

STATE OF NEW YORK

2053

2017-2018 Regular Sessions

IN SENATE

January 11, 2017

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the testing of certain criminal defendants for human immunodeficiency virus

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The criminal procedure law is amended by adding a new
2 section 210.17 to read as follows:

3 § 210.17 Requirement of HIV related testing in certain cases.

4 1. In a case where an indictment or a superior court information has
5 been filed with a superior court which charges the defendant with a
6 violation of section 120.08 or 120.11 of the penal law, the court shall,
7 upon a request of the peace officer, police officer, fireman or emergen-
8 cy medical services professional involved, order that the defendant
9 submit to human immunodeficiency virus (HIV) related testing, if the
10 court determines that there was a significant risk of transmission
11 pursuant to the provisions set forth in section one hundred seventy-
12 eight of the civil service law. Test results, which shall not be
13 disclosed to the court, shall be communicated to the defendant and the
14 requesting public protection official named in the order.

15 2. Any request made by the public protection official pursuant to this
16 section must be in writing, filed with the court within six months of
17 the date of the crime charged, and provided by the court to the defend-
18 ant or his or her counsel. The request must be filed with the court
19 prior to or within forty-eight hours after the indictment or superior
20 court information has been filed with the superior court; provided
21 however that, for good cause shown, the court may permit such request to
22 be filed at a later stage of the action within six months of the date of
23 the crimes charged.

24 3. At any stage in the action within six months of the date of the
25 crimes charged, prior to the final disposition of the indictment or
26 superior court information and while the defendant is charged with an
27 offense specified in subdivision one of this section, the public
28 protection official may request that the defendant submit to a follow-up

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD04125-01-7

1 HIV related test. Such request must be in writing, filed with the court
2 and provided by the court to the defendant or his or her counsel. Upon a
3 finding that the follow-up HIV related test is medically appropriate the
4 court must order that the defendant submit to such test. The court shall
5 not make such finding of medical appropriateness unless the follow-up
6 HIV related test is to be administered a sufficient time after the
7 charged offense to be consistent with guidelines that may be issued by
8 the commissioner of health. There shall be no more than one follow-up
9 HIV related test absent a showing of extraordinary circumstances.

10 4. Any requests, related papers and orders made or filed pursuant to
11 this section, together with any papers or proceedings related thereto,
12 shall be sealed by the court and not made available for any purpose,
13 except as may be necessary for the conduct of judicial proceedings
14 directly related to the provisions of this section. All proceedings on
15 such requests shall be held in camera.

16 5. The application for an order to compel a defendant to undergo an
17 HIV related test must state that the applicant was the victim of the
18 offense enumerated in subdivision one of this section of which the
19 defendant is charged.

20 6. The court shall conduct a hearing only if necessary to determine if
21 the applicant is the victim of the offense of which the defendant is
22 charged or to determine whether a follow-up test is medically appropri-
23 ate. The court ordered test must be performed within forty-eight hours
24 of the date on which the court ordered the test, provided, however, that
25 whenever the defendant is not tested within the period prescribed by the
26 court, the court must again order that the defendant undergo an HIV
27 related test. The defendant shall be advised of information as to HIV
28 testing and medical treatment in accordance with any guidelines that may
29 be issued by the commissioner of health.

30 7. (a) Test results shall be disclosed subject to the following limi-
31 tations, which shall be specified in any order issued pursuant to this
32 section:

33 (i) disclosure of confidential HIV related information shall be limit-
34 ed to that information which is necessary to fulfill the purpose for
35 which the order is granted; and

36 (ii) disclosure of confidential HIV related information shall be made
37 to the defendant upon his or her request, and disclosure to a person
38 other than the defendant shall be limited to the person making the
39 application.

40 (b) The court's order shall include measures to protect against
41 disclosure to others of the identity and HIV status of the applicant and
42 of the person tested and may include such other measures as the court
43 deems necessary to protect confidential information.

44 8. Any failure to comply with the provisions of this section shall not
45 impair or affect the validity of any proceeding upon the indictment or
46 superior court information.

47 9. No information obtained as a result of a consent, hearing or court
48 order for testing issued pursuant to this section nor any information
49 derived therefrom may be used as evidence in any criminal or civil
50 proceeding against the defendant which relates to events that were the
51 basis for charging the defendant with an offense enumerated in subdivi-
52 sion one of this section, provided however that nothing in this section
53 shall prevent prosecution of a witness testifying in any court hearing
54 held pursuant to this section for perjury pursuant to article two
55 hundred ten of the penal law.

56 § 2. This act shall take effect immediately.