NEW YORK STATE SENATE

THE

STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 11, 1999

3:03 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

I ask everyone present to please rise and repeat with me the Pledge of Allegiance.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

THE PRESIDENT: The invocation today will be given by the Reverend Peter G. Young, from Blessed Sacrament Church in Bolton Landing.

REVEREND YOUNG: Let us pray.

Today, O God, we honor by our prayer the professional firefighters of New York state, for their commitment at our most dangerous opportunities of facing the problems of fire and crime.

We pray too for the determination of our Senate to determine the best way to serve our youth and to find a way to try to assist them in their many needs.

We ask You this through Our Lord now and God forever and ever. Amen.

THE PRESIDENT: Reading of the

Journal.

THE SECRETARY: In Senate, Monday May 10th, the Senate met pursuant to adjournment. The Journal of Sunday, May 9th, 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 Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Maltese, on page 50 I offer the following amendments to Calendar Number 843, Senate Print 3229, and I ask that that bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendment is received and the bill will retain its place on the Third Reading Calendar.

SENATOR FARLEY: Madam President, on page 29 I offer the following amendments to Calendar Number 597, Senate Print Number 3158. And that's on behalf of Senator Leibell. And I ask that that bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendment is received, Senator Farley, and the bill will retain its place on the Third Reading Calendar.

SENATOR FARLEY: I wish to call up Senator Volker's bill, Print Number 3106, which was recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 554, by Senator Volker, Senate Print 3106, an act to amend the Penal Law and others.

SENATOR FARLEY: Madam President, I now move to reconsider the vote by which this bill was passed.

THE PRESIDENT: The Secretary will call the vote upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

SENATOR FARLEY: The bill is now on third reading, and I offer the following amendments.

THE PRESIDENT: The amendment is received.

Senator Skelos.

SENATOR SKELOS: I believe there are some substitutions at the desk, if we could please make them at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 14, Senator Holland moves to discharge, from the Committee on Rules, Assembly Bill Number 6909A and substitute it for the identical Third Reading Calendar, 235.

On page 19, Senator Volker moves to discharge, from the Committee on Rules, Assembly Bill Number 333 and substitute it for the identical Third Reading Calendar, 359.

On page 32, Senator LaValle moves

to discharge, from the Committee on Rules, Assembly Bill Number 4736 and substitute it for the identical Third Reading Calendar, 625.

And on page 6, Senator LaValle moves to discharge, from the Committee on Rules, Assembly Bill Number 7009A and substitute it for the identical Second Report Calendar, 1063.

THE PRESIDENT: The substitutions are ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time if we could adopt the Resolution Calendar.

THE PRESIDENT: All in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, on Resolution 1242, Senator Trunzo has offered

sponsorship for the entire membership. It concerns School Transportation Personnel Week. Consent of the Minority will put everybody on. If anybody wishes not to sponsor the resolution, they should notify the desk.

THE PRESIDENT: Any members who do not wish to sponsor the resolution should notify the desk. Thank you, Senator.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 236, by Senator LaValle, Senate Print 2475A, an act to amend the Education Law, in relation to the powers of the Board of Education.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 11. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 238, by Senator Saland, Senate Print 3021A, an act to amend the Executive Law and the Education Law, in relation to providing security information.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 593, by Member of the Assembly Weinstein, Assembly Print Number 3565, an act to amend Chapter 729 of the laws of 1994.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 595, by Senator Trunzo, Senate Print 2468A, an act to amend the Retirement and Social Security Law, in relation to retirement benefits.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 750, by Senator Stafford, Senate Print 3989, an act to amend the Criminal Procedure Law, in relation to electronic court appearance.

SENATOR BRESLIN: Lay it aside.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 753, by Senator Fuschillo, Senate Print 4210, an act to amend the Penal Law, in relation to the offense of assault in the second degree.

SENATOR BRESLIN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 765, by Senator Larkin, Senate Print 104, an act to amend the Vehicle and Traffic Law, in regulation to authorizing the City of Newburgh.

THE PRESIDENT: A home rule message is at the desk.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 767, by Senator Trunzo, Senate Print 4268, an

act to amend the Highway Law, in relation to highway projects or maintenance activities.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 776, by Senator Maltese, Senate Print 4572, an act to amend the Vehicle and Traffic Law, in relation to increasing the penalty for obstructing access.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 781, by Senator McGee, Senate Print 3308, an act to amend the Tax Law, in relation to extending the expiration of the provisions.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 35. Nays, 2. Senators Dollinger and Gentile recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 785, by Senator Marcellino, Senate Print 836, an act to amend the Education Law, in relation to courses of study for cardiopulmonary resuscitation.

THE PRESIDENT: Read the last section.

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

August.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 808, by Senator Leibell, Senate Print 3688, an act to amend the Retirement and Social Security Law, in relation to the membership of police officers and firefighters.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 814, by Senator Leibell, Senate Print 5093, an act to amend the Retirement and Social Security Law, in relation to the extension of the temporary benefits.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 909, by Senator McGee, Senate Print 4318, an act to amend the General Municipal Law, in relation to authorizing state agencies to enter into cooperative agreements.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 910, by Senator McGee, Senate Print 4320, an

act to amend the Municipal Home Rule Law, in relation to authorizing the Secretary of State to receive.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 926, by Senator Johnson, Senate Print 1960, an act to amend the Family Court Act and the Vehicle and Traffic Law, in relation to suspension.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect in 120 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37. Nays,

2. Senators Duane and Smith recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 928, by Senator Maziarz, Senate Print 3809, an act to amend the Family Court Act, in relation to violations of adjournments.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect in 90 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 938, by Senator Saland, Senate Print 5553 -

SENATOR DOLLINGER: Lay it aside.

THE SECRETARY: -- an act to amend the Criminal Procedure Law and others.

THE PRESIDENT: The bill is laid aside, Senator Dollinger.

SENATOR DOLLINGER: Madam

President, could I be recognized for one second?

THE PRESIDENT: Senator Bonacic, that completes the noncontroversial reading of the calendar.

SENATOR BONACIC: Thank you, Madam President. May we now have the controversial reading of the calendar, please.

THE PRESIDENT: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Madam President, I just wanted to introduce someone in the gallery. In addition to our men in blue, there is a delegation from the City of Rochester School for the Deaf, an unusual group with their sign interpreter. I simply wanted to welcome them in somewhat unusual circumstances, Madam President.

THE PRESIDENT: That is so noted, Senator Dollinger.

Could we please proceed with the controversial calendar. The Secretary will read.

THE SECRETARY: Calendar Number 750, by Senator Stafford, Senate Print 3989,

an act to amend the Criminal Procedure Law, in relation to electronic court appearance in Franklin County.

SENATOR DOLLINGER: Explanation, please.

THE PRESIDENT: Senator Bonacic, an explanation has been requested.

SENATOR BONACIC: This is an act to amend the Criminal Law in relation to electronic court appearances in Franklin County. What this does is it permits audiovisual technology in criminal proceedings in which a person would not have to appear. It would save money. It's been requested by Franklin County. There are 13 other counties in the state of New York that presently have this. And it's also been requested by the Office of Court Administration.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. On the bill.

THE PRESIDENT: Go ahead on the bill, Senator.

SENATOR DUANE: Similar to a situation we had yesterday, this is an

expansion of a pilot program, but we still have not gotten the results of the initial pilot program. We don't really know whether this is raising any money. And before we expand the program, I think we should see what the results have been and its impact on the counties of our state.

So I'm going to be voting no on this bill.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 753, by Senator Fuschillo, Senate Print 4210, an act to amend the Penal Law, in relation to the offense of assault in the second degree.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator

Fuschillo, an explanation has been requested.

SENATOR FUSCHILLO: Thank you, Madam President.

This bill has been before the Senate since early 1990. The bill would add a new subdivision to the Penal Law, which is assault in the second degree for intentionally causing physical injury to a school district employee or a BOCES employee.

Recent reports have indicated the need for this. There has been an increase in physical attacks against school personnel throughout the state.

THE PRESIDENT: Read the last section.

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, 49. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

938, by Senator Saland, Senate Print 5553, an act to amend Criminal Procedure Law, the Executive Law, the Family Court Act and the Penal Law, in relation to enacting the Juvenile Justice Accountability and Procedural Reform Act of 1999.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: Senator Saland, an explanation has been requested.

SENATOR SALAND: Thank you, Madam President.

Madam President, this bill is a Governor's Program bill. It's an effort to deal in a comprehensive fashion with the issue of juvenile justice. As many in this chamber are aware, certainly as far back as 1995 the Senate endeavored to move this issue to the front burner by establishing, in effect, an entirely new way or certainly a substantially new way within which to deal with juvenile justice.

We have since joined in partnering with the Governor. The bill before us, as I mentioned earlier, is a Governor's Program

bill. And it does a number of things. On the one hand, it expands a number of sentences for crimes that are committed by juveniles. It alters what is currently the procedure with respect to handling matters involving juveniles, permits the family court to not only issue warrants but in effect to treat juveniles in a fashion, under certain circumstances, that's more akin to the way that criminal courts respond to these particular types of cases.

It would, for example, say that where you've had the opportunity to receive youthful offender treatment for what otherwise would have been a felony, and you commit another act that would constitute a felony within five years thereafter, that there is a look-back. The look-back effectively would permit the youthful-offender prior treatment to be reviewed, and would serve as a predicate for a felony charge, if in fact there is a conviction on the -- as a predicate felon, or certainly be considered in the course of sentencing if there's a conviction on the second felony.

There are a number of additional things that it does, including additional access to juvenile records. The -- the bill contains provisions to ensure parental responsibility -- or involvement, perhaps more appropriately, in the course of a disposition with children who have in fact violated laws and are subject to placement.

The bill is an effort to try and deal with the problem of juvenile crime, a problem which was perhaps last dealt with some 20 to 30 years ago by a Legislature and a Governor at that time who were dealing with children who were more or less like Ozzie and Harriet's children, a time perhaps when they were concerned with issues such as petit larceny, perhaps joyriding in a car, perhaps truancy.

The nature of crime committed by juveniles certainly has become far more violent; in many instances, far more gratuitous. The nature of that crime in terms of statistics not only greatly exceeds those numbers from back in 1985, 1986, but even if given the reality of a diminution of juvenile

crime over the course of the past couple of years not unlike the diminution in crime that's been perpetrated by adults, the reality still remains that the juvenile crime rate in New York is not only significantly higher for violent crime than the national crime rate, and not only is the homicide rate also significantly higher than the national crime rate, but even given the reduction over the past couple of years, New York State's juvenile violent crime rate has increased some 30-plus percent since the 1987 year to the 1997 year, a period of some ten years. 1997 is the last year for which we have statistics, complete statistics. And certainly there has been no increase in population to speak of since that 1987 date.

And the reality is, is that we can reasonably expect that the demographics being what they are, that somewhere shortly after the turn of the 21st century we will have another bubble of teenagers, an increase in population, an increase in a population which tends to be the most violent population and one that engages in numbers far too high in

terms of crime.

The bill attempts to deal with the issue of alternatives. It creates an alternatives commission, a commission that's -- the purpose of which is to, in effect, review what is available to determine which programs, alternatives to dispositional programs work, which programs are the ones that we should be replicating throughout our respective communities.

It's a bill which I think certainly is long overdue. I'm hopeful that before this session ends, if in fact it ever ends, that we will have the ability to sit at the table with our counterparts in the Assembly, perhaps through a conference committee -- ideally through a conference committee -- and negotiate our differences. It's been far too long. This is now, I believe, our fifth session in which we're endeavoring to try and come to closure on this issue.

I certainly believe that what we need to do, if I can speak perhaps more generally to the subject, is not only on the one hand ensure responsibility and impose

responsibility; I think we have to effectively deal with those who commit violent crimes in a fashion that is akin to the criminal justice -- most akin to the criminal justice law. I think we have to take those who we can divert, particularly those who are engaged in activities that are nonviolent, try and keep them out of placements, try and avail ourselves of the opportunity to alternatives. And certainly, as part and parcel of any proposal, there has to be what I would term this comprehensive or wholistic approach.

The reality is, is that these are young people who are going to have the opportunity, regardless of whether they're placed or incarcerated, to be back out in society. And I think it's our job to try and avoid the placement or the incarceration. But once that has occurred, I think we have to make every effort to provide opportunities for rehabilitation that would afford some ability to function in a fashion which society would consider to be more appropriate upon release.

Thank you, Madam Chair -- Madam President.

THE PRESIDENT: Senator Waldon.

SENATOR WALDON: Madam President, may I ask the gentleman a question or two?

THE PRESIDENT: Senator Saland, do you yield for a question?

SENATOR SALAND: It will be my pleasure, always, to yield to Senator Waldon. And the day wouldn't be complete if Senator Waldon didn't have one or more questions for me.

SENATOR WALDON: I'm equally delighted, Senator. Thank you.

Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR WALDON: Senator, just for information, are you aware that Ricky Nelson, the son of Ozzie and Harriet, died in a plane crash where the one survivor, I believe, stated that they were free-basing cocaine, which caused a fire within the plane, which precipitated its crash?

SENATOR SALAND: I'm not aware of that. And I'm not quite sure, if in fact that was alleged, if it was ever established. But I am not aware of it.

Suffice it to say, though, Senator, that when I talk in terms of Ozzie and Harriet's children, I'm talking in terms of a television program that may represent a generational thing, perhaps -- I'm a lot older than you are, but I vividly recall -- I'm being kind, Senator. Don't look so surprised.

I vividly recall the format, the presentation, and the sort of utopian lifestyle that surrounded the family crises that they endured.

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

THE PRESIDENT: Would you continue to yield, Senator Saland?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President.

Senator, I understood your characterization. But I thought it important for us to be aware, if the body of our colleagues were not aware, that even -

SENATOR SALAND: Would you suffer an interruption, please?

Madam President, it may be my hearing, and I know I've had problems before with Senator Waldon. I'm having a real difficult time hearing him.

THE PRESIDENT: Senator, could you speak up, please?

SENATOR WALDON: Senator, I understood -- thank you, Madam President, for your indulgence.

I understood what you were trying to convey to us. But I wanted our colleagues in the chamber to understand that even in the most ideal of settings that children may somehow take a wrong step in terms of their journey through life.

Now, if I may, you mentioned in your statement that there was some reduction in the criminal pattern for our young people over the last few years. You said from 1986 or '89 that it gone up 30-plus percent. Can you give us the information as to the rate of reduction since the first year that it began to go down as opposed to when it was going up?

SENATOR SALAND: I can't give you numbers, Senator Waldon. I can tell you that I believe in 1994 there was a modest reduction. I believe in 1995 there was an increase. I believe in '96 and '97, there were decreases.

Notwithstanding those decreases, I -- the rate is certainly dramatically above the rate of violent crime from the mid-'80s and certainly, as I mentioned earlier, is far higher and above the national rate. And that includes not merely violent crime but homicide. I think the last data that we had had the homicide rate about 40 percent above the national average.

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

THE PRESIDENT: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Senator Waldon, you may proceed with a question.

SENATOR WALDON: Thank you, Madam President.

Senator, before I ask the next question, could you tell us, if you know, what the trend is nationally in regard to reduction of crime amongst those who are 18 to whatever is in your catchment group in terms of those who are juvenile criminals, who are young criminals? And as well, tell us, if you know -

SENATOR SALAND: I hate to do this to you, and it may be something that's coming from behind me. I heard you say "Can you tell us, if you know," something about reduction, and then I lost you, Senator.

SENATOR WALDON: I will repeat it. And I understand the cacophony in the back is creating havoc for both of us.

If you know, what is the national average of reduction over the last few years in the particular group that we're addressing with this proposal? And, secondly, can you tell us about the Boston plan, if you know about that?

SENATOR SALAND: Unfortunately, I can't. And I should be able to tell you, give you a comparison of the national figure versus

New York's. I can't do that. But I can tell you that New York's violent crime rate is the highest among the 50 states. New York's juvenile violence rate is the highest in the nation.

The Boston plan, while I'm not familiar with the particulars, I do know that the -- I do know the Boston plan has captured certainly the attention of many, that it is a plan which has seen a dramatic reduction in violence and one which, as I understand it, has seen a virtual elimination, at least for a period of time, of juvenile homicides. And I can't tell you of all of the particulars of the plan, but I'm certainly familiar with some of those particulars and of its reputation.

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

THE PRESIDENT: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Waldon. Do you have an additional question?

SENATOR WALDON: Yes, I do.

Thank you, Madam President.

THE PRESIDENT: You may proceed.

SENATOR WALDON: Senator, there are plans similar to the Boston plan -- which has had one homicide in the last four years amongst people of the age level we're addressing here. There's one, I believe, in Flint, Michigan; there's one in Tennessee.

All of these programs give massive support services to the age brackets that we're addressing here, both in a preemptive fashion, before they even become of age and involved in crime, and, once they are, they interdict into that group, give them massive support, put them on the proper track in regard to education, give them family support, and even if they are incarcerated or become a number in the criminal justice system, they transition them out with tremendous support services and continue to give them support until they become -- return to society as viable citizens.

Have you considered incorporating any of those types of models in this proposal?

SENATOR SALAND: Senator Waldon,

I'm certainly keenly interested in looking at those types of models. I would certainly hope that the commission that we create under this bill would look at those types of models. And I don't disagree with the fact that this cannot be a one-dimensional approach to juvenile justice.

I think, however, that in response to what you've said, we have to not only impose responsibility -- and that responsibility, in my opinion, and certainly in the opinion of the Governor, entails the ability to provide appropriate sentences for those who engage in violent acts.

But as I mentioned in my opening remarks, if for no other reason than the age of the people involved in committing these crimes, they are going to return to society. And I think we have the obligation to do our best to try and provide the ability for their return to society to be an event which doesn't result in recidivism.

I think every bit as importantly, and even more importantly, that we should be avoiding their getting into the system. And I

think we do that by way of alternatives. And it may well be that there's much that we can learn from the Boston plan or other plans. But I believe that the alternative commission that is called for in the Governor's bill will have the ability to do that. And then it will be up to us, as part of our budget process, to ensure that funds are adequate to be up to that task.

Now, it may well be that when we get to that point, assuming that we get to that point, there may be disagreements as to what constitutes being adequate enough to take care of that. But I certainly think that we do have the responsibility of traveling down that path if we're really serious about a comprehensive approach to dealing with the issue.

SENATOR WALDON: Madam President, would the gentleman yield to more questions?

THE PRESIDENT: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed,

Senator Waldon.

SENATOR WALDON: Thank you very much, Madam President.

Senator, we have discussed, time and time again, ad nauseam, the schools under registration review and the community school boards in this state which are the feeder systems for our prison systems. You've heard me say, and we've discussed this either in our present positions across the room or in committee or just having conversations, that those school districts in those Assembly districts, whether it's 17 or 18 and 11 school boards -- I've forgotten -- are feeding into our prison system 80 percent of the people who are in our prisons as of this moment and the overwhelming majority in our local jails.

Did you consider or was there consideration given in the preparation of this proposal to put massive resources -- a Marshall Plan, if you will -- into those particular areas so that those young people would be given a full opportunity to realize their fullest potential? And if that had occurred, in my opinion, it would preclude the

need for such a punitive act as this. Was there any consideration given to those schools under registration review and to those school districts and to those young people?

SENATOR SALAND: Those issues that you raise are certainly valid issues. And as I believe we've probably discussed before within the context of this type of a bill, those are not the kinds of things that I have viewed as being within the purview of this bill. As I mentioned earlier, I thought they were appropriate for budget and budget negotiations and would believe that that's where we ought to be attempting to deal with those issues.

But let me suggest to you, at the expense of perhaps seeming confrontational, I don't -- notwithstanding the fact that you're correct with respect to the fact that there are certain districts which disproportionately seem to be sending people into the criminal mainstream, I'm not quite sure if the mere application of dollars in and of itself is going to wind up in a meaningful way changing those outcomes.

There's more to it, I think, than the mere application of dollars. Because if, in fact, we look at the areas that you're talking about -- and generally these areas are areas that have disproportionate poverty levels, more people in need, and the term we now use is more people at risk -- I would submit to you that there probably would never be the ability for anybody to claim that they have successfully risen from poverty to attain whatever position that might occur. People make choices. And it may well be that their -- the environment within which they're placed resulted in them making choices that you and I might not make.

But there is an element of choice involved in this. And as part and parcel of what we propose to do, we say that there is an element of responsibility for the choices that you have made. And if you're going to make those choices, you must understand that there are consequences.

And that's not contrary to anything that I've ever said or done in the course of dealing with members of my family. There are

good consequences, and there are bad consequences. And there are bad consequences when you do bad things.

Now, in terms of dealing with the issues of funding programs, I'm certainly not adverse to that, and I certainly think we should be doing our best to meet those responsibilities. But that's not what you're going to find within the parameters of this bill.

SENATOR WALDON: Madam President, if the gentleman would yield again.

THE PRESIDENT: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Waldon.

SENATOR WALDON: Thank you, Madam President.

Senator, you see before you someone who obviously, with the help of his parents and grandparents -

SENATOR SALAND: Thank you, Senator.

SENATOR WALDON: You see before you someone who obviously, with the help of his parents and his grandparents, the Church of God and Christ, and all of those support systems that Patchen Avenue afforded me, someone who made the right choices.

Where we grew up, my first experience I believe with unions were the rats and the roaches, who were so organized I thought they had a shop steward and a dues-check-off system.

It was a very poor area. But some of us actually got out of there okay -- Tommy Davis, Lenny Wilkins, Vinnie Cohen, who's black despite his name, Cyhillo Green, Frank Thomas, who headed the Ford Foundation. All of us came from within a few blocks of each other. So kids even in that abject poverty situation that Bed-Stuy was on Patchen Avenue, between putting them in Gates and putting them in Fulton Street -- Al Vann, who lived at the other end of the block -- we all -- some of us -- not all of us, but some of us did okay.

But others need more than that. And that's why I raise the point about the

source schools or certain schools and about massive resources being put into them.

But I'd like to take a different tack, if I may. I have been into the prisons, and I believe that you have as well. And those of us -- those of us who are realists in terms of what happens within the prisons understand that when you send someone who's 12 or 13 or 14, 15, 16 into an adult facility, we're really sending someone in to be abused and used by the older prisoners.

Is there any consideration being given or have you given any consideration to what will happen in a physical sense, in a psychological sense, in a sociological sense to those children who will be exposed to sexual predators and who will come out, no matter what is able to be done, on the back end of their incarceration worse than when they went in?

SENATOR SALAND: Senator Waldon, it's my understanding -- and please correct me if I'm wrong -- that when you have juveniles of the ages that you're talking about -- 13, 14, 15 -- they are not in a general

population. They are effectively segregated and kept out of that particular population.

SENATOR WALDON: Madam President, if I may, just one or two more questions.

THE PRESIDENT: Senator Saland, do you continue to yield for one or two questions?

SENATOR SALAND: Yes, Madam President.

If you'd permit me, if I might, just -- there have been some corrections people who have told me that they believe that placing younger offenders in with an older population might have a stabilizing effect on the younger, and I disagree with that. I think it's placing them at risk, notwithstanding however tough they may have been and whatever environment they may have come from.

THE PRESIDENT: Senator Waldon, you may proceed.

SENATOR WALDON: Thank you, Madam President. It will be only one or two, Madam President.

Senator Saland, you do understand

that when someone as a young person goes into the prison system, administratively, at least up until age 21, they can be extended in terms of their incarcerated period? You understand that?

SENATOR SALAND: Yes.

SENATOR WALDON: And that is what I was talking about. I apologize to you for failing to make that very clear at first.

Last question, if I may, Madam President. If I may, last question.

THE PRESIDENT: You may proceed, Senator Waldon, with your last question.

SENATOR WALDON: Thank you.

Senator Saland, do you see in the near future, in terms of your mind-set, that you would be supportive of not revisiting this issue but of -- meaning your proposal -- but of revisiting a massive Marshall Plan approach to giving kids who have the least in our state the greatest opportunity to realize their fullest potential, by duplicating or replicating programs like Boston or Flint, Michigan, or the one that's in Tennessee? Do you think that's a possibility for you as a

person who is in a very important and influential position here in our Senate?

SENATOR SALAND: Let me give you an answer that won't be the perfect one that you might like from me, Senator Waldon.

I stand by what I said earlier, that I believe it's important for us to deal with the kinds of issues, particularly in the communities that you refer to as being so greatly at risk. I cannot tell you that I would endorse a -- what you're terming a Marshall Plan. I certainly would be receptive, in the course of our budget negotiations, to try and focus on the needs of those communities. I believe, notwithstanding what occurred ultimately with the budget process that we went through last year, there was some recognition, you know, of some of the needs of those communities, recognition that certainly as the Senate Cochair of the Human Services Budget Subcommittee I deemed appropriate.

I'm prepared to work with those who are pressing for those types of programs. I've worked with my counterpart in the

Assembly, the Chairman of the Assembly Children and Families Committee, and hope to have the opportunity to continue to work with him. But I'd be less than honest if I told you that I'd be able to embrace the idea of a -- of a Marshall Plan. I'm not quite sure what that would entail particularly, but I certainly understand what the concept is.

SENATOR WALDON: Thank you very much, Senator.

Madam President, if I may, on the bill.

THE PRESIDENT: Go ahead, Senator Waldon, on the bill.

SENATOR WALDON: Thank you, Madam President, for the manner in which you've handled this debate. And let me thank Senator Saland, one of our bright stars here in the chamber, who's a consummate gentleman.

I believe that we are putting children at too great a risk if this were to become law. Despite the fact that there are some very violent children in New York state, I think all the recent indicia are that crime is down. And therefore, there's not such a

need for such punitive and draconian measures in regard to the punishment for these criminals.

Also I believe we have a moral obligation, as a state and as a people, as a nation, to ensure that there is an opportunity for people to realize their fullest potential. And by just punishing them and not creating support services in the prisons, whether it be for those who have been sexually abused and/or raped, those who have become drug addicts, those who have, for reasons of dysfunctional families, been thrown on the streets at 7, 8, 9 and 10 years of age and who function alone without the support and guidance of an adult, for any number of reasons I believe that we have a moral obligation to give our kids a chance to just be kids, so that they can then become teenagers, adolescents, and adults.

And I don't see that happening here in this proposal, so I can't support it. I'm not someone who's soft on crime. I'm certainly not someone who doesn't believe that those who are the most violent should be put away and put away permanently. But I think

that kids at 12, 13, 14, 15 years of age, for whatever reason, make mistakes. And we ought to try to salvage them first, as opposed to putting them away forever and throwing the key away. And I think that happens sometimes when a child is arrested, treated as an adult, and ends up being the object of older and more violent predator types which are within the prisons.

So I encourage my colleagues to think judiciously about this and to recognize that something in this bill is very positive and very super, and we should listen to it. But there are, in my opinion, as many facets of this proposal which should not be listened to and which we should not support. And therefore, I encourage us to vote no now. Let's negotiate it and come back with something that's good for all of the people all of the time.

Thank you very much, Madam President.

THE PRESIDENT: Read the last section.

Senator Dollinger.

SENATOR DOLLINGER: Please recognize Senator Duane.

THE PRESIDENT: Excuse me. Senator Duane can be recognized.

SENATOR DUANE: Thank you very much, Madam President. It's my preference to speak on the bill.

I think that this bill is a terrible, terrible piece of public policy. I think it is a terrible criminal justice piece of legislation. I think the idea of making and treating 12-to-14-year-olds as adults in the criminal justice system is just wrong. I also think it's an absolute wrong way to go, to treat even more 14-to-16-year-olds as adults in the criminal justice system. I think that that is not helpful towards making this a safer state.

Very few people, very few people are calling for treating more young people as adults in the criminal justice system. Not DAs, not the federal justice system, not judges, not experts in the area of juvenile justice. No one is for this, really, with the exception of -- sadly -- politicians.

You know, I'm not someone who I guess is totally beyond using politics as a way to shape public policy. But in this case, it is wrong. It is very, very damaging. We are risking destroying young people's lives - not a few, but many, many young people. Crime is down in our state, including and especially among young people. All of the statistics that are gathered across the nation -- not just here in New York state, but across the nation, in very conservative states, by those who have an interest in seeming as law-and-order as possible, have shown that ATIs work, that other things work much better than treating young people as adults.

In fact, young people who go through the adult system commit many more crimes than young people that are treated as juveniles in the criminal justice system. So this does not work as well as treating juveniles within the juvenile justice system. Treating them as adults is not just wrong, but it does not work. It doesn't work here, it doesn't work in Alabama, it doesn't work anyplace where it's being used.

There is a much smaller range of things that you can do with a young person who is being sent through the adult system. A young person that goes before a criminal court judge, the judge does not have as many options for that defendant, for the criminal, the young criminal, than does the family court judge. In fact, oftentimes the criminal court judges give less time than the family court judge does, and the family court judge has far greater supervision all along the way than the criminal court judge does. The supervision is stricter, the range of options open are better, and the success rate is better when they go through the family court judge.

And this is going to become even more important if the court system is merged, because it means that in fact there will be even less people who are familiar with the range of options that will work for young people who are going through the system.

Again, the only people in the field who are for treating youthful offenders as adults are politicians, no one else. Not judges, not DAs. And we probably would have

heard about that -- and you may say, oh, you know, he's making that up. I'm not. That's what the facts show. If we'd had a hearing on this, then we could have brought the experts in, including DAs and judges and people in the criminal justice system and juvenile justice to tell us about those statistics so that you would hear it not just from me, but it could be proven to you that not treating youthful offenders as adults is the better way to go, short term and long term.

I can't believe that we are about to pass something that is not helpful for young people and not something which is going to make the state of New York safer. To have young people go through the family court system is far greater. The supervision is better. They are often sentenced and under supervision for longer periods of time. And the idea that we will now be creating a maximum-security prison for young people is a complete outrage and a waste of money and will not make the state any safer.

I understand that some of you may not be compelled at the idea that what we

should be doing is preventing crimes committed by young people. Maybe you don't think that's a good idea. I do. I think prevention is better than punishing after the fact. I think it's better not to have these crimes be committed.

But even if you disagree with me about that, everything -- all of the statistics, all of the public policy people, all of the situations which have been looked at across this nation say that it is bad public policy, it is not helpful to treat youthful offenders as adults in the system. They should be treated through the family court system with closer supervision, with many more options. That's the way to prevent crimes in the future, not by making the punishment harsher at the other end.

Thank you.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. Would the sponsor yield for a question or several questions?

THE PRESIDENT: Senator Saland,

will you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Montgomery.

SENATOR MONTGOMERY: Yes. Senator Saland, I have figures here that reflect the number of people in prison, on parole and probation in New York State. And that figure -- this is relatively -- well, this is 1998 figures, so it could be different. But it's around 266,000 people in New York State.

Is that the figure that you have for the number of people incarcerated, on parole or probation in New York State, about 266,000 people?

SENATOR SALAND: I know that the number of those incarcerated is a little in excess of 70,000. I will accept, for purposes of whatever your presentation is, the other number for the balance. I can't verify that.

SENATOR MONTGOMERY: All right. Thank you.

And now I see here for 1997 the

admissions to the Office of Children and Family Services by ethnicity, and I believe that this perhaps reflects the same percentage breakdown in the prison system generally: 60½ percent were African-American, 35 percent were Latino, and 3.1 percent white and 1.4 percent Asian and other.

Does that mean that only 3 percent white actually commit crimes, and is that why that percent is so low? Or is that a disparity that we have here in the admissions to OCFS?

It's the same rate of admissions to the prison system, the penal system generally. What does that reflect to you in terms of the crime rate among the different groups?

SENATOR SALAND: I can't begin to tell you what that reflects to me. I can only tell you that, contrary to some of the things that were just raised by our colleague, Senator Duane, effectively there is no mandate requiring somebody to be placed either in OCFS, under their supervision, or in a criminal setting. Effectively the district attorney determines, given the facts and

circumstances of the case, whether it shall be tried as a criminal case or within the family court.

For whatever reason, there seems to be -- and again, it might be couched in some of the things that were suggested by Senator Duane -- a disproportionate number of African-Americans and Hispanics who are being placed in OCFS. Assumedly, again, representing some prosecutorial discretion, and certainly counter to some of the implications of what was stated in Senator Duane's comment. Apparently the decisions were made by the OCFS placement not to try them as juvenile offenders within the criminal system. Because I don't believe that the adult population necessarily reflects those same disparities, although there are disparities within the adult population.

SENATOR MONTGOMERY: Okay. Senator Saland, the adult population reflects the exact same disparities, I can tell you.

I just want to pursue further with Senator Saland, Madam President, if he would continue to yield.

THE PRESIDENT: Senator Saland, will you continue to yield?

SENATOR SALAND: Certainly.

THE PRESIDENT: Go ahead, Senator Montgomery.

SENATOR MONTGOMERY: Senator Saland, I have information here from the -- I believe it's the -- it's compiled by the Correctional Association, and it gives - makes a point of discussing the profiles of programs that are alternatives to incarceration. There's a program that they called CASES, which is, I believe, Community -- wait, I have an acronym for it. I believe it's Community Alternatives -- oh, dear. I'll find it in a minute, Madam President, if you'll just bear with me.

Center for Alternative Sentencing and Employment Services. That's CASES. I don't have the number of people who are in the program. But it costs the state, per youth served, $6,500. The recidivism rate of youth involved in this program is 31 percent. There is another program, Juvenile Intensive Supervision and Probation Program. It costs

the state $4,800 per youth, and the recidivism rate is 36 percent. DFY facilities cost the state $70,000 per youth, and the recidivism rate is 76 percent.

My question to you is, where do we stand in terms of expanding these programs that save us so much in terms of state dollars and reduce recidivism -- with a reduced recidivism rate, which on a long-term basis saves the state an incalculable amount of money?

SENATOR SALAND: Senator, let me just suggest to you that there is not one word or one iota of content in this bill that in any way, shape or form prejudices the use of those programs. If in fact those are diversionary programs, it may well be that they would serve as wonderful models to be replicated by the commission that's proposed in this bill.

This bill, understand, deals generally not with the issue of prevention, which has been the tone and tenor of most of the comments that have been coming from your side of the aisle. This bill deals with what

do we do after somebody has engaged in what could be politely termed antisocial behavior and more appropriately termed criminal behavior.

And this bill attempts to do it in a two-step fashion, or a bifurcated fashion. Number one, providing penalties for those who commit the most egregious and violent acts and saying that those penalties should be stepped up. And, number two, saying that we should divert those who aren't violent, those who should be provided opportunity to avoid a placement or to be incarcerated.

There's certainly nothing inconsistent in that bill with anything that you are proposing by way of the programs that you're citing.

SENATOR MONTGOMERY: Okay. Senator Saland, I also have here that the Juvenile Justice Coalition of New York has proposed, suggested some ways to deal with juvenile justice. One of them is to institute graduated sanctions, where when a young person first -- there is a first offense, at that moment there is intensive intervention and

diversion, hopefully, which can be done at the community level. If that young person continues, has other infractions, that the sanctions are graduated up to a point where that youngster is obviously a repeat offender and needs more of the kind of sanctions that are in your bill.

Is that graduated-sanction approach in this legislation?

SENATOR SALAND: Let me say that to some extent it is, yes.

And let me say that those who are familiar with graduated sanctions I think would tell you that generally graduated sanctions does not say that where you've had somebody who may even be a first offender who has committed a violent crime, that we do not -- or let me rephrase that. Well, that we do not contemplate placing them in a -- either into the criminal system or into a restrictive placement in a juvenile system.

That is not implied by graduated sanctions. Graduated sanctions basically says where you have somebody who's engaged in criminal behavior which doesn't rise to the

level of violent behavior, you should effectively attempt to divert or use a less restrictive means of dealing with them at the initial contact.

But that is not inconsistent with the kinds of sentences that are being proposed here for the types of crimes that are being covered by this. And while it doesn't spell out graduated sanctions in here, I certainly would think that the purpose of the alternative commission would be effectively to put us into that particular mode.

SENATOR MONTGOMERY: Okay. Senator Saland -

THE PRESIDENT: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Montgomery. Do you have additional questions?

SENATOR MONTGOMERY: Yes, I do, thank you.

The Juvenile Justice Coalition also suggests that we need to develop a strong system of youth-court diversion programs,

where there is involvement of teens and a system of peer sanctioning of young people. And this obviously would coincide with a strong graduated-sanction program, where you would have young people adjudicated, quote, unquote, at the level of a community, where their peers and other community people, including local youth officers, as well as a judge, would be involved. But nonetheless, it's not -- they're not going into, as you are saying, criminal court at 12.

So is that a part of this legislation?

SENATOR SALAND: You will not find any -- Senator, you will not find any specific reference. But again, you referred to it as an alternative disposition, I believe. Or diversion. I don't recall the exact term that you used.

I certainly would think that that -- that program which is shown to be effective in a number of areas -

SENATOR MONTGOMERY: Yes.

SENATOR SALAND: -- would be something that would be endorsed or embraced

and recommended by this commission.

The reality is, as I think we all know, very often there are programs which have advocates. And those programs, notwithstanding their advocates, may not rise to the level of efficiency or effectiveness that we would like to see, notwithstanding the advocacy of those who seek to advance it and carve out their niche, whether it be in terms of alternatives or otherwise.

These are public dollars that would be being spent for a variety of alternative programs. And we don't want to get embroiled in fiefdom battles. We don't want to get embroiled in situations where it's really the power of the advocacy and not the effectiveness of the program that determines funding.

And that's the purpose of this commission. We want this commission. We want experts to tell us that -- notwithstanding the laudatory claims of the advocates for many of those programs, which are working, which are working well, and which should be the ones that we are encouraging and funding.

SENATOR MONTGOMERY: Okay. Thank you, Senator Saland, for your patience and your explanation.

Madam President, on the bill, briefly.

THE PRESIDENT: Go ahead, Senator, on the bill.

SENATOR MONTGOMERY: Obviously, the question of disparity in the penal system, the criminal justice system, is very real. We have evidence of it everywhere. And we can only assume that it's going to impact in the very same way once this legislation goes into effect.

Unfortunately, at the same time that we are trying to deal with these young people -- incidentally, there is information that I have here where it says juvenile arrests in New York state of children under the age of 16 account for 6 percent of the total arrests made. Violent juvenile arrests account for less than 1 percent of all arrests in New York state. So we're actually talking about a small number of people that this -- we are doing this huge legislation to deal with.

But we're not saying anything in this juvenile justice bill about what we are going to do to in fact prevent young people from entering into criminal activity, to reduce recidivism. That means that we don't want them in a revolving door, starting at the point when they're 12 and they go in and they come out and they go back in for the rest of their lives.

We know that juveniles who are incarcerated with adult prisoners are twice as likely to be beaten by prison staff and 50 percent more likely to be attacked with weapons by other inmates. We know that they're much more likely to come back to prison. Yet the bill is totally silent to any of the areas that would in fact keep them from doing that, to in fact reduce crime.

So this is not really an anticrime bill as I can see, because clearly all of those areas that are truly meant to reduce crime are somehow absent from this bill. So I -- I have another name for the bill, which I will not say here on the Senate floor. But it is truly a dark moment for me and for a number

of other people in this state, and especially for young people, because there is no - wherever I look in this budget, wherever I look in terms of policy that comes down from on high, wherever high is, there is nothing that speaks to the fact that we really want to reduce crime, that we really want to protect children throughout this state, especially 12-, 13-, 14-, 15-year-olds, especially African-Americans but also white youngsters.

All of our youngsters are crying out for help, and we're not giving them any support in this Legislature, not nearly enough. We ignore them as a group. Maybe it's because they don't vote. Maybe it's not politically sexy to talk about what we need to be doing for young people. But we're not doing it.

So I'm voting certainly against this bill, because it is not a juvenile justice bill, it is just a bill which says to people we're going to further punish without attempting to help, support and protect young people.

Thank you.

THE PRESIDENT: Senator Seabrook.

SENATOR SEABROOK: Yes, Madam President. Will the sponsor yield for a few questions?

THE PRESIDENT: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Seabrook.

SENATOR SEABROOK: Yes. Senator Saland, could you tell me, if you can, the number of murder 2 incidents that have occurred in this state by 12-year-olds?

SENATOR SALAND: Could I -- I'm sorry, Senator Seabrook, could I ask you to repeat yourself? My apologies.

SENATOR SEABROOK: Not a problem. Could you just tell me the number of 12-year-olds that have actually committed murder 2 in this state in the last year?

SENATOR SALAND: I'm afraid, Senator Seabrook, I can't. I don't know the answer to that question and couldn't provide it to you.

SENATOR SEABROOK: Maybe in the last five years?

SENATOR SALAND: I -- again, Senator Seabrook, I could not give you an answer.

SENATOR SEABROOK: Senator Saland -- will the sponsor yield?

THE PRESIDENT: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Seabrook.

SENATOR SEABROOK: Senator Saland, could you tell me, is there a compelling need to pass legislation that would have 12-year-olds committed and tried as adults if we have not collected the data to say really if there's that need -- that they're creating this type of murders in this state?

SENATOR SALAND: Again, I will say to you that while I don't have the data available, I suspect if we check we will find, if not in New York, that elsewhere there have

been incidents where children less than the age of 13, which is the current law, have committed homicides.

Certainly this legislation I think addresses that situation and is, I believe, also an attempt to let people know, whether it be parents or whether it be young people who are prone to violence, that there will be a criminal justice response to those who would, with intent, seek to take the life of another.

SENATOR SEABROOK: But we really don't know the number of 12-year-olds in this state that have actually committed these crimes.

SENATOR SALAND: Well, I do believe that at least in the instance of one or perhaps more of the situations that occurred nationally -

SENATOR SEABROOK: No, I'm talking in this state.

SENATOR SALAND: -- that were the subject of much media attention and certainly national notoriety, I do believe that there was at least one 12-year-old involved.

And again, I can't tell you,

Senator Seabrook, but the mere fact that we are aware of instances in which it has occurred I believe makes it certainly appropriate to be placed in this bill.

SENATOR SEABROOK: Would Senator Saland yield to another question?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Seabrook.

SENATOR SEABROOK: Senator Saland, when that act outside of this state was committed, that homicide, what was the weapon used?

SENATOR SALAND: I couldn't tell you with certainty what the weapon was. I believe it may have been a semiautomatic. I'm not -- and again, I can't tell you with certainty.

SENATOR SEABROOK: But it was a gun.

SENATOR SALAND: Yes, I believe it was.

SENATOR SEABROOK: To your knowledge, have you known of any 12-year-old

committing murder with a fistfight -- their fists?

SENATOR SALAND: I'm not -- to my knowledge, I'm not aware of anybody bludgeoning somebody to death with their fists.

SENATOR SEABROOK: Will the sponsor yield?

THE PRESIDENT: Senator Saland, will you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Seabrook.

SENATOR SEABROOK: Senator Saland, to your knowledge are you aware of any 12-year-olds that manufacture guns?

SENATOR SALAND: Not unless they're particularly bright and capable and have all the tools to do it.

SENATOR SEABROOK: But you're - not to your knowledge?

SENATOR SALAND: I'm not aware of -- whether a 12-year-old would have the ability to alter a gun to make it perhaps a

weapon that would be even more dangerous than that for which it was designed, that would be an entirely different question. And I certainly wouldn't say that that would be out of the realm of possibility.

SENATOR SEABROOK: Can a 12-year-old own a gun in this state?

SENATOR SALAND: Lawfully?

SENATOR SEABROOK: Lawfully. Can they purchase a gun in this state?

SENATOR SALAND: No.

SENATOR SEABROOK: So the -- can you tell me when was the last juvenile justice bill passed in this state as a need?

SENATOR SALAND: As a what?

SENATOR SEABROOK: As a real need, a compelling need, that there was a real sense of an urgency to pass a juvenile -

SENATOR SALAND: Well, I'm not quite sure what you mean by "compelling need."

There have been any number of juvenile justice bills that have been passed that have basically modified in some way, shape or form some element of the existing system. Some 15 to 18 years ago, there was

some significant changes in the system. But the last major reform and the one that basically defines the parameters of our current system was, I believe, a 1970s phenomenon.

SENATOR SEABROOK: Will the sponsor yield?

THE PRESIDENT: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Go ahead, Senator Seabrook.

SENATOR SEABROOK: Senator Saland, I see in this bill it talks about some reform. How is an arrest warrant issued in this state, or a warrant to search in this state or a municipality? How is that done?

SENATOR SALAND: Are we talking criminal court or are we talking the family court?

SENATOR SEABROOK: Well, both.

SENATOR SALAND: The family court currently lacks that ability. And this bill would give it that ability, the ability to get

a search warrant.

SENATOR SEABROOK: Right.

SENATOR SALAND: The criminal court has that ability. And there has to be some showing of probable cause to get the requisite order for the warrant -- or the requisite warrant.

SENATOR SEABROOK: And in this bill, is it allowing a peace officer or police officer to arrest without a warrant or search without a warrant?

SENATOR SALAND: No search without a warrant. This bill -- under this bill, you would need a search warrant. And that is one of the things that we're attempting to permit within the framework of the family court, the Family Court Act. Just as it is in the criminal court.

SENATOR SEABROOK: But in this bill, does it allow a police officer or peace officer to arrest a youth without a warrant even if -- going into the house?

SENATOR SALAND: If you're talking about an arrest as distinguished from a search, yes, you have the ability to make an

arrest. If, in fact, the officer has observed the crime. Just -

SENATOR SEABROOK: But -- but -

SENATOR SALAND: Just as it is in the criminal court.

THE PRESIDENT: Senator Saland, do you continue to yield to Senator Seabrook?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Do you have a question, Senator Seabrook?

SENATOR SEABROOK: Yes, Madam President.

Senator Saland, in reference to the unsealing of youthful offender records and this 12-year-old commits his first crime and he's a 12-year-old and basically now he has made a mistake, is he allowed in terms of deciding to be a police officer, be an elected official? Does that preempt him from doing this, his first felony offense?

SENATOR SALAND: You're talking basically about a juvenile delinquent. You're not necessarily talking about a YO.

And if in fact there was a YO

treatment of a juvenile, under this bill you would have the ability, if you made application to be a police officer, to review the records that constituted the underlying - that underlie the YO. Or, for that matter, to be able to possess or own a gun lawfully.

SENATOR SEABROOK: And so this bill does not allow an individual, a police officer, the right without a warrant to go in and search for a young person? Because part of what I'm reading in the bill, it says that they would have that actual right to just arrest and search.

SENATOR SALAND: If you want to point out where you're reading it, I'll be happy to look at it. That's not my understanding of what we do here nor what we intend to do. But if you have a specific section in which you feel that that occurs, I'll be very happy to respond to your question.

SENATOR SEABROOK: Okay. On the bill.

Thank you, Senator Saland.

THE PRESIDENT: Senator Seabrook,

on the bill.

SENATOR SEABROOK: I think that here we're faced again with a continuous knee-jerk response to juvenile crime and juvenile justice. And part of what we're looking at, the last compelling -- quote, unquote, compelling need for juvenile justice came about with a rave of incidents in New York City, with the Timmons brothers and Willy Bostik and the push-in robberies that was actually occurring, so the Legislature felt a need.

Here there seems to be no statistical data which indicate that 12-year-olds are committing these type of crimes that would allow us to talk about trying individuals, when we can't name within this state one individual 12-year-old who has actually committed that crime which allow us now to change the law. If there was a compelling need or an interest to do that.

The incidents that took place outside of New York state, that particular issue and all of those incidents occurred within individuals with guns or other weapons.

Therefore, young people aren't producing any weapons. They have not -- in any case that we have seen, they have not developed the scientific imagination to change those objects that they play with and make them guns, other than to purchase guns to be violent. They have not purchased those guns. Those guns basically came out of the possessions of family members.

The majority, the overwhelming majority of young people outside of this state -- because 12-year-olds have not committed those crimes in this state -- those guns came from grandparents and parents who purchased those guns, trained those individuals to use those guns. And so therefore the 11- and 12-year-olds that did the shootings in various other places did not commit homicides with their fists. They committed them with guns.

So the question becomes if we're talking about juvenile justice, then there needs to be some adult justice. Because adults have allowed these crimes to be committed by providing the ammunition and the

hardware to allow this to exist.

So I think that if we're talking about it, we do understand, one, that there's such a thing in this state called children. If we do believe that 12-year-olds shouldn't be married, if we do believe that we should not give 12-year-olds the right to drive our cars by themselves, if we do believe that we should not draft them, if we do believe that we should not allow them to vote, then we do believe that they don't pay rent so they don't own their homes to be searched.

Here the justice that we need to talk about is America's violence. And America's violence and the proliferation and the oversaturation of guns have created the problems in American society in terms of that's the violence, that's the crime that's being committed. Juveniles don't vote. Juveniles don't participate. There should be just as much attached to this bill as dealing with those who supply guns, those who manufacture guns, a sense of their liability to those killings, since none is committed by hand other than pulling a trigger.

So we would have to talk about justice, a real juvenile justice bill, when we talk about all of the characters in this whole sense of a conspiracy. If a child cannot purchase a gun, has no right to own a gun - and we've witnessed that there is not this proliferation in this state -- that means that we should be talking about the parents that provided them with the guns, the grandparents that provided them the opportunity to get the guns.

So when we talk about juvenile justice, we should be fair about justice and what justice means. If we decided to treat children as children in this state and provided them with all of the opportunities as children in this state, then we can allow them to be productive citizens and adults. But if we're saying that there's no such thing as a first chance for failure with some sense of redemption, then we are dooming these young people for that prison-industrial complex that Senator Waldon talked about.

So I say that this bill is not a juvenile justice bill. Juvenile justice means

that our parents have a responsibility to ensure the safety of our children. So I will say that this bill should be amended. And if we're talking about responsibility for juveniles, then we should have it attached in here to talk about -- the responsibility of parents and gun manufacturers should be attached to this bill. Because I have yet to find a 12-year-old who owns a manufacturing or ammunition company. And if we're seriously talking about it, let's deal with justice 360 degrees.

So I would urge my colleagues to pull this bill and talk about real justice for young people by having adults being responsible.

THE PRESIDENT: Senator Hoffmann.

SENATOR HOFFMANN: Thank you. Madam President and members of the Senate, if I could just ask your indulgence for a moment.

On behalf of Senator Goodman, who has been delayed, we are very privileged to have a distinguished guest with us on the floor today. And if I could just take a moment to introduce him, I know that debate

will resume with no further interruption or distraction. But we are very pleased to have with us the Deputy Consul General from the Federal Republic of Germany, Hans-Heinrich Freiherr von Stackelberg. And Mr. von Stackelberg is a resident of New York City in Senator Goodman's district when he is in this country.

He has been in this position since September of 1993. Before coming to New York, Mr. von Stackelberg was the deputy director for the United Nations Policy Questions at the Foreign Office in Bonn. He has also held positions in the Office of U.S. Affairs and in the Office of Defense and Security Policy.

From 1987 to 1990, Mr. von Stackelberg was assigned to the German Embassy in Tel Aviv, as cultural counselor. He has served in similar assignments in Moravia, Liberia, and Bucharest, Romania.

We are very pleased to have Mr. von Stackelberg with us today, because he is here exploring economic opportunities between the United States -- namely, New York state -- and the Federal Republic of Germany. And I ask

all of you to join me in making him feel welcome in the Senate.

Thank you, Madam President. Thank you, Senator Leibell.

THE PRESIDENT: On behalf of the Senate and as its President, I extend to you all of the courtesies of the Senate and wish you the best in your entrepreneurialism in New York State.

(Applause.)

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: I'll yield the floor, Madam President. Excuse me, I'm not -- no, I'm not going to waive.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: I'll follow Senator Dollinger's lead. If he won't talk, I won't talk.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. I'll be quite brief.

I was quite moved by the remarks of Senator Montgomery and Senator Duane and

Senator Waldon and Senator Seabrook. And I would just like to go back to some of the comments that Senator Montgomery made when she said that only 6 percent of the arrests in the state are arrests of younger people, and less than 1 percent of the arrests in the state are younger people committing violent crimes.

When we look at the fact that only one-half of 1 percent of younger people are committing crimes, what are we really doing in this legislation for the 99½ percent of young people who have managed to avoid the family court system and the criminal justice system?

The fact is that there is a recurring theme that I found in this debate today. And that was the question would be asked of Senator Saland, do you support some of the programs that have demonstrated real preventative care with respect to younger people? And Senator Saland personally seems to find some merit in those programs.

And it's not Senator Saland's responsibility, but he cannot guarantee that those types of endeavors would be taken in our budget process or in subsequent legislation.

So to some extent, Senator Saland was constrained by the questions that he was asked. He was very gracious in responding to them, and much of the information was very informative.

But this is not an issue to be resolved with Senator Saland. This is an issue to be resolved by the Senate and the Assembly conference committees, or someone who can bring us together on some viable legislation that will help younger people. We need only look at the study in Boston, Massachusetts, that from 1990 to 1997, the police department, working with 45 community groups, reduced the violent crimes in that city by 90 percent.

And though we do have an opportunity in this bill for a commission, we have to understand that in spite of commissions, our problems with youth have been studied ad nauseam and yet our children continue to fester and seethe, our neighborhoods continue to be twisted and wasted many times, and our young population that gets past all of the obstacles into

higher education experiences the greatest difficulty at any effort at self-help.

And so while there are some improvements that are suggested by this legislation, and perhaps some stricter sentences that might be rightly applied to those who are violent and who do it at the time of their younger years, the fact remains that this bill is only half a loaf. We have not really addressed the proven issues that Senator Montgomery and Senator Duane talked about that have been effective in ameliorating many of the problems that younger people have.

If you look at the arrest records of younger people as compared to their adult counterparts, if you create a matrix in which you multiply out the numbers of ages, say, 12 to 18 and compare it to those over 18, you find that young people are actually less violent and less apt to become involved in the criminal justice system than their elders. And therefore, many of the preventative types of care that we're suggesting are really just in furtherance of the care that younger people already receive.

So programs that would help younger people from 3:00 to 8:00, which are the high crime areas, 3:00 to 8:00 p.m., would actually be very effective, as are the programs right now from 9:00 a.m. to 3:00 p.m. when they're in school and the custodial care prevents them from getting into trouble.

So I think that until there is that kind of comprehensive look at this type of legislation and that we provide the preventative care along with the punishments that in some cases are needed, we're really only -- we're not really addressing the problem but are really addressing it in a rather cursory way, in a way that sounds like we're getting tough but we're not really getting smart.

And so I would urge a no vote on this legislation. Hopefully, with the kind of negotiation that would produce something that would be real, something that would bring resources into our communities and into the areas where we do have higher incidences of at-risk youth, and try to establish some real prevention.

As Senator Seabrook pointed out, blaming young people for their antisocial behavior while at the same time not giving them the right to vote, the right to sign a contract, any kind of adult responsibilities, shows really an anachronistic way that we look at that time period in which young people are growing. If we do understand that they are not fully capable of making decisions at those ages, we have to understand that some of the decisions they make were made in some diminished capacity.

And we owe them as younger people, with all of our phrases like "the Decade of the Child" and "the best interests of the child," we owe them some of our own responsibility toward trying to reach out to them and give them an alternative.

This is not something we're talking about, say, in areas of sexual predators, where the statistics have shown that there really isn't any improvement, or even in cases of substance abuse, where the information is that it is often that two-thirds of substance abusers are victims of recidivism.

Here we have documented evidence that the right prevention really is a pound of cure, and that you have amazing results with just some intervention. But as Dr. Martin Luther King once said, you can tell where a nation's priorities are by where it spends its money. And I suggest, Madam President, that you can tell the way a state really feels about its young people by how it invests its resources.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. On the bill.

The -- I find the issue of juvenile crime and juvenile justice is something I've thought about for a long time. My first job after I got out of college was a stint of two years working in a prison. And I remember very clearly the fact that I was much more afraid of 20-year-old recidivist car thieves than I was of 35-year-old murderers, for a very -- and the reason, I learned later, was justified by the literature. Because one of the most important factors in changing a

criminal profile is age, acknowledged by everyone.

And I think the problem I have with this bill is that I don't think pretending children are not different than adults makes them any less different. And I do not like the current juvenile justice system. I think it has a lot of problems.

But I'm saddened by the fact that as thoughtful and comprehensive an effort this is to do an overall review of that system, I think it misses the mark. Because what we really need to do is recognize, as every criminal justice expert recognizes, that age is a critical factor. Youthful offenders need different treatment than adult offenders. And by "treatment" I don't just mean treatment in a benign sense. They need to be treated differently in every sense.

I think there are things we can do for them sometimes -- there are people you can skim out of the system so they don't fall in forever -- that you can't do with older offenders. Youthful offenders -- and one of the reasons they're so scary, if any of you

have ever spent time with them, they're not fully formed. They don't understand life and death sometimes. I mean, I remember this very distinctly. People who didn't have a sense of their own mortality can be very scary. And that's true of a lot of children.

But because they are different, because they are not just short adults, we have to have a different approach. And I just think from a criminal justice point of view the approach here, which tends to eliminate some of the distinctions and treat more children as adults, I think is a flawed approach.

And I hope that we can revisit this issue. I do not think that treating youthful offenders more like adults is something that has any beneficial effect from a criminal justice point of view. One thing we know about the overwhelming majority of the youthful offenders this bill will address is that someday they are coming out. And I'm afraid what we are doing is making the circumstances under which they will come out worse. And it's actually undermining some

other very good efforts to improve the criminal justice system.

So I am going to be voting no on this bill. I think that we know what it takes to reduce violent crime in the United States. And we know that more police reduce crime, that better police-community cooperation, fewer guns, and drug treatment reduce crime. I don't think that treating children like adults reduces crime.

I think this bill is a flawed approach to a very difficult problem, and therefore I'm going to urge my colleagues to join me in voting no. Thank you.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 101. This act shall take effect in 120 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 938 are Senators Duane, Gonzalez, Markowitz,

Montgomery, Paterson, Rosado, Santiago, Schneiderman, Seabrook, Smith, Stavisky, and Waldon. Ayes, 47. Nays, 12.

THE PRESIDENT: The bill is passed.

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

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

SENATOR MONTGOMERY: Madam President.

THE PRESIDENT: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes. I would like unanimous consent to be recorded in the negative on Calendar 753.

THE PRESIDENT: Hearing no objection, you are so recorded as voting in the negative on Calendar 753.

Senator Fuschillo.

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

THE PRESIDENT: Yes, there is.

Senator McGee.

SENATOR McGEE: Madam President, on behalf of Senator Libous, on page number 50 I offer the following amendments to Calendar Number 842, Senate Print Number 2463B, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: The amendment is received, Senator McGee, and the bill will retain its place on Third Reading Calendar.

Senator Fuschillo.

SENATOR MONTGOMERY: Madam President.

THE PRESIDENT: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: I'm sorry. Yes, thank you.

I would also like unanimous consent to be recorded in the negative on Calendar Number 926.

THE PRESIDENT: Senator Montgomery, you will be so recorded as voting in the negative on Calendar Number 926.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam

President, there being no further business, I move we adjourn until Wednesday, May 12th, at 11:00 a.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Wednesday, May 12th, 11:00 a.m.

(Whereupon, at 4:45 p.m., the Senate adjourned.)