the Legislature in the course of many, many demands on a student's time, an instructor's time, teachers and people who set curriculum, to ascertain that instruction be given regarding respect for the flag. This legislation is not proposed in a vacuum. It is proposed because more and more we seem to see a disrespect for the flag of our country and that disrespect unfortunately is manifested at many public events, sporting events.

In addition, it's manifested by a

disrespect for the flag not only during occasions of civil disobedience but those actions of civil disobedience as shown in the public media, on TV, and reported in the media provide unfortunately a bad example for many of our students, many of the young people who have difficulty ascertaining what is right and what is wrong.

So what we are attempting to do is give them, give the education authorities an opportunity to provide the proper instruction in what should come naturally, but unfortunately does not, the respect for our country's flag, the symbol of our great nation and the sacrifices of our veterans and all those Americans who have proceeded us.

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Actually, for those who are unaware, if I had come to the Senate in the last couple of years, I would have thought that the

Pledge of Allegiance, for instance, would have certainly been the precursor to all of the sessions here, but actually the Pledge of Allegiance that we observe every day at the beginning of our session was brought into effect by resolution in 1989.

So this bill is probably something that is refocusing us on the allegiance to our actual country, as certainly was pointed out in the explanation.

My only question that I would like to ask is if there is any measurable fiscal impact of this legislation. Otherwise, that's all I wanted to know.

ACTING PRESIDENT DeFRANCISCO: Senator Maltese.

SENATOR MALTESE: My understanding in prior years was that there were no fiscal implications because it would be handled like any other suggested curriculum changes. The memo -- and in prior years there were no objections made -- provides no fiscal implications and no local fiscal implications.

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger.

SENATOR DOLLINGER: Mr. President. Will the sponsor yield to a couple of questions?

SENATOR MALTESE: Yes.

ACTING PRESIDENT DeFRANCISCO: Senator Maltese.

SENATOR DOLLINGER: Senator, what evidence of need is there for a change in the curriculum on flags in New York State? Do you have any evidence of the need for this change in this state?

SENATOR MALTESE: Mr. President. Certainly, I would feel that for any piece of legislation to be enacted we would have some need. This specific legislation is difficult to place in the context of need. The episodes that I recited of disrespect, open disrespect for the flag, all of us have seen instances of this.

As far as whether or not the fact that it is not done in many of our schools I think would seem to indicate that there would be

a need as far as providing for instruction and including it, as I mentioned before, in a curriculum as part of a necessary recommend - necessary educational instruction as far as the respect for the flag.

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger.

SENATOR DOLLINGER: Again through you, Mr. President. I note in the sponsor's memo, you point out that New York State requires that all of the areas in your bill be covered as part of the curriculum in elementary and secondary schools. Isn't that correct? So we already do this, don't we?

SENATOR MALTESE: Mr. President. The program itself would be supplemented by these specific provisions; and while there is a present provision for it, in actuality, we are advised that the instruction, if you will, is very cursory, very brief and subject to the individual whim of whoever happens to be preparing the curriculum.

ACTING PRESIDENT DeFRANCISCO:

Senator Dollinger.

SENATOR DOLLINGER: Again through you, Mr. President. Senator, do you know of any specific example, any specific example in this state where you can point to the fact that a teacher in an elementary school has given cursory and just proforma explanation of the flag and the high esteem that the flag is held with in this country as part of the curriculum in education? Do you have any specific school, any specific date, any specific pupil that you can point to who got only a proforma introduction to the flag?

ACTING PRESIDENT DeFRANCISCO: Senator Maltese.

SENATOR MALTESE: Mr. President. I have not myself personally participated in any of these classroom sessions. Perhaps in the future, it might be a good idea that I and Senator Dollinger and other members of the body do so. I do have not have any specific instances, but common sense which perhaps all too often is lacking in this body as in other

legislative bodies would dictate that anything subject to the whim or judgment, if you will, ill or good, would vary from case to case and perhaps should be more formalized, and that's what this bill intends to do.

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Maltese will yield to another question. Isn't it true, Senator, that the teaching of one plus one equals two could also be subject to the same kind of whim of the teacher? They may give it a lot of emphasis; they may give it just a little bit of emphasis. They may teach two times two, or five times five may get proforma introduction.

I mean isn't everything that happens in a courtroom -- excuse me -- in a classroom subject to the possibility of being taken by the teacher and given specific emphasis on some topics and lesser emphasis on others, and isn't that the whole process of education?

ACTING PRESIDENT DeFRANCISCO: Senator Maltese.

SENATOR MALTESE: Mr. President. I think while that may be the whole process of education, as I indicated there are many, many demands on teachers and people who set the curriculum, education specialists, administrators, school administrators, and those demands unfortunately at times force the administrators or the teachers to set priorities, and we may not from time to time agree with those priorities; and while something like rote two times two or mathematics or multiplication tables, we can hope that if this is missed by a particular teacher or in a particular year that it would be repeated subsequently and the student would be able to avail themselves of the education that is proffered in that case.

But in this case, we fear that if this would be passed over or provided to not as full an extent as we would wish, we would not be able to remedy that; and, again, common sense

tells us that the adults that we see showing and evidencing disrespect for the flag must have gone through some educational system to arrive at where they are; and what we are hoping to do by this legislation is provide them with some background so that perhaps they wouldn't be as expeditious in coming forth and showing disrespect for the flag and perhaps would be more reluctant to show disrespect for the flag.

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger.

SENATOR DOLLINGER: Again, through you, Mr. President. I'm intrigued as Senator Paterson was by your claim that there is no cost or no fiscal implication attached to this legislation. Don't you intend as part of this that someone in the Department of Education would devise a curriculum, then circulate that curriculum around this state, that local school districts would spend their time and effort in curriculum development in making sure that their local curriculum conformed with the state model; and don't you think that will take up a

significant portion of administrative time so that your estimate that there's no fiscal implication is actually just not true or accurate?

ACTING PRESIDENT DeFRANCISCO: Senator Maltese.

SENATOR MALTESE: This bill was, as I've mentioned before, debated in prior sessions; and at that period in time, the fiscal implications were indicated to be not applicable and no claim or substantiation was made on behalf of Senator Dollinger or any of those Senators who while arguing against the bill ultimately voted for the bill and, thus, must have had their fears allayed as far as fiscal implications are concerned. So I would say that the expectation is that the programs would be developed in the normal course of business of the educational establishment and that it would provide for no additional expenditures or fiscal implications.

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger.

SENATOR DOLLINGER: On the bill, Mr. President.

I guess this bill perhaps epitomizes sometimes what we're all about in this chamber. The best I can tell, and I appreciate Senator Maltese's impetus that brings this bill to the fore, but I didn't hear any demonstration of need. In fact, after this bill was passed last year, I used it as the classic demonstration about how the State Senate used the concept of unfunded mandates; that what we tend to do is we tend to take this little picture, individualized picture, of what is wrong with the state and then we devise a bill and we bring it to the Senate floor. I guess members of the Majority bring it to the Senate floor. We don't get a chance to do that.

But, nonetheless, they bring it to the Senate floor as an episodic view of what's wrong with New York State. We obviously have some parents who don't know how to accord the flag its proper respect. The fault must lie in the curriculum we teach in our schools, I'm

not sure I buy that logic.

But instead we found out -- what I found out was -- I asked my school districts, "What do you do with the flag?" And they told me we teach flag, we teach patriotism. We do it all the time. It's one thing that the kids love to do. We love to give them this training. They sit in wrapped attention as they are told what the stars and bars mean.

I don't think there's any specific need for this. The Senator can't point out any specific need in this state. In addition, it's clearly an unfunded mandate. We're going to require school districts to change their curriculum, not give them any money. I'm sure at some point during this session we'll produce another one of those bills that we always vote on that say no unfunded mandates. The last thing, of course, is I believe it's just a fiction about having no fiscal impact at all.

My final comment is this about the flag. I said this yesterday in a meeting of

veterans in Rochester. I said I believe that the flag is a revered symbol of this country, and I believe it's entitled to respect and our children should be taught what that respect is and how it's properly accorded. But I'd simply point out that the flag now appears on bikini briefs. It appears on bikini bathing suits. It appears on coffee cups, on sweaters, on ties. It appears in the jerseys that were worn by the Dream Team basketball players. It appears on all kinds of swimsuits and other kinds of paraphernalia.

But I think we've got to come to a conclusion in this country. Either, we're going to allow the flag to be commercially exploited as it is now or we're going to go back to the days when it was a revered symbol. I don't think we can have it both ways.

I voted in favor of this bill last year, frankly because I was afraid that somebody would run one of those fancy political commercials against me and accuse me of being not patriotic because I didn't.

I think this bill is an unfunded mandate. I think it's a fiction that it has no cost; and, frankly, I think it typifies it what we too often do in this chamber.

ACTING PRESIDENT DeFRANCISCO: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President. I would like to know if the sponsor would yield for a question?

ACTING PRESIDENT DeFRANCISCO: Senator Maltese.

SENATOR MONTGOMERY: Mr. President. I would like to know if Senator Maltese is amending the existing law that covers instruction for the flag? This bill, does it not, amends Subdivision 1 of Section 802 of the Education Law.

ACTING PRESIDENT DeFRANCISCO: Senator Maltese.

SENATOR MALTESE: Mr. President. Yes.

SENATOR MONTGOMERY: Thank you.

Mr. President. I have the law in

my hand, and I'm trying to figure out just what we're talking about here because the law says that it shall be the duty of the Commissioner of Education to prepare for the use of the public schools of this state a program providing for a salute to the flag and a daily Pledge of Allegiance to the flag, instruction in its correct use and display and such other patriotic exercises as may be deemed by him to be expedient.

Now, it sounds like the only thing that Senator Maltese is ultimately doing is adding that we should also teach the children that they should respect the flag. Is that not so? Is that what this is?

ACTING PRESIDENT DeFRANCISCO: Senator Maltese.

SENATOR MALTESE: Mr. President. Generally speaking, that would be what we would try to do, but because we're setting it forth by statute, we set forth further down the minimum, the provisions of Section 170 through 177 of Title 36 of the United States Code which has the

headings, the paragraph headings that I referred to earlier, and which I would be glad to provide to Senator Montgomery. Basically, it's as Senator Montgomery as indicated. It supplements those provisions but particularizes them as far as the actual content of what should be included in the curriculum.

ACTING PRESIDENT DeFRANCISCO: Senator Montgomery.

SENATOR MONTGOMERY: So that in addition to respect, Senator Maltese, if you would yield, you are adding another mandate for a higher level of a more involved curriculum which then has to be developed by the Education Department for which we are proposing a 30 percent cut in the Department of Education staff?

ACTING PRESIDENT DeFRANCISCO: Senator Maltese.

SENATOR MALTESE: Mr. President. The sections are part of the United States Code and I have them before me, and they take up - without all the legislative references, they are

-- 1, 2, 3, 4, 5 -- well, lengthy. They take up about 12 paragraphs, and they are very specifically set forth as far as the wording; and they are, as I indicated, headed National Anthem, Star Spangled Banner, which is only one sentence. Section 171 is conduct during playing of the Star Spangled Banner. The Pledge of Allegiance to the flag, manner of delivery, display and use of flag, time and occasions for display, and position and manner of display and respect for the flag and conduct during hoisting lowering or passing of flag.

ACTING PRESIDENT DeFRANCISCO: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Senator Maltese.

On the bill briefly.

Mr. President. I reiterate that we already have in law, and it is very clear to me reading this as a lay person. I understand what is required and I understand that every child in the State of New York is required to have some instruction in allegiance to the flag,

and it's clear to me that we sing our national anthem and we salute the flag, and I suppose that teachers teach it for -- teachers teach respect via teachers teaching appropriate behavior as it relates to this process.

Now, I understand that Senator Maltese wants to teach respect, respect of everything, and the flag certainly is one of them and I agree with that. But I think it's a terrible hoax on the citizens of this state to propose legislation which essentially duplicates what we already have, simply says that we are now going to add respect; and in addition to that, we are going to require the Commissioner of Education to go and develop possibly a new curriculum another curriculum.

It's another mandate that's going to be passed on; and, quite frankly, I resent this, because the teacher in my child's class already has 30 children in her class. She is doing as much as she can, and I would not want to be a part of any legislation which passes on to her an additional burden to do something over

and above what she already is struggling to do in that class with those 30 children.

And some children are in class with even more children in the room, and maybe it doesn't affect the schools in your district, Senator Maltese, but it certainly does in mine, and my own son's class, moreover.

So I'm going to vote no on it because I think we already have a bill. This is not necessary. It does not prove any more allegiance to the flag than we already have. It is not going to require us to have any legal sanctions against anybody who desecrates the flag. So even though you have that concern, this doesn't address it, and it adds an additional burden to the schools in the City of New York, and so I'm against it and I will vote no.

ACTING PRESIDENT DeFRANCISCO: Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. Would the gentleman from not too far from where I reside in Queens yield

to a question or two?

ACTING PRESIDENT DeFRANCISCO: Presumably that is Senator Maltese.

SENATOR WALDON: Senator Maltese, do you support the constitutional concept of free speech.

SENATOR MALTESE: Yes. Mr. President, I certainly do.

SENATOR WALDON: Do you in that regard feel that one should be allowed to say whatever he or she wishes just so long as it does not impair and/or interfere with the rights of other Americans?

SENATOR MALTESE: Mr. President. Basically that would seem to cover my position.

SENATOR WALDON: By the way, Mr. President, alert Senator Maltese there's no trap in my question. I have a very -

SENATOR MALTESE: Mr. President. I thought Senator Waldon was going to talk about the access bill to abortion clinics.

ACTING PRESIDENT DeFRANCISCO: Well, be that as it may.

Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. Senator Maltese is being very creative in his imagination today. I'm not barking along that trail.

If I may continue, Mr. President. If the Senator will continue to yield? Senator Maltese, were you in the military?

SENATOR MALTESE: Mr. President. Yes, I was. I was a Marine Reservist, and subsequent to that served in the United States Army where I rose to the lofty rank of corporal.

ACTING PRESIDENT DeFRANCISCO: Senator Waldon.

SENATOR WALDON: As one corporal to another, Mr. President, if I may continue. In your time in the service, Senator Maltese, were you on occasion in parades, military parades?

ACTING PRESIDENT DeFRANCISCO: Senator Maltese.

SENATOR MALTESE: Mr. President.

I appreciate Senator Waldon giving us the opportunity to engage in this bout of nostalgia. Yes, I was in many parades and enjoyed all of them.

SENATOR WALDON: And I recall from my days in the military that when we were either in full dress or fatigues but in parade formation, whether it be the battalion level, company level, or even regimental level, we were often led by the guidon and the guidon had a flag. My question, Mr. President, if I may continue to the learned Senator is, does your recollection recall such instances of parades and following the flag of this country?

ACTING PRESIDENT DeFRANCISCO: Senator Maltese.

SENATOR MALTESE: Yes, Mr. President, I recall them and I know in many instances we had to follow these instructions because many of us were not as familiar with the rules concerning the flag since we didn't receive the instruction in our schools.

ACTING PRESIDENT DeFRANCISCO:

Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President, and I appreciate the Senator's response.

Senator Maltese, we are coming to the end of my inquiry. Can you recall the feeling, the sense of feeling that you had when you were in those formations; and if you can recall such, would you briefly share them with us, meaning your emotional state at that time.

ACTING PRESIDENT DeFRANCISCO: Senator Maltese.

SENATOR MALTESE: Mr. President. You know, since we are engaged in a debate and referring to nostalgia, I grew up in a different time. I was born in 1932 and was just 10 years old on the date that Pearl Harbor was attacked, and we had, I think, different instruction in the home than many of our children have the opportunity to receive today, and the atmosphere and the spirit that permeated the greater American spirit was much different than it was today. People would not have dared at that time

to show disrespect for the flag in public arenas, sports stadiums. They have would have been ridden out of town on a rail. That was a different time.

Yes, Senator, I had a great feeling of pride. I know that many of my colleagues and comrades in arms had a great feeling of pride as did all the veterans of prior wars, and I know that feeling of pride is shared by many that serve today who did not have the opportunity to serve, but I do think that it's worthy of note that it was a different time and a different place and a somewhat different country, and what I am seeking to do with this legislation is restore some of that pride of country, pride in our flag as a symbol of that country.

ACTING PRESIDENT DeFRANCISCO: Senator Waldon.

SENATOR WALDON: Mr. President. Thank you very much, Senator Maltese. Mr. President, if I may, on the bill.

I, too, was extremely proud on

those occasions where I marched behind the flag. I was in the honor guard in France and had the opportunity to march not only with U.S. Military personnel but with personnel from France, from Great Britain, from Canada, and those moments in full dress, marching into towns like Orleans or Nancy, even on occasion Verdun, with thousands of troops in formation, was an exhilarating experience.

I was proud to be part of the U.S. Army. I was proud to be a part of our honor guard. I don't want to offend anyone with what I'm saying and people have the right to believe whatever they believe, but I do believe that nowadays in America there is a callousness toward what it means to be an American, and I'm troubled by that.

I don't know if what you are attempting to do, Senator Maltese, will accomplish your goal or will help us in the journey to inspire people to feel better about this country, the greatest country on the earth. I hope that it will have some saving

grace.

I will support the bill simply because I see too many young people doing things not just about the flag but in general about what it means to be patriotic and what it means to be an American that cause me some concern and cause me some pain actually, because despite the fact that my people came here differently in terms of passage than many of my colleagues in this institution, we have paid our debt to America. We have spilled our blood on foreign soil so that this flag could fly high and with pride, and I hope that the younger people of this nation will become more sensitized to truly what it means to be a part of the greatest nation on earth.

I hope that the teachers will understand that maybe they have a greater role to play in that regard. I hope that the parents will understand that maybe they have a greater role to play in that regard. The threat of Communist Russia is not upon us as it was in the past few decades but there are threats out there

which could undermine this nation.

I believe that what you are doing is commendable. I support it, and I sincerely hope that all of us will learn to feel a little bit better about this country, which happens to be the greatest nation on earth.

Thank you, Mr. President.

ACTING PRESIDENT DeFRANCISCO: Please read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day after it shall have become a law.

ACTING PRESIDENT DeFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57. Nays 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT DeFRANCISCO: The bill is passed.

Secretary will read.

THE SECRETARY: Calendar Number 54, by Senator DiCarlo, Senate Bill 500, an act

to amend the Criminal Procedure Law and the Penal Law in relation to felony sex offenses.

SENATOR GOLD: Explanation.

ACTING PRESIDENT DeFRANCISCO: An explanation is asked for.

Senator DiCarlo.

SENATOR DiCARLO: Yes, Senator Gold. My bill does a number of things. One, it limits plea bargaining for sex offenders and requires that the lowest they can plead to is to a sex felony. It also does a separate sentencing structure, increases minimum terms, mandates that during -- periods of probation and parole be extended and it also is mandatory post prison treatment for sex offenders.

ACTING PRESIDENT DeFRANCISCO: Senator Gold.

SENATOR GOLD: Yes, will Senator yield to a question?

SENATOR DiCARLO: Yes.

SENATOR GOLD: Senator, as I indicated in the Codes Committee, I don't have a problem with what you do. I have a problem with

what you don't do; and, Senator, am I right, the bill does not provide for any kind of a treatment plan for people while they are in prison? Is that true or is that not true.

SENATOR DiCARLO: That's correct.

SENATOR GOLD: Well, could you explain to us, Senator, why you decided not to include that in the bill?

SENATOR DiCARLO: Well, firstly, sex offenders cannot be cured, as I have stated in the past. Their behavior can only be curbed, and that's if we're lucky.

SENATOR GOLD: That's what?

SENATOR DiCARLO: That's if we're lucky, that their behavior is curbed. My bill wants to protect people on the outside. It is my belief that you can have all the treatment programs that you want in prison; once they are out if they don't have those same treatments, they will go back to the same as they were before.

My bill wants to keep them in prison for longer periods of time and while out

have longer periods of parole and probation while they must get treatment because that is the only time I believe it is effective.

So my bill does not talk about treatment while they're in prison, but I would bring to your attention that already in New York State we have 14 prisons that do have sex offender programs, with 24 counseling programs, already instituted, five maximum security prison facilities provide counseling groups, at Attica, Auburn, Elmira, Green Haven and Sing Sing; seven medium security prison facilities provide counseling groups at Arthur Kill, Cayuga, Collins, Gouverneur, Midstate, Orleans, and Watertown. At Groveland Correctional Facility, Veterans Residential Therapeutic Programs has a sex offender program that provides intensive counseling for sex offenders.

We already have in New York State a number of programs for sex offenders, for sex offenders who wish to be in counseling. So that already exists. I do not think what you are asking for has a place in my legislation.

SENATOR GOLD: Will Senator yield to another question?

SENATOR DiCARLO: Sure.

SENATOR GOLD: Senator, you said in your belief there is no cure but it can be curbed. I mean, now, is that belief based upon any particular study or studies or information?

SENATOR DiCARLO: I believe that my predecessor, Senator Mega, held hearings on this back in 1989, where the findings were that from most authorities that they can not be cured, sex offenders cannot be cured, so that's based on hearings and studies that I have look into.

ACTING PRESIDENT DeFRANCISCO: Senator Gold.

SENATOR GOLD: Senator yield to another question?

SENATOR DiCARLO: Yes.

SENATOR GOLD: Senator, what about states like New Jersey which actually have the programs? What is their experience?

SENATOR DiCARLO: You can tell

me. You tell me what their experience is in New Jersey.

ACTING PRESIDENT DeFRANCISCO: Senator DiCarlo, do you wish to respond to that question?

SENATOR DiCARLO: My response would be I'm not sure what New Jersey has found. Maybe you can enlighten me.

SENATOR GOLD: Well, Senator, if you will yield to another question?

SENATOR DiCARLO: Yes, I will.

SENATOR GOLD: Do you know what any of the states have found that actually have a formal program for sex offenders?

SENATOR DiCARLO: Yes, from a New York Times article. Those people who want to be treated and want help sometimes can get help with these programs while in prison, yes.

SENATOR GOLD: Will Senator yield to a question?

SENATOR DiCARLO: Yes.

SENATOR GOLD: Senator, I'm not interested in what some New York Times reporter

said. What I'm interested in -- you are sponsoring legislation which I'm going to vote for. I mean I don't have a problem.

As a matter of fact, as I have said so many times, I'm never amazed when a so-called Conservative misinterprets what a so-called Liberal is. I mean from my point of view, people have rights; and then after the rights are used, you have a trial. You go to jail, "directly to jail, don't pass go, don't collect $200". No problem with that.

I'm asking you, Senator, as the person who drafted this legislation and who says that you don't think that a program in prisons can help, what's your experience from having examined those states like New Jersey and others that do have the programs. What has their experience told you?

SENATOR DiCARLO: Their experience from what I have seen is that if you have treatment within the prison once they are out, if they do not continue treatment, the treatment while in prison was worthless.

SENATOR GOLD: And if you'll yield to another question?

SENATOR DiCARLO: Yes.

SENATOR GOLD: That's what I'm trying to get at so I can learn. Which of the programs that you have investigated gave you that as a result?

SENATOR DiCARLO: Testimony from experts in a half a dozen states, which I will gladly forward to your office so that you can also look at what these experts have told us.

SENATOR GOLD: All right. Mr. President. On the bill.

ACTING PRESIDENT DeFRANCISCO: Senator Gold.

SENATOR GOLD: One of the issues that we raised in the Codes Committee, and I'm interested to see how the rest of the session goes, is whether or not there is not some compromise position between the way we opt in New York State and the way the Congress operates.

Congress, as you probably know,

has one bill. It's the Crime Bill of 1993, or whatever, and they take care of everything. We on the other hand deal in pen certificates, so every single paragraph idea you are going to change gets a pen certificate. Maybe there is something in the middle that works.

And if we're dealing with the subject of sex offenders, Senator DiCarlo has a bill which is pretty comprehensive and I admire the work he's done, but it does miss a step, and I'm offering an amendment. I waive the reading and ask for the opportunity to explain it.

The amendment is an amendment which, by the way, Senator DiCarlo, I'm not only urging upon you and upon former Senator Pataki but I've also urged it upon Governor Cuomo and, unfortunately, they didn't buy it. States like New Jersey set up programs, real programs. They didn't just bring in a sex counselor and say, "If anybody's got a sex problem, come talk once a week." They had a program, and the program was aimed at dealing with sex offenders who are different than other kinds of criminals.

Now, when I say they are different, it doesn't mean that they are better. They are just different. The programs run, the so-called Mahwah program in New Jersey and others, have shown that you can, in fact, decrease recidivism if these people are treated while they are in prison.

The general history of sex offenders as Senator Skelos knows is that while they are in prison they may be excellent, excellent prisoners, and the day they get out they commit another crime because one thing had nothing to do with the other, but those people who have been able to receive some real treatment in prison, the recidivism rate is substantially altered.

And what does that mean? That means safety in the streets, that's what it means. There is one reaction that just says let's tell everybody who they are. New Jersey is trying that, and let's do this and let's do that, but this is simple. This says you've got somebody in prison for a period of time. Under

your bill, Senator DiCarlo, that period of time will be longer and that's fine with me, but do something with them. Do something with them that will help your people and cut recidivism, and it is worth a try.

It's worth a try based upon experience; and when somebody says, "Well, you can't cure, you can only curb," well, if you curb it and it's under control -- I mean there are people with different kinds of illness. There are people who can not handle alcohol ever, so they handle it. We have people who go to AA and live wonderful lives, terrific lives, and you can say, "Well, they're not really cured; they're curbed." But what's the difference? Every day, they are functioning wonderful members of society.

So if you can have a program that will take these people and change their ways, even monitor them after prison as you are suggesting, I think we owe it to people. We owe it to the people we represent, and it is worth a try, and my amendment does exactly that. It

would set up a program in the prisons for people convicted of sex offenses to try to cure or curb, or whatever you call it, that conduct so that society is safer the day they get out.

ACTING PRESIDENT DeFRANCISCO: There is an amendment.

Senator Volker.

SENATOR VOLKER: Mr. President. Let me just first of all say that we commend Senator DiCarlo for sponsoring this bill; and as a discussion as we discussed in the Codes Committee and Senator Gold was part of that discussion, this is an issue, the issue of sex crimes, that is an issue that has a great body of opinion on both sides. There certainly are some people -- and I don't know if I would go as far as you have, Senator Gold, to say that the New Jersey experience has yet shown that there is long-term information that we can necessarily affect a great deal, a great many sex offenders, but I think probably, as I understand it, it has shown the possibility that we may be able to have some impact on these people, and that is

one reason why a number of states have been looking at the so-called sexual predator legislation, which I have introduced last year and that we are going to work on and as we talked in the committee and have talked with Senator DiCarlo and with Senator Skelos and also with you and some other people about the possibility of several things.

Number 1, certainly, that we can all talk about this issue as this session goes on, the possibility that we might hold further hearings on the issues that are involved here. So by no means is Senator DiCarlo, I think, saying or I think is our committee saying that this is the final word on what's going to happen in dealing with this issue.

It's very complex. As you well know, we've had bills on this floor dealing with rape for the last several years that we have not been able to compromise with the Assembly. My feeling is that this is the year I would hope that we will be able to do something more with that and at the same time deal with the issue of

sexual predators which is a very, extremely serious issue.

As somebody who came from a background, as you well know, where I investigated and was on a task force that lasted for years that involved these very issues, it is something that I feel very strongly about, but let me say that nobody is saying in February of this year that this entire issue is -- has been decided yet, and I don't think Senator DiCarlo is saying that.

I think what Senator DiCarlo is saying is that he has a bill here that he feels deals with the issue as far as he feels comfortable with; and it seems to me, though, that I would just say to you that we will certainly as a committee look further at this issue before this year is out; and as I said to you in the committee before, I would be happy to discuss it with you and the other members of this house who are interested in it.

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: Mr. President. This issue of sexual abuse and sexual offenses is one that evokes often a number of knee-jerk reactions and a lot of conform resections, but what I think this amendment that Senator Gold offers us is a real alternate and one that certainly has a basis in program study that is included in this amendment the Mahwah program in New Jersey, one at Avadale also in New Jersey. There are programs right here in New York State, one of which was founded by one of the members sitting here in this chamber, Senator Hoffmann, that have demonstrated that there are some results that would indicate that treating sexual offenders at a time when they are incarcerated can decrease the recidivism when they come out.

One of the things that we have to understand is that there are different types of sexual offenses and different types of results. Those who are defined as pedophiles, there haven't been results that would be as effective as we would like; however, in rape cases

treating those particular cases has had some results when there is some kind of programmatic response where there is an actual structure as is done in other states and as is suggested in this amendment.

So I am happy that Senator Gold has introduced this amendment, and I hope it will pass.

ACTING PRESIDENT DeFRANCISCO: Senator Stavisky.

SENATOR STAVISKY: Mr. President. I notice the roll call in 1994. An identical bill, Senate 6380, passed the Senate by a vote of 57 to nothing. And I think that what is occurring here should be a basis for reflection on both sides of the aisle. You will notice there were no opponents on the Democratic side to the concept. Very often, and you will notice it day after day as the session evolves that Democrats regularly vote for Republican bills, but they are the only bills that normally come out of committee, and I ask you not to view every idea that comes from this side of the

aisle as a hostile amendment.

Senator Gold has made a very constructive suggestion. It is not intended to embarrass the sponsor of this bill. It is not intended to weaken the purpose of this bill. It is intended to make the legislative process in this chamber fair and productive, and I would urge all of my colleagues, not just on this bill but on other bills, not to get up tight when there is a constructive amendment as Senator Gold has proposed and the feeling that by a party vote it has to be voted down.

I'm pleased by Senator Volker's attitude. I think it's an enlightened attitude, and I hope that the sponsor of this bill and the sponsor of other pieces of legislation will take heart from what has happened in this discussion. When Senator Emanuel Gold comes forward with a constructive suggestion that would improve the way that the original bill functions, then welcome it. Don't turn it off on a partisan party vote, "All those in favor signify by saying aye; all those opposed say

no," and then the amendment dies without even a record, and there may even be a bill in committee that was not even given a chance to breathe because it was not even taken up on the committee's agenda. It happens too often in this chamber, and I think the time has come that we should, on both sides of the aisle, reach out to each other and try to improve legislation not in a vindictive or partisan manner but in a sensible way.

And with that having been said, I would hope that the sponsor would take that attitude towards what Emanuel Gold has done here today and embrace the idea. There may be good ideas coming from this side of the carpet. The carpet does not necessarily separate dummies from geniuses. There may be both on both sides of the carpet.

I support the amendment.

ACTING PRESIDENT DeFRANCISCO: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President. Would Senator DiCarlo yield for a

question, please?

ACTING PRESIDENT DeFRANCISCO: Senator DiCarlo.

SENATOR HOFFMANN: I note in the sponsor's memo, there is a reference to requiring mandating a separate sentencing structure for sex felons including extended periods of probation and parole with required post-incarceration participation in approved sex offender treatment programs.

The question I would ask, Senator DiCarlo, is for a definition of approved sex offender treatment programs. Approval by whom, programs run by whom?

ACTING PRESIDENT DeFRANCISCO: Senator DiCarlo.

SENATOR DiCARLO: I believe that would be set by the court at sentencing.

SENATOR HOFFMANN: By the court?

SENATOR DiCARLO: Yes.

SENATOR HOFFMANN: And would Senator DiCarlo yield for a further question?

SENATOR DiCARLO: Yes.

SENATOR HOFFMANN: Is it safe to assume that you are supporting the concept of convicted sex offenders on parole for the purpose of receiving treatment?

ACTING PRESIDENT DeFRANCISCO: Senator DiCarlo.

SENATOR DiCARLO: If I had within my power to keep them in prison, most of them, until the last breath leaves their body, I would. But in the present conditions in this state, the legislation I put together is a bill which keeps them in prison longer and because they must be released under our present laws at some point, we mandate that they be treated; and if they do not go through treatment, they are returned to prison and out of society if that answers your question.

SENATOR HOFFMANN: Would Senator DiCarlo yield for one further question?

SENATOR DiCARLO: Yes.

SENATOR HOFFMANN: I wanted to make sure I understood you correctly. Did you say there are voluntary programs within New York

State's correctional system at this point?

SENATOR DiCARLO: That's my understanding, yes.

SENATOR HOFFMANN: That there are only voluntary programs?

SENATOR DiCARLO: Voluntary programs.

SENATOR HOFFMANN: Thank you, Senator DiCarlo.

On the bill, Mr. President. This is one of those issues that sometimes brings out the best and the worst in people and it makes every one squeamish, and I have seen the history of this issue over the last few years in this chamber, and I must admit that the issue makes me less squeamish than does the action by some people who would go out with a less than fully developed concept in a means to satisfy the public appetite that we do something with dangerous rapists and pedophiles, and I don't mean to criticize Senator DiCarlo because I think his intentions are very good, and it's a very long, complicated sponsor's memo that

conveys a great deal of information and a considerable amount of thought on his part.

I do wish we had had an opportunity to discuss the issue a little bit because I have put in a fair amount of time on this over the years. But as Senator Stavisky just pointed out, discussion across the aisle doesn't happen very often in this chamber; and for that not to happen on an issue like this, I think is particularly sad.

So I'm just going to share with you some of the facts as I know them in supporting Senator Gold's amendment today, and I would also concur with what Senator Stavisky said in offering that we work together, and I would like to reference something Senator Volker said. I sponsored a bill last year dealing with predicate sex felons. It's modeled very much on the Washington state bill that would require civil commitment for those sex offenders who having served their full sentence in the criminal justice arena, having then been judged by a medical review to still be a clear and

present danger to society would be recommitted under civil commitment. The law as it exists now in Washington State has withstood the test of the Supreme Court. The Supreme Court of the United States refused to hear it; therefore, upholding it.

And when I introduced that bill and offered it to co-sponsorship to every member of this house, I received no support on the other side of the aisle. I will be very intrigued to see what happens if an identical bill or a bill identical in concept but with Republican prime sponsorship suddenly receives overwhelming support. What issue of enlightenment occurred between last year and this year between last session and this session that would somehow make the idea noteworthy under somebody else's sponsorship but not under the sponsorship of my name.

I would be delighted, Senator Volker, if you are introducing a bill that does what my bill last year did, to join you in co-sponsorship if that is a way of making that

one happen.

But let me just explain what has happened in New York State over the last few years on the issue of sex offenders and incarceration. The Department of Corrections regularly asks the Legislature for increases in programmatic aid for the treatment of drug users, various other types of addictive behavior and demonstrated with very carefully analyzed graphs and charts the statistical increase in those felons in New York State prisons who are serving time for drug offenses and, therefore, required many million dollars in additional treatment money to treat these people.

I did a little examination of my own at the same time that we were looking at these vast increases in funding to drug offenders and I saw that while the charts showed the curve for drug offenders going up like this, only slightly below drug offenders we had sex offenders on a marked increase through the mid and late '80s, and yet the Department of Corrections asked for no funding for treatment

for sex offenders.

I was aware that other states did treat sex offenders and regularly solicited legislatures in other states to expand those programs, and I asked a couple of times during budget hearings the then Commissioner of Corrections, Tom Coughlin, why New York State was not making a similar request of this Legislature. I asked that during the fiscal hearings that we regularly hold over in the LOB. The first time I asked Commissioner Coughlin this question was, I think, in 1986. It might have been in 1987. But he indicated he didn't believe these programs ever worked, and he wasn't going to bother with them. The second time I asked him he said there were a few and we didn't know the results yet. I don't know whether it was the second or the third time, but we did have some dialogue on this subject, and during that time, I became a little better educated on the subject, so I had a few statistics that I used to increase his level of interest and, finally, we concluded our

discussion during the fiscal hearing with Commissioner Coughlin saying to me sometime in the late '80s, "I don't believe these programs work, but you show me some that do and I'll try them."

I took that challenge very seriously to heart and sought the assistance of the Director of Criminal Justice Services at that time, John Poklemba, to begin a major national study on existing sex offender treatment programs. I went to the trouble to visit several of them myself, visiting Avadale in New Jersey which has been mentioned a couple of times. It is a maximum facility that is solely used to house sex offenders. They are totally segregated from the rest of the inmate population in that state. They are housed in one facility and there is mandated treatment.

On the other end of the spectrum, I saw in Washington State medium and minimum as well as maximum facilities that have mandatory programs and voluntary programs where sex offenders are mainstreamed but provided some

segregated sex offender treatment, and I also saw the programs that operate in the state of Minnesota under the commissionership there of a gentleman named Orville Pung, who is the nation's longest ranking corrections commissioner at this point in time and was at that point in time as well, who also has the distinction of holding the dual responsibility of not only correction commssioner but is also commissioner of parole, one in the same department in that state, providing an added advantage of maintaining control over sex offenders as well as other inmates from the time of sentencing until the time of the final release from parole however many years later. That element of control over their lives and the ability to insist upon a treatment program from day one all the way through incarceration and knowing what would happen post-incarceration was an apparent advantage that is borne out by the statistics, because that state, the state of Minnesota, is the state that has the very best statistical evidence that sex offender treatment

can work.

Now, what do we mean by work?

The phrase cured is never used in discussing sex offenders among the sex offender treatment professionals. There is an alliance of sex offender treatment professionals. In fact, they held a conference here in Albany not too many years ago, bringing in people internationally, and I would refer any of my colleagues who are interested in this subject to that group, because they have excellent data and can provide a lot of very valuable information as to how this whole concept works.

So we don't talk about curing any more than you talk about curing alcoholism or addictive behavior for a substance. What you discuss is behavior modification and the ability to control behavior upon release, and sex offenders learn while incarcerated, number 1, what victim empathy is. They will go through a process where they begin to understand, some of them -- some of them may never understand. They begin to understand what it was that happened

with the victim and begin to learn a little bit about their own motivation. They also begin to understand what it is about themselves that causes them to act out and, most importantly, what the warning signs are, what behaviorial changes they undergo that could be identifiable either to them as individuals or to other people such as parole officers, members of their community and members of their family, that would help monitor their behavior upon release to provide a higher level of safety for the general public.

I think it's safe to say that most of us when we approach this issue are not doing it out of this deep seated sense of compassion for rapists and pedophiles. We're doing it out of a desire to protect the safety of citizens in New York State, the women and children who will otherwise be subjected to the violent crime of rape and lesser crimes of molestation, which can be avoided if sex offenders are afforded some kind of treatment that will allow them to control their behavior

and assist others in making sure that they control their behavior.

So the very complex issue is one that can't be addressed in a single law, mandating treatment in nonexisting treatment programs. To correct a couple of the inaccuracies within this bill, I will just point out, number 1, that the courts do not presently have any system for approval of sex offender treatment in New York State. There is no standard for approved sex offender treatment. Number 2, there is not a sufficient number of treatment programs in New York State to which all of the convicted sex offenders could currently be released. There would have to be a sizeable appropriation in a bill to actually make that part of one that could be implemented, although I think it's a worthy goal and I, for one, would support an appropriation that would create such a program and would require that upon release it be made part of a condition of parole.

And rather than give Senator

DiCarlo a hard time for having indicated that he supports the notion of parole for some sex offenders, and I applaud him for the very diplomatic way in which he suppressed it. I want to say that I recognized after having studied the issue through these many years what the sex offender treatment professionals have come to recognize and what Orville Pung, Commissioner of Minnesota, has stated, that unless you have a hook in them when you release them, you have no means of controlling whether they will be in a program or not.

So, unpleasant as it may be, it is absolutely essential that you have some form of parole for sex offenders so that you can force them to continue the treatment upon release. Otherwise, if they max out, as they generally do at Avadale in New Jersey, they max out. Then they go into society, and there is no extended treatment required at that time.

ACTING PRESIDENT DeFRANCISCO: Senator Mendez, why do you rise?

SENATOR MENDEZ: I wonder if

Senator Hoffmann would yield for a question?

ACTING PRESIDENT DeFRANCISCO: Senator Hoffman, will you -

SENATOR HOFFMANN: I will yield briefly, Senator Mendez, but I prefer to wait.

SENATOR MENDEZ: Of those studies that you have reviewed, could you tell me any specific study that states what was the number of sex offenders that received the treatment, and -

SENATOR HOFFMANN: Yes, Senator Mendez. I'm anticipating your question, and I'll get to that momentarily. Thank you.

SENATOR MENDEZ: There's a number of -

ACTING PRESIDENT DeFRANCISCO: Excuse me a minute. Could you finish your question, please.

SENATOR MENDEZ: I'm trying to finish it. I'm not going to take much -- I - I'm on your side. I know how you feel about it -

SENATOR HOFFMANN: I know. I

know the statistics -

ACTING PRESIDENT DeFRANCISCO: Senator Hoffmann, will you please let her -

SENATOR MENDEZ: My question is -- everybody here is talking about how sex offenders could curb that offensive behavior. My question is, nobody has given specific details as to which specific study, how much subjects were studied, what degree of recidivism was found, and that's -- and I want to know if there is any specific study that anybody could cite here. Do you have any?

ACTING PRESIDENT DeFRANCISCO: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President. To respond to Senator Mendez, I am getting to that point, and I think you will be pleased to know that I have some of those statistics, Senator Mendez, but I would like to bring them up in my own time after I explain a few more aspects of this bill. If you would just bear with me and be patient, I think I can answer your question satisfactorily.

To get back to the issue of parole, it is essential that we have an integrated program that requires mandated sex offender treatment as well as voluntary treatment in prisons and to accomplish that, after having gone through this exhaustive study with DCJS and my own office and having visited several of these facilities over a period of time, I embarked upon the creation of a program that would be a pilot program in New York State and the Department of Corrections. I implemented this at Oneida Correctional Facility in Rome.

And unlike Senator DiCarlo's assertion that they're all voluntary programs, I want to make it very clear that this is a mandatory program to which convicted sex offenders in New York State -- not all of them, but all of them who are sentenced to a five-prison hub in the Mohawk Valley in New York State, all of them initially are required to attend and participate in segregated housing in a sex offender treatment program. The minimum

period of time is six weeks. It is generally considerably longer, several months, that the mandatory component of the program is in place.

During this time, the sex offenders conduct group discussions. They go through an elaborate explanation of their crime, their sentence. After standing and stating their name, where they're from, what their crime was, they then say they were guilty. Several of them in every group that I have visited will say, "And I'm not guilty," or "The bitch asked for it," or something of that nature.

After a while, however, the process of having been forced in that environment to endure the daily discussions of this criminal activity, combined with the exposure to the whole victim empathy professional modality creates a change in their environment and they begin to communicate on an entirely different level and they begin to discuss what it was that motivated them to do it and then, ultimately, after some period of time, they begin to discuss what was wrong, and

finally, why they would like to not do that again or why they would feel badly for somebody if they did whatever it was they had done before.

This change takes place in a different period of time for different inmates, and for some it will never take place, and the urges that accompany the crimes that are committed in many instances will never subside, but there is still the potential for controlling the urges for those men who will go through the program for some period of time, years, and upon release continue with regular treatment, so the professionals say.

What do the statistics show? In New York State it is much too soon to say whether the pilot program at Oneida Correctional Facility is going to reduce recidivism long term. It's only a few years old. I would urge any of my colleagues, you especially, Senator DiCarlo, to please visit and see the program so you have a better sense of how it works. Listen to how these men and their very hard-working,

beleaguered counselors address this issue in a Department of Corrections that is somewhat less than supportive when contrasted to other states; but in those states that have this well structured, well-thought-out mandatory treatment program and required parole treatment in approved -- state sanctioned and approved programs, all of which are missing in New York State, in those states, there's statistical results that show that it works.

And to address Senator Mendez' question, the state of Minnesota is the one that has compiled the best statistical analysis over the longest period of time. For those inmates who successfully stayed in the program while they were incarcerated -- and many of them washed out -- they start the program and then they go through the mandatory part. After they have been in the mandatory part, they literally have to audition for the ongoing part which takes place in the duration of their treatment. If they are not sincerely working on their abnormal behavior, then they are not going to

remain in the program; but for the ones that do, and then continue in program upon release as parolees, the ten-year post-release statistic for recidivism is less than ten percent -- less than ten percent of those sex offenders who continued the program from incarceration through parole in the state of Minnesota recidivate, contrasting that with anywhere between 40 and 50 on a national average for all sex offenders, I think is a remarkable figure.

If we could lower the recidivism rate in New York State for sex offeners in treatment at Oneida Correctional by only five percent, if we could go down from 50 to 45 percent, we would spare, literally, thousands of women and children the agony of a rape or a molestation by those sex offenders. The figures are just enormous. The potential to avoid a crime is one of the most traumatic that we have before us and, yet, to put it all together requires sentencing changes; it requires parole improvements.

We have now embarked upon a

program of dedicated case loads for parole officers. I worked with Commissioner Russi a few years ago and arranged for the National Institute of Corrections to come in and do a training program much like the one we did at Oneida Correctional when we started the sex offender treatment program there, and we now have dedicated case loads for some parole officers who now understand what the sex offender treatment program works like, so for those who can, as parolees, have the good fortune of entering a program that meets some of their needs, there is a parole officer who understands it and has a better sense what the warning signs are when a person may, in fact, be getting close to the point of recidivism.

So I want to applaud Senator DiCarlo for entering this area, and I would hope that it is just the beginning of a long and very fruitful journey in reducing the number of sex crimes in New York State; but I would like very much to applaud Senator Gold for introducing a reasonable amendment, and I hope that we will

not be voting on the party line today to deny the urgency of mandatory sex offender treatment to those sex offenders who are incarcerated in New York State.

Let's support the amendment as well as the bill and then let's work toward a better, more meaningful, comprehensive approach to address this issue from start to finish.

ACTING PRESIDENT DeFRANCISCO: Senator Mendez.

SENATOR MENDEZ: Mr. President, yes, I rise in support of Senator Gold's amendment. I suppose that the reason why I do that is because, although I firmly believe that there is nothing at this point in time that we could ever do to -- to redeem or change the behavior of a sex offender, especially a sex offender that attacks children, so that at least let's try out something.

I understand -- I'm not sure, but I understand that that treatment effort that is going on in Oneida, referred to by Senator Hoffmann, I understand that it is mainly with

rapists. There is a difference, a big difference between -- in my mind at least, between a rapist -

SENATOR HOFFMANN: Will Senator Mendez answer a question?

ACTING PRESIDENT DeFRANCISCO: Excuse me, Senator Hoffmann. Why do you rise?

SENATOR HOFFMANN: I wonder if Senator Mendez would yield for a question, please.

ACTING PRESIDENT DeFRANCISCO: Senator Mendez, would you yield for a question?

SENATOR MENDEZ: Yes, I will. I think -- are you going to ask me -- you're going to mention -- say your question.

ACTING PRESIDENT DeFRANCISCO: Senator Hoffmann.

SENATOR HOFFMANN: I'm going to ask Senator Mendez why it is that she thinks the program at Oneida deals solely with rapists?

SENATOR MENDEZ: Because Commissioner Coughlin once told me when I was telling him what I really think should be done

with sex offenders; Commissioner Coughlin told me that he had a program for rapists, and he didn't mention any other sex offenders, Senator Mendez. That's why.

ACTING PRESIDENT DeFRANCISCO: Senator Hoffmann, you have another question?

SENATOR HOFFMANN: I would just want to respond to Senator Mendez, to let her - reassure Senator Mendez.

ACTING PRESIDENT DeFRANCISCO: Excuse me. Senator Hoffmann, I think Senator Mendez has the floor. If you have a -- you want her to yield for a question?

SENATOR HOFFMANN: Senator Mendez, if you would like to come to the Oneida program in Rome, I think you would be pleasantly surprised to find that there is the full complement, the full garden variety of sex offenders there. There are -- there are incest fathers; there are child molesters, pedophiles of several different varieties, as well as rapists. In -- every sentenced sex offender who goes into that facility goes into the program.

It is not by any means limited to rapists.

ACTING PRESIDENT DeFRANCISCO: Senator Mendez.

SENATOR HOFFMANN: Would you like to come? I would like that.

ACTING PRESIDENT DeFRANCISCO: Excuse me, Senator Mendez. If you can find a question within that, would you want to answer that?

SENATOR MENDEZ: No, I am not interested -

ACTING PRESIDENT DeFRANCISCO: You have the floor. Excuse me. You have the floor.

SENATOR MENDEZ: I am not interested in visiting all those people there that shouldn't be let out to hurt more people.

So anyhow -- but anyhow, Mr. President, I am supporting, I said before, the -- the amendment presented by Senator Gold, just as a last resort, knowing in my mind at this point I feel that there is nothing that we can do.

I was mentioning before that - that, in my mind, there is a difference between rapists and child sexual offenders. Those that rape infants, those that rape little boys and little girls, those people at this point in time, Mr. President, I don't think that there is anything, no treatment at all foolproof that would make it possible for that individual to come out of jail with -- regardless of how many treatments he had received in jail and monitored outside, that person is not worth for society to allow that person to come out and then have another child suffer the horrendous, traumatic experience.

So that in instances like this in which we're dealing with sexual crimes, we really have to -- have to think in terms of the -- of the victims. Of course, we all want to see everybody behave like angels, but not - everybody do not behave like angels, saints in the heaven; and these people, something has occurred to them in their formative years, something went wrong in their psycho-sexual

development that it's excited at that point and it's -- and it's a danger to -- to let them out.

I really want to also congratulate Senator DiCarlo for his bill. It doesn't go as far as it should because we always keep forgetting that the main -- one of the main functions of government is to provide safety for women, children and its citizens, and as long as we keep allowing courts to -- to have -- to have plea bargaining whenever a sex offense occurs, together with another -- as with an armed robbery or whatever, then society has not been paying enough attention to the tremendous importance of people who prey on others to -- to prey on others and commit these horrible crimes.

We should seriously consider eventually to do all kinds of experimentation and treatment and therapies that we want to, we feel we should try in an effort to see if something could be done to, in fact, correct the behavior of these people. I have no problems

with that, but we have to make certain that they stay put where they are, because our primary responsibility is to prevent one single child to be raped in such violent fashions.

This morning, Mr. President, when I woke up, I read in the -- I heard on the radio that there is a man -- he probably was already in jail -- with a van, a red van, going around the schools trying to lure children, little children into his van, and we don't have the right to allow that sick person out of jail to be doing that kind of thing. I hope he's caught before another child pays a price that he shouldn't be paying when we here must make the law to ensure the safety of the citizens and mainly the children should be our first priority.

So, at least some sentencing is going a little bit longer this time around, Senator DiCarlo, but that is not the end of it. We all should forget about everything else and just deal with the issue. Yes, let's have a thorough research. As far as I'm concerned, I'm

going to deal with that later because no specific statistics at all have been given, no detailed explanation of one of these studies that have been conducted and by whom, how were the subjects -- how were the conclusions validated? Nothing. We don't have nothing to make this statement that, in fact -- at least I feel about this one point; maybe it's my ignorance -- that the bulk of the literature would prove that the recidivism of these people is going to be so low, .001 percent, that maybe -- maybe it could be justifiable to allow them out in our society.

So, again, I support the -- the amendments presented by Senator Gold. I don't have big illusions about it, but -- and I support the bill of Senator DiCarlo, but we have a long way to go to ensure the safety of our kids in our society.

ACTING PRESIDENT DeFRANCISCO: Senator Abate.

SENATOR ABATE: I know a lot has been said, and I will try to say it briefly.

On the bill, Senator DiCarlo.

I'm a newcomer to this chamber, but having spent 22 years in criminal justice, the communities that we serve are begging for leadership from this chamber, not just Band-Aid approaches, but comprehensive, rational approaches to making our streets safer. People are looking to the Senate because the Senate traditionally is known for the crime-fighting body of this Legislature, and I would suggest that, although this bill gives rigorous attention to needed vigorous prosecution and sentencing remedies, that we're fooling ourselves if we stop short of providing treatment and prevention.

As a former correction commissioner, as a former commissioner of Probation, I have traveled throughout this country and I have spoken to law enforcement professionals. They will say, if you just do two parts of the equation, law enforcement and policing and not treatment and prevention, we will continue to fail.

I think if we look at the reality

of the situation, there are thousands of sex offenders on probation today throughout the state. There are thousands on parole and there are thousands in the Department of Corrections, and it's not the issue that we can't do anything or nothing we can do works. The issue is we have never tried anything and we have never done enough.

I know when I was a commissioner of probation, we had a thousand sex offenders. There was no money, and my experience was no different from other departments of probation in -- throughout the state. We had to develop specialized case loads, and this is before state Department of Corrections did it, before state parole did it, because we knew how volatile this population was and we tried to develop training for the probation officers. In New York City, there are a handful of programs, so to say that this treatment does or does not work, to say there's not a body of documentation, is really saying we've never had this treatment. We must have the treatment.

We also must have a research component to evaluate what modalities work and what doesn't work. The professionals throughout the country talk about the need for continuum of care. It must start in prison, in jail, continue out in the community or start in probation or end in parole; and the reason is, is what Senator Hoffmann says. People don't change overnight, particularly sex offenders. They go through a long period of denial. They separate their crime, their actions. They depersonalize the victims. They don't think what they did is wrong. It takes years for them to come in touch with their rational being and their emotional being. So it's important that treatment not just be voluntary in correction. It must be mandatory, and that continuum of treatment must be as vigorous and intensive when that offender reaches the community.

And there are all kinds of treatment from counseling, the psycho-dymanics, the biomedical modalities, all of this has to be tried, but we need money and we need designed

programs that have to be developed. They just don't exist, and Probation Departments and Parole Departments have to deal with this population, having offenders coming out of jails and prisons without this kind of treatment.

And I think we all agree, as a body, we need to make sure that sex offenders do not offend again. We need to make our communities safer and what I'm suggesting, the only way to do it is through law enforcement and treatment together, and we can make, I think, a difference.

So I would suggest, Senator DiCarlo, we can take a comprehensive view. If we just do more -- putting more people in parole and probation and prison without the treatment, they will just continue to victimize our -- the people we are served to protect. I would ask you to reconsider, go back and let's have a fuller discussion. Look what happened in Massachusetts. They have done studies - studies throughout the country. Let's make sure we provide the kind of leadership to our

communities so, in fact, we make a difference that makes our streets safer. This just goes one step in that direction. Why not go the whole way and make a difference for our communities?

There's a body of research out there. There's programs that can be developed. Let -- as a Senate body, we are crime fighters. We all care about the safety of our communities. Let's prove it. Let's not do BAnd-Aid approaches, short-sided approaches. Let's not just deal in rhetoric. Let's deal in real solutions that are going to save people's lives.

Thank you.

ACTING PRESIDENT DeFRANCISCO: Senator DiCarlo on the amendment.

SENATOR DiCARLO: Senator Mendez has left the chamber, but she was speaking about our conversations with Commissioner Coughlin and she stopped short of her answer to this problem, and if I read Senator Mendez' mind, if she were putting that on as an amendment to my bill, I

would probably go along with it.

Senator Gold, I know that you've obviously worked long on your amendment, and I think you believe this is going in the right direction. I oppose your amendment because I oppose the content of it. I am perfectly willing to discuss with a colleague their feelings on legislation and potential legislation at any time. I do not believe in your amendment, period.

We have here a case recently in New York City -- we talk about treatment. We have the case of -- the Rosado case, and we talk about treatment as being the panacea and the answer to these troublesome questions. This man was a second felony offender, having been convicted of second degree robbery in 1971. In 1979, he was involved in four separate sex crimes.

In 1980, he was convicted of first degree rape, first degree sodomy, first degree attempted rape, first degree attempted sodomy, second degree assault, second degree

sexual assault, unlawful imprisonment and second degree assault. Although four separate incidents, he was sentenced concurrently, could have been sentenced to a maximum of 12 1/2 to 25, but he was sentenced only a 9 to 18. Parole Board did its job and denied him parole four times and he served the minimum.

Rosado was a model prisoner and he earned good time, which meant he had to be released after serving 13 years. He agreed to submit to an evaluation and treatment program following his release. Now, I'm all for if you're going to get out, you have to have treatment, because it does probably cut back on some tendencies, but it doesn't cure it. Rosado was actually attending the program after his release and, at the same time, committed eight rapes over a one-year period, and this is while getting treatment.

The answer to the problem is to take these people off the streets. The answer is not treatment while in prison or after prison, while out of prison. My bill wants to

keep these people in prison for longer periods of time. I would rather my bill kept them in for much longer periods of time, but I want to get a piece of legislation passed into law. The reason I put treatment into my bill is because I do believe that some are going to be getting out and it is much better for us to try something else if they're going to be released and if they're going to be released into society, we should try to give them some treatment.

Your amendment wants to treat them in prison. Frankly, I don't believe -- and there are studies that will go on forever about what happens in prison and treatments in prison. I do not believe treatment in prison is going to reduce significantly their committing crimes when they're out. I don't think it's going to happen. I don't agree with your amendment, but I think we've got to get serious with this crime. We're not serious with it.

This bill has passed every year for the last six years, and every Democrat in this chamber along with every Republican votes

for it. You might not think it goes far enough. You'd rather see treatment while in prison, but we pass a bill every year in this floor for six years, only to die over in the other chamber. We're not serious about the crime of rape. We're not serious about the crime of child molestation. It's a joke.

Now, Senator Gold, I would always sit down and discuss pieces of legislation with you. I do not believe your amendment goes in the direction that I want my bill to go in, and I would be happy to sit down with you at another time to discuss other pieces of legislation because I believe your many years in the Senate, all right, would be helpful to me, but this amendment does not go in the direction that I want it to. I would not vote for your amendment. I would urge its defeat.

Thank you.

ACTING PRESIDENT DeFRANCISCO: Senator Gold.

SENATOR GOLD: Yeah, if nobody else wants to speak, I'd close on this.

Let me say this. Senator DiCarlo, first of all, I have a great deal of respect for you. You know that, but -- but when you say studies "go on forever", to give the impression that there's studies on the right and studies on left is nonsense because, Senator DiCarlo, in all fairness, there are no studies on the other side that say that it's a waste of time. There aren't. There are the studies referred to. Minnesota, you've got Massachusetts, New Jersey and others. Those are real studies.

Now, I learned years ago you can't argue religion with people because, at one point in time, somebody says to you, "Well, that's what I believe." Well, if that's what you believe, then let's not get into logic or anything else. If you want to say, "Well, this is what I believe," then I won't argue with you on that, but don't tell me there's studies and they go on forever.

The other thing is you said that my amendment talks about treatment as a

panacea. Now, that's not so. I didn't say that at all. And as far as Mr. Rosario is concerned, as Senator Abate pointed out, you don't treat somebody for an hour and say, "My God, we've just sent down another changed person." This takes a period of time, and if that time starts while they're in prison, then the person who goes out on the street isn't hitting treatment for the first time, so you can shrug your shoulders and say, "Look at that. We gave that guy an hour yesterday and he committed a crime today." We're talking about giving people treatment over a period of time, so the day they get out of prison maybe they are a different person.

And the problem with giving me a case like the Rosario case is you've got to invite me to read you these 35 cases of people who went through the program described by Senator Hoffmann and who haven't bothered anybody. So, you know, bad cases make bad law. There's always some instance, situation you can point to, but that doesn't mean that that's

what's really happening across the board.

Now, this bill is not, as far as I know, passing the Assembly tomorrow. As a matter of fact, you indicated you haven't been able to pass it in the Assembly for years, so this conversation we have today could be a very useful one in the process. "Let's not pass the bill. Let's talk. You don't like my amendment, maybe there's a way we can word it differently to fit it in," and then we wind up taking care of the situation.

Another point I want to make is there's an expression used all the time, and I'll bet you right now -- I'll bet you right now, Senator DiCarlo, dinner for four, my wife and you and your wife in New York. You pick the restaurant -- that by the time we finish a debate on a bill tomorrow, if that bill comes up tomorrow, somebody on your side of the aisle is going to say, "And even if this saves only one life, it's worth it." Well, let me tell you something. Why not today? If my amendment will save one life, if my amendment will save 50

women, why isn't that enough? I mean, I must tell you if you -- if you talk to people who have been involved with the rape situation, it's devastating to someone's life, so if my bill could save one life, why isn't it worth it? And the fact of the matter is, we're talking about a lot more than just one life.

What we have here in this debate I find fascinating. We have people who say, "Well, I've got a feeling." There are fears. There's obviously politics involved, and on my side of the aisle, I sat -- and there's a Jewish word "kvell" which means you look at something with great pride, and I listened to Senator Hoffmann talk, and what did I hear? I didn't hear prejudice; I heard facts from an intelligent, articulate lady, setting forth real logic for what is happening in understanding a problem; and if that wasn't enough, Senator Abate jumps in and says, "Look, I'm a Senator for maybe an hour and a half, but I have 22 years' experience in this subject and maybe that's why people sent me here."

And I think that the corker of it all is, Senator DiCarlo, you may, on a scale of one to ten, have an idea of where you are in the fight against sex abuse, but wherever you think you are, put Senator Mendez one step ahead of you because, in her little remarks, we all know the way she feels, and she stands up and says, "I don't think this will work, I'll give it a try," because maybe Senator Mendez, in her wisdom, says, "If it helps one woman, ten women, fifty women --" So that's what we're talking about. We're talking about whether or not this is a serious process.

You said a moment ago, Senator DiCarlo, that you were very upset with the process. This house unanimously has passed a bill and why is it not the law? Maybe it's not the law because it's the fault of your party. Maybe if your party didn't bring bills out for political advantage, maybe if they brought out ideas for conversation, if they came out with open ears and an open mind, that would be fine.

Now, Senator, you said you don't

like the idea. That, I respect. That, I respect. You're entitled not to like the idea, and I believe you're an honest man and you don't like it, but there are people on your side who I know do like it, and maybe if we refined it, maybe if we worked it out between you and I and between you and Senator Hoffmann who probably knows more about it than I do, Senator Abate who probably knows more about it than I do, we'd get the amendment that passes both houses and then, Senator DiCarlo, the system will work and you will be one of the reasons why it worked.

I sincerely hope this amendment passes.

ACTING PRESIDENT DeFRANCISCO: Senator Abate.

SENATOR ABATE: I just want to urge again that this is a good bill, but you have an opportunity to create an excellent bill, and I urge you to go back to the state Division of Parole and speak to parole officers that, if they're going to be effective in supervising sex offenders in the community, they need mandatory

treatment in the prisons. They will tell you that over and over again. If I'm wrong, please come back to the floor and tell me I'm wrong. What I'm asking is to have a debate and discussion so we really can produce a bill that's going to make a difference. And I just want to -- because I did not cover it in the first instance, when we created that sex offender treatment program in New York City, we studied offenders in the prior year to look at the recidivist rates, those sex offenders on probation that did not have offender treatment available to them, and then we developed an intensive treatment program where people were supervised in their homes. We went -- did home visits. There was counseling. There were medical staff assigned to the sex offenders. The recidivism rates were substantially reduced.

Now, Senator Gold, that's not a study in Massachusetts. That's not a study in Minnesota; that's real life and what happened in New York City with real life human beings and serious sex offenders, pedophiles, acquaintance

rapes, other kinds of rapists and sex offenders. Please, let's talk about those experiences in New York City, across the country. Let's look to parole.

You have a great opportunity to provide enormous leadership around a very complex and difficult problem. We ask you to take another look at it. Come back. If we're wrong, tell us we're wrong, but we're raising some critical issues that, I think, deserve more examination and debate.

ACTING PRESIDENT DeFRANCISCO: The question is on the amendment. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed?

(Response of "Nay".)

The amendment is defeated. On the bill, please read the -- please read the last section.

THE SECRETARY: Section 14. This act shall take effect on the 1st day of November next succeeding the date on which it shall have

become a law.

ACTING PRESIDENT DeFRANCISCO: Please call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT DeFRANCISCO: The bill is passed.

THE SECRETARY: Calendar Number 55, by Senator Present, Senate Bill Number 503, an act to amend the Penal Law.

ACTING PRESIDENT DeFRANCISCO: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, could you tell me what number we're on on the calendar? I apologize. 56?

ACTING PRESIDENT DeFRANCISCO: 55.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT DeFRANCISCO: Please read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT DeFRANCISCO: Senator Paterson -

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT DeFRANCISCO: - to explain your vote?

SENATOR PATERSON: This legislation is -

ACTING PRESIDENT DeFRANCISCO: Excuse me. I'm confused a bit. We're on the roll call. Are you rising to explain your vote?

SENATOR PATERSON: I was.

ACTING PRESIDENT DeFRANCISCO: Okay. Thank you.

SENATOR PATERSON: Mr. President, on this particular piece of legislation, I'm voting no on it. The Eighth Amendment of our Constitution allows and certainly provides that every citizen is extended -- that's what I thought. I'm on the wrong bill, Mr. President.

ACTING PRESIDENT KUHL: Senator

Paterson, that's happened to a lot of people before.

Can we continue with the roll call?

SENATOR PATERSON: No, I want to leave now, Mr. President.

(Laughter)

ACTING PRESIDENT KUHL: Senator, I'll allow you to do that too, Senator.

SENATOR PATERSON: Continue the roll call, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will announce the results.

THE SECRETARY: Ayes 57, nays 1, Senator Paterson recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 56, by Senator Cook, Senate Bill Number 561, an act to amend the Criminal Procedure Law.

SENATOR DOLLINGER: Explanation.

THE INMATE: Senator Cook, an explanation has been asked for by Senator

Paterson.

SENATOR COOK: Mr. President, the -- ironically, this bill is explained, although I would have to say rather imperfectly in a memorandum in opposition which states that Article -- I can't read it -- Section 5 of the New York State Constitution guarantees every accused the right not to be held unreasonably or on excessive bail.

In interpreting these provisions of state, it says -- that happens to be one Supreme Court judge -- has properly recognized that the only constitutional -- constitutionally permissible purpose of bail is to ensure the defendant's presence at a trial.

While it was only, indeed, one Supreme Court judge that has been the precedent in the state that the courts of New York have interpreted that bail can only be denied in cases where there's a question of whether the defendant would appear for trial, this bill attempts to establish another standard, and that standard is the purpose of protecting the

public.

It seems to me that our responsibility here is exactly that, and indeed we've just heard a discussion of another bill in which the point was made repeatedly that our purpose here is to protect the public. What this bill does is provide that, in certain enumerated crimes, that is, persons who are arrested and charged with certain enumerated crimes, if they have been previously convicted of one of those enumerated crimes or, indeed, if they're currently on bail and awaiting trial for one of those crimes, that that is taken as an indication that this person is a danger to society and, therefore, that the court is instructed in those cases not to grant bail in those cases. There is a long list of -- a long procedure that can be followed that gives due process by which, if the individual is charged wants to -- wants to contest this, they have the ability to do so, whereupon the judge then has to make a finding in fact that the person does constitute a danger to society.

This is not a particularly new issue. It's an issue that has been addressed by a report issued by the Democrats in this house who themselves have issued a report indicating that, to quote them, several academic studies on the criminal -- the continuing criminal habits of persons granted pretrial release, granted startling conclusions, revealed startling conclusions. The Institute for Law and Social Research found that 26 percent of all felonies committed in the District of Columbia, admittedly not New York State, but I suspect it's not unlike the same statistics year. 20 percent -- 26 percent of all felonies were committed by persons on some form of conditional release. Another study by the U.S. Attorneys Office of over 500 indicted robbery defendants reported a 70 percent rearrest rate while on pretrial release. These were people who were already on bail when they committed another crime. Up to 28 percent of all murders, 19 percent of all rapes are committed by persons on conditional release. Senator Kennedy, citing

instances in Massachusetts, said that over 50 percent of all the crime in that state was committed by persons who were out on bail. So the point is that -- and another statistic incidentally is that 80 percent of all the persons convicted of robbery in New York City - New York City, had a prior felony arrest. More than 2,000 persons arrested -- and mentally, this is a staled statistic, but I'm sure again, unfortunately it probably hasn't changed much - 2,000 persons arrested in that city in 1976 for new crimes were already wanted under bench warrants because they had broken their parole.

So the point is, Mr. President, this bill is a common sense effort to say that there are certain persons in this society who have a history of violent behavior, who have attacked people, who have raped people, in some cases have murdered people, and these people have been arrested. They have been identified. We know who they are, and yet because of the technicality of the way the present law is written and the way it has been interpreted by

the courts, the courts have said, "We have no choice but to let these people back out on the street." This bill attempts to correct that by saying that the court has a responsibility in the case where an individual has a history of dangerous behavior, to deny bail to that person and to have a speedy trial so that the case can be disposed of.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I decided to stay and I really don't mind being the puppet, but my assistants are really starting to let the strings show, so with that, I want to know if Senator Cook would yield for a question?

ACTING PRESIDENT KUHL: Senator Cook yields.

SENATOR PATERSON: Senator Cook, did the study or some of the studies you're talking about give any available information on what would alter the statistics if the trials

were made speedier? In other words, if the individuals who were seeking bail could be brought to trail on a sooner period of time, would that influence the statistics?

SENATOR COOK: Mr. President, I -- I assume that it's really impossible for any study to speculate on what might have happened if something had been done other than what was done. That's always one of the things that we deal with in here, in fact, admittedly in this bill. I can't stand here and tell you with certainty, what's going to happen when this is written into law, but certainly, we know what has happened when this was not in law, and that's what we're trying to deal with.

SENATOR PATERSON: Thank you very much, Senator Cook.

I understand that that's a difficult question to answer. It really calls for a great deal of speculation, and I think you gave us a fair answer.

My problem with this bill really relates to the Constitution of the United

States. As I was saying before, the Eighth Amendment which -- really provides that every citizen of the United States, even one that is arrested, is given the opportunity to receive a reasonable bail and given an opportunity to be released on their own recognizance or released with some control, such that they will come back for the trial. The Eighth Amendment is interpreted in New York State by the Fourteenth Amendment, and that is the right to due process.

Now, in our state, we recognize that right, so in Article 1, Section 5 of our Constitution, we realize that the only real reason that we have bail is to assure the defendant's presence at the trial, and so we've codified into the Criminal Procedure Law, Section 510.30, Subsection (2), paragraph (a) which states that, really the purpose of bail will be to establish some control over the defendant's -- defendant's whereabouts.

What Senator Cook's bill is addressing is the fact that he seems to have

located that there is a high degree of recidivism among those individuals who apparently -- who have been convicted and have been rearrested for a particular crime that, during that period of time, there was -

SENATOR COOK: Mr. President.

ACTING PRESIDENT KUHL: Senator Cook, why do you rise?

SENATOR COOK: Senator, I know that you're excellent at being accurate, and I just want to correct that. The statistics we have are persons who have been arrested, awaiting trial and commit another crime while they're awaiting trial. So that's what I was citing.

SENATOR PATERSON: That's right, Senator Cook. What I was suggesting is that in part of your bill, if there is a previous conviction, that also applies, doesn't it? Okay. And then I was getting to the point that you made which is if they're arrested during that particular time, that they have been again arrested and accused of another offense.

I think the problem with the bill is really our own Constitution. Perhaps if this were Bosnia, it might actually work, but this is the United States of America. We still have a presumption of innocence until proven guilty. Now, this does not belie the statistics that Senator Cook presents us that, apparently for some reason, people who have already been arrested seem to have engaged at a higher degree in criminal activity than they are when they are not arrested, but still as a society, it is my recommendation that we cannot pronounce a presumption of guilt or in any way detain them for any other reason than what the Eighth and Fourteenth Amendment provide -- in Article 1, Section 5 of our state Constitution provides which is that bill does not speak to the guilt or innocence of the crime. Bail speaks to our assurance that the defendant will be able to face the actual charges.

And so I would recommend that we vote no on this particular bill, in spite of the fact that, perhaps, a speedier trial, which is

guaranteed by the Sixth Amendment, is something that we might look into to try to prevent this problem which Senator Cook has properly identified.

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

Senator Dollinger.

SENATOR DOLLINGER: Mr. Chairman, would the sponsor yield to a couple of questions?

ACTING PRESIDENT KUHL: Senator Cook, do you yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Through you, Mr. President. Approximately how many defendants in the criminal justice system in New York State would be affected by the operation of this bill?

SENATOR COOK: Senator, I don't know for sure. I can only cite the one statistic that's indicated in the study I do

have, that said in New York City, there were 2,000 persons arrested who were -- already had bench warrants on them, so I assume we're looking at that kind of numbers.

SENATOR DOLLINGER: Again through you, Mr. President. Those were 2,000 persons that were arrested in 1976, correct? So, is it safe to assume that there's probably four times, three times, five times the amount of the people that might be affected by this bill today; is that a fair statement?

SENATOR COOK: Senator, I'm not sure whether that would be a fair statement or not. Perhaps the courts are doing -- as Senator Paterson indicated, perhaps they are getting to these cases faster, perhaps they're not getting to them as fast. I apologize. I don't have more up-to-date numbers, but I would have to suspect -- I think I know where you're going - that there probably are indeed 4-, 5,000 people in the state who would be in that situation.

SENATOR DOLLINGER: Again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Cook, do you still yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: Senator Cook yields.

SENATOR DOLLINGER: Senator Cook, do you know what the cost is to incarcerate those 4- or 5,000 inmates each day in a county facility or in this case, the city of New York, in the city facility, what the cost of incarcerating those individuals is? What's an average cost per day per inmate?

SENATOR COOK: Senator, I'm not really sure what that cost is. I have heard numbers talking about $50,000 a year, $100,000 a year, and I guess if you divide it by 365, you would come up with that kind of number, but the point is, Senator, I guess if we really are concerned about the cost of the prisons, we ought to just repeal the Criminal Law and not put anybody in prison. The point is we're trying to deal with a problem here of crime on the street.

SENATOR DOLLINGER: Again through you, Mr. President, if I could just ask Senator -

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Let's say the cost were $50 per day per inmate, that's probably a fair cost, wouldn't you agree?

SENATOR COOK: I think it is a little more than that, Senator.

SENATOR DOLLINGER: So to incarcerate the 2,000 people in 1976 at $50 per person per day would cost $100,000 a day to the city of New York to put all the people on pretrial release who are guilt -- who are charged with felonies, had prior felony convictions, would cost them $100,000 a day; is that a fair -- I mean, is my math correct?

SENATOR COOK: I assume -- I'll accept that number for whatever purpose.

SENATOR DOLLINGER: So that's about $36 million a year to incarcerate those? Where are the funds in this bill to pay the city of New York to incarcerate the people so that our vision of what the criminal justice system ought to be is actually reflected by our ability to commit the funds to do it?

SENATOR COOK: Senator, I don't know that we have ever when we've written criminal justice bills -- we're going to be doing a death penalty bill here in a couple of days. We've done other types of bills. Senator Gold had just had an amendment on the floor in which he wanted to have certain treatment. I don't know that any of those bills ever had an appropriation attached to them to cover the cost. The point is that we have a criminal justice system that we fund through a different mechanism that is supposed to do certain things and if we, in fact, pass bills that mandate that there are going to have to be people in prison, it's a given that we're going to provide the funding for them. No question about it.

SENATOR DOLLINGER: But isn't it true -- again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: I agree with you, Senator Cook. I think that we ought to in this era of cost consciousness on the part of government, recognize that when we tell the counties in the city of New York that they now have to pick up the cost of pretrial release and we're going to cancel pretrial release, we're going to require that you put these people in jail, the only problem that I have is that we don't have to pay that cost, do we? That has to come out of the property taxpayers in the city of New York, in the county of Monroe where I live or in any other county in the state, isn't that correct? We don't pay that cost.

SENATOR COOK: Mr. President, it's really interesting, Senator, of all of the

discussions that people have made -- had with me about mandate relief, you're the first person I have ever heard suggest that we ought to repeal the Criminal Law so that we would relieve people of the property tax. That's the first time that's ever been -

SENATOR DOLLINGER: You're misinterpreting -- you've misinterpreted my comments.

ACTING PRESIDENT KUHL: Senator Dollinger, you have the floor.

SENATOR DOLLINGER: I do have one additional question.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

SENATOR DOLLINGER: As we push -

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: -- this cost on to the counties and the city of New York, we don't pay for it ourselves, how do you justify that when the Governor is cutting defender services by $18 million so that these trials

will take longer to occur and he's cutting prosecution cost to the tune of $25 million in this budget, how do you make that fiscal reality square with what appears to be the motive of this bill which is to require that all those trials occur like that?

SENATOR COOK: Thank you.

I think, as I indicated earlier, the Governor has framed his budget in the context of what is currently on the books, and if this bill arrives on his desk at some point and he signs it into law, then obviously he has to deal with that reality in future budgets, but this bill does not have an effective date as of now. It is not one that will be in place at the beginning of the fiscal year starting April 1st, and so, therefore, it is something that would not appropriately be considered in this year's budget but something that would have to be done next near.

SENATOR DOLLINGER: One final question, through you, Mr. President.

ACTING PRESIDENT KUHL: Senator

Cook, do you continue to yield? The Senator continues to yield.

SENATOR DOLLINGER: In view of the fact that shifting to the local property tax, the cost of this measure, have any of the county organizations of the city of New York come in and supported this bill and said, "We're willing to pay the property tax cost that would be involved in financing this bill"?

SENATOR COOK: Well, again, Mr. President, I haven't had anybody protesting "My gosh, you're imposing a mandate on us." I don't think anybody looks at this bill as a mandate in that sense of the word. I think what people are concerned about is the local police agencies are concerned that they have people that they arrest six and seven and eight and twenty and, in some cases, in the city of Buffalo, 100 times when they are out on bail; that's a cost that they wouldn't like to have. I think if they had those people behind bars they wouldn't be paying that cost. I think people who are raped and robbed and the person who is murdered whom I

know personally by somebody who was on bail on a rape charge, I don't think that family would have been -- would have been particularly concerned about paying the extra $10 in property tax to have that person held in jail so that they weren't out on the streets to attack other people.

I think, Senator, that your speech about property taxes may be well taken in another context, but I don't think there's anybody in the state of New York today who wants to have us reduce our surveillance of known criminals who are out there in the public just to save them money. I have not heard that said by anyone.

SENATOR DOLLINGER: Again through you, Mr. President. I apologize. I guess the point of my question to Senator Cook was not to suggest that I favor not doing this because we shouldn't do it. What I simply suggested was, in this new era where we look at costs and we recognize that everything we do in this chamber has a cost associated and at least in my county

-- my county executive is now living on the second floor, my former county executive -- what he always said was "Don't send us any more of those mandates. Don't tell us to do something that's going to raise our property taxes when you're unwilling put your money, your personal income tax revenue, your business tax revenue, your sales tax revenue, you're not willing to put your money where your mouth is." That's what he kept telling me, and he was dead set against all those unfunded mandates, and he made it very clear that, in this chamber, we ought to look at what we mandate and we ought to tie funds with it.

I agree with Senator Cook. Last time when this bill came up, I said, "This is an unfunded mandate.' We're in that -- approving all those bills that said, you know, "No more unfunded mandates. This chamber is dead set against them. We're not going to do it." I was caught up in that rhetoric. I voted for the bill that put a ban on unfunded mandates. I looked at this bill and said, "My God, it's the

same day and we're passing an unfunded mandate." I voted against it. I saw a television commercial that said "Rick Dollinger voted against work release. Rick Dollinger coddles criminals". I tried to stand up and say, "Gee, It was an unfunded mandate. We weren't willing to put our money where our mouth was, that's why I voted against it." I couldn't get that message out in the campaign because I didn't have all that campaign money that showed up on the other side of the ledger. I never got a chance to say it was an unfunded mandate. Got me last time. Didn't get me this time.

I agree with Senator Cook, if it's such a good bill, let's put our personal income taxes, our business taxes, let's fund it ourselves. Let's at least be truthful and realistic. Let's stop sort of this newsletter enacting of legislation or attempts to enact legislation.

Frankly, I think, as I said earlier in this chamber today, we do this all the time. We get little headlines for our

newsletters but we don't accomplish much.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

SENATOR ABATE: Mr. President, will Senator Cook yield to a question?

ACTING PRESIDENT KUHL: Senator Cook, do you yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: Yes. How does this bill preserve the presumption of innocence that should be afforded to all defendants -- it could be you or I, any of us, whether it's violent or non-violent -- crimes we're accused of?

SENATOR COOK: The bill provides due process which is the matter in which we protect that presumption. There is a due process manner in which the defendant is able to, if you will, protest, and that is -- that's how we do it; that's how we do it in a criminal proceeding. It, in effect, does require a

preliminary finding, if you will, if it's requested by the defendant.

SENATOR ABATE: Mr. President.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Would you yield to another question?

SENATOR COOK: Might I suggest that it's not -- in a sense it's not an awful lot like a grand jury proceeding, in a sense, because there is a presumption.

SENATOR ABATE: My understanding is that in a grand jury proceeding, there is testimony taken and after testimony is heard, there's a decision rendered. In this case, there's no evidence heard by the judge, it's just the nature of the crime to which a defendant is accused and by that, the nature that person will be denied bail or ROR?

SENATOR COOK: Not quite, Senator. The purpose of the hearing, if requested by a defendant, is really to determine whether this person is a potential endangerment

to society, and that becomes the criteria. If there is, in fact, a pattern of behavior on the part of that individual that indicates that, if they're released back on the street, there's a likelihood that they're going to commit another crime, that is the criteria that we're dealing with.

SENATOR ABATE: One other question.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: Can you envision a situation where a defendant has a long criminal record but there's little or no evidence to support the instant charge and that individual would really be denied presumption of innocence on the instant charge because of their prior record?

SENATOR COOK: Mr. President, remember, you have a situation where a person is

already out on bail on a previous charge, so you have a pattern there of a person who is repeatedly being arrested for -- for criminal behavior, and it is a matter of making a rational judgment on the part of the Court that this person is very likely to be involved in criminal behavior and, therefore, it's a matter of protection for the public.

SENATOR ABATE: Thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President.

Would the good Senator yield for a question or two? I'll be as brief as I can, Senator Cook. I thank you, Mr. President.

In arriving at this legislative proposal, Senator Cook, did you have a data base which indicated to you the number of people in other situations, in other locations of the states who have been similarly charged, who have had a similar review and who have been either denied their release or held without release?

SENATOR COOK: Senator, the question that you're asking is if in other jurisdictions where they have preventive detention, do I know what those statistics are? No, I don't, Senator. I don't have that. What I do have is statistics indicating what happens in that state when we don't have preventive detention.

SENATOR WALDON: Well, would you share with us in regard to what happens in this state when we don't have preventive detention?

SENATOR COOK: The situation I referred to earlier when 2,000 people in New York City who were arrested had previously - were people who were already awaiting trial. Now, that's a pretty telling statistic, I would think.

SENATOR WALDON: No, Senator. With all due respect, you anticipated my question and, unfortunately, you anticipated it in the wrong manner.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

SENATOR COOK: I would be glad to anticipate, Senator.

ACTING PRESIDENT KUHL: The Senator continues to yield, Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

What I was about to ask you, sir, was is there any information in this state which shows what happens to African-Americans, Caribbean-Americans and Latinos in the process you're proposing when the arresting officer is white, when the prosecutor is white, when the judge is white; is there any information in that regard meaning when there might be a possibility of racism coming into the process as opposed to an absolutely fair, equitable due process process?

SENATOR COOK: Mr. President, I'm not very clear on exactly what the Senator is asking because if the Senator is asking how many people are denied bail because they -- under the statute, obviously nobody has been denied bail because it isn't there. If you're asking me,

how many people would I presume would be denied bail, I don't have any way of answering it. I'm not real clear on the question you're asking.

SENATOR WALDON: Thank you very much, Senator Cook. I appreciate your indulgence. Mr. President, if I may on the bill.

ACTING PRESIDENT KUHL: Senator Waldon on the bill.

SENATOR WALDON: I'm just trying to make a point, my colleagues. The reason that some of us oppose the death penalty is that, historically, those people who are on the lowest end of the socioeconomic ladder and who happen to be of color have been most disparately impacted by the death penalty. The statistics show clearly that those who are black and Latino in this nation have been disproportionately killed and executed by the death penalty wrongfully, and I'm not saying that those who commit those crimes should not be punished, but there have been too many instances where those who happen to be of color have been executed and

it's been found out later that they were innocent.

And so what I'm saying is that this thing that you're proposing which, in my opinion, violates the basic fabric of this nation, the Constitution of the United States, will do the self -- same thing. It will create another opportunity for people of color and Latinos and other minorities and poor people to be disparately treated by our jurisprudential system, and for that reason alone, I must oppose it.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I wonder in Senator Cook would yield for just one -

ACTING PRESIDENT KUHL: Senator Cook, would you yield to Senator Montgomery?

(Senator Cook nods head.)

The Senator yields.

SENATOR MONTGOMERY: Senator, does this remove the jurisdiction from the judge, the judicial process, in terms of determining whether or not bail is being -

SENATOR COOK: Senator, the arraigning judge is the one who makes the determination, and I would assume, and I'm not a lawyer, so if I'm -- if I make a mistake in this, I would stand corrected, but I would assume it would be the same judge who would then be conducting the hearing that is required if requested by the defendant; it would be the same judge who would be holding that hearing as to whether or not the bail ought to be granted.

SENATOR MONTGOMERY: Senator Cook, if you'll continue to yield.

ACTING PRESIDENT KUHL: Senator Cook, do you continue to yield?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield, Senator Montgomery.

SENATOR MONTGOMERY: Senator, are you saying that the process as it stands now is

different in what way? Would you explain that to me?

SENATOR COOK: Senator, there's been a precedent established by one of the Supreme Court districts, happens to be the 6th District in this state, that has interpreted the existing law to say that bail can only be denied if there is a finding that the individual is apt not to return -- not to appear for trial. This bill puts another round in there for denied bail which is a finding by the court that this is an individual who has a history of violence against the public and, therefore, that releasing that person back on the street constitutes an endangerment to the public.

SENATOR MONTGOMERY: Thank you for that explanation, Senator Cook.

This is a very difficult situation for me because, (1) I know that the crime that we're talking about probably affects my district more than it does a number of districts in the state, simply because of the high incidence of crime and it's the

constituents that I represent who really suffer more, and one of the issues for people in my district is that they want us to do something about violent crime. But, on the other hand, I recognize, as Senator Dollinger has pointed out, on one hand, that we may be passing on a problem similar to what we've -- what we now have with the second felony offense law that has swelled the prisons, and we may be now looking at swelling our jails and possibly without the consequence of reducing crime, and the cost of that and the other problem is, as Senator Waldon pointed out, that the judicial system is not always strictly just.

So, Senator Cook, I really would like to support the concept because I think what you want to do makes sense and if, in fact, it were an answer to reducing crime or taking criminals off the street and making that process more efficient, I would certainly be in favor of it, but I think there are a number of questions and I will continue to oppose it, but I do want to be on record in this chamber for not being

opposed to wanting to see this whole process go much more quickly and that there is a sure and direct relationship between a person who commits a crime and punishment, but I do -- I do worry and I'm concerned about safeguarding the rights and not passing that kind of burden on to the locality, the city of New York, that I don't think is able to withstand a tremendous increase in the cost, vis-a-vis the jail system, at this point in time.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, would Senator Cook yield? This is -

ACTING PRESIDENT KUHL: Senator Cook, do you yield to Senator Paterson?

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, as you know it's a fundamental precept to our Constitution that an individual is presumed

innocent until proven guilty. What you're attempting to do, and this is by your own statement, is to add to the acknowledgment of bail under the Eighth Amendment, a new condition for what would be determinative of what bail will be, and so really all I'm asking you is wouldn't you consider trying to change the Constitution of the state rather than putting forth a bill that you would want to pass both houses, because I'm suggesting to you that this bill would be struck down by any court that looked at it because you have really acted to contravene what really is one of the fundamental points that existed in the Bill of Rights.

SENATOR COOK: Mr. President, as a matter of fact, Senator, the federal courts in other states have ruled that this particular type of law is permissible. I don't have the citations in front of me, but there are -- there are citations of federal court cases where they, in fact, have found preventive detention to be acceptable, and I would say, Senator, I'm not sure that this is the only place where we take

people out of circulation on a presumption that they might injure somebody. I think there are places in the Mental Health Law, for example, and other places where we do make presumptions that somebody constitutes an endangerment to the public. So I think that it is a policy that is within the general police powers of the state to do, to make a finding of someone on a temporary basis and it is a temporary basis because it requires a speedy trial, et cetera, is able to -- the court is able to make that determination that releasing this person would not be in the public interest because they are a -- there's a high probability that they would be an endangerment to the public.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Well, the statistics that you brought forth, Senator Cook, certainly were -- were quite shocking, and they definitely demonstrate that there should be some redress. I'm just questioning the fashion of redress that you are proposing.

As a matter of fact, I want to welcome back one of our most distinguished and beloved colleagues today, Senator Galiber, or Galiber if you're Caribbean, and he just pointed out as we were listening to the discussion that we have had a number of cases in this country of preventive detention that really turned out to be huge calamities in our historical reference, such as the insurrection of the Japanese during World War II. That was preventive detention, and we wound up having to pay large sums of money because we were really violating the spirit of our Constitution, so I would be interested in some of the federal court dicta that you propose because I thought that the Eighth Amendment, as it's interpreted through the Fourteenth Amendment, was really clear on the reasonable access of bail that each defendant would necessarily have, and the pattern that you're describing, as far as I'm concerned, is really a pattern of arrest, not necessarily a pattern of guilt, and so while the statistics definitely demonstrate that there

needs to be something about it, that's why I suggested that if we could speed up the trials, that would be a way and also the discretion of the sitting judge, if we provided them with this type of information and tightened up on our bail procedures, assuming that the previous arrests and convictions actually do influence the presence at trial, I would accept that, but a blanket law taking the discretion away from the judges and in a sense making us inflexible and unreasonable where bail is concerned is something that I can't support.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on this bill? If not, the clerk will read -- the Secretary will read the last section.

THE SECRETARY: Section 11. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

The Chair recognizes -

THE SECRETARY: Those recorded in the negative on Calendar Number 56 are Senators Abate, Connor, Galiber, Gold, Leichter, Markowitz, Montgomery, Paterson, Santiago, Smith and Waldon. Ayes 47, nays 11.

ACTING PRESIDENT KUHL: The bill is passed. Also, the Chair would like to say that, Senator Galiber, it's wonderful to have you back. We've missed your warm smile in the chamber. The Chair recognizes Senator Galiber.

SENATOR GALIBER: Yes, Mr. President.

(Applause.)

Mr. President, as you are aware of and many of my colleagues, I have not been here for a while and I'm happy to be back, and I want to take this opportunity to thank my colleagues for their cards, and particularly their prayers, because their prayers are the reason why I'm standing here today.

However, Mr. President, saying that, I would like to either through unanimous consent or just a statement -- there were several bills that, due to my absence, if I had been here, I would have voted in the negative. I'd like the opportunity to take those negatives into the record or read them into the record.

ACTING PRESIDENT KUHL: Senator Galiber, if you will tell us what bills you would like to have been recorded in the negative on, we will have the record reflect your statement.

SENATOR GALIBER: Thank you.

ACTING PRESIDENT KUHL: No objections from the Acting Majority Leader.

SENATOR GALIBER: There's Calendar 1, Bill 289, Calendar Bill 2 and the Senate Bill 514. Let me just read the numbers, I guess, and Bill 515, 496, Bill 34, 197, Bill 205, Calendar -- Bill 213, Bill 619, Bill 623.

I would particularly like to point out, I'm sure there's others that I missed that I probably would have voted in the

negative, but those sort of stood out, if you will, but I would like the record to reflect one bill in particular that, if I were here, I would have debated to the very end, hopefully to convince some of my colleagues that the cameras in the courtroom, that bill, particularly voted in the negative and would like to have had the opportunity.

I think the O.J. Simpson trial is an example of what some of us who have been opposed to cameras in the courtroom have been saying for many, many years, so I just want to make that brief statement, that slight comment as far as the cameras in the courtroom, and I appreciate your courtesy, Mr. President.

ACTING PRESIDENT KUHL: Senator Galiber, the Journal will reflect that, had you been present in the chamber, you would have been recorded voting in the negative on the bills that you enumerated.

Thank you, Senator.

The Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 59, by Senator Present, Senate Bill Number 768, an act to amend the Criminal Procedure Law, in relation to eligibility for youthful offenders status.

ACTING PRESIDENT KUHL: Senator Present, an explanation has been asked for by Senator Paterson.

SENATOR PRESENT: Mr. President, the summary of the provisions of this bill, a person convicted of any Class B violent felony would be eligible for youthful offender only - only if the court determines such a person was a minor participant in the crime, a mitigating circumstance exists which bear directly upon the manner in which the crime was committed.

ACTING PRESIDENT KUHL: Is there a Senator wishing to speak on the bill?

(There was no response.)

Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of

November.

ACTING PRESIDENT KUHL: Call roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -- ayes 57, nays 1, Senator Galiber recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 66, by Senator Kuhl, Senate Bill Number 2034, an act to amend Chapter 356 of the Laws of 1993, amending the General Municipal Law and other laws.

ACTING PRESIDENT RATH: Senator Kuhl, an explanation has been requested.

SENATOR KUHL: Yes, Madam President. This is a bill that essentially defines the term "inducement resolution" which is a term that has not been defined in the law as of this moment, but was included in a bill that this Legislature adopted last year in an Industrial Development Agency reform bill and

which was subsequently signed into law.

ACTING PRESIDENT RATH: Please read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT RATH: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Yes, Madam President. There being no further business, I move we adjourn until Tuesday, February 14th, 1995 at 3:00 p.m.

ACTING PRESIDENT RATH: The meeting is adjourned.

SENATOR MENDEZ: Madam President.

ACTING PRESIDENT RATH: I'm sorry. The Chair recognizes Senator Mendez.

SENATOR MENDEZ: Thank you.

There will be a conference of the

Democratic Minority right after we adjourn.

Thank you.

ACTING PRESIDENT RATH: Thank you, Senator Mendez.

Conference of the Minority right after the meeting, is that correct?

Senator Paterson, was there something else?

SENATOR PATERSON: Yes, Madam President. I offer up the following rules change. At a point in the future, I will move to amend Rule 5, Section 7 of the rules of the Senate and I'm giving proper notice by offering up the final -- the following rules change.

ACTING PRESIDENT RATH: Senator Skelos.

SENATOR SKELOS: Is there any other housecleaning? All right.

Madam President, at this time, I would like to move that we adjourn until tomorrow, February 14th, 1995 at 3:00 p.m.

ACTING PRESIDENT RATH: Without objection, the Senate stands adjourned.

(Whereupon, at 5:38 p.m., the Senate adjourned.)