ALBANY, NEW YORK

March 4, 1996

3:00 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

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

no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

I'll ask the Secretary to read.

THE SECRETARY: Senator Velella, from the Committee on Insurance, reports the following bills:

Senate Print 2716A, by Senator Velella, an act to amend the Insurance Law in relation to the maximum automobile insurance discount;

2764C, by Senator Velella, an act to amend the Insurance Law in relation to reciprocal insurers;

4643, by Senator DeFrancisco, an act to amend the Insurance Law in relation to the premium or compensation for giving bail bond;

5737, by Senator Velella, an

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

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

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

All bills ordered directly for third reading.

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

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Chair recognizes Senator DiCarlo.

SENATOR DiCARLO: Thank you,

Mr. President.

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

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

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

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

Senator DiCarlo.

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

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

Senator Bruno, that brings us to the calendar.

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

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

220 by Senator Skelos, Senate Print 425.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

SENATOR SKELOS: Lay it aside for amendments.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 43.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -

ACTING PRESIDENT KUHL: Announce the results when tabulated.

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

ACTING PRESIDENT KUHL: The bill is passed -

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

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

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

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

SENATOR LEICHTER: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

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

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

Just to remind you of some of

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

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

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

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

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

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

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

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

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

it.

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

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

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

ACTING PRESIDENT KUHL: Senator Dollinger on the bill briefly.

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

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

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

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

When people work for a small

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

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

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

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

for sexual offender.

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

SENATOR NOZZOLIO: Thank you, Mr. President.

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

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

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

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

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

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

SENATOR ABATE: Would Senator Nozzolio yield to a question?

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

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

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

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

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

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

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

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

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

SENATOR ABATE: Could the Senator yield to another question?

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

SENATOR NOZZOLIO: Certainly, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

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

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

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

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

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

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

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

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

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

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

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

are misdemeanors?

SENATOR ABATE: Yes.

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

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

Could I be heard on the bill?

ACTING PRESIDENT KUHL: Senator Abate on the bill.

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

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

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

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

home and there is no parole supervision.

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

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

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

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

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

So, in all due respect to

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

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

Thank you.

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

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

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

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

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

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

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

SENATOR LEICHTER: I wish you would, Senator.

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

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

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Would the Senator continue to yield?

SENATOR NOZZOLIO: Yes.

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

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

SENATOR NOZZOLIO: Mr.

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

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

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

SENATOR LEICHTER: There are not, is that correct?

SENATOR NOZZOLIO: That is correct, Mr. President.

SENATOR LEICHTER: Senator, if indeed you feel -

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

SENATOR NOZZOLIO: Is Senator Leichter asking me to yield?

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

SENATOR LEICHTER: Yes, please.

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

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

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

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

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

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

SENATOR NOZZOLIO: I thought I heard you say that.

SENATOR LEICHTER: But please continue.

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If Senator Nozzolio would continue to yield.

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

Senator Nozzolio, do you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: Senator Leichter.

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

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

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

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

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

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

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

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

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

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

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

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

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

Senator Abate is next on the list.

SENATOR ABATE: Just on the bill briefly.

ACTING PRESIDENT KUHL: Senator Abate on the bill.

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

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

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

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

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

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

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

ACTING PRESIDENT KUHL: The Chair recognizes Senator Marchi.

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

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

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

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

I'm a little disturbed about

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

ACTING PRESIDENT KUHL: The Chair recognizes Senator Montgomery.

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

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

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

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

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

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

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

Montgomery?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

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

back.

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

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

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

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

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

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

SENATOR MONTGOMERY: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I'd just

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

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

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

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

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

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

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

So, Mr. President, thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Mr. President, I'll be brief. I think that the -- the only part of this which is disturbing is that we're dealing with a patchwork, and the sentencing provisions of the state as I think has been pointed out are more than just putting someone aside and punishing someone and society trying to set examples, it does, in fact, set certain social patterns and it creates an environment in a prison as well

as out of a prison.

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

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

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

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

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

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

ACTING PRESIDENT KUHL: The

Chair recognizes Senator Mendez.

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

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

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT KUHL: Senator yields.

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

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

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

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

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

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

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

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

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

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

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

fully.

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

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

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

ACTING PRESIDENT KUHL: The Chair recognizes Senator Espada.

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

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

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

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

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

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

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

(There was no response.)

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the

roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

MR. GOLD: Mr. President.

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

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

ACTING PRESIDENT KUHL: Senator Gold to explain his vote.

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

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

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

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

I vote no.

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

ACTING PRESIDENT KUHL: The bill is passed.

Senator Montgomery, why do you rise?

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

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

Secretary will continue to call the controversial calendar.

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

ACTING PRESIDENT KUHL: Senator

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

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

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

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

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

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

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

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

Senator Seabrook, why do you rise?

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

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

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

Senator Paterson, why do you rise?

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

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

SENATOR PATERSON: Yes, Mr. President.

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

Senator Marcellino.

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

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

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

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