ALBANY, NEW YORK

May 12, 1997

3:00 p.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: Senate will come to order. Ask the members to find their places, staff to find their places. I'd ask everybody in the chamber to rise and join me in saying the Pledge of Allegiance to the Flag and please remain standing for the invocation.

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

We're very pleased to have Pastor Larry Deyss of the Delmar Presbyterian Church, Delmar, New York, with us to deliver the invocation. Pastor Deyss.

REVEREND LARRY DEYSS: Let us pray.

Almighty God, the Creator of the universe so vastly measured in light years. You are our hope and our judge. Hear our prayer. Be with the people of this Senate as they engage in a great and difficult work. Grant them wisdom to deal with complex issues and courage to do what needs to be done to promote the well-being of all people. Grant them strength to stand against great pressures so they may do what they know in their heart of hearts is right to do.

Grant them compassion so they may lift up and empower the weak and the vulnerable. Be with them and guide them over the weeks ahead as they make a series of decisions that will profoundly affect the lives of poor women, teens and children. Help them to have the wisdom and the courage to grasp this historic moment when they have the opportunity to mitigate some of the destructive aspects of the federal welfare law. Guide them so that they may enact policies to assist the poor in job training, to find work and to maintain health care coverage which are so important for well-being and dignity. These are days, gracious God, when anger and meanness are at work in the land. Grant the people of this Senate the strength and the will to rise above the free floating anxiousness and anger of our times so the poor may not be scapegoats.

Help us to remember that over and above any constituency, we are accountable unto You. Let all the work done here be done with such integrity and care for all Your people that when our time on earth is done and we stand before You, we may hear You say, well done, good and faithful servant. Enter into the joy

prepared for you. This we pray this day. Amen.

ACTING PRESIDENT KUHL: Reading of the journal.

THE SECRETARY: In Senate, Friday, May 9th. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Thursday, May 8th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions. Chair recognizes Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on page number 48, I offer the following amendments to Calendar Number 338, Senate Print Number 3109, and ask that said bill

retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL:

Amendments to Calendar Number 338 are received and adopted and the bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I move to recommit Senate Print Number 4926, Calendar Number 1036, which is on the order of First Report to the Committee on Elections with instructions that said committee strike out the enacting clause.

ACTING PRESIDENT KUHL: The bill will be recommitted and the enacting clause will be stricken.

SENATOR MARCELLINO: Thank you, sir.

SENATOR LACK: Mr. President.

ACTING PRESIDENT KUHL: Senator Lack.

SENATOR LACK: Thank you, Mr. President. Would you please unstar Calendar Number 516, S. 3527-A.

ACTING PRESIDENT KUHL: The star will be removed on Calendar Number 516 at the

request of the sponsor.

Senator Tully.

SENATOR TULLY: Yes, Mr. President. I believe I have a privileged resolution at the desk. May I please ask that it be read in its entirety, following which I would like to make a few brief remarks.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: I believe there's a resolution at the desk sponsored by Senator DeFrancisco. I ask that its title be read and move for its immediate adoption.

ACTING PRESIDENT KUHL: There is a privileged resolution by Senator DeFrancisco. Secretary will read the title.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution honoring the students of Team 7D at Lincoln Middle School in Syracuse for their participation in the 49th Senate District "Good News! Good Kids!" Youth Responsibility Program.

ACTING PRESIDENT KUHL: Senator DeFrancisco, on the resolution.

SENATOR DeFRANCISCO: Yes, Mr. President. I rise to congratulate the Lincoln Middle School at being the winner of the Good News! Good Kids! Program that we have in Onondaga County in my district, and basically what the program does is honor students who do good things because, unfortunately, we hear a lot of negative things in the media about young people.

This group did several projects, one of which was to help in the annual Kids Fair put on by one of our local TV stations that allows kids to participate in certain activities at our On Center, and they participated in several ways. They were greeters and workers at that program but, most importantly, they raised close to $3,000 for the Alzheimer's Foundation by raising money in various ways and also going to visit people with those types of infirmities and singing to them and being involved in various activities and along the way learning about it, and these are good things. These are good kids doing good things and it happens to be the middle school that used to be called the Lincoln Junior High School where I attended a

couple of years ago, so I'm very proud of this group of young people and I'm sure that they have continued, they're continuing new projects for next year and they've done a great job and I'm proud to welcome them to Albany and to tell the world that we do have good kids, that it's very, very good news and congratulations and have a great day, Lincoln Middle School students.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the resolution? Hearing none, the question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay?

(There was no response.)

The resolution is adopted and, on behalf of Senator Bruno and Senator DeFrancisco and all the members of the chamber, we welcome these young people from Syracuse to the chamber. Enjoy your stay in Albany.

Senator Skelos.

SENATOR SKELOS: Yes, Mr. President. I believe there's a resolution at

the desk sponsored by Senator Tully. I ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT KUHL: Secretary will read the privileged resolution by Senator Tully.

THE SECRETARY: By Senator Tully, Legislative Resolution commending the 1997 Senior Class of the Henry Viscardi School of Albertson, New York, upon the occasion of their visit to the New York State Legislature on Monday, May 12th, 1997.

WHEREAS, it is the sense of this legislative body that the character and quality of life in this great Empire State is abundantly enriched by organizations which selflessly serve to promote the health and welfare of the citizenry; and

WHEREAS, this legislative body is justly proud to commend the 1997 Senior Class of Henry Viscardi School, Albertson, New York, upon the occasion of their visit to the New York State Legislature on Monday, May 12th, 1997, and

WHEREAS, the Henry Viscardi School is a New York State chartered tuition

free school educating more than 220 children between the ages of 3 to 21 and with severe orthopedic disabilities; over two-thirds of the school's graduates go on to higher education, which is more than three times the national average of 20 percent; and

WHEREAS, the Henry Viscardi School provides a full range of educational, remedial, therapeutic, social and recreational services provided through pre-school, kinder garten, elementary and secondary school programs and extended-year summer programs;

The National Center for Disability Services, founded by Henry Viscardi, had its humble beginnings in 1952, operating out of a garage in West Hempstead; it now occupies a 14-acre wooded campus in Albertson, New York, serving over 4,000 adults and children annually;

The Center is a non-profit agency dedicated to empowering people with disabilities to be active, independent and self-sufficient participants in our society; it accomplishes its mission through education, training, research, leadership, and example;

The Center is internationally

known and hosts visitors from around the world who come to learn about its successes in preparing individuals for meaningful careers; its visitors have included the Emperor and Empress of Japan; and

WHEREAS, the Center received one of its highest honors last September 14, 1995 when it received the United States Department of Labor Exemplary Public Interest Contribution Award; this award is based on nationwide competition and is presented annually to organizations who exhibit unparalleled leadership in assisting disadvantaged Americans to -- into competitive employment;

The Center's work is conducted through the Henry Viscardi School, the Career and Employment Institute which evaluates, trains and counsels adults with disabilities, and the Research and Training Institute which conducts research on the education, employment and career development of persons with disabilities; and

WHEREAS, the members of the 1996 Senior Class of the Henry Viscardi School include Maleni Alvarez, Scott Andreala, Stephen Buzzerio, Lori Carrion, Elissa Figueroa, Keith

Haarmann, Jesin Jose, Michael Kalberer, Lance Palma, Kimberly Poulos, Errol Roberts, Steven Michtav and Marisol Rodriguez,

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its deliberations to express its appreciation to Henry Viscardi School for meeting the special needs of hundreds of children in New York State and to extend a warm welcome to the faculty and students on their visit to Albany; and

BE IT FURTHER RESOLVED that copies of this resolution, suitably engrossed, be transmitted to the students and faculty of Henry Viscardi School.

ACTING PRESIDENT MARCELLINO: Senator Tully.

SENATOR TULLY: Thank you, Mr. President.

Today we have the distinct honor of hosting the graduating class of the Henry Viscardi School, and their acting superintendent Henry Kunstle, in my district.

The Henry Viscardi School, located in my town of Albertson in Nassau County, specializes in treating students with

severe disabilities throughout the entire metropolitan New York region. We're privileged to have these remarkable students here today to witness the deliberations of this legislative body, and those who were previously mentioned are represented by Senator Smith, Senator Skelos, Senator Padavan, Senator Rosado and myself, Senator Hannon, Senator Lack and Senator Levy.

These students of the Henry Viscardi School possess a special brand of strength and determination and are among the most gifted students I have ever encountered. Many of these graduating Seniors have plans to go to college, and some have made plans to begin vocational training programs in preparation for the future.

Whether they plan to continue their education or enter the work force, their years at the Henry Viscardi School are a priceless investment in their future that will carry them throughout the rest of their lives.

So, students, as you prepare for the next step, remember to apply your special gifts and your special talents, work with

dedication and self-discipline in all your future endeavors. Have high expectations of yourself and convert every challenge into an opportunity. You're a credit to your family, to your school, and to your community, and I extend my very best wishes to you for a future filled with happiness, good health and success.

Mr. President, I ask that all of my colleagues, join me in congratulating and welcoming the Senior Class of the Henry Viscardi School to Albany.

ACTING PRESIDENT MARCELLINO: Is there any other Senator wishing to be heard on this motion? All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The ayes have it. The motion is unanimously passed and on a point of personal privilege, I've been to the Henry Viscardi School and witnessed what it does for the young men and women who attend this remarkable institution, and the young men and women who attend this institution are remarkable people in

their own life, and may we stand and give you a round of applause and welcome you to Albany.

(Standing applause)

Senator Holland, may we return to motions for a moment? Yes, the Chair recognizes Senator Leibell.

SENATOR LEIBELL: On behalf of Senator Volker, please place a sponsor's star on Calendar Number 702, and on behalf -

ACTING PRESIDENT MARCELLINO: Bill is starred.

SENATOR LEIBELL: And on behalf of Senator Hannon, please place sponsor's stars on Calendar Number 627 and 780.

ACTING PRESIDENT MARCELLINO: The bills are starred.

Senator Holland, we are at the reading of the non-controversial calendar.

SENATOR HOLLAND: That's exactly it, Mr. President, please.

ACTING PRESIDENT MARCELLINO: Secretary will read.

I've been informed, Senator Holland, that we have some substitutions.

SENATOR HOLLAND: Take the

substitutions, please.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: On page 12, Senator Lack moves to discharge from the Committee on Judiciary Assembly Bill Number 7037 and substitute it for the identical Second Report Calendar 746.

On page 16, Senator Spano moves to discharge from the Committee on Finance, Assembly Bill Number 4563, and substitute it for the identical Second Report Calendar 785.

And on page 53, Senator Skelos moves to discharge from the Committee on Rules Assembly Bill Number 357-B, and substitute it for the identical Third Reading Calendar 466.

ACTING PRESIDENT MARCELLINO: Without objection, substitutions are ordered.

Can we read the non-controversial calendar.

THE SECRETARY: Calendar Number 280, by Senator Johnson, Senate Print 2514-A, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MARCELLINO: Lay that bill aside for the day, please.

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

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 456, by Senator Marcellino, Senate Print -

ACTING PRESIDENT MARCELLINO: Will you lay that bill aside for the day, please.

THE SECRETARY: Calendar Number 466, substituted earlier today, by member of the Assembly Weisenberg, Assembly Print 357-B, an act to amend the Insurance Law, in relation to providing for a reduction in rates of commercial

risk insurance.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 515, by Senator Lack, Senate Print 3453, an act to amend the Judiciary Law, in relation to payment of expenses.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 90 days.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MARCELLINO: The

bill is passed.

THE SECRETARY: Calendar Number 535, by Senator Nozzolio, Senate Print 2285, an act to amend the Vehicle and Traffic Law, in relation to the imposition of a fee for the reissuance of a driver's license.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 543, by Senator Levy, Senate Print 920, an act to amend the Transportation Law, in relation to authorizing the Commissioner of Transportation.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 563, by Senator Wright, Senate Print 3054, an act to legalize, certify and confirm the acts of the Central Square School District.

SENATOR GOLD: Lay it aside, please.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 603, by Senator Rath, Senate Print 3639, an act to amend the Town Law, in relation to building permits by the building inspector.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 614, by Senator Maltese, Senate Print 2317, an act to repeal Section 543 of the Executive Law, relating to recreation programs.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 616, by Senator Volker, Senate Print 1233, an act to amend the Executive Law, in relation to civil actions against employees.

ACTING PRESIDENT MARCELLINO: Are we laying aside 616? Lay it aside.

THE SECRETARY: Calendar Number 623, by Senator Holland, Senate Print 648, an

act to amend the Public Health Law, in relation to authorizing the Hudson Valley Emergency Medical Service Council.

ACTING PRESIDENT MARCELLINO: Read the last -

SENATOR GOLD: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside, please.

THE SECRETARY: Calendar Number 628, by Senator Farley, Senate Print 1815, an act to amend the Public Health Law, in relation to expanding the definition of group practice to apply to rural areas.

SENATOR DOLLINGER: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

THE SECRETARY: Calendar Number 633, by Senator Tully, Senate Print 4111, an act to amend Chapter 521 of the Laws of 1994.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 646, by Senator Seward, Senate Print 4278, an act to amend the Public Service Law, in relation to increasing the statutory ceiling for non major changes.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

SENATOR GOLD: Lay it aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

SENATOR DOLLINGER: Mr. President, a point of order. Did we do Calendar Number 628?

ACTING PRESIDENT MARCELLINO: The bill was laid aside, Senator.

SENATOR DOLLINGER: Thank you, Mr. President.

THE SECRETARY: Calendar Number 649, by Senator Saland, Senate Print 665.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay

the bill aside.

Senator Holland, the reading of the non-controversial calendar has been completed. Shall we proceed with the controversial at this point?

SENATOR HOLLAND: Please, Mr. President, absolutely.

ACTING PRESIDENT MARCELLINO: Secretary will read.

THE SECRETARY: On page 58, Calendar Number 563, by Senator Wright, Senate Print 3054, an act to legalize, certify and confirm the acts of the Central Square School District.

SENATOR GOLD: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Wright, an explanation has been asked for by Senator Gold.

SENATOR WRIGHT: Thank you, Mr. President.

The legislation was requested on behalf of the Central Square School District, a school district within my Senatorial District. They have pending claims totalling $249,000 on three separate instances relating to transporta

tion. They have had previous claims rejected by state Ed' by virtue of the technical deficiencies of signatures issued by the then superintendent and then school board president, both of which have changed. So we are submitting the legislation consistent with the recommendation of state Ed' to the school district.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 616, by Senator Volker, Senate Print 1233, an act to amend the Executive Law, in relation to civil actions against employees.

ACTING PRESIDENT MARCELLINO: Read the last -- an explanation has been asked for, Senator Volker.

SENATOR HOLLAND: Will you lay it aside until we find the Senator.

ACTING PRESIDENT MARCELLINO: O.K. We'll lay the bill aside while we move on to the next one from Senator Holland.

THE SECRETARY: Calendar Number 623, by Senator Holland, Senate Print 648, an act to amend the Public Health Law, in relation to authorizing the Hudson Valley Emergency Medical Service Council.

SENATOR GOLD: Explanation.

SENATOR HOLLAND: This bill has passed for the past couple years. It was recommended by the Orange County EMS service and it basically says that we set up a cable television programming system so that EMS volunteers do not have to go to a central location in a major county or big county. They can learn their trade and protect the people they're volunteered to protect through learning through the cable television system.

SENATOR GOLD: Will the Senator yield to a question?

ACTING PRESIDENT KUHL: Senator Holland yield?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR GOLD: Senator, could you tell me how this program is going to work? Would this be educational material that's going to be on that they can watch, or is this some kind of information as to things that are happening? Exactly what are they going to see on the cable network?

SENATOR HOLLAND: It's basically a taping of the classes that they would normally take in a far training site or some facility like that, that will be available for the volunteers to either be on the cable system or take home and see in their VCR, so they can learn that way. They will still be tested so they will still have to know the subject.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill? Hearing none, 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.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 628, by Senator Farley, Senate Print 1815, an act to amend the Public Health Law, in relation to expanding the definition of group practice.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Farley, an explanation of Calendar Number 628 has been requested by Senator Dollinger.

SENATOR FARLEY: Thank you.

Senator Dollinger, this was a bill that was brought to my attention by a doctor who's chief of rheumatology, Doctor - this particular doctor and two other rheumatologists share a laboratory which enables them to provide diagnostic services to their patients that they would not be able to provide as individuals.

What this does, under the current state Department of Health law a physician is prohibited from referring patients to a shared laboratory because he has a financial interest

in this laboratory. The doctor reports that the Department does not consider the situation a quality issue, but simply notes that this interest does not fall within one of the existing statutory exceptions to the prohibition because the three physicians practice independently and not as a group practice. The laboratory is informally shared among the three and this is not a formal entity in which they have -- as rural practitioners, have an ownership in the investment interests.

Were the three formally organized as a group practice, the laboratory, a formal entity "owned", quote, by the three doctors or the laboratory operated independently, he would not be prohibited from these patient referrals.

This legislation would correct this anomaly affecting these doctors by including informally shared facilities located in a rural area, a county with a population of 200,000 or less or a town with a population density of 150 persons or less per square mile within the definition of group practice.

There's no fiscal impact to the state, and I feel that what it does, it helps

provide a higher quality of medical service and particularly in the rural areas.

SENATOR DOLLINGER: Would the sponsor yield to a question?

ACTING PRESIDENT KUHL: Senator Farley, do you yield to a question by Senator Dollinger?

SENATOR FARLEY: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR DOLLINGER: Senator, as I understand it, this would exempt from the non referral rules, not referring to yourself, in essence the non-referral rules. This would exempt certain rural practices from those rules, is that correct?

SENATOR FARLEY: That's correct.

SENATOR DOLLINGER: And my question again, Senator, Mr. President, if Senator Farley would yield, current -- in current law, there's an exemption in 238 (a) which says, An ownership interest or investment shall not be subject to subdivision 1, which is the anti-referral rules, if the health care

provider authorized to provide clinical laboratory services, pharmacy services, X-ray or imaging services, is in a rural area and the referral practitioner of the patient is in such rural area.

My question is, don't we already have this exemption under state law?

SENATOR FARLEY: Apparently not. Mary Anne Gordineer, that's her name, from the Department of Health has said that they are prohibited under the current law. I did not read you the subdivisions, but I'll be happy to or show it to you, but all I'm saying is that the Health Department per se says that they are prohibited, and she actually suggested this legislation.

SENATOR DOLLINGER: Well, through you, Mr. President, I accept Senator Farley's characterization. He obviously has some material that I don't have with respect to the Health Department's opinion about this, and I -- I don't need to see it. I'm just -- my question is whether we need it. It looks like there's clear statutory authority for the fact that rural practitioners are immune or exempt from the

anti-referral, the self-referral provisions in state law, and it seems to me that I understand why his constituent is driven into this point, perhaps an opinion from the Health Department attached, but I would almost suggest the health opinion that they simply read the law that we wrote that says that people that live in rural communities aren't bound by the same rigid anti referral provisions that everybody else are.

That should be -- that's been our policy in this state. It continues to be the policy, and I'm afraid we're overdoing it here because maybe our bureaucracy didn't quite read what we wrote for them several years ago.

SENATOR FARLEY: I hear what you're saying. Thank you, Senator. As a matter of fact, I'm going to share with you my memorandum.

SENATOR DOLLINGER: Thank you, Senator.

I'll be voting in favor, Mr. President.

SENATOR FARLEY: Thank you.

ACTING PRESIDENT KUHL: 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 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Could we return, Mr. President, to Calendar 616, Senator Volker's bill, please.

ACTING PRESIDENT KUHL: Secretary will read the title to Calendar 616, by Senator Volker.

THE SECRETARY: Calendar Number 616, by Senator Volker, Senate Print 1233, an act to amend the Executive Law, in relation to civil actions against employees.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Volker, an explanation has been asked for by the Deputy Minority Leader, Senator Paterson.

SENATOR VOLKER: The distinguished Deputy Minority Leader, Senator

Paterson. O.K.

This bill -- what this bill would do is basically conform the law to lawsuits that are currently filed against the Department of Corrections and Parole so that those suits would have to be filed in the Court of Claims.

What's happened is that over the years, even though the statute does not necessarily provide for it, some court cases have allowed lawsuits to be filed in both the Supreme Court, in other words courts outside the Court of Claims, and the Court of Claims. In all honesty, some rather clever attorneys have been playing off the Supreme Court against the Court of Claims. These are suits, by the way, for -- lawsuits against the State Police for actions done in the course of their conduct. This is not for anything that is not done in the course of their employment and, of course, also if the acts are intentional torts, in other words if they commit acts that are intentional, it would be beyond the scope of their authority and, therefore, you can sue them anywhere which would probably, of course, be in Supreme Court.

There was a memo put out, and it

sort of dismisses the Corrections Department and Parole and says this doesn't apply there. Well, it doesn't apply there because right now you can only sue them in the Court of Claims. So what we're doing here is conforming the State Police to the same rules that apply to Corrections and to the Parole Department. Needless to say, this bill was filed by the way, was given to me by the Division of State Police.

Mr. President, just a couple more things. The objections to this, so that you realize is that the Trial Lawyers have filed an objection claiming that, under a court case, which is true, there has been a court case, several cases on point here that have stated that a litigant has the right to a trial by jury in Supreme Court which you don't have in the Court of Claims, and, therefore, what this bill would do would be, in effect, overrule that case which this Legislature clearly has the right to do and provide that those claims would have to be filed in the Court of Claims rather than the Supreme Court and/or both places because that's what a lot of these claims -- what happens to a lot of these claims.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill? Hearing none, 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: Record the negatives; announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 616 are Senators Connor, Leichter, Montgomery, Paterson and Sampson. Ayes 52, nays 5.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to read the controversial calendar in regular order.

THE SECRETARY: Calendar Number -

ACTING PRESIDENT KUHL: The Chair recognizes Senator Smith.

SENATOR SMITH: Mr. President, I request unanimous consent to be recorded in the

negative on Calendar Number 616.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Smith will be recorded in the negative on Calendar Number 616. Secretary will continue to read the -- Senator Holland.

SENATOR HOLLAND: Mr. President, can you recognize Senator Montgomery for a minute, please.

ACTING PRESIDENT KUHL: Chair recognizes Senator Montgomery.

SENATOR MONTGOMERY: Thank you. Thank you, Mr. President. I would like to, on behalf of one of my colleagues, Senator Al Waldon, who is not here, to acknowledge in our chamber a group of young people who are visiting the state Capitol from the Law Government and Community Service Magnet High School of Queens, and they are accompanied by their class coordinator, Hakim Nkoma, their science teacher, Miss Thaddea Lewis and their school aide, Mr. Philip White.

We are always happy when young people can visit us and see us in action. This is a day when certainly we are debating bills

which impact on their lives and their future and I welcome them and welcome the opportunity for them to see their government up close.

ACTING PRESIDENT KUHL: Thank you, Senator Montgomery.

Welcome on behalf of Senator Waldon and Senator Holland.

Regular order. Secretary will continue the regular order controversial calendar.

THE SECRETARY: Calendar Number 646, by Senator Seward, Senate print 4278, an act to amend the Public Service Law, in relation to increasing the statutory ceiling for non major changes.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Senator Leichter, you requesting an explanation?

Senator Seward, an explanation of Calendar 646 has been requested by Senator Leichter.

SENATOR SEWARD: Certainly, Mr.

President. This is a bill which has passed in the past unanimously. It would change the definition of a major change in rates for electric, gas, steam, water or telephone services to mean -- the change would mean an increase in the aggregate revenues in excess of the greater of either $300,000 or 2.5 percent. Under this change, the definition would increase the statutory ceiling from the current 100,000 to 300,000 for the non-major changes.

This -- this has not changed since the 1930s, and it is meant to assist the customers of some of our smaller utility companies to avoid the high costs of going through a full-blown public hearing process when we're really looking at some non-major changes in rates.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill? Hearing none, Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 649, by Senator Saland, Senate Print 665, an act to amend the Criminal Procedure Law, the Family Court Act, the Penal Law and the Public Health Law, in relation to the testing of certain criminal defendants.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT KUHL: Senator Saland, an explanation has been asked for by the Acting Minority Leader, Senator Leichter.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill is a bill which this chamber has entertained previously. It's a bill which builds on the efforts of this house to deal with the issue of people who have been subjected to sexual offenses, who desire the ability to make application to a court to determine if, in fact, their -- the perpetrator of these acts, these sexual offenses or in other cases assaults as defined in the bill, are in fact carriers of a

transmissible disease.

The bill does a number of things. We well recall that back in 1995 we passed legislation which enabled New York to require testing where there had been a conviction. This bill attempts to do some additional changes to the law. First it adds to the list of crimes for which court ordered testing could be required.

Second, it permits the testing, not merely post-conviction but permits it pre-conviction.

Thirdly, it continues to maintain confidentiality, which certainly is something which I believe we should all be concerned with and it attempts to balance both confidentiality and the needs of victims so what this bill does in many respects is akin to what is already permitted in the federal law.

Under federal law, even right here in the state of New York, a victim can make application to a federal court and the case currently allows the state court to get permission through the order of a federal judge to have an assailant tested pre-conviction.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. If Senator Saland will yield to several questions.

ACTING PRESIDENT KUHL: Senator Saland, do you yield to Senator Leichter?

SENATOR SALAND: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: Senator, what sort of tests, or shall I say standard, is used by the courts in determining whether to permit the testing of a defendant prior to conviction?

SENATOR SALAND: Senator Leichter, the bill provides for the means by which the applicant can make his or her application and the procedure by which that will be entertained, and I'm thumbing through the bill looking for the exact section as I attempt to respond to you. I'm looking for the section and in the absence of my ability to find it, let me give you, in substance, as I recollect.

What the bill does is, it enables the petitioner to make application to the court.

One of the conditions precedent to that application is her or his being advised of the importance of counseling, in fact that there has been counseling involved.

The bill then goes on to provide that, upon the request being made, the authorization shall be to undergo prompt readily accessible and scientifically recognized laboratory testing at state expense.

SENATOR LEICHTER: Mr. President, if Senator Saland will continue to yield?

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR LEICHTER: Mr. President, what you just read doesn't address my question. What I'm concerned about is that we have an instance here where somebody is charged with a crime but not yet convicted, and what I -- there obviously has to be a hearing which your bill sets up to determine if the defendant, the unconvicted defendant, is to be tested, and my

question to you is, does your bill set forth any standard by which the court is to determine that this defendant is to be tested?

This defendant, he's not been convicted; he has certain constitutional rights. He's presumed to be innocent. Does there have to be a finding of probable cause or some other standard that your bill sets forth?

SENATOR SALAND: I'm looking at page 1 of the bill, paragraph 7.

SENATOR LEICHTER: Senator, I don't think that sets forth any standard that the court is to apply in determining whether a test should be made. If I may continue, Senator, it seems to me that this bill -- and I can't say I've exhaustively studied it, but it doesn't seem to set forth any standard at all for a decision that a defendant has been indicted and charged in one of the enumerated crimes.

SENATOR SALAND: Senator Leichter, if that -- if that implies a constitutional argument, in effect a privacy argument, I do believe the fact that we require under this bill that there be either an

indictment or being held over on an information is adequate to establish the probable cause that a long line of cases, be they Supreme -- U. S. Supreme Court cases or state appellate court cases, have already determined to be adequate, and, in fact, as I mentioned earlier, this method does exist in the state of New York. Unfortunately, the applicant is required to go to federal court and go through a rather lengthy process, and I recall reading not too long ago, probably near the end of last year of one instance in which the district attorney in Kings County, in Brooklyn, had a case involving a precedent rape victim and due to the inability to access the means to test in state court, his office was forced to petition the federal court to -- on behalf of the victim to learn if that -- if the defendant was HIV positive and what had occurred was that -- I believe months of litigation before the order was finally entered by the court.

SENATOR LEICHTER: Well, Senator, if you'll continue to yield.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR LEICHTER: I am concerned that when you subject somebody who is presumed to be innocent to a test, that I -- that the absence either of finding probable cause beyond just the mere fact that somebody has been indicted or there's an information or making a showing of medically necessary, now I think with some of the changes that have occurred in the treatment of AIDS, it may well be that if somebody who is pregnant is raped, that there's a medical benefit in finding out if the alleged perpetrator was HIV infected or infected with some other sexually transmitable disease.

But your bill isn't limited to that. Your bill involves any number of instances where I submit to you, you have failed to show that there's a medical -- or I can show you there's no medical advantage. So at the very least, shouldn't you, in those instances, require the court to make some finding that the defendant, beyond just the indictment or the

information, probably committed the act that he's charged with?

SENATOR SALAND: There is no way that you could possibly expect that there would be any ruling by a court on such an application that did not fail to meet some evidentiary standard adequate for purposes of probable cause and again -- again, the essence of the case law is, is there probable cause on the one hand and secondly, is there a reasonable medical procedure available to accomplish the ends of the testing?

SENATOR LEICHTER: Mr. President, if the good Senator will continue to yield.

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

SENATOR SALAND: Yes, Mr. President.

SENATOR LEICHTER: It may be that some of the cases have correctly set forth that standard, and why didn't you put that in your bill? Why did you infer or imply what the courts will do? Why didn't you just write it in your bill?

SENATOR SALAND: Let me suggest

to you, and perhaps I was looking in the wrong section, over on page 3, line 45, establishes a "good cause" measure which determines whether, in fact, the court will entertain the applica tion and, in turn, rule on the application.

SENATOR LEICHTER: Senator Saland, if you will continue to yield.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield, I think. Senator Leichter, I'm not sure.

SENATOR LEICHTER: Yes, let us - just so we move this along, if you would yield for a number of questions, Senator Saland. I know he always does and very vigorously and effectively defends his bills. But, Senator, that particular provision that you've read to me deals only with persons who are convicted. It doesn't address the example that you and I were discussing of an unconvicted defendant.

SENATOR SALAND: Senator

Leichter, in my haste to try and find the section, I'm having difficulty listening and responding and looking all at once. I would repeat again to you that there has to be, as well you know as a practicing attorney, a standard, and the standard has to be one which assures that the individual who is proposed to be the subject of the test, the so-called perpetrator, is in fact not being denied his or her rights.

SENATOR LEICHTER: Well, Mr. President. Let me ask you -- let's put that aside, Senator, and I'd like to afterwards address that because I think it's a real weakness in the bill, but let me ask you about a convicted defendant, and I have a lot of problems understanding.

Generally with convicted defendants, we don't have the problem that some of the due process issues are different, there's no question about that, but there I have difficulty seeing how there can ever be a benefit. I mean conviction occurs, as we know particularly for crimes of this nature, months and sometimes well over a year or even two years

after the crime was committed. What is -- what possible medical benefit can there be to test somebody after that long period of time?

That -- the victim should have been tested and should have been counselled long ago to be tested. Let's -- what do you conceivably gain medically by testing somebody two years after they allegedly committed or a rape to see if that person is HIV positive?

SENATOR SALAND: Let me suggest to you, Senator Leichter, that I think you've just, at least in substantial part, made my argument for why we should have pre-conviction testing. I have advocated probably back in 1992 or 1993 for that particular standard.

The bill that ultimately was passed in 1995 was somewhat, I must confess disappointingly to me, limited to the post conviction standard. I do believe that there will be a number of victims who may be interested by even a post-conviction standard but I think the value of this kind of a law is to move up the date and time of testing and to make it applicable prior to conviction which, as you know, can take a considerable amount of

time.

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Senator Saland then, if you will continue to yield.

Then you agree with me that as far as post-conviction testing is concerned, it's a very limited or marginal benefit, and in fact I can't see any benefit at all. Can you give me an example -

SENATOR SALAND: I think -

SENATOR LEICHTER: Could you just give me one example of a conviction other than if the conviction should occur within a month of the alleged act, and I think that's almost impossible and unheard of in our legal system, but can you give me any benefit whatsoever to testing a convicted defendant after conviction, after sentencing? What medical benefit is there?

SENATOR SALAND: Well, number one, please don't impute that what I'm doing here is using the medical benefit standard. I mean the medical benefit standard doesn't deal with things such as psychological or psychiatric

trauma which many victims, unfortunately, endure as part of being violated. There certainly is not necessarily the clear-cut medical benefit standard that you happen to be looking for, but let me suggest to you I would not characterize my position as being one that saw concerns of a minimal benefit from post-conviction testing. We have gone through this debate before and you, perhaps more than I, are certainly one of the most outstanding members of this chamber on issues of choice. You're constantly talking about issues of choice, and this is no more than a choice bill.

This is a bill which basically is going to repose in someone who has been violated the ability to make application, use his or her intellect to determine whether or not, after being in counseling, they wish to have -- after being subjected to participation in counseling, they wish to have their assailant tested.

I'm all for moving it back. Governor Cuomo, in 1990, constituted a task force that came out in favor of pre-conviction testing with no medical, reasonable -- no "medically reasonable" standard required, so

that occurred in 1990. He disavowed it or ignored it, but he is the one who had a task force constituted which included medical people as well that came to that conclusion.

ACTING PRESIDENT KUHL: Senator Leichter, does that complete your interrogation of Senator Saland?

SENATOR LEICHTER: I believe the Acting Majority Leader is anxious to be heard.

ACTING PRESIDENT KUHL: Did you have any further questions?

SENATOR LEICHTER: Yes, I do.

ACTING PRESIDENT KUHL: Senator Holland?

SENATOR HOLLAND: Could we suspend the debate for a moment and open the roll for Senator Wright, please.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

THE SECRETARY: Senator Wright.

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

SENATOR WRIGHT: Aye.

ACTING PRESIDENT KUHL: The roll call is withdrawn.

Are you asking Senator Saland to yield?

SENATOR LEICHTER: Yes, I am.

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

SENATOR SALAND: Yes, I do, Senator.

After I gave him all those accolades, Senator, what possibly, after all those accolades, can you stand up and ask? Senator Gold was unhappy about it, but that's all right.

SENATOR LEICHTER: I appreciate your accolades, Senator, but I think that to infer that this is a matter of choice, certainly the choice of the victim should be to be tested, and I happen to think that those parts of your bill which move toward testing of the victim are absolutely correct. We need to test the victim, and I'd like to do that at state expense, but that's the choice of the victim.

You're not -- you're not taking the position that choice means that I can use

what will happen to you, and that's really what you're arguing in this instance.

SENATOR SALAND: You know, Senator Leichter, what I'm arguing is that there is a probable cause standard which says that if you've been indicted, if you've been held over on an information, you have reached that plateau, evidentiary plateau, that's adequate to enable this type of testing, and there are people in the state of New York even in state court proceedings that have the ability, through a somewhat lengthier perhaps more tortured way, to make application to a federal court to get an order to enable them to do this, and there's no -- no intention here, nor would I ever intend to violate anybody's confidentiality, and this bill, I believe accommodates that confidential ity.

I believe this bill represents a balance of the interests of the victim with the rights of confidentiality after a probable cause standard has been met of the defendant. I believe, under the circumstances, that is an appropriate way for us to intervene and to assist the victim.

SENATOR LEICHTER: Mr. President, if Senator Saland would yield, we'll try to make this the last question. I will try.

Senator Saland, let me go back to a question I asked you before, and I don't believe you answered it. Dealing now with the convicted defendant, convicted person, of some crime involving the possibility of sexual transmitted disease, can you give me one example, one example of a medical benefit that would occur of testing a convicted person other than the very dubious matter that you threw out, Well, it may be psychologically satisfying to the victim.

That's not a medical benefit to the -- to the victim. Can you give me, other than that, any medical benefit?

SENATOR SALAND: Senator Leichter, I would come back to what I said before, and I would add to that, I do not understand why, with the protection of the confidentiality that has been provided, why there should be any public policy that would oppose this type of testing.

There is no reason in the world,

if you've sat through the countless hearings I have sat through, if you've met with the various victims that I've met with and yes, I will acknowledge that there's a difference of opinion in some of the victims' advocacy community, and if you sat through that and if you could show me where the prejudice is, where there is a likelihood or the possibility of the violation of confidentiality, perhaps I would pause and reflect on what you're having to say, but we're obviously coming to our respective conclusions 180 degrees apart, and there is little or no ability, I believe, to reconcile those differences.

We've certainly gone through this debate before, and I say nothing to denigrate the position that you take. It's one with which I vehemently disagree, and obviously you with equal fervor disagree with my position.

SENATOR LEICHTER: Mr. President. Thank you very much, Senator Saland, for your usual vigorous defense of this bill.

But I must say, Senator, I've not heard in any of our debates what I think must be the premise, the basis, for this bill. This is

a medical benefit, a medical benefit for the victim and, absent that, Senator, I have very grave reservations why we should do this. I think it essentially is a punitive bill.

Now, people who commit serious crimes ought to be punished, and we do punish them, but you can't go and take somebody's blood unless there's a justification for it, and that justification is lacking.

Let me just review your bill. It has two parts. It deals with defendants charged with crime, and it deals with defendants who have been convicted. Let's take the latter first.

Defendants who have been convicted, I asked you a number of times, give me one example having in mind the lapse of time between the commission of a crime and conviction in this state or probably in any society that provides due process, given that length of time show me any medical benefit, and other than throwing out some hint that, well, maybe it will be psychologically satisfying for the victim, you've been unable to give me one instance where there's a benefit and, of course, there is no

benefit because if there is a sexually transmitted disease, what you need to do is to test the victim, and we ought to counsel the victim for testing, and I like that portion of the bill which gives the victim the right to be tested at state expense. I think that is a proper thing to do, and we ought to set up and we ought to have a procedure whereby people who have been victimized in a crime where there's a possibility that they will contact AIDS or other sexually transmitted disease, we ought to counsel them to be tested immediately. They shouldn't wait for the testing of the person alleged to have committed the crime, and they certainly shouldn't wait until conviction two years later.

So I find no reason -- I have no sympathy for somebody who has been found guilty of committing such a crime, and I hope they're in jail and I hope they're there for a long time, but I'm not going to say, Well, we ought to take their blood when there's no medical benefit whatsoever. I don't think that we can do it, and I don't think we gain anything by doing it.

Now, let's take the instance of a person who is charged with a crime. A person charged with a crime in almost 90 percent or 95 percent of the cases, given the current knowledge of medical information, current medical knowledge about AIDS, there is no benefit in testing the defendant. You've got to test the victim. You test the defendant -- and we've been through this, Senator, and you've never been able to answer it and everybody who deals with this terrible disease of AIDS and while your bill now refers to other sexually transmitted diseases, essentially what motivates, what prompts this bill is that terrible disease of AIDS and everybody who deals with it says, if you just test the defendant that's insufficient, because the defendant may be passing the HIV virus, but he may not test or she may not test positive but, if you have -- if you have an instance where the person does test positive, in any event you've got to test the victim. So the whole emphasis and our whole orientation ought to be in testing the victim.

Now, you mentioned one case where maybe there is a medical benefit because

apparently medical knowledge now shows that, if a woman is pregnant and she is HIV positive, that by giving certain medications we may be able to prevent the disease from passing on to the child that she's carrying in her womb. So under those circumstances maybe there's some benefit in testing the defendant.

Certainly again you've got to test the victim and that's really what the key to the whole thing is, let's test the victim, but I think maybe you want to be guided -

SENATOR SALAND: Mr. President, will Senator Leichter yield to a question?

ACTING PRESIDENT KUHL: Senator Leichter, do you yield to a question from Senator Saland?

SENATOR LEICHTER: Yes.

ACTING PRESIDENT KUHL: Senator does.

SENATOR SALAND: Senator Leichter, in the course of our several debates prior to today, have you ever heard me say that the only person to be tested is the defendant, or did you ever hear me say that the victim should not be tested, because I think, Senator

Leichter, this bill is premised, if you had taken pains to read it, and regrettably my calendar today did not permit me to review it word by word, but it requires that the victim be counselled; it enables the victim to self-test. There can be no dealing with this issue, at least this much we can agree on, without testing of the victim and that service is provided for in here and, as I said earlier, what we're talking about is enabling people of their own volition to make choices, guided by people who have far more expertise than I believe anybody in this chamber does. Again, having been counselled by an appropriate counselor, to enable him or her to arrive at the course of treatment or as to whether to test even.

SENATOR LEICHTER: Senator, I've said twice now, which shows that I did read your bill, I've said twice that I like that part of your bill which encourages testing of the victim, and you've never said in all our debates we shouldn't test the victim.

The question though is, what do you gain by testing the defendant and that's what I'm addressing, and I gave you, in fact,

credit or at least gave you an example where maybe you could find some benefit in testing the defendant and that really came about just recently because we now think that we can possibly prevent or minimize the occurrence of AIDS or HIV virus in a fetus.

So, in those instances where - and I think that's really only where there would be the rape of a pregnant woman, and I'm not so sure that once the medical knowledge shows that where the fetus was conceived by somebody who had -- who was HIV positive that there may be an ability to stop the spread of the disease, I don't know if that's the case where somebody who is already pregnant is raped, but certainly where, as a result of a rape, the person becomes pregnant and wishes to carry the fetus to term, there may be some benefit by testing the defendant.

Obviously you again have to test the victim. But what you should do in those cases, Senator, is require a finding by the court that it is medically beneficial and that's the problem I have with that part of your bill which provides for the testing of somebody who

is charged with a crime but has not yet been convicted. In those instances, you need to have some tests for the court. You don't have that test. You try to read that test. You say, well, of course, the court is going to do that. I think you need a test both that is medically beneficial and there needs to be probably or there needs to be some probable cause conclusion by the court.

So my difficulty with this bill, Senator, is that I think this bill is a punitive bill. It's a bill that's written without regard to knowledge of what these sexually transmitted diseases are. If you want to put the focus on the victim, do that, put forth a bill that would be helpful, that would be of social benefit, that would assist people, but that's not really what you have done. You want to be punitive. I don't mind being punitive of people who have committed these serious crimes, but the punishment that we provide is time in jail, it's not taking their blood two years later, and particularly when you may actually end up misleading victims who think, well, they're going to be testing this person who committed

this crime against me, and that in some way will prevent my needing to be tested.

That's not the case, so, Senator, those of us who vote against the bill -- and there were a number of us -- do so not because we have any sympathy for people who commit these crimes, but we want to do something that really helps the victims, and your bill doesn't, and I think you had this bill before us in 1996, and I see that Senators Abate, Connor, Espada, Leichter, Markowitz, Mendez, Nanula, Paterson, Santiago, Seabrook, Smith and Goodman voted against the bill and similar bills that you've had in other years.

A large number of people have voted against solely and exclusively because it fails to really assist victims.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill? Hearing none, the Secretary will read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives.

The Chair recognizes Senator Abate, to explain her vote.

SENATOR ABATE: Yes, I'd like to explain my vote.

As last year, again this year I am voting against this bill. Like Senator Saland and like Senator Leichter and the other state Senators in the chamber, I too care about crime victims, but in the name of crime victims we can not offer them half a solution. What they want is for the justice system to convict individuals, to punish them, and in many cases incapacitate those individuals. This bill does not provide any real relief to crime victims.

I am basing my conclusion on the recommendations made by the Governor's AIDS Advisory Committee and also basing my opposition on recent conversations I've had with the State Coalition against Sexual Fault. This is a coalition that represents crime victims throughout the state.

What they want and what they say

is they would support, and I would support testing of defendants. Again these are individuals not convicted, if in fact that testing in individual circumstances provides a medical benefit to the crime victim.

What this bill is silent on is what we need for crime victims, and I'm hearing there too from crime victims around the state. They want PCR testing, and that is a testing which is viral testing which shows whether a victim has the virus. They do not want the current state of the art testing which is the elixir, and the elixir or the test that only tests for antibodies.

They also want prophylactic treatment on one and two hours of exposure. They want health and law enforcement statewide protocols to ensure that they get PCR testing and treatment immediately and they want mandatory counseling.

I look forward to working with Senator Saland that incorporates a bill with these provisions and that only for testing that provides medical benefit to the victim. I hope we can reach a compromise on this bill, and I'm

available to work with Senator Saland.

I vote no.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 649 are Senators Abate, Breslin, Connor, Goodman, Leichter, Markowitz, Montgomery, Paterson, Rosado, Sampson, Santiago, Seabrook, Smith and Waldon. Ayes 46, nays 14.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT KUHL: Yes, there is. If we may return to the order of motions and resolutions, the Chair would recognize Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Marchi, on page 45, I offer the following amendments to Calendar Number 257, Senate Print 2581-A, and I

ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

Senator Farley.

SENATOR FARLEY: Mr. President, on behalf of Senator Trunzo -- complicated motion here -- I wish to call up Calendar Number 337, Assembly Print 2997.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: Calendar Number 337, by member of the Assembly Vitaliano, Assembly Print 2997, an act to amend the Civil Service Law.

SENATOR FARLEY: I now move to reconsider the vote by which this Assembly bill was substituted for Senator Trunzo's bill, Senate Print Number 1947, on March 18, 1997.

ACTING PRESIDENT KUHL: I think the entire chamber is waiting to see if you get this right, Senator Farley.

SENATOR FARLEY: I'm getting it

right.

ACTING PRESIDENT KUHL: Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: I now move this Assembly Bill Number 2997 be committed to the Committee on Rules and that Senator Trunzo's Senate bill be restored to the order of Third Reading, Calendar Number 337.

You must act here and say it's in the affirmative. It's up to you now.

ACTING PRESIDENT KUHL: Thank you, Senator Farley, but we will commit the bill and restore the Senate bill to the Third Reading Calendar.

SENATOR FARLEY: You got it!

ACTING PRESIDENT KUHL: Thank you, Senator Farley.

SENATOR HOLLAND: Will you recognize Senator Nanula, please, Mr. President.

ACTING PRESIDENT KUHL: Senator Nanula.

SENATOR NANULA: Thank you, Mr. President.

I'd like to request unanimous consent to be recorded in the negative on Calendar Number 649.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Nanula will be recorded in the negative on Calendar Number 649.

Senator Holland.

SENATOR HOLLAND: I want to congratulate Senator Farley on that motion we had, and there being no further business, I move that we adjourn until Tuesday, May 13th, at 3:00 p.m.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Tuesday, May 13th, at 3:00 p.m.

(Whereupon, at 4:20 p.m., the Senate adjourned.)