ALBANY, NEW YORK

March 19, 1996

3:00 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

Would everyone please rise and repeat with me the Pledge of Allegiance.

(Whereupon, the Senate and those present joined in the Pledge of Allegiance to the Flag.)

The invocation today will be given by the Reverend Peter G. Young, Blessed Sacrament Church, Bolton Landing.

FATHER PETER YOUNG: Let us pray. May we pray today for all of those that are elected, for ourselves that we might be delivered from all illusion of superiority, from all pretense of righteousness, from all arrogance and hardness of heart; that we might know the meaning of compassion in all of our elected duties and in this Senate chamber.

We ask You this in Your name, now and forever more. Amen.

THE PRESIDENT: Amen.

Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 18. The Senate met pursuant to adjournment, Senator Marcellino in the chair. The Journal of Sunday, March 17th, 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.

The Secretary will read.

THE SECRETARY: Senator Rath, from the Committee on Local Government, offers up the following bills:

Senate Print 293, by Senator Cook, an act to amend the County Law, in relation to review and approval of names of rights of way;

668, by Senator Padavan, an act to amend the General Municipal Law, in relation to reporting the information to United States Immigration and Naturalization Service;

1092, by Senator Farley, an act to amend the Real Property Tax Law and the Social Services Law, in relation to withholding Social Services rents;

2677, by Senator Leibell, an act authorizing the Town of Southeast, Putnam County, to establish a road or highway improvement district;

3067, with amendments, by Senator Larkin, an act to amend the General Municipal Law and the State Finance Law, in relation to dispensing of performance and payment bonds;

3360, by Senator Kuhl, an act to amend the General Municipal Law, in relation to authorizing municipal cooperation to establish volunteer cemetery maintenance cleanup;

3740A, by Senator LaValle, an act authorizing advisory, nonbinding referendum in the Towns of Easthampton and Riverhead;

4294, by Senator Marcellino, an act to amend the General Municipal Law, in relation to establishing the Town of Huntington industrial development agency;

5536, by Senator Holland, an act to amend the Real Property Tax Law, in relation to exempting certain municipalities from provisions of service of petitions;

6123, by Senator Leibell, an act to amend the General Municipal Law, in relation to buildings that are part of urban development;

6124, by Senator Leibell, an act to amend the General Municipal Law, in relation to powers of municipalities in carrying out urban renewal plans.

Senator Levy, from the Committee on Transportation, offers up the following bills:

Senate Print 372, by Senator Levy, an act to amend the Vehicle and Traffic Law, in relation to increasing the penalties for aggravated unlicensed operation;

1619C, by Senator Goodman, an act to amend the Vehicle and Traffic Law, in relation to mandatory suspensions of Class E licenses;

5306A, by Senator Padavan, an act

to amend the Vehicle and Traffic Law and the Administrative Code of the City of New York, in relation to the suspension of license and registration privileges;

5773, by Senator Marcellino, an act to amend the Vehicle and Traffic Law, in relation to certificates of inspection;

6171, by Senator Holland, an act to amend the Vehicle and Traffic Law, in relation to providing for distinctive animal population control fund;

6181, by Senator Trunzo, an act to amend the Vehicle and Traffic Law, in relation to allowing persons to indicate an emergency contact person;

6219, by Senator Volker, an act to amend the Vehicle and Traffic Law, in relation to additional traffic regulations;

6298, by Senator Stafford, an act to amend the Highway Law, in relation to implementing an exchange of highways between the state and county of Washington;

6311, by Senator Bruno, an act to

amend the Highway Law, in relation to designating a portion of the state highway system as the Turning Point Trail;

6435, by Senator Volker, an act to amend the Highway Law, in relation to including bicycle path and pedestrian paths within certain construction improvements.

Senator Cook, from the Committee on Education, offers up the following bills:

Senate Print 3584, by Senator Cook, an act to amend the Education Law, in relation to building aid for joint municipal facilities;

6272, by Senator Cook, an act to amend the Education Law, in relation to terms of office of chapters for the Rural Education Advisory Committee;

6433, by Senator Padavan, an act to amend Chapter 399 of the Laws of 1995, amending the Education Law.

Senator Saland, from the Committee on Children and Families, offers up the following bills:

Senate Print 1987, by Senator Johnson, an act to amend the Domestic Relations Law, in relation to visitation rights to infant grandchildren;

2105, by Senator Saland, an act to amend the Social Services Law and the Public Health Law, in relation to disclosure of HIV related information;

3474, by Senator Saland, an act to amend the Social Services Law and the Domestic Relations Law, in relation to venue and termination of parental rights;

4039, by Senator Saland, an act to amend the Social Services Law, in relation to the capacity of foster family boarding homes;

4951B, by Senator Marcellino, an act to amend the Social Services Law, in relation to child day care.

Senator DeFrancisco, from the Committee on Tourism, Recreation and Sports Development, offers up the following bills:

Senate Print 6237, with amendments, by Senator Nozzolio, an act to amend

the Navigation Law, in relation to type of life preservers;

6238, by Senator DeFrancisco, an act to amend the Parks, Recreation and Historic Preservation Law, the General Municipal Law, and the New York State Urban Development Corporation Act, in relation to the New York heritage system;

Senator Marcellino, from the Committee on Environmental Conservation, offers up the following bills:

Senate Print 6090B, by Senator Marcellino, an act to amend the Environmental Conservation Law, in relation to prohibiting the possession and transportation of live venomous reptiles; and

6112, by Senator LaValle, an act to amend the Environmental Conservation Law, in relation to the Central Pine Barrens comprehensive land use plan.

All bills directly for third reading.

THE PRESIDENT: Without

objection, all bills directly to third reading.

Reports of select committees.

Communications and reports from state officers.

The Chair hands down the following report from the Board of Elections certifying those persons elected to the State Senate at the February 15, 1996, special election. Notice will be filed in the Journal.

Motions and resolutions.

Senator Cook.

SENATOR COOK: Madam President, please place a sponsor's star on Calendar Number 412.

On behalf of Senator Goodman, on page 21, I offer the following amendments to Calendar 444, Senate Print 5743, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

SENATOR COOK: And I move that the following bill be discharged from committee

and be recommitted with instructions to strike the enacting clause: That's Senate Bill 6522, by Senator Nozzolio.

THE PRESIDENT: Enacting clause is struck.

Senator Bruno, we have one substitution.

SENATOR BRUNO: Please make the substitution.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 7, Senator LaValle moves to discharge from the Committee on Commerce, Economic Development, and Small Business, Assembly Bill 5417, and substitute it for the identical Senate Bill 3173.

ACTING PRESIDENT KUHL: Substitutions ordered.

Senator Bruno.

SENATOR BRUNO: Mr. President. Can we at this time adopt the Resolution Calendar.

ACTING PRESIDENT KUHL: The motion is to adopt the Resolution Calendar.

All those in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Chair recognizes Senator Hoblock.

SENATOR HOBLOCK: Mr. President. Resolution 2732, can we open that up for cosponsorship, please?

ACTING PRESIDENT KUHL: Resolution Calendar Number 2732 is open for sponsorship for any members of the Majority or Minority. Please indicate to the desk if you would like to be a sponsor. We'll leave that open for the balance of session. Members who wish to ask so indicate.

Senator Bruno.

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

calendar?

ACTING PRESIDENT KUHL: Senator Bruno, before we take up the noncontroversial calendar, the resolution being offered up for joint sponsorship by Senator Hoblock deals with the commemoration of the 50th Anniversary of the Eastern Paralyzed Veterans Association. Indications from the members are that most everybody here would like to be a sponsor. Should we take the procedure we have used in the past of putting everybody on the resolution excepting those who indicate they don't want to be on?

SENATOR BRUNO: Direct the Secretary to put them all on unless it's indicated otherwise.

ACTING PRESIDENT KUHL: Thank you, Senator Bruno. I will direct the Secretary to place everybody on the resolution except for those members indicating that they don't wish to be on that.

With that, I ask the Secretary to read the noncontroversial calendar.

THE SECRETARY: Calendar Number 167, by Senator Marchi, Senate Print 4533, an act to amend the Environmental Conservation Law, in relation to the general powers of the New York State Environmental Facilities Corporation.

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 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar 182, by Senator Velella, Senate Print 5395A, an act to amend the Public Health Law, in relation to the testing of pregnant women for the human virus HIV.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: 228, by the Committee on Rules, Assembly Bill 7801A, an act to amend the Education Law, in relation to the appointment of a superintendent or associate superintendent of schools.

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 47.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 274, by Senator Saland, Senate Print 3502A, an act to amend the Real Property Tax Law, in relation to excluding certain expenditures for medical care.

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 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 308, by Senator Lack, Senate Print 6038, an act to amend the Railroad Law, in relation to police officers of the commuter railroad.

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 48, nays 1. Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 350, by Senator Velella, Senate Print 4910, an act to amend the Public Health Law, in relation to limiting the automatic stay upon the filing of a notice of review with the Administrative Review Board.

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 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 383, by Senator Velella, Senate Print 498, an act to amend the Alcoholic Beverage Control Law, in relation to credit card sales.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the

bill aside.

THE SECRETARY: Calendar Number 396, 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 the parole release decision.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 398, by Senator Nozzolio, Senate Print 4500, an act to amend the Executive Law, in relation to qualification for employment as a parole officer.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar 400, by Senator Nozzolio, Senate Bill 5017A, an act to amend the Correction Law, in relation to notification to law enforcement officials.

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 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 402, by Senator Holland, Senate Print 35, an act to authorize the Salvation Army Eastern Territorial School for Officers Training to change its name to the Salvation Army Training College.

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 50.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 405, by Senator Levy, Senate Print 1976, an act to amend the Education Law and the Local Finance Law, in relation to refinancing of payments by certain employers.

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 51.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 406, by Senator Trunzo, Senate Print 4131A, an act to amend the Education Law, in relation to World War II military service credit for certain members.

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 51.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 424, by member of the Assembly Feldman, Assembly Print 4883, an act to amend the New York State Printing and Public Documents Law, in relation to requiring vegetable ink printing.

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 51.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the noncontroversial calendar.

SENATOR SKELOS: Please recognize Senator Saland.

ACTING PRESIDENT KUHL: Chair recognizes Senator Saland.

SENATOR SALAND: Thank you, Mr. President. Mr. President, I would like to remove a star from Calendar 447, Senate 5104A.

ACTING PRESIDENT KUHL: At the request of the sponsor, the star will be removed on Calendar Number 447.

SENATOR SKELOS: Just stand at ease for a minute.

ACTING PRESIDENT KUHL: Senate

will stand at ease for just one moment.

(The Senate stood at ease briefly.)

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up the controversial calendar starting with Calendar Number 398, Senate 4500, by Senator Nozzolio.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar beginning with Calendar Number 398, by Senator Nozzolio.

THE SECRETARY: Calendar Number 398, by Senator Nozzolio, Senate Print 4500, an act to amend the Executive Law, in relation to qualification for employment as a parole officer.

ACTING PRESIDENT KUHL: Senator Nozzolio, an explanation of Calendar Number 398 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, my colleagues,

this measure before us today amends the Executive Law, to expressly forbid the employment of convicted felons as parole officers. In addition, certain individuals convicted of misdemeanors would, in the chairman's discretion, also be barred from employment.

Existing law requires that parole officers be physically, mentally and morally fitted for the position. It seems logical that an individual who is convicted of a felony should not be entrusted with a state issued weapon and, unfortunately, the Executive Law contains no such specific prohibition.

Parole officers as peace officers are authorized to carry weapons, and this law - are exempted from any laws prohibiting the criminal possession of weapons. Certainly we believe that this was a loophole in the law that should be remedied.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr.

President. If Senator Nozzolio would yield for a question?

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

SENATOR NOZZOLIO: I'd be happy to yield to the Minority Leader.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Thank you, Senator Nozzolio. My question pertains to a discussion I listened to with great interest last year between yourself, Senator Nozzolio and Senator Montgomery about restricting the employment of individuals working for the Department of Youth Services.

And my question is that, would it not be, in some cases -- certainly not all, but in some cases rather effective for those individuals who have been rehabilitated by the criminal justice system that they actually would act as good counselors for those who would be on parole or perhaps in youth institutions?

I understand your concern about

the weapons. But just on the general point of employment, I'm just becoming a little bit concerned that there is any employment for anyone who has been incarcerated, and I'm wondering if these wouldn't be, perhaps, the best places for some who have been rehabilitated.

SENATOR NOZZOLIO: Mr. Minority Leader, I don't believe that that necessarily is an argument that would deter us from establishing this additional standard, that this additional standard says that those who commit a felony need not apply.

I think that's very consistent with other law enforcement entities as well as those who are judged to be part of the law enforcement component, and I believe that the standards have been high, are held high by those who are participants in law enforcement, and parole officers are very much on the front lines of that enforcement.

I think this measure simply rises to the standards already existing by parole

officers who are very dedicated in the performance of their duty across this state, and I believe very strongly that this additional standard is something that parole officers welcome and that we should very much ensure continues.

Now, there are plenty of places in the criminal justice system, and I believe your question is -- you've asked for my opinion, and I think that in sharing my opinion with you there may be -- may be -- some areas in the criminal justice system where those who participated in breaking the law could help advise those who -- after they paid their debt to society could advise those who are on the front lines. But this is in my opinion, sir, really a place for higher standards, not lower standards. It is a place for this type of additional criteria.

Thank you.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Mr.

President. If the Senator would continue to yield?

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: Senator, I don't disagree with a thing that you have said. However, the scope of this legislation carries beyond some of the acts that I think would be of the source that we would want to bar employment. For instance, at the discretion of the Commissioner, you are actually extending this to misdemeanors.

Now, resisting arrest might be a misdemeanor. There are a number of misdemeanors that I don't know would qualify to meet the threshold that would, in a sense, change the standard from -- as high as you're interested in maintaining.

My question is, why would you

include in the list of offenses some that really may relate to a momentary act or something that did not have a far-reaching conclusion for which a person is now being barred from service for the rest of their life?

SENATOR NOZZOLIO: Mr. President, in response to Senator Paterson's question.

Yes, Senator, there certainly are also the potential that misdemeanors under this law would bar an individual from being a parole officer. Those misdemeanors, however, are to be judged in the chairman's discretion, and the chairman in, again, raising the bar, ensuring that the standards of conduct and behavior are as exemplary as possible, could look to certain misdemeanor of moral turpitude, a misdemeanor that clearly demonstrates an ability or inability to respect law, and it would give the discretion to the chairman, the opportunity to look at the individual circumstances surrounding the commission of that misdemeanor.

Certainly, there are misdemeanors that are extremely egregious, that show a total

lack of respect for law and order, a total lack of respect for a particular conduct that may, because of the facts, warrant exclusion from this profession, and that's why the discretion, Senator, is placed in there for certain types of crime.

And it's the same type of discretion. I don't think that we should for one minute think this is not the same type of discretion that every law enforcement entity engages in in studying whether or not they will take an individual into their service.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, thank Senator Nozzolio for his answers.

On the bill.

ACTING PRESIDENT KUHL: Senator Paterson on the bill.

SENATOR PATERSON: I think Senator Montgomery made some very good points on another issue that apply in this particular case

this year. I think that the discretion that we're leaving is an invitation for the possibility of abuse; and I think that, because what we're often talking about, particularly with some misdemeanor offenses, are acts taken by individuals when they are younger and at a point that they don't fully understand the meaning of the criminal justice system or the meaning of law or, for reasons of immaturity, they don't understand it at the moment that they violated the law.

They certainly should be punished. They should serve out any sentence or any restriction that we put on them. Down the road, I don't know if it's a good idea to further restrict them in perpetuity for an action that may have come as the result of something that went on when they were younger.

Now, Senator Nozzolio addresses that by leaving this to the discretion of the Commissioner, which demonstrates that he has understanding on this particular point. I feel that there would be no reason beyond a certain

point to assume that there is going to be a recurrence, particularly with some of the minor offenses.

ACTING PRESIDENT KUHL: Chair recognizes Senator Waldon.

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

Would the learned Senator, the sponsor of this bill, yield to a question or two.

ACTING PRESIDENT KUHL: Senator Nozzolio, do you yield?

SENATOR NOZZOLIO: I'll be happy to yield to Senator Waldon.

ACTING PRESIDENT KUHL: Senator yields.

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

Senator, I am a little bit ignorant in regard to how parole officers are actually chosen. I know, for example, that police officers are on a list, and the one in

three rule applies to police officers. Is there -- is there something going on in the gallery that I should be aware of?

SENATOR NOZZOLIO: Just looking for heavenly inspiration in answer to your question, Senator.

SENATOR WALDON: I hope it's there, Senator.

But, seriously, is there a list established for parole officers and, if so, does the one in three rule apply?

SENATOR NOZZOLIO: I believe there is, Senator, a list. I believe it's extremely competitive. I believe it's much like the same type of procedures. I am not positive, but I believe it's the same type of Civil Service procedures required for the selection of regular police officers.

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

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

SENATOR NOZZOLIO: Yes, Mr.

President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: If such is the case, Senator, is not this proposal redundant? Because if, at the discretion of the hiring agency, they already have the right to weed out those who are unsuitable utilizing the one in three rule, then this becomes unnecessary in a theoretical sense; is that not correct?

SENATOR NOZZOLIO: In a practical sense, Senator, in response to your question, present law, present regulations do not automatically bar felons, and I believe that's part -- that's the sole reason for putting this measure before us today, that there is this loophole in the law, and we're trying to close that loophole.

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

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

SENATOR NOZZOLIO: Yes, Mr.

President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Senator, I have no problems with the felony phase of your proposal. I think in the manner of its construction, there is a redundancy if the one in three Civil Service rule applies. There is no need to be concerned about those who have committed felonies who apply, or even those who have committed misdemeanors of such a nature that the hiring agency feels, upon investigation, that they are unsuitable.

So my real question is, if such is the case, are we not kind of spinning our wheels on something that is unnecessary to do because the Commissioner already has the discretion to not hire those who fall under the per numeral zone of the one in three rule of the Civil Service Law.

SENATOR NOZZOLIO: Mr. President, in response to Senator Waldon's question.

Senator, no, I do not believe it

is redundant. I believe that this is a clear statement of policy by this Legislature stating specifically that those who commit a felony and those who commit an egregious misdemeanor will not be considered or allowed to be in this very important law enforcement capacity.

SENATOR WALDON: Mr. President, with your permission, may I continue? Will the Senator continue to yield?

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Senator, you said earlier the same rules may -- you weren't sure, and I appreciate that. I appreciate your candor. The same rules may apply regarding applicants to become parole officers as apply to those who wish to become police officers. In that regard, when you are asked a question during the investigation process, "Have you ever

been convicted of a crime?" failure to honestly answer the question automatically, upon discovery, bars you from becoming a member of the police departments across this state.

Would that in regard to parole officers apply? And if it does, would those who while teenagers, while juveniles, in fact, who have committed acts which if committed by an adult would be characterized as felonies, be barred from becoming parole officers?

SENATOR NOZZOLIO: Senator, in response to what I believe are two questions, three questions -- first, you are asking me whether or not an individual who lies upon applying for a -- for this parole officer position, would that individual -- if lying upon their application, would that lying disqualify them? Is that the question you are asking me, sir?

SENATOR WALDON: Part of it, yes.

SENATOR NOZZOLIO: I would believe, yes, a lie to me would certainly disqualify an individual testing. A fraud

committed upon -- by the applicant would be, in effect, an issue that would disqualify them. However, sir, if the question was, "Have you ever been convicted of a felony?" and they answered yes, the law would not -- as it's written today, would not disqualify them from service as a parole officer; and, Senator, that's exactly why we're trying to change the law with this proposal.

SENATOR WALDON: Would the kind Senator just suffer an interruption?

ACTING PRESIDENT KUHL: Senator Nozzolio, would you suffer an interruption by Senator Waldon?

SENATOR NOZZOLIO: It would be not a question of suffering, sir. I would be glad to.

SENATOR WALDON: I may not have been clear in my statement, Senator, and I apologize for that. I was talking about those who are classified YOs and juvenile offenders and, in theory, if you are asked a question, "Have you ever been convicted of a felony?"

but, in fact, on your record shows juvenile delinquency and YO offender status and you say "No," in truth you would not traditionally be characterized as a felon; however, for purposes of such a serious position as a parole officer, it seems to me that acts committed even at that tender age might cause someone to be concerned.

The point I'm trying to make is, if the Director and/or the Commissioner, whatever his title may be at this point in time, has the discretion to eliminate those whose records show they are not qualified to become parole officers, I think this is somewhat of an exercise in futility and we're really just wasting the State's time and the State's money in going through this process.

SENATOR NOZZOLIO: Senator, I believe that we're clearly headed -- in response to your question, we're clearly headed here in a loophole, a loophole in the law that recognizes the good work of parole officers, recognizes that they are in the front lines of law enforcement, but we did not ensure that someone

convicted of a felony wouldn't be able to participate in this career. This closes -- the bill before us today simply closes that loophole and ensures that anyone convicted as a felon need not apply as a parole officer.

That's all we're trying to do here. There's no -- what you see is what you get here. It is simply denying anyone who's committed a felony the opportunity to be a parole officer.

SENATOR WALDON: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

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

Let me thank Senator Nozzolio for his candor and for his patience in responding to my questions.

But I am in agreement with Senator Paterson, the learned Senator from that great city of Harlem, in regard to the thrust vis-a-vis misdemeanors.

I believe that if the Commissioner/Director of this agency has discretion to weed out those who do not qualify under their rules, under the rules of the parole commission, as capable of becoming parole officers, then this is, in fact, a redundancy.

I have no problem with excluding felons, especially those who commit, as Senator Nozzolio said, "egregious acts." I would characterize egregious and heinous, even those which do not reflect moral turpitude.

I also believe, as Senator Paterson characterized, if someone at a tender age has committed a misdemeanor, that should not necessarily hang over their heads ad infinitum and preclude them from having an opportunity for service to the people of the State of New York, especially if it is, as some young people get involved with situations where the officer says, "Okay, fellows, let's move along," and rightfully so, the officer has the right under certain circumstances to do that. There is some resistance. Someone gets a little gungee. Next

thing you know, he has an arrest. He is charged with resisting arrest, which may have been just an ill-thought act of the moment, and nothing else happens in that person's life forever. We should not preclude them, in my opinion, from serving as parole officers.

In fact, the experience there might assist them in becoming a better parole officer; and in that regard and for those reasons, I will have to vote no on this particular proposal.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on this bill?

(There was no response.)

If not, the Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator

Montgomery, did you wish to explain your vote?

SENATOR MONTGOMERY: Yes, I do.

ACTING PRESIDENT KUHL: Senator Montgomery to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President. I have been listening to the debate on this bill, and as I have -- the position that I have taken in the past, I maintain in relationship to this legislation, and that is that it's very broad and it sweeps into its net a whole group of people who are probably the most likely people to be excellent parole officers because they may have a unique understanding of people who have been through a system, and so I think that this is a mistake.

We certainly don't want to put in jeopardy any person because a person who is employed to deal with them may be -- pose a danger, but, by the same token, I think we also don't want to exclude a whole group of people who may, in fact, be a particular asset, especially as it relates to working with people who have been involved in the criminal justice

system.

So I'm voting against this bill, and I hope that my colleagues will join me in opposing legislation which limits to such an extent people who will not be a danger but who, rather, would be an asset to serve in such positions.

I vote no, Mr. President.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 398 are Senators Montgomery, Paterson and Waldon. Ayes 54. Nays 3.

ACTING PRESIDENT KUHL: The bill is passed.

Chair recognizes Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees. I believe there is a report of the Finance Committee at the desk.

ACTING PRESIDENT KUHL: We will

return to reports of standing committees. I will ask the Secretary to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers up the following nominations:

Member of the State Council on the Arts, Earle Mack of New York City.

ACTING PRESIDENT KUHL: Chair recognizes Senator Stafford.

SENATOR STAFFORD: It's a pleasure, Mr. President, to move the confirmation of Mr. Mack, who has a distinguished career in government and the public sector and who has a proven interest in the field to which he is being nominated.

ACTING PRESIDENT KUHL: The question is on the nomination of Earle Mack of New York City to become a Member of the State Council on the Arts.

All in favor, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The nominee is confirmed.

The Secretary will continue to read.

THE SECRETARY: Member of the Advisory Council on Agriculture, Edwin D. Fessenden of King Ferry.

ACTING PRESIDENT KUHL: Chair recognizes Senator Stafford.

SENATOR STAFFORD: Mr. President, again it's a pleasure to move the confirmation of Mr. Fessenden to a very important Council, the Advisory Council on Agriculture.

ACTING PRESIDENT KUHL: Chair recognizes Senator Hoffmann.

SENATOR HOFFMANN: I must rise in support of this particular nominee. As the ranking Minority member on the Senate Agriculture Committee, I have had the great pleasure of working with Mr. Fessenden over a number of years. We served together on the Cornell Ag' and Life Sciences Advisory Board and I have observed Mr. Fessenden in an advocacy

role on many, many issues that affect New York State's number one industry. Notwithstanding the fact that his son is a member of the other house, I think it was a remarkable sign of good judgment on the part of Governor Pataki to appoint Mr. Fessenden, who is a Democrat, to another term on this particular board.

ACTING PRESIDENT KUHL: Chair recognizes Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

My colleagues, it is with great happiness that I rise in support of this excellent nomination. Ed Fessenden is a working farmer, one who has been skilled in agriculture and is one who has passed that skill along to his family. His sons are operating his agricultural operation with him, and I'm very pleased as a constituent, as his son Dan is our colleague in servicing the legislative needs, the state legislative needs of Cayuga County. I think this is a terrific nomination, and I rise in support of Ed Fessenden.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination?

(There was no response.)

Hearing none, the question is on the nomination of Edwin D. Fessenden of King Ferry, to become a member of the Advisory Council on Agriculture.

All those in favor of the nomination, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The nominee is confirmed.

Secretary will continue to read.

THE SECRETARY: Member of the Stewart Airport Commission, Robert J. Zaccheo of New Paltz.

ACTING PRESIDENT KUHL: Chair recognizes Senator Cook.

SENATOR COOK: Mr. President. I'm very pleased to second this nomination of Bob Zaccheo to the Stewart Airport Commission,

on two grounds: The first that he is a building contractor and given the fact that they are in the process of, hopefully, major expansion in the future at Stewart, certainly his knowledge will be helpful in that regard; secondly, because he is an elected town board member and a former planning board chairman in the town of Gardiner, which is one of the towns in the hinterlands of the airport and where people are going to be concerned, of course, about approach routes and that type of thing. I think he adds a good balance.

So I think he is a very ideal appointment to this board and I am very pleased to second his nomination.

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

(There was no response.)

Hearing none, the question is on the nomination of Robert J. Zaccheo of New Paltz, to become a member of the Stewart Airport Commission.

All those in favor, signify by

saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The nominee is confirmed.

Secretary will continue to read.

THE SECRETARY: Member, Board of Visitors, New York State Home for Veterans and Their Dependents at Batavia, Linda M. Janelli of Amherst.

ACTING PRESIDENT KUHL: Chair recognizes Senator Rath.

SENATOR RATH: Mr. President, I am pleased to rise and support the nomination of Linda M. Janelli of Amherst for a term to expire in February of the year 2000 -- that almost comes as a shock to say that. The New York State Home for Veterans in Batavia supports and receives veterans from all over the state but, of course, mainly Western New York, which is home to us and home to Linda. Linda is a registered nurse. She is a veteran also of the Operation Desert Shield and is in the U.S. Air

Force Reserves.

She comes with a wonderful resume, and her background, her professional background, is in gerontological activities so she has actually three things in her favor very much so, a registered nurse, of course, for a senior nursing home, experience with working with seniors; and also is in the Air Force Reserves. So I'm pleased to second the nomination.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the nomination?

(There was no response.)

Hearing none, the question is on the nomination of Linda M. Janelli of Amherst to become a member of the Board of Visitors, New York State Home for Veterans and Their Dependents at Batavia.

All those in favor of the nomination, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The nominee is confirmed.

Secretary will continue to read.

THE SECRETARY: Member, Board of Visitors, New York State Home for Veterans and Their Dependents at St. Albans, Donald H. Haber of Douglaston.

SENATOR SKELOS: I move the nomination.

ACTING PRESIDENT KUHL: The question is on the nomination of Donald H. Haber of Douglaston to become a Member of the Board of Visitors of the New York State Home for Veterans and Their Dependents at St. Albans.

All those in favor of the nomination, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The nominee is confirmed.

Senator Skelos.

SENATOR SKELOS: Stand at ease for a moment.

ACTING PRESIDENT KUHL: The Senate will stand at ease for a moment.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time if you would take up Calendar 182, Senate 5395A, by Senator Guy Velella.

ACTING PRESIDENT KUHL: Secretary will read Calendar Number 182.

THE SECRETARY: Calendar Number 182, by Senator Velella, Senate Print 5395A, an act to amend the Public Health Law, in relation to the testing of pregnant women for the human virus HIV.

SENATOR VELELLA: Last section, please.

ACTING PRESIDENT KUHL: Senator Velella, an explanation of Calendar Number 182 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR VELELLA: This is a bill that we passed last year and, basically, has not been changed at all. It requires that pregnant women receive HIV counseling and that they be

made aware of the necessity for HIV testing for their children. It requires that the refusal of an HIV test shall be in writing. Requires that when a pregnant woman refuses an HIV test a good effort shall be made to repeat the counseling and offer the testing at subsequent prenatal visits. Requires HIV-related services be offered within a reasonable period of time from receipt of test results to a pregnant woman who tests HIV positive, and it unblinds the test that is now presently given for children so that the mother will be informed of the status of the child.

I think everybody in the chamber has gone through a rather lengthy debate in the past for several hours, and I would suggest that we incorporate the past debate by reference.

(Laughter.)

ACTING PRESIDENT KUHL: Chair recognizes Senator Paterson.

SENATOR PATERSON: Mr. President. Did Senator Velella have me in mind when he made that -

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

SENATOR VELELLA: Yes.

SENATOR PATERSON: Senator Velella, what if I confine my questions to information that exists between last year and this year?

SENATOR VELELLA: That's fine with me.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: In October of last year, Mr. President, there was a settlement between the Association for the Benefit of Children and the New York State Department of Health in which the Governor's office and the Attorney General's office joined in the settlement and in the negotiation.

What the results of that are is there will be some new regulations that have been promulgated and will be coming into effect later this spring. In my opinion, it incorporates a lot of what is in Senator

Velella's legislation, carried by Assemblywoman Mayersohn in the Assembly, for which they've both worked very hard, very diligently and very dedicated to try to accomplish what would be a great good for society.

As a result of the regulations, though, the only testing results that would not be provided to the mother would be where the mother actually refuses the offer of the results of the newborn testing which actually tests the mother's antibodies and adds to the list of diseases that would be tested, AIDS, the antibodies to the HIV virus.

So my question, Senator Velella, is, that with that in mind -- and the only refusal would be one in which there is an offer and then a refusal as would similarly be the case if a Christian Scientist didn't want treatment.

My question is, do you think this bill still has value in light of the fact that we have regulations going into effect that accomplish almost the same purpose later this

spring?

SENATOR VELELLA: Well, Senator, the answer to that is no, and I will explain it briefly.

When the Governor held a press conference along with Assemblywoman Mayersohn, myself, the people who had brought the lawsuit, many of the advocates for young children, he made mention, and the health commissioner also mentioned the fact that these regulations would be a first step, that they would be part of a solution, but that he was going to the limit that the existing law would provide.

Our bill takes him beyond that point. The regulations will deal with -- the biggest difference being -- outside of encouraging counseling, forcing additional opportunities for a parent or a mother to have counseling during the prenatal time. The biggest difference in the regs are, that where the parent takes no action, where the doctor says, "We recommend you have a test, we recommend that your newborn be tested," and the

parent doesn't reject or doesn't affirm whether or not a test should be taken, the regulations will give the doctor the authority to act, if he believes that that is a high-risk child and an emergency situation exists for the health and well-being of that child, to have the child tested for AIDS and to then take appropriate medical action.

Again, I will point out as I did to you last year, we are treating this disease of AIDS as a special type of problem. We've had these types of problem of communicable diseases before, and we've always addressed them in the law. AIDS is the only politically-protected disease known to man. We should treat it as a contagious disease. We should try to identify it wherever it exists, as any other malady known to man, any other problem, medical problem.

Any doctor will tell you, you can't begin to solve the problem until you find you have the disease. We're saying we're not even going to let people find out they have the disease. That is incredible, and that is

because we have disguised this thing with so much confidentiality that we are depriving newborn babies of being diagnosed with a disease that cannot be cured at this point, but they can be helped to live longer so that probably or hopefully we will find a cure during their lifetime rather than damning them to a slow and painful death because we refused to diagnose a disease that it was our ability to do.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Velella would continue to yield?

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: Senator, as I understand it, the regulations do provide us with a method of understanding whether or not the newborn has the disease or at least it does provide us with an opportunity to test to

determine whether or not the mother has antibodies for the disease, and then we can make a decision as to what to do with the newborn, since 75 percent of the newborns actually do not go on to actually manifest the virus, and this can be very helpful particularly in the treatment of early pneumonia, which is one of the virulent killers of young children, with Pentamadine and other types of drugs.

So I understand that; but with the regulations already providing that, what is added to the regulations that is accomplished in your legislation is simply the fact that now we've made an offer to the mother of the findings of this test that we're going to perform and the mother now refuses, does not want to know the results and is, in a sense, refusing the treatment.

If what we really are looking for is the cooperation of the mother, would it not be better to go back to the mother and say, "Well, these are the reasons why we think treatment can be helpful; we don't have a cure

but we can elongate the life of the newborn"? In other words, consistent counseling and continuing to try to convince the individual that this would be a better way, because we're going to need the mother in the administration of the treatment; and so I'm just saying that is a mandatory piece of legislation or mandatory procedure that is going to be existing when we -- if we put this legislation into law that now tells the mother, "Well, you didn't want to know, but here are the results," is that going to help us in terms of establishing a treatment any more than it would be to say, "You really need to know this, Mother of the Newborn, because caring about your baby, as we're sure you do, this is the best way that you can help your child"?

All I'm saying -- all I'm asking, Senator Velella, is how does the mandatory nature of informing, how does that assist us in the treatment?

SENATOR VELELLA: Senator, one of the first things that comes to mind when you ask

that is probably that mother is in a stage of denial and hitting her with the cold facts might wake her up a little bit to tell her that she and her child are in need of serious medical attention.

As I said before, the only way a doctor can deal with any medical problem is to first determine what it is you have. Not knowing what you have and blinding yourself to that and ignoring the case is just pure lunacy.

Secondly, what can be done if we identify this child after birth if the mother does not want to be informed? At least we would know when we do inoculations that we ought not be shooting live polio vaccines into a child who falls into that 25 percent category who didn't shed the antibodies but developed the full-blown AIDS, and maybe we should be start -- we will be able to start the pneumonia treatments to build up the resistance to the very, very fatal pneumonias that these children develop.

Those are some of the medical things. I'm not a doctor but those are some of

the things that doctors have told me they will do when they know a child is vulnerable to this disease or has developed this disease, to make their life a little bit better.

I find it shocking that you would say to me that out of the 100 percent universe of children whose mothers have the HIV antibody and are born with it, 75 percent shed the antibody and will be normal and only 25 percent of them are going to die, so we shouldn't help them; 25 percent of them are expendable.

I think one life is not expendable, and I think that's a very callous attitude.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Senator, I would be shocked if someone said that, as well, but that's not what I said. I said that 75 percent of the newborns test positive as a result of the tests of the mother's antibodies. The test of the mother's antibodies does not determine whether or not the newborn goes on to

have the infection. In the cases of 25 percent that do, to whatever extent we can prolong their lives -- and you were quite accurate and quite careful not to advertise some of the treatments as a cure -- in the cases of those 25 percent, we certainly think that there certainly should be treatment.

In the case of women when they are pregnant, we can, actually, through the use of AZT and other drugs reduce even that 25 percent to 8 percent. In fact, when the mother is pregnant that is the one time we actually know we have a chance to eliminate the virus entirely through the treatment of AZT. We don't use the AZT any more in the treatment of newborns because it is such a dangerous treatment inherently that, in many cases, it exacerbates the cases and in many cases, it treats the 75 percent who aren't actually going to get the virus and, in some cases, that treatment has actually led to grave problems for the newborn.

SENATOR VELELLA: Senator

Paterson yield for a moment?

SENATOR PATERSON: Yes.

SENATOR VELELLA: Senator, when you talk about that 25 percent or if -- and we provide for more than adequate counseling in this bill in the prenatal term. If we got the prenatal counseling and they took it and there was only 8 percent, how are we going to identify that 25 percent or that 8 percent if, in fact, we don't take those tests and look at the results because the mother may decide she doesn't want to know about it?

We have an obligation to those born children. We're not talking about before they're born. We're talking about babies that have been born into this world, and we have an obligation to that 25 percent or that 8 percent to treat them for what they have, and we can't treat them unless we test them to find out what they have. If there was a way to do it, fine. We have to compromise or bend a little bit that rule of confidentiality to save those 25 percent of the babies.

SENATOR PATERSON: Well, thank you, Senator.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I think we should certainly take any measure that would assist the newborns in fighting the virus, so I agree with you, and I think that the new regulations that are going into effect -- if I'm wrong, please correct me -- are going to accomplish exactly what you are talking about because we are going to have the tests.

SENATOR VELELLA: You're wrong.

SENATOR PATERSON: I'm wrong.

SENATOR VELELLA: Yes. You asked me to correct you. You're wrong.

ACTING PRESIDENT KUHL: Senator Velella, you have shaken me up, too. Would you go through the chair when you do this.

SENATOR VELELLA: Will Senator Paterson yield for a moment?

ACTING PRESIDENT KUHL: Senator Paterson, Senator Velella is asking if you would

yield for a moment?

SENATOR PATERSON: Yes.

SENATOR VELELLA: Senator, you are wrong. Regulations will not accomplish that. You asked me to correct you.

SENATOR PATERSON: I was hoping you would tell me. The regulations will provide for the -- there will be the testing. The only thing that the regulations are not going to provide for will be the notification of the mother and, if the mother refuses the test, then what I'm saying to you is but the health care providers still know what the results of those tests are.

The difference is that we are trying to inform the mother and the mother is refusing, if I'm not correct. That's -- what you are adding to the regulations that are going into effect -- and this is just a point of fact right now -- is that we're now going to inform the parent and all I'm saying, Senator, is in terms of the treatment we're going to need the mother. We're going to need the mother to

establish the treatment.

So if the mother says no, she doesn't want to be informed and we say to her, "Well, we're going to shock you into reality; we're going to tell you what the results of the test are," I don't know that that's a better way than continuing to insist through counseling that the mother get treatment, because what we're trying to accomplish is not just to give her the information. This isn't a question of confidentiality. This is a question of health care. What we're trying to accomplish is to get the mother to get on our side and assist with the treatment.

SENATOR VELELLA: If I might respond to that, Senator. I think I finally isolated the point of difference that we have and it may be a misunderstanding of what the bill is doing.

When that mother says, "No, I don't want my baby tested; I don't want to know anything about this; I want to have my baby and go home and live in my own little world, and I

don't want to know anything about AIDS; I'm not worried about it," we are testing that baby anyway under existing law. Every baby is tested, so we have results. We just are stupid. We don't tell anybody about it.

What I've suggested we do is, "Why don't we tell the mother?" Not the world, the mother. And, two, that when those results are noted on the baby's record, doctors who will be treating that baby will know this baby has the potential for AIDS or has the full-blown AIDS and will treat them accordingly, will not give them high doses of -- will not give them inoculations that have live polio vaccines in - live organisms in them, to build up their immune system because they have a defective immune system. The mother may not reintroduce the virus by breast feeding.

Those are the things that are going to be constructively done. When we take that test and unblind the results, we let doctor and we let the mother know. That's what I think we're going to accomplish. The regs don't do

that.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Let me ask you, Senator Velella, your interpretation of my understanding of what the bill does. My understanding is that we are going to inform all mothers at this point with the exception of those mothers who specifically indicate that they are refusing to get the results under the regulations that are going to go into effect soon.

SENATOR VELELLA: Yes, under the regulations that would be the state that we would be in.

SENATOR PATERSON: Okay. Now that we agree on that, we are now only talking about individuals who have made it clear that they are refusing to get the results of the test; and so, what your legislation -- and what I'm suggesting to you where they differ is, you're saying the best way to get the mother's cooperation, as you put it, was to try to shock

her into reality. And I'm not raising this to be critical of what you're saying. Anything that would get the mother to cooperate would be helpful. But what I'm saying is that since we already know that the mother has offered this refusal, I think we've got to change the mother's mind.

We're not going to change her mind just by giving her the results because she took that into account when she refused to get the results.

What I'm saying is we have to demonstrate to her some of the research that you and others who worked on this legislation have engaged in, to talk about the early treatment of pneumonia, to talk about the way in which we have taken the more virulent forms of the virus and actually extended the lives for years of the younger people, to let them know that we can often eliminate PCP pneumonia in the first months, and I think it would be that way rather than just saying, "Well, now, you didn't want to know, but we're telling you, you got a real

problem and even though you refused to get the results, we are now going to inform you anyway." That's where I think we disagree.

SENATOR VELELLA: That's the beauty of my bill. We both agree and the bill covers that. We provide for this extensive counseling, and I agree with you we have to try to get the mother, and we provide for counseling.

But a lot of cases -- a lot, not the majority but a lot of women who have no prenatal care, they show up at an emergency room ready to deliver. We haven't had time to counsel and discuss the problems with them. They have to have an immediate reaction. That child will need immediate treatment, in my mind, for prevention of some of the complications of the possibility of AIDS.

That is why we provide for the counseling during prenatal and postpartum.

SENATOR PATERSON: Point of clarification, Senator. You are saying your legislation provides for counseling if the

mother refuses? Because I don't see it in here.

SENATOR VELELLA: Counseling is available through all of the services that we - not particularly in this bill, but are readily available through all of the funding sources we do, through the AIDS Institute, through the hospital programs. It is there for anyone who is shocked and finds out they have AIDS through this process. There is all that backup that we have and support that we fund through other vehicles in this state for that parent, that person, after the baby is born.

The prenatal counseling is really the key that you put your finger on to educate the mother as to the problems the child may have, the need for this test. That's all there. We have repeated attempts even after the mother has refused in the prenatal stage -- if the mother has refused to have the test -- for the doctor to go back and try to explain to her the need for this test.

We tried to build in as much counseling as is humanly possible in the

prenatal stage, but you ought to be aware that there are a lot of women that have no prenatal treatment. They show up at the hospital pregnant, have their baby and we are left with the situation where failure to diagnose the antibodies and possible development of full blown AIDS prejudices that child's ability to struggle through life and maybe survive for a longer period of time until there is a cure.

SENATOR PATERSON: Thank you very much, Senator Velella.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: The American College of Gynecologists and Obstetricians opposes this legislation. They don't feel that this is the way to try to encourage the mother's cooperation after the test of newborns has been performed. They feel, as I do, that the continued counseling -- which I don't see in this bill, but Senator Velella assures me does exist in other ways -- is the best way to

encourage the mother that there needs to be a finding and then there needs to be treatment if in the tragic event the baby tests that the mother has antibodies to the HIV virus.

In addition, we're spending $3.8 million from the bad debt and charity pool, a pool that is certainly under duress when we realize that we have not in any way addressed the New York Prospective Hospital Reimbursement Methodology; and so, for this amount of money to be expended just really on the issue of informing the parent as to the nature of a circumstance that will inevitably only affect 25 percent of the newborns, when there even is a positive test, it certainly can be suggested that there would be better ways to use the money to treat the virus, not to accomplish any political goal, not in any way to eliminate from the health care that these young newborns who are unfortunately placed in this position need.

So what I'm suggesting, Mr. President, is that the continued counseling after the fact is the best way -- as I would

defer to the medical professionals on this, that is the most accomplished method to try to encourage the mother to understand that there is a very serious problem here and that although we have not, unfortunately, come up with a cure for the problem, we can at least do what we should always be doing, fighting to extend life as long as we can.

ACTING PRESIDENT KUHL: Senator Volker, why do you rise?

SENATOR VOLKER: Mr. President, can we read the last section? We have one member who needs to be some place else and would like to be able to vote.

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

THE SECRETARY: Section 6. This act shall take effect on the first day of January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator

Gonzalez.

SENATOR GONZALEZ: Yes.

ACTING PRESIDENT KUHL: Senator Gonzalez will be recorded in the affirmative.

The roll call is withdrawn. Debate is continued.

Chair recognizes Senator Abate.

SENATOR ABATE: Mr. President. Would Senator Velella yield?

ACTING PRESIDENT KUHL: Senator Velella, do you yield to Senator Abate?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: I will try to reduce my questions only to new areas that have developed since last year to this year.

One of the issues is that -- I'm trying to understand the bill. Will all the tests be unblinded? All the children that are born will be tested and all those tests un blinded even for the women of children who have already been tested, who have consented to be

tested and already know the results? These are the 90 percent of the women who go through the system, consent to be tested, know the results. Will we also be unblinding those tests under this bill?

SENATOR VELELLA: Well, we'd be unblinding the tests that are given at birth to each child that's -- when the child is born. The prenatal tests would be shared with the mother who obviously consented to the test. I guess in a general -- the answer would be yes. We're unblinding the test that's given to a baby when it's born.

SENATOR ABATE: I guess -- this is an example. I am a mother. I go through prenatal care. Under the existing rules and regulations, I am told I have a right to be tested. I am counseled. I agree. I sign a written agreement to be tested.

And now I give birth, and the hospital then tests my child, unblinds the tests, so not only do I know the results of the test, now the hospital knows.

I mean what public policy is advanced by putting those women into the pool, later on, when they already have the information?

SENATOR VELELLA: In the sense that you say the hospital knows, it would be probably the same -- if you went to the same hospital for the test you consented to, the technicians who read the results and entered it on your file would be the same technicians that read the results of the baby that was born and entered it on their file.

SENATOR ABATE: But in the first instance under the prenatal care, the results remain confidential. They are treated in a far different way than the results after birth.

SENATOR VELELLA: I don't know that they are. Are you sure that they are?

SENATOR ABATE: It's my understanding. I believe that's the case.

SENATOR VELELLA: The confidentiality would still apply to everything equally, except for the fact that that one test

that's taken at birth that nobody is supposed to know about -- it's supposed to be an anonymous test -- now will be attached to that baby.

SENATOR ABATE: But the difference is -

ACTING PRESIDENT KUHL: Senator Abate, are you asking Senator Velella to continue to yield?

SENATOR ABATE: Yes. Thank you.

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

SENATOR VELELLA: Yes.

SENATOR ABATE: Would you continue to yield?

ACTING PRESIDENT KUHL: Senator Velella continues to yield.

SENATOR ABATE: Maybe, correct me if I'm wrong, Senator. Would you correct me, my understanding, if I am a woman, seek prenatal care, I agree to be tested. The results of that test remains anonymous. It doesn't become part of my medical file. Now, when I give birth, my baby is tested. It's the same thing as testing

me because the baby is carrying my antibodies, but yet that information becomes part of the medical record. It's no longer anonymous.

SENATOR VELELLA: Of the child. Of the child.

SENATOR ABATE: Of the child.

SENATOR VELELLA: Yes.

SENATOR ABATE: But it's a representation of my medical condition, so I guess -- again, I ask, what public policy is advanced for me? Like 90 percent of the universe of women when they're counseled and they're educated, they want to be tested and they want the information. Why am I put postnatally in this huge pool of people where the test of my baby is unblinded?

SENATOR VELELLA: The best answer that I can give to you is for the 8 to 25 percent of the children that are going to fall through the safety net that we've tried to build, this will catch them; and the public policy will be that they will live longer, better quality of life, and that they may have

some day the opportunity to live a full life if we make some advances.

When we first started talking about this bill, treatment during pregnancy by AZT was totally unknown. We have now gotten to a point where that treatment can prevent transmission to the fetus. That is a major step forward. I don't know next year, if the Assembly fails to pass this again, what new technology, what new advances, will happen when we debate this next year when they fail to pass it.

But I hope that at some point we will be able to catch those 20, 25, 8 - whatever the number is -- percent of children that are being born, have this dreaded disease, and nobody is telling anybody that there is a way to make their life more comfortable and maybe give them life for a longer period of time and save their life.

SENATOR ABATE: Would Senator Velella yield to another question?

ACTING PRESIDENT KUHL: Senator

Velella, do you continue to yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR ABATE: You raised the issue -- to respond to what you said -- that if we can give information to the mother post birth, we may be able to help a child. But the medical information is, if you don't catch it, if you don't do something medically post-birth within the first three to six weeks, that's the critical time period. In fact, my understanding is when some women breast-feed it's -- the dangerous period of time is maybe in the first week.

So my question is, Senator Velella, when the baby is tested, how long does it take for the hospital or the clinic to receive the results of that test?

SENATOR VELELLA: The latest that we have is approximately 12 days.

SENATOR ABATE: Okay. And then on top of that there has to be some

administrative -- the test is made. You have to send it to the laboratory. So whether it's two -

SENATOR VELELLA: You asked me how long is it to get the results back?

SENATOR ABATE: Right.

SENATOR VELELLA: Our best information is at the most 12 days.

SENATOR ABATE: And then would you agree that there's a period of time to locate the woman. A letter has to be written. They may not have a phone.

SENATOR VELELLA: There may be, there may not be. I don't know. It depends on each case individually. Some people do enter a hospital and put a name and address down with a phone number that they can be reached at. Some don't.

SENATOR ABATE: Right. But by and large, I would say that the women we're trying to reach may not even -

ACTING PRESIDENT KUHL: Are you asking the Senator to continue to yield to a

question?

SENATOR ABATE: Yes.

ACTING PRESIDENT KUHL: Okay. I would just remind the participants to go through the Chair so we can kind of keep some order here.

SENATOR ABATE: Okay. Sorry, Chair. I'm sorry if I have been disrespectful to the Chair.

ACTING PRESIDENT KUHL: I wouldn't consider it that way, Senator. You're doing just fine.

Senator Velella, do you yield?

SENATOR VELELLA: Yes, I yield.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: So is it fair to say it might take several weeks in order to get the test results back, to communicate and track down the woman and also to get her an appointment and have her come to the hospital because the goal of this bill is to get women and their children into treatment. So is it

fair to say when we go through that process, it might be several weeks and it may be too late at that point. The woman has already begun to breast-feed and the danger has been done. Is that fair to say?

SENATOR VELELLA: I can't answer -

SENATOR ABATE: Is my analysis accurate?

SENATOR VELELLA: I can't answer it until you ask him to give me permission to answer it.

SENATOR ABATE: On every question?

SENATOR VELELLA: I guess so. I don't know. I'm following the rules.

SENATOR ABATE: Well, follow the rules today.

Mr. President -

ACTING PRESIDENT KUHL: Yes, Senator Abate.

SENATOR ABATE: -- would Senator Velella yield to my last question?

ACTING PRESIDENT KUHL: Senator Velella -

SENATOR VELELLA: Yes, I will.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR VELELLA: If I can remember it now that it's been so long since you said it. The fact of the matter is, no, that would not be the case that it takes several weeks. It may be the case in some areas. The issue is we are trying to catch as many people as possible and in addition, maybe the most critical treatment might be within that first six weeks, eight weeks, ten weeks, twelve weeks. There's a course of treatment for the rest of this child's life that has been to be given and special attention be paid to that child and that, at least, will be identified as "This child has this condition. We ought to condition everything we do for this child medically with the knowledge that this child has a particular problem", and that will help them in the long term. Yes, it's better if the next

day we know what's going on, and if I could have a bill, would you support it to say, "Let's let the kid be tested immediately, give the results and let's do it"? No, you wouldn't. You'd find another excuse.

So what you're saying is, "We're not going to catch everything we want to catch so let's not catch anything. Let's catch what we can." If it's twelve weeks, if it's ten weeks, if it's five weeks, we're going to do something that's going to help a lot of children that would not be helped if we didn't unblind this test, and that's what my goal is. Am I going to catch everybody? No. But if you're willing to support me, I would have a test and treat it like we do every other thing. When a mother goes in and she finds out she's pregnant or she shows up at the emergency room, test her for AIDS and if she's got it, treat her accordingly and treat the baby accordingly like we do for syphilis, like we do for all the other diseases, like we do sickle cell anemia, like we do for a battery of things that the law says we

have to protect people from spreading to other people and diagnose. We ought to treat AIDS the same way. We shouldn't make special provisions for AIDS. It's not a politically protected disease unless you give it that protection. We ought to protect the people of society from letting it spread, and the way to do that is to identify it as soon as possible and treat people as soon as we identify it, but I can't accomplish that because of the legislative process. There are people who stand in the way of it. So what I'm trying do is water it down a little bit but help a lot of people in the same instance.

SENATOR ABATE: I'll address these issues when I speak on the bill but, Mr. President, I have two additional questions, if Senator Velella would yield.

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

SENATOR VELELLA: Yes.

SENATOR ABATE: It looks as though you need some exercise today, getting up

and down.

SENATOR VELELLA: Am I getting heavy?

SENATOR ABATE: Not yesterday, just today.

The question is, my understanding is that this program would be funded -- the $3.8 bill... million -- not billion, million dollars needed to fund this program would come out of the bad debt and charity pool and, Senator, what impact -- again, that's contingent on NYPHRM either being structured, extended -- the money may not even be available this year if something doesn't happen with NYPHRM, but let's say the bad debt and charity pool is continued. What impact would this funding -- taking about $3.8 million from bad debt and charity, what impact would it have on the hospitals and on the regional pools?

SENATOR VELELLA: Well, I think it would have a fairly positive impact because I think the earlier you diagnose and the earlier you take and contain the problems, the less you

spend in the long run. If these children are not identified, they will develop the pneumonias and the serious complications which cost far more for a hospital to provide service for them at the end of their illness during that pneumonia period when they can't breathe, when they need intensive attention, when they need insensitive care units, special care units. It would cost us a lot more. I think we're investing money to catch the disease front end rather than tail end, and every disease that I know of and every person who's involved in the medical business as it is today will tell you that whether it's cancer, AIDS, common cold, the earlier you diagnose and start treating, the better off you are and the less expenses you have down the road.

So I think it will have a positive effect.

SENATOR ABATE: Unfortunately, though, just to respond, you would probably agree -- and I'll ask -- do you agree that there's no disease quite like AIDS because

there's not a cure and, yes, we can do certain things to prolong people's lives and improve the quality of their lives. At this point, there is no cure for AIDS.

SENATOR VELELLA: I don't know if there's a cure for cancer either but, yes, I agree. There's no cure for AIDS, but people who have cancer go through very expensive treatments, chemotherapy, radiation therapy and there is no known cure for cancer. You don't take a shot and get, you know, cured of cancer. Some work. Some don't work. So far we haven't had anything that worked permanently on AIDS at the terminal end, but we've seen some progress in the prenatal care where AZT is given. So hopefully we'll have something very soon.

SENATOR ABATE: My last question -- Mr. President, would Senator Velella yield?

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: There's a new pro... I think it's a new provision or one that I did not see last year, and maybe you can explain the provision, that the Commissioner of the Department of Social Services can order the testing of all foster care children regardless of the age. That means children that are two years old, which is understandable, four and five or six, but it also applies to adolescents, the 17-year-old who is capable, if given opportunity with informed consent, might agree to be tested, have the option of anonymous testing, and there are all kinds of implications.

Now, I guess I ask you why wasn't there a differentiation in the bill to allow adolescent foster care children to have the option of being voluntarily tested and engaging in informed consent and then thereby being protected through anonymous testing?

SENATOR VELELLA: That's not the case. First, foster care was in there last year and secondly, if you look at the bill, it says

for foster children or individuals who lack the capacity to consent. Someone 17, I think the courts, in interpreting our intention in the law, would say has or doesn't have the capacity to consent, not the legal right, but the capacity, mental capability.

SENATOR ABATE: But does this legislation address adolescent foster care -

SENATOR VELELLA: Page -

SENATOR ABATE: -- and their ability to give informed consent?

SENATOR VELELLA: Page 2, lines 46 and -7.

SENATOR ABATE: What is the language you're referring to?

SENATOR VELELLA: "Lacks the capacity to consent."

SENATOR ABATE: And you read that that if an adolescent foster care child is perceived to have capacity to consent, either the maturity, the intellect, there would not be forced testing of that individual without their consent.

SENATOR VELELLA: That's the way I read it, and I believe that the court would interpret it that way. We don't say "legal capacity".

SENATOR ABATE: Thank you, Senator.

SENATOR VELELLA: You're welcome.

ACTING PRESIDENT KUHL: Senator Abate on the bill.

SENATOR ABATE: Yes, on the bill. Last year, we had a very long debate and the few of us that opposed this bill, I guess created a complete misunderstanding of why we take the position we take, because what is asked of us -- and some of us are mothers and some of us are care takers -- how could any responsible individual be against this bill? I mean, the same rationale, the proponents of the bill saying it's -- why are you concerned about confidentiality and why are you concerned of protecting women who aren't concerned about their children?

The issue at hand is that every

one of us, supporters of this bill, as well as opponents, care about children and care about the mothers, and our ultimate goal shouldn't be testing. Our ultimate goal is to get women and children into treatment. Let's not mistake anything when we say that testing is a health program. Testing isn't a health program. Testing does not necessarily bring people closer to treatment.

So I think we're in one agreement. I'm listening to the -- I'm listening to the discourse behind me. It was more fascinating than what I was -

SENATOR GOLD: Point of order, Mr. President.

ACTING PRESIDENT KUHL: Senator Gold, why do you rise?

SENATOR GOLD: I just thought if Senator Velella doesn't think it's serious enough, maybe we should lay the bill aside. I don't know. I think it's a serious debate among people and I don't think that -

SENATOR VELELLA: Senator, let's

not play games on this bill. Now, if I happen to be talking here with some of my colleagues on your side of the aisle, that doesn't mean I don't take this seriously, and I resent you taking a cheap shot.

SENATOR GOLD: Mr. President -

SENATOR VELELLA: Why don't you just sit down and let the debate go. I will be back in a minute.

SENATOR GOLD: Mr. President, it wasn't a cheap shot. He walked in here with an attitude today -

ACTING PRESIDENT KUHL: Gentlemen -- Gentlemen -

SENATOR GOLD: -- there was legitimate questions being asked and a member on this side asking questions -

ACTING PRESIDENT KUHL: Gentlemen.

SENATOR GOLD: -- doesn't need an attitude from him.

ACTING PRESIDENT KUHL: Point of order is now well taken, Senator Gold.

Senator Abate, you have the floor.

SENATOR ABATE: Yes. Thank you.

ACTING PRESIDENT KUHL: Please continue.

SENATOR ABATE: What I was saying is that we all are concerned to do everything in our capacity to prevent children from becoming infected, to making sure that women get good, safe health advice and also making sure that women consent and actually are tested. I think we agree on the goals. The problem is, I personally disagree with the strategy on how to get women and their children into the health care system.

I think there's less of a compelling reason this year to pass the legislation than last year, and the reason I say that is the Commissioner of Health has promulgated a number of rules and regulations that have not come into effect. They become effective this spring. Those rules and regulations set up mandatory counseling, set up

the ability for voluntary testing. If a woman refuses, it's a rigorous process. If a woman refuses, they have to do so through writing. We are now passing this legislation, I believe, prematurely. We haven't even seen the effects of this program to know if we're going to spend our dollars wisely and if they're going to be spent effectively.

We should let this program come into effect, see if, in effect, that the 90 percent -- we're told that in other mandatory counseling programs where there are voluntary testing, 90 percent of the women want to know if they're informed, but we don't even know the results of this program because we are enacting this legislation in haste. We should evaluate this program and then there's a sense of urgency. We did something last year. We all decided there needed to be a mandatory counseling bill that the Governor -- and to the Governor's wisdom and the Department of Health's wisdom, they are looking to promote mandatory counseling. I think that's a wise approach.

In terms of -- I am also concerned that the bill will be targeting a few women, and these are the few women who, because they have been alienated from the health system, they did not get prenatal care -- many of these women have never seen a doctor, have never gone to a dentist -- it is very unclear to me and all of the professionals agree that that is not the way to get these women into the health care system. It will further alienate these women. These are women who in the past have been told that they have a right to be counseled and have not gotten the adequate counseling. They have never been in the health care system and now we're saying that we're going to force them to get the results and we think miraculously they're going to enter the health care system.

Why then is the American College of Obstetricians and Gynecologists opposed to this bill? Why is the AMA opposed to the bill? These are the frontline care providers who deal with the women and the children every day. They've dedicated their professional careers.

Why are we second guessing their knowledge when they say this is not an effective approach?

Again, I go back on strategy because I'm concerned about the women and children. I want to see them tested. I want to see them get the results of the testing. I want to get them in treatment.

Let me just quote from a statement they made. "Coercive policies will lead to misopportunities to get mothers and infants into treatment quickly. As one of our physicians put it: Trust, not coercion, is the key to cooperation. The American College of Obstetricians and Gynecologists continues to support mandatory counseling and voluntary testing for pregnant women. Our physicians believe very strongly that voluntary testing within the physician/patient relationship is the most effective method of bringing women and, therefore, their children into this treatment. For all these reasons, we continue to oppose this legislation."

So I think our priority should be

how do we develop a relationship between the women who are not currently in a health care system -- certainly sending them a letter and telling them about a test doesn't increase their confidence in this alien system. How do we get them into a nurturing, supportive health care system so they will voluntarily be tested and they will take responsibility for their children? And my suggestion is -

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: -- the only approach.

ACTING PRESIDENT KUHL: Excuse me a moment.

Senator Padavan, why do you rise?

SENATOR PADAVAN: Would Senator Abate yield to a question?

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

SENATOR ABATE: Yes.

ACTING PRESIDENT KUHL: The

Senator yields.

SENATOR PADAVAN: Senator, I have listened very carefully to what you've said and obviously you've done a great deal of reading, and perhaps you can answer a question for me.

Many women that you describe, describe well, coming into city hospitals in our city with no relationship to a doctor or family physician or pediatrician, and so on. Are they capable of knowing a simple fact, namely that if they carry the virus, that if they breast-feed they will transmit that virus to the baby? Are they capable of knowing that one fact, irrespective of all the other things you said?

SENATOR ABATE: If that fact is communicated in a way that it's non-threatening and they understand it's in their best interest and the child's interest, so it's the setting of how that information is given -- I have some experience with working with some of the women through my experience; I talked about it last year, not to belabor it -- through Rikers Island. I was shocked that these were

intelligent women that were afraid to see a doctor. They were afraid to learn about what getting cancer or a breast cancer test, because they felt they were better off not knowing, and they thought they would be stigmatized; they would be kicked out of their houses. There's a lot of, unfortunately, ignorance attached to the health care system.

SENATOR PADAVAN: Well, Senator, perhaps I'm not phrasing my question properly. My primary concern in this entire issue is the baby, and what I don't understand from what you've said, although you did acknowledge that the mother, irrespective of all the other things you spoke of, would have the capacity of knowing that simple fact; you can transmit this virus to your baby, therefore, do not breast-feed. Without the mandatory provisions that this bill provides, would not a certain percentage of these women that you describe not be given that basic fact on a mandatory basis? Would you agree they would understand?

SENATOR ABATE: Well, the problem

is they will see that information and they will ignore it. I mean, that's -- I believe that's the reality. I think what the approach should be is figuring out in a public health way how do we reach the women who, while all women have the right to know now -- all women are told they can be voluntarily tested, get the results and do something to protect their children. We should be developing a public health policy that goes into the shelters, that goes into the social service networks, that goes into where women are now, the women that are alienated from the health care system and find ways to bring them into prenatal care, then we can do something truly about preventing the transmission of the disease. Post-natally, it's too late. What we need to do is get women as early as possible, get them educated in a way that they are open to protecting themselves and their babies.

I agree, we need to do something aggressively here, but I do not think this will produce the results that everyone thinks it will produce, and that's why in terms of public

policy, I believe this is a bad approach. We all agree that we need to do something to make sure that children are protected. I do not believe that testing is a public health program. I still believe it's a charade. It does not get women and children into treatment. I think it'll force more of them out of the public health system, and for the reasons that I stated to Senator Velella last year, which are on the record and I did not repeat this year, and for some of the reasons I've articulated this year, again, I oppose the bill.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Gold.

For the benefit of the members, we do have a list at the desk and Senator Seabrook, Senator Goodman, Senator Dollinger, Senator Marcellino and Senator Stavisky have all indicated a desire -- and now Senator Leichter -- to speak. So keep that in mind. The debate started at 4... excuse me -- 3:50.

Senator Gold.

SENATOR GOLD: Thank you, Mr.

President.

Mr. President, one thing I can - there are a number of things that are obvious but they really should be said because I and I know other people were not too happy with some of the tones that we've heard here today. First of all, there's nobody on either side of this bill that has a monopoly on virtue.

The opponents of this bill are very sincere, and if you take a look at the memos in opposition, they come from organizations to be respected, organizations which I don't consider crackpot, and I don't think, as I said, anyone has the monopoly on virtue.

Senator Abate said that she agrees with the goals of the bill "but", and what came into my mind at that point was a case I was involved in years ago where we used to have the courts with three judges and they tried misdemeanors and a lawyer was on trial, and during the course of that case, the defense tried to do a number of things and it seemed

whatever that they tried to do, there was some technicality and they couldn't do it, and at one point, the person who was really guilty -- it was a commercial kind of crime -- came into court, admitted that he was guilty and the court said, "Well, we can't even take this because of technicalities" and they convicted the lawyer. On appeal, the decision was very simple. You cannot come up with a technicality that leads you to a crazy decision and which convicts somebody of a crime they didn't commit when you know that somebody else did it.

I'm concerned about the memos in opposition. I'm concerned that this issue has been taken out of proportion, and to be very candid about it, I don't blame the chief sponsor, Nettie Mayersohn, for doing that. I think she's been courageous in a very difficult fight, but it's out of proportion, and we hear people talking about civil rights, which is something I take very seriously and I -- I'm very proud, 100 percent rating of the Civil Liberties Union, I think 16, 17 years in a row.

I take civil rights seriously, but I think that if you're going to keep your eye on the ball on this issue, the bottom line is that while there may be other opportunities -- and, Senator Abate, I think that your analysis of other opportunities is important, and I think that other things should be done, but the fact is that while we're doing all of these machinations and we're arguing over civil rights and things like -- and we're all the way off in a corner some place, there are lives that could be saved.

How many times do we see large sums of money being spent, the media all around, a child falls into a hole and everybody's going to save that child and it doesn't matter whether it's $5 million. That one life is so important, particularly when the television cameras are there, that we're going to save it.

Well, this bill is not talking about an isolated life with television cameras. It's talking about a significant percentage of newborns that can be helped, and as with all legislation that we deal with, nothing is 100

percent.

We have books and books full of legislation that deal with a little town here or helping a school district there or this bill will help seniors who happen to go to the parks, and we've had bills that said maybe we should open up college courses just to seniors. We don't do every bill to help everybody, and here's a bill where the estimates are that perhaps as many as 25 percent could be helped by a situation, and my reading of it is very simple, and in saying it's simple, I say it with respect, which I think everybody should have for the opponents of the bill, but to me, it's a simple choice of if we do this, there's a chance of doing good and helping some kids. If we don't, we're back in the same predicament we have been. Talking about creating health policy is good if we can do it, but so far what they've done has not done the job, as far as I see it.

And so from my point of view, I'm going to support the bill. I think that Nettie Mayersohn gets an enormous amount of credit.

She has lived this thing day in and day out, and I think that she's a real heroine.

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

SENATOR PATERSON: Mr. President, with the permission of the Majority, may we call the roll for Senator Lachman who has to leave?

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

THE SECRETARY: Section 6. This act shall take effect on the first day of January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Lachman, how do you vote?

SENATOR LACHMAN: I vote yes on this measure.

ACTING PRESIDENT KUHL: Senator Lachman will be recorded in the affirmative.

The roll call is withdrawn.

The Chair recognizes Senator

Seabrook.

SENATOR SEABROOK: Thank you, Mr. President.

First of all, I certainly would like for a point of information, that there was no joking matter with Senator Velella. I was asking him a couple of questions over here, so we were not joking. We were seriously talking about the bill. I just want that to go on the record, and I was asking questions, so I'll ask it through the Chair, if I may.

ACTING PRESIDENT KUHL: Senator Velella, do you yield?

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SEABROOK: Yes. Senator Velella, just three quick questions that I was asking you over here, is that what is the -- if we're talking about the mandatory testing of all mothers who are basically pregnant, what is the percentage, if you know, of these tests that are performed that come back flawed in terms of a

test that's taken from a pregnant mother and it comes back saying that this mother is positive and there is treatment that's being provided to this mother and we find out later that this mother is not positive, not HIV-positive; what percentages of HIV tests that we actually give out now that come back -

SENATOR VELELLA: Senator, first of all, this bill doesn't mandate testing of mothers. It mandates tests of the infants when they're born, but during the course of, you know, prenatal counseling, if a test is administered, I have no idea what the -- what the rate would be of -- of errors in tests. I would assume they would be on a par with others in tests that might be for a variety of things, higher cholesterol, blood sugars. There is a narrow margin, unfortunately. I don't know of anything that I've read that indicates that there is a higher percentage of misdiagnosis on HIV testing than on any other test, but hopefully if a course of treatment is given, there would be repeated tests and it would be

detected if you're getting good medical attention, I would hope, but I can't give you the absolute answer.

SENATOR SEABROOK: But there is a possibility and this has been documented that there -

SENATOR VELELLA: I would assume so. I can't document them, Senator, but I would assume there's been some misdiagnoses, hopefully that have been corrected later on.

SENATOR SEABROOK: And if during that particular period of this -- and we - you've tested this newborn, what type of treatment is afforded to this newborn if it is found that this baby is -- by that first test, is positive, what treatment?

SENATOR VELELLA: Well, there are three main things that we are concerned with, if we detect that the child has the antibody, and one would be to monitor the child closely because perhaps it will shed that antibody, but the first main thing is if that child would shed that antibody and be AIDS-free and develop

normally, if the mother might introduce the virus back into the child by breast-feeding. So once we determine that the child has the antibody, we would want to be very sure that the mother is not breast-feeding because if the child could shed the antibody and cure itself the way 75 percent do, the mother, by breast feeding, might reintroduce that virus and give the child full-blown AIDS. That's the first thing.

The second thing is there are some programs that are being developed and have been developed to treat these children that are identified with strong antibiotics to protect them from the pneumonias that develop and to make them be on a very vigilant watch by their doctors so that at the first signs of a cold, a simple cold, it will not develop into these pneumonias. If you don't know the child has the potential for AIDS or the AIDS virus, you'll think they have a cold that will develop into a pneumonia and could be fatal or at least require a long period of hospitalization and cause some

very serious damage to the children.

At some of our press conferences, Assemblywoman Mayersohn had some of the children who were victims of these pneumonias that caused severe brain damage and severe problems to them, and it was a very sad case. So we would be preparing -- or allowing the doctor to prevent those very negative results by treating the child if, in fact, we diagnose that.

And the third thing is, as I mentioned before, that we use a different inoculation program for a child who has a weakened immune deficiency system, you know, immune system. You don't shoot live, active polio vaccines into their veins. You give them weakened forms or whatever the medically proper treatment would be, so that you don't introduce something that they can't resist and give them something like a polio contamination or something like that.

So those are the three main areas where we could be helpful with these tests. Can we save their lives at this point? No. Can we

make their life more comfortable and make it longer? Yes. And hopefully, if we do that, they'll be more comfortable, they will live longer, and maybe we'll find a cure.

I just want to add in here while I have an opportunity to say, I think somebody misspoke before and said the Medical Society opposed this bill. I have the memo from the New York State Medical Society supporting the bill.

SENATOR SEABROOK: Thank you.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Goodman.

SENATOR GOODMAN: Mr. President, some years ago, this body saw fit to pass into law a bill that I had the privilege of sponsoring which created the AIDS Institute and the AIDS Advisory Council. The institute is the component of the Department of Health which has dealt with the AIDS epidemic in its many manifestations. The AIDS Advisory Council was a carefully selected group of the top experts in the state of New York to advise the Institute and the Governor and this legislative body on

the best methods of dealing with AIDS. These were medical people. They were the heads of hospital units dealing with AIDS. They were physicians. They were immunologists. They were a group of perhaps the wisest people we could assemble at our direction for the purpose of guiding us in this matter.

When the question arose as to what should be done about testing of newborn children and their mothers, this institute did -- this advisory council made an extensive study, and it was only after about eight months that it returned with a conclusion which was firm and unequivocal, and that conclusion ran something like this: In plain layman's language it said there's absolutely no purpose in locking the barn door after the horse is out, which loosely translated, it meant that there's absolutely no purpose in seeking to test a newborn baby because the vectors of transmission of AIDS occur prenatally while the child is still in the mother's womb.

That's the fundamental fact that

we must keep in mind in determining what the best strategy is to try to provide testing and counseling, and it was the conclusion of the AIDS Advisory Council that the only sure way to prevent the occurrence of the AIDS transmission which occurs prenatally in the womb was to find the best possible inducement to attract women to come in and be counseled and to take tests if they were willing to do so. I underline "if they were willing to do so" because, my colleagues, what we have to stop and think about for a moment is the factors that weigh on a young mother's mind when she finds that she's pregnant and she fears many things in her life, not the least of which is that she may have a stillborn baby or that she may have contracted some disease which will affect her child, and she is just plain frightened. She doesn't know how to cope with this. She, in many instances, has no medical sophistication. The people gathered in this room in terms of a scale of one to a hundred of medical sophistication rank somewhere about 80 and the average young,

impoverished who has had no opportunity to be educated in these areas ranks somewhere around a scale of ten. What this means is that there is no sense of what to do about practicing prudent methods of prevention in the manner of AIDS and that results in the focal point of our problem.

Now, I must say that Senator Velella deserves hard praise for what is unquestionably a sincere and dedicated effort to come to grips with this particular problem, but there was a unanimous report brought in by the AIDS Advisory Council on this question. It said "No, no, no. You cannot wait until a baby is born. The only means to prevent a newborn from contracting HIV require knowledge of maternal HIV status before birth. Virtually every newborn who tests HIV-positive does so because its mother herself is HIV-positive."

Now, we have the Center for Disease Control statistics which confirm this. We know that more than 95 percent of AIDS cases in children occur from birth to four years and they are caused by prenatal infection. A

positive test indicates not whether the newborn is HIV-positive but whether maternal antibodies are. If a newborn tests positive, we learn that the mother was HIV, has HIV and that the odds are roughly one in four that the infant itself is HIV-positive. Unfortunately, there is no post-birth treatment at this time to reduce these odds. I repeat, there is no post-birth treatment at this time to reduce these odds. AZT or other anti-retroviral drugs don't prevent seroconversion in the infant. Do we realize what this means? It means that the primary treatment is antibiotics, as Senator Velella has said, administered prophylactically several times a day to ward off a form of pneumonia which strikes the newborn but it doesn't prevent the infection of the newborn.

So, my colleagues, I posit to you the simple notion that what we have to do is concoct a strategy, which is most likely to lure, if you will, or to induce a prenatal mother to come in and be part of the new developments of medical science which will

protect her and her baby.

Now, you say, "Mama, come in here and if you come in, you can damn well expect that you're going to have to take a test which will reveal whether you've got AIDS, and if it reveals that you've got AIDS, welcome to the club of infinite embarrassment, because you'll never be able to face your neighbors. You'll be marked with an 'A', but not the adultery 'A', the 'A' for AIDS", and that's a stigma which is absolutely overwhelming to a young mother, or you can say, "Come in and let us counsel you. Let us let you know that, if you happen to have been exposed, this is not a certain death certificate for you or your child, but there are ways in which we can help you to overcome this problem", and if we do that, Mr. President, I submit to you that therein lies our best chance of getting this problem solved, and that's the rationale which seems to stand logic on its head.

The normal common sensible persons says, Of course, you've got to test a

new baby to see if the baby has AIDS so you can treat the baby and know what the mother's status is, but the fact of the matter is it's too late to treat the baby if you give the baby a post-birth test because by that time, the baby has a one in four chance of being HIV-positive. So that's why this seeming illogical inversion is, in fact, an eminently sensible approach and, indeed, the only one which can bring about a solution to the problem.

The experts have been into this. They've looked at it. They're not crazy. You've got an overwhelming body of people who have studied this problem intensively who tell us, Don't pick the easy answer and the one that seems to be right. Pick the one that is right, and that's the one which says, find the way to gain the confidence of the young mother and get her in and work with her. If we do that, my friends, we then have a fighting chance to do something about this tragic problem. If we fail to do that and if we focus only on the immediate postnatal testing of the infant on a mandatory

basis, we scare the wits out of the mother. We drive many of them away. They don't want to come in because they fear that big "A". They're afraid of being revealed to have an embarrassment and, indeed, a tragic -- a tragedy on their hands, and that's what the problem is.

So let us, please -- I suspect there are very few people whose minds will be changed by what I'm saying, but I haven't debated this before, but I felt at last I had to get up and remind you, the Senate does some very foresighted things. It creates bodies to look and study things and they come back with conclusions.

I beg of you, my colleagues, don't ignore the conclusions of the very body you've created to advise the Governor and this Legislature and the people of the state on the solutions to these problem. Take them seriously. They are the experts. They know, and even if you don't agree with the logic that I've developed, take it on good faith. Protect the mothers. Protect the kids. Get them in.

Win their confidence, and that's the way to fight this war.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Dollinger.

SENATOR DOLLINGER: Will Senator Velella yield to a couple quick questions?

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

(Senator Velella nods head.)

SENATOR DOLLINGER: As usual, Senator Velella, sometimes I read these bills and go through and find some things that just appear to be slightly inconsistent, and I want to make sure I understand them.

Under the bill, it suggests that the mandatory counseling provision -- I'm dealing with the first page -- it talks about - in line 11 and 12, it says that a physician or an authorized practitioner may or must give the counseling, and then on line 18, it says that the notice of a right to accept or decline is only given by the attending physician. Was it your intention to exclude "other authorized

practitioners" from that portion?

Again, I know I'm sort of switching gears from philosophical issues to specific issues.

SENATOR VELELLA: I have to apologize. I had started to pack up my papers. I thought we were at the end of the debate.

SENATOR DOLLINGER: Little did you know that I would pop up at the tail end.

SENATOR VELELLA: It usually happens.

SENATOR DOLLINGER: Again, just so you -

SENATOR VELELLA: Can you repeat the question because I was trying to find the lines.

SENATOR DOLLINGER: Again through you, Mr. President, on line 13 of the bill, it says that "A physician or authorized practitioner shall offer to take a blood test", all right? The next sentence says, "The pregnant woman, upon notice of a right to accept or decline such test by the attending physician"

-- you don't include the phrase "authorized practitioner" there. Is your intention that the declining of the -- taking the test can only be done by a pract... by a physician?

SENATOR VELELLA: I think it's in the drafting. Taking of the test can be given when drawing the blood -- obviously can be given by a health care technician. It doesn't need to be a physician, although that might be wiser in this setting, but I think it's just a drafting question.

SENATOR DOLLINGER: But it would be your intention, for example, if they -- if the health care provider were a midwife or nurse practitioner, they could give the same disclosure.

SENATOR VELELLA: That would be my intention, yes.

SENATOR DOLLINGER: So it's nothing more than a drafting mistake. Okay.

On page 2 of the bill where it talks about a woman who has tested positive for HIV after being given the mandatory counseling

-- we're at the pre-birth testing -- it says that "The physician or authorized practitioner or attending *** shall refer the woman to HIV-related services." My question is what if the woman elects not to go? What's the consequence of that?

SENATOR VELELLA: Well, again, I've heard so much today, and I agree with most of it about the need for counseling and a lot of people confusing the purposes of this bill. I absolutely 100 percent agree, the best way to do it is catch it early, look at it, counsel the woman as early as possible, and that's all in our bill. We don't say "No counseling. We're taking the money away from you. All we're going to do is test your baby and we're only interested in the final product. The heck with you all before that."

All those safeguards that Senator Goodman, Senator Abate and several others talked about are in there. We want to use all those avenues, every one of them, but when that fails, we want to catch the only way we can catch it

toward the end when that baby is born. We want to catch that disease to do what we can in that limited capacity.

SENATOR DOLLINGER: Okay. Again through you, Mr. President, if Senator -

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

SENATOR DOLLINGER: I agree with all of that too. I mean, I like this bill better than I've liked prior versions because of the emphasis on mandatory counseling, but my question is this seems to suggest that if a woman in response to mandatory counseling takes the test, it's what we want her to do, it says that the physician or authorized practitioner shall refer her to certain services.

My question is, what's the consequence if she fails to follow through with that referral? And I'll be blunt with you, Senator. Here's what I'm looking for. Would that lead to a finding of neglect on the part of this mother if she did not take the services,

did not take the AZT testing that we all agree she should have? My question is, does this usher her into a neglect proceeding?

SENATOR VELELLA: The answer to that, Senator, is -- let me give you both answers. I would love to be able to do that, if Guy Velella had his way. This bill does not do that to the mother. It provides the avenue, the opportunity. It directs her. It provides the services, but if she doesn't avail herself of them, I don't believe there's anything else we can do. We've shown her everything possible. When the baby is born, hopefully we'll be able to deal with the problem of the baby's existence.

If I had my way, absolutely, I'd do the same thing we do with tuberculosis. We've stopped tuberculosis by requiring people to be tested. We can hold them against their will in a hospital 'til the results of a tuberculosis test comes back to stop the spread. I would try to do the same thing if we had good, common -- good, reasonable cause to

believe that someone was spreading AIDS. We've got to treat infectious diseases as infectious diseases, not play political favors because one group is more vulnerable than another.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Velella will continue to yield.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR VELELLA: Yes.

SENATOR DOLLINGER: Isn't that the risk, Senator, that those of us who have opposed this bill in the past are afraid of, is that the notion that the test could lead to a neglect finding, and I think the bill opens the door to that. I agree with you that the text of this bill doesn't go that far, but it seems to me that a physician or a hospital which has the major liability under this bill for requiring the testing and the counseling could and might and more than likely will, if a woman has tested positive under mandatory counseling and she refuses to take the services, will, in fact, be

a subject of a neglect proceeding, and my only concern there is, do you believe that that threat of neglect, finding of neglect with all the possible consequences, will deter the mother from taking the test?

SENATOR VELELLA: Well, I don't -- to respond to your question directly -- you had three criteria there: "Could", "might" and "definitely will". I believe after being in this chamber for now ten years that we can't rule out anything that the courts might do. So anything could happen. Ultimately, definitely will, I don't believe so. I think that this bill does not present that threat, and if it does and it loses a few people along the way, I'm sorry for that, but it's going to save a lot more lives and it's going to help a lot more people than it might injure because someone might be concerned about that. I think that goes to the ultimate remote possibility. Maybe a few people might fall into the crack there, but we're going catch a lot more babies and make their lives a little more comfortable and maybe

give them a longer and better quality of life while they're here, and I think that's more important.

SENATOR DOLLINGER: I understand that motive. Just one other question about the text of the bill.

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: On page 3 of the bill, in lines 15 through 18, it says that "Once the results of the test come back", it says, "testing -- the recording of the results of the test, tracking follow-up reviews and educational activities shall be performed at such times and in such manner as may be prescribed by the commissioner."

Is it your intention to require that the mother and the family provide and comply with the directions of whoever gives those directions as a possible beginning of a

neglect proceeding?

SENATOR VELELLA: Again, the issue is not neglect. It's a question of trying to get the services to the person that has the affliction, and certainly we would like to see the follow-up that the commissioner may detect for that child -- or may direct, rather, for that child to be followed up. So it's not a question of neglect. It's a policy of positive reinforcement and aggressive action.

SENATOR DOLLINGER: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Dollinger on the bill.

SENATOR DOLLINGER: I think that Senator Velella's sincerity in this bill is evident to everyone in the chamber, and the notion that somehow what's at stake here is children's lives, frankly, is something that is important to us all.

However, in looking at this bill, I still believe that the experts who have spoken out against it make a relatively good point,

that when the AIDS Advisory Council, as Senator Goodman mentions, when the College of Obstetrics and Gynecology comes forward, when HANYS that's going to have to actually administer this bill, comes forward and says, "This is bad science. From our perspective, it's bad science. It doesn't address the issue present in the streets", and I think the issue that's present in the streets is the notion that this test will lead to neglect proceedings brought against mothers who have either young babies or who are pregnant, and what I think that will do is that will be a substantial disincentive to get them into the kind of counseling program that will get them to take the test at a time when, as Senator Velella properly points out, 75 percent of the infection rate can be reduced by the AZT therapy, and my fear is that while this bill may help some who need mandatory counseling and will benefit from mandatory counseling, it may also run the risk of alienating another portion of our population who are perhaps most at risk and drive them out of the health care system.

So from my point of view, when someone -- when the science part of this debate says it's bad science, our going forward, in my judgment, becomes the worst kind of political science, and that is science which is dictated by politicians rather than science dictated by scientists. ACOG is against this. The AIDS Advisory Council is against this. HANYS that would have to provide these services says it's not a good idea to do. Senator Abate quoted a portion of it. They say, "Testing newborns provides no definitive medical information regarding newborn's infection status" because, as we all know, they could test positive and not develop the HIV. "Two, it would create a climate of distrust between provider and patient." We don't want any notion of distrust to affect the very fragile relationship between a pregnant woman or a woman, a newborn child and her attending physician.

And lastly, it says "It would discourage at-risk woman from seeking pregnancy related care, such that the anticipated benefits

from mandatory testing may be eliminated by a resultant increase in infant morbidity and mortality."

It seems to me there are risks involved in this legislation. I understand the risk that Senator Velella, Assemblywoman Mayersohn are trying to ameliorate, but it seems to me that when you look at this bill in a total picture, it doesn't do that job, and as difficult a decision as this is for me -- and it's a close one, quite frankly -- I nonetheless believe that science ought to be left to the scientists. We should listen to our scientists, and when they tell us this is a bad idea, we should hear them and follow their point of view.

I will be voting in the negative, Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos, why do you rise?

SENATOR SKELOS: If there's no objection, could we have the last section read for the purposes of Senator Farley.

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first day of January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Farley, how do you vote?

SENATOR FARLEY: I vote aye.

ACTING PRESIDENT KUHL: Senator Farley will be recorded in the affirmative. The roll call is withdrawn.

The Chair will recognize Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

This is the second time around on this bill for me. I supported it the first time. I will support it again. I hear language, words like "embarrassment", words like "we should try to get people into -- it's not necessarily going to help the child." It's

going to -- if a child tests positive for AIDS -- for the AIDS antibodies, that generally means, by my way of thinking, that the mother has the disease. The mother is at risk too. We're talking about a few -- that we try to save the children, yeah, that's great. We should do as much as we can, but we do know one fact. While there's a chance some of those babies won't have AIDS, we know mama does, and if we don't tell her, she'll continue to do what she's doing, spreading the disease to others. You have to deal with that. That's a reality. We're worried about embarrassment. It's life and death. If you don't tell her, she'll continue her behavior and never change.

You have to inform -- how do you have knowledge that someone's at risk and you don't tell them? How do you have that knowledge and not know? You'll do it if they have chickenpox. You'll do it if it's tuberculosis. You wouldn't dream of letting someone with tuberculosis leave a hospital. Nobody in his right mind would do that. You wouldn't dream of

letting someone with measles walk out the door without telling them. We wouldn't dream of letting any other infectious disease, gonorrhea, syphilis, name it. If we knew you had it, we would tell you, without any hesitation at all.

Here we have a disease that is lethal to the person that gets it, and they can spread this disease which we acknowledge is a disease which is spreading into all areas of society regardless of sexual persuasion, regardless of color, race, creed, religion, you name it, height, weight, it doesn't matter, and yet we won't tell you. We know you're going to die, but we're not going to tell you because we don't want to scare you. We don't want to embarrass you. So, therefore, we're going to let you go out and spread the disease and kill more. Where's the logic in that? I really don't understand it.

I respect the arguments that I hear from my colleagues, I really do. I understand where you're coming from. I understand what you're trying to get at, but how

do you get past that one point? "Mama is dying." She has the disease. We know that she has the disease. We can make her life better. We can help her make her life better. All we have to do is tell her. How in God's name can we keep that information to ourselves? How in God's name under any justification can you not let someone who is suffering from a lethal disease know it so that they will take care of themselves and that they will not hopefully spread it to others?

My colleagues, I just don't understand how we can do anything else but tell these people, and I think that's the genesis of this bill, and that's the argument that I haven't heard overcome yet. I haven't heard anyone address that point, that when you know something like that and you hold it to yourself, how do you get past -- what possible justification can there be? I haven't heard a single one address that issue at this point in time, and I say I support the bill this time. I commend Senator Velella and Assemblywoman

Mayersohn. They're doing a service to society here, and I think we should contribute to that service. I'll vote aye. I think this is a worthy bill. It should be passed once again.

ACTING PRESIDENT KUHL: Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Would Senator Marcellino yield to just one quick question?

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Could you tell me, Senator, whether there's anything in current law anywhere in this state or this nation which prohibits a woman from asking whether or not she can be tested for the HIV virus?

SENATOR MARCELLINO: I know of no such thing that would prevent anyone from asking if she wanted to be tested.

SENATOR DOLLINGER: So any woman in New York State who wants to know can find out, isn't that correct, and no one would

prevent anyone from telling her?

SENATOR MARCELLINO: Senator, would you yield me a question? If you know that I have a disease -

SENATOR DOLLINGER: Mr. President, I don't think I've yielded yet.

SENATOR MARCELLINO: Oh, please, let me do it.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I'm prepared to yield as a quid pro quo for an answer.

ACTING PRESIDENT KUHL: Senator Dollinger, just for the sake of -- so we understand where we are, Senator Marcellino had the floor. You rose as he was giving up the floor to ask him a question. You don't have the floor, Senator, but are you asking him to yield to another question? There are other people on the list that would like to be recognized like Senator Stavisky has been very, very kind in waiting and Senator Leichter has been -

SENATOR DOLLINGER: I asked my one question, Mr. President. I'll sit down.

ACTING PRESIDENT KUHL: Thank you.

The Chair recognizes Senator Stavisky.

SENATOR STAVISKY: I was moved by the argument, those opposing this bill, that by the time we learn that the baby has AIDS or is HIV-positive, that it's too late. What I ask those people who are opposing this legislation here or outside of these chambers, would you, therefore, look for early identification when it is not too late?

Remember, New York State once had a Wasserman Law which required that before there was a marriage certificate issued, a test for venereal disease had to be undertaken. Are you advocating that maybe we should go back to that, or are you reconciled to the idea that not everyone has sexual intercourse with benefit of clergy? Do you, therefore, require to get the early on information that before anyone has

sexual intercourse of any kind, that they have a test for HIV-positive? That would really be an intrusion on confidentiality. That would be an intrusion of the grossest kind, and I'm not advocating that, but I have heard these pleas that -- yes, thank God -- I've heard these pleas that "We've got to get it early on, early on, early on." Well, what about going back to the Wasserman Laws standard? If you are so concerned about doing it early on, have a test for AIDS given to both male and female to determine whether they are carrying this HIV virus or full-blown AIDS. I don't propose that. I don't think the opponents of this legislation are proposing that.

I've also heard crocodile tears. "We are going to look only to the experts in the medical profession." I can assure you that there have been lobbying groups showing up at meetings of the medical profession, opposing this legislation. The memos in opposition don't all come full blown without intensive lobbying outside of these chambers, and some of you have

seen the results of lobbying for and against this bill inside the chamber.

Now, do we have clean hands with regard to following only medical advice, or do we make medical decisions as a Legislature in a different life? When I served in the Assembly, I served with a very fine legislator by the name of Jim Tallon, and Jim Tallon managed to put through a change in the law here when he was chairman of the Health Committee and he was also the Majority Leader, in which the Legislature determined what was right and what was not going to be law.

We have a compulsory school attendance law in New York State. Kids have to be in school allegedly 180 days a year for a specific number of hours, minimum hours, and I remember Jim Tallon saying, "We will not admit into school any child who has not had the inoculations that are beneficial to the health of that child and to the health of everyone else."

Now, here was a conflict between

an existing law on compulsory school attendance and a belief that you could compel compliance with public health by making it necessary for parents to see that their children receive the necessary inoculations so they wouldn't be spreading disease and they wouldn't be subject to contamination themselves, and we in this Legislature, as political people, not as doctors and not as educators either, we in this Legislature decided that before a child could go to elementary school or kindergarten, that child had to have proof that the inoculations had been performed.

Now, that's a decision made by the Legislature, running contrary to the compulsory school attendance. We didn't say, "Reach out to the parents. Prevail upon them to do the right thing. Talk to them. Counsel them." We said, "No. You do not go and bring your child to school unless the inoculations have taken place."

In the same spirit, we have a power, and I believe we have the responsibility

to protect everyone, including the child, and that child can't ask the parent to go through the test. That child has been given a test for AIDS. That child can't speak. That child can't reason. That child can't plead, and that child can't ask the parent to be tested. That child is silent except for cries out of hunger and out of discomfort. That child can't reason with the parent.

So I ask you, there are times when we have to -- there are times when we have to make a decision that will protect those who cannot help themselves and babies cannot help themselves if adults are unwilling to help them.

In that spirit -- and not to embarrass anyone, not to speak about political correctness in terms of posturing, but rather to speak in terms of what is necessary to save the lives of children, I would urge my colleagues to allow this to become law and hope that the Assembly is equally responsible in the progress of the bill in the other house, otherwise Nettie

Mayersohn will never forgive them and neither will the children who will be vulnerable to this dread disease.

I hope you will vote in the affirmative.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Leichter.

SENATOR LEICHTER: Mr. President, I will try to be very brief because I think really most points have been covered.

I had an interesting experience not that long ago. I was at the University of Michigan Law School where my son was attending and he put me on a panel that his section on health law was -- had arranged, and it happened to be on the HIV babies. I said, "Oh, I don't want to do this. I've heard this", and so on. He said, "No, no. You got to be on this panel." So I was on the panel, and also on the panel was either the Commissioner of Health of the state of Michigan -- it wasn't clear to me. It was either the Commissioner of Health or the primary doctor of the Health Department of the

state of Michigan, and as we discussed the HIV baby's bill and I dis... recounted what had been going on in New York, he expressed amazement. He expressed utter amazement. Now, mind you, he comes from the administration -- the conservative administration of Governor Engler, but he expressed amazement that we in New York State were so fixated on this bill. He said "This bill makes no sense."

Now, let me just say to you, we all have the same aim and purpose which is to get people tested that should be tested, which means all pregnant women. Secondly, that if a baby is shown to have the AIDS antibiotics, we certainly want to bring that mother and that baby under treatment. The reason that this doctor -- his name was David Johnson and what he said is what all of these other experts have said, that the bill doesn't make sense is - because this bill doesn't, nor is there anything that we can do to compel treatment. There's no way whatsoever that we can get a mother who is unwilling to get treatment.

Now, maybe as Senator Dollinger -- and I think he put his finger precisely on one of the real problems with the bill, as he so often does, is the only way you're going to do it is in a neglect proceeding, and I don't think that we're willing to do that. I don't know if the court would be willing, if you have a neglect proceeding. An infant who has tested positive for the AIDS antibiotics, mother maybe is a Christian Scientist, says, "I don't believe in any treatment" in view of the fact that there's no way to save the life of that baby if, in fact, the test shows that the baby -- and as you know in three out of four, the fact that the baby has the antibiotics, it will not result in actually the baby being infected with the HIV virus, but I doubt very much that any court would apply the neglect law in those situations.

So the point really comes down, how do we bring women and their infants where there's indication that there may be infection of AIDS virus into treatment? Now, the people

who deal with these women almost universally say the worst way to do it is to compel treatment. That's what this doctor, health official, in the state of Michigan said. That's what these organizations have said.

Let me just say to you, Senator Marcellino, the point of this bill was not to inform women that they are HIV-positive as a result of tests on their babies and that, therefore, they will moderate their behavior. That's not the aim of this bill. The aim of this bill is to try to get some treatment for infants in some ways, hopefully, to possibly avoid full-blown AIDS developing, or at the very least, prolong the life of the baby and ease the pain and the suffering that that infant could have.

That's the purpose of this bill and, Senator Stavisky, you talked about, "Well, you know, we compel people to be immunized before they can attend schools." That was because the doctors -- because the experts said that's what's needed. Here the experts say,

"Don't proceed this way. It doesn't achieve your purpose." Your purpose is laudable. Your purpose is one that everybody who opposes the bill shares.

What we're saying and what the experts have said and the people who, again, deal with these women, by and large, those who refuse to be tested, who don't want to know, they're a fragile population. They're difficult to deal with. They're mistrustful, and the issue for us is how to bring them into the system. That's the issue, and you don't do it by telling somebody who says, "Please don't tell me. I don't want to know about AIDS." "You have it." You just don't do it. That's not the way you're going to do it.

So I -- it just seems to me -- I think Senator Goodman said it extremely well. We all -- we've set up our own panel to advise us. We are not the experts in this. The people who have worked with this population have said, "Don't go this way because it doesn't achieve the purpose." And for that reason, I voted

against the bill last time. I'm going to vote against it, and I want to say, Assembly member Mayersohn, we all know how deeply committed she is and with the best of intentions, but I must rely on the experts and the experts, and with good reason, say this is not the way to save lives. This is not the way to stop the spread of AIDS. This is not the way to prevent suffering of infants.

ACTING PRESIDENT KUHL: Senator Leichter, excuse the interruption.

Senator Marcellino, why do you rise?

SENATOR MARCELLINO: I was going to ask a question, but I'll waive it.

ACTING PRESIDENT KUHL: Senator Marcellino waives.

The Chair recognizes Senator Goodman -- or, excuse me -- Senator Waldon.

SENATOR WALDON: I really appreciate that mistake, considering the ability of Roy to ride in cars that I only dream about. I appreciate the mistake, Senator -- Mr.

President. Would the good Senator Guy Velella yield to a question?

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR WALDON: Thank you, Mr. President.

Senator Velella, I'll try to be quick about this. I was wondering, Senator, do you have any information in regard to the number of people who are determined to be HIV-positive who actually live a full and productive life?

SENATOR VELELLA: No, Senator, I don't have any statistics. I can just tell you generally, my impression is that -- that have the actual virus?

SENATOR WALDON: Have the actual virus.

SENATOR VELELLA: That it is ultimately determined -- terminal and people will live a period of years and then slowly

degenerate and get an infection and die of the infection. I don't know how long a period that is, if anyone here has that information.

SENATOR WALDON: Mr. President, would the Senator -

SENATOR VELELLA: I just would say, I don't believe many who have the AIDS virus lead a very long and productive or full and productive life. If it's full, I doubt that that ever is achieved and productive. They do live on and then gradually get worse, is my understanding of the disease.

SENATOR WALDON: I'm going to ask a couple more questions -

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

SENATOR WALDON: -- if you'll continue to yield.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: And it will be over very quickly. If I understood you, Senator Velella, you're saying that your knowledge base

indicates to you and it is your belief that those who actually have the virus, it is certain that they will die; is that a correct assumption?

SENATOR VELELLA: That's my understanding, not if they just have the antibody, but if they have the virus, they will ultimately die. There is no cure.

SENATOR WALDON: If the Senator will continue to yield.

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

SENATOR WALDON: Senator Velella, in your information base, is there any distinction between children who have the virus, will they live longer -- I'm talking about who actually have the virus, will they live long and productive lives, or is it that it's your knowledge that they also die as well as adults who have the active virus, they die? Trust me, Guy.

SENATOR VELELLA: My resident expert, Assemblywoman Mayersohn, who has a lot

more of the information, tells me in the case of children, generally to teenage, but they can die as early as seven, eight, six, around there, but the most extended period being into their teenages before they ultimately expire.

SENATOR WALDON: Okay. Just one or two more questions, Mr. President.

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: I believe in the earlier debate, Senator Velella, I heard you very clearly and graphically state and describe that if the baby is born and it is determined that the baby has the antibodies, that if treatment can be given to the baby and the mother does not, through feeding -- breast feeding that child, reintroduce the virus, there's some possibility that that child will not develop full-blown AIDS down the road.

SENATOR VELELLA: Yes. It's

about one in four that will develop the full-blown AIDS. Three out of four will not, unless the virus is reintroduced, as you said.

SENATOR WALDON: Last question, Mr. President.

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR WALDON: If I understand you correctly, Senator Velella, are you saying that the benefit of this test would allow as much as 75 percent of the children who are determined to have this antibody, if that's the correct term, to live a full life without having the scourge of AIDS, this insidious disease, take their life far too soon; is that fairly accurate?

SENATOR VELELLA: That's correct, so long as it's not reintroduced, yes.

SENATOR WALDON: Thank you very much, Senator. If I may, Mr. President.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

SENATOR WALDON: I want to support this legislation because I don't think that we have the right to deny any child or any person a life, whether it be with the assistance of AZT or whether it be the opportunity to have a full and productive life because in our wisdom we made it possible for measures to be taken to allow them to have a healthy existence.

I don't know who's making money on this if we were to defeat this bill, but I believe that money is a driving force. I certainly don't want to in any way inveigle the rights of women to make the decision. I've never taken a stand publicly or privately in that regard.

I believe that what Senator Marcellino said and what others have said is on the money, that this is an insidious, virulent disease, that we must stop it in its track as best as possible, and although this might not be the panacea. This might not be the cure-all.

This might not be the end all and the be all. It is a step in the right direction. I think we are absolutely foolish. We are insensitive. We are not wise. We are not good public officials if we do not support this legislation.

I vote yes.

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

THE SECRETARY: Section 6. This act shall take effect on the first day of January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

Senator Mendez, to explain your vote?

SENATOR MENDEZ: Yes.

ACTING PRESIDENT KUHL: Senator Mendez to explain her vote.

SENATOR MENDEZ: I actually feel that it is a most cruel thing to do not to allow

a mother to know that her child is infected with the -- has the antibodies of this horrible virus.

In fact, Mr. President, a few weeks ago a constituent of mine went to my office and told me that she's HIV-positive, that she had a baby, the only baby she's ever had in her life, and that if she would have known - the baby passed away at about six or seven months old -- that if she would have known that her child had the antibodies, she would have made it her business to take that child to the doctor's where they should go and maybe she would have known her child could have a chance of being alive now.

I feel it is a wonderful bill. Nobody is being mandated to do anything, and it's better for the woman to know so that she will have the choice, either to find treatment for herself or reject any treatment offered to her, but at least she would have a -- she would have a genuine choice.

I vote aye, Mr. President.

ACTING PRESIDENT KUHL: Senator Mendez will be recorded in the affirmative. Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 182 are Senators Abate, Connor, Dollinger, Goodman, Leichter, Markowitz, Montgomery, Paterson, Seabrook. Ayes 52, nays 9.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please recognize Senator Maltese.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Maltese.

SENATOR MALTESE: Mr. President, in yesterday's roll call vote, the bill by Senator Holland, Calendar Number 403, I was otherwise engaged on Senate business, arrived in the chamber late. I would ask unanimous consent that had I been present, I would have voted in the affirmative.

ACTING PRESIDENT KUHL: Senator

Maltese, the record will reflect that had you been present yesterday when the roll call was called on Calendar Number 403, that you would have voted in the affirmative.

Senator Skelos.

SENATOR SKELOS: Mr. President, is there any housekeeping at the desk? Wait a minute. Mr. President, I hand up the following notice and ask that it be read and filed in the Journal.

ACTING PRESIDENT KUHL: The Secretary will read the notice.

THE SECRETARY: By Senator Bruno, pursuant to Senate Rule Number XI, Section 1, I hereby give one calendar legislative day's notice that I will move to alter Senate Rule VII, Section 1, in relation to the membership of standing committees.

ACTING PRESIDENT KUHL: The notice will be filed.

Senator Skelos.

SENATOR SKELOS: Is there any other housekeeping at the desk?

ACTING PRESIDENT KUHL: None, Senator Skelos.

SENATOR SKELOS: Mr. President, there will be a Majority Conference on Wednesday at 10:00 a.m., and I would like to announce on behalf of Senator Bruno that the legislative session calendar has been modified and there will be no session on Thursday, March 21st, and there being no further business, I move we adjourn until Wednesday, March 20th, 1996 at 11:00 a.m. sharp, Majority Conference at 10:00 a.m.

ACTING PRESIDENT KUHL: Two important announcements. There will be a Majority Conference tomorrow at 10:00 a.m. in the Majority Conference Room, Room 332. Majority Conference tomorrow, Wednesday, March 20th, 10:00 a.m. in Room 332. Also, the Thursday session normally scheduled has been cancelled. Without objection, the Senate stands adjourned until tomorrow, 10... or 11:00 a.m., March 20th.

(Whereupon, at 5:39 p.m., the

Senate adjourned.)