NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 10, 2002

3:07 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order.

I ask everyone present to please rise and join me in reciting the Pledge of Allegiance to the Flag.

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

ACTING PRESIDENT MEIER: The invocation today will be given by Mathews Barnabas, Metropolitan of the American Diocese of the Malankara Orthodox Syrian Church.

METROPOLITAN BARNABAS: Let us pray.

Almighty and most merciful Lord from whom all thoughts of peace and truth proceed, kindle, we pray Thee, in the hearts of all peoples of the world the true love of peace.

Guide with Thy wisdom those who pay counsel to all nations of the earth, that they may learn to live as Your children in peace and harmony. Drive away from them all evil, hatred, and cruelty, that they may accommodate and accept one another, with charity to all

and malice to none.

And now, Lord, we commend to Thee all who are engaged in the government of New York State, the executive, the legislative, and the judiciary. Grant to them pure hearts, clean hands, and sober minds, and unfailing devotion to duty.

O, Lord, use them as instruments of Thy will for the uplift of the poor, the relief of the oppressed, and the eradication of all social evils.

And finally, Lord, we beseech Thee to give them Thy grace to think, to speak, and to do everything for Your glory and the good of Thy people whom they represent.

We ask all this for Your glory, amen. God bless America.

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, June 9, the Senate met pursuant to adjournment. The Journal of Saturday, June 8, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MEIER: Without

objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator McGee.

SENATOR McGEE: Thank you, Mr. President. I wish to call up, on behalf of Senator Leibell, Print Number 7441, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 1279, by Senator Leibell, Senate Print 7441, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT MEIER: Senator McGee.

SENATOR McGEE: Mr. President, I now move to reconsider the vote by which this

bill was passed.

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 41.

SENATOR McGEE: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MEIER: The amendments are received and adopted.

Senator McGee.

SENATOR McGEE: Mr. President, on behalf of Senator Volker, I wish to call up his bill, Print Number 6663A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 1045, by Senator Volker, Senate Print 6663A, an act to amend the Highway Law.

ACTING PRESIDENT MEIER: Senator McGee.

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

ACTING PRESIDENT MEIER: Call the

roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 41.

ACTING PRESIDENT MEIER: Senator McGee.

SENATOR McGEE: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MEIER: The amendments are received and adopted.

SENATOR McGEE: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Thank you, Senator McGee.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

Amendments are offered to the following Third Reading Calendar bills:

Senator Leibell, page 8, Calendar Number 149, Senate Print Number 5082A;

For Senator Padavan, page number 12, Calendar Number 291, Senate Print Number 4748;

For Senator Larkin, on page number 29, Calendar Number 680, Senate Print Number

4137A;

For Senator Morahan, on page number 38, Calendar Number 840, Senate Print Number 6182C;

For Senator Marcellino, on page 40, Calendar Number 901, Senate Print Number 6947;

For Senator Seward, on page 44, Calendar Number 941, Senate Print Number 5524A;

For Senator Hoffmann, page number 44, Calendar Number 949, Senate Print Number 6913;

For Senator Lack, page number 46, Calendar Number 989, Senate Print Number 5669A;

For Senator Skelos, on page 49, Calendar Number 1029, Senate Print Number 7153A;

For Senator Seward, page number 55, Calendar Number 1123, Senate Print Number 2400A;

For Senator Leibell, page number 56, Calendar Number 1126, Senate Print Number 3252;

For Senator DeFrancisco, page

number 62, Calendar Number 1257, Senate Print Number 7414A;

For Senator Lack, page number 59, Calendar Number 1170, Senate Print Number 4090.

And, Mr. President, I now move that these bills retain their place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received and adopted, and the bills will retain their place on the Third Reading Calendar.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator Velella, on page number 16 I offer the following amendments to Calendar Number 371, Senate Print Number 3663, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: Mr.

President, on behalf of Senator Volker, I move for the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Print Number 3432.

ACTING PRESIDENT MEIER: So ordered.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Wright, I wish to call up Senate Print Number 6136, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 570, by Senator Wright, Senate Print 6136, an act in relation to fire protection.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MEIER: The amendments are received and adopted.

Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, on behalf of Senator Brown, I wish to call up his bill, Print 5780, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 1289, by Senator Brown, Senate Print 5780, an act to amend the Highway Law.

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

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

SENATOR STACHOWSKI: Mr.

President, I now offer the following amendments.

ACTING PRESIDENT MEIER: The amendments are received and adopted.

SENATOR STACHOWSKI: Thank you.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: If we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT MEIER: The Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 16, by Senator Seward, Senate Print 4641C, an act to amend the Insurance Law, in relation to accounting of certain assets.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 12. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 224, by Senator Larkin, Senate Print 2656B, an act to amend the General Municipal Law, in relation to the operation of games of chance.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 307, by Senator Wright, Senate Print 807, an act to amend the Real Property Tax Law, in relation to the taxation of certain state lands.

ACTING PRESIDENT MEIER: Read the last section.

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

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 330, by Senator Trunzo, Senate Print 5027A, an act to amend the Public Authorities Law, in

relation to extending the limitation.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 537, by Senator Morahan, Senate Print 1116A, an act to amend the Agriculture and Markets Law, in relation to exempting therapy dogs from licensing fees.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 586, by Senator Saland, Senate Print 6748A, an act creating the Hudson Area Public Library.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 607, by Senator Volker -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 627, by the Assembly Committee on Rules, Assembly Print Number 8735, an act to amend the Economic Development Law, in relation to

the provision of entrepreneurial assistance.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 665, by Senator Maziarz, Senate Print 6877A, an act to amend Chapter 433 of the Laws of 1997 amending the Public Health Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Mr.

President. To explain my vote.

ACTING PRESIDENT MEIER: Senator Duane, to explain his vote.

SENATOR DUANE: I just -- you know, I always have a problem when we renew a law so that we can extend the demonstration program. We keep extending demonstration programs around here, but we never really find out what those programs have actually demonstrated.

So I'm hoping that this will be the last time we have to extend this and once and for all do what the law previously had called for, and that's to get a report on what the demonstration had shown for portable x-rays for people who are entitled to Medicaid.

So, you know, I've been here for - this is the -- coming down on the end of my fourth year. And, you know, rarely if ever have I ever seen a demonstration law actually end up with results. We only ever continue to extend the demonstrations. So I wish we could get our acts together and just make sure that the -- whatever agency is supposed to give us a report gives us the report.

But I'll be voting yes on this one, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 748, by Senator Kuhl, Senate Print 4154A, an act to amend the Education Law, in relation to the provision of school health services.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 18. This act shall take effect on the first day of September.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 766, by the Assembly Committee on Rules,

Assembly Print Number 11254, an act to amend the Environmental Conservation Law, in relation to marine resources management.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 832, by Senator Libous, Senate Print 7284, an act to amend the County Law, in relation to the assigned counsel representation.

ACTING PRESIDENT MEIER: Read the last section.

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

SENATOR PATERSON: Mr. President, this is Calendar Number 832, isn't it?

ACTING PRESIDENT MEIER: Yes, it

is, Senator.

SENATOR PATERSON: Would you lay that aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 953, by Senator DeFrancisco, Senate Print 6498, an act to amend the Real Property Tax Law, in relation to establishing a permanent exemption.

SENATOR LIZ KRUEGER: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1028, by Senator Meier, Senate Print 7152, an act to amend the General Municipal Law, in relation to allowing certain shared purchasing.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1046, by Senator Trunzo, Senate Print 6813, an act to amend the Vehicle and Traffic Law, in relation to violations of vehicle weight.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1054, by Senator Padavan, Senate Print 2712, an act to amend the State Administrative Procedure Act, in relation to denial, suspension and revocation.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2 -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1059, by Senator Wright, Senate Print 6937, an act to amend the Executive Law, in relation to the research development program.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1099, by Senator Marchi, Senate Print 3833, an act to amend the Navigation Law, in relation to speed at Crooke's Point in Great Kills Harbor.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1100, by Senator DeFrancisco, Senate Print 4240A, an act to amend the Navigation Law, in relation to vessel equipment.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1171, by Senator Alesi, Senate Print 3391A, an

act to amend the Banking Law, in relation to restricting the parties.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1251, by Senator Meier, Senate Print 7135B, an act to amend the Social Services Law, in relation to application for the food stamp program.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1298, by Senator Saland, Senate Print 7419, an act to amend the Criminal Procedure Law, the Family Court Act, the Penal Law and the Public Health Law, in relation to testing.

ACTING PRESIDENT MEIER: Read the last section.

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

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

Senator Skelos, that completes the noncontroversial reading of the calendar.

SENATOR SKELOS: Mr. President, if we could go to the controversial reading of the calendar at this time.

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

THE SECRETARY: On page 10, Calendar Number 224, by Senator Larkin, Senate

Print 2656B, an act to amend the General Municipal Law, in relation to the operation of games of chance.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT MEIER: Senator Larkin, Senator Dollinger has requested an explanation of Calendar 224.

SENATOR LARKIN: Richard, this is a bill we've had before in this house. And we've worked out the differences between the Governor's office, the Assembly, and ourself.

This bill permits games of chance to be conducted by licensed, non-for-profit organizations, such as our volunteer fire and ambulance, no more than three times a year at a private catering or restaurant.

The basis for this was in discussion with the volunteer firemen and ambulance units across the state. One of the biggest problems in our rural areas, as you know, is they do not hold title to a facility large enough so that they can meet their obligations, pay off their debts, and meet the requirements of OSHA and everybody else.

The numbers that we're using were those that were negotiated on a three-way negotiation.

At one time this year there was an objection by the City of New York. They have withdrawn that because in there we have eliminated New York City at the request of the city. So this only pertains to those units outside of New York City.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to a question, Mr. President?

ACTING PRESIDENT MEIER: Senator Larkin, do you yield for a question?

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: My concern with this bill, Senator Larkin, is that what we will do is establish, in essence, not-for-profit gambling centers, that there will be halls that will engage in not-for-profit gaming every night of the week

or every weekend of the year around the clock.

Is there anything in this bill that prevents that from happening?

SENATOR LARKIN: Yes, Richard.

SENATOR DOLLINGER: And could you point me to that language?

SENATOR LARKIN: Well, first of all, in the language there they cannot have more than 12 in a given year, that respective catering house or restaurant.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MEIER: Senator Larkin, do you continue to yield?

SENATOR LARKIN: Yes, Richard.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: And I hate to be picayune, but could you just tell me where that language is in the bill so I can reference that?

SENATOR LARKIN: Section 7, line 50.

SENATOR DOLLINGER: Through you,

Mr. President, what line number was that again?

ACTING PRESIDENT MEIER: Line 50.

SENATOR DOLLINGER: Section 7, line 50.

SENATOR LARKIN: Section 7, Richard. Richard (indicating).

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

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I appreciate the sponsor extending me not only the courtesy of an answer, but extending the courtesy of pointing out the line. I haven't had that happen before, but I appreciate it.

Mr. President, I'm going to still vote against this bill. I think that the effect of an increased concentration of gaming activities even under the banner of not-for-profit activities is not a good idea. I continue to think that as we create a greater and greater chance that there will be more halls that become identified as places where gaming, even for not-for-profit

purposes, can occur, I think that concentration is unwarranted.

It seems to me that we continue to move down this path toward encouraging people to raise money not just for not-for-profits, but Lord knows we've now encouraged people to raise money for the State of New York - supposedly, someday billions of dollars through gaming.

I continue to think this is a bad idea. I think encouraging it, increasing it, feeding the beast of gaming in this state is not the right thing to do. This may be a somewhat benign step down that road, but it's not even an itsy-bitsy, teeny-weeny step that I want to take, Mr. President. I'll vote no.

ACTING PRESIDENT MEIER: Does any other Senator wish to be heard on the bill?

Debate is closed.

Read the last section.

THE SECRETARY: Section 10. This act shall take effect on the 180th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 224 are Senators Dollinger, Duane, L. Krueger, and Padavan. Ayes, 51. Nays, 4.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 307, by Senator Wright, Senate Print 807, an act to amend the Real Property Tax Law, in relation to the taxation of certain state lands.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Wright, Senator Paterson has requested an explanation of Calendar 307.

SENATOR WRIGHT: Thank you, Mr. President.

The bill provides for an amendment to the Real Property Tax Law that would require for the payment of taxations to the Town of Parish in the County of Oswego on state-owned conservation land.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Through you,

Mr. President, if the sponsor will yield to a question.

ACTING PRESIDENT MEIER: Senator Wright, do you yield to a question from Senator Dollinger?

SENATOR WRIGHT: I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: I know we debated this bill partly last year, Senator Wright. And maybe you could just refresh my recollection. Approximately -

SENATOR WRIGHT: Would you like me to read the debate verbatim to refresh your memory?

(Laughter.)

SENATOR DOLLINGER: Through you, Mr. President, I haven't refreshed my recollection with the debate from last year.

But the question I have is about the Town of Parish. What percentage of the real property tax base is actually covered by the reforestation tax exemption?

SENATOR WRIGHT: Ten percent.

SENATOR DOLLINGER: Ten percent.

Just briefly on the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Senator Wright and I, I think perhaps with Senator Paterson, debated this bill at some length last year.

The concern I have about this bill, the reason why I voted against it and I'm going to continue to vote against it this year, is that I think we're dealing in a hodgepodge, happenstance manner with the issue of what happens when there are significant properties located in communities that are tax-exempt.

Senator Wright's point is perhaps well-taken with respect to the Town of Parish. But as the President knows, and I'm sure everybody else knows, in our major cities like the city of Rochester there are enormous tax-exempt properties. A major portion, a growing portion of the properties in these communities are consumed by educational

institutions, philanthropic institutions, and health care institutions, none of which pay real property taxes, putting a further drain on municipal resources.

It seems to me that the way to do this is to adopt a policy that would be applicable statewide that would say when the percentage of real property tax exemption becomes -- say the Town of Parish, if it exceeds 10 percent, if the not-for-profit and tax-exempt property exceeds 10 percent of the tax base, then there is an adjustment made or additional payments or something done to shield the municipality from the extra cost.

I know in the community I represent, I believe in the city of Rochester the number is about 35 percent of the real property tax base is exempt from taxation because it meets tax-exempt status. It seems to me that that's something we should do across the board rather than just doing it for the Town of Parish.

I voted against it before. I do because I think it's unfair to do it piecemeal. I would strongly support a bill

that would adjust, for communities across the state when they reach a certain percentage, let's give them some additional form of relief.

That might be something conveniently to include in a bill that would deal with the partial property tax exemptions, so that we could end the troubling the Senate for the 20 bills that we've done this year that involve partial property tax exemptions, all of which stem from Nassau County.

Mr. President, let's do a real property cleanup tax bill. We could do the partial tax bill, the partial property exemption, and we could also do an emergency aid or a special funding when certain communities exceed a fixed percentage of their real property tax base. Until we do that complete cleanup bill, I'll continue to vote no.

ACTING PRESIDENT MEIER: Does any other Senator wish to be heard on the bill?

The debate is closed, then.

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 307 are Senators Connor, Dollinger, Gentile, Hevesi, Paterson, A. Smith, and Stavisky. Ayes, 49. Nays, 7.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 607, by Senator Volker, Senate Print 2305A, an act to amend Penal Law, in relation to assaults against transit employees.

SENATOR HEVESI: Explanation.

ACTING PRESIDENT MEIER: Senator Volker, Senator Hevesi has requested an explanation of Calendar 607.

SENATOR VOLKER: Mr. President, I regret, Senator Hevesi, that you won't be here next year. But I -- anticipating that, I have tried to make sure that this bill passes this year.

So that I have reached over to the

Assembly and had some discussions with them. And this bill, if you'll notice, has been amended. And actually I have a different sponsor than I had last year. Roger Green is the sponsor. I've had discussions with the Assembly.

And not only does this bill now amend the law to raise the penalty for assaults against bus operators, bus dispatchers, and so forth -- in other words, transit employees -- and provide that it's a second degree assault, which means it's a Class D felony, but it also provides, as requested by the Assembly, that signs be posted in conspicuous places on the public transportation vehicles and so forth, and sets up the lettering to point out that an attack on any transit employee is a serious offense, a felony, and would subject a person to the possibility of seven years in jail.

And the concept that the Assembly asked for, they believe that this would help maybe to protect some of the people who are on the transit facilities and so forth.

So that's the difference in this

bill from last year, which I remind you passed 55 to 2 last year.

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Just briefly. I don't want to rehash the debate we had last year.

I'm surprised to hear that -- and I'll just infer from what Senator Volker said that it's possible that the Assembly failed to pass this bill two years in a row because there was not a provision regarding the posting of the potential penalty.

I thought that the Assembly shared my concerns with the problem with this bill, which evidently they don't, and which remain primarily that we are taking a Class A misdemeanor and increasing it to a D felony, not an E felony, and affording individuals protections that I don't know why it's justified. It's certainly justified for

police officers and peace officers and what have you, but not for all categories of transit workers.

And just again, briefly, I gave the example of this last time when we debated it. If this bill passed into law the following scenario could happen. I'm assaulted and am injured badly. My assailant can face only, under current law, a maximum of up to a year in jail. But if a sweeper on the subway in New York City is assaulted, his assailant can get up to seven years in jail. I don't understand it.

What we should do -- and I think Senator Volker agreed to it, but there are other problems from doing this -- is to raise second-degree assault to a Class E felony for everybody, and that way you don't have the disparity where you're now providing additional penalties -- not for emergency service workers, who I think we all agree need the additional penalties -- but you're not taking transit workers, who I don't believe are any more likely to be assaulted.

And I know that the unions want it,

and I know nobody wants to go against the unions because there could be retribution there. But I see no reason why because individuals who work for the transit authority or are in transit-related positions who are in contact with the public quite a bit are more likely to be assaulted as a consequence of their job.

And just as a matter of equity, I think this is a bad idea. So I'm going to continue to vote no. No disrespect, Mr. President, intended to the hardworking men and women who work on buses and what have you. And I know that they are assaulted sometimes. So are people who are not transit workers and who are not emergency service workers.

And for those who are emergency service workers, we have the protection. For other individuals, I agree an A misdemeanor is insufficient. But the way to remedy that is not to take one class of people and give them much greater protection than anybody else even when they don't really deserve it. It's to give everybody else a greater protection by providing an E felony for a second-degree

assault.

I'll be voting no.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: Mr. Chairman, if the sponsor would yield to one question.

ACTING PRESIDENT MEIER: Senator Volker, do you yield for a question?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STAVISKY: Mr. Chairman, my question is this. Are there restrictions to the time and place -- or not the time, but the place of the assault?

In other words, let's say a transit worker were not doing the performance of his or her job and were assaulted. Would this apply?

SENATOR VOLKER: Senator, I think the answer to that is it's a question of fact.

But I think you're right, that this would have to be in the importance, obviously, of their duties. Because the reason for the protection is -- and I guess I would only

disagree with what Senator Hevesi said, is that there is a lot of studies that have been done on transit employee assaults, which are extremely high, particularly in New York City and in Buffalo.

But the answer is that they would have to be related to what they're doing. Because quite clearly, if you're going to designate a group, the fact that they were assaulted, for instance, in their own home would have no relation to the transit authorities.

SENATOR STAVISKY: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Stavisky, on the bill.

SENATOR STAVISKY: I recall reading in the newspaper about, oh, maybe a month ago, or within the past month, that two transit employees, two women transit employees in the city of New York were indeed assaulted.

This is a very serious problem. It's hard enough to drive a city bus, for example. And they certainly should be afforded all of the protection that the law

provides. And I certainly will be supporting Senator Volker's bill.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the bill?

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Hevesi recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 832, by Senator Libous, Senate Print 7284, an act to amend the County Law, in relation to the assigned counsel representation.

SENATOR PATERSON: Explanation.

SENATOR MORAHAN: Lay it aside for the day, please.

ACTING PRESIDENT MEIER: Lay the

bill aside for the day.

THE SECRETARY: Calendar Number 953, by Senator DeFrancisco, Senate Print 6498, an act to amend the Real Property Tax Law, in relation to establishing a permanent exemption.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR LIZ KRUEGER: Explanation.

ACTING PRESIDENT MEIER: Senator DeFrancisco, Senator Liz Krueger has requested an explanation.

SENATOR DeFRANCISCO: Presently there's a provision of the law that allows for individuals to increase the value of their property by making improvements while not being taxed for the cost of those improvements. The problem with that bill is that the tax exemption for the improvements, I believe it's up to $80,000, phases out after seven years.

In discussions with housing groups in Syracuse, Assemblywoman Christensen and myself prepared this bill that would allow for

a lesser exemption for improvements up to $40,000, rather than $80,000, but allow the property to be exempt during the entire ownership of the property for that improvement, up to $40,000.

And the purpose is obviously to improve the housing stock in our area and in urban areas.

SENATOR LIZ KRUEGER: Mr. President.

ACTING PRESIDENT MEIER: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. If the sponsor will yield to a question.

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

How is this publicized, Senator DeFrancisco? How do people know about this option in different communities?

SENATOR DeFRANCISCO: The same way they know about any other law. They either read about it being passed, they are told by their representatives in mailings or

in brochures, or they learn from housing groups that this particular option is available.

But on the other hand, it doesn't become available unless it's passed.

SENATOR LIZ KRUEGER: Okay, thank you.

If the sponsor would continue to yield, Mr. President, through you.

ACTING PRESIDENT MEIER: Senator DeFrancisco, do you yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

Since you mention there's an existing law that allows for $80,000 up to seven years, is this an alternative to -

SENATOR DeFRANCISCO: Yes.

SENATOR LIZ KRUEGER: -- or a replacement for?

SENATOR DeFRANCISCO: No, this would be an alternative.

It's a smaller exemption, but a lot of low-income individuals who are trying to

cling on to their home and make improvements most likely will keep their home for a much longer period of time. It's not to flip the piece of property over.

And the concept here is for individuals that own a home that's -- and they're low-income individuals, they don't have to have a big tax kick-up for that, up to $40,000 as long as they hold that home.

SENATOR LIZ KRUEGER: Mr. President, if the sponsor would continue to yield to an additional question.

ACTING PRESIDENT MEIER: Senator DeFrancisco, do you continue to yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you, Senator.

I was fascinated by this bill, and I was not familiar with this model. So now they would have an alternative, they could choose whichever locality.

Could a locality say yes to me and no to you under the same circumstances once

the locality had taken this option?

SENATOR DeFRANCISCO: Well, first, the locality has to say yes to the option in the first place.

SENATOR LIZ KRUEGER: Right.

SENATOR DeFRANCISCO: And I would think that if they -- well, I know that if they accept the option and pass it with a local ordinance, unless they want to get sued, they have to make it applicable to all people that are covered by the bill.

SENATOR LIZ KRUEGER: Thank you.

If the sponsor would continue to yield, through you, Mr. President.

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

Senator DeFrancisco, why does it apply only to single-family homes as opposed to any residence in a community?

SENATOR DeFRANCISCO: Well, you know, you can modify a bill any way you choose. But what we're mostly concerned about is owner-occupied properties, rather than

multiple residence. Multiple residence, at least in our area, even two-family homes, are mostly owned by absentee landlords or landlords that are not living in the property.

And as a result, we're trying to get this benefit not so somebody can make money but, on the other hand, for people who are residing in their home to improve it and improve the quality of housing in the city.

SENATOR LIZ KRUEGER: I'm sorry. Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MEIER: Does the sponsor yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT MEIER: He yields.

SENATOR LIZ KRUEGER: Thank you.

There seems to be -- in Section 6 of the bill, it allowed for the sponsor to, it seemed, pass along the right for the spouse to stay in the home while they went off to a separate residence. Is it your understanding that I could conceivably have two homes under this tax deduction scenario?

SENATOR DeFRANCISCO: Let me read the section. One second.

ACTING PRESIDENT MEIER: Just a second, Senator DeFrancisco.

Can we have some quiet, please. Senator DeFrancisco has the floor.

SENATOR DeFRANCISCO: Well, once again, the exemption is for people so that they -- individuals who decide to hold their home. I mean, to keep the home. And it ceases once the home is sold.

But that's -- this provision is to accommodate for if one of the two, a husband and wife, one of them has to go to a nursing home or one of them cannot reside there any longer. Say the woman had the exemption, she owned the property. She goes into a nursing home. It allows for the woman to transfer to her husband the property and still maintain this exemption.

So the rule is basically that once you sell it, the exemption is over, the new person has to pay at the higher value. But to accommodate a husband-and-wife situation where one is no longer able to live in the

residence, that provision was put in.

SENATOR LIZ KRUEGER: Mr. President, if the sponsor would yield to one final question.

ACTING PRESIDENT MEIER: Senator DeFrancisco, do you yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT MEIER: He yields.

SENATOR LIZ KRUEGER: Thank you, Senator.

Why does the bill apply only to localities of below a million people?

SENATOR DeFRANCISCO: Well, the existing law that I talked about before about an exemption over a period of seven years, up to $80,000, that also applied to locations other than a million people.

There's a whole series of other benefits that are particular to New York City that are in the law. But I just modeled this bill over the -- after the last one.

SENATOR LIZ KRUEGER: Thank you.

Mr. President, if I could just speak on the bill.

ACTING PRESIDENT MEIER: Senator Krueger, on the bill.

SENATOR DeFRANCISCO: Excuse me; I just thought of this. $40,000 probably wouldn't buy much in New York City.

SENATOR LIZ KRUEGER: That's true, it doesn't.

SENATOR DeFRANCISCO: Just kidding.

SENATOR LIZ KRUEGER: No, no, I think it's accurate. You're right, it doesn't.

I was fascinated by the bill, and I think that while on the one hand there are some concerns of localities of giving up their property tax money depending on how widely this option might be chosen by people, Senator DeFrancisco did clarify for me another concern that I had that it would be used with selection by a locality; that if they liked Candidate One who applied for it, they could give it to them as a tax deduction, and if they didn't like Candidate Two, they could refuse that. So I appreciate the clarification.

I think, overall, giving localities the option to make their own decisions about how they use their flexibility over property tax to encourage expansion and redevelopment and I guess improvement in their housing stock is a good model. And I will vote for this bill.

I wish that we would imagine expanding this to include other than single-family owners. Because in fact, as the housing market continues to tighten for people throughout the state of New York, not only in my own city -- certainly in Long Island we hear frequently about the problems of overcrowding and inadequate housing arrangements -- that we would allow the same options for localities, whether it be in property tax reductions or in zoning ordinances and changes, to address the issue of multifamily housing models as well as single-family houses.

I think that my one concern with this bill is that it continues a pattern of inequity in the state of New York between how we treat single-family houses and how we treat

multifamily dwellings. I understood the Senator's point that we don't want this to be an option for people who are, say, absentee landlords or simply people who are in the real estate business.

But, in fact, in multifamily dwellings you often have someone who's an owner trying to assure that they can both get a return on their property investment in order to continue to afford their own housing and also be able to assure additional housing in their community.

So I wish that I could recommend that in the next incarnation of this bill that it's amended to include multifamily housing as well.

And I would argue also that I think that we should make this statewide, since it is local option. And there's probably good arguments why the City of New York might not be interested in going down this road. I don't see why the State of New York should pass a bill that would limit the City of New York's option to do this.

So with the recommendations that

sometime we might explore expanding to multifamily as well as single-family, and including the City of New York, I will vote for this bill, and I thank you for the clarification, Senator.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the bill?

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Duane, to explain his vote.

SENATOR DUANE: Thank you, Mr. President.

I'm going to vote in favor of this bill. But I do also want to make the point of how important it would be for the City of New York for us to be able to extend a tax credit for people who are fixing up their landmark buildings. That would do a great deal to help

beautify our neighborhoods in a time like this. Particularly when New York City needs more visitors, our historic districts are perhaps our greatest attraction.

So I'm hoping that before the end of this session we will see that legislation come to the floor.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Duane will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I would request unanimous consent to be recorded in the negative on Calendar 224, Senate 2656B.

ACTING PRESIDENT MEIER: Without objection, Senator Schneiderman will be recorded in the negative on Calendar 224.

The Secretary will continue to read.

THE SECRETARY: Calendar Number

1054, by Senator Padavan, Senate Print 2712, an act to amend the State Administrative Procedure Act, in relation to denial, suspension and revocation of a license.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Padavan, Senator Paterson has requested an explanation of Calendar 1054.

SENATOR PADAVAN: Thank you, Senator Paterson.

The employing of individuals by licensed entities in the State of New York who are not authorized to work in this country is and can be a serious problem.

I believe, and I'm sure you agree, that a license issued by our state to any entity, of which there are many, is a serious issue. And a person who applies for that license should be in compliance with all federal and state laws. To issue a license to someone who is not I think is patently wrong.

This bill prevents the issuance of a license to someone, some entity that has violated federal law, specifically the Federal Immigration Reform and Control Act of 1986, on

two or more separate occasions. At that point, an administrative procedure would take place and that state agency which issues the license has the opportunity of suspending or revoking the license.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Padavan would yield for a couple of questions.

ACTING PRESIDENT MEIER: Senator Padavan, do you yield for a question?

SENATOR PADAVAN: A couple? That's two. And I'd be delighted.

ACTING PRESIDENT MEIER: The sponsor is delighted and yields.

SENATOR PATERSON: Well, Mr. President, I chose the number two because I was wondering why Senator Paterson chose two violations, being that -- the volume of individuals that come through the system.

And often in these situations people come to our country, they want very much to work. Sometimes the people who are using the documents are not the actual people.

In other words, they're using aliases. Other times, the documents themselves are sometimes fraudulent.

Isn't it a rather severe encumbrance on the employer to weed through - I think most of the time most employers can do it. But this is a tremendous number of applications that they look at and people that come through there. And this is a rampant problem. You've identified a problem, Senator.

I'm just asking you if two violations should be the threshold. And if not a specific number, perhaps a pattern and a practice of conduct.

SENATOR PADAVAN: Keep in mind, Senator, the federal statute that we're referring to has no such threshold. Either you violate it or you don't. And the hiring of illegal aliens and the continuation of employment of illegal aliens is in violation of federal law.

We are being somewhat pliable, in a sense, by allowing an employer at least that first mistake. And should it occur again,

then we feel the license should be put in jeopardy.

Also keep in mind, we don't mandate that the license be revoked. We provide an opportunity for the state agency to consider that possibility.

First question. Second one coming.

SENATOR PATERSON: Mr. President, I think that I'm going to grant Senator Padavan a reprieve. One question ought to do it. And I'll speak on the bill. Anxious as he may be, though, to answer another question.

I was not aware that the federal standard doesn't even require for there to be two violations. I think the reason I raised this objection is just that I hope that there won't be a chilling effect on the part of employers where people are really denied the opportunity to work because of the fear that the employer would have about running a violation of the Federal Immigration Act.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the bill?

Debate is closed, then.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1054 are Senators Duane, Mendez, Paterson, and Schneiderman. Ayes, 52. Nays, 4.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Smith.

SENATOR MALCOLM SMITH: Yes, Mr. President. I request unanimous consent to be recorded in the negative on Calendar Number 224, Senate Print 2656B.

ACTING PRESIDENT MEIER: Without objection, Senator Malcolm Smith will be recorded in the negative on Calendar Number 224.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 1298, by Senator Saland, Senate Print 7419, an

act to amend the Criminal Procedure Law, the Family Court Act, the Penal Law and the Public Health Law.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT MEIER: Senator Saland, Senator Duane has requested an explanation of Calendar 1298.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, some of us may recall in 1995, as part of the then budget agreement, we provided that, postconviction, the victim of an assault or sexual assault, more properly, would have the ability to make application for and in turn require his or her assailant to be HIV-tested.

This chamber, both prior to that date and since that date, has proposed and passed legislation in this house to expand that right of a victim to include preconviction testing and to expand it to all sexually transmissible diseases, or certainly a number of enumerated sexually transmitted diseases.

What this bill would do would be to say that a victim of a sexual assault would effectively be empowered, by way of his or her choice, to request, by way of application of a court, to have his or her assailant tested for a sexually transmissible disease where in fact there had been an indictment or some accusatory instrument, that indictment or accusatory instrument effectively providing the threshold of reasonable cause to permit the state to have an interest in a preconviction testing.

What this bill would do would be to expand the number of crimes for which such testing could occur. The bill would require state funding for the testing.

The bill would require that, as part and parcel of any application that might be made by a victim, that that application provide that the applicant had been advised of -- and here I'm reading from the bill at page 4 -- "the limitations on the information to be obtained through a blood test on the proposed subject: current scientific assessments of the risk of transmission of a

disease from the exposure he or she may have experienced; the need for the applicant to undergo testing to definitely determine his or her status with regard to any disease; and the availability of prompt, readily accessible and scientifically recognized laboratory testing of the applicant, including, where appropriate, polymerase chain reaction (PCR), or other advanced testing technologies for the diagnosis of transmissible disease at state expense."

What originally brought me to this subject a number of years ago was reported instances in which defendants refused to permit themselves to be tested; in fact, using a refusal to be tested as a means to try and derive a better plea bargain.

Some of you may recall as recently as -- I believe it was April 30th of this year, an editorial by the Daily News entitled "Raped Again, By the Law." And that particular editorial goes on at some length to describe a situation involving a woman in the city of New York who had been the victim of a sexual assault who in fact has undergone a

number of tests and who, and I'm quoting here, at a press conference with the New York State Federation of Taxi Drivers stated: "As a precaution, I have to take four different medicines to help protect against HIV, chlamydia, herpes, and other sexually transmissible diseases. And I was told that unless this guy volunteers for the test, I had to wait until he was convicted."

"Stating the obvious" -- and here I'm quoting from the editorial -- "obvious to all but the criminal justice system in Albany, she added, 'If you are assaulted, you should have the right to know whether or not this person has infected you with anything.'"

We have worked to provide a bill which I believe is balanced, which reflects the current state of the law, recognizing that both state and federal courts have recognized the right to preconviction testing.

I have worked very closely with Senator Velella, having a number of meetings with him with regard to this measure, and I've greatly appreciated his assistance in helping to put this together.

ACTING PRESIDENT MEIER: Senator Duane.

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

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: I'm not going to debate the sponsor on this bill, because I don't really want to indicate that this bill is in any way helpful or in fact worthy of debate.

Mandatory testing of defendants has not and never will be the answer. Of course I agree that victims of crimes, if they wish to be tested, should be allowed to, at no cost to them and should be -- the cost of the test should be paid for by the state.

I also think that counseling and mental health services should be provided at no cost to the victim, and also to their spouses and to their domestic partners.

But testing defendants -- and remember, this bill also includes juveniles. This isn't just adults, this is also juveniles -- is wrong and ineffective. Now,

remember, this tests defendants. Not those who have been convicted, but defendants. And, as I say, it includes juvenile defendants.

Now, I know that some would say that certain sex crimes should demand this kind of testing of defendants. I disagree with that. But this bill goes even further than that. This bill includes crimes of aggravated assault and harassment, harassment in the second degree. I don't understand why harassment is -- a defendant accused of the crime of harassment should be mandatorily tested for HIV.

Also -- also, this bill is also a backhanded way of testing inmates people who are incarcerated. The bill includes aggravated harassment of an employee by an inmate.

So rather than making it a bill which is about mandatory testing of people who are incarcerated, this bill -- because, you know, aggravated harassment in a correctional facility is like if you push someone. And even at that, people are charged with aggravated assault in facilities without

anything actually happening. But even if there was an inmate pushing a correctional officer, this subjects them to mandatory testing.

This also subjects juveniles in juvenile facilities -- this bill also includes mandatory testing of defendants in juvenile facilities who might be accused of pushing one of the people who works in that facility. I don't understand what would necessitate giving an HIV test to a juvenile who may have gotten into an altercation in a juvenile facility.

You know, the shocking thing here is that, you know, I've been here for four years. I really think what I need to do is to have a class that we'll call HIV 101, and I'll invite everybody to come -- my colleagues, their staff members.

Because again, you know, this is another -- this is one of those bills this could be like a feces and urine bill. Remember feces and urine day here in the State Senate? We have that every year, where, you know, mentally ill, incarcerated people -- who probably shouldn't be incarcerated, because

they are mentally ill -- but if they throw feces or urine, you know, they get punished even more.

Mentally ill inmates who are actually in the psych ward of a correctional facility, if they throw feces and urine, they get a bigger punishment, even though they're already in a mental health facility. Which proves how absurd our positions are in this body on the criminal justice system.

But this just, you know -- because remember, aggravated assault is throwing feces and urine. Which, while, you know, disgusting, is not a way that AIDS is spread. In fact, I would urge my colleagues to look at our own -- the state's Department of Health regulation on what it is that causes significant risk of contracting HIV, which does not include exposure to urine, feces, sputum, nasal secretions, saliva, sweat, tears, vomit, et cetera.

So, you know, if you had a juvenile who was in a juvenile facility who threw feces and urine or if you had a mentally ill person in an adult prison or a youth prison who did

that, then they would be charged with, because of what we do here, aggravated harassment. And thereby, they would be forced to have an HIV test.

Now remember, testing a person who commits a crime of any sort does not in any way make it -- or it is not proof-positive by any sense of the word that the person who is assaulted will become HIV-positive. And certainly if someone has feces or urine or if -- you know, if a juvenile spits at one of the people who's working in a juvenile facility, they could be charged for harassment or assault and be subjected to a test, even though you don't get HIV from being spit at. I mean, it's unpleasant, it's nasty, but it's not how HIV is spread.

So I know that there are people here who disagree about mandatory testing of defendants in sexual assault. And, you know, I disagree with that. But I understand why people might think that. But to mandatorily test a kid who spits at someone? Ridiculous. Completely and totally and utterly absurd.

So, you know, maybe there's a bill

here which you know people who disagree with me could in good conscience vote for. But this bill is not that bill. And again, I'm constantly frustrated; you know, people throw around, you know, criminalizing people with HIV very lightly in this body.

And the other thing that people do in this body is assuming that people who are in like juvenile facilities have HIV as compared to someone who lives down the block from you.

I mean, if we're going the way of mandatorily testing people here and there and everywhere, for whatever reason we can slip them in, well, let's do what they do in Cuba and just test everybody. When you go to the doctor, everybody get tested. But then let's do that, and let's not just test certain segments of the population because they're a captive audience for it.

And let's not let this -- you know, this is the New York State Senate. I still, I cannot believe that people are so stupid that they think that you can get AIDS from being spit at.

You know, last year we had a bill about you could get AIDS by, you know, having sex in a taxicab, and everybody voted for it.

SENATOR SALAND: Mr. President. Mr. President, would Senator Duane yield to a question?

ACTING PRESIDENT MEIER: Senator Duane, will you yield for a question?

SENATOR DUANE: No, Mr. President.

Last year we had a ridiculous bill that assumed that taxi inspectors and parking violation specialists got AIDS on the job.

You know, for your homework this summer I would encourage all of you to take a class on HIV and how it's transmitted. And then next year when we come back, maybe we won't have any more of these stupid bills in this body.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

I greatly appreciate Senator

Duane's zeal for the cause that he so admiringly and admirably does so well. But I was rising for purposes of asking him perhaps to look at the section and do a little reading in the bill.

Because if you read the bill, Senator Duane, you will realize that by definition, by definition, there's no way under this bill that somebody spitting at somebody could possibly be, in any way, shape or form, the subject of an application dealing with a question of whether someone is HIV-positive. It's black and white. Take a look at the definition section. That would have saved you some time and perhaps some characterizations. It's a relatively simple thing to do.

Now, if I may, Mr. President, this bill is not about HIV. And I certainly - when I say "about," not exclusively about HIV. And I certainly can appreciate, as I said earlier, Senator Duane's passion. And he is really to be credited for it.

This bill is about sexually transmissible diseases, and it also includes

HIV. And if you look at the definition of what's a transmissible disease, page 2 of the bill, subsection D, it says transmissible disease means the human immunodeficiency virus (HIV) or any of its derivatives -- syphilis, gonorrhea, lymphogranuloma venereum, herpes, genital warts, or hepatitis and any of its derivatives.

It goes on, in another section, body fluid. "Body fluid shall have" -- and this is subsection F, same page -- "shall have its ordinary meaning, except that where the specified transmissible disease for which testing is sought is human immunodeficiency virus (HIV) or any of its derivatives, bodily fluids shall mean blood or semen." It shall not have anything to do with saliva.

Why is aggravated harassment in this bill? We tried to be very selective about the crimes that we included in this bill. Aggravated harassment in the second degree would cover an instance where somebody would bite somebody else.

That's not intended to deal with somebody -- at least not intended to deal with

somebody who might attempt or allege that somehow or other by spitting on somebody it might make them HIV-infected.

Why is aggravated harassment of an employee by an inmate included? That's Section 240-32, also referred to in the bill. Because that requires, as one of its elements, that the aggravated harassment provides that attempts to cause such employee to come into contact with blood, seminal fluid, and also urine or feces.

So the definitions, the language don't comport themselves well with the argument we just heard. Not that, from Senator Duane's vantage point, there is not reason for him to state his position. I welcome that. We've gone through this before. But I'd be more comfortable, and I would like to think the house would be more comfortable, if we were all working off the same page.

Thank you.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. On the bill, really very

briefly.

My concern here is not -- I share some of Senator Duane's concerns. What really bothers me about this bill is I think unintentionally it is, in fact, a bill that will do harm to people.

The reason it will do harm to people is that it suggests that if someone who is a defendant or accused of -- say, someone who is accused of assaulting you or committing any of the other crimes set forth here, and tests negative for HIV or tests positive for HIV, that that tells you whether or not you've got HIV.

And that is a message that misleads, in a very dangerous way, the public. If you think you've been exposed to HIV, you get yourself tested. I don't care how the defendant tests. You take prophylactic measures. If it tests negative, it doesn't mean you're home free. If you test positive, it doesn't mean you've got it.

And I think we really need to rethink the very, very harmful public health message we are conveying in this. There are

measures now available to keep people alive who have been exposed to HIV, who have HIV. If you think you've been exposed, take those measures, get yourself tested. And the fact of however a defendant tests should not affect your thinking on those steps one bit.

I think we send a bad message with this bill. I urge everyone to vote no.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the bill?

Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

The bill, in the definitions section, says that a petitioner means a person who alleges he or she was exposed to bodily fluid of a defendant. Now, bodily fluid does not say blood or semen. It says bodily fluid.

Now, section -- New York State Department of Health Regulation 63.10 states that there are three factors necessary to create a significant risk of contracting or transmitting HIV infection: The presence of a significant-risk body substance, a circumstance which constitutes significant

risk for transmitting or contracting HIV infection and, three, the presence of an infectious source and a noninfected person.

Significant-risk body substances are blood, semen, vaginal secretions, breast milk, tissue, and the following body fluids - you know, brain fluid, peritoneal fluid, pericardial fluid, et cetera.

Now, circumstances which constitute a significant risk of transmitting or contracting HIV infection are sexual intercourse -- vaginal, anal, oral -- which exposes a noninfected individual to blood, semen, or vaginal secretions of an infected individual; sharing of needles and other paraphernalia used for preparing and injecting drugs between infected and noninfected individuals; the gestation, birthing or breast-feeding of an infant when the mother is infection with HIV; transmission or transplantation of blood, organs, or other tissues from an infected individual to an uninfected individual, provided such blood, organs or other tissues have not tested conclusively for antibody or antigen and have

not been rendered noninfective by heat or chemical treatment.

Other circumstances are during which a significant body risk substance other than breast milk of an infected individual contacts mucous membranes -- that is, eyes, nose, mouth, nonintact skin, open wounds, skin with a dermatitis condition, abraded areas, or the vascular system of a noninfected person.

Such circumstances include but are not limited to needle-stick or puncture-wound injuries and direct saturation or permeation of these body surfaces by the infectious body substance.

Circumstances that involve significant risk shall not, shall not include exposure to urine, feces, sputum, nasal secretions, saliva, sweat, tears or vomitus that does not contain blood that is visible to the naked eye; human bites where there is no direct blood-to-blood or blood-to-mucous membrane contact; exposure of intact skin to blood or any other body substance; or occupational settings where individuals use scientifically accepted barrier techniques and

preventive practices and circumstance which would otherwise pose a significant risk if such barriers are not breached and remain intact.

Now, those are significant risk - those are things that are not of significant risk.

Now, I believe I have shown that the petitioner means -- which the bill says means a person who alleges he or she was exposed to bodily fluid of a defendant during -- or whatever. Body fluid, that's what it says.

Now, maybe I'm wrong. I don't think I am. But I am -- but, you know, last year we voted on two bills that said that a taxi inspector could get HIV by inspecting a taxi. They didn't even have to like prove that the taxicab was HIV-positive. It was just assumed that they were.

The same thing with a parking violation specialist, which I guess means that a parking meter could be HIV-positive. And if, you know, you fooled around with a parking meter without using protection, you might get

HIV infection.

Ridiculous, right? But that's the kind of bills we have here. Last year when we voted on those bills, everybody just sat here like that made sense. It was completely ridiculous.

And then the group of people that tried to move the bill along went after me, the labor unions, like there was -- that it was anti-labor that I was against it. What I was was anti-stupidity on how it is that HIV is transmitted.

So in a body like this where people are so stupid on how it is that HIV is transmitted, call me crazy or call me, you know, mentally impaired for being skeptical about this. But I stand by it. A kid that spits at someone in a juvenile facility under this bill faces being mandatorily tested, and that's wrong and ridiculous. And I don't know -- I don't know why it even came to the floor in that form.

And, yes, it is true I am passionate about this. So maybe we could have a chat about it before a bill like this comes

to the floor. You know, there aren't that many people here listening to the debate, so they're missing being educated on this.

But if the sponsor wants to chat about this kind of legislation, I'm in the book at home, I'm in 415 in the LOB, you can come and talk with me, you can come talk to the New York AIDS Coalition, you can come talk to doctors, you could come -- I'll blow up the New York State Department of Health regulations on how it is that HIV is transmitted. We can study it together. We can see if there are problems with that, if we think that that should be changed.

But until that time, you know, call me a fool for resisting voting for bills which potentially perpetrate myths on how HIV is contracted and spread.

ACTING PRESIDENT MEIER: Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

With all due respect, we're obviously talking over each other. And for us to be able to talk, we have to start on the

same page. And that page requires you to read the bill. It requires you to look at the language of the bill.

And notwithstanding what you just read, please take a look at the definition of bodily fluid here and see how clearly it eliminates anything, in the case of HIV, anything but blood or semen. I mean, it's as plain as the nose on your face.

Now, let me suggest to you, if you want to follow me through this bill a little bit, and I'll just stick to the language here, over on page 4, starting at line 31, it says "In the case of an application pursuant to paragraph B" -- and that's for the preconviction testing -- "of subdivision 2 of this section, the application must state that the petitioner may have been exposed to bodily fluid of the defendant during or as a proximate result of the commission of or in the course of flight from an offense described in such paragraph, in a manner that may have involved transmission of a specified transmissible disease from the defendant to the petitioner."

If you then look at page 5, subsection E, lines 40 through 49: "For the purpose of paragraph C of subdivision 5 of this section, the petitioner has been exposed to bodily fluid of the defendant when (1) an element of the qualifying offense allegedly committed by the defendant includes intercourse or the deviate sexual intercourse with the petitioner; or (2) the skin or mucous membrane of the petitioner has been punctured by a hypodermic instrument which was in the possession, custody, or control of the defendant; or (3) the defendant's semen, vaginal secretions or any bodily substance containing blood visible to the naked eye may have come into contact with the mucous membrane, ruptured or broken skin, or the vascular system of the petitioner."

Now, let me just suggest to you that I'm not the only one that has been interested in this subject. And you may recall, although you didn't serve with him, our prior governor, Governor Cuomo. He had a task force, and that task force in 1990 issued a report. And that task force recommended

preconviction testing.

And let me read, if I may, from the report submitting to the governor dated April of 1990. It reads as follows: "While the results alone may not be determinative, some victims, after consultation with their physician or an HIV counselor, may want to begin immediate treatment with prophylactic drugs. Where the assailant's first test is positive, the victim may want to begin immediate drug therapy, even though she or he might not have been actually infected. Even if the offender's first test turns out to be negative, the victim may nevertheless want to proceed with drug therapy, since she or he may have been exposed.

"The question of how and when to test the alleged sex offender remains. The task force considered and rejected waiting until an accused is convicted. While a convicted defendant is no longer presumed innocent and has fewer procedural rights, there are two problems with waiting for conviction.

"One, extensive delay is inevitable

because it takes weeks for conviction by plea and months for conviction by verdict. And, two, there are a number of acquittals and dismissals where the defendant may have nevertheless infected the victim. In either case conviction is not an adequate triggering event.

"For similar reasons, indictment is not a good marker. Indictment can be delayed, particularly when the defendant is at liberty. Furthermore, a prosecutor may be unable to obtain an indictment for reasons unrelated to whether the accused is the true perpetrator.

"The task force therefore suggests that an efficient process be developed in the civil court system to allow a victim to obtain court-ordered tests to obtain an alleged offender's HIV status. Access to this process should be available to all victims regardless of their ability to afford the costs of testing or other court-related costs. Under this process, a victim might move for the court order immediately after the rape or sexual assault."

So certainly this is not something

that I was the first one to visit. There are others. And that task force, if I remember correctly, was comprised of a number of medical and health-related personnel - physicians, registered nurses, psychologists, and people otherwise similarly expert in the area.

The bottom line here is that while we've spent a lot of time talking about HIV, this is not limited to HIV, nor is it intended to be limited to HIV.

And as is so often the case, the parameters of what we should be discussing can be readily found within the bill. And none of us -- whether it's those who Senator Duane condemns for perhaps being judgmental, and he uses the term "stupid" -- none of us should be so glib and so righteous, particularly when we haven't taken the time to read the bill.

Thank you.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. Just one question, if the Senator would yield.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: Senator Saland, I won't pretend that I've had as much of an opportunity to view this bill as you have had. But I have attempted to read the bill. And my question really has to do with the next stage.

You talk about the state paying for the testing. But when or if the victim -- to use your definition of "victim" -- may be found to be positive, what does the bill do in terms of providing any kind of therapy for the for this victim?

SENATOR SALAND: The bill provides first, initially, that the victim must understand that he or she has to engage in, as condition precedents, a number of things.

And I would take you to page 4 of the bill. And I think in my prior comments I

mentioned those conditions. And you'll find them beginning at line 38 and running through line 52.

The bill provides in the concluding several pages that the Commissioner of Health -- and I will try and find you the language. Somewhere in the last several pages of the bill, and I'm not finding it readily, it provides that the commissioner will promulgate the rules and regulations necessary to effectuate the intent of this legislation.

The testing would be provided at state expense. The therapy, to the extent that it would be covered by the Crime Victims Compensation Board, would be available through that source.

Therapy might be available through insurance; therapy might be available through employee benefits. But this bill does not provide for the therapy at state expense. It provides for the costs of the testing at state expense.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: I had

said one question, and I will leave it at one question. Thank you.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Thank you, Senator.

Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you. If the sponsor would yield for a question, Mr. President.

ACTING PRESIDENT MEIER: Senator Saland, do you yield to a question?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you, Senator Saland.

So I've listened to this discussion and debate, and it is a one-house bill. So I suppose my question -- I'm trying to make it one question, again, because the time is getting longer.

But I think there are real concerns in this bill, both from a civil liberties perspective of requiring testing prior to any

confirmation of guilt by the courts.

I think there is a real question here about whether in fact it is the best-practice model of science to argue for this kind of testing. You referenced a report by a task force by Governor Cuomo, and that was from 1990. And of course the science around both testing and outcomes for sexually transmitted diseases and other blood diseases, particularly HIV, has advanced dramatically between 1990 and the year 2002.

Because I'm looking at a reference from a task force, an advisory council from Governor Pataki, Governor Pataki's AIDS Advisory Council. And his public health experts actually recommended that the testing of defendants occur only if it provides information of substantial medical benefit to a victim.

And so for me, listening to this debate and trying to read through the entire bill as the debate was going on, it seems to me that I would ask you whether you would consider withdrawing the bill and going back and looking at this in relationship to both

civil liberties issues, what is the best approach for testing.

I know if I was, God forbid, the victim of a rape or other sexual attack, my response would be I need myself to be tested. It's not so much the concern of testing the criminal. Because in fact, as we know, tests can have false negatives, false positives, change over time on any disease.

My interest would be assuring that I had the right to have myself tested, not only immediately but on an ongoing period, to assure that I did not have, as a result of this attack, some additional problem to deal with in the future.

And it seems to me that we do have many open-ended questions here. And I believe that we're close to the end of session this year, there's not an Assembly sponsor -- or not in the materials that I have -- and I think that issues on both sides have been raised here.

And I would ask whether you would reconsider some of the issues within your bill, because I think we will be addressing

this again past this session.

SENATOR SALAND: Let me see if I can address some of your comments.

Number one, technically this is a one-house bill. There is a comparable bill that has been introduced by Assemblyman Kaufman. And hopefully we will be able to negotiate with him some agreement on this legislation.

Secondly, while you may feel that there are civil liberties questions -- and that certainly is a subjective standard - there will be nobody who will be able to tell you there are any constitutional questions with this.

Whether it's under the U.S. Supreme Court case I referred to earlier, "Schmerber," whether it's the New York State Court of Appeals case, "Matter of Abe," there is, beyond any question, the ability in the state of New York to test preconviction. It's absolute. I will stand on that, I will stake anything on that.

As long as there's probable cause and the filing of the accusatory instrument -

or the indictment constitutes that probable cause. That's what takes it out of the realm of concern that you have. There has to have been the filing of an instrument.

There was one other thing, and I'm trying -- I didn't write it down.

SENATOR LIZ KRUEGER: Mr. President, may I clarify?

I believe it was the recommendation of Governor Pataki's AIDS Advisory Council.

SENATOR SALAND: And I find that very interesting. And interestingly enough, I find it interesting because I view this bill as clearly a matter of choice, an issue which I assume is valued rather dearly, more so on your side of the aisle, perhaps, than on my side of the aisle. It's a matter of empowerment.

What it says is after you've had all of those conditions precedent, after you've been advised of the fact that you have to be tested, after you've been given a scientific risk -- you've been told of the risk assessment, after you have been told that you must have undergone counseling, you have

the ability, should you choose, to say: Okay, I guess I don't want to go any further.

But you also have the ability, as a matter of choice, to say -- as did this unidentified woman known as Jane in the piece I read from the Daily News editorial -- you have your choice to say: Why shouldn't I be able to test my assailant? Why do I have to wait for him to be convicted?

It's about choice. It's about empowerment. And it's about people making intelligent decisions based upon the use of their own inherent abilities to reason.

There's no cookie-cutter approach. It just says we will give you that option where it's important to you. And if in the process of making that victim whole or attempting, if you can ever make that victim whole, bringing that victim back to someplace close to where she or he may have been before being violently, violently assaulted, this seems to me to respect that choice, to give that sense of empowerment.

There are no civil liberties questions that could be resolved negatively.

And it basically says, after you've been counseled and you know the state of the science, if that's what you want to do, by God, you should be permitted to do that.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Saland would yield for a question.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, were you referring to Governor Cuomo or Governor Pataki's advisory committee -

SENATOR SALAND: If I remember correctly, 1990 predates Governor Pataki.

SENATOR PATERSON: Mr. President.

SENATOR SALAND: An attempt at humor, Senator.

SENATOR PATERSON: Yes, Senator. That's the way I remember it.

And that particular task force at

that time -- first of all, it took, for a person to theoretically have the virus from six to nine months to be diagnosed in the first place. They really didn't know very much about P24 antigens. The only way they really measured was by a T-cell count. It was far antiquated to the standards that are used today.

But the one thing that the task force did apparently say, according to the New York State Pride Agenda, is the fact that there would be a qualifying benefit to the victim that would be established before we would realize the petition.

And my question is, what would be the benefit to a victim to have the alleged perpetrator take a test? What would be the benefit to the victim?

SENATOR SALAND: I would say that that's very subjective. For some victims, they may decide, as I've said several times today, after they've gone through all the conditions precedent, they may decide that for them there's no benefit.

Other victims may believe, and very

much so, whether it be something that's physical, whether it's emotional, whether it's psychological, they may believe that it's critical for their well-being and their, as I said earlier, return to as close to their preassault status, that they have that test.

ACTING PRESIDENT MEIER: Senator Paterson.

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

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Now, Senator, in Section F of subdivision 1 of the bill you refer to the actual definitions of what bodily fluids are. But it's actually in Section E where you talk about what the actual qualifying offenses are that would mandate that somebody be tested because they were either convicted or charged with an actual offense.

Now, you seemed to make a connection in Section C earlier, where you talk about the actual bodily fluids and what the actual diseases are that would come from those particular bodily fluids. My question to you is, why wouldn't you take the whole issue of HIV and the AIDS virus out of this bill?

Because if you want to test for bodily fluids and feces and other sexually transmittable and also other transmittable diseases that don't involve sex, you're talking about two different types of things.

So I can start to see where some of anxiety comes from when what we really have here is an omnibus mandatory testing bill, when we clearly have two different types of results that can occur.

One is if someone spits on someone or someone throws something at someone, that they might in a sense be at risk for a certain type of disease. The other would be those precursors to HIV, which are an entirely different type of interaction.

So what I'm saying, since they're

so different, so that there be not any confusion -- and I think some of the anxiety that you have heard today comes from a frustration with the fact that twelve years after the report of Governor Cuomo's task force in 1990, you're still hearing people push it all together and making it all seem as if, if you pass by and touch somebody, that they could receive HIV.

HIV is obviously the most dangerous of the infections that you talk about. It's obviously the one that's the most publicized. It's also the one that's created the greatest stigma for people that are afflicted by it.

And so I hope you would understand -- and this is the reason why I asked that you might separate all this, so that in addition to empowering the victim such that they might want to find out what the alleged perpetrator's medical status is, you might also be adding some clarity to the medical evidence that's really long-held at this point but seems to fall back into that aura of confusion as the result of the way - the composition of the bill itself.

SENATOR SALAND: I think I understand the question. Let me -

SENATOR PATERSON: I'll state the question in a sentence. Why don't you write two bills?

SENATOR SALAND: Let me suggest to you that what would be the -- there would be no difference if I wrote two bills.

ACTING PRESIDENT MEIER: Excuse me.

Senator Morahan.

SENATOR MORAHAN: If I may interrupt the debate, I'd ask that the last section be read and a roll call be called so that Senator Farley may cast his vote.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

SENATOR FARLEY: Thank you for your courtesy, Senator Saland, Senator Paterson.

I vote aye.

SENATOR MORAHAN: Withdraw the roll call, please.

ACTING PRESIDENT MEIER: Senator Farley will be recorded in the affirmative.

Withdraw the roll call.

Senator Saland.

SENATOR SALAND: Let me just hopefully clear up some, at the very least, misconceptions. I find it hard to believe there's anybody within the sound of my voice who, notwithstanding some of your comments, could possibly believe that HIV could be contracted by casually being touched by somebody or some mere contact.

Let me also say to you that it would really be of little or no difference, it would just be a variation on a theme were I to divide this bill. We would go through this very same exercise all over again.

I understand, as I said earlier, the passion that this particular topic evokes. This is a bill that's intended to be an omnibus bill. This is a bill that's intended to be a victim's rights bill. This is a bill

which takes great pains to make sure that any victim is aware that he or she will not get any quick or easy answer regardless of which avenue that person may pursue.

It is, as I said earlier, an effort to try and secure for the victim, under her or his own individual decision-making process, the ability to secure a test, the ability to learn whether in fact the court will permit the test by making the application and then to have whomever his or her assailant may be tested.

Will that provide the medical guarantee that will ensure a resolution? I don't think anybody here can say that. But if it's important to 10 percent of the victims - and there's, what, 4600 reported rapes and sexual assaults in this state for the last reporting year? If 10 percent of them, if 2 percent of them, if 1 percent of them believe that that's important and it has value to them, then I say I don't have one iota of problem with that.

Because, quite candidly, my sympathies and my desire to assist lies with

the victims. The individual who's the assailant has been indicted, has stood accused under some accusatory instrument. There's the probable cause threshold. I'm not saying indiscriminately, I'm saying there has to be a threshold that's crossed.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: The reason I think the bill should be divided is because of the debate we've heard today, because of the confusion and the inability of this bill to address these issues.

Senator Saland said that he thought it would be ridiculous for anyone to think that being touched by a person with HIV could create an infection. In 1984, which was not that long ago, we had a case in the Queens DA's office. I was standing right there, we brought a defendant into the courtroom, the court officers would not touch them.

Now, that was a belief at that particular time. It's taken a while to

educate the public to the actual ways in which a person can become infected with HIV. It's my opinion that there are a number of people who really do believe what Senator Duane was trying to dissuade in his comments earlier, which is that you would be able to get it from tears or from saliva or from feces or urine or some other form that actually is not a promulgator of the HIV virus.

And that's the reason I think that for clarity's sake that these issues be defined separately in a separate bill, because of the stigma that exists in our society.

On the issue of the benefit to the victim, I don't know of any measurable medical benefit to the victim. And I think there's a mountain of evidence to the contrary that it would be good to suggest, to codify, or in any way to allow any person who thinks they were a victim of an act that would cause the HIV virus to even think about having the alleged perpetrator take the test, for the simple reason that in many cases -- and there is substantial research to prove this -- the victim was measured to have received the HIV

virus prior to the perpetrator.

So the only thing we would be giving the victim is a pyrrhic victory. And it would really be a shock to those individuals who were already under a great deal of stress and anxiety to find out later on that they were testing an individual who tested negative for HIV at a time when they were HIV-positive and should have been receiving immediate treatment.

This is not really a case of moral victories or empowerment. This is a very serious life-threatening illness that a person could contract. And I don't think that anyone affiliated with the medical profession, with the psychological profession, or any legislator should be doing anything to contribute to it.

If it were just a situation of allowing people to speak at the phase of a trial where there's a sentencing or something that does actually create an issue of empowerment or a moral victory, or perhaps extending the statute of limitations to create an opportunity for victims of perhaps child

sexual abuse as adults to sue the perpetrator, those, I think, are moral victories.

But here we're talking about allowing an individual to for some reason be soothed in feeling that there would be some way to actually make the perpetrator create evidence where the perpetrator cannot.

As Senator Schneiderman said earlier, the only way to find out whether or not there is possible harm to the victim is for the victim to be tested. And I think any other information to the contrary really diminishes the importance of the actual test.

And I'm not even worried about whether the perpetrator is indicted or convicted. This is a case of science. This is a case of quality of health care. And it's the only conclusion I think that you can come to when the victim feels that his or her life is at stake.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the bill?

Debate is closed.

Read the last section.

THE SECRETARY: Section 8. This

act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

SENATOR PATERSON: Slow roll call, Mr. President.

ACTING PRESIDENT MEIER: More than five Senators have arisen. The Secretary will ring the bells.

The Secretary will call the roll.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Andrews.

(No response.)

THE SECRETARY: Senator Balboni.

(No response.)

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Yes.

THE SECRETARY: Senator Breslin.

(No response.)

THE SECRETARY: Senator Brown, excused.

Senator Bruno.

(Senator Bruno was indicated as voting in the affirmative.)

THE SECRETARY: Senator Connor.

(Senator Connor was indicated as voting in the negative.)

THE SECRETARY: Senator DeFrancisco.

(No response.)

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Yes.

THE SECRETARY: Senator Duane.

ACTING PRESIDENT MEIER: Senator Duane, to explain his vote.

SENATOR DUANE: Thank you, Mr. President.

I have to say that I have had many advocates come and ask for free rape kits and prophylactics for those who have been victimized by sexual assault. I've never had a victim come to me and say that they wanted the testing of the defendant.

I was listening to Senator Saland when he said that, you know, if there's 1 percent of the victims that would want this legislation to pass, well, then, they should have that choice. But I don't understand why

it is that we should create state policy based on the 1 percent of victims who have erroneous information. I mean, more than 1 percent of the people of the State of New York want SONDA to be passed, and apparently that hasn't been enough to change state policy.

Also, you know, this bill obviously is very important. I don't understand why it came out of Rules. If this bill has been cooking for so long, why didn't it go through the regular committee route? I must have missed the hearing on this bill. I think that would have been a good place to have hashed this out.

And I also want to hark back to the days of 1989. That was when Ricky Ray and his brothers and their family were having their trailers burned down in a rural area in another state. That was a different time.

So that we can move forward on what our AIDS policies are and what our criminal justice policies should be, I urge my colleagues to vote no, and I'll be voting no, Mr. President.

ACTING PRESIDENT MEIER: Senator

Duane will be recorded in the negative.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Yes.

THE SECRETARY: Senator Farley voting in the affirmative earlier.

Senator Fuschillo.

SENATOR FUSCHILLO: Yes.

THE SECRETARY: Senator Gentile.

(No response.)

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Aye.

THE SECRETARY: Senator Hassell-Thompson.

(No response.)

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: Yes.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Aye.

THE SECRETARY: Senator Johnson.

(No response.)

THE SECRETARY: Senator L. Krueger.

ACTING PRESIDENT MEIER: Senator

Liz Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

I raised some issues earlier. I will be voting no on this bill. I think that, while it has pieces in it that are important, it is overall not a bill that I can support.

But I want to thank Senator Duane for so many things he educated us on today. And in his last comments when he was speaking on the bill, he reminded me of other things that I think are equally important that we have failed to do in this house.

And given the concern of Senator Saland on the importance of addressing victims' rights, I would argue that we need to pass, before we leave session this year, the bills that would guarantee a woman the right to emergency contraception in emergency rooms if she's been raped, the right of rape victims throughout the state of New York to have rape kits paid for so that DNA cross-tests can be done. They are piling up in warehouses throughout this state.

And that we also need to address

the fact that we still require rape victims in hospitals to fill out cumbersome paperwork at the time of their rape in order for the hospital to be get reimbursement for the care that they are delivering. And that there are serious issues for victims of sexual crimes that go unaddressed in this house.

And so I would hope, based on the education we all got today about victims' rights and the importance of the State Senate addressing these concerns, that we might be passing these bills this year before we end our session.

And I will vote no on this. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Liz Krueger will be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator C. Kruger.

SENATOR CARL KRUGER: Yes.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

(No response.)

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Libous.

(No response.)

THE SECRETARY: Senator Maltese.

(No response.)

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Yes.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Yes.

THE SECRETARY: Senator Mendez.

(No response.)

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Onorato, excused.

Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Aye.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator

Schneiderman.

SENATOR SCHNEIDERMAN: No.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator A. Smith.

SENATOR ADA SMITH: No.

THE SECRETARY: Senator M. Smith.

SENATOR MALCOLM SMITH: No.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: No.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Aye.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Wright.

SENATOR WRIGHT: Aye.

ACTING PRESIDENT MEIER: The Secretary will call the absentees.

THE SECRETARY: Senator Andrews.

SENATOR ANDREWS: Nay.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Aye.

THE SECRETARY: Senator Breslin.

(No response.)

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Yes.

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Hassell-Thompson.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson, to explain her vote.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

To Senator Saland, this is -- in continuing to read this bill, I have a sense,

a better sense of what I think the bill's intent is. But I, like many of my colleagues, believe that this is not the way to go about it.

I have some great concerns when we look at what we call transmittable diseases and then suddenly stick HIV into the same category with other diseases that might in fact be transmittable by casual contact. HIV is not a casual-contact disease.

And it becomes very important - and it may sound like we're being casual or flip when we say that we need to be better-educated, but we do. It's a sad state of affairs that we believe that the ability to transmit such a horrendous disease can be so easily transmitted. It cannot.

What this bill attempts to do I think is the reverse of what our concerns should be. As we begin to talk about how do we ensure that people become tested and receive treatment quickly and immediately, this is not the way to go about doing that.

And I would hope that Senator Saland would take this opportunity to rethink

some of the concerns that have been raised and asked for. And I know that he would get the help and support of people on this side of the aisle who have a little bit more experience than some of the people on the other side of the aisle just in the practice. So that when we do a bill such as this, it will not appear that one side of this house is insensitive to victims.

And I think that we get ourselves caught too often in the belief that we are soft on crime and that we soft-pedal issues, when the real intent of the bill completely escapes some of the people that sit in this chamber.

So, Mr. President, I will be voting no on this bill.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson will be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Johnson.

(No response.)

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: Yes.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Yes.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Mendez.

(No response.)

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Sampson.

(No response.)

ACTING PRESIDENT MEIER: The Secretary will announce the results.

THE SECRETARY: Ayes, 41. Nays, 13.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I would like unanimous consent to be recorded in the negative on Calendars 607 and 1054.

ACTING PRESIDENT MEIER: Without objection, Senator Montgomery will be recorded in the negative on Calendars 607 and 1054.

Senator Stavisky.

SENATOR STAVISKY: Mr. President, I would appreciate unanimous consent to be recorded in the negative on Calendar 1054.

ACTING PRESIDENT MEIER: Without objection, Senator Stavisky will be recorded in the negative on Calendar 1054.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. I would like to have unanimous consent to be recorded in the negative on Calendar 307 and Calendar 1054.

ACTING PRESIDENT MEIER: Without objection, Senator Hassell-Thompson will be recorded in the negative on Calendars 307 and 1054.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Stafford, Mr. President, on page 36 I offer the following amendments to Calendar Number 814, Senate Print 3820B, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: The

amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

SENATOR LIBOUS: Mr. President, on behalf of Senator Marcellino, on page 33 I offer the following amendments to Calendar Number 762, Senate Print 6210, and ask that the bill retain its place on the Third Reading Calendar.

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

SENATOR LIBOUS: And, Mr. President, on behalf of Senator Skelos I wish to call up his bill, Print Number 425, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 158, by Senator Skelos, Senate Print 425, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT MEIER: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

SENATOR LIBOUS: Mr. President, I now pass up the following amendments.

ACTING PRESIDENT MEIER: The amendments are received and adopted.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. Is there any other housekeeping at the desk?

ACTING PRESIDENT MEIER: No, no other housekeeping, Senator.

SENATOR MORAHAN: For the information of the members, there will be an immediate meeting of the Rules Committee in the Majority Conference Room, Room 332.

And the Senate will stand at ease.

ACTING PRESIDENT MEIER: There will be an immediate meeting of the Rules Committee.

Senator Paterson.

SENATOR PATERSON: Mr. President, following the Rules Committee there will be a meeting of the Minority in the Minority Conference Room.

ACTING PRESIDENT MEIER: All right. Senator Paterson, we're going to receive the report. I assume you mean after session.

SENATOR PATERSON: Yes.

ACTING PRESIDENT MEIER: Is that correct, Senator Paterson? Conference of the Minority immediately following session.

The Senate will stand at ease pending the report of the Rules Committee.

(Whereupon, the Senate stood at ease at 5:15 p.m.)

(Whereupon, the Senate reconvened at 5:25 p.m.)

ACTING PRESIDENT MEIER: Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. Could we return to reports of standing committees.

ACTING PRESIDENT MEIER: Reports

of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Print 417B, by Senator Skelos, an act to amend the Criminal Procedure Law;

2714, by Senator Padavan, an act to amend the Executive Law;

3078, by Senator McGee, an act to amend the New York State Urban Development Corporation Act;

3920, by Senator Stafford, an act to amend the Public Officers Law;

3927, by Senator Stafford, an act to amend the Public Officers Law;

3928, by Senator Stafford, an act to amend the Public Officers Law;

4525A, by Senator Nozzolio, an act to amend the Correction Law;

4925, by Senator DeFrancisco, an act to amend the Civil Practice Law and Rules;

5206A, by Senator Wright, an act to amend the Public Service Law;

5842A, by Senator Velella, an act to amend the Retirement and Social Security Law;

6121, by Senator Maltese, an act to amend the Education Law;

6508, by Senator Lack, an act to amend the Judiciary Law;

6951, by Senator Velella, an act to amend the Vehicle and Traffic Law;

6966A, by Senator Farley, an act to amend the Public Officers Law;

7157, by Senator DeFrancisco, an act to amend the Vehicle and Traffic Law;

7334B, by Senator Velella, an act to amend the Retirement and Social Security Law;

7445, by Senator Nozzolio, an act to amend the Town Law;

And Senate Print 7451, by Senator Wright, an act in relation to authorizing the town of Hannibal.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Senator Morahan.

SENATOR MORAHAN: Move to accept the report of the Rules Committee, Mr. President.

ACTING PRESIDENT MEIER: All those in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The report of the Rules Committee is accepted.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. There being no other business in front of the Senate, we move to adjourn until June 11th, at 3:00 p.m.

ACTING PRESIDENT MEIER: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. President. There will be an immediate conference of the Senate Minority in the Minority Conference Room.

ACTING PRESIDENT MEIER: Immediate conference of the Senate Minority in

the Minority Conference Room.

On motion, the Senate stands adjourned until Tuesday, June 11th, at 3:00 p.m.

(Whereupon, at 5:29 p.m., the Senate adjourned.)