ALBANY, NEW YORK

March 24, 1997

3:03 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 you please rise and join with me in the Pledge of Allegiance.

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

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

Reverend Young.

REVEREND PETER G. YOUNG: Let us pray. May we -- as we enjoy the bright sunlight of March and to spring, may we pray today for ourselves that we might be delivered from the illusion of superiority, from all the pretense of righteousness, from all arrogance and hardness of heart, that we might know the meaning of compassion in all of our elected duties. We ask You this in Your name now and forever. Amen.

THE PRESIDENT: Amen.

The reading of the Journal, please.

THE SECRETARY: In Senate, Sunday, March 23rd. The Senate met pursuant to

adjournment. The Journal of Saturday, March 22nd, was read and approved. On motion, the Senate adjourned.

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

Presentation of petitions.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Levy, from the Committee on Transportation, reports the following bill direct to third reading:

Senate Print 1133-A, by Senator Marcellino, an act to amend the Vehicle and Traffic Law, in relation to certificates.

THE PRESIDENT: Without objection, all bills will go directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Maltese, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. That's Senate Number 1174.

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

SENATOR FARLEY: On behalf of Senator Holland, Madam President, on page 15, I offer the following amendments to Calendar Number 310, Assembly Print 322 and I ask that this bill retain its place on the Third Reading Calendar.

THE PRESIDENT: So ordered.

SENATOR FARLEY: On behalf of Senator Levy, Madam President, on page 21, I offer the following amendments to Calendar Number 376, Senate Print 3481-A and I ask that that bill retain its place.

THE PRESIDENT: So ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, at this time may we please have the non controversial reading of the calendar.

THE PRESIDENT: Secretary will

read.

THE SECRETARY: Calendar Number 118, by Senator Saland, Senate Print 491, an act to amend the Family Court Act, in relation to the placement of children.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 217, by Senator Cook, Senate Print 1422, an act to amend the Criminal Procedure Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: Read the last section, please.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: Oh, I'm sorry. Lay it aside.

THE SECRETARY: Calendar Number

255, by member of the Assembly Gottfried, Assembly Print 4394, an act to amend the Public Health Law and the Insurance Law, in relation to radiation therapy services.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 10. This act shall take effect in 180 days.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 261, by Senator Libous, Senate Print 1920, an act to amend the Vehicle and Traffic Law, in relation to authorizing senior citizens to renew motor vehicle registrations annually.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 262, by Senator Farley, Senate Print 2338, an act to amend the Education Law, in relation to authorizing the state university trustees.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 286, by Senator Volker, Senate Print 1717, an act to amend the Penal Law, in relation to aggravated harassment of an employee by an inmate.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 290, by Senator Maziarz, Senate Print 1963, an act to amend the Criminal Procedure Law, in relation to firearms training.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 322, by Senator Present, Senate Print 749, an act to amend the Vehicle and Traffic Law, in relation to snowmobile dealer registrations.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 4. This

act shall take effect on the first day of October.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 323, by Senator Johnson, Senate Print 809, an act to amend the Vehicle and Traffic Law, in relation to motorcycle accident reporting.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 324, by Senator Levy, Senate Print 924, an act to amend the Vehicle and Traffic Law, in relation to fines and penalties.

THE PRESIDENT: Read the last

section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 364, by Senator Stafford, Senate Print 1520, an act to amend the Tax Law, in relation to the electronic funds transfer program.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 13. This act shall take effect April 1.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 387, by Senator Kuhl, Senate Print 548, an act to amend the Agriculture and Markets Law, in

relation to the duties of the Commissioner of Agriculture and Markets.

THE PRESIDENT: Read the last section, please.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: Lay it aside.

SENATOR SKELOS: Madam President, can we please have the non- -- the controversial calendar read now.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 217, by Senator Cook, Senate Print 1422, an act to amend the Criminal Procedure Law, in relation to denial of recognizance or bail.

SENATOR PATERSON: Explanation.

SENATOR COOK: Thank you, Madam President.

This bill provides that when there is a person brought before court seeking bail, that this person's criminal record be a matter upon which the judge will make a decision as to whether this individual is a potential endangerment to society if, indeed, the bail

were to be granted.

New York State law makes a presumption that the only reason for which bail may be denied is a concern that the individual may not appear for trial. This, of course, puts us in a situation where we have people with histories of repeated arrests and convictions for violent crimes, are released back on the street and we have documentation, in some cases, showing persons with as many as 11 different charges against them repeatedly committing violent crimes, being let out on bail only to commit another violent crime even before they ever reach the point where a trial is held on the first crime.

So this is really a public protection bill, an effort to say to society that we think you have a right to be protected, that, indeed, the criminal -- or the accused has their rights, but where there is a pattern of behavior that indicates that the person who is under indictment has, in fact, repeatedly committed violent acts while at large, that the judge then has the ability to protect the public by denying bail.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

If Senator Cook would yield for a question.

SENATOR COOK: Yes.

ACTING PRESIDENT MAZIARZ: Senator Cook.

SENATOR PATERSON: Senator, while I would not assume that this legislation turns the presumption of innocence on its head, I would certainly like to ask you about the notion that this bill creates that an arrest, during the time that someone is out on bail, creates a higher probability that the individual is guilty. If that's the reason for the bill, how does that conform to the constitutional presumption of innocence?

SENATOR COOK: Mr. President, you've changed.

ACTING PRESIDENT MAZIARZ: Senator Cook.

SENATOR COOK: Mr. President, the constitutional issue of preventive detention has been resolved in the federal courts. There are

-- there is -- under federal law, there are preventive detention statutes which have been found to be constitutional. The difference is that in New York State courts, we have, at least in one Supreme Court district, a ruling that present New York State law -- and it is not the New York State Constitution but New York State law, per se -- makes the only presumption that the individual may not reappear for trial.

So that's what we're trying to do is to change the law in that regard so that the judge can, in fact, consider the potential endangerment to society as a factor in granting bail or denying bail.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Cook would yield for just one other question.

ACTING PRESIDENT MAZIARZ: Senator Cook, would you yield for just one more question?

SENATOR COOK: I will certainly do that.

ACTING PRESIDENT MAZIARZ: Senator Paterson, Senator Cook yields for one more question.

SENATOR PATERSON: Thank you, Mr. President.

SENATOR COOK: Even two.

SENATOR PATERSON: Well, the reason we're only going to ask one more question, Mr. President, is because we had a rather lengthy discussion on this bill last year and we have the transcripts if anyone would like to see them. We also have it available on tape for 14.95 and we have the CD set of this whole discussion but just to preempt it, Senator Cook, the issue of judicial discretion to me would actually be one that would, in a sense, alleviate even the question of constitutionality and even assuming that what you're saying is true, just the whole issue of the many types of cases that can come before a judge in these sort of circumstances and exactly the kind of problems that you're outlining -- which is why the real catalyst for this legislation, I think is very good, but don't you think it would be better relieved by the discretion of the judge

looking at the individual case and responding to exactly what you are proposing in those types of cases just to at that point perhaps incarcerate the defendant because of actions taken during the previous bail period?

SENATOR COOK: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Cook.

SENATOR COOK: Senator, in essence, that's what the bill does. Now, admittedly it does it in perhaps the opposite direction from what you have stated in that a person who is denied bail then has a set procedure which he or she may follow in bringing that matter before the judge and asking the judge to make a decision much in line with what you're saying, but it does, in fact, create a presumption that the court is supposed to, in granting bail, make a decision as to whether the release of this individual back onto the street constitutes an endangerment to society.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: If we're completed with the debate, why don't we have the

roll call and recognize Senator Goodman.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the first day of January.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MAZIARZ: Read the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 217 are Senators Abate, Connor, Markowitz, Montgomery, Paterson, Sampson and Santiago. Ayes 46, nays 7.

ACTING PRESIDENT MAZIARZ: The bill is passed.

SENATOR GOODMAN: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Goodman.

SENATOR GOODMAN: There will be an immediate meeting in Room 332 of the Senate Committee on Investigations, Taxation and Government Operations.

ACTING PRESIDENT MAZIARZ: There

will be an immediate meeting of the Senate Investigations Committee in Room 332, the Capitol.

Senator Present.

SENATOR PRESENT: Mr. President, may I ask to reconsider the vote on Calendar 322.

ACTING PRESIDENT MAZIARZ: It's out of the house right now, Senator Present.

SENATOR PRESENT: Can we call it back.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Mr. President, could you take up Senator Kuhl's bill, Calendar Number 387.

ACTING PRESIDENT MAZIARZ: The Secretary will read.

THE SECRETARY: Calendar Number 387, by Senator Kuhl, Senate Print 548, an act to amend the Agriculture and Markets Law, in relation to duties of the Commissioner of Agriculture and Markets.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MAZIARZ:

Senator Kuhl, an explanation has been requested of Calendar Number 387 from Senator Paterson.

SENATOR KUHL: Thank you, Mr. President.

This bill is a proposal that has been in front of this house before. It really is very simplistic in its nature and its overview and is an attempt to try to keep current, and particularly with some foresight thought, the regulatory oversight of the agricultural community in this state.

It's a bill that would require that the Commissioner of Agriculture and Markets review the current rules and regulations that are in effect which would have some sort of an effect on agriculture and try to take the appropriate steps to modify any of those regulatory regulations which might be burdensome to that community.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Mr. President, in 1994, I voted against this bill but in 1995, I was persuaded by the eloquence and the substance of Senator Kuhl's remarks and I voted

for the bill, and I'm going to vote for it again this year.

Last year there was one negative vote who asked us to hold the bill, Senator Leichter, who is at a committee meeting right now but because of his ability to communicate with me telepathically, he's arrived and perhaps now -- because my question, Senator Kuhl, is going to be, do you know what problem Senator Leichter would have had with your bill?

ACTING PRESIDENT MAZIARZ: Senator Kuhl.

SENATOR KUHL: I thought we took care of all of Senator Leichter's problems last year, Senator Paterson, and that he was appropriately informed and sufficiently informed and knowing that he would want to make sure that his constituency in the city of New York received the products that are produced so wonderfully by our producers in this state, were the best produced as far as quality goes at the least price that they could be produced for so that his constituents were adequately served.

Now, that having been said and Senator Leichter having been given the folder

and knowing what a speed reader he is, I'm sure he's appropriately informed now to ask the question that he had.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Hold it, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: I was going to ask you to hum the Jeopardy theme, but in that case, read the last section.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MAZIARZ: Announce the results.

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

ACTING PRESIDENT MAZIARZ: The bill is passed.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Leichter.

SENATOR LEICHTER: Yes. May I have unanimous consent to be recorded in the negative on Calendar 217 and 290, please.

ACTING PRESIDENT MAZIARZ: Without objection, so ordered.

Senator Present -- I'm sorry - Senator Kuhl.

SENATOR KUHL: I understand Senator Present had asked earlier for a bill to be brought back to the house. Is it at the desk?

ACTING PRESIDENT MAZIARZ: Yes.

SENATOR KUHL: On Senator Present's behalf, I would move to reconsider the vote by which Calendar Number 322 passed the house.

ACTING PRESIDENT MAZIARZ: Without objection, the Secretary will read.

THE SECRETARY: Calendar Number 322, by Senator Present, Senate Print 749, an act to amend the Vehicle and Traffic Law.

SENATOR KUHL: Could you lay that

bill aside.

ACTING PRESIDENT MAZIARZ: Senator Kuhl, the bill will be laid aside - reconsider the vote by which the bill was passed.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MAZIARZ: The bill is laid aside.

SENATOR KUHL: Thank you.

ACTING PRESIDENT MAZIARZ: Senator Present.

SENATOR PRESENT: Is there any housekeeping to be taken up?

ACTING PRESIDENT MAZIARZ: We have to stand at ease awaiting the report of the Senate Investigations Committee, Senator.

SENATOR PRESENT: Let's do that.

ACTING PRESIDENT MAZIARZ: The Senate will stand at ease.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Gold.

SENATOR GOLD: Yes. While we're

waiting, I was called out of the room when we voted on Calendar Number 217. May I please be recorded in the negative.

ACTING PRESIDENT MAZIARZ: Without objection, so ordered.

(Whereupon, the Senate stood at ease from 3:25 p.m. until 3:28 p.m.)

ACTING PRESIDENT MAZIARZ: Senator Present.

SENATOR PRESENT: Mr. President, I understand you have a standing committee report from the Investigation Committee.

ACTING PRESIDENT MAZIARZ: Can we have some order, please.

SENATOR PRESENT: You have a report from the Investigation Committee. May we have that.

ACTING PRESIDENT MAZIARZ: Return to the order of reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Goodman, from the Committee on Investigations, Taxation and Government Operations, reports the following bills:

Senate Print 2-A, by Senator

Bruno, an act to amend the Tax Law and the Public Service Law, in relation to a reduction in the rate of tax;

2219, by Senator Kuhl, an act to amend the Tax Law, in relation to extending;

3094, by Senator Seward, an act to amend the Tax Law, in relation to extending the expiration of provisions;

3096, by Senator Seward, an act to amend the Tax Law, in relation to extending;

3161, by Senator Nozzolio, an act to amend the Tax Law, in relation to extending the sales tax;

3248, by Senator Present, an act to amend the Tax Law, in relation to extending the authorization; and

3290, by Senator Present, an act to amend the Tax Law and Chapter 574 of the Laws of 1986 amending the Tax Law.

All bills ordered direct for third reading.

ACTING PRESIDENT MAZIARZ: Without objection, all bills will be moved direct to third reading.

Senator Smith.

SENATOR SMITH: Mr. President, I would request unanimous consent to be recorded in the negative on Calendar Number 217.

ACTING PRESIDENT MAZIARZ: Without objection, so ordered.

Senator Waldon.

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

I respectfully request the same consideration in regard to Calendar 217, that unanimous consent be granted and I be recorded in the negative.

ACTING PRESIDENT MAZIARZ: Without objection, so ordered.

Senator Seabrook.

SENATOR SEABROOK: Yes. I would like to express unanimous consent to be recorded in the negative on Calendar 217.

ACTING PRESIDENT MAZIARZ: Without objection, so ordered.

Senator Present.

SENATOR PRESENT: Is there any housekeeping since I last asked?

ACTING PRESIDENT MAZIARZ: No. I'm sorry, Senator Goodman.

SENATOR GOODMAN: With your gracious permission, I would just like to take 30 seconds to introduce to the house a very distinguished visiting diplomat, a counsel general of France who is headquartered in New York, is Mr. Patrick Gautrat who is here to visit us and take a tour of Albany and he's standing at my right. I would just like him to know how delighted we are to be able to show him the Senate chamber and the other great sites of Albany, to extend him our usual warm welcome to distinguished guests here in this chamber. May I ask that he receive our usual round of applause.

ACTING PRESIDENT MAZIARZ: Sir, on behalf of Senator Bruno and all my colleagues here in the New York State Senate, we welcome you. Enjoy your visit. Thank you.

(Applause)

Senator Present.

SENATOR PRESENT: Mr. President, there being no further business, I move that we stand adjourned until Tuesday, March 25th, at 3:00 p.m.

ACTING PRESIDENT MAZIARZ: Upon

motion, the Senate stands adjourned until Tuesday, March 25th, at 3:00 p.m.

(Whereupon, at 3:31 p.m., the Senate adjourned.)