ALBANY, NEW YORK

February 23, 1998

3:05 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order. Would you please rise and join me in the Pledge of Allegiance.

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

The invocation today will be given by Pastor Selwyn Wilkinson from Our Lady of Lourdes Spiritual Baptist Church in Brooklyn.

Pastor Wilkinson.

PASTOR SELWYN WILKINSON: On behalf of the Spiritual Baptists, the islands of Trinidad and Tobago, my prayers of invocation to you: Our Father which art in heaven, hallowed be Thy name. Thy kingdom come; Thy will be done on earth as it is in heaven. Give us this day our daily bread and forgive us our trespasses as we forgive those that trespass against us and lead us not into temptation, but deliver us from all evil, for Thine is the kingdom and the power and the glory forever and ever. Amen.

Almighty God, Who hast given us grace at this time to make our supplications

unto You, that You have promised that where two or three have gathered together, You are in the midst, and that is to bless. Bless this assembly, almighty God, our chairmen, the decisions they have to make. Grant them, almighty God, and guide them, O great Jehovah, guide them that they will go in the right direction that will be prosperous to all that dwell within the state of New York. I ask You, almighty God, to send Your blessings. Come, O Spirit, come, Spirit divine, attend our prayers and make them as Thine own. Descend with all Thy gracious powers. O come, sweet Spirit, come. Come to bless, almighty God. Guide them, O great Jehovah. Guide us, good almighty God, we thank Thee for Senator Markowitz who have invited us, and may the assembly, almighty God, Conservative, Republican or Democrat, whatever they have to do, let it be precious in your sight, almighty God, for the benefit of this nation. Bless our President, almighty God, and our Governor. This, I ask in no other name but in Jesus' almighty name.

The Lord is my shepherd. I

shall not want. He maketh me to lie down in green pastures and beside the still waters and restores my soul. He leads me in the paths of righteousness for his name's sake. Yea, though I walk through the valley of the shadow of death, I shall fear no evil, for God gives me Thy rod and Thy staff, they comfort me. Thou preparest a table before me in the presence of my enemies. Thou anointest my head with oil, that goodness and mercy shall follow us all the days of our life and we shall dwell in the house of the Lord forever.

Thank you, dear Jesus. In Jesus' almighty name, in Jesus almighty.

THE PRESIDENT: Amen.

The reading of the Journal, please.

THE SECRETARY: In Senate, Friday, February 20th. The Senate met pursuant to adjournment. The Journal of Thursday, February 19th, was read and approved. On motion, 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.

Secretary will read.

THE SECRETARY: Senator Leibell, from the Committee on Housing, Construction and Community Development, reports:

Senate Print 6152, by Senator Leibell, an act to amend the Private Housing Finance Law;

6153, by Senator Leibell, an act to amend the Private Housing Finance Law;

6154, by Senator Leibell, an act to amend the Private Housing Finance Law.

Senator Velella, from the Committee on Insurance, reports:

Senate Print 2550-B, by Senator Johnson, an act to amend the Insurance Law and the Vehicle and Traffic Law;

2684-B, by Senator Johnson, an act to amend the Insurance Law;

3883, by Senator Velella, an

act to repeal Section 4227 of the Insurance Law, and

4055, by Senator Saland, an act to repeal Section 334 of the Insurance Law.

All bills directly for third reading.

THE PRESIDENT: Without objection, all bills directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, I move the following bill be discharged from the respective committee and be recommitted with instructions to strike the enacting clause: That would be Senate Print Number 3279.

ACTING PRESIDENT HOLLAND: Without objection, the enacting clause will be stricken.

SENATOR MARCELLINO: Mr. President, amendments are offered to the

following Third Reading Calendar bills:

Sponsored by Senator Volker, page number 9, Calendar Number 143, Senate Print Number 1467-A;

Sponsored by Senator Johnson, page 12, Calendar Number 187, Senate Print Number 4834-C;

By Senator Skelos, page number 12, Calendar Number 193, Senate Print Number 1983-A;

Sponsored by Senator Maziarz, page number 13, Calendar Number 194, Senate Print Number 5083;

By Senator Seward, page number 15, Calendar Number 218, Senate Print Number 3267; and finally

By Senator Kuhl, page number 14, Calendar Number 213, Senate Print Number 3157- A, and, Mr. President, I now move that these bills retain their place on the order of third reading.

ACTING PRESIDENT HOLLAND: Amendments are received. The bills will retain their place on the Third Reading Calendar.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT HOLLAND: Senator Skelos.

SENATOR SKELOS: Before we go on with the resolutions, I just want to point out to the members that there are new mikes on the desks that are extremely sensitive, and you probably received a memo from the Secretary of the Senate, Steve Boggess, that mentions this, but I also want to point out that one of the mikes which happens to be on Senator Stachowski's desk right now is on, on a permanent basis, until it can be fixed. So, for example, you could be sitting in the fireplace discussing something with Senator Dollinger and it may be heard over the squawk boxes, so again, these mikes are very sensitive, and we should just recognize that.

ACTING PRESIDENT HOLLAND: Watch what you say.

SENATOR SKELOS: If we could take up at this time a resolution by - privileged resolution by Senator Johnson. I'd ask that it be read in its entirety and move

for its immediate adoption.

ACTING PRESIDENT HOLLAND: Secretary will read.

THE SECRETARY: By Senator Johnson, Legislative Resolution, recognizing the F.E.G.S. Suffolk Vocational Center, Bailey House West-South Oaks, upon the occasion of commemorating the 20th Anniversary of New York State's Displaced Homemaker Program.

ACTING PRESIDENT HOLLAND: The question is on the resolution.

THE SECRETARY: WHEREAS -

ACTING PRESIDENT HOLLAND: I'm sorry.

THE SECRETARY: WHEREAS, organizations which serve the interests of the people of this Empire State merit the commendation of this legislative body;

New York State's Displaced Homemaker Program has served the interests of the people of New York State for 20 years;

This legislative body is justly proud to recognize F.E.G.S. Suffolk Vocational Center, Bailey House, West-South Oaks of Amityville, New York, upon the occasion of

commemorating the 20th Anniversary of New York State's Displaced Homemaker Program, a program that has been recognized across the United States for its innovative services for individuals into permanent paid employment;

F.E.G.S. Suffolk Vocational is under the competent guidance of Fay Sutherland, a skilled and inspirational director whose illustrious reputation is renowned throughout Suffolk County;

Established in 1978, the New York State Department of Labor's Displaced Homemaker Program is one of the oldest, most successful state funded resources of its kind. The 24 multi-purpose centers offer a caring holistic approach, multiple services and a community of support aimed at addressing the complex problems faced by displaced homemakers entering or re-entering the paid job market;

The multi-purpose Displaced Homemaker Centers provide a wide range of services designed to help a displaced homemaker overcome multiple barriers and reach economic and personal self-sufficiency. The centers provide "job readiness" services that

give displaced homemakers the opportunity to make informed job and career decisions and learn life planning skills. In addition, it builds strong relationships with employers and educational institutions that result in training programs that aid economic development efforts in local communities;

Since 1978, over 140,000 individuals have received employment-related services. Over 28,000 homemakers have entered the labor force while another almost 26,000 went on for further education or training;

It is estimated that 1,962 homemakers who entered employment in the 1995-96 program year contributed some $16 million to the state's economy through their wages alone. Since wages generate spending in a community, the total economic impact on the state is estimated at over $42 million;

Through its sustained commitment to the preservation and enhancement of human dignity New York State's Displaced Homemaker Program has so unselfishly advanced that spirit of united purpose and shared concern which is the unalterable manifestation

of our American experience;

NOW, THEREFORE BE IT RESOLVED that this legislative body pause in its deliberations to commemorate the 20th Anniversary of New York State's Displaced Homemaker Program, fully confident that such procedure mirrors our shared commitment to preserve, to enhance and to yet effect that patrimony of freedom which is our American heritage; and

BE IT FURTHER RESOLVED that a copy of this resolution, suitably engrossed, be transmitted to Fay Sutherland, Director F.E.G.S., Suffolk Vocational Center, Bailey House West-South Oaks.

SENATOR JOHNSON: Mr. President.

ACTING PRESIDENT HOLLAND: Senator Johnson.

SENATOR JOHNSON: Mr. President, I'm proud to say that 20 years ago I played a role in establishing this first Displaced Homemaker Program.

We are honored today to have the resolution read on this anniversary and

have Miss Fay Sutherland, who serves many people in my district, here today to represent the group. Thank you, Miss Sutherland, for being here.

ACTING PRESIDENT HOLLAND: Senator Johnson, would you like to open up the resolution for co-sponsorship?

SENATOR JOHNSON: Yes, of course, Mr. President, and I'd like recognition of Miss Sutherland, who was standing as everyone noticed that she was here and we welcome her on this occasion.

Thank you.

ACTING PRESIDENT HOLLAND: The Senate recognizes Mrs. Sutherland and congratulates you on your activities here.

(Applause)

The question -- let me do the resolution, Senator Skelos.

The question is on the resolution. All in favor say aye.

(Response of "Aye.")

Opposed say no.

(There was no response.)

The resolution is carried.

Everyone will appear on the resolution unless they so signify.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there is a privileged resolution at the desk sponsored by Senator Holland.

ACTING PRESIDENT HOLLAND: Good resolution.

The Secretary will read.

SENATOR SKELOS: I think we're just going to ask that the title be read on this one -

ACTING PRESIDENT HOLLAND: Please.

SENATOR SKELOS: -- and move for its immediate adoption.

THE SECRETARY: By Senator Holland, Legislative Resolution paying tribute to the Rockland County citizens who volunteered their time and effort to help the storm victims in the North Country, to recognize on February 24th, 1998.

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

(Response of "Aye.")

Opposed say no.

(There was no response.)

The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Mr. President, could we take up the non-controversial calendar, please.

ACTING PRESIDENT HOLLAND: The Secretary will read the non-controversial calendar, please.

THE SECRETARY: Calendar Number 5, by Senator Libous, Senate Print 5053, an act to repeal paragraph 3 of subdivision (a) of Section 9.05 of the Mental Hygiene Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT HOLLAND: Lay aside.

THE SECRETARY: Calendar Number 32, by Senator Alesi, Senate Print 4012-A, an act to amend the Insurance Law.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 95, by Senator Volker, Senate Print 1708, an act to amend the Criminal Procedure Law, in relation to the preclusion of evidence.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 99, by Senator Skelos, Senate Print 3503, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first day of November.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 123, by Senator Holland, Senate Print 5918, an act to amend the Vehicle and Traffic Law, in relation to exempting vehicles.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 124, by Senator Present, Senate Print 2536, an act to amend the Economic Development Law, in relation to directing a rural agribusiness.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 128, by Senator Seward, Senate Print 1182, an act to amend the County Law, in relation to establishing county communications.

ACTING PRESIDENT HOLLAND: Read the last section.

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

January.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 129, by Senator Cook, Senate Print 1419, an act to amend the Real Property Tax Law, in relation to statements of taxes by school districts.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number

173, by Senator Trunzo, Senate Print 4277, an act to amend the Civil Service Law.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 184, by Senator Kuhl, Senate Print 546, an act to amend the Agriculture and Markets Law, in relation to producer referendum.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 208, by Senator Stafford, Senate Print 121, an act to amend the Environmental Conservation Law, in relation to non-hazardous municipal landfill.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 211, by Senator Marcellino, Senate Print 1388, an act to amend the Environmental Conservation Law, in relation to exemptions.

ACTING PRESIDENT HOLLAND: Lay the bill aside.

THE SECRETARY: Calendar Number 222, by Senator Larkin, Senate Print 6001, an act to amend the Town Law, in relation to exempting the Good Will Fire District in Orange County.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 223, by Senator Volker, Senate Print 222, an act to amend the Penal Law and the Criminal Procedure Law.

ACTING PRESIDENT HOLLAND: Lay the bill aside.

THE SECRETARY: Calendar Number 224, by Senator Goodman, Senate Print 424, an act to amend the Penal Law, in relation to

consecutive terms.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 2.

ACTING PRESIDENT HOLLAND: Call the roll. Last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT HOLLAND: The bill is passed.

THE SECRETARY: Calendar Number 235, by Senator Balboni, Senate Print 5950, an act to amend the Penal Law, in relation to consecutive sentences.

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

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

SENATOR KUHL: At the request

of the sponsor.

ACTING PRESIDENT HOLLAND: At the request of the sponsor.

Senator Kuhl, we'd like to read a couple of substitutions, if it's O.K. with you.

SENATOR KUHL: If you'd like to do that, fine, let's do that.

ACTING PRESIDENT HOLLAND: Secretary will read.

THE SECRETARY: Senator Leibell moves to discharge from the Committee on Housing, Construction and Community Development Assembly Print 8870, and substitute it for the identical Senate Print 6042.

Senator Leibell moves to discharge from the Committee on Housing, Construction and Community Development Assembly Print 8869 and substitute it for the identical Senate Bill 6043.

And Senator Leibell moves to discharge from the Committee on Housing, Construction and Community Development Assembly Bill 8871 and substitute it for the

identical Senate Bill 6044.

ACTING PRESIDENT HOLLAND: Without objection, the substitutions are ordered.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Can we now take up the controversial calendar, commencing with Calendar Number 5, by Senator Libous.

ACTING PRESIDENT HOLLAND: Secretary will read the controversial calendar, Calendar Number 5.

THE SECRETARY: Calendar Number 5, by Senator Libous, Senate Print 5053, an act to repeal paragraph 3 of subdivision (a) of Section 9.05 of the Mental Hygiene Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT HOLLAND: Explanation has been requested.

SENATOR LIBOUS: Thank you, Mr. President.

Currently the Mental Hygiene Law, Section 9.05, prohibits physicians on the staff of a private hospital from authorizing the admission of a mentally ill patient to

that hospital.

What this would do is remove that provision and allow a physician on staff to make such an examination of a mentally ill individual, and it would indeed provide admission for that patient.

ACTING PRESIDENT HOLLAND: Read the last section.

Senator.

SENATOR MONTGOMERY: Yes, thank you, Mr. President.

I would like to know if Senator Libous would yield for a couple of questions.

ACTING PRESIDENT HOLLAND: Senator Libous, would you yield?

SENATOR LIBOUS: Certainly, Mr. President.

ACTING PRESIDENT HOLLAND: Senator yields, Senator Montgomery.

SENATOR MONTGOMERY: Senator, you indicate that the existing law may serve as an obstacle to the timely admission of a mentally ill person. Can you provide us any evidence of this happening; is there some indication that this is a real problem?

SENATOR LIBOUS: Yes. We've had a number of physicians who are presently at these institutions through their association over the years that have come to us and discussed the problem with admission because presently if they're on staff they have a patient who needs to be involuntarily admitted that they can't get them in and there's some problems that exist because they're on staff.

SENATOR MONTGOMERY: If you would continue to yield, Senator Libous.

In what instances are the services to mentally ill patients being delayed and how long are these delays, do you -- is there an indication of how long the delays may be?

SENATOR LIBOUS: I don't know how long the delays are. I don't have that information, but what we're -- what we try to do here, Mr. President, is to make sure that someone who is in need of these services can get them as soon as possible, but I don't have any -- I'm sure that I could dig up those stories.

SENATOR MONTGOMERY: Just a couple of other questions. The -- you indicate that there is some difficulty or at least the physicians have indicated. Do you think that we need to take some more time to study this issue before or is this -- there an urgency that you think we need to move ahead with this particular legislation?

SENATOR LIBOUS: Thank you. Mr. President, I do believe we need to move ahead. I believe it did pass this body last year and, as I said, it has been something that we've discussed for a number of years and presently I know that on the books this provision doesn't apply to physicians who are staff members of a general hospital or a state-operated facility at the present time, so we feel that if it's something that doesn't pertain to those particular hospitals, it doesn't -- it shouldn't also pertain to some of the private hospitals.

SENATOR MONTGOMERY: All right. Thank you, Mr. President. Briefly on the bill.

ACTING PRESIDENT HOLLAND:

Senator Montgomery, on the bill.

SENATOR MONTGOMERY: There are a couple of concerns that have been expressed by some of the -- the Mental Health Association and mental health advocates and they relate to the issue of the concern for an impartial designation of people who are being admitted and particularly in those instances where it might be possible for an institution to seek admission or to agree to having an admission because it helps to fill the beds of that particular facility, and it's -- this is the same problem that we have experienced with pre-school handicapped children or children with handicapping conditions. Because many of the evaluating -- evaluators have a particular connection with a specific institution, we've found that in too many instances children were evaluated and placed in the same institutions that these evaluators were connected with and so that same problem is -- I'm afraid might be happening vis-a-vis relaxing this particular provision.

So I just wanted to raise this with you, Senator, that there is a concern and

we certainly would not want to find ourselves in a situation where we're having people placed possibly inappropriately based on the interest of an institution rather than the interest of an individual.

Thank you.

ACTING PRESIDENT HOLLAND: Senator Paterson.

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

If Senator Libous would yield for a question.

ACTING PRESIDENT HOLLAND: Senator, do you yield?

SENATOR LIBOUS: I would be honored.

ACTING PRESIDENT HOLLAND: Senator yields.

SENATOR PATERSON: Senator Libous, last year I came to this chamber opposed to this legislation and was persuaded by the argument that you offered at that particular time and since the legislation has actually not passed, I just wanted to offer a suggestion to you, something I thought perhaps

might alleviate some of the concerns of the Mental Health Association and some of the advocates who have voiced their concerns to us, well articulated by Senator Montgomery.

This is simply a civil commitment case under Section 9 of the Mental Health -- I believe it's Section 9.43 in which two physicians sign the certificate enabling the institution to take control over the individual who's unable to distinguish to the extent that they could care for themselves. The concern that Senator Montgomery raised is that, if the particular physician has a strong fiduciary responsibility or proprietary relationship with the institution, that even if the physician is trying to be fair that there is certainly an implicit understanding that the physician might, because of other factors, be persuaded to feel that the patient should be committed.

What I'm thinking is rather than attack the problem as the law does now by saying that no physician can sign the statement unless they are not -- they don't have a financial relationship with the

hospital, would it be better for two physicians to sign the statement anyway, to draft the legislation so that, as long as one of the two physicians, provides a certificate that he has no interested, financial or otherwise in the hospital, then it would be understood that this would be an adequate commitment.

So my question is, would you consider rather than just waiving what is right now the obligation under the law, simply turning it around and stating that as long as one of the two physicians is unrelated financially to the institution that the certificate with both signatures would be valid?

SENATOR LIBOUS: Mr. President, Senator Paterson raises a good point and I'd like to address that.

I believe, Senator, that if you look at what we're asking for in the legislation, this would simply allow a physician to admit a patient for a 15-day period so that they can make that determination and get help from someone or

force someone who has a mental illness and we have presently in place organizations such as the state Mental Hygiene Legal Services or the state Commission on Quality Care which exists to make sure that the safeguards that are in place, and we also have the Patient's Bill of Rights, which guarantees that such patients will be fully informed about their treatment and their options that are open and available to them.

The other point that I'd also like to make that I think answers Senator Paterson's concern, Mr. President, is finally insurance companies pay close attention, particularly nowadays and won't authorize coverage of in-patient care if it isn't warranted, so I believe, Mr. President, that there are a number of safeguards in place and particularly with, as I mentioned, the Commission on Quality Care which is something that we have some jurisdiction and control over, and that if there was a situation that did exist, where you know, people were being placed arbitrarily into hospitals and that one of those, that physician might have some

interest in the hospital, that would have come to our attention quite quickly, and I think that would be addressed.

But it's a good question. Those safeguards have to be watched for. We need to make sure that, as we pass a number of pieces of legislation in this house, that we are cautious in providing proper treatment to individuals who need it on a basis that is expedient but at the same time we have to make sure that we are not helping others to profit.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 5 are Senators Abate, Leichter, Montgomery and Paterson. Ayes 50, nays 4.

ACTING PRESIDENT HOLLAND: The

bill is passed.

Secretary will read.

THE SECRETARY: Calendar Number 211, by Senator Marcellino, Senate Print 1388, an act to amend the Environmental Conservation Law, in relation to exemption for hazardous packaging.

ACTING PRESIDENT HOLLAND: Senator Oppenheimer.

SENATOR OPPENHEIMER: I'm sorry. Were we up to Calendar Number 211?

ACTING PRESIDENT HOLLAND: That's correct.

SENATOR OPPENHEIMER: Could I have an explanation, please, Senator Marcellino?

ACTING PRESIDENT HOLLAND: Explanation has been requested.

SENATOR MARCELLINO: Certainly. Mr. President, thank you.

Mr. President, the idea of recycling and packaging of products that are used for the prevention of tampering or damage until the product reaches the consumer is a poor industry. Packaging also presents many

problems because, after the product reaches the consumer most packaging ends up in the solid waste stream. Therefore, we must have effective programs in place to deal with packaging the waste.

We also must have a means of encouraging the recycling industry, which this bill seeks to do. What this bill seeks to do is to allow certain exemptions to occur to the law which is in response to the -- an organization called CONEG, which is an acronym for the Coalition of Northeastern Governors. These people have requested that these exemptions be permitted and that they be extended.

They exist in law now except there is some confusion in the law as to how many times these exemptions can be granted. Certain federal legislation that exists requires certain exemptions. Certain packaging rules, these exemptions were made in compliance with -- in accordance with the federal legislation. The federal legislation still exists, no change there.

It would seem logical to allow

these exemptions to move on and to still continue to exist. This bill has been introduced twice. In 1996 it passed 56 to nothing; in 1997 it passed 58 to nothing.

ACTING PRESIDENT HOLLAND: Senator Oppenheimer.

SENATOR OPPENHEIMER: Would Senator Marcellino yield for a couple of questions, please?

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT HOLLAND: He does.

SENATOR OPPENHEIMER: I have a couple of questions on this, because I don't understand how the law would pass in 1990 and here we are seven, eight years later, and I can't understand why -- why we haven't found alternatives to this packaging because we're many years later, and it was supposed to be found by now; so could you explain that.

SENATOR MARCELLINO: Senator, the alternatives that you're talking about. I know what you're dealing with. You're dealing with substances that are put into the packaging as a result of their being

recycled. Any toxic substance, any heavy metals that might be present in this packaging comes from the fact that it is a recycled substance. This is not newly added material. This is not something that would be put on brand new packaging or brand new stuff. This is stuff that would enter as a part of it being recycled perfectly. For example, this piece of paper has ink on it. The ink may have some substances present in it that may add to the waste stream.

We're concerned -- that's what the exemption deals with. We're trying to force the recycling industry, that is a marketplace-driven industry, and it is a very difficult one. There are days and there are months when you get paid to take certain material, and they'll buy it from you. There are times when a municipality or an agent would have to pay to get it taken away from - get it removed. It is not a simple situation. It is not an easy industry to move ahead. The technology is not moving as quickly as anyone would like.

However, the problem still

exists. We need recycling. We want them to be recycled. We're trying to encourage recycling.

SENATOR OPPENHEIMER: I cannot hear. There is an awful lot of conversation going on, and I'm trying very hard to focus, but it's -- it's just impossible.

ACTING PRESIDENT HOLLAND: Could we have some quiet in the chamber, please. I don't know whether it's the new mikes or not, because it's more difficult to hear.

SENATOR OPPENHEIMER: It may be the new mikes, but I think I got about half of what you said, Senator Marcellino.

SENATOR MARCELLINO: You've heard more than I said then.

SENATOR OPPENHEIMER: What?

SENATOR MARCELLINO: You've heard more than I said.

SENATOR OPPENHEIMER: Well, if these exemptions, these two-year exemptions are necessary because the technology hasn't come along sufficiently, I mean I understand we don't want this in our -- in our sites

because we certainly want to try and protect our earth and water, but I have trouble understanding why they are being recycled anyway if they have contain lead, cadmium, mercury, chromium, but the question I have at this point is, we've been -- we've been giving two-year exemptions. You come in each year for a single two-year exemption.

This permits multiple two-year exemptions. I don't understand why we have to increase the time. Why are they coming back every two years for the exemption?

SENATOR MARCELLINO: We're not increasing the time, Senator. We're keeping the same exemption with the change in the language which says up to two years, so it could be shorter if necessary, if the situation changes.

New York State's representative to CONEG has assured us that participating states will -- all believe that this general exemption to aid recycling will end in the year 2000.

You seem to be having a problem. I don't know whether I'm talking loud

enough or what.

SENATOR OPPENHEIMER: I'm trying to hear as best I can, but these new mikes don't seem to be doing much of a job here.

I thought that the applicant - through you, Mr. President, I thought the applicant would come in for more than a single two-year exemption; they could come in for a multiple of two-year exemptions.

SENATOR MARCELLINO: The current law, Senator, we believe is somewhat ambiguous on that situation. As I said earlier, the federal law requires the changes that we have recycling and all of that to go on. It requires it. That law still exists. Those problems still exist. We see no reason and there's nothing relative to changing in the system or in the recycling industry to warrant us to just do away with that without effectively or negatively impacting the whole recycling industry as well.

It is, as I said earlier, a difficult industry at best. It is market driven; it is not being driven very well

because the marketplace is, quite frankly, saturated with an awful lot of material, so we're trying to help this industry, by encouraging them and encouraging business to use recycled materials rather than to go and say, We won't use recycled materials at all. We will seek new materials. That means virgin wood. That means cutting down more forests. That means generating new paper products. We're trying to allow them to use the recycled products as much as we possibly can.

Nothing in this legislation would provide a health hazard to any user of the packaged material, so that if you picked up an object that -- that contains this material, there is no health hazard to you as an individual consumer or anyone else. We're trying to again deal with what we consider to be ambiguities in the federal law and in the state law. If the federal law still exists, then the state law should allow for some standard as long as that federal law is unchanged, as long as conditions are unchanged.

SENATOR OPPENHEIMER: O.K. If

the Senator would yield for another question?

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT HOLLAND: Senator yields.

SENATOR OPPENHEIMER: I can understand your point and I'm willing to accept the recycling aspect of it, but I don't understand why a new exception was added at this time and that new exception which wasn't in the law for the last seven, eight years is for radioactivity -- radioactive packaging. That I don't understand, if it wasn't there for the last seven, eight years, why is it now in the law, in this act proposed?

SENATOR MARCELLINO: You're absolutely right, Senator. That's a new exemption, but those things don't end up in any waste stream. We don't dump them into municipal landfills. They don't go into anything like that. They're very carefully dealt with and they're carefully removed and packaged in their own methodology. They're not put into your typical waste stream. They don't hit municipal landfills and the like.

SENATOR OPPENHEIMER: Can you

tell me -- through you, Mr. President, can you tell me why that wasn't -- why that is now necessary in this law when it wasn't in the last law, the one from 1990?

SENATOR MARCELLINO: This had been -- this particular exemption, Senator, I'm sure -- I just wanted to check with counsel, but this particular exemption has been in the last two bills that passed both the last two years. This is not new, Senator. This has been in the bill for the last two years.

SENATOR OPPENHEIMER: So, not new.

SENATOR MARCELLINO: That's why I wanted to check, Senator.

SENATOR OPPENHEIMER: Also, it was pointed out to me that in paragraph 4, as opposed to paragraph 3, these are not recyclables. Paragraph 4 is not recyclable material, so the -

SENATOR MARCELLINO: I'm sorry, I did not -- I didn't think you asked a question, quite frankly.

SENATOR OPPENHEIMER: The

items, the new paragraph 4, these are not recyclables that are mentioned in paragraph 4.

SENATOR MARCELLINO: The new exemptions in paragraph 4 are not in paragraph 4; that's what I heard.

SENATOR OPPENHEIMER: The new exemptions in paragraph 4 are not recyclables.

SENATOR MARCELLINO: Is that my understanding?

SENATOR OPPENHEIMER: They are not part of our recycling, paragraph 4.

SENATOR MARCELLINO: You're saying those things are not recyclables, but they relate to a different exemption.

SENATOR OPPENHEIMER: Well, I can -- through you, Mr. President, I can buy into your recycling argument, but now here I have a full paragraph which has nothing to do with recycling, so now I'm back to confusion.

SENATOR MARCELLINO: What are you referring to?

SENATOR OPPENHEIMER: Referring to paragraph -- section 4.

SENATOR MARCELLINO: We've taken some language from section 2, deleted it from 2 and put it into 4. That's basically what's happened, just a rearrangement of the language.

SENATOR OPPENHEIMER: But, if I may, through you, Mr. President. If this is not part of recycling, then why are we doing it? The packaging was considered hazardous packaging with implications for children's health, mental incapacities, potential cancer, and -- and if this is not part of the recycling stream, then why are we doing it?

SENATOR MARCELLINO: Senator, as I said earlier, this is part of existing law now. We're not adding any new law here. This is existing law. What has been done is the language has been, for the technocrats' purposes, cleaned up a little bit by moving it from one section to another, but it is in existing law. You can go back to it and look at it again; it's there.

SENATOR OPPENHEIMER: Well, through you then, Mr. President, I question why we are doing it, if one can believe that

the recycling would be in diminishing amounts in the new product because part would be eventually through recycling, it would get to be smaller and smaller amounts that are used in the new process, in the new packaging. If I can buy into that, I can't buy into that there's no recycling involved at all.

SENATOR MARCELLINO: Up to a point, it would diminish because you can only reuse and reuse, but after a while you can't recycle everything over again forever. Recycled materials becomes a problem. You have to sometimes go back, because of the strength of the packaging and the consistency of the packaging you need to go back and bring in new stuff to a certain extent so you can not just keep on recycling.

It's a nice idea but we ultimately end up with nothing new. We'll just keep on reusing the same old material. That would be fine if you got it all back, which you don't, because some of it becomes contaminated, you can't get it all back; and it would be also fine if the consistency was there, the strength and the durability was

there. The recycled materials do not hold up necessarily when they're reused more than a few times, so that you have to weigh the content.

All of these things caused to make the industry what it is and that is an evolving industry and it's still changing and will continue that way for a long time. We need to encourage that. Federal legislation has set a certain standard that we see the need for certain exemptions. They do too, but the way the bill was written originally, it didn't allow for more than or at least apparently doesn't allow for more than one exemption or one sequence.

We believe the intent was to allow for these exemptions to continue as long as the need continues. The need is still there. The federal legislation is still there. We're cleaning up the language; that's all we're doing here, Senator.

SENATOR OPPENHEIMER: Thank you very much, Senator.

On the bill.

ACTING PRESIDENT HOLLAND:

Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: I have in the past supported this bill, and I did feel that we have to give time to -- to industry to come up with viable alternatives to -- to the hazardous packaging and I -- I do understand the recycling aspect of it and, you know, eventually have smaller and smaller amounts of the recycled material that will be utilized in the new packaging.

I can buy into that, but I'm going to be voting no on the bill because it seems to me that it's simply enough is enough. We have been waiting seven to eight years to get a reduction in the hazardous packaging, and there's a large portion of this bill which is devoted to hazardous packaging that is not in the waste stream, that is not being recycled.

So I feel that we have waited long enough for viable alternatives to this packaging which we believe -- many of us believe that these substances -- these substances can cause considerable damage to the nervous system and to learning

disabilities and cancer, and I just think enough is enough. We've waited long enough for an alternative.

I'll be voting no.

ACTING PRESIDENT HOLLAND: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 120th day.

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 211 are Senators Leichter, Montgomery, Oppenheimer, Paterson and Smith. Ayes 51, nays 5.

ACTING PRESIDENT HOLLAND: The bill is passed.

Senator Kuhl, with your permission, we'd like to step away from the controversial calendar.

Negative. Secretary will read.

THE SECRETARY: Calendar Number 223, by Senator Volker, Senate Print Number

222, an act to amend the Penal Law and the Criminal Procedure Law, in relation to term of imprisonment.

SENATOR VOLKER: Mr. President, this bill, I think the best term for it was coined last year, is called "three times and you're out". The bill, by the way, passed last year 49 to 7 and the year before passed 46 to 8. I guess we're doing a little better, sort of; but at any rate -- anyways, what the bill says basically is -- and keep in mind that there's a very limited number of people that are involved in this because we always - already have the persistent violent felony bill which sends people away for a considerable piece of time.

What this would -- this is a third offense for a violent felony offense and we have specifically listed, these are the most -- the heaviest of crimes, would say that the minimum penalty would be 25 years to life.

Now, frankly, in most cases on the second offense, depending on -- obviously on the two violent felonies, that person will

have spent a lot of time in jail already, so you're really talking about what we call here professional violent felons in a sense. These are heavy people. These are not people who are ordinary violent offenders. These are people who have gone through the mill on several occasions, and now this is the third time that they're arrested and convicted of a violent felony offense.

It also has certain limitations in it relating to plea bargaining and pleading in the violent felony offense area. One of the things I think everyone should understand is that, despite comments to the contrary, in a lot of these -- in legislation, we can say that there is never any particular plea bargaining in these areas but, of course, there's always the possibility for plea bargaining. What this bill would do would set certain limitations for people who are in the violent felony offense category.

As I say, this bill has passed for the last several years, and that's basically the bill.

ACTING PRESIDENT HOLLAND:

Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you, Mr. President.

I would just like to ask Senator Volker if he would yield for a couple of questions.

SENATOR VOLKER: Sure.

ACTING PRESIDENT HOLLAND: Senator yields.

SENATOR MONTGOMERY: Senator, it's my understanding that, in fact, the incidence of violent crime has been decreasing, if you will, so that we're experiencing a very large drop in the violent crime that you're talking about. Is that not the case, or is that a misunderstanding?

SENATOR VOLKER: Let me just say, actually you're actually right and let me just say the memo -- I realize just looking at the memo here, and I apologize. This memo was given to us some years ago and it's fascinating that it talks about the incredible rate and rise in violent crime.

Let me point out to you that that incredible rate in violent crime has

declined dramatically since we have been locking people up, especially violent criminals over the last three to four years in particular. You can make an argument, I think it's a very good argument, that we have really clamped down on people and beginning to make sure that the really violent people are going to jail, that the rate of violent crime has begun to drop dramatically.

That doesn't mean that we still don't have a high violent crime rate but what it means is that it has dropped off dramatically and you are absolutely right.

SENATOR MONTGOMERY: Now, as I read the legislation, Senator Volker, through the Chair, we -- you are changing the category of persistent violent felony offender to predicate; is that what the language change is?

SENATOR VOLKER: No, actually what we're doing is we're adding -- persistent violent felony offender has been in the law for some time.

SENATOR MONTGOMERY: Right.

SENATOR VOLKER: But what we're

doing here is we're adding that and actually, the predicate, what we are doing here we are taking -- you have a person who is already subject to the Persistent Violent Felony Offender Law which we passed here, by the way, many years ago now comes out and now permits another violent felony offense, so the predicate becomes the violent -- the previous violent felony offenses.

That person is the one we are now subjecting to 25 years to life.

SENATOR MONTGOMERY: The - just for information purposes, Senator.

SENATOR VOLKER: Sure.

SENATOR MONTGOMERY: Persistent violent felony offenders likely to have been incarcerated previously?

SENATOR VOLKER: They have - well, they have to have been incarcerated essentially previously, because these are, as I say, these are not -- these are heavy people. These are people who have -- the violent felony offenders are people who are limited categories of offenses in the law involving, you know, personal crimes, man

slaughters, sodomy, rapes, those sort of things, and murderers in certain cases, I suppose, so we are talking about a limited group of people who commit a lot of violent crimes.

So this, by the way, so you understand, we're not changing the Persistent Violent Offender Law or anything like that. We're just adding an additional category for somebody who has been through the previous cycle, has committed the two previous violent felony offenses and now they do the third and when they do the third now, we're putting in what we call a "three times and you're out". You know, "two times and you're out" has been presented. We're calling this "three times and you're out" and, as somebody said, three times and you're really out.

SENATOR MONTGOMERY: Thank you, Senator Volker.

On the bill, Mr. President.

ACTING PRESIDENT HOLLAND: Senator Montgomery, on the bull.

SENATOR MONTGOMERY: Senator Volker is proposing that the minimum sentence

for a violent felony offender in this category, if I read the bill correctly, be increased from a minimum of two to ten, ten years to a minimum of 25 years, am I -- and. If that is the case, I certainly understand what Senator Volker is seeking to do and that is to make sure that a person who continues to commit violent offenses for certain is incarcerated.

However, one of the main problems that we have with -- as our system now exists, is that we have basically stripped away much of the support services that keep people from, in fact, returning to crime and thereby returning to -- back into the system.

So without -- without a strong system of education, drug -- drug rehabilitation, employhment, skills development of people who are incarcerated, this legislation will do nothing more, it seems to me, than to force us to build more prisons because we now have people who are just going to be warehoused there for 25 years perhaps, rather than 10 years. When they come out, they will still be left with the same

problems that they had when they went in, and so the -- the legislation, while certainly it's going to increase the length of time the people are going to be in minimally, it won't, in fact, reduce the problem that we're trying to address here because once they come out, they just will have had 10 to 12 to 15 more years in the same situation without having the kind of remediation that would be required in order for them to, in fact, change their behavior.

So I will vote as I did last year on this legislation, and I note that there were several other of the members who did vote against this legislation including Senator Connor, Senator Leichter, Senator Waldon, Senator Smith, Senator Sampson, Senator Paterson, and myself.

Thank you, Mr. President.

ACTING PRESIDENT HOLLAND: Senator Leichter.

SENATOR LEICHTER: Yes. Would Senator Volker yield, please?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT HOLLAND:

Senator yields.

SENATOR LEICHTER: Senator, I appreciate your statement that you intend this bill to apply to, as you call heavy people, not -- I mean it still does apply to people who weigh more than 200 pounds. What you're intending is those who are a menace to society; but, right now, if somebody commits that third offense and it's a particularly heinous offense, a judge could sentence that particular defendant or criminal, if you will, to a life term, can he not?

SENATOR VOLKER: He could. In all honesty, Franz, what this really effectively does is raise the minimum. I mean for various reasons it raises the minimum from 20 to 25 years to life. In other words, you know the complications here. We're talking about violent felony offenders to start with and, as I understand it, if you get into the minimum situation and the predicate felony situation, once you get past and into the third offense, although it's arguable that there's a way of getting away from the 20 years, but the general -- when we did the

mockup on this bill, so to speak, it essentially increases the minimum sentence from, I believe it's 20 to 25 to life or something like that, but 25 to life.

We're not -- this isn't a dramatic increase. What it's designed to do is, in all honesty, it was a follow-up to the death penalty. It's a follow-up in a sense to the death penalty, because what we're doing, we're using this as the next sentence down for extreme violent felony offenders where the death penalty statute, the second or second - murder second, which used to be the top penalty was 25 years to life, and we're saying that these are the next people in line in a sense when they are triplicate violent felony offenders.

SENATOR LEICHTER: Mr. President, if Senator Volker would continue to yield.

SENATOR VOLKER: Sure.

SENATOR LEICHTER: What you're really doing here is limiting very severely the discretion that judges have. Wouldn't that be a fair statement?

SENATOR VOLKER: Not very severely but we're limiting it somewhat. They're already limited to some extent because of previous legislation that we passed. It does tighten up, that's true, it does tighten up for triplicate felony offenders, but there's some limitations already in the law relating to these people because they are such severe violent felony offenders and we have to keep in mind something here, that these are people that obviously have spent a lot of time in jail and, when you say that there are not services or something for them, I'm not exactly sure what services we can provide for these people.

I mean these are not your average ordinary criminals. These are people who have been in the system probably for 25 or 30 years and are still committing very serious crimes, and I think that's why this bill is - is here, and that's why it is -- this is, frankly, a middle ground between the second so-called "two times and you're out" and - and the -- and the more moderate, the more moderate sentence.

SENATOR LEICHTER: Mr. President, if Senator Volker would yield to another question.

Senator, you know, right now, we have somebody who has committed two serious violent felonies and he commits another serious violent felony. The judge can sentence him to a life term. So we have a way right now of dealing with that person who really cannot be rehabilitated, who has had already two chances, and with such a threat to society that we could make the determination that person either has to spend the rest of his days in jail or should spend time in jail for many, many years until he really will be so old as not to be a threat.

What I'm concerned about, Senator is there are differences in violent felonies. You'll agree with me on that. Some that are less heinous, there are some that are very heinous. My concern is, and maybe you can address that is, somebody who has had two violent felony offenses and he's out and he maybe gets into a brawl in a bar. Under some circumstances the physical nature of that

could result in his being charged with a violent felony.

My question is, do you want to treat that person the same way as that person who, I think I gave that example having been in jail two times, now he's involved in an armed robbery, and he shoots somebody; but under your bill, the judge would not be able to make any differentiation, isn't that true?

SENATOR VOLKER: Franz, I assume if you mean he's in a brawl, he's in a violent felony offense; he's either killed somebody or almost killed somebody because that would be the most likely violent felony that I could think of that would constitute the third.

Franz, let's keep this in mind when you're talking about life imprisonment, the life imprisonment might mean what is the minimum for that life imprisonment. The judge just doesn't sentence somebody to life imprisonment. I believe the maximum would be 20 years to life if I'm not mistaken.

What this does, in effect, is push up the minimum to 25 from 20 years to

life. It pushes it up to 25 years to life. Now, the district attorney, by the way, and you know very well if he's not really -- if he's not charged with a violent felony offense and the jury is not going to be inclined to feel that it is a serious offense, the D.A., of course, can plead it out if he wants to; but the thing is once a person has committed that third serious offense and that's what this is all about, he's in a position or she's in a position where they have had two times before this to -- to make decisions.

This is not, you know, a minor offender. This is a very serious offender.

SENATOR LEICHTER: Mr. President, on the bill.

ACTING PRESIDENT HOLLAND: Senator Leichter, on the bill.

SENATOR LEICHTER: Let me first thank my friend, Senator Volker, for his answers.

Senator, I must say that I consider this a harsh and an unnecessary bill. I think you yourself in a sense stated

how unnecessary it was by pointing out that we've had a significant decline in crime, particularly in violent crime.

Now, whatever the reasons for that is, and the criminologists and penologists really are unable to come and point to any of one thing, you point to the highest sentences that have been imposed in this state and I can't say that isn't a factor. I think most people are more inclined to think it's a matter of the demographics and the fact that there are less younger people, those who are inclined to commit crimes, who are currently in our society and that crime rate will probably go up as we get an increase in that younger population; but whatever the reason, the fact -- the point is that we've had this decline in crime. We've had this decline in violent crime absent this very draconian bill. You yourself said, Well, it was written many years ago and that's why your memorandum, which I was going to question you on, but you pointed it out, it starts off, and it -- or the second paragraph says, "unmistakably crimes of violence in this

state are on the rise."

Well, they're not on the rise. They're on the decline. Maybe when you first drafted this bill maybe there was some justification for it. I would have argued against it even at that time, but by your own terms there's no justification for it now, and I think Senator Montgomery made some very valid points. We've increased the jail population in this state from when I think I came to the Legislature it was probably less than 15,000. We're now approaching 70,000. We're looking at a population and that may go as high as $100,000 -- 100,000 people.

I don't think this is necessary for the protection of society. I think we have to take a look at really whether we're not becoming a society where our only answer is increased penalties; build more jail cells; incarcerate people. I think there are other answers. There are other approaches, and there are other needs that this society has, and looking at the current situation of crime in this state, I don't find any reason or justification for taking away from judges the

power that they now have to already impose extremely severe sentences.

It's, as you said, well, they can now sentence somebody to 20 years to life. How much more do you want to do? You say, Well, this is a natural corollary to the death penalty. I don't know what that means and, as you know, I'm a strong opponent of the death penalty, but I don't think that just because we now have the death penalty means that we've now got to raise every other penalty in this state, which seems to be the argument you are making.

So I strongly urge us not to adopt this measure, to have some balance, some reason to have some other approach than just say, Well, every day we're going to increase some penalty and provide even more people for jails. I think this bill is a mistake.

ACTING PRESIDENT HOLLAND: Senator Gold.

SENATOR GOLD: Thank you, Mr. President.

Will Senator Volker yield to a question, please?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT HOLLAND: Senator yields.

SENATOR GOLD: Senator, I've been hearing a lot in the -- and, by the way, I'd like to face you, but the new rule is we're supposed to look at the microphone.

Senator, I've been hearing a lot lately about this business of terminating parole and, while some people are under the impression that everyone going to jail for life, we all know that's not true and that if there is an end to parole, we'll probably be talking about some kind of a definite sentencing system, and my question, Senator, is with all of your good intentions in this area -- and I know they are very sincere - why would we do this bill today if, in fact, we've got this proposal coming from the Governor, and I think that people are going to at least look at it -- whether we adopt it is another issue -- but doesn't it make more sense, and it's sort of I guess a combination between you and Senator Leichter, and doesn't it make more sense to, maybe once and for all,

take a look at the sentencing structure in one piece rather than examining it in bills which may conflict with something we may want to do in a month from now?

SENATOR VOLKER: Senator, the problem with that is -- and that would be fine. We've been working at this, the issue of sentencing obviously for years and years. In fact, you might be interested to know that we're just finishing a review that I did because there's been so much talk about the Rockefeller drug laws and sentencing. I had my counsel do a review of all we've done since -- since the late '60s in sentencing which we're going to release fairly shortly, that shows an enormous change over in sentencing and in the way we handle not only drug laws but violent offenders, and so forth.

I think that, yeah, I think the Governor is about to come out with a bill relating to limitations of parole. That bill, as I understand it, and I haven't seen it yet obviously, is talking about limitations of parole for first offenders and, Senator, we still have people who are already now in jail,

violent felony offenders, who in a first offender bill will not have a -- necessarily any impact on where this bill here that relates to these people who are third time offenders will directly relate to them.

Now, you -- I think you can make an argument, I suppose, that we could wait to see if the Assembly will accept the Governor's proposal and, if we can come to an agreement, but it's my position that this is a proposal that has been around for a number of years. I think it makes sense in the -- in the area of sentencing for again third time violent felony offenders, let me make that very clear, and it just seems to me that this makes a great deal of sense and it's something that I think we should put out on the floor and look at and talk with the Assembly on, as we have and, in fact, if I'm not mistaken several people in the Assembly have said that they think this bill is something that should be looked at. In fact, I think one very prominent person in the Assembly said that this is something that they want to look at.

SENATOR GOLD: Mr. President,

on the bill.

ACTING PRESIDENT HOLLAND: Senator Gold, on the bill.

SENATOR GOLD: Senator, when you say it's something that we should look at, the fact is we have looked at it in '95; we looked at it in '96, Senator Volker, and we looked at it in '97, and here we are again and the Assembly knows that this house, in spite of the opposition from a number of people, they know that this bill can pass.

One of the things -- one of the thoughts I had when I was listening to Senator Leichter, was a statement made by a doctor years ago when he was asked by some very nervous parents whether their child would survive a certain piece of surgery, and the doctor looked at the parents and said, "Please, this is very, very, very difficult surgery," and there was a pregnant pause and then the doctor said, "We do it every day."

Senator, in sentencing, if we are going to accomplish what Senator Leichter suggested, which I think everybody understands has a certain reasonable basis to it, it may

not be the easiest way to do it, but people do it every day in the federal courts where they work on a grid system, and I'm not saying that that's the end all of all intelligence, but they take a look at crimes and even within a specific crime, they look at the criminal and the crime is on one side of the grid and the criminal is on the other side of the grid and circumstances of the crime get worked in there and you wind up with something like Senator Leichter is talking about, where differences in crimes perhaps are treated differently and there's a more intelligent approach.

I think that, if the public and the political community believes that parole, quotes/unquote, should be ended, then everybody in this chamber knows you're going to be talking about a new sentencing structure, because under a parole system if somebody is now spending four years in jail let's say and then they get paroled, if we end parole, we may change the sentence to be four years, and then put the person on probation because nobody is suggesting that all of a sudden, something which the law says, somebody

goes up to eight years is going to do eight years. That's not true because everybody knows, when you get eight years everybody knows you get three years, and you get this, so everybody knows we are going to have to do restructuring of this sentencing, and, Senator Volker, from my point of view, I am glad that you are one of the people that will be involved because I think you bring a common sense attitude towards it.

But I think while I've gone back and forth on this bill in my mind, going back over the years, this year I am going to oppose it only because I think that I don't want us jumping at these proposals so that the Assembly knows we can do it. The Assembly knows. The make-up of this house since 1995 has not changed that much, unfortunately for my side, and the Assembly knows that we can pass it, and I think that this year if we're going to get a budget on time which I'm, very hopeful maybe we'll do that, and if we're going to get out of here on time, we ought to perhaps, instead of spreading out the debate to bring everything in.

I know that the leader of this house doesn't want us to have inactivity, and one of the ways we do that is by spending January and February with old chestnuts because his people can work on the budget without thinking too hard because we've had all of these bills before, but I don't really know that that really makes too much sense, and this is an area this year where perhaps we can do something that is really meaningful in the whole sentencing structure, and I'm not so opposed to a definite system if it's worked on a grid and it takes into consideration all different kinds of aspects.

But I would just urge, Senator Volker, that things like this ought to wait. They ought to wait until we get all of the proposals out there and see whether the Legislature is going to move in that area.

So this year respectfully, I'm going to vote not to pass it.

ACTING PRESIDENT HOLLAND: Read the last section.

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

ACTING PRESIDENT HOLLAND: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT HOLLAND: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, I'd like to explain my vote.

ACTING PRESIDENT HOLLAND: Senator Paterson, to explain his vote.

SENATOR PATERSON: Mr. President, I think Senator Volker made a point that probably is important that we are talking about people who are predicate felons; we are talking about people who have now committed their third violent felony.

My feeling, however, is that by the time they commit their third violent felony and when you factor in the period of time that they would be spending behind bars that we are actually turning our prisons into geriatric wards, and we're also accruing a tremendous cost to the state to house the number of people who will probably age out in terms of their capacity to further become

violent.

The reason I'm voting against this legislation is that although we can take into account previous acts when -- when issuing a sentence for a third violent felony, we can't take that into account when actually conducting the trial, so in other words, in an place like the Bronx which has an 84 percent conviction rate -- I'm sorry, 84 percent of cases pleaded out, Manhattan is 81 percent pleaded out, the general average is about 81 percent of cases are pleaded out, the conviction rates in these same areas are generally 15 to 20 percent lower, so you're going to get a conviction rate in the 60s for these violent third felony cases because the individuals, since the sentence is mandatory, are going to opt for a trial, knowing full well that they can't plead these cases out since the legislation actually restricts plea bargaining to a certain extent.

So I think that we're going to be housing a number of people who -- in your prisons who are no longer violent and we're actually going to be losing perhaps 15 to 20

percent of the individuals who we try because knowing that there's no judicial discretion and that this will be a mandatory sentence for the third violent felony offense, they're going to opt to go to trial and many of them are going to slip through the cracks.

So I just think that any judge who can't understand that a third violent felony should probably receive the kind of sentence that Senator Volker is proposing in the legislation maybe shouldn't be sitting on the bench in the first place.

I think this is a case of judicial discretion, and more so a lack of faith in judicial discretion more so than what would really be a mandatory sentence which I suggest that if we execute a mandatory sentence, we're going to have more trials and more individuals who should be behind bars going free to commit their fourth violent felony offense.

ACTING PRESIDENT HOLLAND: How do you vote, Senator?

SENATOR PATERSON: Oh, I'm sorry, Mr. President. I vote no.

ACTING PRESIDENT HOLLAND: Senator Paterson votes no.

THE SECRETARY: Those recorded in the negative on Calendar Number 223 Senators Connor, Gold Leichter, Montgomery, Paterson, Santiago, Seabrook and Smith. Ayes 48, nays 8.

ACTING PRESIDENT HOLLAND: The bill is passed.

That completes the controversial reading of the calendar.

Senator Kuhl.

SENATOR KUHL: May we return to motions and resolutions. I believe there's a privileged resolution at the desk by Senator Bruno. I would move its adoption. Ask the title be read and move its adoption.

THE SECRETARY: By Senator Bruno, Legislative Resolution memorializing Governor George E. Pataki to proclaim February 23rd as Permanent Rotary International Day in the state of New York and designating the week following as Rotary International Week in the state of New York.

ACTING PRESIDENT HOLLAND: The

question is on the resolution. All in favor say aye.

(Response of "Aye.")

Those opposed say no.

(There was no response.)

The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Also, Mr. President could we have the title to a resolution by Senator Montgomery, Senate Resolution 2537, read. The resolution was previously adopted by the house, and then would you recognize Senator Montgomery.

ACTING PRESIDENT HOLLAND: The Secretary will read.

THE SECRETARY: By Senator Montgomery, Legislative Resolution memorializing Governor George E. Pataki to proclaim Monday, February 23rd, 1998 as Boys and Girls High School Football Team Day in the state of New York.

ACTING PRESIDENT HOLLAND: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

It gives me great pride and pleasure to acknowledge a wonderful accomplishment by one of the premier high schools in my district, Boys and Girls High School Football Team. The team is the Red Swarm, and they are the 1997 Metro Division B championship team. They won their game in a very, very -- championship rather in a very, very tight game against Erasmus High School, another high school that happens to be in Senator Marty Markowitz' district, so for once, Bed-Stuy has beaten Senator Marty Marty Markowitz' team. They won 20 to 18, so it was a very close championship game.

The team members are here today with us. We honored them earlier, by having lunch with them. Assemblyman Vann has given each of the team members a certificate, but now in the Senate, I am very pleased to welcome and salute them. They are accompanied by their dedicated and hard working team coaches. Three of the coaches are here on the floor with us: Head coach Ron Adams, assistant coach Steve Markham, and assistant coach Miles Witkoff. In addition, assistant

coach Maberti and assistant coach Bernard Gilliam are also accompanying the team.

I am proud because these young people have demonstrated and bring to us what excellence means, that it means to be a winning team, but more importantly, they represent for me personally and particularly the best of young men from Bedford-Stuyvesant, so I'm very proud of them and I certainly hope that this victory in 1997 is only a beginning. It's a break in 21 years of not having such victories, but certainly I am sure that the next 21 years will bring a lot more, a lot more winning championships for Boys and Girls High.

Thank you very much, Mr. President for allowing me to acknowledge these young men today.

ACTING PRESIDENT HOLLAND: Thank you, Senator Montgomery.

Senator Smith.

SENATOR SMITH: Thank you, Mr. President.

I too, as the other African American female in the New York State Senate

and the other person representing part of Bed-Stuy, am very pleased to welcome you here today. Boys and Girls High is an out -- makes outstanding contributions to our community. The history of Boys High goes back to the days when I was in school and the athletes are still as good or better than they ever were.

Not only do they contribute on the athletic field, but they contribute in the classroom. You have outstanding coaches and then you have a marvelous principal who is a friend to all of us. I expect to be hearing more from you as you go on through the colleges of your choice and you excel and you bring credit to the community that you represent.

Thank you.

ACTING PRESIDENT HOLLAND: Thank you, Senator Smith.

Senator Markowitz.

SENATOR MARKOWITZ: Thank you very much Mr. President.

First of all, the Brooklyn Boys High played Erasmus and the game was tremendously tight.

Let me just say ever so briefly back in 1961 I was a student of -- had been a student one year, I forget my years at times -- of Wingate High School. Wingate High School that year, we lost the championship by one point, one point for the entire state of New York. B-o-y-s -- Boys High beat us by one point.

SENATOR GOLD: Yeah.

SENATOR MARKOWITZ: But I never held it against them, never because the truth of the matter is that Boys High and Girls are the pride of Bedford-Stuyvesant. They are the pride of Brooklyn. We know Brooklyn is the apple, the center of New York State, and if you accept that and we all do, then we know that Bedford-Stuyvesant is the heart of Brooklyn.

Congratulations. You deserve it.

(Applause)

ACTING PRESIDENT HOLLAND: Thanks you, Senator Markowitz.

Senator Paterson.

SENATOR PATERSON: Mr.

President, I was actually born in Brooklyn. My mother attended Girls High School. I grew up in that area. I then moved, but I would like to congratulate all the students from Boys and Girls High School, and I would like to congratulate the football team for their success. I see they are still winning, but if you were only able to beat a team that Senator Markowitz was with by only one point maybe you really weren't that good back then.

(Laughter)

However, he wasn't on the team. So, well, that -- that notwithstanding I want to congratulate them and Coach Adams, they had 21 years of losing and you've turned the program around. Maybe you'd consider going forward and doing something for the Jets.

Thank you very much.

ACTING PRESIDENT HOLLAND: Senator Stachowski.

SENATOR STACHOWSKI: I too would like to stand up and congratulate them. I know some of my colleagues are wondering why I get up, but my colleague, Senator Montgomery, asked if I had the opportunity to

play football in high school and college, she thought it would be nice to say something.

Actually I never miss the opportunity when I can congratulate a team that had no wins a couple years ago and a team then wins and are champions, and I know what sacrifice and hard work is and all the important things that go into winning football but the one message I'd like to leave for the younger students who are on that team, keep in mind you have to do well in the classroom too because no matter what you do in football, you don't move on beyond high school unless you do well in the classroom also, and your coaches tell you that all the time but you say, Oh, they're only coaches, but take it from somebody who has gone through that system, I know the limits you have, that if you don't do well in school it doesn't matter if you're the best player in the whole region or perhaps the whole state, if you don't get in they can't use you and the first stop the recruiters have when they go to visit a school is the guidance counselor's office to find out how motivated you are, and if you can't get in they're going

to say, Young man, we can't get him in, we're not going to waste his time or our time, so keep that in mind despite all the hard work you have to give the coach on the field, you still have to do your work in the classroom.

Congratulations on your accomplishment.

ACTING PRESIDENT HOLLAND: Thank you, Senator Stachowski. The Red Swarm, on behalf of Senator Bruno, Senator Montgomery, and all of the Senators in the chamber, and to the coaches, we congratulate you on your championship. Keep up the good work.

(Applause)

Senator Kuhl.

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

ACTING PRESIDENT HOLLAND: There is no housekeeping, sir.

SENATOR KUHL: All right. There being no further business, Mr. President, I move we adjourn until tomorrow, Tuesday, February 24th at 3:00 p.m.

ACTING PRESIDENT HOLLAND: On motion, the Senate stands adjourned until Tuesday, February 24th, at 3:00 p.m.

(Whereupon at 4:35 p.m., the Senate adjourned.)