ALBANY, NEW YORK

May 12, 1998

3:04 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

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

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

The invocation today will be given by Reverend Harold L. Rutherford from the Israel African Methodist Episcopal Church in Albany.

Reverend.

REVEREND HAROLD L. RUTHERFORD:

Let us pray. Almighty God, You have plans for us and the power to make them happen. We thank You for the leadership of the Senate whom You have raised up to God the great Empire State of New York. Give them the knowledge of Your will for us. We pray that they will remember they serve a public trust beyond personal gain or glory.

May they see that no state live for itself alone, but is responsible to You for peace, for the well-being of all Your children.

May they seek the welfare of our great state and may they never engage in anything that erodes our right for freedoms of life,

liberty and the pursuit of happiness.

Give them a sense of deep dedication and clear direction in all of their weighted responsibility. We pray that they seek Your guidance to be responsible and wise, courageous and strong in making important decisions and never place power in positions before the needs of New York State.

Guide us the people to expect of them, and to support them in all legislation and faithful administration, that we may all prosper under an equal law. Defend our liberties and grant us the sense of our responsibility.

God of our weary years, God of our silent tears, God who has led us on the way, who is by Thy might, listen to the light.

We pray that You will guide and direct these elected men and women. May they always depend on your power to assist them in their responsible positions. In Christ may we pray.

May the grace of Christ give us freedom. May the love of God teach us to use it responsibly and wisely. May the fellowship of the Holy Spirit uphold us in this task. Amen.

THE PRESIDENT: Amen. The reading of the Journal, please.

THE SECRETARY: In Senate, Monday, May 11th. The Senate met pursuant to adjournment, Senator Fuschillo in the Chair upon designation of the Temporary President. The Journal of Sunday, May 10th, 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.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nomination: New York Convention Center Operating Corporation Board of Directors: Walter N. Rothschild, of Syosset.

SENATOR STAFFORD: Move the nomination, please.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Move the nomination, please.

THE PRESIDENT: The question is on the confirmation of Walter N. Rothschild, Jr., as member of the Board of Directors of the New York Convention Center Operating Corporation. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

Walter N. Rothschild, Jr., is hereby confirmed as a member of the Board of Directors of New York Convention Center Operating Corporation.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bills direct to third reading:

Senate Print 7466, by the Senate Committee on Rules, an act making an appropriation; and

Senate Print 7467, by the Senate Committee on Rules, an act making an appropriation.

Senator Farley, from the Committee on Banks, reports the following bill direct to third reading:

Senate Print 7442, by Senator Farley, an act to amend Chapter 3 of the Laws of 1997.

ACTING PRESIDENT KUHL: The bills are ordered directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

The Chair recognizes Senator Holland.

SENATOR HOLLAND: Mr. President, amendments are offered to the following Third Reading Calendar bills:

Page 15, Calendar 320, Senate Print Number 3029, by myself; page 25, Calendar 591, Senate Print 6581, by Senator Goodman; page 30, Calendar 667, Print Number 6368, by myself; page 35 -- excuse me -- Calendar Number 729, Senate Print Number 6758, by Senator Trunzo; page number 43, Calendar 803, Print Number 233, by myself.

ACTING PRESIDENT KUHL: The amendments are received and adopted. The bill will retain its place on the Third Reading

Calendar.

Senator Holland, do you have another motion?

SENATOR HOLLAND: Yes. On behalf of Senator Libous, please remove the sponsor's star from Calendar Number 314, I believe.

ACTING PRESIDENT KUHL: The sponsor's star is removed on Calendar Number 314.

Senator Holland.

SENATOR HOLLAND: Mr. President, I wish to call up my bill, Calendar Number 708, Assembly Print Number 1337.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 708, by member of the Assembly Gromack, Assembly Print 1337, an act to amend the Executive Law.

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR HOLLAND: I now move to reconsider the vote by which the Assembly bill was substituted for my bill, Senate Print Number 6204, on the 4th of May.

ACTING PRESIDENT KUHL: The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 40.

SENATOR HOLLAND: I now move that the Assembly Bill Number 1337 be recommitted to the Committee on Housing, Construction and Community Development and my Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT KUHL: The bill will be recommitted and your bill will be restored.

SENATOR HOLLAND: Mr. President, I now offer the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Holland, on the prior motion relative to which you said was Calendar Number 314, was that -

SENATOR HOLLAND: That's what I understand.

ACTING PRESIDENT KUHL: Is it 314 or 3 and 4.

SENATOR HOLLAND: 3 and 4. Thank you very much.

ACTING PRESIDENT KUHL: 3 and 4.

Okay. Thank you, Senator Holland.

I might suggest that you see the eye doctor. (Laughter)

Senator Skelos, we have a couple of substitutions at the desk.

SENATOR SKELOS: Read the substitutions, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the substitutions.

THE SECRETARY: On page 4, Senator DeFrancisco moves to discharge from the Committee on Insurance Assembly Bill Number 72-A and substitute it for the identical First Report Calendar 878.

On page 16, Senator Trunzo moves to discharge from the Committee on Civil Service and Pensions Assembly Bill Number 5073-A and substitute it for the identical Third Reading Calendar 348.

On page 19, Senator Spano moves to discharge from the Committee on Labor Assembly Bill Number 10042 and substitute it for the identical Third Reading Calendar 449.

And on page 44, Senator Alesi moves to discharge from the Committee on

Transportation Assembly Bill Number 8028 and substitute it for the identical Third Reading Calendar 816.

ACTING PRESIDENT KUHL: The substitutions are ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, may we please adopt the Resolution Calendar with the exception of Resolutions 3388 and 3396.

ACTING PRESIDENT KUHL: The motion is to accept the -- adopt the Resolution Calendar with the exception of the Resolutions 3388 and 3396. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar with those exceptions are adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a privileged resolution at the desk by Senator Johnson. I ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT KUHL: The

Secretary will read the privileged resolution by Senator Johnson, Number 3452, in its entirety.

THE SECRETARY: Legislative Resolution by Senator Johnson commending and paying tribute to Kristin Rummell in recognition of her heroic act in donating her bone marrow to an individual and giving the gift of life;

WHEREAS, it is the sense of this legislative body to act in accord with its long standing traditions honoring the achievements of its promising citizens and leaders of tomorrow whose character and achievements best exemplify the ideals and values cherished by this great state and nation; and

WHEREAS, this legislative body is justly proud to commend and pay tribute to Kristin Rummell and other bone marrow donors during Bone Marrow Donor Awareness Week in recognition of their heroic act in donating their bone marrow to individuals and giving the gift of life.

Kristin Rummell, while a college student, registered as a potential donor joining over two and a half million volunteers in the registry.

Many people in the United States have died because their desperate searches have not produced a matching donor in time.

Kristin Rummell, who is now a New York State Senate staff member, selflessly donated her bone marrow to an individual with whom her marrow matched, giving the gift of life to an unknown person.

An individual is faced with only about a 1 in 20,000 chance of finding an unrelated person who will match closely enough to allow the opportunity for a bone marrow notation; and

WHEREAS, Kristin Rummell's heroic action will stand as our inspiration and compel others to register with the national marrow donor program; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to honor Kristin Rummell and other bone marrow donors during Bone Marrow Donor Awareness Week; and be it further

RESOLVED, that a copy of this resolution, suitably engrossed, be transmitted to Kristin Rummell.

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Johnson to speak on the resolution.

SENATOR JOHNSON: Mr. President, I was very honored to have the opportunity to introduce this resolution during Bone Marrow Week and to realize that bone marrow donors like blood donors are not just anonymous people but they may be individuals with whom you relate -- you have a friendship or a relationship.

This young lady who's standing behind me now works in my office. She's the daughter of my late good friend Bob Rummell. As you heard in the resolution, she was impelled during her college days as an idealistic person. We should all start off idealistic. She remained idealistic. She registered to be a bone marrow donor and she was called upon a few months ago to help save the life of an individual who she does not know. She made the donation of her bone marrow. It was a, she said, rather painful process. It took several months of healing but she did it to save a life, and I thought it's really -- rather than just have a resolution which we had yesterday which we all can identify with but to meet a real person who's made that

contribution, I think is wonderful to have her here and to be able to recognize her today.

So, Kristin, take a bow and we all are proud of you. (Applause)

Thank you very much for your support of this resolution.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: May we please take up Resolution 3388 by Senator Johnson. May we have it read in its entirety and move its immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read privileged Resolution 3388 by Senator Johnson in its entirety.

THE SECRETARY: Legislative Resolution 3388, by Senator Johnson, memorializing Governor George E. Pataki to proclaim the week May 11 through May 15, 1998 as

School Transportation Personnel Week in the state of New York;

WHEREAS, in New York State more than 2.2 million children are transported to and from their schools on school buses every day; and

WHEREAS, these children ride in more than 35,000 yellow school buses over 350 million miles per year in cities and towns and suburbs across the state; and

WHEREAS, the safety and well-being of these children are of the utmost concern to all New Yorkers.

Thousands of school transportation professionals, including school bus drivers, school bus aides and attendants, maintenance mechanics, school bus driver instructors, master instructors and examiners and transportation supervisors and directors work diligently to ensure the safety of these children.

The contribution these personnel make is immeasurable in terms of the lives of these school children; and

WHEREAS, the people of the state of New York respect the hard work and dedication of these individuals and wish to recognize them

for their steadfast dedication for the children; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to memorialize Governor George E. Pataki to proclaim the week of May 11 through May 15, 1998 as School Transportation Personnel Week in the state of New York and to call upon all New Yorkers during this time to recognize the valuable contributions of school transportation professionals in their home and school communities.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Can we take up the non-controversial calendar, please -- can we have Resolution 3396 by Senator Holland read in its entirety and move for its immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read the privileged Resolution

3396 by Senator Holland in its entirety.

THE SECRETARY: Legislative Resolution 3396 by Senator Holland, honoring Rockland County upon the occasion of its historic Bicentennial Celebration;

WHEREAS, it is the intent of this assembled body to honor and commemorate the proud and distinguished histories of the communities which compromise the essence of this great Empire State; and

WHEREAS, in accord with this intent and its long-standing traditions, it is the purpose of this assembled body to now commemorate the 200th Anniversary of Rockland County, joining in the recognition and celebration of the anniversary of this county and commemorating the celebration that began with an opening day pageant on February 22, 1998. The ceremony will officially commence an eight-month long series of events that will be held throughout the spring and summer and will culminate at the Bicentennial Dinner Dance at the IBM Palisades Center in Palisades, New York, on October 24, 1998; and

WHEREAS, Henry Hudson is credited

as the first European to set eyes on what would become Rockland County. In 1609 he sailed up the river and mistakenly assumed he'd found the Northwest Passage.

Early attempts to settle the county by the Dutch were generally unsuccessful and in 1664 they handed over the territory to the English. In 1686 the Duke of York, later to become King James II of England, established the county system and designated what is now Rockland County to be included in Orange County.

By the 1770s, the movement to separate what is now Rockland from Greater Orange County was in full swing, a process that was completed in February of 1798; and

WHEREAS, during the American Revolution, Rockland County became an important crossroads, a vital link between the northern and southern colonies and a scene of conflict and treason. It played a crucial role in the history of the United States and was the site of the first formal recognition of the new nation by the British.

The New York State Legislature officially credited -- created Rockland County on

February 23, 1798.

Improvements in transportation set the pace for development in the first half of the 19th Century. The Nyack Turnpike was completed and that connected Nyack to Suffern, where the Orange Turnpike provided a route to Albany.

In 1827, steamboat travel debuted and to facilitate steamboat travel from Tappan Landing, a road was built over the marshes to the end of a 500-foot pier which within a few yards became the terminus of the Erie Railroad.

Although agriculture remained dominant in Rockland County well into the 20th Century, industry saw a gradual growth; because of the proximity of iron mines, numerous metal products were made - plows, hoes, railings, nails, machinery, even cannonballs. Its factories also made shoes, straw hats, silk and cotton cloth, sulfur, matches and pianos.

During this time the stone, brick, wood and nails from Rockland County literally built the city of New York; and

WHEREAS, schooling in the late 18th and early 19th Century in Rockland County was done in the home or by private school masters

in their houses or their pupils' homes, as compulsory education spread, there were 34 school districts established in the county by 1829.

In the mid-1900s, halls and opera houses were built to facilitate entertainment. Newspapers were established in Nyack and Haverstraw and a fire in Haverstraw in 1854 brought about the formation of the first volunteer fire company.

Religion also played a prominent part in Rockland's history. The earliest Dutch Reformed churches and later the Presbyterian churches laid the groundwork for other Protestant denominations to flourish in the county. The first Roman Catholic church in Rockland was St. Peter's Church in Haverstraw which opened in 1847. Haverstraw was also the site of the congregation of the Sons of Jacob which completed and dedicated its first temple in 1889; and

WHEREAS, the dawn of the 20th Century saw the beginnings of the decline in the number of farms in Rockland and the general rise in industry. Today the county is home to many international companies such as Avon, Lederle, Fujitsu and soon Mercedes-Benz.

By the 1920s, Rockland County was becoming home to many artists, writers and stage celebrities.

Rockland County's rural character was changed forever with the opening of the Tappan Zee Bridge in 1955 and the completion of the Palisades Interstate Parkway and Thruway during the same decade; and

WHEREAS, Rockland County is one of the most ethnically diverse counties in the country and the Bicentennial Celebration will serve as a cohesive factor for the community; now, therefore, it be

RESOLVED, that this legislative body pause in its deliberations to honor Rockland county upon the occasion of its historic Bicentennial celebration; and it be further

RESOLVED, that a copy of this resolution, suitably engrossed, be transmitted to Rockland Bicentennial 1998, Incorporated.

ACTING PRESIDENT KUHL: Senator Holland on the resolution.

SENATOR HOLLAND: We in Rockland County are very happy to celebrate the 200th Anniversary of Rockland County all this year.

On the western shore of the Hudson River where the hustle and bustle of New York City yields to the tranquility of upstate, lies my community, Rockland County.

This year we are celebrating our 200th birthday with a year-long celebration and grand events like the Tall Ships Riverfest that will take place over the Memorial Day weekend.

The county's relative youth defies Rockland County's rich history.

When Henry Hudson sailed into the Tappan Zee on September 24th, 1609 he was greeted by the Algonquins, who had occupied the area for 5- or 6,000 years.

As the British and Dutch began to compete for the highly desirable trading points along the Hudson, they purchased land from the Native Americans, most of whom were driven west.

Rockland's most vivid history remains the part it played in the Revolutionary War. When local citizens passed the Orangetown resolutions on July the 4th, 1774, Rockland's role in the fight for independence had begun.

Rockland's position was critical as local militia maintained continual

surveillance on British warships patrolling the lower Hudson Valley.

Several major battles were fought on Rockland soil, including one of the most dramatic battles, the Battle of Stony Point.

Troops of General Washington's Continental Army, under the command of General "Mad" Anthony Wayne, made a daring bayonet night attack on Stony Point swiftly defeating the surprised British garrison.

Maybe the most notorious of the war involved revolutionary hero Major General Benedict Arnold. Dissatisfied with his treatment by the Army, Arnold arranged to surrender West Point to Sir Henry Clinton.

Clinton's spy master, British Major John Andre was captured with the traitor's plans. Andre was tried, convicted and eventually hanged in Tappan in Rockland County.

Brother against brother, neighbor versus neighbor, the region was torn apart by years of Tory and Patriot skirmishes and by marauding bands of outlaws, who stripped the families of their property and their livelihood.

During this time the Rockland

region was considered part of Orange County and it wasn't until February the 23rd, 1798, mainly due to the difficulty of traveling across the Ramapo mountains, that Rockland split from Orange and established itself as a separate entity with New City as the county seat.

Though it had been ravished during the war years, by the early 19th Century, Rockland County had settled into a tranquil farming community.

Abundant water power encouraged the milling of grain, cider and wood and with the industrial revolution came shipyards, quarries and ice operations.

The town of Haverstraw became known for its brick industry and was instrumental in building much of 19th Century New York City, many of those buildings still standing. In its heyday, there were 106 brick- making businesses in Rockland County and the brick manufacturers were digging under the city to get more clay to make bricks and there was a collapse in 1906. Many people were killed. Fires raged into the night.

These industries persisted into

the 20th Century when early scientists began to set up shop and ushered in one of the first waves of high tech' industry.

During World War II, Camp Shanks at Orangeburg was the largest Army embarkation on the East Coast, sending 1.3 million American troops to England and North Africa and keeping many German and Italian prisoners during that time.

Today, in addition to being a hub for high tech' business and a great place to raise a family, Rockland is probably the best known as the gateway to the Hudson Valley.

While most of you have driven through it, I would like to extend to each and every one of you a personal invitation to stop by and experience Rockland County during its bicentennial year.

Thank you very much.

ACTING PRESIDENT KUHL: Senator DeFrancisco on the resolution.

SENATOR DeFRANCISCO: Would the sponsor yield to a question? (Laughter) I was just curious if -

ACTING PRESIDENT KUHL: Senator

Holland, Senator DeFrancisco enjoyed all -- you were enlightening the members so much and in sharing those personal experiences with us about Rockland County that he has a question. He wants to know if you would yield to a question.

SENATOR HOLLAND: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DeFRANCISCO: What role, if any, did Rockland County have in the Civil War? (Laughter)

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolution is adopted.

Senator Bruno.

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

ACTING PRESIDENT KUHL: The Secretary will read the non-controversial calendar.

THE SECRETARY: Calendar Number 413, by Senator Saland, Senate Print 4519-B, an act to amend the Domestic Relations Law, the Social Services Law and the Family Court Act, in relation to changing.

ACTING PRESIDENT KUHL: The Secretary -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 549, by Senator LaValle, Senate Print 2669, an act to amend the Town Law, in relation to expanding from fire district revenues.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

595, by Senator Goodman, Senate Print 6663, an act to amend the Tax Law, in relation to correcting cross-references.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 654, by Senator Volker, Senate Print 6600, an act to amend the Penal Law, in relation to loitering and the unauthorized boarding of school buses.

ACTING PRESIDENT KUHL: The 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: Eyes 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 655, by Senator Goodman -

SENATOR WALDON: Lay it aside.

THE SECRETARY: -- Senate Print 6794 -

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 668, by Senator Stafford, Senate Print 6475, an act to amend the Executive Law, in relation to the Commission on Uniform State Laws.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

675, by Senator Marcellino, Senate Print 2248 -

SENATOR WALDON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 679, by Senator Nozzolio, Senate Print -

SENATOR WALDON: Lay it aside.

THE SECRETARY: -- 5182.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 688, by Senator Rath, Senate Print 2014, an act to amend the Education Law, in relation to displaying the flag of the state of New York.

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

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

700, by Senator Seward, Senate Print 3742-B, an act to amend the Judiciary Law, in relation to establishing a second County Court.

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

THE SECRETARY: Section 3. This act shall take effect January 1.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negative and announce the results.

THE SECRETARY: Ayes 54, nays 1, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 726, by member of the Assembly Weinstein, Assembly Print 9167, an act to amend Chapter 729 of the Laws of 1994.

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

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

ACTING PRESIDENT KUHL: Call the

roll.

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 728, by Senator Spano, Senate Print 6411, an act to amend the Retirement and Social Security Law, in relation to establishment of a presumption.

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

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Is there a lay aside on that bill?

SENATOR LEICHTER: Hold on just one moment, please.

ACTING PRESIDENT KUHL: Is there a lay aside on Calendar Number 728? Does some member wish to lay it aside?

SENATOR LEICHTER: I'll just vote in the negative.

ACTING PRESIDENT KUHL: Don't feel obliged to. Is that something you wish to do, Senator Leichter? Lay Calendar Number 728 -

SENATOR LEICHTER: No, no.

ACTING PRESIDENT KUHL: You want to vote no. Okay. The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negative.

THE SECRETARY: Ayes 54, nays 1, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 815, by Senator Bruno -

SENATOR PATERSON: Lay it aside.

THE SECRETARY: -- Senate Print 706 -

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 825, by Senator Holland, Senate Print 6884, an act to amend the Vehicle and Traffic Law, in relation to required identification.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 826, by Senator Skelos, Senate Print 6981, an act to amend the Vehicle and Traffic Law, in relation to requiring school bus drivers to ensure.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55, nays 1, Senator Meier recorded in the negative.

ACTING PRESIDENT KUHL: The bill

is passed.

Senator Bruno, that completes the reading of the non-controversial calendar. What's your pleasure?

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

ACTING PRESIDENT KUHL: The Secretary will read the -- the Secretary will read the controversial calendar, beginning with Calendar Number 915 at the request of the Majority Leader.

THE SECRETARY: Calendar Number 815, by Senator Bruno, Senate Print 706, an act to amend the Vehicle and Traffic Law, in relation to the disqualification of a school bus driver in certain instances.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Bruno, an explanation of Calendar Number 815 has been requested by Senator Paterson, the Acting Minority Leader.

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

This is a bill that changes the

Vehicle and Traffic Law of this state. This is a piece of legislation that we have passed in this house for two previous years, two years ago unanimously, last year unanimous minus four votes and it does something, Mr. President, that needs to be done in this state.

It removes drunken bus drivers, who drive our children, from behind the wheel. It removes those that test positive for using drugs from getting behind the wheel and transporting our most precious cargo, our children.

Federal law and state law addresses the question of testing, random testing of bus drivers, but the problem is that when bus drivers are tested positive for alcohol or drugs, there is no way that the school district can do much other than get them into some program, chastise them, potentially a maximum fine of $250 and they're back behind the wheel.

In my district, the same bus driver was behind the wheel three times and found in testing to be under the influence of alcohol and/or drugs. That is wrong. This law will change that.

A driver's license in this state is a privilege. It is not a divine right belonging to each and every individual. Driver's licenses are removed from people who abuse the privilege of driving and any bus driver -- and in the capital region, in the district of Troy, they are on the verge of trying -- and they're trying to break the contract with a bus company because any number of drivers have been tested and found positive, endangering the welfare and the lives of our children.

Now, why should parents have to put a child on a bus and worry themselves until that child gets home that some driver who has the trust entrusted to look after those children may not be thinking clearly or acting properly?

So this bill has passed, as I've said, overwhelmingly for good reason. All we change here is that if a person is tested, they can request, if they're not happy with the result, a second test from the same specimen and if that second test proves positive, they then can have their license revoked permanently and that means that if they were hired to drive a bus, they would then be undoubtedly fired by the

school district because if they're bus drivers without a license, they're not going to drive many buses.

That's the intent of this law. I understand those that are concerned about the civil rights of individuals. I am concerned about an individual's civil right. I am also concerned about our children who by the tens of thousands board buses every day and we cannot allow the condition that presently exists to continue.

So, Mr. President, that's the explanation, and I would humbly recommend that those people that are so inclined support this legislation.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Would the distinguished Majority Leader yield for a few questions?

SENATOR BRUNO: I will, Mr. President, for our very distinguished Minority Leader.

ACTING PRESIDENT KUHL: The

Senator yields.

SENATOR PATERSON: Mr. President, I want to advise the members today that there was an incident in New York City last week where a former teacher who had been put on the list for those not eligible to act as a substitute teacher inadvertently was rehired at a school district, 15 years prior had assaulted a student and that was the reason why this teacher had been taken off the list and in the classroom this teacher is alleged to have assaulted many students with a chair and was actually arrested toward the end of last week in New York City.

Assuming this legislation passes -- because it did last year -- I wanted to ask the Majority Leader what will be some of the measures that will be taken to ensure that when it becomes law that it's actually enforced properly?

SENATOR BRUNO: It is enforced properly?

SENATOR PATERSON: Yes.

SENATOR BRUNO: The law mandates that if the person tests positive that the school district -- that they would have their license

revoked by the Department of Motor Vehicle. So that it removes it from the jurisdiction of the district and it also supersedes, if this were law, the collective bargaining arrangement that might have been made where they have bargained away their right to dismiss as they may have in the instance that you just described, Senator.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Bruno would yield for another question.

SENATOR BRUNO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator Bruno, we have a number of studies that were presented to us by some of the lobbying organizations, the New York Civil Liberties Union, the Civil Service Employees Association, demonstrating that in tests conducted by the general accounting office and also by the Center for Disease Control - thank you -- that the possibility of a false positive arising from a test varies from between 3 and 30 percent in different studies. With the

distinct possibility of a false positive, we would not want to destroy the reputation of a driver that is not engaging in any substance abuse and prohibit them from pursuing their career as a bus driver.

At the same time, we recognize the importance to protecting children and that if there is any gray area, we would probably want to err, if we do err, in the direction of saving children.

Nonetheless, under the federal law, there is a much more distinct and much more specific reference to dual testing. I suggested on the floor last year that perhaps we might write it into this legislation since it wouldn't change in any way any of the results as it would remove those drivers that are proven in double tests to be substance abusers.

I was wondering if the Majority Leader had an opinion or a comment on why we can't change the legislation as it's written to coincide with the way it appears in the federal law.

SENATOR BRUNO: Well, it's my understanding, Senator, that the fed's have

mandated random testing in many areas in our society and we have been doing that for years, and the tests that are taken, if we understand them correctly, would leave very little room for error because when a person is suspected or randomly tested, a specimen is taken. It is separated into two parts and one part is put aside and one part is immediately tested. If that test is positive and the alleged perpetrator feels that that's unfair, they can then request a second test before the district is even notified of the results of the first test and then that second half of the specimen is taken to an entirely different facility, another lab where they would do a totally separate independent test for the second time and if it is found to be positive, well, then this law would take effect. The employer is notified. DMV is notified. The person loses their license.

So it would seem that there's very little room for error by two separate facilities who specialize in these kinds of tests.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr.

President.

I want to thank the Majority Leader for his responses and on the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson on the bill.

SENATOR PATERSON: We have a situation where, as the Majority Leader explained, we would be using the same specimen and there's the possibility to conduct a second test to confirm the validity of the first test.

As we mentioned before, the issue of child protection and children safety really must supersede all other issues. However, the issue of clarity, so that in looking at the law those who would be inclined to participate in the legal right of representation of one who is accused of testing positive, there would be a clear understanding of what the options that the defendant would enjoy in this type of circumstance. We don't think that the clarity should in any way serve to diminish the value of this legislation and we just felt that the federal protection could have been applied to the state and could have been written into this

legislation.

I'm going to vote for the bill, Mr. President. I think it has great merit, and I think that the issue of child protection must be favored above all others in a situation where we have seen a number -- and frankly alarming number of situations where children were hurt because a substance abuser was operating a vehicle supposedly to transport them from home to school and from school back to custodial care and yet they wound up in an accident due to the irresponsibility of the individual.

However, in these situations, it must be noted that there are several instances of false testing. I don't think that anyone here may have been victimized by it. There's a former colleague of ours who was victimized by it in a situation, and I think we should attune ourselves and should familiarize ourselves with how frequently these false tests occur.

As I said before, the general accounting office in one test and other tests conducted by the Center for Disease Control estimate that in some cases the false positive can be reached in an alarming rate of 30 percent

and how much more foresighted, I think it would have been, to have just written the legislation so that the protections of those accused would be made just as clear in our state-sponsored legislation as what was mandated by federal law which we would certainly be serving at the same time.

As I said, I'm going to vote for the bill but because we are not able at this point scientifically to have our tests be as accurate as we can test other diseases or other maladies, we would really try to convince the sponsor before making this law that perhaps that slight change would put the bill in a spectrum in which we would all be able to support it.

ACTING PRESIDENT KUHL: Senator Farley on the bill. Senator Farley.

SENATOR FARLEY: You know, this might seem like an insignificant piece of legislation to some, but let me just tell you in Niskayuna, the town where I live, a bus driver was arrested driving children for being under the influence of alcohol. The children that were riding the bus had to report him to the police because of his erratic driving.

I think it's absolutely outrageous that we can have people that are under the influence of alcohol driving young children in a community. It happened just recently here in my hometown of Niskayuna.

I urge the support of this bill.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill?

(There was no response.)

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives. Announce the results.

THE SECRETARY: Ayes 55, nays 2, Senators Montgomery and Sampson recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Smith, why do you rise?

SENATOR SMITH: I request

unanimous consent to be recorded in the negative on Calendar Number 815.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Smith will be recorded in the negative on Calendar Number 815.

Senator -

SENATOR BRUNO: Recognize Senator Goodman for an announcement and then Senator Marchi.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Goodman.

SENATOR GOODMAN: Mr. President, it's with a great deal of pleasure that I remind members on both sides of the aisle that tonight is a very important night in the calendar year of every state Senator because it is the annual meeting of the Senate Club of the state of New York.

The Senate Club for many years had a restrictive clause which said that it was necessary to have five years of Senate service before joining the club, but in view of an enlightened change in that policy, every member of the Senate is now eligible along with every

alumnus of the Senate and all the alumni often make it a point to return, including some of our most distinguished former leaders and governors of the state and the like, and may I just say to members that in addition to all of these intellectively brilliant attractions, we're also providing some secret highly cultural entertainment for your delectation and delight this evening, and I hope you'll make it a certain point to join us.

The dues for the club are very modest. The returns are enormous in terms of gastronomy, other types of refreshment which can be obtained in cylindrical shaped vessels and excellent good fellowship beyond descript -- my humble powers of description. Please come to Jack's Restaurant, 6:30 cocktails, 7:00 o'clock dinner. We'll see you there.

Thank you very much, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Marchi.

SENATOR MARCHI: I'm just wondering whether this reunion of Senators is fit for general population.

In any event, Mr. President, it has been one of our better traditions in the Capitol to have -- be visited and honored by the presence of members of the St. John's University School of Law with us.

Their record is really tremendous. Strangely they have not accepted Bundy money just so that they could maintain some of the freedom and flexibility which they feel is appropriate to them and notwith- standing, they have been able to stand the rigors without enormous foundations and provide education of great quality.

I'm the oldest member of this genre of Senators and legislators, but we also have the presence of the youngest member who told me very boldly that he was born before I was - before I came to this chamber and he's a brilliant young man, and I yield to him for the purpose of recognizing some of the governance at the university and express his pleasure so that we come within our grasp all of the -- all of those who -- and I'm sure this embraces the entire chamber -- the -- of the St. John's presence here in the state Capitol. We've had it

every year and we look forward to it.

I yield to my brilliant colleague who wasn't even born when I came to the Senate but shows enormous promise and the fact that this body will be rejuvenated by the freshness and intelligence that he characterizes and exhibits.

ACTING PRESIDENT KUHL: Senator Balboni.

SENATOR BALBONI: Thank you, Senator Marchi.

And until you said my name, nobody in the chamber knew who you were speaking about. They're still not sure it applies, but I appreciate the opportunity nonetheless.

Senator Bruno, I appreciate the - this occasion that you've allowed us to join with the celebration for St. John's University School of Law.

I share many things in common with my predecessor. This is one of my -- the more proud moments that I have to stand on the floor for the first time, as Mike Tully was also an alumni of St. John's Law School and today joining with us is Dean Rudy Hasl, Richard Kane, Judge Milton Mollen, the former presiding justice of

the second department appellate division and the Reverend Richard Kehoe, chaplain of the law school, along with several of the alumni that join us in the gallery.

Mr. President, it's my honor to welcome them here this year as a member of the state Senate. It's a very proud moment for me and my family indeed.

Thank you very much.

ACTING PRESIDENT KUHL: Senator Balboni, on behalf of Senator Bruno and yourself and all the other members, we certainly welcome these distinguished alumni of St. John's Law School to the Senate chamber. Have an extremely terrific and good time while you're here in the Capitol and thank you for sharing a moment of your day with all of us. Gentlemen.

(Applause)

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time continue with the controversial calendar.

ACTING PRESIDENT KUHL: The Secretary will continue to read the controversial calendar in regular order.

THE SECRETARY: Calendar Number 413, by Senator Saland, Senate Print 4519-B, an act to amend the Domestic Relations Law, the Social Services Law and the Family Court Act.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Saland, an explanation of Calendar Number 413 has been requested by Senator Paterson.

SENATOR SALAND: Mr. President, this bill amends various sections of the Domestic Relations Law, the Social Services Law and the Family Court Act to replace or substitute the term "parenting time" for the term "visitation".

The bill, I believe passed earlier this year. It's been recalled for technical reasons. The technical reasons will be found in Section 10 of the bill and basically it addresses the fact that when the bill was originally drafted last year, we hadn't passed the major support reform piece that we had done later in the 1997 session. The bill now includes that particular session in its amendments.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Sorry. I was

just consulting with my counsel. Now I'm ready for my -- my question, if Senator Saland will yield for a question.

ACTING PRESIDENT KUHL: Senator Saland, do you yield?

SENATOR SALAND: Certainly, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Thank you.

Senator, is -- the term "parenting" as opposed to "visitation", I would imagine is -- that the whole genesis of this is the idea of having a greater responsibility on behalf of the party that would actually benefit from the new title and to, I guess as a public apology -- public policy encourage greater participation.

However, many of the support groups in the area have pointed out that the mere allowance of visitation does not connote that there's full participation of the other party.

So my question is, would we want to be, in a sense granting that title or create that standing of the other party to assert it to

the child when, in fact, what the child is unaware of is that that party is maybe not necessarily keeping up their end or fully participating as a parent?

SENATOR SALAND: Mr. President, my intention with this bill was basically to say to non-custodial parents that unlike visiting an inmate or unlike making a visit to some institutional setting, whether it be correctional, whether it be a mental institution of some kind, that this was more than visitation.

A parent is a parent. How that parent lives up to his or her responsibilities was not addressed by this particular bill and when you say "support groups", I am aware of a memo, one memo in opposition, and I must tell you, other than the fact that I find it amusing, it is the most appalling, territorial, disgrace ful memo that I have ever seen issued by any group regarding any issue.

This knee jerk, slap slick, abysmal piece that's now put out is a disgrace. They should be ashamed of themselves and when you talk about territoriality, you talk about just

trying to cut out the other guy and here we're talking about another guy now has found a low. I have never seen anybody or any group sink to a lower level than I have with this memo, and if that is what you are referring to, really, you do justice neither to the many equitable causes that you have done battle for, and certainly I would hope that that is not the basis upon which you raise these questions.

This piece of garbage is nothing more than an effort to try and be territorial and just to shut the door and slam it right in the face of non-custodial parents. That's all. We don't like it because it's not punitive. Therefore, we're going to oppose it and if any third-party rational person looked at this rag, once they stopped laughing, they would be appalled also.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Well -

SENATOR SALAND: But other than that, I don't feel strongly about it.

SENATOR PATERSON: Well, I'll tell you what, Senator Saland, let's forget about that

memo. Why don't you and I just have a conversation on it.

SENATOR SALAND: Incidentally, if I may, Senator Paterson, this bill passed, if I can coin Senator Bruno's earlier comments or draw on them, unanimously with the exception of one vote last time when we entertained it.

SENATOR PATERSON: I sure hope it wasn't mine. (Laughter)

Senator, what I'm referring to - and to be honest with you, I think in situations of custody battles, you do see the frustration of, I would say of both parties coming out and you do observe a lot of writings that clearly have a great deal of passion, and I would even concede that there is a territorial nature to it as you describe, maybe perhaps because of the parameters of custody and the over-arching problems that young children have, and I think your point is well taken.

However, just on the meritorious issues that may be raised from just a perusal of what we're intending to try to change in the law from your legislation, suppose you have a situation where you have a custody battle between

two parents -- and I'm not going to assume that either won the custody battle and I'm just going to say that disgruntled parent that did not win custody very often tries to convince the child that they are an equal partner even if they aren't -- even if they aren't contributing equally. So visitations at school and all different types of activity occur which makes it very difficult for the custodial parent to make decisions, separate visitations for medical care and that kind of thing. These are every-day problems that people experience from trying to be a custodial parent and yet trying to fulfill the visitation requirement as the court compels individuals to adhere to.

So my question is when you have these situations, to now change the title and refer to it as parental visits, in those cases - and I'm not assuming that all non-custodial parents don't contribute, but in those cases where the parent is not contributing, I'm just asking you, why do we want to bestow that title on someone, whether it is a man or a woman, that hasn't earned it?

SENATOR SALAND: If I may. It

would seem to me, then, that what you're advocating is that simply by the use of a term, we should be judging the relative merits of claims by people involved in custodial disputes. In other words, the term, whether it be parental visitation -- or parental rights, I'm sorry - parental time or visitation should be used somehow or other to denote what, in fact, is the interaction between a parent and child as perceived by some less than disinterested party, mainly the other person who would be the custodial parent.

I mean, that's really what I think you're saying to me, and I would no more think that we should do that, than I would think that we should punish all non-custodial parents by giving them, in effect, a secondary status by way of terming their time with their children, however frequently and however appropriately and however lovingly and responsibly they deal with those children, by terming it visitation. They are exercising the rights of a parent as a court has permitted them to do and perhaps they would like to exercise it even more but the court's directive will not permit them to do that and the

custodial parent will not permit that visitation or parental time beyond what has been decreed by way of a court order.

Similarly, are we to condemn every -- every custodial parent because some custodial parents, be it men or women, needlessly call in reports to the central registry of child abuse in order to gain an advantage in custodial fights? Should we somehow or other call those custodial parents something different because they've been tainted by the action of some small percentage?

This is a very simple bill. There is really no great substantive change that this bill offers. All we're doing is changing the references collectively wherever the word "visitation" is used to "parenting time".

We are not being judgmental. We are not saying one way or the other that they're perfectly harmonious parental relationships. We are not saying that they are less than harmonious relationships. We are just talking in terms of parental time. That's what I would think would be appropriate. I mean, the birth certificate says that's the parent, the non-custodial person is the parent and that person may exercise to the

fullest, as I mentioned before, a desire even more than he's permitted by law or she's permitted by law and others, as you point out, may do that in a less than admirable fashion and may not even abide by this responsibility. Do we paint all as being bad, because that's what this now memo would have us do, that every non-custodial parent should be punished because there are non- custodial parents who fail to abide by what is either morally or judiciously required of them as a parent, therefore, a pox on every one of their houses.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I'm just going to ask one final question. It's physical fitness day, and I don't want to be responsible for driving Senator Saland's blood pressure up. They were just testing it, but I just want to -- just a point of clarification, Senator Saland.

So the genesis of the legislation would be that you feel that with this change in title, this would actually, if anything, encourage the other parent who is the non custodial parent to have a greater involvement

because we are making it clear in the law that they are equally a parent.

SENATOR SALAND: I'm being advised by my ever esteemed counsel, Senator DeFrancisco, that it calls for a yes or no answer. Let me just suggest I had a marvelous catharsis and I don't have any blood pressure problems. I feel very well, Senator Paterson, but I would simply add that it wasn't my intention of doing something substantive.

My intention was to somehow or other say to those parents, those non-custodial parents, who have in so many different ways done whatever would be required of them and perhaps gone beyond, that they shouldn't have to feel like outsiders. They shouldn't have to feel that they were less than a parent, and it would seem to me that when I have non-custodial parents who are telling me in my capacity as the chairman of the Children and Families Committee that they find the word "visitation" very difficult to accept inasmuch as they feel they're more than mere visitors with their children, that this is an appropriate response and to the extent that this memo, as I said earlier, says if they're not

all good, they're all bad, I think that's a terrible judgment to make and I really think it's a shameful judgment to make.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, a point of clarification, if Senator Saland would yield.

SENATOR SALAND: Certainly, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: Senator, there are at times situations where the grandparents or some other relative of the child are exercising the visitation. Would the term apply to them, or would you -- would we use visitation?

SENATOR SALAND: The term for grandparents would more appropriately be visitation.

SENATOR PATERSON: Okay. Thank you very much, Senator.

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

THE SECRETARY: Section 46. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator DeFrancisco to explain his vote.

SENATOR DeFRANCISCO: I don't know what the memo said but I haven't read it. My reason for voting no is very simple.

Senator Saland indicated that this bill represented no substantive change. If it represents no substantive change, then I see no purpose in it, but more importantly I think the fact is that we in the legal profession have a body of case law that we rely on interpreting very important language and bills and there's a whole body and many, many years of case law in interpreting the word "visitation" and to start a new term which may be subject to dispute may, in some ways, change that case law when, in fact, the sponsor says that the intent is not to substantively change anything.

So I vote no.

ACTING PRESIDENT KUHL: Senator DeFrancisco will be recorded in the negative.

Announce the vote.

THE SECRETARY: Ayes 57, nays 2, Senators DeFrancisco and Meier recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 655, by Senator Goodman, Senate Print 6794, an act to amend the Criminal Procedure Law and the Executive Law.

SENATOR WALDON: Explanation.

ACTING PRESIDENT KUHL: Senator Goodman, an explanation has been requested of Calendar Number 655 by Senator Waldon.

SENATOR GOODMAN: Mr. President, let me first take you on a quick trip down memory lane to give you a little of the history of what's going on with this bill.

In June of 1995 at the insistence of the Governor, a Sentencing Reform Act was passed enacted to ensure that violent felony offenders receive appropriate prison sentences. This was a get tough law by its intent and was so

fashioned and so implemented and among other provisions, that measure, first of all, created determinate sentences for second violent felony offenders. It eliminated parole for second violent felony offenders and required them to serve six-sevenths of the determinate sentence. It required that first violent felony offenders serve a minimum of one half rather than one-third of their maximum sentence. It lengthened the permissible terms of imprisonment for persistent violent felony offenders.

In view of the increased penalties that were imposed by that law, the Governor in his judgment felt that in order to ensure sufficient prison space to house these inmates, the Sentencing Reform Act should also have a provision for the deportation to the country of origin of criminal aliens who are in prison for non-violent felony offenses prior to the expiration of their minimum term.

As has been the case with other states that have enacted similar programs in conjunction with the federal government, the program has resulted in the deportation of over 1,000 offenders from New York State prisons to

their country of origin, thereby ensuring that the prison system can house the violent offenders who are incarcerated under the provisions of this get tough act.

However -- and it's an important "however" -- the early parole for deportation purposes to the most serious drug offenders should be denied in cases where there are offenses of an A-1 or A-2 felony nature involving the possession of significant amounts of controlled substances. The principal criterion should not be simply whether they are violent offenders but rather whether their possession is of such magnitude as to suggest that they may have linkage to the drug trade often originating in the Dominican Republic and you may have noted just in this past week's New York Times a front page story describing the extraordinary pervasiveness of the Dominican drug trade and the epidemic of difficulties that it's brought about.

Now, the problem with the existing law was exposed, I think by among other things a hearing of the Senate's ever watchful watch dog, the Senate Investigations Committee which had a hearing on the subject of heroin of new high

intensity and the problems it was engendering and in the course of that hearing a very important member of the judiciary, Judge Leslie Crocker Snyder noted that many of the street sales were being handled by Dominican gangs and that the gangs are extremely violent and have murdered rival drug dealers, witnesses and innocent people. The judge also said that even when they are arrested and prosecuted, some of the gang members were able to escape from the confines of the law to apply their elicit trade again and she cited as an example the case of a drug dealer convicted of an A-1 felony whom she had sentenced 25 years to life in prison.

Under the recently enacted conditional parole law that I just described, this drug dealer could be considered for parole and deported to the Dominican Republic after serving only seven years of the sentence. This particular drug dealer was convicted under another Class A-1 felony previously and had been deported to the Dominican Republic and he was recycled and came right back into society and managed to return to the country to run his cocaine and heroin rings once more.

Now, very frankly, the law which had as its intention a crackdown on drug dealers had one in my judgment mistaken view and that was that it was desirable in certain instances to create room in prison for the most serious offenders by allowing the deportation of those foreign people who were convicted of A-1 and A-2 felonies.

The purpose of this bill is to close the loop hole which permitted those people to leave the country after serving only a fraction of their original sentences and to come back into the country and apply their heinous trades once again and, therefore, what the bill does and what it, I think very properly seals off is the possibility of the return of these very serious drug felons, even though they were not involved in violent activity.

Specifically, under the bill, inmates convicted of Class A-1 drug offenses will be ineligible for the program envisaged originally in the bill and in addition the district attorney will receive notification from the Division of Parole prior to consideration being given to any inmate convicted of a Class

A-2 felony drug offense. If the district attorney objects to the inmate's potential parole to the Immigration and Naturalization Service, the inmate shall be ineligible for such parole consideration prior to the completion of the minimum sentence.

So in a nutshell, Senator, what this bill does is to close off an inadvertent loop hole which arose as an attempt to get stricter and tougher and it does say that if you are an A-1 felon, you cannot be deported prior to the completion of your sentence and if you're an A-2 felon, you can only be deported if the district attorney and the prosecuting officer approves such deportation.

We are confident that this will then permit us to preclude the return to the United States of those people who should not be here and who obviously are involved in very heavy drug and dangerous drug trafficking.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: If the gentleman would yield to a question or two.

SENATOR GOODMAN: Yes, I will. Certainly, Senator.

ACTING PRESIDENT KUHL: Senator Goodman, do you yield to a question? The Senator yields.

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

Senator, let's continue down that memory lane that you orchestrated so well moments ago. How many of these so-called drug kingpins, if I may characterize them as such, have been released to date which precipitated this change in the law? This just didn't happen happenstance. What caused the Governor to do this? What was the -

SENATOR GOODMAN: It was my understanding, according of Katie Lapp, the Governor's Criminal Justice Services Director, it's my belief that there have been four such instances that are known to her of the number who have been deported and there are four very serious cases involved.

Let me see if I can elaborate upon that slightly, if you'll give me just a moment to consult a recent description of this. There were

1500 inmates found eligible for the program since 1995 through '97. Parole officials approved 1,218 for release and of those more than 900 have already been freed from prison. Illegal immigrants make up at least 27 percent of the approximately 69,500 inmates in the state's overcrowded prison system. Federal prosecutors in New York have indicated -- let me see if I go find -- yes. I stick to that original number, Senator, as four.

SENATOR WALDON: Senator, I am not a contentious personality -- may I continue, Mr. President?

ACTING PRESIDENT KUHL: Are you asking Senator Goodman to continue to yield?

SENATOR WALDON: Yes, I am, Mr. President.

SENATOR GOODMAN: I will gladly yield to you, Senator, since it's well known to me that you are far from a contentious personality.

SENATOR WALDON: I thank you for that kind assessment, Senator Goodman, but I have information which tells me that the number is not four but that the Governor's early release

program has resulted in 1,218 felons being released from prison for deportation, including a number of major drug dealers whose release was opposed by the district attorneys who convicted them. Furthermore, my information says -

SENATOR GOODMAN: Will you suffer an interruption briefly?

SENATOR WALDON: Absolutely, Senator.

SENATOR GOODMAN: I believe there's a misunderstanding. For just a moment, I would like to clarify. I read you that same number and indicated that that was the number, but I thought your question related to those who have returned to the country after being released.

SENATOR WALDON: No, no. I said so-called drug kingpins.

SENATOR GOODMAN: Oh, I beg your pardon.

SENATOR WALDON: A major drug dealer, in my estimation, if I may continue, Mr. President, is a kingpin.

SENATOR GOODMAN: As I've said to you earlier, 1218 is the correct number, which I

believe I presented to you before you raised it and pointed out and thinking that you were inquiring about those returning to the country, that that number was four.

SENATOR WALDON: Okay. If I may continue, Mr. President. Will the gentlemen continue to yield?

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

SENATOR GOODMAN: Yes. You have my full attention, Senator.

SENATOR WALDON: Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Thank you, Senator Goodman.

Senator Goodman, I'm further advised that of these 1218, more than 650 of them had been convicted of serious drug offenses and that four have already been rearrested in New York City. Is your information similar to that?

SENATOR GOODMAN: Yes. And you are using the word "serious". You're not

referring to violent offenses. You are referring to A-1 or A-2 offenses.

SENATOR WALDON: Correct, sir.

SENATOR GOODMAN: And if I may just be clear for the members of the chamber's fuller understanding, what we mean by A-1 and A-2 are offenses which involve specified weights of various restricted substances along the felony lines.

An A-1 drug felon, for example, is considered an A-1 felon if he is involved in the criminal sale of two ounces or more of narcotic drugs.

An A-2 felon is similarly viewed if he is involved in a half to two ounces of market drugs and there are a number of other things such as Methadone -- Methadone and other types of specified hallucinogens, stimulants and other substances, LSD, for example, included.

So "serious" is a matter of -- in the eyes of the beholder. I regard A-1 and A-2 as being serious. I think that may be your point.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Thank you. That was -- may I continue, Mr. President? That was my point, Senator.

May I continue, if the gentleman would continue -

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

SENATOR GOODMAN: Yes, I will.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Senator Goodman, in your preparation for the debate today, can you share with us the number of people who were released, these so-called serious drug offenders who were released over the objections of the specific or particular district attorney who had been responsible for convicting them?

SENATOR GOODMAN: I have no such information available to me at this time, Senator.

SENATOR WALDON: Would the gentleman continue to yield, Mr. President?

SENATOR GOODMAN: May I just say I'm happy to yield ad seriatim as many times as the Senator would like until 6:00 o'clock

tonight.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Thank you, Senator.

Senator, have you or to your knowledge has the Governor conducted any hearings regarding this proposal that you're submitting for our consideration or the facts which were the genesis, the circumstances which were the genesis of this proposal?

SENATOR GOODMAN: No, but it may well be that he was privy to the annals of the Senate Investigations Committee which, as I said earlier, did examine this matter and received some very cogent testimony from Judge Crocker Snyder and other experts in the field.

SENATOR WALDON: If I may continue, Mr. President.

Senator, why did we wait until the spring of '98 to deal with this issue -- when you characterized it earlier in our meandering back through time as originating about 1995 or 1996, why did we wait until today to deal with this issue?

SENATOR GOODMAN: Now, Senator, I regard myself as a friend and warm supporter of the Governor's, but I cannot make any claim to having access to the processes and the inner workings in his mind, and so I'm not able to answer that.

SENATOR WALDON: May I continue, Mr. President?

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: Senator, I appreciate your patience and I won't belabor this point much longer, this discussion, this colloquy, if you will, but in your estimation, does any of this have anything to do with certain drug kingpins who were released to go back to Israel or who may have been alleged to have used influence on the administration to obtain their release? I believe I have their names somewhere, but are you aware of that?

SENATOR GOODMAN: Senator, may I in the most serious vein say that I have no such information and I would be very, very grateful to you if you would not, unless you are prepared to advance specific evidence to that effect, even

advert to it because, in my opinion, that was a smear directed at the Governor without any substance of any kind whatsoever, and I think it would be most beneath the dignity of this chamber to indulge in such speculation.

SENATOR WALDON: Mr. President, I thank the Senator and I would like to speak on the bill.

ACTING PRESIDENT KUHL: Senator Waldon on the bill.

SENATOR WALDON: Senator Goodman, I respectfully accept your advice regarding a potential smear in terms that one should never make accusations, though protected by this chamber or elsewhere against one of our elected officials. That was not the purpose, but there was a news report which indicated that a number of people -- to my knowledge, a news report. I have it right here in front of me -- were released and it was alleged that someone had prevailed upon governmental officials to facility that.

If that is not true, I am the first to acknowledge. If someone can show me that it had no bearing in truth or fact, I would

be the first to say I'm glad that such is the case. However, it was an allegation and I shared it with you for purposes of our discussion.

I am not going to vote against this bill. I think any time that we are dealing with people who are predators, whether it be in terms of a violent act of a physical nature, attacking someone's body or their life, I think those are very bad people.

I think equally bad are people who sell death to our children and those who are the purveyors of cocaine, "crack" cocaine, heroin and a whole host of other drugs are such predators.

However, I sincerely hope that in our addressing this issue today, we will remember that there's a whole group of other people who are incarcerated as a result of the Rockefeller Drug Law and that they are doing hard time and that those people who were arrested under the Rockefeller Drug Law, to my knowledge, from the information I received over the years, did not have the kind of inclination as these we are talking about today in terms of the weight -- and I'm talking about the weight of the drugs -- or the intensity of the violence that was attached

to their drug trafficking.

I think if we're going to address this issue and make sure that these persons who are predators of drugs are taken care of in this manner, we should also be responsible enough to address the fact that those incarcerated still under the Rockefeller Drug Law, in my opinion, are being overly punished and held far too long.

If we need space in our prison, it seems to me that we ought to do the right thing and we ought to retrofit those laws because if we were to do so, those people who have served far beyond what would be an acceptable, in my opinion, penalty for the crime committed would leave tomorrow from the prisons and we would have all the space that we need for those who are the violent predators that you're speaking to in what you proposed to us today, Senator Goodman.

I will support your measure. I sincerely hope that someone in this chamber will hear with a sensitive ear what I have shared with the Rockefeller Drug Law.

And I thank you and I thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator

Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

Will Senator Goodman yield to a couple of questions?

SENATOR GOODMAN: I will, Senator.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Senator, I - the first thing I want to make sure I understand is this is part of the Sentencing Reform Act of 1995, is that correct?

SENATOR GOODMAN: That's correct.

SENATOR DOLLINGER: Do you know how long the Senate deliberated on that bill back in 1995?

SENATOR GOODMAN: I -- I can tell you the date on which it was adopted. It was in April on that year, and I believe it was on the -- I'll tell you in just a moment exactly when it is, not that it's relevant to your question, but it happened to have been on April the 6th of that year, I believe. It was not a multiple of days. Therefore, I can only assume that the deliberations confined themselves to one working

day.

SENATOR DOLLINGER: In fact, that was the first day the bill had been printed. Actually it was the 2nd of June -

SENATOR GOODMAN: Excuse me. It was on June -- may I correct myself. I see that it was on June 10th, 1995. The reference to April refers to another matter, and I apologize.

SENATOR DOLLINGER: Is June 10th, Senator Goodman, the day that the bill was actually signed by Governor Pataki?

SENATOR GOODMAN: It was the date that it was enacted.

SENATOR DOLLINGER: So it was actually -- that was the date it was actually signed and enacted into law with his signature.

SENATOR GOODMAN: Yes. That's my understanding.

SENATOR DOLLINGER: Do you know what day it was introduced in the Senate?

SENATOR GOODMAN: I do not.

SENATOR DOLLINGER: Do you know what day it passed the Senate?

SENATOR GOODMAN: I do not.

SENATOR DOLLINGER: Okay. Just

for the record, Senator -- and this relates - I'll tie this back in a second. This bill was introduced on June 2nd and it was referred to the Finance Committee on June 2nd. It was reported and committed to the Rules Committee on June 2nd. It was ordered to third reading on the calendar on June 2nd. It was given a message of necessity on June 2nd and it passed the Senate on June 2nd. We deliberated for all of, oh, what, 20 minutes, 15 minutes, 10 minutes? Pick a time that on June 2nd that we actually sat down and worked on this bill.

The reason why I ask that question, Senator Goodman, is would you describe this bill as a mistake, this provision as a mistake?

SENATOR GOODMAN: Would I describe the provision that relates to the A-1 and A-2 felons as a mistake?

SENATOR DOLLINGER: That allows the deportation of felons who are convicted of drug offenses, would you describe that as a mistake?

SENATOR GOODMAN: I think the best testimony on that comes from the Governor's own

drug enforcement top official who, if I may quote her, described it in the following terms. It was described in an article on April 10th, 1998 in the New York Times as having reservations about the program.

SENATOR DOLLINGER: Okay.

SENATOR GOODMAN: And that she suggested that its rules were too lax and, as I've explained to you, the Senate's ever watchful watch dog committee, the Senate Investigations Committee, held a hearing in which it received testimony that was eloquent in indicating that the A-1 and A-2 felons were being recycled back into our society after leaving the country on a theory that presumably opened up more prison space but, in fact, caused the return of these people on a premature and dangerous basis.

SENATOR DOLLINGER: Right. In fact -- again through you, Mr. President. In fact, you said earlier in response to Senator Waldon's questions that four felons who had been deported had come back to the United States and had been rearrested, isn't that correct?

SENATOR GOODMAN: I think I understand the direction in which you're heading,

Senator, and I don't know how long you propose to attenuate the woodshed that you're attempting to take certain officials on the second floor into, but I suppose you cough it up quickly. Let's have it out and we don't have to use -

SENATOR DOLLINGER: I'll put it right out on the table. Wasn't this a mistake, Senator Goodman, to allow convicted felons, who happened to be foreign nationals, to go to prison for a minimal amount of time and then get deported back to their own country only so that they could come back and prey on our streets again? Wouldn't you classify that as not only a mistake but a colossal mistake?

SENATOR GOODMAN: If we were all gifted with a crystal ball into which we could gaze and perceive the consequences of all our actions, what a better world this would be, Senator.

The fact is that this was conceived with a very admirable purpose which was to make room for the more serious felons in our society to be incarcerated by releasing those perceived to be less serious felons. In doing that, it was designated that those who had not

been involved in violent drug offenses but less serious felons, but with the gift of 20/20 hindsight, it was perceived by various people whom I've quoted this afternoon as having been something which should not have been allowed to happen and, therefore, the Governor himself has strongly recommended in this program bill the sealing up of this error so that people could not return to society. In my opinion, that represents enlightened leadership to acknowledge when a legislative program has had unintended consequences that it needs to be repaired and this is repair work if you choose to call it that.

SENATOR DOLLINGER: Mr. President, Senator Goodman is always eloquent to the point. He provides the justification that I'm sure the second floor would offer if that state Senator who sat across the way was sitting here today would have offered. I commend Senator Goodman for his eloquence in making that statement.

I'd just point out to everybody in the chamber that this is an idea that we tried. It has turned out, to my judgment, to be a colossal mistake, putting aside for a moment the

question of whether it can be manipulated by outside forces but that's not what's at issue here, but the notion that somehow we create a two-tiered system of justice -- we get an American who lives in New York State arrested with 12 pounds of cocaine and we get a foreign national arrested with 12 pounds of cocaine and we want to be tough on crime. We're real tough on our own and we're real lenient on our imported friends.

So what we've done is we've basically put a sign out on the marketplace that says, if you want to do a little time for drug dealing, come to New York State and commit a serious drug offense and what we'll do is we'll simply give you a plane ticket back to your homeland. We won't punish you as severely as we punish our own.

The reason, Senator Goodman, why I mentioned the reference to how long we deliberated on this bill is that, yes, indeed, I voted for this bill. We never considered the issue of the deportation of felons. We never considered it in detail.

As long as we continue to do

complicated bills like the Sentencing Reform Act of 1995 and we did it without public hearings in 1995 -- which is what we should have done back then, if we had looked at this issue in greater detail at the time, we might have had a different result and we might have spared ourselves the newspaper headlines that somehow suggest anybody's letting drug kingpins out.

I agree with this bill, Senator Goodman. I'm going to vote for it, but the notion that we've ever seen a headline in this state that says we're letting the worst of the worst, the real merchants, the guys who are making the big money, that we're letting them go back to their land of origin, touch base there and then take a plane ticket back and re-enter this country illegally so they can make a fortune while driving our children to drugs and our costs for drug treatment to the ceiling, that just doesn't make good public policy.

I wish we had looked at this in greater detail back then. I'll leave to another day the issue of who may be responsible for that, but I'm going to support this bill. I think it's the right thing to do.

I would only close the loop hole completely, Senator. I would simply say that we put out a message in the international marketplace that is as follows: Whether you're charged with an A-1 offense, an A-2 offense or any offense, we will treat you in New York the same way we treat our own. If we harshly punish our own who deal in drugs, we'll treat you no matter whether you come from Korea, Israel, Nigeria, any place on the planet, we're going to treat you the same way we treat our own. That would be tough on crime for everyone and it would put real teeth into the notion that you can't come to New York State and deal drugs.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to

read the -- Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I would like unanimous consent to be recorded in the negative on Calendar Number 413.

ACTING PRESIDENT KUHL: Without objection.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT KUHL: Hearing no objection, Senator Montgomery will be recorded in the negative on Calendar Number 413.

The Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 675, by Senator Marcellino, Senate Print 2248, an act to amend the Executive Law, in relation to prohibiting parole.

SENATOR PATERSON: Explanation.

SENATOR WALDON: Explanation, please.

ACTING PRESIDENT KUHL: Senator Marcellino, an explanation has been asked by two Senators, Senator -- excuse me -- Senator Paterson, also Senator Waldon, on Calendar Number 675.

SENATOR MARCELLINO: Thank you,

Mr. President.

I'm honored to rise on the birthday of my colleague, Senator Balboni, and to give an explanation of this very important bill.

Quite succinctly, this bill seeks to amend the Penal Law to prohibit parole for inmates convicted of -- or those persons convicted of homicide or sexual offenses.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

Would the gentleman yield to a question or two?

ACTING PRESIDENT KUHL: Senator Marcellino, do you yield?

SENATOR MARCELLINO: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR WALDON: Senator Marcellino, is there ever a time under your proposal where extenuating circumstances or an extenuating circumstance would allow a variance from no parole ever, ever to the possibility of

parole at the discretion of the parole commission, or is it never, never?

SENATOR MARCELLINO: Mr. President, through you. It's my belief that people who are convicted of violent crimes as defined by the Penal Law in this case, which would include criminally negligent homicide, vehicular manslaughter first and second degrees, manslaughter first and second degrees, murder first and second degrees, abortion first and second degrees, self-abortion first and second degrees; in the sexual offenses, sexual misconduct, rape first, second and third degrees, consensual sodomy, sodomy first, second and third degrees and sexual abuse first, second and third degree, aggravated sexual abuse first and second degree and, of course, sexual conduct against a child first and second degree and the answer is never, never, never. Leave them there.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Would the gentleman yield to another question?

SENATOR MARCELLINO: Yes, sir.

ACTING PRESIDENT KUHL: The

Senator continues to yield.

SENATOR WALDON: Senator Marcellino, under Jenna's Law, proposal -- it's not law yet, so I apologize for that mischaracterization. Under the proposal in regard to Jenna's Law, the Governor feels that we could allow people to be on parole after they've served their six-sevenths of the time allocated that they must serve under that law. That's a very specific bill, a very important bill. We will consider it in the not too distant future, I hope. It is one which will address a whole host of issues which require addressing.

Under that bill proposed -- I should say bill -- we will have parole. That doesn't cause any sobering thought for yourself in regard to the proposal that you're bringing before us today?

SENATOR MARCELLINO: No. I think Governor Pataki has been a fine Governor, has led this state well. Hopefully will be re-elected come this November and we will all join him in that re-election and we'll support him as usual.

In this case, this bill stands on its own merits, and I believe that for the crimes

defined in the law as this bill mentions, that those who are involved in this kind of crime do not deserve parole. They should, in fact, serve their full sentence. They are the most repetitive type of criminal. They are the ones who keep coming back and repeat and repeat and re-repeat, in other words, recidivists of the highest order. Our society has been too long - too long at risk with these predators. They do not belong on our streets. They have proven themselves many times to be the kind of people, the kind of individuals who don't deserve parole. They deserve to be put away and to serve their time.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Let me thank Senator Marcellino and let me apologize -- and on the bill, Mr. President.

Thank you, Senator.

ACTING PRESIDENT KUHL: Senator Waldon on the will.

SENATOR WALDON: I made a misstatement. It's post-release supervision

under Jenna's Law and not parole. So I apologize for that, but the gist of what I was attempting to get out was the same.

Senator Marcellino, I'm sure that you really believe what you propose here today. I have not the slightest doubt that you totally support this concept and that this is something which you are very certain about in terms of its importance and the philosophy of it, but I must respectfully disagree with you.

I do not believe there is any proposal that we should make or any human experience that is always forever, never, ever an opportunity for a deviation from that proposal.

I think that when someone has committed even the violent crimes that you've talked about, somewhere in the universe in the future, someone will have a mitigating circumstance or a reason for the judge and the jury to look at that person differently than all the others who precede before them under similar circumstances, and I just think we have to leave a safety valve for that person, for that situation to be treated differently, and for that reason I cannot support your proposal.

I encourage my colleagues to consider that and to think that there is an exception to every rule and would join me in voting no on this issue.

Thank you very much, Mr. President. Thank you, Senator Marcellino.

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

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, if the sponsor would yield for a question.

ACTING PRESIDENT KUHL: Senator Marcellino, do you yield to a question from Senator Paterson?

SENATOR MARCELLINO: Yes, Mr. President. I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Thank you, Senator Marcellino.

Senator, how does this bill differ, if it does, from Jenna's Law that we passed?

SENATOR MARCELLINO: Senator, I

quite frankly could not give you that answer in detail. I do not have the expertise to do that.

SENATOR PATERSON: Thank you, Mr. President.

If the sponsor would yield. The reason I'm asking the question is I'm just a little concerned that I don't see in this -- in this particular bill any provision for supervision or any interaction between the released inmate and any kind of authority after the time that the sentence has elapsed, and so while we might make sentences longer for felonies and obviously rather heinous crimes, I'm wondering if Senator Marcellino would comment on what should be the relationship after the sentence is served even if the sentence is longer? Should there be any interaction with any kind of authority?

SENATOR MARCELLINO: Mr. President, through you, it is not my understanding that this bill extends a specific sentence. It simply says that if you are convicted of a -- one of the violent crimes listed in the bill, that you are not able to get parole. You will not be granted parole. It

doesn't, in effect, lengthen the period of time you are sentenced. I understand the sentences in some cases allow for parole after a period of time, but the sentence has a finite limit to it, in which that case that person who's convicted of murder in the first degree, that is, premeditated murder, will serve whatever time frame is given to them without the possibility of parole. I have no problem with that, Senator. I have absolutely no problem with that.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I understand what the prescription of the sentence is and that the individual that was sentenced would serve the full length of the sentence. I understand that the bill does that, but there are really two applications of parole.

One is to allow for a shortened sentence, and I think in the discussion between Senator Waldon and Senator Marcellino, Senator Marcellino made very clear why he wants the sentence served. I don't agree with it, but what I'm relaying here is the other, the kind of part of the bifurcated parole system which is in some

way to recognize that just because someone has served the length of their sentence, it does not mean necessarily that they are rehabilitated and, therefore, the state through the parole system eschews the states really maintains the option of making the individual who's out on parole respond with parole officers or counseling or some kind of interaction with some authority to get an idea as to what this individual may be doing when they get out. These prisoners serve long sentences. They are sometimes estranged from their families. They don't have any roots in the community. They can't exactly just get out and walk right into a meaningful job and so in those cases where there is recidivism, what the parole system has traditionally accomplished is to in a sense sound an alarm to law enforcement that this individual may well be back at whatever activity got them in prison in the first place or some other anti-social activity.

So my question to Senator Marcellino is, does this bill prescribe any supervision at the end of the sentence that's served?

SENATOR MARCELLINO: I don't

believe in prescribes any supervision at the end of the sentence, nor does it deny them any supervision at the end of the sentence, to my knowledge.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

On the bill.

ACTING PRESIDENT KUHL: Senator Paterson on the bill.

SENATOR PATERSON: Based on Senator Marcellino's answer, I really have a strong difficulty voting for this bill and interestingly enough it is on the issue of that second situation where what the parole system really was originally designed to do was to make the sentence that is actually issued longer than the time that would generally be served. In other words, the prescribed sentence would actually be longer than the time we want the person to be incarcerated as a society so that as a society by giving back some of that time we now maintain the option of supervision over the released person.

Now, this piece of legislation may not necessarily deny supervision at the end of the sentence but once you come to the end of the sentence, whatever length it is, that's the end of the sentence. That's the end of the time period that society can maintain some kind of dominion over the activities of the inmate but now that that time is served, that inmate is free to go out and who knows where they are.

So what I'm just saying is if you really take a good look at what the sentencing guidelines are and what the sentencing system was designed to do, the way to perhaps maintain individuals for a longer period of time if we feel that their crimes are that serious is to just lengthen the sentence.

As long as we are letting the individual out at the end of the sentence without supervision, I would suspect that we may be making the kind of mistake that we made on June 2nd, 1995, what Senator Dollinger referred to when the Senate voted to pass the Governor's - the Governor's Sentencing Reform Act which really allowed individuals, while we remove them from a certain area, we really put them in the position

to be unsupervised, in many respects unguided.

And so what I think is happening here is at the end of the sentence, we're going to look at a situation where people just walk out of prison and presumably not out to any meaningful activity but right back out onto the streets.

What I would have -- would recommend is that we still maintain some margin, even if Senator Marcellino would like to shorten that margin, some margin where the state does not eschew its opportunity to maintain some control in these types of situations or we may be right back here in a couple of years unfortunately looking at the situations where those who didn't have any kind of meaningful exit or exit relationship with a parole authority may have gone right back out and committed the same crimes for which they were in prison in the first place.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. Just briefly on the bill.

ACTING PRESIDENT KUHL: Senator Montgomery on the bill.

SENATOR MONTGOMERY: I want to remind my colleagues that we have a situation here that is specifically related to women in prison and it is that many of those women who are incarcerated for serious crimes, even murder, have committed that -- even though it's a most heinous crime and we certainly cannot agree with it, most of them have committed that crime in relationship to a very long and extensive experience with domestic violence and it is very often their response as a means of protecting themselves or in the least resolving a situation that they have found untenable.

So these are crimes of passion, certainly. Many of them are serving very long sentences and certainly it is never anticipated that they will commit a crime like that again. So that what we have is -- with this legislation, we would, in fact, be making it absolutely impossible for there to be any kind of mediated time spent in prison based on an opportunity for parole.

So I am going to oppose this concept because I think it would -- particularly and specifically in the instance where women are

involved and we now have -- women make up the fastest growing new inmate population in our state and in the nation and we also know that domestic violence has become a very major problem as it relates to the murder of women but certainly as it also relates to the reason why many women find themselves in prison and this does not give us any opportunity to work with those women, to provide an opportunity for us to have them released early. Many of them will never see their children grow up. When they come out, their children will be adults, if they go in when the children are young and there's no way - there's no way to mitigate that -- that kind of sentence.

So, Senator Marcellino, I understand what you -- what your intentions are, but I feel that I absolutely must stand up for the possibility of the state having some mitigating action available to it as it relates to people who really will definitely not by any stretch of the imagination commit another crime and who can be rehabilitated and certainly we would want them to re-enter society perhaps without necessarily spending many, many years

without having the option of parole.

So I'm going to oppose the bill.

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

THE SECRETARY: Section 3. This act shall take effect on the first day of September.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 765 are Senators Leichter, Montgomery and Paterson. Ayes 57, nays -- also Senator Waldon. Ayes 56, nays 4.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Santiago, why do you rise?

SENATOR SANTIAGO: I request unanimous consent to be recorded in the negative on Calendar Number 815, please.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Santiago

will be recorded in the negative on Calendar Number 815.

The Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 679, by Senator Nozzolio, Senate Print 5182, an act to repeal Subdivision 9 of Section 500 (b) of the Correction Law.

ACTING PRESIDENT KUHL: Senator Nozzolio, an explanation of Calendar Number 679 has been requested by Senator Waldon.

SENATOR NOZZOLIO: Thank you, Mr. President.

This measure repeals the requirement that local correctional facilities submit duplicative and unnecessary reports regarding the housing of prisoners every four months to the state Commission of Corrections.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Would the gentleman yield to a question or two?

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

SENATOR NOZZOLIO: Yes, Mr.

President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR WALDON: Senator -- thank you, Mr. President.

Senator, I'm just trying to make sure I'm on the same page as you on this. The reports that we're talking about in this proposal that will no longer be required, they don't speak to incidents, correct? They're just talking to the number of prisoners in a facility which is an automatic situation done by computers?

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

SENATOR WALDON: So the quarterly reports -- if I may continue, Mr. President. Is it true then that the quarterly reports would just be a more comprehensive assimilation of the material that's been received in the previous four months?

SENATOR NOZZOLIO: For example -

SENATOR WALDON: Or three months.

SENATOR NOZZOLIO: Mr. President, to answer Senator Waldon's question, local correctional facilities currently report

population to the Commission, as Senator Waldon said, on a daily basis and then the Commission's daily population system -- population reporting system is on-line with all facilities, so that - and then incidents are reported to the Commission within 24 hours. So it's not just as Senator Waldon asked, daily population figures but also incident reports. It must be filed within a 24-hour period. That's the type of information that's there. To establish another quarterly report is just duplicative of that information that's already on-line.

SENATOR WALDON: All right. Thank you, Mr. President. Thank you, Senator.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives. Announce the results.

THE SECRETARY: Ayes 59, nays 1. Senator Montgomery recorded in the -- also

Senator Leichter. Ayes 58, nays 2.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Fuschillo, that completes the reading of the controversial calendar.

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

ACTING PRESIDENT KUHL: Yes, there is. We'll return to the order of motions and resolutions.

The Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

Would you please place a sponsor's star on my bill, S.3755-A, Calendar Number 501 and also, Mr. President, on behalf of Senator Saland, I wish to call up his bill, 5961, which was recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 390, by Senator Saland, Senate Print 5961, an act to authorize the payment.

SENATOR FARLEY: I now move to reconsider the vote by which this passed.

ACTING PRESIDENT KUHL: The motion is to reconsider the vote by which the bill pass the house.

The Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 60.

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: I now offer the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Farley.

SENATOR FARLEY: On behalf of Senator Skelos, I wish to offer the following amendments on page 24, Calendar 568, to Senate Print 4115, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 568 are received and adopted. The bill will retain its place on

the Third Reading Calendar.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, the Chair recognizes Senator Volker.

ACTING PRESIDENT KUHL: Senator Volker.

SENATOR VOLKER: Mr. President, tomorrow morning at 8:00 o'clock the annual legislative memorial service for deceased members of the Legislature of both the Senate and the Assembly will be held at the usual place at St. Mary's Church and afterwards we will have the usual breakfast at the Albany Room. Since we had two deceased members of this body in the last year who were active members, we have also, in fact, asked members of the family if they so desire to be here and we expect at least one of the members of the family to be here. I just wanted to tell everybody that. So 8:00 o'clock tomorrow at St. Mary's. We're going to have the same services we've had in the past, the interfaith service. So we would like to have as many members there as possible.

Thank you.

ACTING PRESIDENT KUHL: Thank you

for that announcement, Senator Volker.

Senator Fuschillo, did you wish the Chair to make the announcement?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT KUHL: Okay. For the benefit of the members, this is a momentous day in all of our lives because one of our members, one of the new members to the chamber, Senator Michael Balboni, is celebrating his 39th birthday and, Senator, we welcome you. Once again, we congratulate you on your birthday and we are most pleased that you took this occasion to invite your lovely wife Stephanie to the chamber.

So welcome Stephanie and happy birthday, Senator. (Applause)

Senator Fuschillo.

SENATOR FUSCHILLO: There being no further business, I move we adjourn until Wednesday, May 13th, at 11:00 a.m.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Wednesday, May 13th, at 11:00 a.m.

(Whereupon, at 5:00 p.m., the Senate adjourned.)