S T A T E O F N E W Y O R K

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I N A S S E M B L Y

March 6, 2009

Introduced by M. of A. BURLING, MILLER, CALHOUN, ERRIGO, HAYES, KOLB, FINCH, GIGLIO, HAWLEY, BALL, TOBACCO, SPANO, WALKER -- Multi-Sponsored by -- M. of A. ALFANO, BARCLAY, BARRA, CROUCH, DUPREY, FITZPATRICK, McDONOUGH, McKEVITT, MOLINARO, OAKS, QUINN, RAIA, REILICH, SAYWARD -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the public health law, in relation to providing for human immunodeficiency virus testing of sex offenders and disclosure of the results to victims of sex offenses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The legislature finds that sex offenses are occurring with alarming frequency; that sex crimes have a lifelong dehumanizing and traumatizing effect on victims; with the increased incidence of the acquired immune deficiency syndrome virus (AIDS) in New York, victims of sex offenses can contract the human immunodeficiency virus from their attackers. These victims have a right to know if they are at risk.

The purpose of this act is to facilitate identification of sex offenders carrying the AIDS virus in order to notify the victims of such offenses of the possibility of contracting the virus from their attackers.

S 2. The criminal procedure law is amended by adding a new section 210.52 to read as follows:

S 210.52 RESULTS OF BLOOD SPECIMENS.

UPON MOTION OF THE PROSECUTOR, WITH THE CONSENT OF THE COMPLAINANT AND SUBJECT TO CONSTITUTIONAL LIMITATION, THE COURT IN WHICH THERE IS PENDING AN INDICTMENT, SUPERIOR COURT INFORMATION, PROSECUTOR'S INFORMATION OR INFORMATION CHARGING A VIOLATION OF ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW MAY:

1. ORDER THE TAKING OF SAMPLES OF BLOOD FROM DEFENDANT'S BODY IN A MANNER NOT INVOLVING AN UNREASONABLE INTRUSION THEREOF OR A RISK OF SERIOUS PHYSICAL INJURY THERETO.

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

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THIS SUBDIVISION SHALL NOT BE CONSTRUED TO LIMIT, EXPAND, OR OTHERWISE AFFECT THE ISSUANCE OF A SIMILAR COURT ORDER, AS MAY BE AUTHORIZED BY LAW, BEFORE THE FILING OF AN ACCUSATORY INSTRUMENT CONSISTENT WITH SUCH RIGHTS AS THE DEFENDANT MAY DERIVE FROM THE CONSTITUTION OF THIS STATE OR OF THE UNITED STATES.

2. BLOOD SPECIMENS REQUIRED BY SUBDIVISION ONE OF THIS SECTION SHALL BE TAKEN IN THE MANNER PRESCRIBED IN SECTION 210.53 OF THIS ARTICLE.

3. SUCH BLOOD SPECIMENS SHALL BE FORWARDED TO THE DIVISION OF CRIMINAL JUSTICE SERVICES WHICH SHALL CONTRACT WITH LABORATORIES AND ESTABLISH REGULATIONS FOR TESTING TO DETERMINE THE PRESENCE OR ABSENCE OF THE HUMAN IMMUNODEFICIENCY VIRUS (HIV).

4. UPON COMPLETION OF SUCH TESTING, THE RESULTS SHALL BE FORWARDED TO THE PROSECUTOR WHO SHALL, UPON REQUEST OF THE COMPLAINANT AND/OR THE DEFENDANT, REVEAL THE RESULTS TO SUCH INDIVIDUAL. OTHER THAN NOTIFICATION OF THE VICTIM AND/OR DEFENDANT, THE TEST RESULTS SHALL BE HELD CONFIDENTIAL PURSUANT TO THE PROVISIONS OF ARTICLE TWENTY-SEVEN-F OF THE PUBLIC HEALTH LAW.

5. TEST RESULTS SHALL NOT BE ADMISSIBLE AT DEFENDANT'S TRIAL.

S 3. The criminal procedure law is amended by adding a new section 210.53 to read as follows:

S 210.53 PROCEDURE FOR TAKING BLOOD SPECIMENS.

1. (A) WHEN THE TAKING OF BLOOD SPECIMENS IS REQUIRED PURSUANT TO THE PROVISIONS OF SECTION 210.52 OF THIS ARTICLE, THE FOLLOWING PERSONS MAY WITHDRAW BLOOD FOR THE PURPOSE OF CONDUCTING AN ANALYSIS TO DETERMINE THE PRESENCE OR ABSENCE OF THE HUMAN IMMUNODEFICIENCY VIRUS BY THE DEPARTMENT OF CRIMINAL JUSTICE SERVICES: (I) A PHYSICIAN, A REGISTERED PROFESSIONAL NURSE OR A REGISTERED PHYSICIAN'S ASSISTANT; OR (II) UNDER THE SUPERVISION AND AT THE DIRECTION OF A PHYSICIAN, A MEDICAL LABORATORY TECHNICIAN OR MEDICAL TECHNOLOGIST AS CLASSIFIED BY CIVIL SERVICE, A PHLEBOTOMIST, AN ADVANCED EMERGENCY MEDICAL TECHNICIAN AS CERTIFIED BY THE DEPARTMENT OF HEALTH, OR A MEDICAL LABORATORY TECHNICIAN OR MEDICAL TECHNOLOGIST EMPLOYED BY A CLINICAL LABORATORY APPROVED UNDER TITLE FIVE OF ARTICLE FIVE OF THE PUBLIC HEALTH LAW.

(B) NO PERSON ENTITLED TO WITHDRAW BLOOD PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION OR HOSPITAL, CLINIC OR TREATMENT CENTER EMPLOYING SUCH PERSON, AND NO OTHER EMPLOYER OF SUCH PERSON SHALL BE SUED OR HELD LIABLE FOR ANY ACT DONE OR OMITTED IN THE COURSE OF WITHDRAWING BLOOD PURSUANT TO THIS SECTION.

(C) ANY PERSON WHO MAY HAVE A CAUSE OF ACTION ARISING FROM THE WITHDRAWAL OF BLOOD PURSUANT TO THIS SUBDIVISION, FOR WHICH NO PERSONAL LIABILITY EXISTS UNDER PARAGRAPH (B) OF THIS SUBDIVISION, MAY MAINTAIN SUCH ACTION AGAINST THE STATE. NO ACTION SHALL BE MAINTAINED PURSUANT TO THIS PARAGRAPH UNLESS A NOTICE OF CLAIM HAS BEEN DULY SERVED IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN SECTION FIFTY-E OF THE GENERAL MUNICIPAL LAW.

(D) NOTWITHSTANDING THE PROVISIONS OF THIS SUBDIVISION TO THE CONTRARY, AN ACTION MAY BE MAINTAINED BY THE STATE AGAINST A PERSON ENTITLED TO WITHDRAW BLOOD PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION OR HOSPITAL EMPLOYING SUCH PERSON FOR WHOSE ACT OR OMISSION THE STATE HAS BEEN HELD LIABLE UNDER THIS SUBDIVISION TO RECOVER DAMAGES, NOT EXCEEDING THE AMOUNT AWARDED TO THE CLAIMANT, THAT MAY HAVE BEEN SUSTAINED BY THE STATE BY REASON OF GROSS NEGLIGENCE OR BAD FAITH ON THE PART OF SUCH PERSON.

(E) THE PROVISIONS OF PARAGRAPHS (B), (C) AND (D) OF THIS SUBDIVISION SHALL ALSO APPLY TO ANY PERSON EMPLOYED BY A HOSPITAL AS SECURITY

PERSONNEL FOR ANY ACT PERFORMED OR OMITTED IN THE COURSE OF WITHDRAWING BLOOD PURSUANT TO A COURT ORDER.

2. THE DEPARTMENT OF HEALTH SHALL ISSUE AND FILE RULES AND REGULATIONS APPROVING SATISFACTORY TECHNIQUES OR METHODS OF CONDUCTING ANALYSES OF A PERSON'S BLOOD TO DETERMINE THE PRESENCE OR ABSENCE OF THE HUMAN IMMUNO-DEFICIENCY VIRUS AND TO ASCERTAIN THE QUALIFICATIONS AND COMPETENCE OF INDIVIDUALS TO CONDUCT AND SUPERVISE ANALYSES OF A PERSON'S BLOOD TO DETERMINE THE PRESENCE OF THE ACQUIRED IMMUNE DEFICIENCY SYNDROME (HEREAFTER REFERRED TO AS AIDS). IF THE ANALYSES WERE MADE BY AN INDIVIDUAL POSSESSING A PERMIT ISSUED BY THE DEPARTMENT OF HEALTH, THIS SHALL BE PRESUMPTIVE EVIDENCE THAT THE ANALYSES WERE PROPERLY PERFORMED.

3. BLOOD SPECIMENS SHALL BE DRAWN AND COLLECTED IN A MANNER PRESCRIBED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES, WHICH DEPARTMENT SHALL PROVIDE SPECIMEN VIALS, MAILING TUBES, LABELS AND INSTRUCTIONS FOR THE COLLECTION OF BLOOD SPECIMENS.

4. THE BLOOD SPECIMENS SHALL BE FORWARDED TO THE DIVISION OF CRIMINAL JUSTICE SERVICES OR TO A LABORATORY DESIGNATED BY SUCH DIVISION FOR ANALYSIS TO DETERMINE THE PRESENCE OR ABSENCE OF THE AIDS VIRUS.

S 4. Paragraphs (n), (o) and (p) of subdivision 1 of section 2782 of the public health law, paragraphs (n) and (o) as added by chapter 584 of the laws of 1988 and paragraph (p) as added by chapter 592 of the laws of 1990, are amended and a new subdivision (q) is added to read as follows:

(n) a medical director of a local correctional facility as defined in section forty of the correction law, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the medical director is authorized to access records containing such information in order to carry out his or her functions, powers and duties with respect to the protected individual; [or]

(o) an employee or agent of the commission of correction, in accordance with paragraph (a) of subdivision two of section twenty-seven hundred eighty-six of this article, to the extent the employee or agent is authorized to access records containing such information in order to carry out the commission's functions, powers and duties with respect to the protected individual, pursuant to article three of the correction law[.];

(p) a law guardian, appointed to represent a minor pursuant to the social services law or the family court act, with respect to confidential HIV related information relating to the minor and for the purpose of representing the minor. If the minor has the capacity to consent, the law guardian may not redisclose confidential HIV related information without the minor's permission. If the minor lacks capacity to consent, the law guardian may redisclose confidential HIV related information for the sole purpose of representing the minor. This paragraph shall not limit a law guardian's ability to seek relief under section twenty-seven hundred eighty-five of this [chapter.] ARTICLE; OR

(Q) THE COMPLAINANT AND DEFENDANT AS SET FORTH IN SUBDIVISION FOUR OF SECTION 210.52 OF THE CRIMINAL PROCEDURE LAW.

S 5. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.