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ALBANY, NEW YORK

March 4, 1996

3:00 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

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P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. The members to find their chairs, staff to find their places.

I ask all of you to rise, all of you in the chamber to rise in joining me in saying the Pledge of Allegiance.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

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

(A moment of silence was observed.)

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate Sunday, March 3rd, the Senate met pursuant to adjournment, Senator Hoblock in the Chair upon designation of the Temporary President. The Journal of Saturday, March 2nd was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT KUHL: Hearing

1 no objection, the Journal stands approved as
2 read.

3 Presentation of petitions.

4 Messages from the Assembly.

5 Messages from the Governor.

6 Reports of standing

7 committees.

8 I'll ask the Secretary to read.

9 THE SECRETARY: Senator

10 Velella, from the Committee on Insurance,

11 reports the following bills:

12 Senate Print 2716A, by Senator

13 Velella, an act to amend the Insurance Law in

14 relation to the maximum automobile insurance

15 discount;

16 2764C, by Senator Velella, an

17 act to amend the Insurance Law in relation to

18 reciprocal insurers;

19 4643, by Senator DeFrancisco,

20 an act to amend the Insurance Law in relation

21 to the premium or compensation for giving bail

22 bond;

23 5737, by Senator Velella, an

1 act to amend the Insurance Law in relation to
2 providing for a reduction in automobile
3 insurance;

4 6004, by Senator Leibell, an
5 act to amend the Insurance Law in relation to
6 expanding provisions relating to insurable
7 interests;

8 and 6125, by Senator Velella,
9 an act to amend the Insurance Law in relation
10 to continuing authorization for certain prepaid
11 legal services plans.

12 All bills ordered directly for
13 third reading.

14 ACTING PRESIDENT KUHL: Without
15 objection, all bills are directed directly to
16 third reading.

17 Reports of select committees.

18 Communications and reports from
19 state officers.

20 Motions and resolutions.

21 Chair recognizes Senator
22 DiCarlo.

23 SENATOR DiCARLO: Thank you,

1 Mr. President.

2 On behalf of Senator Libous,
3 please place a sponsor's star on Calendar 336.

4 ACTING PRESIDENT KUHL: At the
5 request of the sponsor, Calendar 336 is
6 starred.

7 SENATOR DiCARLO: Also, Mr.
8 President, on behalf of Senator Present, on
9 page 17, I offer the following amendments to
10 Calendar 311, Senate Print 1931, and ask that
11 said bill retain its place on the Third Reading
12 Calendar.

13 ACTING PRESIDENT KUHL:
14 Amendments to Calendar Number 331 are received
15 and adopted. Bill will retain its place on the
16 Third Reading Calendar.

17 Senator DiCarlo.

18 SENATOR DiCARLO: Also, Mr.
19 President, on behalf of Senator Leibell, on
20 page 10, I offer the following amendments to
21 Calendar 239, Senate Print 3384, and ask that
22 said bill retain its place on the Third Reading
23 Calendar.

1 ACTING PRESIDENT KUHL: Amend
2 ments to Calendar Number 239 received and
3 adopted. The bill will retain its place on the
4 Third Reading Calendar.

5 Senator Bruno, that brings us
6 to the calendar.

7 SENATOR BRUNO: Mr. President,
8 can we, at this time, take up the non
9 controversial calendar.

10 ACTING PRESIDENT KUHL: The
11 Secretary will read the noncontroversial
12 Calendar.

13 THE SECRETARY: Calendar Number
14 152, by Senator Volker, Senate Print 2151, an
15 act to amend the General Municipal Law and the
16 Personal Property Law in relation to payment of
17 municipal fees.

18 ACTING PRESIDENT KUHL: The
19 Secretary will read the last section.

20 THE SECRETARY: Second 5. This
21 act shall take effect immediately.

22 ACTING PRESIDENT KUHL: Call
23 the roll.

1 (The Secretary called the
2 roll.)

3 THE SECRETARY: Ayes 43.

4 ACTING PRESIDENT KUHL: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 202, by Senator Hoblock, Senate Print 2352A,
8 an act to amend the Penal Law in relation to
9 increasing the penalties for sale of controlled
10 substances.

11 ACTING PRESIDENT KUHL: The
12 Secretary will read the last section.

13 THE SECRETARY: Section 7.
14 This act shall take effect on the first day of
15 November.

16 ACTING PRESIDENT KUHL: Call the
17 roll.

18 (The Secretary called the
19 roll.)

20 THE SECRETARY: Ayes 43.

21 ACTING PRESIDENT KUHL: The bill
22 is passed.

23 THE SECRETARY: Calendar Number

1 220 by Senator Skelos, Senate Print 425.

2 SENATOR PATERSON: Lay it
3 aside.

4 ACTING PRESIDENT KUHL: Lay the
5 bill aside.

6 THE SECRETARY: Calendar
7 Number 236, by Senator LaValle, Senate Print
8 1368A, an act to amend the Town Law in relation
9 to exempting from fire district revenues
10 amounts appropriated for equipment.

11 ACTING PRESIDENT KUHL: The
12 Secretary will read the last section.

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

15 ACTING PRESIDENT KUHL: Call
16 the roll.

17 (The Secretary called the
18 roll.)

19 THE SECRETARY: Ayes 43.

20 ACTING PRESIDENT KUHL: The
21 bill is passed.

22 THE SECRETARY: Calendar Number
23 253, by Senator Saland, Senate Print 2110A, an

1 act to amend the Executive Law and the Social
2 Services Law in relation to making reports of
3 child abuse available.

4 ACTING PRESIDENT KUHL: The
5 Secretary will read the last section.

6 THE SECRETARY: Section 5.
7 This act shall take effect on the 90th day.

8 ACTING PRESIDENT KUHL: Call the
9 roll.

10 (The Secretary called the
11 roll.)

12 THE SECRETARY: Ayes 43.

13 ACTING PRESIDENT KUHL: The bill
14 is passed.

15 THE SECRETARY: Calendar Number
16 254, by Senator Nozzolio, Senate Print 2244A.

17 SENATOR PATERSON: Lay it
18 aside.

19 ACTING PRESIDENT KUHL: Lay the
20 bill aside.

21 THE SECRETARY: Calendar Number
22 255 by Senator Skelos, Senate Print 2337D, an
23 act to amend the Correction Law and the

1 Criminal Procedure Law in relation to
2 notification concerning released or escaped
3 inmates.

4 SENATOR SKELOS: Lay it aside
5 for amendments.

6 ACTING PRESIDENT KUHL: Lay the
7 bill aside.

8 THE SECRETARY: Calendar Number
9 265, by Senator Kuhl, Senate Print 4296, an act
10 to amend the Education Law in relation to
11 optional retirement programs for employees of
12 the State University of New York.

13 ACTING PRESIDENT KUHL: The
14 Secretary will read the last section.

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

17 ACTING PRESIDENT KUHL: Call the
18 roll.

19 (The Secretary called the
20 roll.)

21 THE SECRETARY: Ayes 43.

22 ACTING PRESIDENT KUHL: The
23 bill is passed.

1 THE SECRETARY: Calendar Number
2 275, by Senator DiCarlo, Senate Print 6149, an
3 act to amend the Real Property Tax Law, the
4 Administrative Code of the city of New York and
5 local law number 1 of the city of New York.

6 ACTING PRESIDENT KUHL: The
7 Secretary will read the last section.

8 THE SECRETARY: Section 4. This
9 act shall take effect immediately.

10 ACTING PRESIDENT KUHL: Call the
11 roll.

12 (The Secretary called the
13 roll.)

14 THE SECRETARY: Ayes 43.

15 ACTING PRESIDENT KUHL: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 278, by Senator Stafford, Senate Print 617, an
19 act to amend the Real Property Law in relation
20 to authorizing a voluntary administration to
21 execute a discharge of mortgage.

22 ACTING PRESIDENT KUHL: The
23 Secretary will read the last section.

1 THE SECRETARY: Section 2.

2 This act shall take effect immediately.

3 ACTING PRESIDENT KUHL: Call the
4 roll.

5 (The Secretary called the
6 roll.)

7 THE SECRETARY: Ayes 48.

8 ACTING PRESIDENT KUHL: The
9 bill is passed.

10 THE SECRETARY: Calendar Number
11 280 by Senator Trunzo, Senate Print 2145, an
12 act to amend the Eminent Domain Procedure Law
13 in relation to acquisition of land by the
14 state.

15 ACTING PRESIDENT KUHL: The
16 Secretary will read the last section.

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

19 ACTING PRESIDENT KUHL: Call
20 the roll.

21 (The Secretary called the
22 roll.)

23 THE SECRETARY: Ayes 48.

1 ACTING PRESIDENT KUHL: The
2 bill is passed.

3 THE SECRETARY: Calendar Number
4 287, by Senator Cook, Senate Print 636, an act
5 to amend the Town Law in relation to the terms
6 of office of elected officers.

7 SENATOR PATERSON: Lay it
8 aside, please.

9 ACTING PRESIDENT KUHL: Lay the
10 bill aside.

11 THE SECRETARY: Calendar Number
12 289, by Senator LaValle, Senate Print 1652, an
13 act to amend the Town Law in relation to
14 initiation of a criminal history check.

15 ACTING PRESIDENT KUHL: The
16 Secretary will read the last section.

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

19 ACTING PRESIDENT KUHL: Call
20 the roll.

21 (The Secretary called the
22 roll.)

23 THE SECRETARY: Ayes -

1 ACTING PRESIDENT KUHL: Announce
2 the results when tabulated.

3 THE SECRETARY: Ayes 47, nays
4 1, Senator Leichter recorded in the negative.

5 ACTING PRESIDENT KUHL: The
6 bill is passed -

7 THE SECRETARY: On Calendar
8 Number 289, ayes 48, nays zero.

9 ACTING PRESIDENT KUHL: The
10 bill is passed.

11 Senator Bruno, that completes
12 the noncontroversial calendar; what's your
13 pleasure?

14 SENATOR BRUNO: Mr. President,
15 can we now take up the controversial calendar.

16 ACTING PRESIDENT KUHL: The
17 Secretary will read the controversial calendar,
18 commencing with Calendar Number 220.

19 THE SECRETARY: Calendar Number
20 220, by Senator Skelos, Senate Print 425, an
21 act to amend the Business Corporation Law, in
22 relation to corporate finance, proxies, powers
23 of directory and mergers.

1 ACTING PRESIDENT KUHL: Senator
2 Leichter, why do you rise?

3 SENATOR LEICHTER: Mr.
4 President, on the bill.

5 ACTING PRESIDENT KUHL: Senator
6 Leichter, on the bill.

7 SENATOR LEICHTER: I just want
8 to remind colleagues that we had a somewhat
9 extensive debate on this bill last week, and I
10 don't want to rehash all the things that were
11 said, but I think it's worth remembering
12 because I think it's a very significant bill.

13 And I find it ironic, while the
14 whole rest of the nation, Democrats and
15 Republicans, Bob Dole, Buchanan, everybody else
16 is talking about corporate irresponsibility,
17 this state Legislature, or at least this bill
18 by Senator Skelos, goes exactly in the opposite
19 direction that everybody in the nation knows
20 and thinks that we need to go, which is to
21 provide for greater corporate democracy, to
22 provide for greater corporate responsibility.

23 Just to remind you of some of

1 the features of this bill, one is, it changes
2 long-standing New York State law that holds
3 corporate officers, or directors, rather,
4 responsible for unpaid wages under certain
5 circumstances; allows directors for the first
6 time to provide for loans that the corporation
7 will make to the directors; grants directors
8 the powers to give themselves greater options
9 or options which I guess at this time, they
10 cannot do; it dilutes the rights of share
11 holders to vote on certain matters.

12 Why would we do this? I'm told
13 by Senator Skelos, well, this is going to bring
14 more business to lawyers in New York State. I
15 don't know if that's so or not, but I assure
16 you that that's hardly justification for really
17 screwing the shareholders.

18 I think that if you have a
19 corporation that's incorporated in the state of
20 New York, I would like to see us hold that
21 corporation to certain standards.

22 One of the facts that has
23 recently come out, I guess the statistic is a

1 fact, but I think all of us have known how
2 executive compensation has really increased so
3 enormously in this country, and the Times
4 pointed out just a week or so ago in an
5 editorial where they also talked about
6 corporate responsibility, just the opposite of
7 what this bill does, which is a bill of
8 corporate irresponsibility, the Times pointed
9 out that corporate or executive compensation,
10 which used to be corporate officers, on the
11 whole would receive maybe 40 times as much as
12 the average worker; that's now 200 times as
13 much. While we're having corporations
14 downsizing, they're having record profits,
15 executive compensation is up enormously; and
16 under this bill, it will go up even more.

17 I learned early on from law
18 school and in my practice that really one of
19 the protections and an important protection for
20 the people who own the corporations, not the
21 managers, but the shareholders, is to have a
22 great degree of corporate democracy, require
23 the shareholders to act on important issues

1 affecting the corporation, particularly the
2 structure of the corporation and be sure that
3 you hold the directors to the highest fiduciary
4 duty, don't allow their self-interests to
5 interfere. This bill does just the opposite,
6 allows directors to give themselves options,
7 allows directors to go out and get loans.

8 We were told last week that the
9 Bar Association has approved that bill; I've
10 not -- I've tried to check on it and I've not
11 seen a memo. I know that there's a committee
12 of the Bar Association made up of lawyers who
13 represent these large corporations that have
14 drafted this bill, they are in favor of it, but
15 I don't know -- and maybe Counsel or maybe,
16 Senator Skelos, you have something that says
17 that the Bar Association is actually supporting
18 this. I tried to check, I tried to find it, I
19 don't have it. If you have it, I'd be
20 interested.

21 But, I must tell you that I
22 think the people who prepared this did a
23 self-serving job. I'm sorry they sold you on

1 it.

2 I really think that this bill
3 is a mistake; and for this Legislature at this
4 time when the whole focus is how do we get
5 corporations to be more responsible, how do we
6 get them to pay attention to their obligation
7 they have to their workers, to their
8 communities, not to be greedy when it comes to
9 corporate salaries or executive compensation,
10 this bill does exactly the opposite. I can't
11 understand it.

12 ACTING PRESIDENT KUHL: The
13 Secretary will read the last section -- Senator
14 Dollinger.

15 SENATOR DOLLINGER: Mr.
16 President, on the bill just briefly.

17 ACTING PRESIDENT KUHL: Senator
18 Dollinger on the bill briefly.

19 SENATOR DOLLINGER: We did
20 have a debate last time when we addressed this
21 bill and the two concerns I had were about the
22 provisions that actually, Senator Leichter,
23 just to clarify, not only under New York law

1 can officers and directors be held liable for
2 the payment of wages to certain employees, but
3 under the current Section 630 of the Business
4 Corporation Law, in certain corporations, the
5 top ten shareholders can be held responsible
6 for the nonpayment of wages.

7 The reason why that provision
8 is in our PCL was because we in this state had
9 believed that while limited liability should
10 apply and protect the shareholders, owners of
11 the business from almost any other possible
12 remedy, protect them from injunctions, protect
13 them from civil lawsuits, we should allow them
14 to have the benefit of limited liability
15 corporations.

16 There was one thing that was so
17 important to us that we tore the shield of
18 limited liability away from a corporation and
19 said, "We're going to hold the shareholders
20 responsible." That one thing that we allow the
21 veil of corporate limited liability to be
22 lifted for is simply for the payment of wages.

23 When people work for a small

1 corporation, they ought to be able to have
2 assurance that they're going to be paid, and
3 many times they are relying on the expressed
4 promise of a shareholder, director, officer to
5 engage in employment; and it seems to me we
6 retreat from the principle that people should
7 be paid for their work.

8 When we allow a corporation
9 simply to treat a worker like every other
10 creditor, it seems to me that's a step
11 backward, it's a step not in the best interests
12 of the working men and women of this state.

13 We also talked about my concern
14 about officers and directors and participation
15 of loans and how corporations can guarantee the
16 loans of directors without approval of the
17 shareholders; that, too, is a departure from
18 the notion of economic democracy that is a part
19 of all corporations.

20 There's one other thing that
21 I've noticed, Senator Leichter, in my going
22 back and looking through this, and that is the
23 requirement in Section 718 of the Business

1 Corporation Law that provides that creditors
2 can get the lists of officers and directors of
3 a corporation prior to commencing litigation
4 against them. My understanding is the reason
5 that that provision is in the PCL is because if
6 you're about to sue a corporation, you were
7 going to make an allegation not only against
8 the corporation, but its shareholders -- excuse
9 me, its directors and officers, you would have
10 access to their address so you can serve them
11 with process.

12 This change would simply remove
13 that disclosure obligation to the corporation
14 and mean that you would have to bring the
15 action against the corporation first, find out
16 through the discovery and disclosure process
17 where everybody lived so you can then bring the
18 action against the directors, shareholders and
19 officers in their individual capacities.

20 It seems to me that just
21 postpones the whole litigation process, that
22 the notion that a corporation is obligated to
23 disclose to its creditors the officers' and

1 directors' names and addresses so that you can
2 facilitate the litigation process in
3 appropriate cases, it seems to me, is still a
4 good idea. It's too bad that it's being
5 abandoned in this bill.

6 This bill contains an awful lot
7 that deals with the notion of restructuring our
8 business corporations. There are certainly
9 some good provisions in it. I give Senator
10 Skelos credit for going through and picking out
11 many of the good things that are in this bill
12 to improve shareholder democracy. But at least
13 from my perspective, I see those three issues,
14 loans to directors without shareholders'
15 approval, a retreat from our long-standing
16 notion that will protect workers' wages and
17 make shareholders liable, and the removal of
18 the fact that the corporation has to disclose
19 its officers and its directors to potential
20 litigants, as a retreat from important
21 principles in New York and, therefore, in
22 balance, Mr. President, I'll be voting in the
23 negative.

1 ACTING PRESIDENT KUHL: The
2 Secretary will read the last section.

3 THE SECRETARY: Section 57.
4 This act shall take effect on the 180th day.

5 ACTING PRESIDENT KUHL: Call the
6 roll.

7 (The Secretary called the
8 roll.)

9 ACTING PRESIDENT KUHL: Announce
10 the results when tabulated.

11 THE SECRETARY: Those recorded
12 in the negative on Calendar Number 220 are
13 Senators Abate, Connor, Dollinger, Leichter,
14 Markowitz, Montgomery, Onorato, Paterson,
15 Seabrook and Smith. Ayes 45, nays 10.

16 ACTING PRESIDENT KUHL: The
17 bill is passed.

18 The Secretary will continue to
19 call the controversial calendar.

20 THE SECRETARY: Calendar Number
21 254, by Senator Nozzolio, Senate Print 2244A,
22 an act to amend the Correction Law in relation
23 to limiting time allowances for good behavior

1 for sexual offender.

2 ACTING PRESIDENT KUHL: Senator
3 Nozzolio, an explanation of Calendar Number 254
4 has been asked for by the Acting Minority
5 Leader, Senator Paterson.

6 SENATOR NOZZOLIO: Thank you,
7 Mr. President.

8 Senator Paterson, my
9 colleagues, my measure before us today would
10 exclude from good time allowances a person
11 being held in a correctional institution in
12 this state as a result of them committing a
13 heinous sexual predator offense against a
14 child; that this, in my opinion, is such an
15 offense that warrants no so-called good time
16 behavior.

17 There is no good time behavior
18 breaks for those who have been the victims of
19 this heinous type of criminality. Scarred for
20 life, hurt for life, is the victim.

21 Just because the prisoner
22 happens to be a good, by-the-rule person in
23 prison doesn't afford them such an opportunity

1 to be let out of jail early as a result of them
2 being incarcerated and following the rules of
3 prison life.

4 That's the bill, the sum and
5 substance of it, Mr. President. Thank you.

6 ACTING PRESIDENT KUHL: The
7 Chair recognizes Senator Abate.

8 SENATOR ABATE: Would Senator
9 Nozzolio yield to a question?

10 ACTING PRESIDENT KUHL: Senator
11 Nozzolio, do you yield to Senator Abate?

12 SENATOR NOZZOLIO: Yes.

13 ACTING PRESIDENT KUHL: The
14 Senator yields.

15 SENATOR ABATE: Last year, we
16 passed a law that dealt with two- and three
17 time, or persistent violent offenders, some of
18 them included sex offenders; and am I correct,
19 in that law, we eliminated discretionary parole
20 for those individuals? What I mean by
21 "discretionary parole," because we went to a
22 determinant sentencing scheme which meant that
23 someone wasn't doing three to nine, they were

1 now doing six years, that there was no
2 eligibility for early release for parole.
3 Didn't we pass that last year?

4 SENATOR NOZZOLIO: Senator
5 Abate, let me respond to that question because
6 I know what your issue is, you're concerned, as
7 we've discussed, with this measure, continuing,
8 if I may, the sense, if it's your question, the
9 sum of your concern, is that you're concerned
10 that we don't have continued parole supervision
11 for those who have committed this crime, is
12 that not correct?

13 SENATOR ABATE: My concern is,
14 given the fact that we eliminated discretionary
15 parole and then we talked about reducing good
16 time from one-third to one-seventh, if we
17 eliminate good time altogether, it's my under
18 standing, under your bill, many of these sex
19 offenders who are violent that are likely to
20 recidivate would leave prison, not go under
21 parole supervision, and just be on the street
22 without supervision and that I favor an
23 approach of reducing good time but keeping some

1 good time so that parole can kick in and we can
2 screen and follow these individuals in the
3 community.

4 This would eliminate
5 discretionary parole, as well as parole based
6 on good time.

7 SENATOR NOZZOLIO: Senator,
8 your point is taken with good spirit in that
9 after you raised it during our committee
10 discussions, I have introduced, along with
11 Assemblyman Sweeney in the Assembly, a measure
12 that is sponsored by, it looks like, close to
13 ten members of this house that will amend the
14 law to provide active supervision and a life
15 time parole component for those who have
16 committed sex predator offenses against
17 children, that I believe your concern is
18 extremely legitimate.

19 I commend you to take a look at
20 this measure, it's Senate Bill 6175; and that
21 measure, I believe, gets to the essence of the
22 concern that you raise about continuing parole
23 supervision for anyone, regardless of good time

1 behavior or not, let out of prison, that this
2 measure will be, I believe, on the floor of
3 this house within a very few days and that it
4 is to take in companion with the bill before us
5 which, as you well know, reduces good time
6 behavior, eliminates the possibility of good
7 time behavior and then, taken in conjunction
8 with S6175, would have a mandatory lifetime
9 parole requirement for those convicted of this
10 type of crime.

11 SENATOR ABATE: Could the
12 Senator yield to another question?

13 ACTING PRESIDENT KUHL: Senator
14 Nozzolio, do you continue to yield?

15 SENATOR NOZZOLIO: Certainly,
16 Mr. President.

17 ACTING PRESIDENT KUHL: Senator
18 continues to yield.

19 SENATOR ABATE: Since I cannot
20 comment on this new bill that you've drafted,
21 and I certainly appreciate your taking into
22 consideration some of the concerns I've raised
23 in committee, would this new bill also cover A

1 misdemeanor sex offenses, because sex offenders
2 fall in a lot of different categories, some of
3 them are B felons and A misdemeanants. Would
4 this cover the full array of sex offenders?
5 So would we be talking about life parole for
6 someone who's been convicted of 130.20, which
7 is sexual misconduct, an A misdemeanor?

8 SENATOR NOZZOLIO: Let me
9 list the enumerated crimes, Senator, that 6175
10 will be involved -- if I may suffer an
11 interruption for a second.

12 Senator, are you asking the
13 crimes for the bill that's before us or the
14 bill that -- are you asking the crimes of the
15 bill that's before us?

16 SENATOR ABATE: No. In terms
17 of -- you talked about life parole. My concern
18 is that sex offenders shouldn't be released
19 without parole supervision.

20 SENATOR NOZZOLIO: Then let me
21 list those crimes for you of the bill that I
22 had described earlier that is not before the
23 house at this moment. Those crimes are -

1 designated sex offender means a person
2 convicted of the following felonies: Section
3 130.30, 130.35, 130.45, 130.50, 65, 67 and 70
4 related to sex offenses, listing felonies. I
5 don't have a misdemeanor here listed.

6 SENATOR ABATE: Okay. So -
7 but then this bill -- if I'm correct, this bill
8 before us now, which is 2244 which is on the
9 floor, applies to misdemeanants, as well as
10 felons, so there would be some misdemeanants,
11 if I understand the bill correctly, that
12 potentially could be supervised without parole?

13 SENATOR NOZZOLIO: What
14 misdemeanor sex predator circumstance would not
15 be under a felony, Senator, that you're
16 concerned with?

17 SENATOR ABATE: Well, you have
18 sexual misconduct, you have sexual abuse in the
19 third degree, in the second degree, aggravated
20 sexual abuse. So I don't know whether -- if
21 this law applies -

22 SENATOR NOZZOLIO: Pardon me,
23 Senator, pardon me. For my edification, those

1 are misdemeanors?

2 SENATOR ABATE: Yes.

3 SENATOR NOZZOLIO: Maybe they
4 shouldn't be misdemeanors, maybe we should make
5 them felonies. I would certainly support
6 making them felonies; and if we could get the
7 Assembly to make them felonies, I think we
8 would all be better off. But, frankly, I don't
9 believe that -- if you would like to help with
10 that, that certainly would be something I would
11 certainly support, making those enumerated
12 offenses felonies.

13 SENATOR ABATE: Senator
14 Nozzolio, I thank you for the clarification on
15 the bill; I have a greater understanding of
16 it.

17 Could I be heard on the bill?

18 ACTING PRESIDENT KUHL: Senator
19 Abate on the bill.

20 SENATOR ABATE: I share
21 Senator Nozzolio's concern and I would say that
22 probably every member of this body shares the
23 concern about the dangers of sex offenders on

1 the street. We're well aware that there's no
2 overall cure, there's a high recidivism rate,
3 and we have seen recent studies that show that
4 the victims of sex offenders are more likely to
5 be children than adults.

6 My concern is, last year -- and
7 we're moving in a Governor's bill to eliminate
8 discretionary parole, which is -- what that
9 does is elongate the sentence and that probably
10 is appropriate, there are certain sex offenders
11 that should stay in prison longer. But, what
12 this bill does is takes it another step,
13 eliminates good time, which means that an
14 individual charged with a sex offense would
15 have to serve the entirety of their sentence.

16 I would debate -- and I think
17 it's a good idea for sex offenders to reduce
18 good time from one-third, off the back, to
19 one-seventh, but what this bill does, it
20 eliminates good time altogether so when an
21 individual serves the entirety of their
22 sentence, they walk out the door with \$30 in a
23 their pocket, they're told go back to their

1 home and there is no parole supervision.

2 I happen to believe that parole
3 can serve a very vital function in this arena.
4 I've seen, in my work in probation, the
5 necessity when someone goes to their home,
6 there's needs of supervision, there needs to be
7 home visits, and the transition time from being
8 released from prison to the point of that first
9 year in the community is a critical time when
10 you're going to see many offenders recidivate.

11 It's critical that the parole
12 officer does home visits. We need to know
13 where that offender is going to relocate; is it
14 going to be near a school? When a parole
15 officer goes to the home, they can see what
16 kind of child paraphernalia is at home. It's
17 important to make sure that that person gets
18 into treatment, they need to be monitored; and
19 oftentimes and if you speak to the parole
20 department, they can catch someone before they
21 commit the next crime.

22 So in terms of public safety,
23 this is not -- what I'm proposing is tougher on

1 crime because what I'm suggesting is we've
2 already elongated the sentences by taking,
3 particularly for discretionary and violent
4 offenders, we have taken away discretionary
5 parole, ensure there's a period of time, even
6 make it one-seventh, not one-third, where that
7 individual is supervised intensely by case
8 loads, make it ten to one- now it's 25 to one
9 - so we know what they're doing.

10 And the Meagan's Law goes so
11 far, it tracks; I'm talking about someone
12 breathing down the neck of that individual so
13 we know what they're doing. This bill just
14 says, "You served your time, go home and do
15 your thing." Well, doing your thing, I
16 believe, will jeopardize the safety of women
17 and children and many people in our community.
18 For that reason, I'm against eliminating
19 altogether the good time allowance because, in
20 effect, that will mean parole will be out of
21 the business of supervising sex offenders. I
22 don't think that's what we want to do.

23 So, in all due respect to

1 Senator Nozzolio, I agree with his intentions.
2 These are very serious offenders, but I think
3 we need to keep the parole component, even if
4 it's for a short period of time, in those
5 critical months when we know through statistics
6 offenders re-offend, particularly sex
7 offenders.

8 I hope my colleagues will join
9 me in sending this back to committee so we can
10 take another look at it.

11 Thank you.

12 ACTING PRESIDENT KUHL: Senator
13 Leichter, why do you rise?

14 SENATOR LEICHTER: Yes. Mr.
15 President, would Senator Nozzolio yield?

16 ACTING PRESIDENT KUHL: Senator
17 Nozzolio, do you yield to a question from
18 Senator Leichter?

19 SENATOR NOZZOLIO: Yes.

20 ACTING PRESIDENT KUHL: The
21 Senator yields.

22 SENATOR LEICHTER: Senator,
23 I'm trying to understand the rationale for your

1 bill; and I read the memo, I listened to the
2 debate that you had with Senator Abate. Is it
3 your view that presently people who commit the
4 crimes that you have enumerated do not serve
5 sufficiently long sentences?

6 SENATOR NOZZOLIO: Mr.
7 President, knowing Senator Leichter as I do and
8 watching his voting record over these last four
9 years, I doubt he would ever understand the
10 rationale for this measure, but let me try,
11 Senator. Let me try to impart the rationale to
12 you.

13 SENATOR LEICHTER: I wish you
14 would, Senator.

15 SENATOR NOZZOLIO: The
16 rationale is that those who commit violent
17 sexual acts against children and victimize
18 children should not be given consideration for
19 what's called good time behavior while they're
20 in prison. The length of a sentence of a
21 prisoner in this state is reduced by what's
22 called good time behavior, if they're good boys
23 and girls while they're in prison, they, in

1 fact, are given an opportunity to get out of
2 jail earlier; this measure today precludes that
3 opportunity.

4 ACTING PRESIDENT KUHL: Senator
5 Leichter.

6 SENATOR LEICHTER: Would the
7 Senator continue to yield?

8 SENATOR NOZZOLIO: Yes.

9 ACTING PRESIDENT KUHL: Senator
10 continues to yield, Senator Leichter.

11 SENATOR LEICHTER: Senator,
12 I'm glad you've watched how I voted and I think
13 you know that one thing I dislike particularly
14 is bills that pander. I just heard the
15 response that you gave, Senator, and I think
16 all of us would agree that child molesters need
17 to be treated in a particular way. But
18 Senator, your bill is not limited to people who
19 molest children. You've, as I see it, included
20 a number of sexual offenses, as Senator Abate
21 pointed out, that are misdemeanors, that don't
22 involve molestation.

23 SENATOR NOZZOLIO: Mr.

1 President, if I may respond. The enumerated
2 felonies, Senator Leichter, are these: Incest,
3 use of a child in a sexual performance,
4 promoting an obscene sexual performance by a
5 child, promoting sexual performance by a
6 child. Those are the enumerated felonies in
7 this measure.

8 SENATOR LEICHTER: Then which
9 -- okay. Then maybe I misunderstood your
10 answer or Senator Abate's question. There are
11 no misdemeanors included within -

12 SENATOR NOZZOLIO: That's
13 correct, Mr. President.

14 SENATOR LEICHTER: There are
15 not, is that correct?

16 SENATOR NOZZOLIO: That is
17 correct, Mr. President.

18 SENATOR LEICHTER: Senator, if
19 indeed you feel -

20 ACTING PRESIDENT KUHL: Senator
21 Nozzolio, do you continue to yield?

22 SENATOR NOZZOLIO: Is Senator
23 Leichter asking me to yield?

1 ACTING PRESIDENT KUHL: Yes, I
2 believe so. You're asking Senator Nozzolio to
3 continue to yield, are you not, Senator
4 Leichter?

5 SENATOR LEICHTER: Yes,
6 please.

7 SENATOR NOZZOLIO: Yes, Mr.
8 President.

9 ACTING PRESIDENT KUHL: Senator
10 continues to yield.

11 SENATOR LEICHTER: Senator
12 Nozzolio, if, indeed, you feel that people who
13 commit these offenses should serve longer
14 sentences, isn't the way that we've structured
15 our Penal Law to provide sentences that
16 whoever's sponsoring the bill feels are
17 commensurate with the crime?

18 I have difficulty understanding
19 why these particular crimes are treated in the
20 fashion that you do lengthening the services by
21 making -- by making them determinant sentences.

22 SENATOR NOZZOLIO: Mr.
23 President, let me respond to my colleague's

1 question in this fashion: Frankly, I resent
2 his characterizations of this measure as an
3 attempt at pandering, that that is certainly -

4 SENATOR LEICHTER: Senator, I
5 know you would never do that and I didn't say
6 that.

7 SENATOR NOZZOLIO: I thought I
8 heard you say that.

9 SENATOR LEICHTER: But please
10 continue.

11 SENATOR NOZZOLIO: I thought I
12 heard that, Senator, but -

13 SENATOR LEICHTER: You heard
14 me say that I don't like bills that pander, but
15 if you feel that that fits, Senator, that's
16 your determination.

17 SENATOR NOZZOLIO: Mr.
18 President, sex offenders have committed
19 extremely grievous offenses, that we're talking
20 about offenses here against the most innocent
21 of victims, that sex offenders have
22 demonstrated the highest rate of recidivism of
23 all criminals sent to prison. To me it makes

1 no sense to give those who commit this crime
2 the opportunity to get out of jail early before
3 their sentence is completed as a result of what
4 is a system in our penal institutions in this
5 state of good time behavior, and that is
6 getting out of jail earlier if they
7 participate -- if they basically do not get in
8 serious trouble while serving their sentences.

9 I believe sex predators who
10 have committed these offenses and that we, as a
11 legislature, who determine sentences should
12 make a firm statement that we believe people
13 who commit these offenses should stay in jail
14 for the length of their sentence. It should
15 not -- those sentences should not be reduced by
16 a policy of the corrections department that
17 establishes good time behavior and that is why
18 this measure is before us, Senator, and that's
19 why I'm stridently supporting it. I believe it
20 is essential, it's necessary, it stops or
21 closes a loophole that exists in the law today
22 where sex predators are not serving their
23 entire sentences.

1 ACTING PRESIDENT KUHL: Senator
2 Leichter.

3 SENATOR LEICHTER: If Senator
4 Nozzolio would continue to yield.

5 ACTING PRESIDENT KUHL: Senator
6 Leichter, excuse me just a minute. Let me ask
7 him, okay?

8 Senator Nozzolio, do you
9 continue to yield?

10 SENATOR NOZZOLIO: Yes, Mr.
11 President.

12 ACTING PRESIDENT KUHL: Senator
13 continues to yield.

14 SENATOR LEICHTER: Senator,
15 those are nice sound bites about loopholes in
16 the law. There's no loophole in the law
17 whatsoever. The law in this state is that
18 except for where there is a sentence for life,
19 somebody's committed particular categories of
20 murder, that we have indeterminate sentences,
21 that we give people good time because we feel
22 that that is, one, a way of managing a jail
23 population, and I would think most experts in

1 corrections feel that that makes a lot of
2 sense; secondly, that we, as Senator Abate
3 pointed out, feel that there is a value of
4 having people out where they're supervised, but
5 you still haven't answered my question, which
6 is if you feel that a sentence is too short,
7 that people, by reason of getting good time and
8 getting parole, can get out of jail earlier.
9 We have a lot of bills, I'm sure that every one
10 of them has your name on it either as sponsor
11 or cosponsor, which lengthens a sentence.

12 What I'm trying to understand
13 is why you have taken these particular crimes
14 and instead of addressing them in the way that
15 we usually do here where we feel that somebody
16 may serve a sentence that is too short,
17 lengthening the sentence, that you've taken
18 this one category and said, "I'm going to make
19 them determinant sentences."

20 SENATOR NOZZOLIO: Mr.
21 President, in response to Senator Leichter's
22 question, Senator, we have established a
23 certain sentencing guideline and certain

1 sentencing structure in this state. Good-time
2 behavior in our correctional institutions can
3 result in a sentence being reduced by one-third
4 of the term imposed by the court.

5 What we're saying, as a policy
6 matter, is that we do not believe as Senators
7 and Assemblymen of this state that that
8 sentence for these types of crimes, this type
9 of criminality against children should be
10 reduced by one-third, simply because the
11 prisoner happens not to commit a prison riot,
12 happens not to stab somebody while in prison,
13 watches his cable TV at taxpayers' expense like
14 a good prisoner during the length of his stay
15 and, in effect, doesn't create disturbances
16 while in prison. That is not good enough,
17 Senator. Just because a prisoner is sent to
18 jail, does not create a riot, his sentence for
19 these types of crimes should not be reduced by
20 one-third.

21 If you were related to a victim
22 of this offense, I'm sure you would feel the
23 same way.

1 SENATOR LEICHTER: Senator, I
2 would think that we provide greater protection
3 for society, maybe not as good headlines, but
4 greater protection for society, Senator, when
5 we have good time. As I pointed out, it deals
6 with management of inmate population, and I
7 think Senator Abate, who has a lot of
8 experience, having run a correctional system,
9 having been a parole officer, I think has
10 pointed out the value to society of having
11 these people under parole.

12 Now, I might very well support
13 a bill that, in certain instances, people
14 continue and stay under supervision, but I
15 still haven't gotten an answer to my question
16 why you approach this in terms of making it a
17 determinant sentence instead of approaching it
18 the way that this house generally has. I
19 usually haven't voted for these bills but I can
20 understand the logical approach which is that
21 you lengthen the sentence. You haven't done
22 that and you haven't given us a reason why
23 these become determinant.

1 Let me ask you this question,
2 if you would continue to yield, please, Senator
3 Nozzolio: You say these are very heinous
4 crimes. These are heinous crimes, so is
5 murder, murder is a heinous crime, assault is a
6 heinous crime, those crimes continue to be
7 indeterminate sentences. I don't see you
8 saying that those people should serve longer
9 time.

10 I'm trying to understand the
11 logic, Senator. I understand the appeal the
12 bill has, but I'm trying to understand if it
13 makes sense.

14 SENATOR NOZZOLIO: Mr.
15 President, is Senator Leichter asking a
16 question? I don't understand the question.

17 ACTING PRESIDENT KUHL: Senator
18 Leichter, is that a rhetorical question to
19 Senator Nozzolio?

20 SENATOR LEICHTER: He can deal
21 with it however he wishes, Senator.

22 SENATOR NOZZOLIO: Senator,
23 are you saying that by asking the question -

1 you say you don't understand the logic; it
2 doesn't surprise me, Senator, but I guess my
3 inadequacies of explaining it to you, I believe
4 it must be weighed against your intransigence
5 against -- in support of ensuring that
6 criminals are given every benefit possible in
7 this society.

8 Frankly, Senator, if you cannot
9 understand the logic of taking away a
10 prisoner's benefit of good time behavior for
11 particularly vile acts, Senator, I'm sorry, I
12 can't explain that. If you can't see the logic
13 in it, I can't explain logic to you if you
14 don't see that logic. I see logic in it, and
15 the logic I see is that for certain enumerated
16 offenses, having a benefit given to prisoners
17 simply further ignores the type of individual
18 that they victimized; and I, frankly, believe
19 that we should have lifetime parole, as well,
20 Senator, and that was the bill that Senator
21 Abate had asked me about, a bill that was not
22 on this floor, is not before the house, but is
23 a measure that is accorded with this one and,

1 that is, establishing lifetime parole for those
2 who committed these same types of offenses with
3 the highest rate of recidivism of any criminal
4 recorded in this state.

5 ACTING PRESIDENT KUHL: Senator
6 Leichter.

7 SENATOR LEICHTER: Senator, I
8 think I understand the political logic; I was
9 trying to understand the logic, Senator, of
10 saying these particular crimes, we're going to
11 make determinant sentences. When there's an
12 approach of lengthening the sentences, if you
13 think that that is what is required for the
14 safety of society without, at the same time,
15 creating the difficulties in the jails which
16 this bill does and without freeing these people
17 from any supervision whatsoever when they get
18 out -

19 SENATOR NOZZOLIO: I'm
20 confident, Senator, that the correction
21 officers and the corrections department can
22 deal -- will be able to deal with this issue.
23 The question boils down to whether or not this

1 Legislature decides to exempt the benefit of
2 good time behavior from those who are sex
3 predators, that's what the question is before
4 us, and that's the vote that we have this
5 afternoon.

6 SENATOR LEICHTER: Mr.
7 President, on the bill, and I -

8 ACTING PRESIDENT KUHL: Senator
9 Leichter, on the bill.

10 SENATOR LEICHTER: I thank
11 Senator Nozzolio. Let me just say that the
12 issue is of how we're going to deal with child
13 molesters or other, as Senator Nozzolio calls
14 them, sexual predators, in a fashion that's
15 going to protect society.

16 There's some feeling among some
17 members that maybe the sentences aren't long
18 enough, and what I'm trying to suggest to
19 Senator Nozzolio is that that can be dealt with
20 by changing the gradation of crimes providing
21 for lengthier sentences, which is the way that
22 we have dealt almost invariably within
23 instances where we feel a crime does not carry

1 sufficient penalties or that somebody who
2 commits that crime may get out earlier. And I
3 wish to point out that if you continue that
4 treatment, then it has the benefit, as I said
5 before but it's worth repeating, of providing
6 better inmate management and also supervision
7 afterwards.

8 Now, there are some people who
9 believe that all crimes ought to carry with it
10 a determinant sentence, there are some very
11 prominent people who believe in that; District
12 Attorney Robert Morgenthau has been urging that
13 approach for a long time. The Congress went in
14 some direction, in that direction, and as you
15 know, they are now in the federal courts, some
16 fairly strict guidelines.

17 But I can't help but think that
18 this is something that, you know, may sound
19 very good in the community, we will not exempt
20 sexual predators and so on, but I don't find
21 that it fits into the structure of sentencing
22 that we have and I think it carries some
23 unfortunate consequences.

1 So, I don't think the issue
2 here is whether you're going to be tough on
3 sexual predators. I think all of us are tough
4 on sexual predators, none of us, I think, have
5 any desire to see that anything other than
6 strict punishment is meted out and a punishment
7 that protects the public. But I think just to
8 put forth bills of this sort which maybe carry
9 some nice publicity with it and you can come
10 out with some nice sound bites on it but that
11 really don't fit into the way that we deal with
12 these sort of crimes, that I think far from
13 protecting society, I think it actually creates
14 problems for society. I think it makes it -
15 gives us less protection against sexual
16 predators, as Senator Nozzolio likes to refer
17 to them.

18 I just think that this has
19 become very fashionable. We had Meagan's Law
20 last year, and I think we overdid that to a
21 large extent. I think similar bills, as this
22 one, which again, make good headlines, but I
23 don't think they're good social policy.

1 ACTING PRESIDENT KUHL: Senator
2 Skelos is next on the list; he waives.

3 Senator Abate is next on the
4 list.

5 SENATOR ABATE: Just on the
6 bill briefly.

7 ACTING PRESIDENT KUHL: Senator
8 Abate on the bill.

9 SENATOR ABATE: Just to remind
10 all of us that last year we passed a truth in
11 sentencing law which said in terms of if you're
12 a violent offender and you've done it a couple
13 times or you're a persistent violent offender,
14 you're not going to get an indeterminate
15 sentence. We already went to determinant
16 sentencing last year and raised the minimum and
17 the maximum, so if someone could have gotten -
18 and it was raised across the board, so if the
19 average sentence was three to six under the old
20 indeterminate law, under the new determinant
21 law, the truth in sentencing law that was
22 passed last year, violent felons, the people
23 we're talking about here, will be doing a lot

1 more time and they will get a determinative
2 sentence, the judge will say, "I want him to do
3 nine years," all right, or, "I want them to do
4 so seven years," there was no range; and what
5 they did is, there is no discretionary parole.
6 We decided that was a good way to handle it
7 because we thought that there were certain
8 violent felons that should stay in prison
9 longer.

10 What we did last year is we
11 kept the good time allowance which meant if
12 someone behaved themselves in prison, gave them
13 an incentive to behave, they wouldn't get one
14 third off, what we decided last year, they
15 would get one-seventh off.

16 We deliberated that, or didn't
17 deliberate that process, but in our wisdom last
18 year, we said, "We'll take away discretionary
19 parole, we'll elongate the sentence, we'll
20 reduce good time off the back from one-third to
21 one-seventh; and I guess my question is now,
22 why are we doing it differently this year? We
23 dealt with murders last year, we dealt with all

1 kinds of heinous crimes and we decided we'll
2 elongate the sentence, take away discretionary
3 parole and reduce good time. Why are we
4 treating this differently?

5 Let's not talk about one-third,
6 let's reduce it to one-seventh, but that good
7 time which allows parole supervision gives the
8 capacity for correction officials to control,
9 it's another tool to control inmates who are
10 difficult.

11 Why are we disrupting a system
12 that we think is working. And I go back to the
13 argument that Senator Leichter has done, if we
14 did it that way last year, what has changed
15 between last year and this year? It means that
16 we should be taking away good time altogether,
17 which will impact, again, on public safety.

18 ACTING PRESIDENT KUHL: The
19 Chair recognizes Senator Marchi.

20 SENATOR MARCHI: Perhaps I
21 don't understand this issue well enough, but I
22 am a little concerned about prisoner
23 management, there must be some effect there;

1 and then the other issue that you raised,
2 reducing it to that one-seventh, does that
3 one-seventh of a period constitute a kind of
4 halfway house from where there is a societal
5 benefit knowing what the circumstances are when
6 a person emerges and reenters into society.

7 Even though I assume that the
8 Meagan Law is still operative, I mean, in this
9 case, you know, I think there may be some
10 societal benefits in the experience that we all
11 acquire under these circumstances without
12 expanding into a largess that goes beyond
13 limits and also the factor, I think, in
14 management of conduct within an institution.

15 I assume that if we wanted
16 more, we can just extend the -- increase the
17 sentence, but I don't think it's bad to have a
18 short period of structured presence by law on
19 the circumstances of a reentry of one of these
20 violators who have a high rate of recidivism,
21 and perhaps we may all learn something from the
22 process.

23 I'm a little disturbed about

1 this change, unless there are -- I can be
2 corrected on this, but I am troubled by it and
3 I don't intend to vote for it unless there is
4 some answer that I can understand that makes it
5 rational.

6 ACTING PRESIDENT KUHL: The
7 Chair recognizes Senator Montgomery.

8 SENATOR MONTGOMERY: Thank
9 you, Mr. President. I wonder if the sponsor
10 would answer a question I have.

11 ACTING PRESIDENT KUHL: Senator
12 Nozzolio, do you yield to Senator Montgomery?

13 SENATOR NOZZOLIO: Yes, Mr.
14 President.

15 ACTING PRESIDENT KUHL: Senator
16 yields.

17 SENATOR MONTGOMERY: Thank
18 you. Senator Nozzolio, in your sponsor's memo,
19 you refer to a Mr. Carl DeFlumer who was
20 convicted of murder and attempted sodomy and
21 served apparently almost 30 years, and then
22 immediately or practically immediately, two
23 years later, went back and sodomized someone

1 else, another child. And I'm just wondering if
2 this person -- are you implying that he was
3 released earlier than his sentence based on
4 good time, or is it just that it almost doesn't
5 matter how long they serve, they are likely to
6 recidivate?

7 SENATOR NOZZOLIO: Mr.
8 President, Senator, it raises a good
9 question. The point I was trying to make with
10 this particular example was with the recidivism
11 and the notorious rate of recidivism and
12 examples of recidivism; I picked out this one
13 in particular, but there are statistics that
14 bear out the premise, the highest rate of
15 recidivism of any criminal behavior is that of
16 a sexual predator. And that was the reason
17 that I included this particular example in the
18 bill memo.

19 SENATOR MONTGOMERY: Thank
20 you. Mr. President, just one further question
21 for Senator Nozzolio.

22 ACTING PRESIDENT KUHL: Senator
23 Nozzolio, do you continue to yield to Senator

1 Montgomery?

2 SENATOR NOZZOLIO: Yes, Mr.
3 President.

4 ACTING PRESIDENT KUHL: The
5 Senator yields.

6 SENATOR MONTGOMERY: Senator,
7 I don't see one and obviously we don't usually
8 come out with companion bills, but I'm just
9 wondering if, due to the fact that this is such
10 a difficult kind of person to treat, I know
11 that other legislators have attempted in the
12 past to deal with some sort of a program that
13 specifically addresses this type of individual.
14 I believe some years back Senator Hoffmann had
15 legislation trying to deal with sex offenders
16 in prison while they were serving time. I'm
17 just wondering if you have any thoughts about
18 that, if there's a plan that you have to
19 address it from that angle, given the fact that
20 it's -- you know, there's such a high rate of
21 recidivism and it doesn't appear to make any
22 difference how long or short the sentence is or
23 how long they remain, they are likely to come

1 back.

2 Have you thought about looking
3 at treatment as a means of dealing with this
4 issue in particular?

5 SENATOR NOZZOLIO: Yes, Mr.
6 President, in response to the Senator's
7 question. I believe it is an extremely
8 important issue that we need to do more on -
9 more of, and Senator DiCarlo each year has
10 introduced the sex offender reform act which
11 provides for consistent treatment and continual
12 treatment.

13 Senator Abate's point that was
14 raised in committee is one that we followed up
15 with additional legislation requiring lifetime
16 parole for this type of criminal. That is a
17 measure that, as I mentioned earlier, will be
18 coming before this house in the very near
19 future.

20 I visited at Oneida Correctional
21 Facility this last winter or earlier part of
22 the winter a program of sex offenders and sex
23 offender treatment, and I believe that we need

1 to continue those types of efforts in an effort
2 to ensure that we can at least fight this huge
3 rate of recidivism, that it does society no
4 good to have the repeaters again and again
5 continue this crime.

6 What we need to further ensure,
7 though, is that we give sight to the victim,
8 and that's the point of this legislation. We
9 can focus as much as we have been and need to
10 focus more on the predator, but the victim
11 needs to be remembered; and to give the
12 perpetrator of the crime a benefit, in effect,
13 relative to reducing their sentence just simply
14 smacks, I believe, to the sense of the victim
15 and I believe that is certainly something that
16 most of us share here and I can state it was
17 the reason for putting this measure before the
18 house.

19 SENATOR MONTGOMERY: On the
20 bill, Mr. President.

21 ACTING PRESIDENT KUHL: Senator
22 Montgomery, on the bill.

23 SENATOR MONTGOMERY: I'd just

1 like to make a couple of points here. One, I
2 certainly agree with Senator Nozzolio and I
3 look forward to him coming out with legislation
4 that deals with treatment.

5 We have 70,000 people serving
6 in prisons throughout the state right now and
7 with an anticipation that in the next five or
8 so years, that number is going to grow
9 exponentially based on the sentencing laws that
10 we did last year, and what is anticipated will
11 be changes in our system this year.

12 And I think that if Senator
13 Nozzolio follows through and comes forth with a
14 bill for treatment of sex offenders, that's
15 what we absolutely should be doing because
16 we're going to have to look at our prison
17 system more and more as an opportunity to reach
18 people on many different levels, to educate
19 them, to provide various kinds of treatment
20 based on their addictions of various sorts,
21 including sex and what have you, to try to
22 reform people because we can't continue to have
23 people locked away in such large numbers

1 realizing that at some point they are going to
2 be coming back into society and if we have not
3 done anything to try and rehabilitate them or
4 habilitate them, we're going to be more and
5 more pressured to build more and larger and
6 more secure prisons, and it's really going to
7 consume us as a budget item.

8 So, I think that while certainly
9 we need to deal with what to do about sex
10 offending prisoners, we also -- in terms of
11 their incarceration, we also need to deal with
12 some kind of treatment for them. We also need
13 to deal with treatment for people who are drug
14 addicts in prison, we need to be talking about
15 educating people, not taking away their
16 education opportunities. We need to be talking
17 about giving people an opportunity to work, to
18 be habilitated and rehabilitated on many
19 different levels.

20 So, I hope that this is a sign
21 for Mr. Nozzolio and all of the other
22 legislators and Senators who have brought forth
23 many different kinds of -- pieces of

1 legislation dealing with the prisoners, mainly
2 taking away from prisoners, I think that we
3 need to talk about what can we do to make that
4 prison experience one that leaves us with more
5 positive and with better citizens than when
6 they went in because otherwise we are going to
7 continue to have to spend the kinds of dollars
8 that we're spending to keep people in prison,
9 and it is not cheap.

10 So, Mr. President, thank you.

11 ACTING PRESIDENT KUHL: The
12 Chair recognizes Senator Gold.

13 SENATOR GOLD: Thank you, Mr.
14 President.

15 Mr. President, I'll be brief.

16 I think that the -- the only part of this which
17 is disturbing is that we're dealing with a
18 patchwork, and the sentencing provisions of the
19 state as I think has been pointed out are more
20 than just putting someone aside and punishing
21 someone and society trying to set examples, it
22 does, in fact, set certain social patterns and
23 it creates an environment in a prison as well

1 as out of a prison.

2 Now we've had legislation over
3 the years to try to pick apart victims, so if
4 you happen to assault someone who is a senior
5 citizen, no matter how old or young they look,
6 versus somebody who is not, no matter how old
7 or young they look, someone suggested there
8 should be a different penalty. But
9 theoretically, as we pointed out, if you were
10 to assault -- take a look at two people and
11 decide to punch, God forbid, a pregnant woman
12 in the stomach rather than her mother who might
13 be a senior citizen, you know, you got
14 different penalties. We were selecting
15 victims. We've done that in areas of young
16 and old.

17 The thing that bothers me about
18 this bill is not that it makes some judgments
19 in the sentencing field, it's that it doesn't
20 do it in terms of any particular pattern. So,
21 for example, if you had a situation where
22 somebody knives and seriously injures an adult,
23 they could perhaps get good time, whereas

1 somebody who did an unpermitted touching to a
2 minor that was not a rape, was not a sodomy,
3 under this, you say no, they lose that benefit.
4 And, under this bill, I can see where you have
5 a jail filled with nonviolent drug offenders
6 who were sentenced under Rockefeller time, plus
7 some people who committed some sexual crimes
8 not of the most serious, and, therefore, our
9 parole board, having to do something to
10 alleviate the tensions in the prison, are
11 letting out people who are assaulters, who are
12 robbers, who are arsonists but perhaps not
13 first degree arsonists, et cetera, et cetera.

14 So, Senator Nozzolio, I think a
15 lot of people understand your concern for sex
16 offenders and particularly to protect younger
17 people. But I was very taken with Senator
18 Marchi's remarks. When you're dealing with
19 certain areas of the law, it has -- what we do
20 has far-reaching effects, and the sentencing
21 provisions happen to be one of those areas
22 where we, in fact, do deal with legislation
23 that has far-reaching effects. It will effect

1 prison populations, it affects social conduct
2 in the street, and you cannot, in my opinion,
3 take one little pocket out of the patchwork of
4 our sentencing laws and in one bite decide
5 you're going to change it because today that
6 happens to be something which sounds popular.

7 So the urging you have from not
8 only this side, but people on your own side,
9 too, Senator, is to perhaps fit this into
10 something which is a pattern. I heard your
11 comments to Senator Leichter, and forgetting
12 the tone of them, which I think was
13 inappropriate, the point is, we do understand
14 your logic, Senator. Some of us think your
15 logic has certain motivations behind that logic
16 which you may not want to concede in public,
17 but the logic we understand, what we're talking
18 about, Senator, is that as a governmental body
19 and as a legislative body, perhaps there should
20 be more thought given to how this fits into a
21 total scheme rather than taken as if it was on
22 a desert island by itself.

23 ACTING PRESIDENT KUHL: The

1 Chair recognizes Senator Mendez.

2 SENATOR MENDEZ: Thank you, Mr.
3 President. Will Senator Nozzolio yield for a
4 question?

5 ACTING PRESIDENT KUHL: Senator
6 Nozzolio, do you yield to a question from
7 Senator Mendez?

8 SENATOR NOZZOLIO: Yes.

9 ACTING PRESIDENT KUHL: Senator
10 yields.

11 SENATOR MENDEZ: Senator
12 Nozzolio, do -- sex offenders in prison are
13 more likely to behave better than the rest of
14 offenders while in prison?

15 SENATOR NOZZOLIO: Mr.
16 President, that's a very good question. I
17 don't have any emperical data, Senator, to
18 advise you of what that answer is, but it is a
19 good question, I just don't know the answer.

20 SENATOR MENDEZ: Oh, you
21 don't. Well, I think I know the answer and I
22 wonder if you would agree with me. I think
23 that sex offenders in prisons, those who commit

1 sex crimes against children under the age of
2 18, which is usually the thing, that they do
3 behave very well in prison, you know why,
4 Senator Nozzolio? Because they do not have
5 children there to molest or to rape, and
6 because children are not there at their reach,
7 of course they're going to behave like angels.

8 I think that, Mr. President,
9 Senator Nozzolio, I think that the suggestion
10 that was made by Senator Abate pertaining to
11 the need to retain a little bit of, let's say,
12 a hook so that somebody who is released would
13 be able to fall within the umbrella of -
14 within the umbrella of parole and be intensely
15 watched is a good one and I certainly hope, if
16 I understood you correctly, didn't you mention
17 that you have another bill that would do
18 something along those lines?

19 SENATOR NOZZOLIO: Yes. Mr.
20 President, if I may, Senator Abate had raised
21 an issue, Senator Mendez, in committee that
22 discussed the issue of ensuring not a break in
23 probation or parole treatment for sex

1 offenders, that we are pushing other
2 legislation that is not before the house today
3 but will be so very soon, that requires
4 mandatory sex offender treatment and
5 counseling, it requires a lifetime parole order
6 for those repeat offenders.

7 So, it is something that I
8 believe is certainly appropriate for long-term
9 dealing with this issue; and I think taken in
10 conjunction with the bill before us today makes
11 good sense.

12 SENATOR MENDEZ: You know,
13 Senator Nozzolio, Mr. President, on the bill, I
14 really believe, I truly believe that it is a
15 total waste of taxpayers' moneys to provide
16 treatment to sex offenders. The fact remains
17 that they are the worst recidivists. The
18 increasing sexual crimes against children has
19 been -- has been proceeding at such a fast rate
20 that society, government, must do something
21 about it. It is a -- statistics show that
22 they're the worst recidivists ever, so
23 actually, there is no way -- once a rapist,

1 unfortunately, that is the bottom line, you are
2 going to be a rapist. Once a sexual offender
3 against children, unfortunately, you are going
4 to keep on preying on children.

5 And I feel very strongly, Mr.
6 President, that it is one of the primary
7 functions of government to protect its citizens
8 and the only way in which our government will
9 be able to prevent women from being raped over
10 and over and over, the only way that our
11 government is going to prevent children from
12 being raped and killed and traumatized for life
13 because of these sex offenders that do not
14 have -- that we don't have -- science has not
15 come up yet with a way in which they could be
16 rehabilitated. So, until then, I am going to
17 support your bill very gladly. I hope that the
18 aspect of treatment is eliminated. We do not
19 have any moneys for them to proceed in your
20 next bill to make sure that once they complete
21 their sentence, there is some after -
22 tailoring, let's say, there would be some kind
23 of a mission in which they will be watched

1 fully.

2 That's a horrible problem that
3 our society has and that would be the best that
4 we can do.

5 I've always maintained here in
6 this same chamber that the best thing to do so
7 is to have sex offenders segregated, let them
8 there, work for their keep and let's stop
9 having them hurt women and children of the
10 state of New York.

11 Thank you, Mr. President and
12 I'll be voting aye.

13 ACTING PRESIDENT KUHL: The
14 Chair recognizes Senator Espada.

15 SENATOR ESPADA: Thank you,
16 Mr. President. I think the heightened emotions
17 are due to some of the inherent contradictions
18 that we've heard in the debate.

19 If one was to come to a logical
20 deduction, then I'm left with the following
21 that I wish to share for my colleagues: Mr.
22 Carl DeFlumer, who spent 30 years in, jail only
23 to get out and sodomize someone 13 years of age

1 two years later, under the provisions and under
2 the discussion that's been had on the floor,
3 that would justify leaving Carl out there
4 alone, unsupervised, I guess someone could say,
5 "Well, wait a minute, their neighbors will now
6 know that Carl's on the loose."

7 Is that the only protection
8 that society, that law-abiding citizens deserve
9 is a question, is a legitimate question. Some
10 of the answers that one of my colleagues just
11 gave was perhaps perplexing in that 46 percent
12 is a rate of recidivism that is noted here in
13 the justification for this bill. I cannot
14 fathom how we can justify, in the face of a
15 recidivism rate of that size, that to leave
16 Carl and those of his ilk alone; that in the
17 interests of protecting children and neighbor
18 hoods and families, that something else ought
19 to kick in, and perhaps that's the bill that's
20 coming up next week, but this is before us
21 today and this makes the situation worse.

22 We're all for the basic premise
23 that sex offenders should be punished. Carl

1 was punished for 30 years, we could have left
2 him in there some more years; eventually he
3 would have gotten out. Without any
4 supervision, it makes matters worse.
5 Therefore, we stand not in favor of sex
6 offenders, but more protection for the public
7 at large, and a supervised provision is one of
8 those things. I imagine that there may be
9 other interventions, treatment and what have
10 you, could be a subject of discussion; since
11 it's not today, we stand opposed to this bill.

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

15 (There was no response.)

16 Hearing none, the Secretary
17 will read the last section.

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

21 ACTING PRESIDENT KUHL: Call the
22 roll.

23 (The Secretary called the

1 roll.)

2 ACTING PRESIDENT KUHL: Announce
3 the results when tabulated.

4 MR. GOLD: Mr. President.

5 ACTING PRESIDENT KUHL: Senator
6 Gold, why do you rise?

7 MR. GOLD: Yes, if I could
8 explain my vote.

9 ACTING PRESIDENT KUHL: Senator
10 Gold to explain his vote.

11 SENATOR GOLD: Mr. President,
12 I'm going to vote against the bill but I want
13 to make it clear to Senator Nozzolio in his joy
14 that if he were to put in a general bill that
15 will do the things that Senator Espada
16 mentioned that would have, for example, things
17 in it that I've suggested over the years like
18 the Mahwah plan in New Jersey which had real
19 treatment for sex offenders, which is the only
20 criminal, by the way, who you can do something
21 about in that sense, and if you had things in
22 it which took into account whether or not the
23 state of New York should generally go to

1 determinant sentencing, even for people who
2 knife people, who maim children, who knife
3 children, who kill children, not only touch
4 them in a form of misdemeanor, then maybe some
5 of us could vote for such an overall plan.

6 The Congress does something
7 which I think makes some sense, they pass many,
8 many less laws than we do and they will have
9 the Crime Act of 1995, 1996 and they will give
10 you things which take a look at the criminal
11 justice system and have a plan. Well,
12 Congressmen don't get as many pen certificates,
13 I guess, as you try to get in New York and we
14 break up our laws in a different way.

15 But, unfortunately, when you
16 break them up, sometimes you work your way into
17 a corner which makes no sense and no logic.

18 I vote no.

19 THE SECRETARY: Those recorded
20 in the negative on Calendar Number 254 are
21 Senators Abate, Connor, Espada, Gold, Leichter,
22 Marchi, Montgomery, Paterson and Smith. Ayes
23 48, nays 9.

1 ACTING PRESIDENT KUHL: The
2 bill is passed.

3 Senator Montgomery, why do you
4 rise?

5 SENATOR MONTGOMERY: Mr.
6 President, last Wednesday, I was attending a
7 hearing on reform of the child welfare system
8 and I was not in the chamber when the body
9 voted on Calendar Number 251, Senate Bill 408,
10 and had I been present, I would have voted no
11 on that legislation.

12 ACTING PRESIDENT KUHL: Senator
13 Montgomery, the record will reflect that had
14 you been in the chamber last Wednesday when the
15 roll call was taken on Calendar Number 251,
16 that you would have voted no.

17 Secretary will continue to call
18 the controversial calendar.

19 THE SECRETARY: Calendar Number
20 287, by Senator Cook, Senate Print 636, an act
21 to amend the Town Law in relation to the terms
22 of office of elected officers.

23 ACTING PRESIDENT KUHL: Senator

1 Cook, an explanation of Calendar Number 287 has
2 been asked for by the Acting Minority Leader,
3 Senator Paterson.

4 SENATOR COOK: Mr. President,
5 some years ago, we amended the law and
6 permitted towns to increase the term of office
7 of certain of their officials. At least one
8 town and probably some others have attempted to
9 reverse that and to change the terms back from
10 four years, back from two years.

11 We have conflicting opinions.
12 The Attorney General has a published opinion
13 that seems to state that the town may reduce
14 the term of its supervisor from four to two
15 years by local law. We have a letter from the
16 Comptroller that says that -- well, in effect,
17 that they don't believe they can.

18 So, it's as much as anything a
19 matter of just trying to clarify that the
20 intent of the Legislature would be that if the
21 town was able to increase the term, they were
22 also able to decrease the term.

23 ACTING PRESIDENT KUHL: The

1 Secretary will read the last section.

2 THE SECRETARY: Section 2.

3 This act shall take effect immediately.

4 ACTING PRESIDENT KUHL: Call
5 the roll.

6 (The Secretary called the
7 roll.)

8 THE SECRETARY: Ayes 57.

9 ACTING PRESIDENT KUHL: The
10 bill is passed.

11 Senator Marcellino, that
12 completes the controversial calendar. What's
13 your pleasure, sir?

14 SENATOR MARCELLINO: Mr.
15 President, is there any housekeeping at the
16 desk?

17 ACTING PRESIDENT KUHL: There
18 is no housekeeping at the desk, Senator
19 Marcellino.

20 Senator Seabrook, why do you
21 rise?

22 SENATOR SEABROOK: I rise in
23 reference to requesting unanimous consent to

1 cast my vote in the negative on the bill
2 Calendar Number 254.

3 ACTING PRESIDENT KUHL: Without
4 objection, hearing no objection, Senator
5 Seabrook will be recorded in the negative on
6 Calendar Number 254.

7 Senator Paterson, why do you
8 rise?

9 SENATOR PATERSON: Mr.
10 President, I would like to announce that there
11 will be an immediate meeting of the Minority in
12 room 314.

13 ACTING PRESIDENT KUHL: There
14 will be an immediate meeting of the Minority in
15 the Minority conference room, room 313?

16 SENATOR PATERSON: Yes, Mr.
17 President.

18 ACTING PRESIDENT KUHL:
19 Immediate meeting of the Minority in the
20 Minority conference room, room 313.

21 Senator Marcellino.

22 SENATOR MARCELLINO: Mr.
23 President, there being no further business, I

1 move we adjourn until Tuesday, March 5th at 3
2 p.m. Promptly.

3 ACTING PRESIDENT KUHL: Without
4 objection, Senate stands adjourned until
5 tomorrow, March 5th at 3 p.m.

6 (Whereupon, at 4:23 p.m., the
7 Senate adjourned.)

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