ALBANY, NEW YORK

April 24, 1995

3:02 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. Ask the members to find their chairs. Ask everybody in the chamber to rise and say the Pledge of Allegiance to the Flag with me.

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

In the absence of clergy, I would ask that we recognize Senator Bruno at this time.

SENATOR BRUNO: Mr. President, can I ask that all of us in the chamber just take a moment and bow our heads and just say a prayer for the victims and the families of the great tragedy in Oklahoma.

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Sunday, April 23rd. The Senate met pursuant to adjournment, Senator Hoblock in the Chair. The Journal of Saturday, April 22nd, was read and

approved. On motion, the Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no 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 Bruno.

SENATOR BRUNO: Mr. President, can we ask for an immediate meeting of the Rules Committee in Room 332?

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Rules Committee in the Majority Conference Room, Room 332.

The Chair recognizes Senator Farley.

SENATOR FARLEY: Mr. President,

on behalf of Senator Cook, on page 29, I offer the following amendments to Calendar 421, Senate Print 3491, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar 421 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Farley.

SENATOR FARLEY: On behalf of Senator Levy, on page 12, I offer the following amendments to Calendar 128, Senate Print 2591-A, and I ask that that bill retain its place.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 128 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Farley.

SENATOR FARLEY: On behalf of Senator Levy, again on page 28, I offer the following amendments to Calendar 411, Senate Print 4036, and I ask that that bill retain its place.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 411 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Bruno, we have a couple substitutions at the desk.

SENATOR BRUNO: Please make the substitutions.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Senator Hoblock moves to discharge from the Committee on Veter ans, Assembly Bill Number 2542, and substitute it for the identical Calendar Number 465.

On page 6, Senator Johnson moves to discharge from the Committee on Environmental Conservation, Assembly Bill Number 4123, and substitute it for the identical Calendar Bill 469.

On page 23, Senator Trunzo moves to discharge from the Committee on Education, Assembly Bill Number 1428, and substitute it for the identical Bill Calendar Number 368.

ACTING PRESIDENT KUHL: The substitutions are ordered.

Senator Bruno.

SENATOR BRUNO: Mr. President, at this time I'd like to call up Resolution Number 782 that had been previously -- previously adopted by Senator Nozzolio and ask that it be read in its entirety.

ACTING PRESIDENT KUHL: The Secretary will read the resolution in its entirety.

THE SECRETARY: Legislative Resolution Number 782, by Senators Nozzolio and others, proclaiming April 23rd through the 29th, 1995 as National Crime Victims' Rights Week in the state of New York.

WHEREAS, public opinion polls clearly indicate that crime and violence are the number one concern among all United States citizens.

35 million Americans fall victim to violent crime each year in the United States.

Every minute in the United States four women are battered, one woman is raped, six children are abused and one person is robbed.

Victims play an indispensable role in bringing offenders to justice and thus preventing further violence.

Law-abiding citizens are no less deserving of rights, resources, restoration and rehabilitation than the violent offenders who victimize them.

Victim service providers, coun selors and advocates should enjoy full support from all public and private institutions, entities and individuals in their efforts to render critical assistance to those whom our nation failed to protect.

Whether measured in dollars, domestic tranquility, dread or death, crime represents the greatest threat to Americans in America.

The observance of National Crime Victims' Rights Week is planned for April 23rd through the 29th, 1995 for the purpose of pro

viding crime victims and those who serve them with the opportunity to educate citizens about violence and victimization and to encourage their support for victims' rights and services.

This legislative body is moved to extend its grateful appreciation to those indiv iduals and organizations committed to working to provide counsel and support to crime victims through direct assistance and educational programs; now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to proclaim the week of April 23rd through the 29th, 1995 as National Crime Victims' Rights Week in the state of New York; and be it further

RESOLVED, that copies of this resolution, suitably engrossed, be transmitted to Linda Campion of the Capital District Coalition for Crime Victims' Rights Week.

ACTING PRESIDENT KUHL: Without objection.

The Chair recognizes Senator Nozzolio to speak to the resolution.

SENATOR NOZZOLIO: Thank you, Mr. President, on the resolution.

Mr. President, my colleagues, in the wake of one of our nation's most horrific tragedies, the honoring of Crime Victims' Week could not come at a more appropriate time.

I rise as chairman of the Senate Crime Victims, Crime and Corrections Committee, and it is my honor that -- as we in this chamber begin Crime Victims' Week.

The Oklahoma bombing tragedy clearly indicates the long-lasting trauma which can be afflicted on crime victims and their families. That trauma lasts a lifetime; but as the tragedy also indicates, my colleagues, every American citizen is a victim of crime perpetrated against others.

The pictures and images of the senseless and brutal desecration of human life in Oklahoma has not just victimized those citizens of Oklahoma City or those of the state of the Oklahoma, they have victimized us all as Americans and that, as we embark on National

Crime Victims' Week, we must expand our sensitivity to the tragedy that occurred there to address the needs of crime victims here in New York in our own state. We must work to assist the victims of rape, robbery and murder and all other crimes. Almost a million crimes happen in New York each year and about 170,000 of those are of a violent nature.

My colleagues, a number of Senators today have legislation to deal specifically with the issue of crime victims and those efforts are to try to ensure that those who are victimized by crime are not further victimized by the system.

Senators DiCarlo, Volker, Leibell, Skelos, Maltese and Johnson each have legislation that will be considered by this house today to deal directly with the issue of crime victims and to try to make those who, as was stated in a news conference with Senator Vacco today, not by one of us today, are a crime victim. We need to bring not just criminal justice but the issue is justice for those

victims of crime.

Mr. President, I'm proud to be a member of this chamber and prouder still of the work done in this particular area by my colleagues.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair would note for the record that the resolution was previously adopted by this chamber.

Senator Bruno, that brings us to the calendar.

SENATOR BRUNO: Mr. President, can we now take up the non-controversial calendar?

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

THE SECRETARY: Calendar Number 54, by Senator DiCarlo, Senate Print 500-A, an act to amend the Criminal Procedure Law and the Penal Law, in relation to felony sex offenses.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the

bill aside.

THE SECRETARY: Calendar Number 138, by Senator Holland, Senate Print 466-A, an act to amend the Social Services Law, in relation to access to the statewide register of child abuse and maltreatment.

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

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Call the roll.

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 200, by Senator Saland, Senate Bill 2106, an act to amend the Family Court Act, in relation to dispositional alternatives upon the education of child protective proceedings.

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

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 295, by Senator Lack, Senate Print 2982, an act to amend the Surrogate Court Procedure Act, in relation to a claimant's right to action.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 317, by Senator DiCarlo, Senate Print 1984, an act to amend the Executive Law, in relation to

qualifications of employment.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 321, by Senator Saland, Senate Print 2120, an act to amend the Family Court Act, in relation to the fair treatment of child witnesses.

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

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 359, by Senator Trunzo, Senate Print 3661, an act to amend the Civil Service Law, in relation to conforming the terminology procedures with

existing practice for obtaining a guide dog.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 383, by Senator Hannon, Senate Print 2087, an act to amend the Civil Practice Law and Rules, in relation to disposition of proceedings.

ACTING PRESIDENT KUHL: The Secretary will -- lay the bill aside.

THE SECRETARY: Calendar Number 385, by Senator Volker, Senate Print 2720, an act to amend the Criminal Procedure Law, in relation to pre-sentence investigations.

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

THE SECRETARY: Section 26. This act shall take effect immediately.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 386, by Senator Leibell, Senate Print 2743-A, an act to amend the Penal Law, in relation to increasing the penalty for endangering the welfare of a child.

SENATOR BRUNO: Lay it aside at the request of the sponsor.

ACTING PRESIDENT KUHL: Star Calendar Number 386 at the request of the sponsor.

THE SECRETARY: Calendar Number 426, by Senator Skelos, Senate Bill 2478, an act to amend the Family Court Act and the Criminal Procedure Law.

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

THE SECRETARY: Section 3. This act shall take effect on the 1st day of

November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 429, by Senator Maltese, Senate Print 455, an act to amend the Executive Law, in relation to the filing time for crime victims compensation.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 430, by Senator Maltese, Senate Print 495, an

act to amend the Executive Law, in relation to the definition of victim of a crime.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 432, by Senator Johnson, Senate Print 2183, an act to amend the Executive Law, the Civil Practice Law and Rules and the Tax Law, in relation to personal injury awards.

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

THE SECRETARY: Section 4. This act shall take effect on the 1st day of January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 433, by Senator Volker, Senate Print 3814, an act to amend the Executive Law, in relation to the written statement of the crime victim in making a parole release decision.

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

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Bruno, that completes the non-controversial calendar.

SENATOR BRUNO: Mr. President,

can we now take up the controversial calendar?

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

THE SECRETARY: On page 10, Calendar Number 54, by Senator DiCarlo, Senate Print 500-A, an act to amend the Criminal Procedure Law and the Penal Law, in relation to felony sex offenses.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator DiCarlo, an explanation of the bill has been asked for by Senator Paterson.

SENATOR DiCARLO: Thank you, Mr. President.

This is exactly the same bill that this body passed unanimously a few weeks ago, except that a technical amendment was necessitated by passage of the death penalty bill. That's the only difference.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Paterson.

SENATOR PATERSON: Yes, Mr. President. This is an excellent bill. We all

voted for it, and what I would like to do is to propose an amendment to this bill, hopefully to improve it, if that's even possible.

Is my amendment at the desk, Mr. President?

ACTING PRESIDENT KUHL: Yes, Senator Paterson, there is an amendment at the desk. Are you asking to move the amendment, waive the reading of it and an explanation to explain it?

SENATOR PATERSON: Let me waive the reading, Mr. President, and just explain it briefly.

ACTING PRESIDENT KUHL: Senator Paterson to explain the amendment.

SENATOR PATERSON: What this bill does is that it provides for -- for treatment of sex offenders at the -- by the approval of the court.

What I wanted to do was create a specific fashion in which the treatment could be achieved. What we would do is we would direct the Department of Corrections and the Division

of Parole to supervise the treatment of sex offenders emanating from one year to the end of the actual sentence continuing through the parole period, and what we would have is the Office of Mental Health give an overview and provide some of the protocols to make sure that the treatment continuum moves from the Department of Corrections with the incarcerated person as they move into parole.

What it would also do, it would mandate that there be a study as to how effective the treatment of sex offenders can be that would be due on November 1st of the year 2000.

Senator DiCarlo pointed out when we moved the bill earlier that there is no real cure for sex offenders, and we have no quarrel with that. What we would suggest is that there have been a number of sex offender treatment programs, particularly in New Jersey, that have been effective. They haven't necessarily been effective of curing, but what they have been effective in is curbing and limiting and

certainly reducing the recidivism of the sex offender who is serving time. No matter how long the prison sentence is that we impose, we still have the problem of the sex offender coming out of the incarcerated facility.

What this amendment does is it provides for a way of establishing some sort of control that we, as a society, would have over the offender emanating from one year prior to the end of the sentence continuing through the entire parole period, and that is the context of this amendment and, Mr. President, I ask that we move it now.

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

(Response of "Aye".)

Opposed, nay.

(Response of "Nay".)

The amendment is lost.

Senator Abate, are you trying to get my attention?

SENATOR ABATE: No. I was going

to speak on the amendment. I'm sure I would have changed every vote in the house after I spoke, but I supported -- if I -- it's already -

ACTING PRESIDENT KUHL: Senator Abate on the bill.

SENATOR ABATE: Okay. On the bill.

The hostile -- or the amendment is no longer before this body, but I think it's very important that while we do our law enforcement efforts, which are very important, that we also keep in mind, if we are actually going to curb the impact of sex offenders, it's very important to talk about treatment at the same time, and I believe this bill is deficient because there's no appropriation. There's no mandatory treatment available in prison as well as in the community.

Let me give you a perspective. If you talk to the Division of Parole and if you talk with the local probation departments around the state, they will tell you that it's not

enough to put a sex offender under scrupulous surveillance and monitoring. It's not enough to have a probation officer and parole officer go to someone's house, have that individual report. They need another set of eyes and ears and often that set of eyes and ears is the treatment professional. That individual can get the sex offender to open up. They can get information about what they're doing at home, what fights they're having with their families, whether they're keeping up with their curfew. It's the ability to get this critical information before the parole or probation officer that's necessary, because oftentimes as this information comes before they -- the individual relapses and commits the next crime, when they get this information, they can usually either violate the individual from parole or probation, put their -- put them under more strict surveillance.

So if we're talking about public safety, if we are also speaking about preventing future victimization while this sex offender is

on the street, we have to talk about treatment and prevention. I ask you, why did the state Division of Parole set up a sex offender unit nine years ago? Why did they go through the entire expense and reorganization to set up specialized case loads for sex offenders? They did that because they needed to do differently with sex offenders; and that's law enforcement, that's prevention and treatment.

The bill does some good things. It should go a lot further if we really care about safety on the street and protecting women and children and other members of our society from sex offenders.

ACTING PRESIDENT KUHL: The Chair indicated the amendment failed. Is there any other Senator wishing to speak on the bill?

(There was no response.)

Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 14. This act shall take effect on the 1st day of November.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 317, by Senator DiCarlo, Senate Print 1984, an act to amend the Executive Law, in relation to qualifications of employment as a youth division aide.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Saland -- excuse me.

Senator DiCarlo, an explanation of Calendar Number 317 has been asked for by Senator Paterson.

SENATOR DiCARLO: Thank you, Mr. President.

Simply put, what this bill does is it disqualifies from employment as a youth

division aide, a YDA, for the Division of Youth, any person convicted of a felony and misdemean ance, at the discretion of the director.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Montgomery.

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

Would the sponsor of the bill yield for a question?

ACTING PRESIDENT KUHL: Senator DiCarlo, do you yield to Senator Montgomery?

SENATOR DiCARLO: Yes.

ACTING PRESIDENT KUHL: The Senator yields, Senator Montgomery.

SENATOR MONTGOMERY: Thank you.

Senator, are there any memos on this legislation?

SENATOR DiCARLO: I don't have any memos on the bill, but I have spoken to the new director of the Division for Youth and he is in favor of my bill.

SENATOR MONTGOMERY: Okay. Thank you.

Mr. President, if the Senator would continue to yield.

ACTING PRESIDENT KUHL: Senator DiCarlo, do you continue to yield? The Senator continues to yield, Senator Montgomery.

SENATOR MONTGOMERY: Does the commissioner currently have any authority to reject any employee based on prior criminal activities? Is that currently part of his jurisdiction in the law?

SENATOR DiCARLO: Presently, the director does not have that ability and the Correction Law would prohibit that.

SENATOR MONTGOMERY: He does not have authority to -

SENATOR DiCARLO: Deny employment based on that, yes.

SENATOR MONTGOMERY: Based on that. Okay.

Senator, you -

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

SENATOR DiCARLO: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR MONTGOMERY: The bill says that, if a person has been convicted of a felony, they're automatically disqualified and if a person has been convicted of a misdemeanor, it is at the discretion of the commissioner, I believe. That's how I interpret your -

SENATOR DiCARLO: You're correct, if convicted of a felony, cannot work, and the other is also correct.

SENATOR MONTGOMERY: All right. Senator, we passed a bill last week, I believe. It was to establish the crime of urination and defecation, if you recall.

SENATOR DiCARLO: I recall, yes.

SENATOR MONTGOMERY: And I believe that it had degrees of criminality. One was a misdemeanor and that could escalate to a felony, depending on how many times you're arrested and charged for that.

SENATOR DiCARLO: I'm taking your word on it.

SENATOR MONTGOMERY: Well, let me just ask, Senator. In the event that we had someone who had been arrested and charged with such a crime, or less, that resulted in that person having a misdemeanor charge or even perhaps a felony charge of some lower degree, that means that that person is either automatically disqualified or must prove to the commissioner their worthiness to the satisfaction of the commissioner.

SENATOR DiCARLO: Well, if that person were convicted or pled to a felony, they could not be employed. It's not discretionary. If it is a misdemeanor, then it is discretionary and can either work or not work based on the director of the Division for Youth.

SENATOR MONTGOMERY: Okay. Thank you, Senator.

Mr. President, briefly on the legislation.

ACTING PRESIDENT KUHL: Senator Montgomery on the bill.

SENATOR MONTGOMERY: Okay. This

bill, I think, is very far-reaching, and it is my understanding that, despite the fact that the commissioner has indicated that he does not have the authority, my information says that, under Corrections Law Section 752, the DFY commissioner does, in fact, have the authority to restrict and to refuse to hire a person who has a prior criminal record.

And so in that sense, Mr. President, I'm not sure that it's even necessary that we do this bill but, nonetheless, Senator DiCarlo has decided that he wants to pass this legislation.

Now, I want to just say a word of caution about the far-reaching aspect of this bill. It is going to involve in its net a large number of people whom we, in fact, might want to be able to work in the facilities that they might be employed.

I have a program in my district that is a -- it's run by an organization called Therapeutic Communities, Inc. It was founded and established as a prison-based program for

rehabilitation of people who've been incarcer ated because they had been involved in drug crimes. It is now a community-based program, and the people who run the program have been inmates themselves and, personally, I think the quality of the program and the success of the program is directly related to the fact that the people who are running it are the most skilled, most knowledgeable, most informed and understand how to work with a personality such as the people that they work with.

So, in that sense, if we had this legislation in place, Senator DiCarlo -- Mr. President, we may not have that kind of program in our state, and that program, by the way, has been exported by the state of New York. We don't pay for it, but the model is ours. It was born here. It has now been invited to be a major program in the prison system in the state of Texas and in other states and countries around the world.

So I'm just -- I think that we're going backwards, Mr. President, and I would

advise that Senator DiCarlo rethink the whole notion of what it is we're talking about. I don't think you expect, Mr. President -- I don't think Senator DiCarlo expects that a group of well-meaning, well-trained social workers are going to go into a DFY facility and function perhaps as well and as professionally as a person who knows the system, knows the personalities, understands how to work with them, understands the dynamic of the behaviors that they are faced with and can deal with them in a very professional fashion.

So I think this is a -- it's well-meaning but it's, one, not needed and, two, I think it's too far-reaching and it's going to ultimately prevent us from having some of the best possible minds and hands in those available to work in some of the very difficult situations in DFY facilities. So I'm voting against it, and I urge my colleagues to also oppose this legislation.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Paterson.

SENATOR PATERSON: Mr. President, I agree with what Senator Montgomery said and I'm quite persuaded by her presentation. I would just like to add to that, the fact that we disagree sometimes in this chamber on how long the sentences should be for particular crimes, but we do have an overall theory about individuals paying their debt to society.

In cases where a person commits a murder, we have determined in this state now that they may pay the ultimate price for the crime they committed. In other cases, we may incarcerate them for life because, while we might not want to execute them under our new death penalty, we recognize that it is a danger to have these individuals come back into society.

Now, where we have allowed individuals back into society, there are at times protections that we may establish based on the type of crime that individual has committed. There is a bill that's on the active list -- it

hasn't come before the Senate yet -- that would disallow bus attendants who previously had a felony from working here in New York State. Now, these individuals would work around younger people and I could understand, for instance, if they were sex offenders that we wouldn't want them around younger people. We don't want previous inmates to be working as guards in our correctional facilities that would compromise security, so I can understand that.

But what I think Senator Montgomery was admonishing us and what I think we really need to heed is the warning that we aren't providing any kind of opportunity for individuals who we have determined have paid their debt to society. Yes, there is a more increased possibility that they may be recidivists compared to a member of the average population but, at the same time, if we are really providing some sort of rehabilitation and we are not inviting these individuals who engaged in criminality to continue, then I would suggest that there have to be some methods of

employment for them, and if we're not going to let them work in correctional facilities or if we're not going to let them work in Social Service facilities, if we're not going to let them work in youth facilities, my question is where are they going to work?

There are a lot of studies that demonstrate that individuals who have previously been convicted have been very effective at times in prevention aspects, of talking to younger people and letting them know some of the lessons that they have to learn in life and advising them to think before they would get involved in that kind of criminal conduct, lest they be put in the same position that these ex-offenders are.

What I'm objecting to in this piece of legislation and others that I see is we, as a society, taking a -- an extremely strict and constructionist view about ex-offenders, almost forcing them back into recidivism because we, as a society, haven't got the slightest job that they would be eligible

for because in some way we've decided that it impedes the regular workings of society from continuing.

The other problem of this bill is, since there is the discretion on mis demeanors on the part of the commissioner, is the fact that people have been convicted for misdemeanors for trespassing and violating orders of protection and a number of issues in which it may have just been a compulsive act committed once and then, for the rest of time, this individual may have an employment problem because of an act, such as a violation of Section 240 of the Criminal Law which relates to trespass.

And so I would -- I would suggest that we not move this bill and rethink what our directives are to those who have served time.

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 49, nays 4. Those voting in the negative are Senators Abate, Espada, Galiber and Paterson.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Also, Senator Montgomery.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 383, by Senator Hannon, Senate Print 2087, an act to amend the Civil Practice Law and Rules, in relation to disposition of proceeds of claim of infant, incompetent or conservatee.

SENATOR PATERSON: Last section.

ACTING PRESIDENT KUHL: Read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 385, by Senator Volker, Senate Print 2720, an act to amend the Criminal Procedure Law, in relation to pre-sentence investigations of defendants in sex offense cases.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Volker, an explanation has been asked for of Calendar Number 385 by Senator Paterson.

SENATOR VOLKER: Mr. President, this is known as the Rape Victims' Services Act of 1995. This bill passed the Senate last year by a vote of 52 to 2.

It provides a series of provis ions in relates -- in relation to various

support services and various types of services involving sex crimes. It establishes a statewide toll-free rape crisis hot line. It establishes standards for rape collection - evidence collection kits. It establishes treatment for rape offenders. It allows victims to be notified if their assailant has HIV. It makes HIV testing and counseling costs covered by crime victims' compensation. It requires regular updates to victims of the progress of prosecution, including plea bargains and an opportunity to be heard. It requires a 15-day notification of the disposition of the case and the date of parole hearings. It requires a written statement of the reasons for granting parole to a sex offender. It allows testimony on rape trauma syndrome. It allows photographs, sketches, and so forth, to be used in identification of perpetrators.

This bill, which in the past was sponsored by Senator Marino and co-sponsored by myself, has passed the Senate, as I said, last year by a vote of 52 to 2 and it passed on

several occasions. The Assembly has a much more limited bill that was just introduced within the last about 15 days, I understand. It is my hope, by the way, that this bill will be the basis for some sort of compromise this year.

We have had two bills over the years that deal with the issue of rape, one dealing more primarily with penalties and with the -- the incarceration of rapists, and so forth, and this bill which deals with rape crisis and services.

If you'll notice in the bill, although it's effective later on this year, there are demonstration projects involved in it which would not trip in until 1996. The obvious reason for that is that we would have to prepare the funding for that and, due to the limited funding this year, we do not have the funding in this bill except for the initial start-up of the -- of this proposal.

So that basically is the bill. Are there any other questions?

ACTING PRESIDENT KUHL: The Chair

recognizes Senator Paterson.

SENATOR PATERSON: Mr. President, this bill actually will assist us in the state recouping ten percent of our federal grant, our Byrne money and, however, what the bill does is it actually goes beyond it because the HIV testing request can be made by the victim prior to conviction.

If Senator Volker would yield for a question.

ACTING PRESIDENT KUHL: Senator Volker, do you yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: The Senator yields, Senator Paterson.

SENATOR PATERSON: I just wanted to inquire as to why Senator Volker chose to go beyond the federal standard in drafting the bill?

SENATOR VOLKER: Senator, the reason we did that was this was a bill -- very honestly was basically requested by crime victims and, as I related in the description of

the bill earlier, is a bill that has a whole series of provisions in it, not just the HIV provision but a whole series of provisions that relate to crime victims and specifically the issues of sex crimes; and the reason for that provision in this bill is, frankly, it was requested by crime victims themselves and was included in the bill from the time that it was drafted, which I believe was about three or four years ago, and that's why it's there.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: If Senator Volker would continue to yield.

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

SENATOR PATERSON: Through you, Mr. President.

Senator Volker, if the person who is being accused of the crime tests negative for the HIV virus, wouldn't we still have the

responsibility of coming back and testing them after the disposition of the -- of the trial; considering that they're found guilty, wouldn't we have to do it at that time anyway? So that's the reason I'm asking why we have to do it beforehand.

SENATOR VOLKER: I don't believe so, Senator. I don't know what the initial - the process is that, if the person requests the -- requests the test and the defendant objects, then the judge would hold a hearing on the issue of the test and should the judge decide, then the defendant would be ordered to do it, but once the defendant is determined to be negative, I don't know what reason there would be to retest the defendant later on after the case is disposed of.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Volker will continue to yield.

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The

Senator continues to yield.

SENATOR PATERSON: Senator Volker, the reason that I think -- in fact, the reason I'm quite sure we would have to retest the defendant is because if the -- if the act - if the crime was committed within six months of the arraignment of the defendant, even if the - even if the defendant tests negative, we still do not know that they're fully testing negative for the HIV virus because it takes about six months, according to medical personnel, for the results of that test to show up.

So, in other words, a person who may have just obtained the virus and then commits a crime would test negative but, at some point in the future, they will surely test positive. And so I was wondering that, since this person at the time that we are establishing a mandatory test has not been convicted of a crime, that even for correct medical data as to when someone contracts the HIV virus, that we would wait until the end of the trial anyway, because we don't have reliable information.

Even if they test negative, the victim, in my opinion, has to assume that they're positive until some six-month period has elapsed between tests.

SENATOR VOLKER: Senator, let me just say to you, at the present time, as you well know, there is no law that says that the person be tested at all. You brought up an interesting issue, but there is nothing in the law now that says a person has to be tested six months from then or at any point. So I guess the answer to your question is, as far as I can see under this statute, a person only need be tested at the -- during the initial hearing, but you might -- you make a point that possibly there should be a consideration for further testing later on, but under this statute, as far as I can see, the only mandate would be that the test be taken at the time the person is arrested and then there's probable cause to say that this person is the perpetrator.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, would you thank Senator Volker for his cooperation, and if I might be allowed to speak on the bill.

ACTING PRESIDENT KUHL: Senator Paterson on the bill.

SENATOR PATERSON: Senator Volker, previously I pointed out that your legislation is going to, first of all, recoup a lot of the federal funding that we're not getting right now and, second of all, it is going to establish testing which -- which is a commendable reason to draft the bill. That's not what my problem with the bill is.

My problem with the bill is that there would be an issue of mandatory testing for an individual who has not been convicted of a crime in the first place, and what I was saying is maybe because of the danger we might want to overlook that. In other words, this is a dangerous situation. There's a chance that this person, by the fact that they're on trial, may be the actual guilty party and so we would force

them to consent to testing for the HIV virus, but what I would hope Senator Volker will consider is that that initial test cannot be the only test, and I make that argument on behalf of the health care of the victim, Senator Volker, because if the defendant contracted the HIV virus anywhere within six months of that particular time, it will not show up in a test. It will not show up until later, as are many types of diseases where the individual has the disease and doesn't know it, so they don't test that way until it matures to the extent -- to an extent where we can pick it up through HIV testing.

And so what I implore Senator Volker to consider is to possibly redraft this legislation and include in it a final test at some later date so that this could be determined, and I would suggest so that we can clear up all of the issues of privacy in addition, as it impinges on the concept of justice, what we would really want to do is to just wait until that period has elapsed because

then we would have a sure test and also we would not have violated the privacy of a person who may be found not guilty of the offense.

Thank you.

ACTING PRESIDENT KUHL: Senator Mendez.

SENATOR MENDEZ: Mr. President, will Senator Volker yield for a question?

ACTING PRESIDENT KUHL: Senator Volker, do you yield to a question from Senator Mendez?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MENDEZ: Senator Volker, in your bill, you have options for treatment of rapists. Do you really believe that they could be cured or stopped from committing that horrible crime?

SENATOR VOLKER: Well, I think there's a debate about whether there's any possibility of cure, but what the bill provides is for -- remember, it provides -- when we talk

about options, we're talking about they can go to jail and be treated.

What this bill -- this bill doesn't say that you can just walk out and get treatment rather than incarceration. What it really is, it provides some treatment.

As we've talked about, Senator, on a number of occasions, ultimately what we're really looking for is a dual thrust and that is, number one, persons in prison also get treatment and look for treatment for anybody who is also going to get out, and that's what we're really looking for; but the answer to your -- the answer is I'm not sure that anyone has really determined -- I think someone can probably be treated. In most severe cases, they probably can't, but the option here does not mean that a person is going to walk free just because they committed a sex crime, but it means that they will receive incarceration as well as treatment.

SENATOR MENDEZ: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator

Mendez on the bill.

SENATOR MENDEZ: Yes, Senator Volker is correct in saying that the results of treatment for rapists and other sex offenders are mixed.

I have consistently stated in this chamber, Mr. President, that the first order of business -- and on this I want to congratulate Senator Volker. The first order of business is to ensure that sex offenders like rapists, like pedoists that prey on young children are locked up, and I mean locked up, to ensure the safety of the children and the women in the state of New York.

I don't have the data concerning to what -- how effective those treatment in the prison -- in the system in New York State has been. The fact is that there are no women there. Pedoists that received treatment in the prison system, of course, they don't have the kids around. They're in a different environment that is totally different from the environment outside of the prison system.

So I am supporting this bill. I do hope that, eventually, we could come up with a bill in which the rights of the women and children of the state of New York, to safety in that area are more strongly defended by segregating our sex offenders in a prison in New York State and making sure that they stay there for a lengthy period -- a sufficiently lengthy period so that they would not come out so easily and prey once more on women and children.

Again, I congratulate Senator Volker on this.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will Senator Volker yield to a question?

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

SENATOR VOLKER: Should we essentially repeat last year's question and answer?

SENATOR DOLLINGER: Again, Senator, I'm just trying to make sure -

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: -- make sure I understand because I thought this might have been attended to in the bill.

The issue, through you, Mr. President, is who pays the cost for the victim to bring the court application to get the mandatory test? And one of the concerns I had and I know I expressed it last year, was that we tried to provide access to victims' compensation funds to cover the cost of the legal fees that will accrue when the victim who's in this very difficult situation has to hire their own counsel to go out and bring the court order.

I note just for the record, Mr. President, that there is a provision in there that says that out-of-pocket loss shall include the cost of testing, counseling and prophylactic treatment provided -- prescribed by a physician in connection with the exposure of the victim of

the sex offense. So the crime victim of the sex offense would have the ability to have a portion of their medical costs paid.

My question is, and I know we talked about this before, I would just hate to think that a woman is going to be faced with the problem of having to go out and raise 500, $750, $1,000 to bring the civil action to force the test, and one of the things I think we talked about last year was allowing the district attorney to do it. I understand how that gets the district attorney representing an individual plaintiff instead of the state. That may be a problem, but if there was some way that you would give this victim who says, "I would like to have the test of my accused", but then the district attorney says, "You've got to go out and hire a private lawyer to do that" -- I just think it's a deterrent.

SENATOR VOLKER: I think our discussion last year -- and that's what I was - I was just reading the testimony, Senator, primarily on the issue of when the HIV test

comes in, and so forth, and that's why I was - I didn't mean to be flippant about it. You make a good point, and it's something that we're going to look at.

Let me say that it certainly is an issue. I think generally speaking, many of these cases are poor cases anyways. That is, the person is not -- not even necessarily represented because of the way of -- the situation, but you are right, it is something that, I think, needs to be addressed, because we certainly don't want the person to be in a position where she has to -- to have to expend a considerable amount of money to be able to uphold what the law is, because we cover the treatment and we cover everything else. You are absolutely right. It is something we are going to look at and see if there is some way to cover it.

SENATOR DOLLINGER: Just on the bill, Mr. President.

I'm going to vote in favor of -

ACTING PRESIDENT KUHL: Senator

Dollinger on the bill.

SENATOR DOLLINGER: I'm going to vote in favor of this bill, but I'd just point out, Senator Volker, that one of the other questions would be when the application is sought, I assume many of these defendants will be represented by the public defender. I can understand from the public defender's point of view that they could take the position that they would have to defend this person civilly on the test because of the potential that it could somehow affect the criminal case. So you may have someone who's a victim of a crime having to hire private counsel to wage a war against the public defender who's being retained at government expense to provide a defense, and it just seems to me that you get into that sense of unfair treatment, the unfairness of the system that a victim would take to heart and be more disappointed than enthused that this remedy is available.

I'm going to vote in favor of this bill. I think that there is a balancing

here. I can see that there's been a lot of work done to improve this balance. I'm just concerned that, unless you provide a mechanism of counsel -- counsel fees out of the crime victims' assistance funds, that you may end up with an illusory benefit to the victim.

ACTING PRESIDENT KUHL: Senator Volker on the bill.

SENATOR VOLKER: Thank you, Senator Dollinger, and let me just say that you make a very good point. It is something that we are going to look into, and I hesitate to admit it, but my good friend, Senator Paterson, also makes a good point.

Senator, if we look at the bill, the -- if you look at the section that relates to HIV testing, you'll see that it talks about the person can bring an action or rather a hearing when the sex offense was committed by the person to be tested in violation of any crime within six months prior to the application, but you do make a point that -- and I guess because I am by no means an expert on

HIV testing and I don't profess to be, that we may have a problem with the six-month issue thereafter.

So, although I think the bill does cover basically what we were trying to cover as far as the initial testing is concerned, I think we must consider the real possibility that we should look to a further test later on just to be safe. So we will look at that, Senator.

I guess I don't agree with your -- with the fact that you don't want to do the initial test, but I think that it is something that we certainly will look at and consider very seriously, making an amendment to the bill.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Saland on the bill.

SENATOR SALAND: Mr. President, I listened intently to the debate, certainly the debate that ensued between Senator Volker and Senator Paterson.

In prior sessions, I have introduced and this house has passed legislation

dealing with the subject of HIV testing in sex offense cases and, while this language does not mirror the language that was contained in those particular bills, the two things that I would like to point out would be, number one, the application process requires that the victim or the individual who's making application for the court order to enable the testing has to show that the victim has had the opportunity for counseling. That is in addition to the fact that there also is the prerequisite that the person who is the subject of the test, the proposed subject of the test, is a person who has been advised that they have the right to voluntarily submit to the test.

So it may well be that a number of people would voluntarily submit to the test. I would assume that that -- considering the confidentiality requirements in this bill would not be a particularly onerous task but, secondarily, in the course of that counseling, the victim would be apprised of the problems associated with HIV testing and, in fact, I

believe at the bottom of pages -- bottom of page 6 and top of page 7, there's some reference to the importance of the victim understanding what that is all about.

And insofar as testing prior to conviction, I certainly have advocated that on this floor previously, continue to advocate it. I'm aware of at least two separate instances in which the refusal or the inability, I should say more appropriately, to require an HIV test was used in the city of New York in two separate cases that were reported to me, one in a New York City newspaper, the other in a legal bulletin, where it was the defendant attempted to use his refusal to take that test as a means to secure a plea bargain.

I would think that the panel that former Governor Cuomo put together, the task force dealing with a number of related issues, was certainly not stacked with right wing Republican types, but they too have recommended that there be a separate civil proceeding which would enable a victim of a sexual offense to

have his or her attacker tested prior to conviction. In fact, in their commentary, they said it was an easy decision for them to reach, but they felt that it was an appropriate decision and one which I would agree with wholeheartedly.

Mr. President, I certainly thank Senator Volker for bringing this bill forward. I'm hopeful, as he has indicated, that it will form the framework within which we will be able to obtain some type of agreement on this subject during this session. It certainly is long overdue.

ACTING PRESIDENT KUHL: Senator Abate, do you wish to speak on the bill?

SENATOR ABATE: Senator -

ACTING PRESIDENT KUHL: The Chair recognizes Senator Abate.

SENATOR ABATE: Yes. Senator Volker, would you yield to a question?

ACTING PRESIDENT KUHL: Senator Volker, do you yield? The Senator yields.

SENATOR ABATE: As we've spoken

before, I also applaud you for many of the provisions, particularly around notification, hot line services, prosecutorial advances, very important pieces of this legislation and, hopefully, this will not just be a one-house bill, it will eventually become law.

I do have problems with one section, but on balance, I will support the bill. The problem I have is not post conviction, but in the accusatory stages, the testing of a defendant, and around that issue, I have a number of questions, and just to follow up on Senator Saland's questions.

Can a victim seek an application for testing in criminal court, Supreme Court, as well as civil court under the provisions of this statute?

SENATOR VOLKER: Just in civil court, Senator.

SENATOR ABATE: Just in civil court?

SENATOR VOLKER: Right.

SENATOR ABATE: And -- which is

preferable, because one of my concerns is the application of this test could interfere with the due process rights and presumption of innocence of people accused of crimes and not at a stage of conviction.

In order -- and I would hope that once this bill is negotiated, the testing would only be post-conviction but, in any case, assuming if it's preconviction or post conviction, will there be provisions for the victim to bring an ex parte motion? Will it have to be in writing? Could it be also brought by a crime victim advocate? These are issues that perhaps you might want to look at.

Again, I stand opposed to preconviction testing. I believe the eventual outcome will be post-conviction testing in order to ensure federal dollars, that you'd look at the issues of how the motion can be brought and if, in fact, it's going to be a real bill, it has to have some teeth and some reality because most victims do not have the resources to go into court.

And so while I oppose the preconviction, the post-conviction, I believe, at that point, a woman has a right to know even though the information may be faulty, even though the woman still has to get tested herself, I think you need to consider, is it really going to be an available use to most victims?

SENATOR VOLKER: I agree with you. I think it's something we certainly are going to look at and although I don't -- I think that it would be a shame if we ended up strictly with post-conviction, it's something we certainly will look at.

We have -- I've said on many occasions with the Assembly that we would be willing to talk about any of these issues. I don't know if you're aware, Senator, that I came to the Senate in part because of my interest in this issue. I led the largest rape investi gation in upstate New York's history, a state trooper and myself many, many years ago, in an investigation that eventually ended up arresting

something, I believe, in the neighborhood of 27 or 28 people as part of the investigation that involved some 2- or 300 rapes of women throughout upstate New York, and one of the reasons I say I felt so strongly was when I came to the Senate and I was thankfully part of a movement that was occurring which changed the laws on rape and allows us now to convict people, at the time was virtually impossible to convict the person of rape first and, in fact, I think in the time that I was a law enforcement officer, I don't believe one person in Erie County, the county I came from, was convicted of rape first, and this Legislature, in a period of a few years changed the law, so now as you all know, there are a great many rapists who are incarcerated in our prisons, which is where they should be, and there are issues now that are coming up.

Obviously HIV and the issue of testing is something very new, as really is the issues -- the crime victim issues are comparatively new because, I think we've only

become aware of these over the last few years as more and more people are going to jail but, Senator, it is certainly something we will look at, and we don't want to burden anybody with any more costs than they have to, and we will be happy to look at all those issues in the context of an agreed bill, and I think that the possibilities this year are there probably more than any other because at least the Assembly, very honestly, has introduced a very extremely limited bill within the last month which indicates that they are, at least, interested in discussing this issue.

SENATOR ABATE: Would the Senator yield to one more question?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to one more question? The Senator yields.

SENATOR ABATE: Senator, as you are probably aware, the victims' community is not a monolithic community and not every service provider victim advocate supports the HIV

testing of rape victims, and I think most of us think that it's a very clear issue for victim advocates; it is not.

The one thing they are united around, whether the testing is mandatory or not, that there be mandatory counseling of the victims, because they want to ensure that there's not false information given to a crime victim around this test because, even though the offender may test negative, he may, in fact, be positive, or if he tests positive, it does not mean that the crime victim is infected with the HIV virus. So it's just one snapshot on a long picture of information that needs to be given to the crime victim, and I would hate to see that a mandatory testing bill come forward and, hopefully, it's not preconviction again, but if it's post-conviction, along with a mandatory testing, there should be mandatory counseling, so that provision could be strengthened. What we don't want is to have crime victims rely on bad information and not get the medical help they need. They need to be tested themselves to

ensure their physical well being.

So as this bill progresses in the Legislature, I hope you take another look at that counseling provision also.

SENATOR VOLKER: Senator, I think if you look at the bill, you'll see that we do provide for crime victims' counseling in the bill, and I think we covered that pretty well.

Let me just say about testing, I really think there's only one group that opposes HIV -- really, HIV testing, and all the crime victims' groups, except for a handful of groups that are centered around one group are the ones that oppose this, and I think you know what I'm talking about. Unfortunately -

SENATOR ABATE: New York City opposes it, the Bar Association, the Crime Victims Board never took a position.

SENATOR VOLKER: Yeah. I think it's only because of one small group in the city that they oppose it because they have, in fact -- most of these groups have come to us and said, "We know it should be done, but we got a

problem because some of our members are skittish about this", and so forth, but the problem, I think, is that women are being affected by this, and the difficulty, I think, is it's not just a matter of law, it's a matter of a serious social and criminal justice problem that we have to face up to, whether we like it or not.

I know it's a heavy political problem, but I think it has to be faced up to, and it's one of the reasons why, very honestly, we have persisted because I think that sooner or later it's going to happen and, Senator, I guess my only disagreement would be, yeah, maybe initially we're going to be post-prosecution, but I will be willing to wager to you that, before too long, we are going to do HIV testing the way this bill is, because I think it has to happen, and I think most of us that are dealing with this issue know it has to happen.

SENATOR ABATE: And I guess one other question to your response.

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: You provided for the crime victims' board paying for the counseling that they need as a result of the testing, but I'm not sure, is there -- in the bill that says when the testing occurs, there will be a provision -- a mandatory provision of counseling to the crime victim if they want it? I know that there's compensation available.

SENATOR VOLKER: If you look at the bottom of page 6, it says that "based on reasonable cause to believe the crime was committed by defendant, that the applicant has received counseling by a physician or public health officer and understands the limitations on the information to be obtained through HIV related testing", and so forth. I think that's the section that would cover it.

SENATOR ABATE: All right. Thank you.

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

THE SECRETARY: Section 26. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the controversial calendar.

SENATOR SKELOS: Yes, Mr. President. At this time, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk.

ACTING PRESIDENT KUHL: We will return to reports of standing committees. The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills: Senate Print 4323, by the Committee on Rules, an act to amend the Racing,

Pari-mutuel Wagering and Breeding Law and Chapter 281 of the Laws of 1994 amending the Racing, Pari-mutuel Wagering and Breeding Law.

Senate Print 4324, Budget Bill, an act making an appropriation for the support of government.

Senate Print 4325, Budget Bill, an act making an appropriation for the support of government.

And Senate Print 4326, Budget Bill, an act to provide for payments to municipalities and to providers of medical services under the Medical Assistance Program.

All bills reported directly for third reading.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Yes, Mr. President. I move we adopt the report of the Rules Committee.

ACTING PRESIDENT KUHL: The motion is to accept the report of the Rules Committee. All those in favor signify by saying

aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is accepted.

Senator Skelos.

SENATOR SKELOS: Could you recognize Senator Santiago, please?

ACTING PRESIDENT KUHL: The Chair recognizes Senator Santiago.

SENATOR SANTIAGO: Mr. President, I would like to be recorded in the negative on Calendar Number 385, please.

ACTING PRESIDENT KUHL: Without objection, Senator Santiago will be recorded in the negative on Calendar Number 385.

Senator Skelos.

SENATOR SKELOS: Yes. At this time, Mr. President, could we take up Calendar Number 479, Senate 4324?

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 479.

THE SECRETARY: Calendar Number

479, Budget Bill, Senate Print 4324, an act making an appropriation for the support of government.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, can we take up Calendar Number 480, Senate 4325?

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 480.

THE SECRETARY: Calendar Number 480, Budget Bill, Senate Print 4325, an act making an appropriation for the support of government.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: At this time, can we take up Calendar Number 481, Senate 4326?

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 481.

THE SECRETARY: Calendar Number 481, Budget Bill, Senate Print 4326, an act to provide for payments to municipalities and providers of medical services under the Medical Assistance Program.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Yes. Could you recognize Senator Present, please?

ACTING PRESIDENT KUHL: The Chair recognizes Senator Present.

SENATOR PRESENT: Mr. President, on page 19, on behalf of Senator Lack, I offer the following amendments to Calendar Number 296, Assembly Print 395, and ask that it retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 296 are received and accepted. The bill will retain its place on the Third Reading Calendar.

Senator Present.

SENATOR PRESENT: Mr. President, on page 11, on behalf of Senator Cook, I offer the following amendments to Calendar 90, Assembly 290-A, and ask that it retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments are received to Calendar Number 90 and accepted. The bill will retain its place on the Third Reading Calendar.

SENATOR SKELOS: Mr. President, is there any other housekeeping? If we could just stand at ease for a moment then.

ACTING PRESIDENT KUHL: There's no housekeeping here, Senator Skelos, at the moment. The Senate will stand at ease for a few moments.

(Whereupon, the Senate stood at ease.)

ACTING PRESIDENT KUHL: The Chair recognizes Senator Skelos.

SENATOR SKELOS: Yes, Mr. President. At this time, there being no further business, I move we adjourn until Tuesday, April

25th at 3:00 p.m. sharp.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Tuesday, April 25th at 3:00 p.m. sharp.

(Whereupon, at 4:15 p.m., the Senate adjourned.)