ALBANY, NEW YORK

May 18, 1998

3:15 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: Would all please rise and join with me in the Pledge of Allegiance.

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

May we bow our heads in a moment of silence.

(A moment of silence was observed.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Sunday, May 17th. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Saturday, May 16th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Gold. Yes, Senator Gold.

SENATOR GOLD: If I may, Madam President, just a brief interruption. For years I had the great honor and distinction of having as my Assemblyman, one of the brightest people who's ever served in this Legislature, and he was also bright enough to know when to get out and when he did get out, the people of the city of New York were bright enough to elect him as their comptroller, and I gather that he's up here today with a group pushing some very important legislation dealing with the labor issues, and if you could welcome the very, very distinguished comptroller of the city of New York, Alan Hevesi.

THE PRESIDENT: Welcome, Alan Hevesi.

(Applause)

Senator Kuhl.

SENATOR KUHL: Yes, Madam

President. I move the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause. Those are Senate Prints 1453 and 3952.

THE PRESIDENT: So ordered. The enacting clause will be struck.

Senator Skelos.

SENATOR SKELOS: Madam President, are there substitutions to be made?

THE PRESIDENT: Yes.

SENATOR SKELOS: Please make the substitutions.

THE PRESIDENT: So ordered. Secretary will read.

THE SECRETARY: On page 40, Senator Cook moves to discharge from the Committee on Education Assembly Bill Number 4442-D, and substitute it for the identical Third Reading Calendar 389.

On page 45, Senator Trunzo moves to discharge from the Committee on Civil Service and Pensions Assembly Bill Number 7624-A, and substitute it for the identical Third Reading Calendar 516.

On page 58, Senator Seward moves to discharge from the Committee on Cities, Assembly Bill Number 10,677, and substitute it for the identical Third Reading Calendar 746.

On page 6, Senator Lack moves to discharge from the Committee on Judiciary Assembly Bill Number 8175, and substitute it for the identical Third -- First Report Calendar 1139; and on page 6 Senator Velella moves to discharge from the Committee on Judiciary Assembly Bill Number 1816-A, and substitute it for the identical First Report Calendar 1142.

THE PRESIDENT: Substitutions are ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, with the consent of the Minority, I move that Calendar Number 1100, Senate 2869, by Senator Johnson, which is advancing to third reading today, have its third reading.

THE PRESIDENT: Secretary will read. So ordered.

THE SECRETARY: Are we going to

non-controversial?

THE PRESIDENT: Senator Skelos?

SENATOR SKELOS: If you could take up the non-controversial calendar, please.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 3, by Senator Libous, Senate Print 3886, an act to amend the Mental Hygiene Law, in relation to approved mobile crisis outreach teams.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 6, by Senator Larkin, Senate Print 459-A, an

act to amend the General Municipal Law, the State Finance Law and the Municipal Home Rule Law.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 5. This act shall take effect on the 120th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 18, by Senator Saland, Senate Print 1143-A, an act to amend the Penal Law, in relation to including the intentional preventing of hospital emergency department personnel.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 59, by Senator Wright, Senate Print 1659-A, an act to amend the Vehicle and Traffic Law, in relation to creating the crime of aggravated driving while intoxicated.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 9. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 271, by Senator Larkin, Senate Print 2012-A, an act to amend the Real Property Tax Law, in relation to subjecting certain state lands.

THE PRESIDENT: Read the last

section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 272, by Senator Wright, Senate Print 2167-A, an act to amend the Real Property Tax Law, in relation to subjecting lands.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 330, by Senator Johnson, Senate Print 737-A,

an act to amend the Public Health Law.

SENATOR PATERSON: Lay aside, please.

THE PRESIDENT: Lay it aside.

THE SECRETARY: Calendar Number 470, by Senator Volker.

SENATOR GOLD: Lay it aside.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Lay it aside.

THE SECRETARY: Calendar Number 500, by Senator Kuhl, Senate Print 6332-A, an act to amend the Agriculture and Markets Law, in relation to penalties.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

559, by Senator Rath, Senate Print 6421, an act to amend the General Municipal Law, in relation to issuance of building permits.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 180 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 633, by Senator Cook, Senate Print 6276-A.

SENATOR BRUNO: Lay aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 649, by Senator Goodman, Senate Print 4843, an act to amend the Penal Law, in relation to gambling offenses.

ACTING PRESIDENT MEIER: Read

the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 652, by Senator Skelos, Senate Print 6415, an act to amend the Civil Practice Law and Rules, in relation to the inadmissibility of settlement negotiations.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 657, by Senator LaValle, Senate Print 5935-A, an act to amend the General Business Law, in relation to senior citizen discounts.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 120 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 661, by member of the Assembly Harenberg, Assembly Print 2587, an act to amend the Executive Law, in relation to creating.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 662, by Senator Holland, Senate Print 2068-A, an act to amend the Tax Law, in relation to providing for business tax credits.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 676, by Senator Nozzolio, Senate Print 4219, an act to amend the Correction Law, in

relation to extending civil immunity to officers.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 693, by Senator Meier, Senate Print 6064, an act to amend the Education Law, in relation to compensation paid.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 703, by Senator Lack, Senate Print 6418, an act to amend the Judiciary Law, in relation to appeals from Appellate Division orders.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 704, by Senator Lack, Senate Print 6419, an act to amend the Family Court Act, in relation to filing.

ACTING PRESIDENT MEIER: Have some order in the house, please. Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 734, by Senator Alesi, Senate Print 3989, an act to amend the Vehicle and Traffic Law, in relation to extending the time of license.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 771, by Senator Stafford, Senate Print 6855, an act in relation to the lease or rental of certain land in Warren County.

ACTING PRESIDENT MEIER: There's a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Senator Hannon moves to discharge from the Committee on Health Assembly Bill Number 10,399 and substitute it for the identical Third Reading Calendar 775.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number

775, by member of the Assembly Gottfried, Assembly Print 10,399, an act to amend Chapter 314 of the Laws of 1984.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 777, by Senator Seward, Senate Print 6902, an act to amend Chapter 725 of the Laws of 1989, amending the Public Health Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Senator DeFrancisco moves to discharge from the Committee on Health Assembly Bill Number 10,148 and substitute it for the identical Third Reading Calendar 779.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 779, by member of the Assembly Christensen, Assembly Print 10,148, an act to amend the Public Health Law, in relation to the provision of services.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 840, by Senator Present, Senate Print 6173, an act to amend the Criminal Procedure Law, in relation to authorizing electronic court appearances.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1100, by Senator Johnson, Senate Print 2869, advanced earlier today, an act to amend the Public Authorities Law, in relation to authorizing the Thruway Authority.

ACTING PRESIDENT MEIER: Read

the last section.

THE SECRETARY: Section 2.

This act shall take effect in 180 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno, that concludes the reading of the non-controversial calendar.

SENATOR BRUNO: Thank you, Mr. President.

Mr. President, can we at this time take up the controversial calendar starting with Calendar Number 470.

ACTING PRESIDENT MEIER: The Secretary will read the controversial calendar beginning with Calendar Number 470.

THE SECRETARY: Calendar Number 470, by Senator Volker, Senate Print 6604, an act to amend the Penal Law, the Executive Law, the Criminal Procedure Law, in relation to

eliminating parole.

SENATOR GOLD: Explanation.

ACTING PRESIDENT MEIER: Senator Bruno, an explanation has been requested of Calendar 470.

SENATOR BRUNO: Thank you, Mr. President.

Senator Volker, as the sponsor, will go into some detail on explaining this bill that's before us, with his colleague, Senator DeFrancisco, as co-sponsor, and I believe some others will want to speak.

I would like to speak for just a few moments on this bill which is known as "Jenna's Law" and we're hopeful that this will become Jenna's Law.

Jenna Greishaber was a lady 22 years old and was killed almost six months ago, November 6th, in Albany, New York. She was a student at Russell Sage. What we're doing here today, hopefully, will be the first passage in the Legislature for a bill that must become a law; but I'm standing because I want to commend and thank Jenna's parents who are here, Bruce and Janice up on my right in

the center, and I want to thank them for their courage, for their courageous efforts with their daughter Erica. They have a mission, and their mission is to help protect so many others who are out there in our society from being preyed upon by people who are out of prison on parole and released early, and their daughter was killed by a violent felon who was out on parole, and had he served a sentence as will be required in Jenna's Law, Jenna undoubtedly would be alive today.

So to Janice and to Bruce, to your family, we just want to say thank you. As a father, as a grandfather, we can relate to the heartache but unless you've experienced such a tragedy, it would be hard to really be totally aware. But I know one thing, that it's got to be difficult every time Jenna's name is mentioned and every time that you step out throughout the state and throughout this country with your efforts to make our lives safer for our children and our grandchildren and for all of the people in society, we're indebted to you, and what will happen here this afternoon hopefully will happen in the

Assembly and, as we all know, the Governor has provided the leadership by sending us a program bill, and that's what is before us.

So again, my colleagues, I ask you to support this, and I know you will, and I ask that you join me in our gratitude and our thanks to Janice and Bruce and to their family for their valiant efforts and their courage in the face of such adversity that is out there before them in their lives every day.

Thank you.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: Mr. President. Thank you, Senator Bruno, and I know how strongly you feel about this issue, as I do. As I've said in the press conferences both with the Governor and with us very recently, I have a daughter who is going to turn 20 this week who is in college, and I guess you try not to personalize these issues in many ways because of the system that we have, but it's very difficult to not personalize, and those of us that know me do

know that I do have a tendency to personalize given my prior life.

I think probably the provisions of this bill, ironically, of the bills that we've had this year probably are better known than almost any bill that we have not done in a long time. I say that because there has been so much discussion already not only in the press, but I think at various times with legislators about the implications of the first felony offender status that I think that most of us are aware of at least the initial provisions of the bill, but let me just run through it very quickly, and I say that, because of some of the discussion that's come up lately on the Rockefeller drug laws, we did a -- my committee staff, committee, did a little rundown on the changes in laws, on sentencing laws over the last 20 years. There seems to be a rather strange deja vu around here on sentencing that many people have - forget about the enormous changes that have been made and in the last four years there have been -- three years and almost four years now, there have been enormous changes

certainly made under our Governor, George Pataki.

A historic bill was passed in this house and became law, second felony offender reform. There were all sorts of predictions of dire consequences, and the only dire consequences there have been that the crime rate in this state continues to nosedive, and that people are going to jail for longer periods of time, and we have a lot more people who committed violent felony offenses off our streets.

This bill deals with first violent felony offenders, not minor offenders. These are people who are listed in the Penal Law under the so-called VFO sections. These are people that commit serious crimes. Under the present law, there are minimum and maximum sentences that give a great deal more flexibility and allow the Parole Board to parole people at a much earlier time than the bill that is before us would allow.

Essentially, although it's been reported that this bill would say no parole,

that's not, obviously, accurate. What it is is using the so-called "truth in sentencing" provisions from Washington which are aimed primarily at second felony offenders. It would use the six-seventh test, that is six sevenths, or 83 percent, of the maximum of the sentence would have to be served, with the possibility of something we call "good time" which means that if you don't create problems and if you are an exemplary prisoner, you could in effect be paroled after that six-seventh time.

But what this bill does, even more than that, after that -- and these, by the way, are for B, C, D and E felons -- for B and C felons it provides a five-year period after the person is released from prison, what we call supervisory parole, and this is something fairly new to the system. There's a few states that have been getting into it, but New York I think is really ahead of the - ahead of the scale, for the most part, here in moving toward this. The Governor and his people are to be immensely commended. It provides for five years supervision; for those

that are D and E felons it provides for three-year supervision.

One other thing I think most people don't realize, for second felony offenders, because we have already passed upgrading for second-time VFOs, for second violent felony offenders, but we do not have supervision after that. In this bill is a provision which would provide for five-year supervision after the people that are second felony offenders are let out of jail, and finally in this area, another area that I don't think has got a lot of notice, for sex offenders, for serious sex offenders, this bill provides for lifetime supervision.

So this is a tough bill, no question. Remember, this deals with some of the toughest people in our society. In addition, this bill would provide for notification to all victims of violent crimes whenever an offender is scheduled to be released from prison. It's a more comprehensive notification provision than we've had in the past and basically it would say that the victims would have to be

notified.

Finally, let me say this bill would become effective on September 1st of 1998. There apparently has been some confusion about what it would apply to. It would apply only to crimes, because of the constitutional provisions. In fact, some of the people in this chamber may be aware that there was just recently, I think in the last week or two, a decision relating to resentencing because there has always been some question about whether you could pass a law, you know, after somebody committed a crime but prior to resentencing. There's always been some debate about that, if a person was resentenced later on, but the courts have been very clear that this would only apply to people who were convicted, whose crime was actually committed after September 1st of 1998 and could not be applied retroactively.

SENATOR GOLD: Madam President.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank

you, Madam President.

The reason I'm standing to speak on this particular bill is in view of the fact that the parents of Jenna are from my district, as was Jenna, the town of Camillus.

I first met Bruce Greishaber since he works in the same building that I do, where my law practice is, shortly after this very, very tragic event. He had come to me to see what we can do to try to solve these very serious problems where violent felons were out on the street and not in jail, and I informed him early on that we had been working on this issue for some time, where we -- Senator Volker had sponsored a bill that would have done this had there been some response from the other house, a couple of years ago. Unfortunately, it did not happen, and despite the fact that he was in a state of terrible grief, he came to start working on this particular bill from that day forward. This is a couple of weeks after the tragic death.

I contacted the Governor's office, who obviously, as was Senator Bruno when I contacted his office, was well aware of

this tragic event, it having happened right here in Albany, and they had already started working on a solution for the problem. The Governor made it a top priority by mentioning it in his State of the State message, not only mentioning it but getting the loudest applause when all the legislators were there hearing that this was a priority bill this year.

The Governor came out with this program bill which is this bill, and Senator Bruno quickly made it a priority of this house and we're here today to vote on it. It's an important bill. The crusade has been brought to us by both Bruce and Janice and their daughter Erica.

The reason that it should be passed is because it's the right thing to do. No doubt many of us will argue that there's too many people in jail. We should have alternatives to incarceration. We should have situations where we can reserve the jails, the overcrowded jails, for those who should be there and this house has stood repeatedly for the proposition that the violent criminals are those who should be there, and the fact that

work release has been stopped for violent criminals and the crime rate is going down in the state of New York, the fact that New York City rather than being the crime capital of the world, is now being visited by police commissioners from throughout the country to find out how did New York City do it, how is New York State doing it.

The answer is very simple: We have stopped violent felons with two violent felonies from getting out on parole. Now, it's time to go that next step. Had that next step been done a couple of years ago, who knows what would have been the fate of Jenna. Her parents definitely believe she'd still be here today.

So the message is very clear. We're here on a bill that has merit; it's the right thing to do, and we should do it and I would urge all of my colleagues from throughout the state to unanimously pass this bill and send it on to the Assembly for passage in that house because it's certain to be signed by the Governor.

Thank you.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Thank you, Madam President.

Could I ask Senator Volker to yield to a question, please?

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Certainly.

SENATOR GOLD: Senator, I just want to clarify one issue really for myself. I understand, Senator, there is a difference between talking about discretionary parole and conditional release, is that correct?

SENATOR VOLKER: Exactly.

SENATOR GOLD: Senator, in terms of this particular bill, my understanding is that this bill deals with the discretionary parole provision, is that correct?

SENATOR VOLKER: Well, it -- it -- the bill is crafted so that it deals not only with the potential for the six -- the one-seventh which is what is left after the sentence is served, as well as sets up a post-sentence supervision so that we are

talking about the one-seventh piece of it is discretion under -- obviously under the "good time" guidelines but after that you still have, for B and C felons obviously, five years, and three years for D and E felons, but from that perspective it's discretionary except that the time lines are set that the person must serve in effect on parole either five or three years depending on the seriousness of the crime.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Yes, if the gentleman would yield to one more question.

SENATOR VOLKER: Certainly.

SENATOR GOLD: Senator, I understand what you said, and I just want to clarify though. I understand the two-thirds and six-sevenths. We're not talking about that.

SENATOR VOLKER: Yeah.

SENATOR GOLD: There are two separate programs, as I understand it. One is discretionary parole, and the other program is a different program, it's called conditional release.

SENATOR VOLKER: Yes.

SENATOR GOLD: Now, my understanding is that the bill in front of us deals with the discretionary parole, but that the conditional release portions of the law remain in effect although it may not take effect on six-seventh.

SENATOR VOLKER: Yes, that's true.

SENATOR GOLD: All right. Thank you.

Madam President, on the bill.

Madam President, I listened to Senator Bruno and, unashamed, I will tell you that the man feels in his heart -- and I have to be moved by his comments, and I certainly appreciate Senator DeFrancisco and certainly my friend Senator Volker and the sincerity with which we deal with this issue, and certainly I think I'm no less emotional than anybody else in the room towards the feelings of two individuals and a family that comes here supporting legislation.

We're told that this is a solution to a specific problem by one of my

colleagues, and we talked about visiting the city of New York because it is now safer and I'll tell you as a very proud resident of the city of New York it is safer, but I'm not going to tell you that it's now O.K., that we only get 100, 200, however many murders a year, but that's O.K. because it's safer. I wouldn't like to be the parent, the brother, the child of anybody who is murdered in any situation, because it's the old story that if you're the victim of a crime, crime is a hundred percent, so I don't know whether that answers too much along those lines.

Everybody in this chamber, no matter how they're going to vote, is stunned and horrified, disgusted by what happened to Jenna. There's no doubt about it and that creates one of the problems that we have facing us today in this chamber, because as happens so often we legislate by slogan and while I make no bones about the fact that I have a great admiration for Jenna's parents because there are people who lose children in many different ways; not everyone can lift themselves up and be prepared to carry on any

particular fight.

But whether or not this bill is the answer or the solution, as has been said, is up to us and if, as in so many other areas, we were to pass a bill out of emotion and the problem remains, we really haven't done too much other than help the press corps for that particular day.

The questions that I asked Senator Volker were to make a simple point. It is my understanding, and if my facts are wrong I'd be glad to hear about it but I don't believe they are, it's my understanding that the alleged murderer in the Jenna case had applied for and was denied discretionary parole, denied discretionary parole, and it's my understanding that the individual was out on the street because he was granted by the Department of Corrections, not the Parole Board, but the Department of Corrections granted him conditional release.

That, by the way, happened during Governor Pataki's administration, and I point that out not to criticize the Governor but only to make the point that things happen,

and you can't point fingers. I think Governor Pataki is as sick about this case as anybody, but things happen during people's time on the watch.

But if my facts are accurate, Senator Volker, I don't understand how we say that passing this bill affects what happened to this lovely young lady, because the alleged murderer was not paroled, was not put out on the discretionary parole program that your bill deals with. It deals with a program which you are not touching and leaving there. The bill does increase the penalties, and that is fine. That is -- that is something which, in itself, may make the streets safer.

I was also concerned, Senator Volker, that I think in earlier versions or at least in earlier discussions there was no continued supervision, but to the credit of the Governor, we are continuing that supervision. The reason that I thought it was important to make these particular comments is I think that whenever we have a situation that is permeated with deep emotion, we've got to take a deep breath and just settle back and

see what the piece of paper says.

It is my understanding that, for example, in the issue of late-term abortion after all of the conversations we've had in this house that there may now be a new bill that corrects a lot of the complaints that many of us had with that bill and maybe something that I and other people can vote for because now we've got a real bill and these books in front of us are filled with pages of laws that have specific words in them.

I have great sympathy for this bill, and I am unashamed to tell you that I probably will vote for it although I'm going to listen to the debate. But, Senator Volker, I would just say to you in my experience on this floor, amendments don't happen. What happens is we have debates and if it gets really rough maybe it comes back and maybe amendments are made on some other days.

But I would just urge upon all my colleagues to understand that, while we are here today for Jenna's Law, as Senator Bruno said, the program that this bill is dealing with is not the program under which the

alleged murderer got out of prison, and so I don't see how you make that particular tie-in.

Perhaps the bill ought to cover both programs. Perhaps it should cover the discretionary release program which it does cover and maybe it also ought to cover the other program also.

I think it's a little of an unfair hit, if my facts are accurate, on the Parole Board that actually turned down the parole and blame them if the person got out on a different program where the Parole Board was not involved and the Department was involved.

So having said that, I hope we focus on what the bill in front of us says and if it does need some expansion, Senator Volker, I'd be glad to talk to you about that, but I'm just not convinced, although I -- I may be able to support the bill for what it does do, I'm not convinced that, if this bill were the law, it would have changed the facts in this case.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President. Let me just say, Senator Gold, you're wrong and I know what you're saying and I heard the Assembly's response and what the Assembly did was, and I understand, I mean we understand about conditional release except for one thing. Had this bill been law when Jenna's alleged killer had been sentenced and assuming that that person was sentenced under the normal provisions of this statute, he wouldn't even be out now. The issue of conditional release wouldn't even have been an issue. In other words, under the six-sevenths provision, that person would have been sentenced beyond 2000, I don't know, 2003, whatever it is, somewhere beyond 2000. That is really the issue.

What -- there is a question about whether he was released by parole or prison. Whoever he was released by doesn't matter, but had this bill been law it wouldn't have happened and that's the key to this whole issue.

THE PRESIDENT: Senator Gold.

SENATOR GOLD: Yeah, just very

briefly.

Senator Volker, as the downtown head of your fan club, I understand what you were saying and yes, on the six-seventh portion of this bill, there is no doubt about that. The only thing which I was a little concerned about is that, unfortunately for all of us in this chamber, the facts don't always determine what the press prints, and this case has been a hit on the Parole Board.

Now, I'm not here lobbying on behalf of the Parole Board, but if we're going to have a debate, at least let's understand that it wasn't the Parole Board in this particular case, as I understand it, that put the criminal out on the street. It was a different program, so yes, I agree with you on the six-sevenths and on the math, Senator Volker, and that's perhaps why -- one of the reasons why I can support the legislation.

But let's not get down on the parole provisions if that is not the reason why the individual was let out of jail.

THE PRESIDENT: Thank you. Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President.

I would request in a moment to ask Senator Volker a question or two, but before doing so, if I may be permitted, I'd like to preface my questions with some remarks.

I spent the past week end at a place called Green Acres in Dover Plains. The New York City Mission Society has a camp there. Some of you may know of it as Camp Minisink. I was with a group of people that I've gone on religious retreats with for 25 consecutive years, once in the spring and once in the fall. When we began, most of us were early parents, now we find ourselves as grandparents.

What we do at each of these sessions is to have a theme, to discuss the theme, to share our reflections upon the theme and to see whether or not it helps us to grow and helps us to resolve the issues facing each of us in our nuclear families.

This past week end, the theme was parenting. Two of the children of people

in this organization which we call The Tree began with the Presidio movement, Marriage Encounter, some of you may be aware of that, are going to be parents soon, which would make their parents in our organization, our little group, this ad hoc group that's lasted for 25 years, grandparents and one of the things that each of us was challenged to do was to send a note, a personal note, to each of the expectant parents trying to help them to anticipate some of the things which may occur in their lives as married people.

None of us want to see what happened to this family that is in the gallery. In our expressions, we talked of things like diaper training and what do you do when the child begins to walk, how to not treat the child in an angry fashion when you're angry so that the child would grow up to being all that it could be.

That's the point, and the point I'm trying to make is that each of us in this chamber is grieved by the extreme tragedy that the Greishaber family has encountered. It is the worst nightmare of any parent, so I want

you to understand, Mrs. Greishaber, that my debate on this issue is in no way disrespectful of you or the memory of your daughter, but philosophically there are some concerns that I have and I must raise them. The people that empower me to come here challenge me to do the things that I feel in terms of conscience and in terms of the laws of the state are correct. So if I do or say anything on this floor that causes you the least bit of concern, let me please apologize ahead of time.

Now, if the Senator would permit me to ask him a question or two, Madam President.

SENATOR VOLKER: Certainly.

THE PRESIDENT: Senator Volker.

SENATOR WALDON: Senator Volker, do you have a definition for us while chairman of Codes of what is a career criminal?

SENATOR VOLKER: A career criminal? There is no definition, I don't believe, for a career criminal. In this bill,

we talk about violent felony offenders if that's what you're talking about.

SENATOR WALDON: Madam President, would the gentleman yield again?

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Sure.

SENATOR WALDON: I was not paraphrasing or trying to find another phrase or word for career criminal. I was just trying to get your gut check as to what a career criminal is because those whom we normally deal with in our prison system in terms of very long sentences are under that rubric of career criminal.

In your opinion, Senator Volker -- if I may continue, Madam President -- in your opinion, Senator Volker, who do you think is best capable of determining whether someone has benefited from their incarceration? Would it be the judge in anticipation of sentencing? Would it be the district attorney, or might it be the Parole Board before which these people normally come?

SENATOR VOLKER: I think what

you have to do is, I think when you're looking at the crime -- and these are all serious crimes -- when you talk about career criminals, we have to look at the situation that we have here.

First violent felony offenders we're not necessarily saying are career criminals; we're saying they're violent offenders, and we're saying they're people that create a danger to society. What happens is the judge makes a determination on sentencing and his determination is that under the guidelines that he has under the law that we're passing today he determines if that person is found guilty of one of these violent felony offenses, obviously a B, C, D or E, and then he has the sentencing ability, and under this law he will sentence to at least six-sevenths and then after -- after that time, based on, if the person has fulfilled the so-called good time philosophy, then the Parole Board -- then there will be an opportunity to release that person, but if he's a D or E felon or B or C felon, on the one case, it would be five years and on the

other case it will be three years before that person will be able to be freed from the post-conviction or the post-sentencing observation.

One more thing, just let me point out by the way, that I didn't discuss was that another tough provision of this bill relates to the one-year return. That is, if you violate the parole provisions you must serve at least one year back in incarceration which means that even if you -- say you have a five-year post-release supervision and four years and 11 months, you violate it, you could go back for one year or you will go back for one year. So I'd just like to point that out. That's one of the tough provisions of this bill.

SENATOR WALDON: Madam President, would the gentleman yield again?

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Sure.

SENATOR WALDON: Senator, one of the maxims, if you will, of our parole system and in turn our incarceration system

has been that we built in some incentives for people to do life while -- right while in prison, so that they may qualify to get out earlier and not be hassled unnecessarily while in prison.

It is my understanding -- and you're a former police officer and so am I, that we have these systemic things built in, in part because we want safety and security not only for the inmates but for those who have to work with them on a daily basis, the correction officers. In your mind's eye, is there any value to having a parole system which allows people who do good, promote safety and security in the prison, to be released early?

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Senator, let me just say this. Remember something, and you and I know it. We're talking about first violent felony offenders here, but -- and as I told at the press conference, we must be realistic. Some years ago, I passed a - well, I sponsored and this house passed and

both houses and the Governor signed a bill, Governor Cuomo, that provided for first felony offender diversion and the idea was that the Assembly in particular had this idea that somehow we needed to somehow find a way to divert people, that too many people were going to jail who were first felony offenders.

The program turned out to be a flop, and the reason it turned out to be a flop is you got to be arrested dozens of times before anybody sends you to jail, particularly in New York City, even violent felony offenders. This is the real world. This is not -- this is not what some of us think, academics think. This is the real -- this is the real world.

The real world in New York City, unless they commit very serious crimes and sometimes unfortunately do it two or three times, they're not going to go to jail. So Senator, my response is look, a person who goes to jail, who's convicted of a first violent felony offense, is a person that's a danger to society and, therefore, although we like to have incentives and we -- you know, we

have built into our system now some excellent drug treatment and alcohol treatment, and we're doing more and more to deal with the problems of who we have in our prison system.

The point, I think, is this, that the policy of the state of New York based on this statute, based on what the Governor has sent us, says that if you commit a serious crime, a serious violent crime, then the judge sends you to jail for a certain length of time which is a longer time, it's true, than it is now, six-sevenths, and the option is if you do not create a problem in prison, you can have that other one-seventh, so to speak. You can get out of prison but even after that the sentence of the crime is so severe you still have to -- to deal with post provisions, parole supervision, and in that case that's where the parole department comes in to make sure that that person handles him or herself in a proper way five years if it's a B or C felony and three years if it's a D or E felony.

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

SENATOR VOLKER: Sure.

SENATOR WALDON: Senator?

SENATOR VOLKER: Yes.

SENATOR WALDON: We have over 70,000 people in our prisons, twice that number in our local jails. We have a law which you just alluded to, I think, not intentionally, would be most appropriately applied to New York City but this is a law, if it becomes law, this is a proposal if it becomes law which would apply to the entire state. I think that's what we're really driving at here.

Would you tell me, please, if you personally believe that every single person who has violated our laws in violent felony offender situations, is equal in terms of the act that they performed?

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Senator, I think you know my response to that. Obviously they're not equal in terms of the crime that they are involved with, but crimes of violence in this state have reached the proportions

where we have to make a judgment, it seems to me, that to get people off the street who commit crimes and we set up in the Penal law, by the way, and we specifically set up, it seems to me that we are making a judgment that the crimes they commit are severe enough that they will have to realize that, if they commit these crimes, that they will be sentenced to a long prison sentence and that they will not have the options that they have had in the past or think they're going to have the option to get out at an early period of time, that they're going to have to serve the vast amount of their sentence and then even after that they're going to have to deal with post-release supervision and they must understand that when they commit those crimes and you know we've often said, you know, when -- I think you and I both when we were out in the street, you know, if you could get swift and sure punishment, why, we would see the crime rate fall. We're beginning to get it, Senator, and this is another move towards that.

SENATOR WALDON: Madam

President, would the gentleman -- Oh, Mr. President, and -

ACTING PRESIDENT MEIER: And a good day to you.

Does the Senator continue to yield?

SENATOR VOLKER: I certainly do, Mr. President.

SENATOR WALDON: Senator, if we want to address as a body, as a state, as a government the criminal justice problems that we're facing, would we do it as we're doing it now, piecemeal, last year one law, this year another law, next year another law, and I don't mean to mischaracterize the seriousness of what we're doing. This is extremely serious. It is profound. Its social impact will be long standing and of a very serious nature, but wouldn't it be better for us to create a comprehensive criminal justice package to deal with all of the problems as opposed to doing it piecemeal? That's question one.

Number two, if we were doing that, could we not also address the

Rockefeller drug situation? If we're talking about, as the Governor stated in an article I have in front of me, if we're going to address our prison capacity which seems to be driven -- a part of the driving force for our dealing with this issue, wouldn't it be better -- I know you're very good, Senator, but I wanted to make sure that you heard what I was saying.

Wouldn't it be better for us to, one, have a comprehensive plan; two, free up the prison cells by getting those persons who are not violent felony offenders and treating them in medical arts or pharmacological settings so that we would have space; would that not be a good thing to do?

SENATOR VOLKER: Well, I think, Senator, I'd like to think that, if you and I could sit down and develop a whole plan and make a decision, maybe we could do that in a short period of time. But would it be better? You're absolutely correct. We know that and, if we could develop a whole scheme in a short period of time but, Senator, the reality is that that's not going to happen and the

reality is that there are disagreements on certain parts of the law that say that it really can't be done, although personally I must tell you that we have made, in my opinion -- I've said it, I'll say it once again - since George Pataki has become Governor we have made strides in this state in criminal justice that in the previous 20-some years that I've been here we talked about but were never able to do.

Now, let me just say this about the Rockefeller drug laws, because I -- since you brought it up, I would just say this. I would be careful and warn all the people who talk about the Rockefeller drug laws to take a look at the numbers. We have been taking a look at the numbers and there aren't as many drug offenders in jail as people think there are, particularly drug offenders who don't have any kind of violence.

In fact, you know we're having problems in prison now getting enough people in our Shock incarceration program which is, you know, a nationally renowned Shock incarceration program, and I was just out

there, by the way, here two weeks ago and spoke at a graduation.

The reason I mention it is, Senator, certainly we can look at those issues although I would point out to you that California is pouring thousands and thousands of people into their system and, by the way, we were even with California in the number of inmates at 40,000 in 1980. We just checked the other day. I was absolutely shocked to find out they're at 142,000 inmates and we're still at about 70,000.

I'm not -- I'm telling you that, in my opinion, and I've talked to the professionals in the prison system a lot, they tell me this: There are fewer non-violent offenders in our system today than at any time in modern times. Unfortunately, there are more violent offenders in our system than at any time in modern times also, so I guess the answer is, sure, we can look at the Rockefeller drug laws but in talking about an excellent comprehensive approach, this is the next step in that approach, in my opinion, and I think the Greishabers would agree, I think

Senator Bruno would agree, and I think most of the people in this chamber will agree and we hope eventually that the Senator will agree also.

SENATOR WALDON: Would the Senator yield again, please?

SENATOR VOLKER: Sure.

ACTING PRESIDENT MEIER: Senator continues to yield.

Senator Waldon.

SENATOR WALDON: Senator, you created a nice segue for me into the next area that I wished to address, and that is the explosion almost exponentially of the prison system, not necessarily in New York State as in California, as in Texas, where their ability to govern, not govern the prison system but their ability to govern the state is being undermined by the drain on resources of maintaining the prison system. It is my anticipation that this proposal, if it becomes law, will create the same kind of driving force regarding our budget.

If you recall, Senator Volker, and I'm sure you do, much better than most,

that the prison budget since 1988 has expanded by 76 percent. Our education budget has gone up by about 25 percent. Wouldn't we do better, and I realize this is a very bifurcated -- by the way, I have the data here for J.R. and yourself, it's very accurate, wouldn't we do better if I were to spend our money more on education, less on prisons, take some steps which would free up the space in the prisons regarding the Rockefeller drug law and give those people who are violent felony offenders who are not career criminals and who are not going to be career criminals an opportunity not to serve time to the extent that this proposal requires?

SENATOR VOLKER: Senator, you and I have talked about these issues many times. I don't know where that 76 percent comes from. We'll look into it, but I got to tell you something else. We spend -- what do we spend, I think on the whole criminal justice system in this state we spend about 2.3 billion, something in that nature. The total amount that we spend on education is - in fact, the total amount we spend on

education in this state is over 30 billion. There is no comparison, and the -- and, Senator, I mean I've listened to some of that, and the expansion of some of the costs, and I think they're probably talking about the fact that we've built some new prisons, but the actual operating cost of prisons has not gone up anything compared to what we've spent on secondary education.

I can assure you, I mean we just spent 863 million additional dollars, for instance, in -- on secondary schools in this state just this year alone, and that doesn't include, by the way, lottery money which is going into education, and some of it is also going in for the -- for the so-called STAR program indirectly.

But, Senator, I would agree with you, if we -- and we have been looking for the so-called non-violent felony offenders, but Senator, this bill is not going to break the back of the prison system any more than the second felony offender bill we passed back in 1995 is, and, of course, keep in mind this is, the main impact of this bill

is going to be somewhat years down the line anyways and we're anticipating, you know, some impact because it will be the -- you're already going to be sentencing these people to prison in the first place. It's just that we're going to be sentencing them a little longer, and then we're going to have post-release supervision. All the Dooms Day stories of what's going to happen if we pass second violent felony offender has not happened. In fact, as you know, overall the crime rate has continued to drop, and actually we're doing better and when we get these new prisons in place we hope we'll be able to get rid of double bunking and all the rest of the things and we will be able to treat people better, treat from the standpoint of education and all the rest of the things, and we'll be able to deal with inmates in a better way.

Are we going to be like Texas and California? No way, and the Governor knows that. I think the Senate is convinced of that and I think even the Assembly in the end is going to agree with that.

SENATOR WALDON: Madam

President -- I'm sorry. Mr. President, if I may. Thank you very much, Senator Volker. If I may, on the bill.

ACTING PRESIDENT MEIER: Senator Waldon, on the bill.

SENATOR WALDON: First, I am extremely sensitive to the family which is in the gallery, and I hope that nothing here during this debate has unduly stressed you or angered you. I apologize if it did. It was not intended. I was trying to establish some themes, through the dialogue with Senator Volker, specifically on this issue.

I think that sometimes in the realm of human experience, those who are characterized as first-time violent felony offenders are not equal. If there are 10,000 arrests for violent felony offenders in one year, someone in that mix should have an opportunity for parole. We're not talking about people who take lives. As you know, Senator, from our experience, both working on the Codes Committee, that those who are really bad people, I believe should be in jail and never out, but sometimes systemically someone

is different than the mix, but what you have by definition they will receive the same kind of sentence as those in the mix and the purpose of our discussion from my side of the table is to elucidate that if somehow someone should fall through the cracks of what you're proposing, I provide judicial discretion because the judge is in the courtroom hearing the case or simply because the person is not equal to the kind of behavioral pattern which all others falling under that particular definition should fall.

Secondly, and this is my perennial, I think that we spend money foolishly in this state. I believe that, if we had the emphasis on education, that we could turn this prison thing and this criminal justice thing around. An example, and we've discuss this before, the Schools Under Registration Review in those Assembly Districts in the City and around the state - Syracuse, Buffalo, even here in Albany, where 80 percent of all of the young people who end up in our prisons stacked like cordwood, uneducated, where they come from, if we were

smart money, in my opinion, we'd take the massive resources and put into those schools to ensure that they have above a reading level education because all of the data proves that those who are educated do not return to prison so fast. Four or five percent of those who obtain Master's degree -- if I'm correct in my memory, and I may be wrong -- never return to prison as a recidivist but those who have little or no education, who are out of prison for any reason, either having fulfilled their obligation, on parole, on a release from Willard or wherever, 45-plus percent of them are back within three years.

So I think that in terms of our allocation of resources, our philosophical approach to this, we're shortsighted. We're pennywise and pound foolish.

What I believe we ought to do, in my opinion -- in my opinion -- is to change the direction that we're going in terms of construction of prison cells, to change our philosophy in terms of treating those who may be an exception to the rule, those who are truly repeat, repeat, repeat violent offenders

should go away and stay away, but someone makes a mistake and they should not be treated the same.

Let me create an hypothetical for you. A mother with children who is in an abused relationship and some guy has abused her, her husband, for quite some time and one day she crosses the line. Should she be treated the same as someone who puts a gun in his hand, goes into a bank, guns down the people in the bank and robs a bank? I think not, and that's the point I'm trying to make. There should be some ability for us to create an exception to where we are.

ACTING PRESIDENT MEIER: Senator De...

SENATOR WALDON: I want to -

ACTING PRESIDENT MEIER: Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: I want to ask Senator Waldon a question if he would, please.

ACTING PRESIDENT MEIER: Sure. Senator, do you yield?

SENATOR WALDON: Absolutely.

ACTING PRESIDENT MEIER:

Senator Waldon yields.

SENATOR DeFRANCISCO: Senator Waldon, each of the people who are resentenced under this new law, if it becomes law, are treated the same way after the sentence. They'd have to serve six-sevenths, but isn't it true that, under your example, the judge, prior to sentencing, can take into account the circumstances of the crime, including the woman who may be at her last possible rational moment before a violent act is committed? Wouldn't the sentencing judge have the power to treat her differently by framing her sentence to be a lesser sentence than the sentence might be for someone who premeditated that particular murder and, therefore, be treated differently?

SENATOR WALDON: Absolutely. Senator DeFrancisco is on the money, and your assessment and analysis is absolutely correct.

Let me finish if I may, Mr. President.

I would encourage the people in

this chamber today to do what they must in terms of their conscience. I am going to vote for the bill, but I don't want my vote to be seen as not wanting to see that the predators in our society are not dealt with correctly. Someone who takes a life should not be on our streets; some people make a mistake, and I think to have the provision for every first-time violent felony offender to face this proposal is a mistake, and let me close by saying again I beseech you, my colleagues, to take the resources of this state and to put them where they will be better used and will create the best potential of our state which is in the education of our children, especially in those Schools Under Registration Review in our inner cities and in those Assembly Districts where 80 percent of all the people in our prisons originate.

Thank you very much, Mr. President.

ACTING PRESIDENT MEIER: Senator Nozzolio.

SENATOR NOZZOLIO: Senator, I rise not just as a Senator but also as chair

of the Crime and Corrections Committee, and I must tell you that this debate has stimulated many thoughts.

The first is from the victims' perspective a sensitivity that we must have, a consideration that we must have. For these last 30 years in this state, the scales of justice have been tipping. They have tipped on the side of protecting the rights of those who are accused of crime, criminal conduct. Those scales have tipped and tipped and tipped until I believe they have been tipped over, in recognizing and protecting and focusing on the rights of the accused, of the criminal, and emphasizing the "criminal" in the criminal justice equation, but not recognizing the victim and the sense of justice which should prevail in protecting victims' rights.

It's extremely unfortunate, Mr. President, that a tragedy, a very visible tragedy, would bring attention finally to our victim and victims' rights. I applaud Senator Volker for having the courage and the wisdom to push this legislation; particularly my thanks to Senator DeFrancisco for his

recognition of the fact that something needed to be done, and the way he has pushed this bill through this house.

My reactions to Senator Waldon's comments about the need for a comprehensive policy, absolutely we should have a comprehensive policy. We should pass comprehensive legislation, but I dare say it is a cop-out by this Legislature to think that really all crime could be solved with one bill, that the entire criminal justice system could be changed by one piece of legislation; but we are stating today in Senator Volker's legislation that by calling for an absolute zero tolerance to be imposed on all muggers, murderers and rapists is, I dare say, not a revolutionary act. It's something that should have been done a long, long time ago.

But this step is an important step, and as I applaud the sponsors, as I thank also our Senate Majority Leader, that this step puts us on a goal of ending parole for first-time violent offenders and by ensuring those who have exhibited heinous behavior, who have taken life, who have raped,

who have threatened and injured, that those in our society will be told that society -- those in society commit those crimes will be told very clearly that their actions will not be tolerated.

When it comes to committing a violent crime, cutting a deal for early release from prison must never be an option, and Governor Pataki in his very first act as our Governor, ended what was called work release for those who have committed violent crimes, and work release as we have sat through hearings on that in 1994, work release was being used by the then Cuomo administration to let violent felons out of jail early in an effort to ignore the fact that we needed to incarcerate them and it was used as a pressure relief valve on our prison system, but it wasn't doing anything for our citizens because it was putting violent criminals out on the streets without serving much more than a very fraction of their sentence.

This Legislature, again through Senator Volker's leadership, through the

Governor's direction, took very courageous steps in increasing penalties for violent felons; but unfortunately, we have a significant loophole in the law so those who are engaged in parole, in reviewing the performance of those who are incarcerated, look at the record and see, did Inmate A follow proper prison procedure? Did he participate in counseling? Did he take additional education or any type of education credits? In a sense, did that inmate do anything to rehabilitate themselves?

And if the answer was "no", in spite of the fact that they were a murderer, a robber, a rapist, they would be let out of prison because the parole folks had their hands tried. That is exactly what took place in the alleged incident -- in the incident by the alleged perpetrator that we are discussing today.

By ending parole as we know it for first-time violent offenders, we are taking a significant step towards protecting the citizens of this state. I believe that we need to continue to right-size our prison

system and to those who have said that we must do more to deal with the non-violent drug offender, I dare say just look to the record, look to what this legislator -- Legislature supported. Look to what Governor Pataki created in the formation of the Willard Drug Treatment Center, a prison dedicated to violent -- to those who are non-violent offenders, but drug users and alcohol abusers, substance abusers.

Don't try to hide behind the fact that non-violent drug offenders are in our prison to say we shouldn't do anything against those who are violent, and also don't forget the record that says that we have created in New York State the first of its kind, I dare say in the nation, a prison for those who are non-violent drug offenders.

Mr. President, my colleagues, let me reiterate a special thanks to Senator Volker and Senator DeFrancisco for pushing this good legislation; thank Governor Pataki for recognizing the fact that this policy must be implemented, and if it is implemented we will see further dramatic cuts in our crime

rate. We must do it to bring those scales of justice back, back up to recognizing the victim, and let's focus on the victim's justice and not just the criminal's justice.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: We'd ask the members' indulgence for a minute so the stenographer can change paper, please.

Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Volker would yield for a few questions.

SENATOR VOLKER: Certainly.

SENATOR PATERSON: Senator, I want to discuss a little further the issues raised by Senator Gold when he talked about the discretionary aspect of the Parole Board, the discretionary parole as opposed to the responsibilities of the Department of Corrections.

The perpetrator in this particular case, the murderer of Jenna, which brings us here to discuss what we're terming "Jenna's Law", was sentenced for an stabbing

on January 16th of 1991. That would have enabled under the two-thirds rule, he received parole. I guess, in 1995 in the beginning of it. Had he served the six-sevenths of the term, what Senator Gold is saying, since he already had two months jail time credit, he would have been released in November of 1996 or thereabouts, and so you disagreed with Senator Gold's contention, but I want to restate it and get your opinion on it with some specificity, because I'm contending that sentenced to seven years in 1991, he would have been out even had he served the amount of time as it is designated under the bill that's before us right now.

SENATOR VOLKER: Senator, I think that's what the confusion here is and I think Mr. Greishaber talked about that also, is that remember, by the way, there are - there are ranges here, and we were just talking about this. It's not as if a person gets sentenced under this statute that they necessarily -- they necessarily have to serve a certain -- for instance, on B felons it's - the range is 5 to 25 years; On C felons, it's

3 to 15 years; D felons 2 to 7 years, and on E felons, it's 1-1/2 to 4 years.

The judge has the ability to set a sentence. If he sets the top sentence, obviously then it's six-sevenths of that top sentence, but, for instance, for an E felon, he wouldn't necessarily have to do that because he could -- you have to sentence to at least one and a half but I suppose he could do it one and a half for that matter and that certainly would be within the law.

What you're saying is the confusion about the conviction and as to whether that person would be under post - certainly under this law, for sure, he would be under post... post-release supervision, and that's for sure, but there was the possibility that he could be convicted of, in fact, a more serious crime. What you're saying is under the crime that he was actually convicted of, while the evidence could have convicted him of a more serious crime, and I think that's what Mr. Greishaber was talking about is that he could well have been convicted of a more serious crime because of the nature of the

crime and that in reality -- so he's assuming I believe that he would be convicted of a more serious crime and, therefore, would have been serving an even longer sentence, it's true.

Under the sentence that he was actually sentenced to, which I think is a D felony, isn't that right? -- then technically speaking you are right, if that were the case, he would -- however, even under this bill, even under the bill that we are doing, he would have been under post-supervision had he been sentenced identically as -- to the same -- convicted of the same sentence that he was convicted of and not to the higher, the higher sentencing provision. So you are right and I -- in fact, one of the things that my trusted counsel here was whispering in my ear was that we figured some smart fellow like you would figure that out, that I misspoke because what I was talking about is, and very honestly, is that had he been convicted of the higher offense which he could well have been convicted of, he would then have been in jail and would not have been around under this statute to -- to kill poor -- allegedly to

kill Jenna, but if he were convicted under the provision as it is here, although he would be under post-release supervision he could be out on the street, and that's true, assuming he didn't violate or what else he did, and remember, by the way, one thing I did find out was he would not have got any good time because virtually surely because apparently he had 19 violations in prison, so I think that you could be pretty well sure that he was not going to get any good time.

SENATOR PATERSON: Thank you, Mr. President.

Senator Volker, as he so often in this chamber, has distinguished himself. I'm very happy that you took a second look at that because we all know Senator Gold is wrong enough, we didn't need him to be wrong any more than he usually is.

But in all seriousness, the post-sentence supervision which is in this bill is really something that we have to go back to, and I'm glad that we are going back to it because in the Sentence Reform Act of 1995, introduced by Governor Pataki in his

original year, we didn't have any post sentence supervision and theoretically from September of 1995 until the effective date of the passage of this bill, we're going to have that problem that people are being released and no matter how long we give someone a sentence, when they leave we have to remember they're not coming back to any particular family roots or any socialization process or coming out to get a job. Sometimes our only way to have any idea as to whether they may be headed back in the same direction, and in many respects heading that off, is through the parole system, and I'm very happy that Senator Volker pointed out that we're going back to that, and I think it's -- it's unfortunate that we have served three years with this system in place.

Senator Volker also referred to the 22 -- I think there were 19 to 22 violations that this individual accrued during the time he was in jail, so actually during his time in prison, he didn't lose any good time for those violations, but even though they were second tier violations, I suggest

that perhaps a little more responsibility by the Department of Corrections, and much of that time may have been taken away from the - from the convicted felon, and perhaps that would have extended the time that this individual spent in prison.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: I would be remiss representing the Minority today, if we did not thank the Greishaber family for joining us in the chamber. To Bruce Greishaber and Janice, and to Erica, the sister of the victim in this particular case, we are very much enlightened by your presence. You came here today hoping that this bill would succeed, and what I would like you to know is that your success was derived long before we would ever vote on this bill. Your success comes from the ability to persevere, to dedicate yourselves to something that you believe in, to fight back tears, and I guess an enormous sense of tragedy, to go forward and probably improve the quality of

life for all of us in New York State.

You will see some of us vote for this bill. You will see some of us vote against this bill. That is how it works in our democracy. The former president, Woodrow Wilson, once said in 1915, It may not be as important to legislate as it is to publicize those issues that affect so many people, that affect lives.

And so what we are engaging in here today, as Senator Waldon referred to, is a process by which we try to ferret through the issues of this particular bill and try to come to an individual conscience decision as to what's right and what's wrong in this particular case, but in the collective sense we're all together in deploring this tragedy that befell this particular family and also trying to find a way to eliminate and eradicate these similar situations from going on every day in our society.

This is the greatest part of our democracy. This is fine. This is the noblest form of democracy. The objections here today are stated with clear conscience.

There is nothing unnatural about it. This is intellectual, and it repeatedly exists when legislators look through all the different issues and all the different aspects of law that face the challenges of our time, and yet the stillness of one heart compels those around it to come here to force us to see what's actually happening in our society.

I want to thank that family for being here today. I want to thank Senator Volker for his work on the subject, and certainly Senator Gold and Senator Waldon for raising the types of issues that will hopefully bring us together on a bill one day that will make sure that we don't have to come back here again and see a tragedy on another family in similar conditions.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

You know, I rise in support of this bill as a Capital District Senator and somebody that was well aware of this tragedy that happened right here in this area. It's

not the first that has happened to a young college student and, of course, Bruce and Janice, who are with us in the gallery, let me express my sympathy to you and to your daughter, who is also with you, for this incredible loss.

But I think it was mentioned at the press conference what this family did. They went on to make something happen here, to make the world a little bit safer for the - for young women and victims of crimes, vioilent crimes, and that is the reason that I rise to support this bill. It's one that's time is long in coming. It's one that's terribly important. It's one that addresses a terrible societal problem, violent criminals who are let out on the street to commit violence and death to innocent people.

I can't say how horrible this situation is, and there are other families that have been -- not only in Syracuse where they come from, but let me just say this, that Senator DeFrancisco has risen to this occasion to help the family, to meet with the Governor, to work with Senator Volker, to make this come

to reality and let me say, it is close to becoming a reality because the Assembly is looking at this very closely, I would hope in a bipartisan way so that we can address this. They have got some other areas that they want to look at here, and as we've often said trying to do something to the criminal justice system is kind of difficult in the other house, but trust me, something is going to happen here because it has to happen. Society wants it to happen, and this state is going to do something about violent criminals, and I think that this bill is the bill that's going to do the job.

Thank you very much, Mr. President, and I would hope that everybody in this chamber would support this legislation.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Mr. President.

I too join my colleagues in expressing a deep sense of sorrow for the loss of the daughter of the Greishabers, and certainly it is a fear that every parent in

America has, and that is that some crazed, deranged criminal will come along and murder their child. So I regret that that is something that some families, and far too many families, have to live with.

I want to, however, discuss this legislation not as it relates to the tragedy that occurred with this young woman, as it has occurred to so many young people in our nation, but I do want to speak to the legislation as it relates to criminal justice policy in our state.

This legislation is representative of what I consider to be misplaced priorities in our state government. It will cause our prison system to grow even more and, as public financial support of education decreases, we see an exponential increase in the prison population and prison expenditures.

Every spring at commencement ceremonies across the nation, graduates and their families will hear how their degrees are the tool they will need to pry open the American dream. Yet, for a growing number of

Americans, even the echoes of those commencement speeches will be drowned out by the sound of jail and prison gates slamming shut, and this legislation will only worsen this sad trend.

We have every example before us, especially and particularly in the state of California. In California, in the last ten years, for example, there have been 230 new prisons built and two state university campuses. There are now 26,000 state correctional jobs -- 26,000 state correctional jobs have been added to the correctional system in the state of California, but 8,000 jobs have been lost in higher education in the state of California. The California Department of Correction operating budget increased an average of 14 percent, but the state budget increased an average of 7 percent per year.

So are we going to end up the same as California? New York's higher education system has also suffered as our prison budgets have grown. We are now spending almost twice what we spent ten years

ago on prisons. Since 1988, the New York public universities have seen their operating budgets plummet by almost 30 percent, but we have seen our prison budget increase by 76 percent.

In actual dollars, the Department of Correctional Services budgets increased by $760 million between 1988 and 1998, while the budget for New York City and State University systems have declined by 615 million. Even though New York spent more than twice as much on universities than on prisons in 1988, the state now spends 275 million more on prisons than on state and city colleges.

What are we saying to our future, to the students, to people who want not to go to prison, but rather to go to higher education? An opportunity not to engage in criminal activity. Well, our Governor, we certainly know, has vetoed most of the additional funding that the Legislature put into higher education for opportunity programs this year. He also vetoed some -- a $500,000 that was in our budget and an additional $100,000 item in our budget,

$500,000 for the Niagara Frontier College Group to provide inmate education and $100,000 to Green Haven Correctional Facility for a leadership development program there.

So while we want to essentially expand our prison system with this legislation, without addressing the problem that we have with the behavior of people that begins when they're very young, very often as exhibited in behaviors at the level of junior high and high school and ends up as criminal behavior, until we are willing to address that and invest in changing that kind of behavior and preventing the outcome, we're not really addressing the parents who are here today to listen to us debate a bill that is ostensibly to -- to correct what happened to their daughter. This is not what we are debating.

We're debating a bill that expands our prison system, and we know, as Senator Waldon has said, that all of those prisoners are going to come back. They come back to our neighborhoods. They come back to Albany; they come back to Brooklyn; they come back to Manhattan, the Bronx. They come back

to Buffalo, and if we don't invest in changing the behavior, as even the inmates in the correctional facilities have said themselves, they really would like to be able to change but we're now removing every opportunity for the corrections system to rehabilitate people and at the same time we're extending the prison sentences, and we pretend that we're going to address the issue of recidivism and crime. It is not the case.

I sincerely apologize to the family here today, the Greishaber family. I cannot in good conscience support this legislation. It is only going to escalate the state's financial drain, putting our very much needed resources in an end product because we have not invested in the front end and we are not going to eliminate the problem that we are here talking about today, and that is the murder of a wonderful young person by someone who was -- whose behavior apparently was never addressed and, therefore, would be a criminal and would be -- would never be reformed because we never addressed that; and so, if we donated do that, we're only going to have more

and more problems such as we're looking at today.

So I ask my colleagues, we're not voting against our wish and our desire to correct what this is supposed to correct; we're voting against something that is bad for the state, that will not address the issue that we -- that Jenna's Law claims to address. It will not satisfy what happened to Jenna. It will not -- it will not give us an opportunity to really make sure that this doesn't happen again, because we have not done it right, and I ask that, with all -- with every good intention, I understand what my colleagues want to do and what they wish to happen and what statement you wish to make, but let's not do this. It is the wrong way to go, and we're going to incarcerate many, many people for much, much longer without rehabilitating them, and that doesn't help to do what we want to do.

Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Leichter.

SENATOR LEICHTER: Yes. Thank

you, Mr. President.

Certainly all our hearts go out to the family of Jenna, and I admire that they express their grief by seeking a change in the law, by seeking what they think would be a constructive way to deal with a problem and in a way that they hope will save other people from the terrible, terrible tragedy that occurred to their daughter.

But I don't think that we can legislate based on one particular case. I don't think that it's particularly instructive to try to package legislation in terms of this tragedy or, as we did a couple of years ago, in terms of the tragedy that befell Megan, and it's become somewhat popular now to sell bills as, you know, this bill would have saved that particular life, and it's to the great credit of Senator Volker, and his candor is unmatched in this Legislature, and in point of fact that wouldn't have happened; but even if it had, even if it had, is this the right legislation? And we really cannot be swayed by the passions, by the emotions, by the desire to, in some way, relieve the pain of this family.

We can't do it if it's bad public policy. We can't do it if it doesn't make sense. We can't do it if it's not going to advance a safer, saner and more just society.

This bill, in some respects, really is a -- would be suspect under fraud in advertising, because as we have seen, one, under its provisions the violent criminal who committed this act would have been out of jail in any event. Secondly, it's sold as a limiting of parole, which really isn't what it does. It's sold as a determinate sentence, but it isn't actually a determinate sentence.

So I think it's a sort of bill that maybe one sees in election years. Basically what this bill does is, it lengthens sentences for certain violent criminals. The question is, does that make sense? Is that needed? Is that where we need to go? I hear my esteemed colleague, Senator Nozzolio, say, Well, this bill is going to right the balance which has been tipped in favor of the criminal. Tipped in favor of the criminal? Since I've been here, I've seen the jail population in this state go from 15,000 to

where now we're about 80,000. Senator Volker says 72,000. So we've had almost a 4-, 500 percent increase, so I don't think in any respect that over the years the governors that I've served under, Republican or Democratic, or this Legislature has been insensitive to crime.

I think what we've tried to do certainly is to lengthen sentences, and we've done this consistently. Our sentences have gone up for violent and non-violent crimes, to what degree I can't say. I can't say we've doubled them over the last 15, 20 years but we've certainly increased them substantially. Does it make sense to increase the penalties that we're going to impose for violent criminals to a greater degree than we do presently? Where is the case? Where are the facts? Let's take a look at the statistics.

We all know that crime has been declining significantly in this state and throughout the country. Is it all due to the lengthier sentences that we've enacted in this Legislature? Probably not. Has that played a role? Unquestionably. Has it played a major

role? Probably not. Most criminologists and penologists will tell you the reason that we've seen a decline in crime throughout this country, every state, New York State too - some more than New York State, some less than New York State -- is because of demographic changes. We know that crimes by and large are committed by younger people, and there's a smaller percentage of younger people in our society. That leads to a reduction in crime.

There are other reasons for it. We've increased police forces. I think certainly the type of policing that occurs, community policing, probably has made a difference, and certainly longer sentences have made a difference. But is there a compelling reason to be made to increase these sentences at this particular time? Is there a great need? I don't think that case has been made.

I think in every -- almost every crime that occurred you can then say, well, if we had a different law, that crime would not have occurred, and that may be true. But does it make sense for society to

change every law, to change every sentence, because there has to be some balancing of social needs, and there has to be some consideration given to cost, although cost obviously can't be the only consideration. If we can save lives, then we will incur the cost, but I think a very strong argument has been made by some of my colleagues very eloquently by Senator Montgomery and Senator Waldon, that you will save more lives, you will prevent Jennas, and maybe you ought to call a law after Jenna that will provide for the sort of education, the sort of support, the sort of community care that will prevent people from becoming criminals, not that you're going to be able to prevent everyone from becoming a criminal. Obviously, this society, no more than any other society, is going to be capable of fully eradicating crime.

But we need to ask ourselves, is the only answer that we have to social dislocation, to socially disruptive acts and yes, to violent criminals, to continuously increase penalties? Is that the only way that

we're going to save future Jennas? I think not, and I think that's the argument that we're making on this side of the aisle or those of us at least who oppose this bill, and it's not that we have any less sensitivity to crime than those who support this bill or any less -- grieve any less for this terrible tragedy that has occurred, but we think that to act out of the passion and emotion of this particular terrible tragedy and to say the only way to handle this is to increase penalties, we think that's not a sensible and not a productive way to proceed.

So I've opposed this bill, similar bills in the past. I will continue to do so in the future, and I will hope that we could address some of the real problems that beset us in our society, that we can make that commitment and provide the resources to deal with the conditions that, yes, create criminals and, yes, create people that commit these horrible crimes.

Certainly there will have to be criminals who will be punished, and we believe in that. We have strict sentences as it is in

this state. This bill, by taking away a certain discretion from Parole Board, from judges, lengthening sentences, in our mind does not make for a safer society. On the contrary, by diverting more and more resources solely into the penal system, we think it takes away approaches, takes away from initiatives that could help avoid these sort of tragedies and maybe, if we're going to name -- if we're going to give names to bills based on particular victims, maybe a bill that would provide monies for education and for community resources would more appropriately be called Jenna's Law.

ACTING PRESIDENT FUSCHILLO: Senator Gentile.

SENATOR GENTILE: Yes, Mr. President, as we debate the pros and cons of this bill, we've done so very eloquently here today. I just point out that, as this bill would eliminate discretionary parole for first-time violent felony offenders, it also does something very, very important for second-time violent felony offenders, arguably the most dangerous set of felony offenders

that we have in our society here in this state, and that is in this legislation the post-release supervision would apply also to second violent felony offenders, and in so doing would impose the same three, five - three- or five-year period or the lifetime period in the case of a second violent felony offender who commits a sexual offense.

In doing that, in this bill having done that, it really fills a gaping hole that was created in the Sentencing Reform Act of 1985, and I say this through the prism of being a former prosecutor and having - having lived through the 1995 Sentencing Reform Act. Although I was not a member of the Legislature at the time, I was a prosecutor at that time, and it struck me as a -- as a serious omission that the Governor and the Legislature at the time did not include any post-release supervision in the Sentencing Reform Act of 1995, which made repeat VFO offenders ineligible for discretionary parole release, and I say that because what we have now created with second violent felony offenders is that, whereas

their parole supervision at one point had been up to half their maximum term of incarceeration, now their maximum time of parole supervision really is now only the one-seventh of the -- of their sentence. That one-seventh of their sentence is really the maximum time that a second violent felony offender is now subject to any type of post-release supervision.

So what we have now in this state are very, very, very violent criminals who have served their time, but now have only had a very short period of post-release supervision, i.e., that one-seventh of their remaining sentence. This legislation -- and I would point this out to my colleagues: This legislation corrects that in that now it imposes upon second, repeat VFO offenders as well as first time offenders, a post-release supervision period, as Senator Volker delineated earlier today.

So this certainly corrects the omission of the Sentencing Reform Act of 1995. As a prosecutor, as a former prosecutor, it's certainly something that I want to see happen

and certainly something, I think, that anyone interested in the safety of our citizens here in this state who want to see a longer period of post-release supervision. This bill would do that not only for the first-time violent felony offenders but the second-time repeat violent felony offenders, and I think that's a good thing and something that we need to correct from the 1995 legislation.

Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

25 years ago next month, I would have been up there. My 21-year-old cousin who was ten months younger than I was, was shot and killed in California by an inmate who had been released from a mental health facility, who had had prior criminal activity in California.

At the time, my family was deeply conflicted about what to do. It happened a long ways away. We sort of sat in silence bemoaning the fact that it seemed as

though chance, as much as any other factor, had resulted in my young cousin's death.

So I understand, as I remember those thoughts about what it might be like to sit up there, and today as we've debated this bill, the same time conflicts that my family felt about what to do and how to do it then seems to have been debated on this floor.

We have a society which has a right to be free from violence, and we have individuals that we in this country treat like no other country in the world. We give them rights and we respect them, and the notion that's present today is how do we balance the right of our society to be free from violence to protect Jenna or Patsy, as my cousin was called, how do we protect them and at the same time provide for individual liberties of those who still have rights even if they commit crimes.

Just some quick comments on how you've seen that conflict played out today. Some people have said we can't use this one example, the example of your daughter or of my cousin as a basis for enacting law. I

disagree with that. I think we can use one example. Certainly we, as lawyers, all the time use a single court case to build a premise upon which society functions. Think of Gideon against Wainwright, one man who made a huge difference in Prisoners Legal Services and the right to counsel. So using one example isn't -- and legislating on the basis of that example is not a bad thing.

You've also heard discussion today that this bill, if it becomes law, is the wrong way for our criminal justice system to function because it doesn't do everything that we would want it to do. I listened to the comments of Senator Montgomery as she talked about the fact that there is a need to do so much more. Senator Leichter made the same comment, that we need to do more so that whoever the perpetrator is, whoever the perpetrator might be, isn't in a position where violence becomes their reaction in the particular context.

I agree with that. I agree we should do more. Senator Waldon has spoken so eloquently before on the floor of this chamber

about the eight or nine neighborhoods in New York City that, unfortunately, produce about 60 or 70 percent of the inmates in our state prison system. Why can't we find $200 million to pump into those communities and deter them from crime? I agree that we should do that; but I don't think that what we're being asked to do today is to resolve the entire direction of our criminal justice system, to finally resolve all of the problems in our criminal justice system. That's not why we're here.

I also hear Senator Volker talking -- again, this is part of my conflict. We hear Senator Volker say, if we pass this, we're going to deter future crime. I'd point out to Senator Volker that 25 years ago, almost at the same time my cousin died, this Legislature said we're going to end the drug problem in this state. We're going to pass a law, a series of mandatory drug laws that will be the harshest in the nation, that will send an unequivocal message to our drug dealers that drugs will not be allowed in New York State.

I think everyone, including

Senator Volker, would admit they have been a failure. Some would say a colossal failure. But the mere fact that we have harsh penalties doesn't mean that we solve our criminal justice problem. We all know it takes more than that.

I'm also conflicted because I've heard in this debate, in the political debate on this floor so many times, that our criminal justice policy of what we do for the rehabilitation of prisoners is also deeply conflicted. We have heard bills on this floor to take away the gymnasium equipment in our gym -- in our prisons. We have heard debates on the floor to take away educational opportunities, higher educational opportunities, from our inmates. It's as though we say we would love inmates to be rehabilitated, but we don't want to do anything to help them. We certainly don't want to be accused of being soft on crime because we provide inmates with college programs while they're in prison.

So in one -- from one point of view, we're taking away the supports in our

prison system to rehabilitate them, yet at the same time we're saying we can't be soft on crime.

The last conflict I have is again a deep-seated personal one, and that's about this whole notion of violence and violent crime. I'm astounded at what my children watch on television. I'm astounded at how often people die on television and in the movies, but yet they reappear in the next movie. We glamorize violence; we allow our heroes to become gun-toting urban semi automatic assault weapon wielders. They become police heroes. They're Rambos. They're Mel Gibson running around killing people. We glamorize it on our television. We glamorize it in the movies. Our heroes are now people who shoot people, and we wonder, quite frankly, why do we end up with such a violence society. What is it about America that we elevate violence to such a high position, such a glamorized position, and then the moment it happens in real life, we jump to condemn it? I don't understand.

I don't understand how we think

sometimes. I don't understand why we end up so deeply conflicted, but for me today I resolve that conflict with one simple question: Is it fair to say to someone who commits a violent crime that you are going to serve a longer determinate prison sentence? I do not believe that it is unfair to tell someone who commits that crime that you are going to pay a greater price and, hopefully, the message that we send, maybe not in its complete sense, maybe not in an unequivocal fashion but maybe the way -- the message that we send is that we as a society recognize that we can no longer tolerate violence. We can no longer allow anyone's name, anyone, whether it's Jenna, your daughter, or Patsy, my cousin, we can't allow a society in which we have to attach their name to a bill which seeks to cure a problem that has already cost someone their life and that what we will do, it seems to me, is we send a message that we will not tolerate violence, just as we tell our children when they're young that they can not be violent in school or violent to their brothers and sisters; they cannot be violent

when they grow up.

I look forward to the day, Senator Montgomery, when we do have an enlightened policy, when we do reach that social goal of providing greater support to families, greater support to kids, and we cut down on our socieal tendency to be violent. It's going to take an enormous change in the way we think and in the way we view our selves. Until we get to that day, I believe that we can send a message and should send a message that violence will not be tolerated.

Today, perhaps even in a conflicted way, we send that message. I'll be voting in the affirmative.

ACTING PRESIDENT FUSCHILLO: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

All too often, we're accused of being inconsistent when it comes to sentencing. It also has been stated many times that there's a great deal of lip service given by people in the legislative line of work. We've all heard phrases about locking

somebody up and throwing away the key, and we hear references to getting really tough on crime, only to find out later that nothing could be further from the truth.

We've also been slow to come up with the appropriations that would allow adequate prison facilities, adequate parole follow-up, adequate training, rehabilitation. We've been very, very reluctant to deal with the true issues that affect violent crime and we've also, as a legislative body, for at least two decades, more like three decades, been inconsistent in the difference between violent and non-violent criminal sentences.

I read with some interest the other day that three former members, three former leaders of this chamber, Senators Anderson, Dunne and Barclay have lent their names to a revision of the Rockefeller drug laws. As mentioned moments ago by Senator Dollinger, these laws originally described as the do-all/end-all to keep drugs out of New York State have done nothing of the sort. What they done, however, is tie up valuable bed space, many resources and $30,000 a year

as the cost of maintaining -- warehousing, if you will -- people who probably would be less threatening to society than many, many of the violent offenders who are routinely released on parole.

I wish that the 34 Republican sponsors of this bill had the guts to introduce a change in the Rockefeller drug laws at the same time, and it troubles me that in this chamber once again we have a measure coming up in an election year which will be touted as a partisan solution. I want to correct any misimpression that my colleague, Senator Leichter, gave relative to sides of the aisle. This is not an issue that should affect people at the ballot box. It should not be relegated to any kind of partisan discussion.

This is a matter of earnest concern for all people in New York State. I somewhat resent the fact that the bill is only circulated, as are most of the other bills in this house, to Republican sponsors. I'm sure that there are many people on this side of the aisle who would have lent their name to it.

I'm reluctant to say too much about that fact today, because it's such a sensitive issue especially for a few people who are here in the chamber watching our proceedings today.

I hope that we can conduct our selves with dignity and address the real issues of the correctional justice system in years to come in a better way than we have in the past, and I believe that this measure represents a very important first step in that direction.

I know that there is not agreement with the other chamber. I realize that we are a long way from making this law, but I hope that all of us can be involved in coming up with a reasonable solution to what has become an embarrassment and a horrible criminal affront to the people of this state.

So I will be glad to cast my vote in favor of this measure, and I also ask all of my colleagues on both sides of the aisle to think how we can earnestly come up with proposals that will address these real problems, well in advance of the time we rise in the chamber to explain what we're doing

once we get to this point.

The time for us to put together a reasonable measure, time for us to come up with a policy, is not when we're in the chamber debating a bill while the cameras are rolling. The time for us to look at these things is throughout the course of the year in the respective committees chaired by Senator Volker, Senator Nozzolio, all of the committees that should be looking at sensible solutions, the Mental Health Committee as well.

Let's put aside some of this partisanship. Let's put aside what has become all too often an attempt to capitalize on a heinous crime, and let's look at earnest ways that we can redeem ourselves in the eyes of the public in this state and come up with some real solutions to our criminal justice nightmare.

ACTING PRESIDENT FUSCHILLO: The Chair recognizes Senator DeFrancisco, to close the debate.

SENATOR DeFRANCISCO: Thank you, Mr. President.

We've heard a lot of discussion about the Rockefeller drug laws, about other ways to deal with the criminal justice system, about education, about social behavior and how to adjust social behavior and probably things that I didn't write down.

The fact of the matter is we are voting on one bill today, and one bill is before us and there's obviously a philosoph ical difference between those who favor it and those who oppose it.

I for one think people should adjust their behavior and if society needs to help them do that, that's just fine, but I think people are responsible for their own behavior and if they violently commit acts, whether it's the first violent felony or the second or the third, they should know when they're sentenced, whatever that sentence may be, that they're going to serve the time.

As far as social behavior and how to adjust that behavior, many of my colleagues don't realize that the Greishabers have decided and are in the process of forming a foundation for non-violence. This

legislation is one part of their whole program of what they're trying to do and they want to adjust the behavior that Senator Dollinger talked about and they want to adjust the behavior that Senator Montgomery talked about, but this -- the bill is needed as well.

The policy of what we should do with our violent felons should be the policy based upon what we feel. If we feel that first-time violent felons should not serve six-sevenths of their sentence, you should vote against this, but don't use the argument that we spend too much money on criminal justice to vote against it because we have an obligation, if that's our policy, to keep first-time violent felons in jail, and we should spend that money. Education and corrections are not mutually exclusive.

The question concerning the election year really irritates me to no end. That's the best word I could use. The fact of the matter is Senator Volker had a bill very similar to this ending parole for first-time violent felons that didn't see the light of day a few years ago. It's unfortunate that,

to get people's attention, a violent act has to happen which because of the election year gains momentum and changes minds of a philosophy that doesn't feel that this type of bill is the appropriate one.

This is not an election year ploy. This happens to be a bill that should have passed a couple of years ago but is gaining momentum because we have a brave family pushing this bill through the Legislature.

I think Senator Paterson, in closing, mentioned that Woodrow Wilson said it's sometimes better to publicize than to legislate. I never knew Woodrow Wilson. I can't imagine him saying that, but I can tell you one thing, if he was here today on this bill, he would say it's better to legislate and pass this bill than continue to publicize this issue.

I vote -- request that all of my colleagues vote in the affirmative for this bill.

ACTING PRESIDENT FUSCHILLO: Read the last section.

THE SECRETARY: Section 42. This act shall take effect immediately.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

SENATOR WALDON: Explain my vote.

ACTING PRESIDENT FUSCHILLO: Senator Waldon, to explain his vote.

SENATOR WALDON: I'll be brief, Mr. President, my colleagues.

A thought occurred to me as my colleagues debated the latter portion of the debate -- during the latter portion of the debate, what might have happened differently if the person who was the alleged perpetrator in this event had come out of prison five years later, two years later, or as a child in one of those Schools Under Registration Review, which means a failing school in Brownsville, in Brooklyn or in South Jamaica -- the area where I live now, though I grew up in Brooklyn -- what would happen if that person went through the criminal justice

system in prison and comes out many years later and encounters someone where the opportunity for violence presents itself as occurred in this most tragic situation; would the person have acted differently or could that person act differently?

I think that the answer is no. The answer is no because the social fabric has not created a better person, because the schools haven't taught him or her how to read, because the other things which need to occur to make a person a self-validated, proud human being, someone who believes in himself sufficiently that he will not resort to that kind of action has not occurred and if that is the case, then we as a society have failed.

There's a second tragedy here. The Schools Under Registration Review are primarily in African-American and Latino communities. If you look at what happened two years ago when the racial disparity report was reported in regard to sentencing, the people who are sentenced so are primarily African-Americans and Latinos. Our jails are exploding with African-Americans and Latinos.

So we have failed ourselves and those people who are of color, and we have created in a sense a permanent underclass in this state. It is not, I believe, our intention. I don't think that any of us in this chamber intend to do that, but our actions have resulted in that, and so I challenge you today -- I'm going to vote against the legislation -- the legislative proposal, but I challenge you to remember what we're doing, to remember what we're doing, that some young black or Latino child, who could escape this circumstance, is given an education and an opportunity to have an enjoyable life and we fail every day that we fail to address that issue.

Please vote no on this legislation.

ACTING PRESIDENT FUSCHILLO: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President.

I would like to explain my vote. I understand my colleague -- I'm addressing particularly Senator Dollinger when he says we can't do everything with this one

bill and I certainly agree with that, but I cannot in all good conscience vote for this legislation when two weeks ago I sat in a junior high school in my district with buckets on the stage where the children in that school supposedly should have an opportunity to perform and those buckets were catching water that was running and their gymnasium floor has been ruined because of water leaks and we could not -- the Governor vetoed the $500 million that was put in the budget so that we could begin to address those facilities, while at the same time we are asking for 100 -- he is asking for $180 million to build a new prison.

So it says to me that absolutely not. I cannot support a bill that will result in the expansion of the prison system at the expense of the children in my district who do not have decent schools and who have to go to school with 30 children in a room in the third grade.

So that -- it does not -- to me it -- there is no way that I'm getting a message that we need to send a message to the

criminals. We need to send the message to the children who are not yet criminals, to say to them, we don't want you to go in that direction and then I can say that I can feel comfortable voting for something that sends also a message to the criminals.

Until that takes place, I can never support this kind of legislation. I am very sorry, and I apologize to the family who is sitting here listening to this today, but you have to understand my pain is based on what I see happening to the children in my district.

I vote no, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Nozzolio, to explain your vote.

SENATOR NOZZOLIO: Mr. President, my colleagues, I rise to concur with Senator Waldon and Senator Montgomery that our schools need all of our support. We need to continue to support education and, as Senator Volker said in this debate, we are spending about 30 billion a year to focus on elementary and secondary education. Our objectives are similar, that we need good

schools and we certainly are spending for good schools, but are you suggesting that we, in terms of school, sentence muggers, rapers, robbers to school? Should we sentence those prisoners -- or those people who have committed violent acts to school?

Frankly, that's exactly what you're suggesting, that there isn't -- I point out to my colleagues in explaining my vote, there is a time and place for everything and this is the time and this is the place to establish a zero tolerance policy for those who have committed violent crime.

That's what this bill does. That's what we are addressing, and that's why it makes such good sense to support it.

With all due respect to my colleagues, I don't think you want muggers, rapers -- rapists or murderers sentenced to school. That's what you're suggesting.

ACTING PRESIDENT FUSCHILLO: Senator Mendez, to explain her vote.

SENATOR MENDEZ: Thank you, Mr. President.

First, I want to have the

parents of Jenna to understand that we understand your sorrow.

Secondly, I for one, Mr. President, join in the pain that my colleagues here, Senator Al Waldon and Senator Montgomery have expressed concerning the social evils that do come out of poverty. I know the educational system is not the same in areas that are poor like in some areas of my district and theirs, but on the other hand, we must have -- we cannot make excuses for one simple thing, and that is that a violent felon, somebody who goes out and kills or rapes or finishes the life of any other human being, we are not asking the criminal justice system to be lenient. All that we are saying is that this person has shown, through his or her behavior, that it is a danger to the society, to other human beings, all that we want is for this person to serve six-sevenths of his or her sentence.

Crime, yes, has gone down in the nation, has gone down in New York State and New York City. So by supporting this bill, which in my view is a very balanced

bill, we are not restructuring the entire criminal justice system. We are just stating a very simple fact that we want to do everything possible to prevent a recurrence of hurt and taking away a life of other people, because in the final analysis, Mr. President, the state must have a balanced view on the rights of those who commit violent crimes and the society at large.

Secondly, in the argument that is being given here pertaining to the need for greater prisons, I will say I think that we really should get done with repealing the Rockefeller drug laws because they have not solved the problem, which was we were supposed to finish with the -- with the -- with drug addiction and drug traffic and everything else. It has proved to be a failure, that set of laws. So we should vacate the prisons.

For those very, very violent first felons and the issue of having them being supervised after they have been in prison, then it's also imperative to support this bill.

I think that while they are in

prison, some of them will be able to get education, realize the horrible thing that they have done and possibly if they get some religion when they come out, they might be of some service to the community.

I vote yes, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Leichter, to explain your vote.

SENATOR LEICHTER: Yes, to explain my vote.

Mr. President, it's unfortunate in spite of the very excellent debate that we had and I thought the very eloquent statements, strong statements made both against the bill and for the bill, that there seems to be a real misunderstanding of what Senator Waldon and Senator Montgomery said.

They did not say they want to send murderers and rapists and violent criminals to schools. They made the point that we're not investing in our communities. We're not investing in our schools and that as we deal with a bill of this sort, which is going to substantially increase the cost that we're going to spend on correction, that you

would be better off spending that money in communities and in neglected communities of the deprived, communities that are underprivileged where, unfortunately, many people do come who are violent because they never had the opportunities; they never had the education. That's the point that they made, and I think we ought to be very clear about it.

I can understand the philosophical differences about this. It's been raging in this country for some time now, how we ought to deal with crime, but their point was very clear and certainly their stand that, yes, you must deal with violent criminals but before somebody becomes violent, before they become a criminal, invest to prevent that from happening and that's the reason that they and I and others are voting against this bill, because we have a zero tolerance for violence.

We've said all along violence is unacceptable in our society. We have penalties. We have severe penalties for violent criminals and we don't think that it

makes sense to make those penalties even greater to spend more on correction when we have particularly the deplorable situations that exist in so many of our communities where people grow up to be violent.

Mr. President, I vote in the negative.

ACTING PRESIDENT FUSCHILLO: Senator Seward, to explain your vote.

SENATOR SEWARD: Thank you, Mr. President.

In my view, Mr. President, we have both a long-term and a short-term issue and problem that we're dealing with here today.

In the long term, I would agree with those who have spoken out for more schools and other preventive measures to help lead our young people toward a productive, law-abiding life. No one argues with that and we do that as a state. The figure has been mentioned in terms of what we spend in education in this state every year and other preventive programs and we're going to continue that and we stand together on that.

This bill is not, in my estimation, a contradiction to those policies. This bill deals with the very real short-term problem, a violent crime has been committed against an innocent victim.

These are not statistics. These are real people in the state of New York who have suffered from a rape, an assault, a murder, and we need to deal as a society, as a people, as a Legislature with that short-term problem, a crime has been committed. Society and our people have a right to respond in an appropriate way.

I say, Mr. President, the appropriate response is to have those convicted felons first time and every time serve the maximum allowed under the law in terms of their sentence. That's all we're saying under this legislation. That's what I believe the people of New York want us to do to have these people fulfill their sentence.

So, Mr. President, I vote aye.

ACTING PRESIDENT FUSCHILLO: Announce the vote.

THE SECRETARY: Those recorded

in the negative on Calendar Number 470 are Senators Connor, Leichter, Montgomery, Paterson, Smith and Waldon. Ayes 51, nays 6.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator Balboni.

SENATOR BALBONI: Mr. President, at this time I would like to lay aside the rest of the calendar for the day.

ACTING PRESIDENT FUSCHILLO: Laid aside.

SENATOR BALBONI: Do we have any housekeeping?

ACTING PRESIDENT FUSCHILLO: Yes. We have some substitutions.

The Secretary will read - Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on behalf of Senator Farley, on page number 71, I offer the following amendments to Calendar Number 871, Senate Print Number 7352-A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FUSCHILLO: So

ordered.

Senator Larkin -- the Secretary will read the substitutions.

THE SECRETARY: On page 42, Senator Wright moves to discharge from the Committee on Finance Assembly Bill Number 9892 and substitute it for the identical Third Reading Calendar 441.

On page 43, Senator Volker moves to discharge from the Committee on Local Government Assembly Bill Number 9322 and substitute it for the identical Third Reading Calendar 477.

On page 49, Senator Kuhl moves to discharge from the Committee on Local Government Assembly Bill Number 7923 and substitute it for the identical Third Reading Calendar 624.

On page 58, Senator Lack moves to discharge from the Committee on Judiciary Assembly Bill Number 7613 and substitute it for the identical Third Reading Calendar 747.

On page 58, Senator Lack moves to discharge from the Committee on Judiciary Assembly Bill Number 9992 and substitute it

for the identical Third Reading Calendar 749.

On page 58, Senator Lack moves to discharge from the Committee on Judiciary Assembly Bill Number 9993 and substitute it for the identical Third Reading Calendar 751.

On page 59, Senator Lack moves to discharge from the Committee on Judiciary Assembly Bill Number 9994 and substitute it for the identical Third Reading Calendar 752.

On page 71, Senator Maltese moves to discharge from the Committee on Finance Assembly Bill Number 9208 and substitute it for the identical Third Reading Calendar 873.

And on page 71, Senator Libous moves to discharge from the Committee on Finance Assembly Bill Number 10370 and substitute it for the identical Third Reading Calendar 874.

ACTING PRESIDENT FUSCHILLO: The substitutions are ordered.

Senator Balboni.

SENATOR BALBONI: Senator Fuschillo, I would just like to comment, you've done a terrific job in keeping this

place in shape today and with no further business, I move that the Senate stand adjourned until Tuesday, May 19th, at 3:00 p.m.

ACTING PRESIDENT FUSCHILLO: Thank you, Senator Balboni, for the compliment.

The Senate stands adjourned until Tuesday, May 19th, at 3:00 p.m.

(Whereupon, at 5:45 p.m., the Senate adjourned.)