ALBANY, NEW YORK

January 21, 1997

3:03 p.m.

REGULAR SESSION

LIEUTENANT GOVERNOR BETSY McCAUGHEY ROSS,

President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. I would ask everyone to please rise and join me in the Pledge of Allegiance.

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

THE PRESIDENT: The invocation today will be given by Rabbi Nachman Simon, Chabad of the Lubavitch of the Capital District, Delmar, New York.

RABBI NACHMAN SIMON: Soon it will be the 15th day of the Hebrew month of Chabad. It is the celebration of the New Year for trees.

There are many lessons for us to learn from a tree. A tree is made up of three parts: Its roots, trunk and branches, and its fruit.

Since the Lubavitcher Bible compares human beings to trees, it is reasonable to believe that in certain circumstances, man has the three major, vital parts as part of his character.

The roots of a tree are hidden

in the ground. Even though they can't be seen, they play a most important role in the life of a tree. The roots anchor and support, as well as draw nourishing moisture to the entire tree. For us, the roots are faith of the Almighty that we draw upon constantly to carry out our day with the full belief that God has given us the ability to meet all challenges.

The trunk is the growth when we see ourselves striving higher and higher to reach our goal, even to the very skies; and finally, bearing fruit, so that others can benefit from our good deeds.

As the ethics of our Father teach us, if I'm not for myself, who will be for me; and if I'm only for myself, what am I? And if not now, when?

May it be the will of the Almighty that He give us the strength to truly symbolize the tree, to draw upon and nourish from our roots upon which the state of New York has been founded and to continue to grow and add new opportunities for everyone and, finally, to help others so that

they can be prospering trees and the entire world can reach perfection with the revelation of our righteous redeemer, the Meshia, and let us all say, Amen.

THE PRESIDENT: Thank you, Rabbi Simon.

The reading of the Journal.

THE SECRETARY: In Senate, Sunday, January 19. The Senate met pursuant to adjournment. The Journal of Saturday, January 18, was read and approved. On motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On page 4, I offer up the following amendments to Calendar Number 6, Senate Print 169, and I ask that that bill retain its place on the Third Reading Calendar. This is on behalf of Senator Maltese.

THE PRESIDENT: Amendments received.

Senator Skelos?

SENATOR SKELOS: Madam President, on behalf of Senator Bruno, in consultation with the Minority Leader

THE PRESIDENT: Is your microphone on?

Go ahead.

SENATOR SKELOS: In consultation with the Minority Leader, on behalf of Senator Bruno, I hand up the following committee changes and ask that they be filed in the Journal.

THE PRESIDENT: So ordered. Notice will be filed in the Journal.

SENATOR SKELOS: There will

be an immediate meeting of the Rules Committee in Room 332 of the Capitol.

THE PRESIDENT: There is an immediate meeting of the Rules Committee in Room 332.

Senator Skelos, are you ready for the calendar?

SENATOR SKELOS: Yes, if you could take up the non-controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 2, by Senator Stafford, Senate Print 364A, an act to amend Chapter 452 of the Laws of 1993, amending the Executive Law.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2

SENATOR LEICHTER: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 5, by Senator Velella, Senate Print 92, an act to amend the Penal Law, in

relation to arson in the second degree.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 7, by Senator Skelos, Senate Print 178, an act to amend the Civil Practice Law and Rules, in relation to causes of action.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 35.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 8, by Senator Tully, Senate Print 185, an act to amend the Penal Law, in relation to sexual performance by a child under the age of 18 years.

SENATOR LEICHTER: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar 9, by Senator Tully, Senate Print 186, an act to amend the Penal Law, in relation to consecutive sentences in the calculation of sentences.

SENATOR LEICHTER: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 10, by Senator Volker, Senate Print 222, an act to amend the Penal Law and the Criminal Procedure Law, in relation to term of imprisonment for certain offenders.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 19, by Senator Levy, Senate Print 358, an act to amend the Vehicle and Traffic Law,

in relation to authorizing the proration of registration fees.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take on the first day of September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

THE PRESIDENT: The bill is passed. That completes the non-controver sial calendar.

Senator Holland.

SENATOR HOLLAND: Can we stand at ease for a minute, Ma'am, awaiting the report of the Rules Committee?

THE PRESIDENT: The Senate will stand at ease.

(Whereupon, the Senate stood at ease from 3:10 p.m. To 3:14 p.m.)

THE PRESIDENT: Senator Holland.

SENATOR HOLLAND: Madam

President, may we return to reports of standing committees, and I believe there is a report of the Rules Committee at the desk.

THE PRESIDENT: Reports of standing committees, the Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills: Senate Print 593, by Senator Spano, an act to amend the Public Authorities Law, in relation to the creation of the Westchester County Health Care Corporation System;

1117, by the Senate Committee on Rules, an act to amend the Public Authorities Law, in relation to the creation of the Nassau Health Care Corporation;

And Senate Print 1118, by the Senate Committee on Rules, an act to amend the Public Authorities Law, in relation to the reservation of the state's right to adjust Medicaid rates.

All bills ordered directly for third reading.

THE PRESIDENT: Senator Holland.

SENATOR HOLLAND: Madam President, I move to accept the report of the Rules Committee.

THE PRESIDENT: All in favor of accepting the report of the Rules Committee, please signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is accepted.

Senator Holland.

SENATOR HOLLAND: Madam President, may we please take up the third reading of the Rules report at this time?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 21, by Senator Spano, Senate Print 593, an act to amend the Public Authorities Law.

THE PRESIDENT: There are two home rule messages at the desk.

Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Madam President, we debated this bill for some time during the special session. The only reason I'm going to vote against it is because of the manner in which the board of directors is chosen by this corporation, unlike the way the board of directors is chosen for the Nassau corporation, which there, as I recollect -- and I'm going on my recollection, but there, I believe, in the Nassau, it's -- the local authorities are the ones that appoint the directors.

That, as I recollect and unless the bill has been changed, I didn't want to start a debate on this, but as I recollect, here the Governor has the right to choose the board of directors and it just seems to me that that's something that ought to be done locally, it should be done by the

county, and for that reason, I will vote in the negative on this bill, but I will not oppose the Nassau bill.

THE PRESIDENT: Thank you, Senator Leichter.

The Secretary will announce the results.

THE SECRETARY: Ayes 52, nays 1, Senator Leichter recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 22, by the Senate Committee on Rules, Senate Print 1117, an act to amend the Public Authorities Law.

THE PRESIDENT: Read the last section -- oh, there's a home rule message at the desk.

Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

SENATOR HANNON: To explain my

vote.

THE PRESIDENT: Senator Hannon.

SENATOR HANNON: I think there are some details that I'm not so sure Senator Leichter is correct on, and I'll be giving him a memo on the bill later on, so he can be clear on that. Thank you.

THE SECRETARY: Ayes 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 23, by the Senate Committee on Rules, Senate Print 1118, an act to amend the Public Authorities Law.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

THE PRESIDENT: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Can we return to the regular calendar and do the controversial, please?

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 2, by Senator Stafford, Senate Print 364A, an act to amend Chapter 452 of the Laws of 1993, amending the Executive Law.

SENATOR PATERSON: Explanation.

THE PRESIDENT: An explanation is requested.

SENATOR STAFFORD: Madam. President.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Madam President, very often in the Secretary of State's work, operation, domain

SENATOR PATERSON: Explanation satisfactory.

SENATOR STAFFORD: Thank you.

THE PRESIDENT: Read the last

section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 5, by Senator Velella, Senate Print 92, an act to amend the Penal Law, in relation to arson in the first degree.

SENATOR LEICHTER: Explanation

THE PRESIDENT: Yes, an explanation is requested, Senator Velella.

SENATOR HOLLAND: One second, please.

THE PRESIDENT: Senator Velella, an explanation is requested.

SENATOR VELELLA: Yes, Madam President. This bill would change the definition of "incendiary device" for the purposes of prosecuting arson in the first degree.

As a result of a recent court case, a car was loaded with gasoline and driven into a building and the court dismissed the prosecution for arson in the first degree on the basis that a car loaded with gasoline and ignited did not represent an incendiary device as defined under the law. This bill would change that so that any type of flammable fluid that is ignited could be used for the purposes of prosecuting arson in the first degree.

THE PRESIDENT: Senator Leichter?

SENATOR LEICHTER: Yes, Madam President. I remember this bill was before us last year and I voted for it.

I laid this bill aside and two other bills, both of which were reported out of the Rules Committee, really for only one reason, because I think we're getting in the very bad habit of calling committees off the floor. Now, if we do it at the end of the session and there's an understandable rush, I think some of us can understand that, although even at that time it's a practice to

be deplored.

But, at the beginning of the session, to call a committee such as the Codes Committee off the floor, I think was totally erroneous, bad procedure, and it really denies members of the committee a chance to review the bill in committee and it denies the members of the Senate to know that the bill has been adequately and fully considered in committee.

I think that's particularly true of penal bills. They're complex bills, they're difficult bills.

And also, if I may say so, and I've been on the Codes Committee for many years under the chairmanship of Senator Volker, it's an excellent committee and there's really very good, thorough discussions of the bills, and there is very fair discussion. Senator Volker gives everybody a chance to contribute.

When you have a committee called off the floor, you don't have that opportunity, and I think that it's a bad habit that we should make sure -- or it's a

bad practice that we ought to make sure really doesn't become a habit; and if it does, I, for one, and I think there will be other members, that will just lay aside these bills and we're going to discuss them then, at some length, to make sure that all of the work that should have been done in committee and could not have been done in committee because it was called off the floor and you didn't have time to do it, is then done on the floor. I don't think any of us want that.

So, I'm just pointing that out, that's why I laid these bills aside, Senator. I'm not going to ask you any questions on it. But, if this continues, certainly committees that I'm on, I feel I have the obligation, then, to see that we have a full discussion on the floor. I would hope we could avoid that. I hope we will not have committees called off the floor as occurred last week and that the committees can perform their functions, their responsibility to all the members of considering the bills.

SENATOR VELELLA: Madam President, on the bill.

THE PRESIDENT: Yes, Senator Velella.

SENATOR VELELLA: Madam President, I think it's deplorable when we see members of this Senate stand up with technical objections to procedures and attempt to threaten that good, meaningful legislation will be stopped because they happen to be offended by the procedure.

Now, we know this is the beginning of the session and we see that we have a rather light calendar. It would be more beneficial to the people of this state if we can move these bills out, get them started, get the Senate doing its business, rather than to meet here, look at each other and leave because there's nothing on the calendar.

I compliment Senator Volker for moving good bills that are basically non controversial. As Senator Leichter has said, he has no objection to this bill, he objects to the procedure, because we're moving a

little bit too fast. Well, Senator, keep up with the pace. You can keep up with us. If you try hard, you'll follow our lead. We want to get some work done, we want the Senate to hit the ground rolling. Maybe the Assembly will come along; but certainly I have confidence that you'll be able to keep up with the rest of us.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, if I can just point out, Senator Leichter, I tend to agree with you. We do not intend to be calling committee meetings off the floor. The only reason that it happened -- and by the way, every bill that was reported out were bills that passed this house last year and they already had been considered in our committee previous to this, in other words, during last year's session, some of which have been considered, by the way, for years, and years, and years. You know we have some bills that aren't reported for many, many years. But, I also wanted to say that the reason we did the committee

meeting off the floor was because the leader did want to get some bills on the agenda to move. As you know, we could not do them on Tuesday because on Tuesday we were going to do the Court of Appeals judgeship for Judge Wesley and it would have been physically impossible to have the meeting at our normal time at noon on Tuesday as we are going to have tomorrow, well, Tuesday being a Wednesday tomorrow.

But, we do not intend to have committee meetings called off the floor, unless there is some very, very unusual situation, and this was one of them.

There was one bill on the agenda, by the way, that was a new bill and when any kind of objection was raised to it, we just passed it aside. So, I just want to tell you that.

So, we understand your questions, but I think this -- we had debated all this legislation previous to this, anyway.

SENATOR LEICHTER: Madam President.

THE PRESIDENT: Senator Leichter?

SENATOR LEICHTER: I didn't want to prolong this, but I thought that Senator Velella's statement needed a little clarification because I didn't want the record

SENATOR VELELLA: Could you please repeat that? I was distracted.

SENATOR LEICHTER: Senator, you're usually distracted, so I'm glad that you're listening.

But let me just say, Senator, I wanted to correct the statement because as you know, you and I, we share a community, we work together very well and I don't want the word to go out from here that Senator Velella got up and said, "Procedures don't matter. Don't pay attention to technicalities. Don't look at the bill, just let's get things passed," because I know that's not your view.

Your view is that procedures do count, rules count. It is important that we do things in an orderly fashion. And I want the people of the community that you and I share,

I want to assure them that your view is, because you've expressed it to me at other times, is that you do want to be careful before you pass legislation, that you don't want to rush it through; that what you pass here, you want to be able to go to people and say, "this has had careful, deliberate consideration." And it's in that sense, Senator, that I urge that we don't call committees off the floor; and even there's bills as excellent as your bills, and I'm sure you must agree, you want it to go through the regular procedure. And it's to protect you and me and every other member of this body that I urge that we follow the rules and we don't have committees called off the floor.

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

Senator Velella.

SENATOR VELELLA: I would just like to respond briefly to Senator Leichter.

Perhaps the pace is a little too fast, so I'll slow it down for you. The

point is, Senator, the time to object procedurally is when the meeting is called, when your ranking minority member is requested permission to consent to a meeting off the floor, which we do, which is a courtesy.

We ought not to be using the procedural steps to try and prevent or delay good legislation from going into force. You are always the one who screams and yells about rushing to judgment, as you're trying to do here, about the case -- about the load that we have toward the end of session. We're trying to get things moving quicker here at a quicker pace.

This is hardly a controversial bill. You certainly have said it's meritorious, it's a good bill, you voted for it in the past; it never got passed on in the other house. We want to get the work load moved out so we can devote more time to controversial matters, matters that you might want to contribute your experience and your expertise on in the course of debate.

However, trying to object just

on technical reasons to a bill that's a good bill I think is counterproductive here. The time to object to procedural events are when the committee meeting is held, when the ranking minority member, who you are part of and who is represented by -- represents you with the chairman gives his consent to call the meeting off the floor. Those are the times, those are the in-house workings.

The ultimate goal here is to do the best for the people of the state of New York. This is a good bill. We ought not be having this political bickering on the floor at so early a stage. We ought to get the bills out that are non-controversial, pass them; those that you agree with, fine; those that you don't agree with, debate against them. But, let's not try to bog down the place and be counterproductive, that's all I'm trying to say to you. And I think that is what is the essence of what you were saying, "I will hold these bills up and debate them all to death, unless we follow the procedures I think is right."

There is no negative procedure

here, there is no violation of the rules, the rules were followed. This is a procedure to expedite the matters, to get it before the Senate, to give it the opportunity to have a full debate.

You have the opportunity now to ask any question that you want. You're familiar with the bill, you knew you voted against it last year, and you're just nitpicking now to try and make some kind of political point. Let's try and put that aside and let's work on getting the good bills that are non-controversial moved out of this house and over to the Assembly so they can work on them. They take a little longer to understand things than we do. We can move things quickly.

Thank you.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 8, by Senator Tully, Senate Print 185, an act to amend the Penal Law, in relation to sexual performance by a child under the age of 18 years.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 2. 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 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 9, by Senator Tully, Senate Print 186, an act to amend the Penal Law, in relation to consecutive sentences and the calculation of

sentences.

SENATOR PATERSON:

Explanation.

ACTING PRESIDENT KUHL:

Senator Tully, an explanation of Calendar Number 9, Senate Print 186, has been asked for by the Acting Minority Leader, Senator Paterson.

Senator Paterson.

SENATOR PATERSON: On second thought, to expedite the process

ACTING PRESIDENT KUHL:

Secretary will read the last section. Not that quick.

SENATOR PATERSON: With the distinct advantage of hearing what Senator Velella suggested, I think this bill is fine. We can read the last section.

ACTING PRESIDENT KUHL:

Secretary will read the last section.

THE SECRETARY: Section 3. 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 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 10, by Senator Volker, Senate Print 222, an act to amend the Penal Law and the Criminal Procedure Law, in relation to term of imprisonment for certain offenders.

ACTING PRESIDENT KUHL: Senator Volker, an explanation has been asked for by two Senators, Senator Montgomery and also Senator Paterson.

SENATOR VOLKER: Assuming my voice holds out; I have a little cold today. Apparently both my wife and Senator Leichter think I probably shouldn't have been here today; I think she was probably more right than you, Franz.

But, at any rate, this bill is a bill that passed previously, I think several times. It's what I call -- and it's an in-the-middle bill between the proposal for second -- "two times and you're out."

Some people term it a "three times and you're out" bill which says that if a person is convicted of a violent felony offense and has previously been convicted of two or more violent felony offenses, then that person would be subject to a minimum mandatory sentence of 25 years to life in prison.

ACTING PRESIDENT KUHL: Senator Volker, excuse me just a minute.

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: I see a lot of conversations and I hear a lot of noise. I'm having an extremely difficult time hearing you. We might just as well start the year out in the right way. If the members would take their conversations out of the chamber if you're going to have them.

Thank you, Senator Volker, for the interruption.

SENATOR VOLKER: Senator, this is a bill, as I said, that provides that if a person is convicted of a violent felony offense for, in effect, a third time, that person is then subject to 25 years to life, and there are limitations on plea bargaining

also in these violent felony offenses.

This is what I consider to be a middle ground in the area of violent felony offenses as I know the Governor, I believe, and some other people have come up with legislation that would provide for what they call two times and you're out, as far as violent felony offenses are concerned.

ACTING PRESIDENT KUHL: Senator Paterson?

SENATOR PATERSON: Mr. President, with sensitivity to Senator Volker's capacity to answer the questions today, I think he qualifies for the consolidated question alternative, so I'm going to take the three questions I would have had and try to put them together in a way that maybe he can just answer this at one point.

Senator Volker, if you would yield for a question.

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL:

Senator yields.

SENATOR PATERSON: I'm concerned about the effect on the impact of crime that this legislation would provide in the short term, in the long term, and also its cost to the taxpayers.

I turn your attention to the sentencing project from 1994 where it indicates that 66 percent of crimes are committed by people under 30 and that the largest group of individuals who commit crimes are males age 15 to 24; and so, therefore, it would suggest a couple of conclusions that this -- the passage of this bill would produce, number one, that already we passed legislation in 1995 which would provide for 85 percent of the sentences that have been served by second and persistently violent offenders so that they would be serving 85 percent of their sentence term in the first place.

Secondly, we would have a situation now whereby the time -- the additional time that these individuals are

serving are the times that just, demographically, people of this age are not committing crimes anyway, even people who've already been released from prison; that what we would be, in a sense, doing is setting up a geriatric ward in our correctional facilities with people who are low risk to society and not really addressing the crime issue by passing this bill as much as we would be housing inmates and spending up valuable taxpayer dollars with which we could fight crime, just by keeping people for the crimes they already committed.

Finally, what I would like you to respond to is just the cost effect of passing this legislation when, as I said before, we're just housing individuals for a long period of time.

SENATOR VOLKER: Senator, first of all, let me just say that I think the thing that you have to put in mind is and when you're talking about long-term effects, you're absolutely correct, it's really long term, because if we didn't pass this legislation, someone who previously was

convicted of two serious, violent felony offenses, I would assume had already spent at least some time in prison and would be subject to a long prison term, even though it's now indeterminate anyway.

And the thing about it, I think, is that what we're really talking about is a society, by the way, that has been, to a certain extent, ignoring some of these violent felony offenses. We have not been sending people away, in many cases, for two violent felony offenses. In fact, that's part of the problem. In some cases, we haven't been sending them away for violent felony offenses for the third or fourth or fifth time and sixth time.

One of things that's interesting when we talk about the drugs laws, one of the things we forget is in New York City, you have to be arrested about fifteen times before anybody pays a lot of attention to you in many cases. Some of the people who went to prison under the Rockefeller drug laws were arrested 100 times for various crimes, some of them for

violence, by the way; and I said one time to somebody, why would anybody possibly plead to a Rockefeller drug offense? Think about it. There is only one real reason why they would do it and that is because they face something much more severe, a violent felony offense they face.

Now, what we're saying here is, we're taking people who have previously been convicted of violent felony offenses, and these are pretty serious convictions, and we're saying if you commit another such offense, you are going to be subject to 25 years to life, which is one of the most obviously one of the most serious penalties we can give.

Now, the impact, obviously, is not going to be felt immediately because these people would have presumably gone to jail for some period of time anyway. Our hope is that by these severe penalties, we will continue to develop a rational criminal justice process that brings the crime rate down because one thing I think just about everyone is convinced about in the criminal

justice system, it just depends on whether you want to admit how much it is, the fact that we are putting people in jail for long periods of time is clearly and unequivocally having an impact on the crime rate. This business of somebody saying again now, all of a sudden, that the age of criminals today has suddenly -- their perception of the age of criminals has now said, "Well, that's why the crime rate is coming down," is baloney because just two years ago when the crime rate was still going up, they were saying the reverse.

So my answer, I guess, to you is this: In the short term, the impact is comparatively limited because these people presumably would have gone to jail anyway. But we hope that, particularly for the long term, that what this will do is have a major impact on the amount of violent felons who are able to walk on our streets, and many of us feel that this is one of the ways that we can deal with some of the most predatory criminals in our system.

ACTING PRESIDENT KUHL:

Senator Paterson?

SENATOR PATERSON: Mr. President, I want to thank Senator Volker.

On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: We are all opposed to these persistent violent felony offenses and we all want to see justice meted out in these particular cases.

We just want to make sure that the awareness of time is not impinging upon the concept of justice, that we are not reacting to what is always popular, which is to tell the public that we need to increase sentences for persistent violent felony offenders, when, in fact, many of these offenders may have actually aged out.

If Senator Volker says that we have not gone far enough, I have to respect his judgment and also his expertise in this particular area.

However, what is of great caution to all of us in this chamber is the fact that we do have a significant crime

problem, even if it is decreasing, and that we need to be spending resources in the way that will best impact on the crime situation.

We feel that in these particular situations, that we are over-invested in people who've been in prison often into their 40s and 50s and 60s and perhaps that the resources might be more effective if they were directed in another area.

ACTING PRESIDENT KUHL: Senator Montgomery, did you have a question or a comment?

SENATOR MONTGOMERY: Yes, Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Montgomery.

SENATOR MONTGOMERY: I don't have a question for my colleague, but I just want to comment briefly on this bill.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I know there is similar legislation that has been passed and implemented in some other states,

namely California has, I believe, what is a similar policy at this point in time, and they have found that it is not as successful in terms of addressing the issue of crime as they had anticipated, number one.

And number two, it seems to be a net that catches specifically African Americans more than any other group, and it also somehow pulls in people who have not, in fact, committed the kind of felony crimes. I don't know if your bill will be -- if you've corrected that in this legislation; it seems that you have. But the California bill is a problem in that respect.

I cannot vote for this legislation, even though it is intended to address the issue of predicate felons, because one of the most successful programs that I'm aware of is -- has a piece in my district which is a program that houses and works with former inmates and most of them have been incarcerated for crimes related to their drug use or to drugs in general, they are back out and they are being rehabilitated, some of them are being

habilitated, and it is a program with a very high rate of success in terms of reducing recidivism, as well as producing quality citizens back into society.

And since many of the people in the state prison system in New York are going to come back to Brooklyn and Manhattan and the Bronx, I have a particular interest in those programs that work. And those are not the programs that we are now increasing funding for in the state budget. We are, in fact, cutting all of those programs, programs for alternatives to incarceration, we don't have money in the budget for community mediation centers, we're not looking at building -- building recreational centers in communities like mine for young people. There is no investment in keeping people from becoming violent felons to begin with.

So I cannot, in all good conscience, support continuing to invest on the back end, which is more expensive and which waits until people become essentially destructive to themselves and society before we're willing to invest anything. So I'm

going to vote no on this legislation, Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Waldon.

SENATOR WALDON: Thank you very much, Mr. President. I would like to ask Senator Volker a question or two, if he would yield; but before that, I would like to share a thought with him before I ask the question. May I do that, Mr. President?

ACTING PRESIDENT KUHL: Absolutely. The floor is yours, Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

Senator Volker, a couple of years ago, we went to one of the prisons downstate to look at the geriatric prisoners there, some colleagues and I, I don't remember if you were there, I think not, but I saw people who were up in age beyond the number that I would have imagined before entering the facility, in their 80s, many of them frail and elderly.

I'm one of the founders of the

Jamaica Service Program for Older Adults in Queens which services thousands and thousands of senior citizens and so I've had a chance over the last 20 years or so to see what it is to be in a geriatric setting -- I'm rapidly approaching it myself -- but I saw people in a prison setting with their legs amputated, having been amputated in prison. I saw people who had to travel with the stand holding the drip solution, whatever it was that they were being fed intravenously. I saw people who had to have a guard and/or a nurse get them up, clean them up, escort them around during their day in the prison, and then put them to bed at night.

And so I ask in this situation with this bill that we may pass and which may become law, has anyone considered the true fiscal impact in terms of the medical costs for these people who will obviously age out and die in prison?

SENATOR VOLKER: Senator, you're making an assumption that I think I have a difficulty in making. By the way, we passed legislation here some years ago called

medical parole; it's been pointed out, we haven't used it very much.

There are some very good reasons why we haven't used it very much. For one thing, we're having difficulty with some of our inmates who don't want to apply for it. We don't have a lot of people who are very old, but we have some. Some of those people do not want to apply for medical parole because the only life that they've really known is the prison life. But you should understand that most of these people have very, very severe records.

There is no -- by the way, in thinking about it, if you get a person here who is a persistent violent felon that is arrested and convicted today, they presumably would be in their 30s because most of the people who are convicted as violent felony offenders, even if they've already been in jail for a while, are still in their late 20s and 30s because of the way the system works. So, they're sentenced to 25 years to life; admittedly, they will be in their 50s. I don't exactly think that's quite geriatric.

You have to look at the system, Senator, it seems to me, for where it is. And I agree with you that I think we have to be careful. These are not ordinary offenders, these are violent felony offenders. These are people that have committed very serious crimes, not only in the past, but now, as to why they are going to be sentenced to these severe charges.

And Senator, you and I know that we're talking about the mandatory minimum sentences. To get there, they have to get by a DA who thinks it's severe enough to charge them with these kind of sentences. Most DAs, unless they think it's a pretty serious charge, are not going to be bothered with it.

So, I think the thing is that it's not as if the system is written in stone because we pass legislation that says somebody is charged, we're saying that once they're convicted. But history shows that the DA, unless it's a pretty severe penalty involvement or a person that they are very worried about, are not likely to move ahead

and prosecute these cases, anyway, whether they're black or white or whoever they are, whether its upstate or downstate or wherever it is.

In fact, they are much more likely to be prosecuted in upstate New York, in all honesty, than they are in downstate New York because of the fact that the prosecutors in upstate New York, tend to be -- admittedly, they don't have quite as much to prosecute, but they tend to prosecute people on a much more -- on a much different basis.

So, I guess my answer is I really don't see where this is going to likely create an enormous amount more geriatric inmates unless, of course, they are inmates that, as part of their persistent violent felony offender, kill somebody, then that's a different story.

And I would venture to say that most of the people you saw -- because the people I know of who are in those positions, probably committed some sort of form of homicide, most likely, because they

are most of the people that are still around in prison at the advanced ages.

ACTING PRESIDENT KUHL: Senator Waldon?

SENATOR WALDON: Mr. President, I would like to ask the gentleman to yield again, because obviously

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

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: I apologize, Senator Volker. I was not clear in my question because had I been clear, I would have elicited an answer somewhat different from the one you gave me. I respect your answer.

I was trying to find out, has anyone done a cost analysis in regard to the explosion of prisoners which will occur, which would, I'm sure -- and you're aware of what happened in California, which I'm sure would replicate somewhat what has happened in Texas, and in that regard, on the back end,

there would be a big change in terms of the medical costs.

SENATOR VOLKER: The studies that have been done, by the way, and we've debated this, Senator, a number of times and ironically there probably won't be a really good study done until we pass this and, you know, that's the way life is, I guess. But remember that the system as it is would still be sending these people to jail for a considerable period of time, we assume that they would be. Although, because we're making it mandatory, we know and they know and they will know, by the way, that if they get themselves involved in another violent felony offense, they will know there's no question that they're going to jail, or at least assuming all things being equal, for 25 years to life. And that's one of the arguments we're making as to why inmates today and why criminals today are looking at the system differently.

The answer is that the studies that have been done so far indicate that for a number of years, there will not be any

enormous change; but down the line, it's true, assuming that the rate of violence in our state doesn't decline, and although right now it's declining, but assuming that that were not to continue, somewhere down the line, we would have a bubble, there's no question about it. It would be somewhere in the area of about 14 years to 25, but in the immediate future, it should not have any major impact.

But you are right, somewhere down the line, this could have a rather decided impact. Of course, in the meantime, we're going to be looking at what's happening with the whole criminal justice system and we'll have time to decide whether we need more prisons at that point.

SENATOR WALDON: Mr. President, if I may continue, would the gentleman continue to yield?

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator continues to yield.

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

Senator, I realize from the Governor's budget address and from my review of his budget proposals that last year he said, let's build 8,800 prison cells, at the cost of 486 million, and I found that something that I thought not wise.

This budget has said let's build 7,700, or thereabouts, prison cells but at a cost of $660-plus million. The reason I raise that now in the context of what we're talking about is because that cost down the road will be really $1.8 billion with the mortgage, at least as I understand what happens with these things.

And correct me if I'm wrong but, too, when you couple that cost -- and I'm told that the reason for that cost is that these prison cells will be different than what we've done in New York State before, we're going to build the state-of-the-art prison cells, perhaps similar to what our former leader, Ralph

Marino, and I saw when we went with Mel Miller to California, Contra Costa and other places, to view prison cells on behalf of Governor Cuomo.

But my concern is the 660-plus million, along with the cost of these people who will obviously become, in my opinion, obviously become geriatric patients who will require massive medical costs. Is that a burden that we as a state should look towards without absolute, impeccable, line-by-line, itemized analysis to know where we're going? Do we know where we're going with this move?

SENATOR VOLKER: I think we know with about as much certainty, frankly, as we can possibly have, although I would be the first to admit to you that I think we probably do need another study of the prison situation. But, keep in mind, if you had started a study two years ago before the tremendous drop in the crime rate, you would have had an entirely different -- in fact, that's one of the things, when we passed the legislation here, this is two years ago, I believe, the historic "Truth in Sentencing"

legislation, the situation then actually was dramatically different. Since then, there's been a dramatic decline in the violent crime rate in this state and particularly in your city, in the city of New York, and everyone in the world has taken credit for it, which I understand, that's fine.

I think the answer is we know at this time, given the way the system has developed, that is the prison system, that we need new cells if we are going to continue to embark on making sure that violent felons are incarcerated for long periods of time.

And you are right there. The geriatric side of the situation, I think we should look at it to a greater extent, but it seems to me that we don't have as many geriatric prisoners today as we did years ago, and I don't believe we do, and it's one of the reasons we did medical parole and some other things to give us the ability, if we have to, to get these people out if they are too elderly, and so forth, and not be a danger to society. I think we have some relief valves there, and I think we should

continue to do that just in case.

But I think, Senator, that right now the Governor believes, I believe, and I think many of us believe that if we are to continue to maintain our movement toward curtailing the crime rate and making sure that violent felons are incarcerated for extensive periods of times, then we need to build additional prisons and that we need to maintain the momentum that we have already started.

So what this legislation, however, does is once again, to just back up what we've already done and deal with people who are violent felony offenders, not ordinary offenders, these are violent felony offenders, and put them away in a certain and discernible way for a long period of time.

SENATOR WALDON: Thank you very much, Senator Volker.

If I may, Mr. President.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

SENATOR WALDON: One, I thank you, Senator Volker, for your patience in

walking me through this, I appreciate it very much.

I have some concerns, though, which will force me not to be able to support you on this issue.

As of the moment, we are able to put away violent felony offenders for a long time without in any way invading the discretion of the judges in their courts. Historically, I think that's the right way to go. On a personal basis, in terms of my philosophy, I know absolutely we should not interfere with judicial discretion as much as we do in this state, and I find that, for me, something unacceptable.

I absolutely support putting violent felony offenders away. It has worked in this state, it has worked in South Carolina which first gave the idea that, Waldon, you're making a mistake. You need to see what works and allow that to happen here.

Some of us get caught up, in the minority community, with a very defensive posture in regard to police tactics and incarceration tactics, but it is the minority community

which is under siege by many of these people who are acting as predators, and this works.

My feeling, though, is that how much punishment is truly adequate punishment. I think this is too far-reaching.

Also, if you recall, last year I spoke of the field of dreams. I said then that if we build them, they will come and my fear is that this is a preemptive strike in ensuring that the line of marching persons to fill these prisons and to justify their construction will happen with this bill.

But more so on a moral basis than my monetary concern, I feel that we are interfering with judicial discretion far too much and, therefore, for all of that -- I mean, for all of those other reasons I've said, but most importantly for that, I cannot support you on this issue, Senator Volker. Thank you very much.

Thank you, Mr. President.

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 5. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Secretary will call the roll.

(The Secretary called the roll.)

Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 10 are Senators Connor, Leichter, Montgomery, Paterson, Sampson, Smith and Waldon. Ayes 49, nays 7.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland, that completes the controversial calendar.

SENATOR HOLLAND: Mr. President, can we stand at ease while we await a message from the Assembly, please?

ACTING PRESIDENT KUHL: The Senate will stand at ease awaiting a message

from the Assembly.

(Whereupon, from 4:03 p.m. to 4:50 p.m., the Senate stood at ease.)

ACTING PRESIDENT KUHL: The Senate will come to order. Ask the members to find their chairs.

SENATOR SKELOS: At this time, could we return to messages from the Assembly.

ACTING PRESIDENT KUHL: We'll return to the order of messages from the Assembly. The Chair hands down a message from the Assembly.

Ask the Secretary to read.

THE SECRETARY: On motion of Senator Bruno, the rules were suspended and said bill ordered to third reading: Assembly Print 1817, by the Assembly Committee on Rules, an act to amend the Legislative Law, in relation to allowances for members of the Assembly.

ACTING PRESIDENT KUHL: Without objection, the bill is ordered directly to third reading.

The Secretary will read the

last section.

THE SECRETARY: Calendar Number 24, by the Assembly Committee on Rules, Assembly Print 1817, an act to amend the Legislative Law, in relation to allowances for members of the Assembly.

Section 2. This act shall take effect immediately.

ACTING PRESIDENT KUHL: The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: There is none at the desk, Senator Skelos.

SENATOR SKELOS: There being

no further business, I move we adjourn until Wednesday, January 22nd, at 3:00 p.m. sharp.

ACTING PRESIDENT KUHL:

Without objection, the Senate stands adjourned until tomorrow, January 22nd, at 3:00 p.m.

(Whereupon, at 4:53 p.m., the Senate adjourned.)