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

749

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. McDONOUGH, HAYES, SAYWARD, TOWNSEND, RABBITT, WALKER, TEDISCO -- Multi-Sponsored by -- M. of A. ALFANO, BACALLES, BARCLAY, BARRA, MILLER, OAKS, RAIA, SCOZZAFAVA -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, the family court act, the penal law and the public health law, in relation to the testing of certain criminal defendants and juveniles for transmissible diseases

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

Section 1. Section 390.15 of the criminal procedure law, as added by chapter 76 of the laws of 1995, subdivision 1 as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 390.15 Requirement of [HIV related] testing FOR TRANSMISSIBLE DISEASES in certain cases.

1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(A) "DEFENDANT", "CONVICTION" AND "SENTENCE" MEAN AND INCLUDE, RESPECTIVELY, AN "ELIGIBLE YOUTH," A "YOUTHFUL OFFENDER FINDING" AND A "YOUTHFUL OFFENDER SENTENCE" AS THOSE TERMS ARE DEFINED IN SECTION 720.10 OF THIS CHAPTER.

(B) "VICTIM" MEANS THE PERSON WITH WHOM THE DEFENDANT ENGAGED IN AN ACT OF SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT, AS THOSE TERMS ARE DEFINED IN SECTION 130.00 OF THE PENAL LAW, WHERE SUCH CONDUCT WITH SUCH PERSON WAS THE BASIS FOR THE DEFENDANT'S CONVICTION OF AN OFFENSE SPECIFIED IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION.

(C) "PETITIONER" MEANS A PERSON WHO ALLEGES HE OR SHE WAS EXPOSED TO BODILY FLUID OF A DEFENDANT DURING, OR AS A PROXIMATE RESULT OF, THE COMMISSION OF AN OFFENSE DESCRIBED IN PARAGRAPH (E) OF THIS SUBDIVISION OR PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION. AS USED IN SUBDI-

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

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VISION ONE-A OF THIS SECTION, "PETITIONER" SHALL ALSO INCLUDE A PERSON WHO ALLEGES IN A COMPLAINT FILED WITH AN APPROPRIATE LOCAL OR STATE LAW ENFORCEMENT AGENCY THAT HE OR SHE WAS EXPOSED TO THE BODILY FLUID OF AN UNAPPREHENDED PERPETRATOR DURING, OR AS A PROXIMATE RESULT OF, THE COMMISSION OF AN OFFENSE DESCRIBED IN PARAGRAPH (E) OF THIS SUBDIVISION OR PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION.

(D) "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.

(E) "QUALIFYING OFFENSE" MEANS: A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THE PENAL LAW; ASSAULT IN THE THIRD DEGREE AS DEFINED IN SECTION 120.00 OF THE PENAL LAW; ASSAULT IN THE SECOND DEGREE AS DEFINED IN SECTION 120.05 OF THE PENAL LAW; AGGRAVATED ASSAULT UPON A PERSON LESS THAN ELEVEN YEARS OLD AS DEFINED IN SECTION 120.12 OF THE PENAL LAW; SEXUAL ABUSE IN THE THIRD DEGREE, AS DEFINED IN SECTION 130.55 OF THE PENAL LAW; SEXUAL ABUSE IN THE SECOND DEGREE, AS DEFINED IN SECTION 130.60 OF THE PENAL LAW; RAPE IN THE THIRD DEGREE AS DEFINED IN SECTION 130.25 OF THE PENAL LAW; RAPE IN THE SECOND DEGREE AS DEFINED IN SECTION 130.30 OF THE PENAL LAW; CRIMINAL SEXUAL ACT IN THE THIRD DEGREE AS DEFINED IN SECTION 130.40 OF THE PENAL LAW; CRIMINAL SEXUAL ACT IN THE SECOND DEGREE AS DEFINED IN SECTION 130.45 OF THE PENAL LAW; PERSISTENT SEXUAL ABUSE AS DEFINED IN SECTION 130.53 OF THE PENAL LAW; AGGRAVATED SEXUAL ABUSE IN THE FOURTH DEGREE AS DEFINED IN SECTION 130.65-A OF THE PENAL LAW; FEMALE GENITAL MUTILATION AS DEFINED IN SECTION 130.85 OF THE PENAL LAW; FACILITATING A SEX OFFENSE WITH A CONTROLLED SUBSTANCE AS DEFINED IN SECTION 130.90 OF THE PENAL LAW; HARASSMENT IN THE SECOND DEGREE, AS DEFINED IN SUBDIVISION ONE OF SECTION 240.26 OF THE PENAL LAW; AGGRAVATED HARASSMENT IN THE SECOND DEGREE, AS DEFINED IN SUBDIVISION THREE OF SECTION 240.30 OF THE PENAL LAW; AGGRAVATED HARASSMENT IN THE FIRST DEGREE, AS DEFINED IN SUBDIVISION TWO OF SECTION 240.31 OF THE PENAL LAW; AGGRAVATED HARASSMENT OF AN EMPLOYEE BY AN INMATE AS DEFINED IN SECTION 240.32 OF THE PENAL LAW; INCEST IN THE THIRD DEGREE AS DEFINED IN SECTION 255.25 OF THE PENAL LAW; INCEST IN THE SECOND DEGREE AS DEFINED IN SECTION 255.26 OF THE PENAL LAW; AND INCEST IN THE FIRST DEGREE AS DEFINED IN SECTION 255.27 OF THE PENAL LAW.

(F) "BODILY FLUID" 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 FLUID" SHALL MEAN BLOOD OR SEMEN.

1-A. A VICTIM OR PETITIONER, AS DEFINED IN PARAGRAPHS (B) AND (C) OF SUBDIVISION ONE OF THIS SECTION, OR AN ATTORNEY ACTING ON THEIR BEHALF, MAY DIRECT A REQUEST FOR A TRANSMISSIBLE DISEASE TEST TO DETERMINE HIS OR HER TRANSMISSIBLE DISEASE STATUS TO THE CHIEF CITY OR COUNTY PUBLIC HEALTH OFFICIAL OF THE JURISDICTION WHERE HE OR SHE RESIDES OR WHERE THE VICTIM OR PETITIONER BELIEVES HE OR SHE MAY HAVE CONTRACTED SUCH TRANSMISSIBLE DISEASE. SUCH OFFICIAL SHALL, UPON SUCH REQUEST, AUTHORIZE THE VICTIM OR PETITIONER TO UNDERGO PROMPT, READILY ACCESSIBLE AND SCIENTIFICALLY RECOGNIZED LABORATORY TESTING INCLUDING, WHERE APPROPRIATE, POLYMERASE CHAIN REACTION (PCR) OR OTHER ADVANCED TESTING TECHNOLOGIES, FOR THE DIAGNOSIS OF TRANSMISSIBLE DISEASES AT STATE EXPENSE, PURSUANT TO SECTION TWENTY-SEVEN HUNDRED EIGHTY-FIVE-B OF THE PUBLIC HEALTH LAW. NOTHING IN THIS SUBDIVISION SHALL PRECLUDE OR LIMIT A COURT FROM GRANTING AN APPLICATION FOR THE TESTING OF A DEFENDANT PURSUANT TO THIS SECTION OR ANY OTHER APPLICABLE LAW.

2. (a) In any case where [the] A defendant is convicted of a felony offense enumerated in any section of article one hundred thirty of the penal law, or any subdivision of section 130.20 of such law, where an act of "sexual intercourse", "oral sexual conduct" or "anal sexual conduct," as those terms are defined in section 130.00 of the penal law, is required as an essential element for the commission thereof, the court must, upon a request of the victim, order that the defendant submit to [human immunodeficiency (HIV) related] testing[. The testing is to be conducted by a state, county, or local public health officer designated by the order. Test results, which shall not be disclosed to the court, shall be communicated to the defendant and the victim named in the order in accordance with the provisions of section twenty-seven hundred eighty-five-a of the public health law, but such results and disclosure need not be completed prior to the imposition of sentence.

(b) For the purposes of this section, the terms "defendant", "conviction" and "sentence" mean and include, respectively, an "eligible youth," a "youthful offender finding" and a "youthful offender sentence" as those terms are defined in section 720.10 of this chapter. The term "victim" means the person with whom the defendant engaged in an act of "sexual intercourse", "oral sexual conduct" or "anal sexual conduct", as those terms are defined in section 130.00 of the penal law, where such conduct with such victim was the basis for the defendant's conviction of an offense specified in paragraph (a) of this subdivision] OF HIS OR HER BLOOD FOR THE PRESENCE OF ONE OR MORE TRANSMISSIBLE DISEASES.

[2.] (B) IN ANY CASE WHERE A DEFENDANT (I) IS CONVICTED OF A QUALIFYING OFFENSE AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF THIS SECTION, OR (II) STANDS CHARGED BY AN ACCUSATORY INSTRUMENT WITH A QUALIFYING OFFENSE AS DEFINED IN PARAGRAPH (E) OF SUBDIVISION ONE OF THIS SECTION OR AN OFFENSE DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION; AND THE COURT HAS MADE A FINDING PURSUANT TO PARAGRAPH (B) OF SUBDIVISION SIX OF THIS SECTION, THE COURT SHALL, UPON REQUEST OF THE PETITIONER AND PURSUANT TO THIS SECTION, ORDER THE DEFENDANT TO SUBMIT TO TESTING OF HIS OR HER BLOOD FOR THE PRESENCE OF ONE OR MORE TRANSMISSIBLE DISEASES.

(C) THE TESTING OF BLOOD PURSUANT TO THIS SECTION IS TO BE ARRANGED BY A STATE, COUNTY, OR LOCAL PUBLIC HEALTH OFFICER DESIGNATED BY THE ORDER. TEST RESULTS, WHICH SHALL NOT BE DISCLOSED TO THE COURT, SHALL BE COMMUNICATED TO THE DEFENDANT AND TO THE PETITIONER OR VICTIM NAMED IN THE ORDER IN ACCORDANCE WITH THE PROVISIONS OF SECTION TWENTY-SEVEN HUNDRED EIGHTY-FIVE-A OF THE PUBLIC HEALTH LAW.

(D) WHEN A REQUEST FOR TESTING OF A DEFENDANT IS RECEIVED BY A COURT PURSUANT TO THIS SECTION, THE COURT SHALL ADVISE THE VICTIM OR PETITIONER OF THE AVAILABILITY OF PROMPT, READILY ACCESSIBLE AND SCIENTIFICALLY RECOGNIZED LABORATORY TESTING OF SUCH VICTIM OR PETITIONER FOR THE DIAGNOSIS OF TRANSMISSIBLE DISEASES AT STATE EXPENSE PURSUANT TO SUBDIVISION ONE-A OF THIS SECTION.

3. (A) Any request made [by the victim] pursuant to PARAGRAPH (A) OF SUBDIVISION TWO OF this section must be in writing, filed with the court and provided by the court to the defendant or his or her counsel. The request must be filed with the court prior to or within ten days after entry of the defendant's conviction; provided that, for good cause shown, the court may permit such request to be filed at any time before sentence is imposed.

[3.] (B) THE DISTRICT ATTORNEY SHALL REPRESENT THE PETITIONER BEFORE THE COURT. ANY REQUEST MADE BY A PETITIONER PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION MUST BE IN WRITING,

FILED WITH THE COURT AND PROVIDED BY THE COURT TO THE DEFENDANT AND HIS OR HER COUNSEL. SUCH REQUEST MUST BE FILED WITH THE COURT PRIOR TO OR WITHIN TEN DAYS AFTER ENTRY OF THE DEFENDANT'S CONVICTION; PROVIDED THAT, FOR GOOD CAUSE SHOWN, THE COURT MAY PERMIT SUCH REQUEST TO BE FILED AT ANY TIME BEFORE SENTENCE IS IMPOSED. WHERE THE REQUEST IS PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, SUCH REQUEST MUST BE IN WRITING, AND MUST BE SERVED AND FILED WITH THE COURT PRIOR TO THE DEFENDANT'S ENTERING A PLEA OF GUILTY OR THE RENDERING OF A VERDICT AFTER TRIAL. WHERE A CRIMINAL ACTION IS TERMINATED IN A MANNER OTHER THAN BY A PLEA OF GUILTY OR A VERDICT AFTER TRIAL, A REQUEST PURSUANT TO SUCH SUBPARAGRAPH (II) MUST BE SERVED AND FILED WITH THE COURT PRIOR TO SUCH TERMINATION.

(C) A REQUEST FOR TESTING PURSUANT TO THIS SUBDIVISION MAY BE HEARD AND DETERMINED ONLY IN A COURT OF RECORD HAVING JURISDICTION OVER THE OFFENSE CHARGED. IF THE COURT IN WHICH THE CRIMINAL ACTION IS PENDING IS NOT A COURT OF RECORD, AND THE REQUEST FOR TESTING IS FILED IN SUCH COURT, SUCH COURT SHALL PROMPTLY TRANSFER THE APPLICATION TO A COURT OF RECORD WHICH HAS CONCURRENT JURISDICTION OVER THE OFFENSE CHARGED, FOR THE SOLE PURPOSE OF HEARING AND DETERMINING THE APPLICATION.

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

[4.] 5. (A) The application for an order to compel a [convicted person] DEFENDANT to undergo [an HIV related test] A BLOOD TEST FOR A TRANSMISSIBLE DISEASE PURSUANT TO THIS SECTION may be made by the victim OR PETITIONER but, if the victim OR PETITIONER is an infant or incompetent person, the application may also be made by a representative as defined in section twelve hundred one of the civil practice law and rules.

[The] (B) IN THE CASE OF AN APPLICATION PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, THE application must state that [(a)] the applicant was the victim of the offense enumerated in SUCH paragraph (a) [of subdivision one of this section] of which the defendant stands convicted[; and (b)].

(C) IN THE CASE OF AN APPLICATION PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO 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.

(D) IN ALL SUCH APPLICATIONS FOR TESTING FILED PURSUANT TO THIS SECTION, THE APPLICANT MUST ALSO STATE THAT the applicant has been offered counseling by a public health officer and been advised of (i) the limitations on the information to be obtained through [an HIV test] A BLOOD TEST on the proposed subject; (ii) current scientific assessments of the risk of transmission of [HIV] A DISEASE from the exposure he or she may have experienced[, and]; (iii) the need for the applicant to undergo [HIV related] testing to definitively determine his or her [HIV] status WITH REGARD TO ANY DISEASE; AND (IV) WHERE THE REQUEST IS FOR A TRANSMISSIBLE DISEASE TEST OF THE DEFENDANT, 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 DISEASES AT STATE EXPENSE PURSUANT TO SUBDIVISION ONE-A OF THIS SECTION.

[5. The] 6. (A) IN THE CASE OF AN APPLICATION TO TEST A DEFENDANT PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, THE court shall conduct a hearing only if necessary to determine if the applicant is the victim of the offense of which the defendant was convicted.

(B) IN THE CASE OF AN APPLICATION TO TEST A DEFENDANT PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, THE COURT SHALL CONSIDER SUCH APPLICATION ON AN EXPEDITED BASIS. IF THE APPLICATION SETS FORTH FACTS SATISFYING THE REQUIREMENTS OF PARAGRAPHS (C) AND (D) OF SUBDIVISION FIVE OF THIS SECTION, IT SHALL BE GRANTED ON THE PAPERS AND WITHOUT A HEARING; PROVIDED, HOWEVER, THAT THE COURT SHALL DIRECT AN IMMEDIATE HEARING WHEN REQUIRED BY, AND IN ACCORDANCE WITH PARAGRAPH (C) OF THIS SUBDIVISION. AN APPLICATION SETS FORTH FACTS SATISFYING THE REQUIREMENTS OF PARAGRAPHS (C) AND (D) OF SUBDIVISION FIVE OF THIS SECTION WHEN THE DISTRICT ATTORNEY CERTIFIES THAT THE DEFENDANT HAS BEEN EITHER CONVICTED OF A QUALIFYING OFFENSE OR CHARGED BY AN ACCUSATORY INSTRUMENT WITH A QUALIFYING OFFENSE AND AN AFFIDAVIT SUPPORTED AND SUBMITTED IN SUPPORT OF THE APPLICATION ASSERTS FACTS SUFFICIENT TO DEMONSTRATE THAT THE PETITIONER MAY HAVE BEEN EXPOSED TO BODILY FLUID OF THE DEFENDANT DURING, OR AS A PROXIMATE RESULT OF OR IN THE COURSE OF FLIGHT FROM THE COMMISSION OF THE QUALIFYING OFFENSE SPECIFIED IN THE APPLICATION IN A MANNER WHICH MAY HAVE INVOLVED TRANSMISSION FROM THE DEFENDANT TO THE PETITIONER OF ONE OR MORE SPECIFIED TRANSMISSIBLE DISEASES.

(C) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVISION, THE COURT SHALL DIRECT AN IMMEDIATE HEARING IF THE DEFENDANT FILES A WRITTEN REQUEST FOR A HEARING, AND SUCH REQUEST CONTAINS SWORN ALLEGATIONS OF FACT, BASED UPON PERSONAL KNOWLEDGE OF THE DEFENDANT OR ANOTHER PERSON OR PERSONS ESTABLISHING REASONABLE GROUNDS TO BELIEVE THAT EITHER: (I) THE DEFENDANT DID NOT COMMIT THE QUALIFYING OFFENSE CHARGED OR A LESSER INCLUDED OFFENSE THEREOF; OR (II) IN THE COURSE OF THE COMMISSION OF, FLIGHT FROM OR ARREST FOR THE QUALIFYING OFFENSE OR AS A RESULT THEREOF THE PETITIONER WAS NOT EXPOSED TO BODILY FLUID OF THE DEFENDANT.

(D) ALL PERSONS GIVING FACTUAL INFORMATION AT SUCH HEARING MUST TESTIFY UNDER OATH, EXCEPT THAT UNSWORN EVIDENCE PURSUANT TO SUBDIVISION TWO OF SECTION 60.20 OF THIS CHAPTER MAY ALSO BE RECEIVED. AT SUCH HEARING, THE PROSECUTION HAS THE BURDEN OF PERSUASION, AND THE DEFENDANT HAS THE BURDEN OF GOING FORWARD. IF THE DEFENDANT FAILS TO SATISFY HIS OR HER BURDEN, THE COURT SHALL NOT TAKE TESTIMONY FROM THE PROSECUTION, BUT SHALL INSTEAD IMMEDIATELY GRANT THE APPLICATION. NEITHER SWORN ALLEGATIONS OF FACT OF THE DEFENDANT CONTAINED IN A WRITTEN REQUEST FOR A HEARING NOR ANY TESTIMONY IN SUPPORT THEREOF OFFERED BY THE DEFENDANT SHALL BE ADMISSIBLE AT TRIAL IN THE PROSECUTION'S CASE-IN-CHIEF.

(E) FOR PURPOSES OF PARAGRAPH (C) OF SUBDIVISION FIVE OF THIS SECTION A PETITIONER HAS BEEN EXPOSED TO BODILY FLUID OF THE DEFENDANT WHEN: (I) AN ELEMENT OF THE QUALIFYING OFFENSE ALLEGEDLY COMMITTED BY THE DEFENDANT INCLUDES SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT WITH THE PETITIONER; OR (II) THE SKIN OR A MUCOUS MEMBRANE OF THE PETITIONER HAS BEEN PUNCTURED BY A HYPODERMIC INSTRUMENT WHICH WAS IN THE POSSESSION, CUSTODY OR CONTROL OF THE DEFENDANT; OR (III) THE DEFENDANT'S SEMEN, VAGINAL SECRETIONS OR ANY BODILY SUBSTANCE CONTAINING BLOOD VISIBLE TO THE NAKED EYE MAY HAVE COME INTO CONTACT WITH A MUCOUS

MEMBRANE, RUPTURED OR BROKEN SKIN OR THE VASCULAR SYSTEM OF THE PETITIONER.

(F) The court ordered test must be performed [within fifteen] AS SOON AS PRACTICABLE BUT IN NO EVENT LATER THAN FIVE days [of] AFTER the date on which the court ordered the test, provided, however, that whenever the defendant is not tested within the period prescribed by the court, the court must again order that the defendant undergo [an HIV related test] A BLOOD TEST FOR THE PRESENCE OF SUCH TRANSMISSIBLE DISEASE. ANY COURT ORDER FOR TESTING PURSUANT TO THIS SECTION SHALL SPECIFY THE DISEASE OR DISEASES FOR WHICH THE DEFENDANT'S BLOOD IS TO BE TESTED.

[6.] 7. (a) Test results shall be disclosed subject to the following limitations, which shall be specified in any order issued pursuant to this section:

(i) disclosure of TEST RESULTS OR confidential HIV related information shall be limited to that information which is necessary to fulfill the purpose for which the order is granted;

(ii) disclosure of TEST RESULTS OR confidential HIV related information shall be limited to the person making the application; redisclosure shall be permitted only to the victim OR PETITIONER, the victim's OR PETITIONER'S immediate family, guardian, physicians, attorneys, medical or mental health providers and to his or her past and future contacts to whom there was or is a reasonable risk of [HIV] transmission OF SUCH TRANSMISSIBLE DISEASE and shall not be permitted to any other person or the court.

(b) Unless inconsistent with this section, the court's order shall direct compliance with and conform to the provisions of article twenty-seven-F of the public health law. Such orders shall include measures to protect against disclosure to others of the identity and HIV OR OTHER DISEASE status of the applicant and of the person tested and may include such other measures as the court deems necessary to protect confidential information.

[7.] 8. Any failure to comply with the provisions of this section or section twenty-seven hundred eighty-five-a of the public health law shall not impair or affect the validity of any sentence imposed by the court.

[8.] 9. No information obtained as a result of a consent, hearing or court order for testing issued pursuant to this section nor any information derived therefrom may be used as evidence in any criminal or civil proceeding against the defendant which relates to events that were the basis for the CHARGES OR THE defendant's conviction, provided however that nothing herein shall prevent prosecution of a witness testifying in any court hearing held pursuant to this section for perjury pursuant to article two hundred ten of the penal law; AND PROVIDED, FURTHER, THAT NOTHING IN THIS SECTION SHALL BE DEEMED TO PRECLUDE THE INTRODUCTION IN ANY SUCH PROCEEDING OF ANY OTHER ADMISSIBLE TEST RESULT CONCERNING THE HIV OR TRANSMISSIBLE DISEASE STATUS OF ANY PERSON, INCLUDING EVIDENCE OBTAINED PURSUANT TO SECTION THREE THOUSAND ONE HUNDRED TWENTY-ONE OF THE CIVIL PRACTICE LAW AND RULES.

S 2. Section 347.1 of the family court act, as added by chapter 76 of the laws of 1995, subdivision 1 as amended by chapter 264 of the laws of 2003, is amended to read as follows:

S 347.1. Required testing of the respondent in certain proceedings. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(A) "VICTIM" SHALL MEAN THE PERSON WITH WHOM THE RESPONDENT ENGAGED IN AN ACT OF SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT, AS THOSE TERMS ARE DEFINED IN SECTION 130.00 OF THE PENAL LAW,

WHERE SUCH CONDUCT WITH SUCH PERSON WAS THE BASIS FOR THE FINDING THAT THE RESPONDENT COMMITTED AN OFFENSE SPECIFIED IN PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION.

(B) "PETITIONER" MEANS A PERSON WHO ALLEGES HE OR SHE WAS EXPOSED TO BODILY FLUID OF A RESPONDENT DURING, OR AS A PROXIMATE RESULT OF, THE COMMISSION OF AN OFFENSE DESCRIBED IN PARAGRAPH (D) OF THIS SUBDIVISION OR PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION. AS USED IN SUBDIVISION ONE-A OF THIS SECTION, "PETITIONER" SHALL ALSO INCLUDE A PERSON WHO ALLEGES IN A COMPLAINT FILED WITH AN APPROPRIATE LOCAL OR STATE LAW ENFORCEMENT AGENCY THAT HE OR SHE WAS EXPOSED TO THE BODILY FLUID OF AN UNAPPREHENDED PERPETRATOR DURING, OR AS A PROXIMATE RESULT OF, THE COMMISSION OF AN OFFENSE DESCRIBED IN PARAGRAPH (D) OF THIS SUBDIVISION OR PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION.

(C) "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.

(D) "QUALIFYING OFFENSE" SHALL MEAN THE OFFENSES SET FORTH IN PARAGRAPH (E) OF SUBDIVISION ONE OF SECTION 390.15 OF THE CRIMINAL PROCEDURE LAW.

(E) "BODILY FLUID" 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 FLUID" SHALL MEAN BLOOD OR SEMEN.

1-A. A VICTIM OR PETITIONER, AS DEFINED IN PARAGRAPHS (A) AND (B) OF SUBDIVISION ONE OF THIS SECTION, MAY DIRECT A REQUEST FOR A TRANSMISSIBLE DISEASE TEST TO DETERMINE HIS OR HER TRANSMISSIBLE DISEASE STATUS TO THE CHIEF CITY OR COUNTY PUBLIC HEALTH OFFICIAL OF THE JURISDICTION WHERE HE OR SHE RESIDES OR WHERE THE VICTIM OR PETITIONER BELIEVES HE OR SHE MAY HAVE CONTRACTED SUCH TRANSMISSIBLE DISEASE. SUCH OFFICIAL SHALL, UPON SUCH REQUEST, AUTHORIZE THE VICTIM OR PETITIONER TO UNDERGO PROMPT, READILY ACCESSIBLE AND SCIENTIFICALLY RECOGNIZED LABORATORY TESTING INCLUDING, WHERE APPROPRIATE, POLYMERASE CHAIN REACTION (PCR) OR OTHER ADVANCED TESTING TECHNOLOGIES, PURSUANT TO SECTION TWENTY-SEVEN HUNDRED EIGHTY-FIVE-B OF THE PUBLIC HEALTH LAW, FOR THE DIAGNOSIS OF TRANSMISSIBLE DISEASES AT STATE EXPENSE. NOTHING IN THIS SUBDIVISION SHALL PRECLUDE OR LIMIT A COURT FROM GRANTING AN APPLICATION FOR THE TESTING OF A RESPONDENT PURSUANT TO THIS SECTION OR ANY OTHER APPLICABLE LAW.

2. (a) In any proceeding where [the] A respondent is found pursuant to section 345.1 or 346.1 of this [article] PART, to have committed a felony offense enumerated in any section of article one hundred thirty of the penal law, or any subdivision of section 130.20 of such law, for which an act of "sexual intercourse", "oral sexual conduct" or "anal sexual conduct", as those terms are defined in section 130.00 of the penal law, is required as an essential element for the commission thereof, the court must, upon a request of the victim, order that the respondent submit to [human immunodeficiency (HIV) related testing. The testing is to be conducted by a state, county, or local public health officer designated by the order. Test results, which shall not be disclosed to the court, shall be communicated to the respondent and the victim named in the order in accordance with the provisions of section twenty-seven hundred eighty-five-a of the public health law.

(b) For the purposes of this section, the term "victim" means the person with whom the respondent engaged in an act of "sexual intercourse", "oral sexual conduct" or "anal sexual conduct", as those terms

are defined in section 130.00 of the penal law, where such conduct with such victim was the basis for the court's finding that the respondent committed acts constituting one or more of the offenses specified in paragraph (a) of this subdivision] THE TESTING OF HIS OR HER BLOOD FOR THE PRESENCE OF ONE OR MORE TRANSMISSIBLE DISEASES.

[2.] (B) IN ANY PROCEEDING WHERE A RESPONDENT (I) IS FOUND PURSUANT TO SECTION 345.1 OR 346.1 OF THIS PART TO HAVE COMMITTED A QUALIFYING OFFENSE AS DEFINED IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION, OR (II) STANDS CHARGED BY A PETITION WHICH ALLEGES THAT SUCH RESPONDENT COMMITTED AN OFFENSE WHICH WOULD CONSTITUTE A QUALIFYING OFFENSE OR AN OFFENSE DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION, AND THE COURT HAS MADE A FINDING PURSUANT TO SECTION 325.3 OF THIS ARTICLE OR THE RESPONDENT HAS VALIDLY WAIVED SUCH A FINDING; AND THE COURT HAS MADE A FINDING PURSUANT TO PARAGRAPH (B) OF SUBDIVISION SIX OF THIS SECTION, THE COURT SHALL, UPON A REQUEST OF THE PETITIONER AND PURSUANT TO THIS SECTION, ORDER THE RESPONDENT TO SUBMIT TO TESTING OF HIS OR HER BLOOD FOR THE PRESENCE OF ONE OR MORE TRANSMISSIBLE DISEASES.

(C) THE TESTING IS TO BE ARRANGED BY A STATE, COUNTY, OR LOCAL PUBLIC HEALTH OFFICER DESIGNATED BY THE ORDER. TEST RESULTS, WHICH SHALL NOT BE DISCLOSED TO THE COURT, SHALL BE COMMUNICATED TO THE RESPONDENT AND TO THE PETITIONER OR VICTIM NAMED IN THE ORDER IN ACCORDANCE WITH THE PROVISIONS OF SECTION TWENTY-SEVEN HUNDRED EIGHTY-FIVE-A OF THE PUBLIC HEALTH LAW.

(D) WHEN A REQUEST FOR TESTING OF A RESPONDENT IS RECEIVED BY A COURT PURSUANT TO THIS SECTION, THE COURT SHALL ADVISE THE VICTIM OR PETITIONER OF THE AVAILABILITY OF PROMPT, READILY ACCESSIBLE AND SCIENTIFICALLY RECOGNIZED LABORATORY TESTING OF SUCH VICTIM OR PETITIONER FOR THE DIAGNOSIS OF TRANSMISSIBLE DISEASES AT STATE EXPENSE PURSUANT TO SUBDIVISION ONE-A OF THIS SECTION.

3. (A) Any request made [by the victim] pursuant to PARAGRAPH (A) OF SUBDIVISION TWO OF this section must be in writing, filed with the court and provided by the court to the [defendant] RESPONDENT and his or her counsel. The request must be filed with the court prior to or within ten days after the filing of an order in accordance with section 345.1 or 346.1 of this [article] PART, provided that, for good cause shown, the court may permit such request to be filed at any time prior to the entry of an order of disposition.

[3.] (B) THE PROSECUTOR SHALL REPRESENT THE VICTIM BEFORE THE COURT. ANY REQUEST MADE BY A PETITIONER PURSUANT TO SUBPARAGRAPH (I) OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION MUST BE IN WRITING, FILED WITH THE COURT AND PROVIDED BY THE COURT TO THE RESPONDENT AND HIS OR HER COUNSEL. SUCH REQUEST MUST BE FILED WITH THE COURT PRIOR TO OR WITHIN TEN DAYS AFTER THE FILING OF AN ORDER IN ACCORDANCE WITH SECTION 345.1 OR 346.1 OF THIS PART, PROVIDED THAT, FOR GOOD CAUSE SHOWN, THE COURT MAY PERMIT SUCH REQUEST TO BE FILED AT ANY TIME PRIOR TO THE ENTRY OF AN ORDER OF DISPOSITION. WHERE THE REQUEST IS PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, SUCH REQUEST MUST BE IN WRITING, AND MUST BE SERVED AND FILED WITH THE COURT PRIOR TO THE RESPONDENT'S ENTRY OF AN ADMISSION OR THE ISSUANCE OF AN ORDER IN ACCORDANCE WITH SECTION 345.1 OR 346.1 OF THIS PART. WHERE PROCEEDINGS ON THE PETITION ARE TERMINATED IN A MANNER OTHER THAN PURSUANT TO SECTION 345.1 OR 346.1 OF THIS PART, A REQUEST PURSUANT TO SUCH SUBPARAGRAPH (II) MUST BE SERVED AND FILED WITH THE COURT PRIOR TO SUCH TERMINATION.

(C) A REQUEST FOR TESTING PURSUANT TO THIS SUBDIVISION MAY BE HEARD AND DETERMINED ONLY IN A COURT OF RECORD HAVING JURISDICTION OVER THE

OFFENSE CHARGED. IF THE COURT IN WHICH THE CRIMINAL ACTION IS PENDING IS NOT A COURT OF RECORD, AND THE REQUEST FOR TESTING IS FILED IN SUCH COURT, SUCH COURT SHALL PROMPTLY TRANSFER THE APPLICATION TO A COURT OF RECORD WHICH HAS CONCURRENT JURISDICTION OVER THE OFFENSE CHARGED, FOR THE SOLE PURPOSE OF HEARING AND DETERMINING THE APPLICATION.

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

[4.] 5. (A) The application for an order to compel a respondent to undergo [an HIV related test] A BLOOD TEST FOR A TRANSMISSIBLE DISEASE PURSUANT TO THIS SECTION may be made by the victim OR PETITIONER but, if the victim OR PETITIONER is an infant or incompetent person, the application may also be made by a representative as defined in section twelve hundred one of the civil practice law and rules.

[The] (B) IN THE CASE OF AN APPLICATION PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, THE application must state that [(a)] the applicant was the victim of the offense[,] enumerated in SUCH paragraph (a) [of subdivision one of this section], which OFFENSE the court found the [defendant] RESPONDENT to have committed[; and (b)].

(C) IN THE CASE OF AN APPLICATION PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, THE APPLICATION MUST STATE THAT THE PETITIONER MAY HAVE BEEN EXPOSED TO BODILY FLUID OF THE RESPONDENT 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 RESPONDENT TO THE PETITIONER.

(D) IN ALL SUCH APPLICATIONS FOR TESTING FILED PURSUANT TO THIS SECTION, THE APPLICANT MUST ALSO STATE THAT the applicant has been offered counseling by a public health officer and been advised of (i) the limitations on the information to be obtained through [an HIV test] A BLOOD TEST on the proposed subject; (ii) current scientific assessments of the risk of transmission of [HIV] A DISEASE from the exposure he or she may have experienced; [and] (iii) the need for the applicant to undergo [HIV related] testing to definitively determine his or her [HIV] status WITH REGARD TO ANY DISEASE; AND (IV) WHERE THE REQUEST IS FOR A TRANSMISSIBLE DISEASE TEST OF THE RESPONDENT, 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 DISEASES AT STATE EXPENSE PURSUANT TO SUBDIVISION ONE-A OF THIS SECTION.

[5. The] 6. (A) IN THE CASE OF AN APPLICATION TO TEST A RESPONDENT PURSUANT TO PARAGRAPH (A) OF SUBDIVISION TWO OF THIS SECTION, THE court shall conduct a hearing only if necessary to determine if the applicant is the victim of the offense the respondent was found to have committed.

(B) IN THE CASE OF AN APPLICATION TO TEST A RESPONDENT PURSUANT TO PARAGRAPH (B) OF SUBDIVISION TWO OF THIS SECTION, THE COURT SHALL CONSIDER SUCH APPLICATION ON AN EXPEDITED BASIS. IF THE APPLICATION SETS FORTH FACTS SATISFYING THE REQUIREMENTS OF PARAGRAPHS (C) AND (D) OF SUBDIVISION FIVE OF THIS SECTION, IT SHALL BE GRANTED ON THE PAPERS AND WITHOUT A HEARING; PROVIDED, HOWEVER, THAT THE COURT SHALL DIRECT AN IMMEDIATE HEARING WHEN REQUIRED BY, AND IN ACCORDANCE WITH PARAGRAPH (C) OF THIS SUBDIVISION. AN APPLICATION SETS FORTH FACTS SATISFYING THE

REQUIREMENTS OF PARAGRAPHS (C) AND (D) OF SUBDIVISION FIVE OF THIS SECTION WHEN THE DISTRICT ATTORNEY CERTIFIES THAT THE RESPONDENT HAS BEEN DETERMINED TO HAVE COMMITTED A QUALIFYING OFFENSE OR CHARGED BY A PETITION WITH A QUALIFYING OFFENSE AND AN AFFIDAVIT SUPPORTED AND SUBMITTED IN SUPPORT OF THE APPLICATION ASSERTS FACTS SUFFICIENT TO DEMONSTRATE THAT THE PETITIONER MAY HAVE BEEN EXPOSED TO BODILY FLUID OF THE RESPONDENT DURING, OR AS A PROXIMATE RESULT OF OR IN THE COURSE OF FLIGHT FROM THE COMMISSION OF THE QUALIFYING OFFENSE SPECIFIED IN THE APPLICATION IN A MANNER WHICH MAY HAVE INVOLVED TRANSMISSION FROM THE RESPONDENT TO THE PETITIONER OF ONE OR MORE SPECIFIED TRANSMISSIBLE DISEASES.

(C) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVISION, THE COURT SHALL DIRECT AN IMMEDIATE HEARING IF THE RESPONDENT FILES A WRITTEN REQUEST FOR A HEARING, AND SUCH REQUEST CONTAINS SWORN ALLEGATIONS OF FACT, BASED UPON PERSONAL KNOWLEDGE OF THE RESPONDENT OR ANOTHER PERSON OR PERSONS ESTABLISHING REASONABLE GROUNDS TO BELIEVE THAT EITHER: (I) THE RESPONDENT DID NOT COMMIT THE QUALIFYING OFFENSE CHARGED OR A LESSER INCLUDED OFFENSE THEREOF; OR (II) IN THE COURSE OF THE COMMISSION OF, FLIGHT FROM OR ARREST FOR THE QUALIFYING OFFENSE OR AS A RESULT THEREOF THE PETITIONER WAS NOT EXPOSED TO BODILY FLUID OF THE RESPONDENT.

(D) ALL PERSONS GIVING FACTUAL INFORMATION AT SUCH HEARING MUST TESTIFY UNDER OATH, EXCEPT THAT UNSWORN EVIDENCE PURSUANT TO SUBDIVISION TWO OF SECTION 60.20 OF THE CRIMINAL PROCEDURE LAW MAY ALSO BE RECEIVED. AT SUCH HEARING, THE PROSECUTION HAS THE BURDEN OF PERSUASION, AND THE RESPONDENT HAS THE BURDEN OF GOING FORWARD. IF THE RESPONDENT FAILS TO SATISFY HIS OR HER BURDEN, THE COURT SHALL NOT TAKE TESTIMONY FROM THE PROSECUTION, BUT SHALL INSTEAD IMMEDIATELY GRANT THE APPLICATION. NEITHER SWORN ALLEGATIONS OF FACT OF THE RESPONDENT CONTAINED IN A WRITTEN REQUEST FOR A HEARING NOR ANY TESTIMONY IN SUPPORT THEREOF OFFERED BY THE RESPONDENT SHALL BE ADMISSIBLE AT TRIAL IN THE PROSECUTION'S CASE-IN-CHIEF.

(E) FOR PURPOSES OF PARAGRAPH (C) OF SUBDIVISION FIVE OF THIS SECTION A PETITIONER HAS BEEN EXPOSED TO BODILY FLUID OF THE RESPONDENT WHEN: (I) AN ELEMENT OF THE QUALIFYING OFFENSE ALLEGEDLY COMMITTED BY THE RESPONDENT INCLUDES SEXUAL INTERCOURSE, ORAL SEXUAL CONDUCT OR ANAL SEXUAL CONDUCT WITH THE PETITIONER; OR (II) THE SKIN OR A MUCOUS MEMBRANE OF THE PETITIONER HAS BEEN PUNCTURED BY A HYPODERMIC INSTRUMENT WHICH WAS IN THE POSSESSION, CUSTODY OR CONTROL OF THE RESPONDENT; OR (III) THE RESPONDENT'S SEMEN, VAGINAL SECRETIONS OR ANY BODILY SUBSTANCE CONTAINING BLOOD VISIBLE TO THE NAKED EYE MAY HAVE COME INTO CONTACT WITH A MUCOUS MEMBRANE, RUPTURED OR BROKEN SKIN OR THE VASCULAR SYSTEM OF THE PETITIONER.

(F) The court ordered test must be performed [within fifteen] AS SOON AS PRACTICABLE BUT IN NO EVENT LATER THAN FIVE days [of] AFTER the date on which the court ordered the test, provided however that whenever the respondent is not tested within the period prescribed by the court, the court must again order that the respondent undergo [an HIV related test] A BLOOD TEST FOR THE PRESENCE OF SUCH TRANSMISSIBLE DISEASE. ANY COURT ORDER FOR TESTING PURSUANT TO THIS SECTION SHALL SPECIFY THE DISEASE OR DISEASES FOR WHICH THE RESPONDENT'S BLOOD IS TO BE TESTED.

[6] 7. (a) Test results shall be disclosed subject to the following limitations, which shall be specified in any order issued pursuant to this section:

(i) disclosure of TEST RESULTS OR confidential HIV related information shall be limited to that information which is necessary to fulfill the purpose for which the order is granted;

(ii) disclosure of TEST RESULTS OR confidential HIV related information shall be limited to the person making the application; redisclosure shall be permitted only to the victim OR PETITIONER, the victim's OR PETITIONER'S immediate family, guardian, physicians, attorneys, medical or mental health providers and to his or her past and future contacts to whom there was or is a reasonable risk of [HIV] transmission OF SUCH TRANSMISSIBLE DISEASE and shall not be permitted to any other person or the court.

(b) Unless inconsistent with this section, the court's order shall direct compliance with and conform to the provisions of article twenty-seven-F of the public health law. Such order shall include measures to protect against disclosure to others of the identity and HIV OR OTHER DISEASE status of the applicant and of the person tested and may include such other measures as the court deems necessary to protect confidential information.

[7] 8. Any failure to comply with the provisions of this section or section twenty-seven hundred eighty-five-a of the public health law shall not impair the validity of any order of disposition entered by the court.

[8] 9. No information obtained as a result of a consent, hearing or court order for testing issued pursuant to this section nor any information derived therefrom may be used as evidence in any criminal or civil proceeding against the respondent which relates to events that were the basis for the [respondent's conviction] CHARGES OR THE FINDING THAT THE RESPONDENT COMMITTED SUCH OFFENSES, provided however that nothing herein shall prevent prosecution of a witness testifying in any court hearing held pursuant to this section for perjury pursuant to article two hundred ten of the penal law; AND PROVIDED, FURTHER, THAT NOTHING IN THIS SECTION SHALL BE DEEMED TO PRECLUDE THE INTRODUCTION IN ANY SUCH PROCEEDING OF ANY OTHER ADMISSIBLE TEST RESULT CONCERNING THE HIV OR TRANSMISSIBLE DISEASE STATUS OF ANY PERSON, INCLUDING EVIDENCE OBTAINED PURSUANT TO SECTION THREE THOUSAND ONE HUNDRED TWENTY-ONE OF THE CIVIL PRACTICE LAW AND RULES.

S 3. Section 353.6 of the family court act is amended by adding a new subdivision 5 to read as follows:

5. IN ANY INSTANCE IN WHICH A CHIEF COUNTY OR CITY HEALTH OFFICIAL HAS AUTHORIZED TESTING OF A PERSON PURSUANT TO SUBDIVISION ONE-A OF SECTION 347.1 OF THIS ARTICLE, AND A DISPOSITIONAL HEARING IS HELD FOR THE RESPONDENT WHO WAS ALLEGED TO HAVE TRANSMITTED A TRANSMISSIBLE DISEASE TO THE PERSON TESTED WITH REGARD TO THE OFFENSE WHICH FORMED A BASIS FOR SUCH TESTING, THE COURT AS A PART OF SUCH DISPOSITION SHALL ORDER THE RESPONDENT TO MAKE RESTITUTION TO THE STATE OF NEW YORK OF THE REASONABLE COST INCURRED BY THE STATE IN CONDUCTING SUCH TESTING.

S 4. Section 60.27 of the penal law is amended by adding a new subdivision 14 to read as follows:

14. IN ANY INSTANCE IN WHICH A CHIEF COUNTY OR CITY HEALTH OFFICIAL HAS AUTHORIZED TESTING OF A PERSON PURSUANT TO SUBDIVISION ONE-A OF SECTION 390.15 OF THE CRIMINAL PROCEDURE LAW, AND THE DEFENDANT WHO WAS ALLEGED TO HAVE TRANSMITTED A TRANSMISSIBLE DISEASE TO THE PERSON TESTED IS SENTENCED FOR THE OFFENSE WHICH FORMED A BASIS FOR SUCH TESTING, THE SENTENCING COURT SHALL ORDER THE DEFENDANT TO MAKE RESTITUTION TO THE STATE OF NEW YORK OF THE REASONABLE COST INCURRED BY THE STATE IN CONDUCTING SUCH TESTING.

S 5. Section 2785-a of the public health law, as added by chapter 76 of the laws of 1995, is amended to read as follows:

S 2785-a. Court order for [HIV related] testing OF BLOOD in certain cases. 1. Notwithstanding any contrary provision of law or regulation, a state, county or local public health officer to whom an order or a consent for [an HIV test] A BLOOD TEST FOR HIV OR THE PRESENCE OF A TRANSMISSIBLE DISEASE is addressed or sent, in accordance with section 390.15 of the criminal procedure law or section 347.1 of the family court act, must cause [HIV related] SUCH testing to be administered to the subject named therein and, if the test is pursuant to court order, must immediately provide to the court that issued the order a written report specifying the date on which such test was completed. Such report to the court shall not, however, disclose the results of such test. Such officer must disclose the results of the testing to the victim OR PETITIONER indicated in the order or consent and must also disclose the results to the person tested, unless the person tested has been asked to but declines to authorize such disclosure to himself or herself.

2. At the time of communicating the test results to the subject or the victim, such public health officer shall directly provide the victim OR PETITIONER and person tested with (a) counseling or referrals for counseling for the purposes specified in subdivision five of section [two thousand seven] TWENTY-SEVEN hundred eighty-one of this article; (b) WHERE THE TEST WAS AN HIV RELATED TEST, counseling with regard to HIV disease and HIV testing in accordance with law and consistent with subdivision five of section [two thousand seven] TWENTY-SEVEN hundred eighty-one of this article; and (c) appropriate health care and support services, or referrals to such available services. If at the time of communicating the test results, the person tested is in the custody of the department of correctional services, [division for youth] OFFICE OF CHILDREN AND FAMILY SERVICES, office of mental health or a local correctional institution, the counseling and services required by this subdivision may be provided by a public health officer associated with the county or facility within which the person tested is confined.

3. Unless inconsistent with this section, the provisions of this article regarding the confidentiality and disclosure of HIV related information shall apply to proceedings conducted pursuant to section 390.15 of the criminal procedure law or section 347.1 of the family court act.

S 6. Section 206 of the public health law is amended by adding a new subdivision 26 to read as follows:

26. THE COMMISSIONER SHALL ANNUALLY REVIEW THE LIST OF TRANSMISSIBLE DISEASES SET FORTH IN PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION 390.15 OF THE CRIMINAL PROCEDURE LAW AND PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 347.1 OF THE FAMILY COURT ACT AND, IF THE COMMISSIONER DEEMS IT APPROPRIATE, SHALL RECOMMEND MODIFICATIONS TO SUCH LISTS TO THE GOVERNOR, THE SPEAKER OF THE ASSEMBLY AND THE TEMPORARY PRESIDENT OF THE SENATE, TOGETHER WITH THE REASONS FOR SUCH RECOMMENDATIONS.

S 7. The public health law is amended by adding a new section 2785-b to read as follows:

S 2785-B. TRANSMISSIBLE DISEASE TESTING OF CRIME VICTIMS IN CERTAIN CASES. 1. THERE IS HEREBY ESTABLISHED IN THIS STATE A STATEWIDE PROGRAM OF CRIME VICTIM TESTING FOR TRANSMISSIBLE DISEASES, WHICH SHALL BE AVAILABLE TO PERSONS APPROVED FOR TESTING PURSUANT TO SUBDIVISION ONE-A OF SECTION 390.15 OF THE CRIMINAL PROCEDURE LAW OR SUBDIVISION ONE-A OF SECTION 347.1 OF THE FAMILY COURT ACT. THE COMMISSIONER SHALL PROMUL-

GATE REGULATIONS CONSISTENT WITH THIS SECTION AND SUBDIVISION ONE-A OF SECTION 390.15 OF THE CRIMINAL PROCEDURE LAW AND SUBDIVISION ONE-A OF SECTION 347.1 OF THE FAMILY COURT ACT TO IMPLEMENT THE PROGRAM OF CRIME VICTIM TESTING AVAILABLE PURSUANT TO SUCH STATUTES.

2. CRIME VICTIM TESTING AUTHORIZED PURSUANT TO SUBDIVISION ONE-A OF SECTION 390.15 OF THE CRIMINAL PROCEDURE LAW OR SUBDIVISION ONE-A OF SECTION 347.1 OF THE FAMILY COURT ACT SHALL BE CONDUCTED BY AN APPROPRIATE LABORATORY OR LABORATORIES APPROVED FOR SUCH PURPOSES BY THE COMMISSIONER PURSUANT TO SECTION FIVE HUNDRED SEVENTY-FIVE OF THIS CHAPTER. SUCH TESTING OF CRIME VICTIMS SHALL BE CONDUCTED PROMPTLY, AND SHALL BE READILY ACCESSIBLE AND SCIENTIFICALLY RECOGNIZED LABORATORY TESTING INCLUDING, WHERE APPROPRIATE, POLYMERASE CHAIN REACTION (PCR) OR OTHER ADVANCED TESTING TECHNOLOGIES, FOR THE DIAGNOSIS OF TRANSMISSIBLE DISEASES. THE COST FOR SUCH TESTING SHALL BE A STATE CHARGE.

3. UNLESS INCONSISTENT WITH THIS SECTION, THE PROVISIONS OF THIS ARTICLE, INCLUDING BUT NOT LIMITED TO SECTION TWENTY-SEVEN HUNDRED EIGHTY-FIVE-A OF THIS ARTICLE REGARDING THE CONFIDENTIALITY AND DISCLOSURE OF HIV RELATED INFORMATION AND THE COUNSELLING OF TESTED PERSONS, SHALL APPLY TO THE TESTING OF CRIME VICTIMS PURSUANT TO THIS SECTION.

4. THE COMMISSIONER SHALL DEVELOP AND PERIODICALLY REVISE A DESCRIPTION OF THE PROGRAM OF CRIME VICTIM TESTING FOR THE PRESENCE OF TRANSMISSIBLE DISEASES AVAILABLE PURSUANT TO THIS SECTION. THE COMMISSIONER SHALL FURNISH COPIES OF SUCH DESCRIPTION TO THE APPROPRIATE COURTS AND THE APPROPRIATE CHIEF COUNTY AND CITY PUBLIC HEALTH OFFICIALS, WHO IN TURN SHALL FURNISH SUCH DESCRIPTION TO PERSONS REQUESTING OR CONSIDERING REQUESTING TESTING PURSUANT TO SUBDIVISION ONE-A OF SECTION 390.15 OF THE CRIMINAL PROCEDURE LAW OR SUBDIVISION ONE-A OF SECTION 347.1 OF THE FAMILY COURT ACT.

5. NOTHING CONTAINED IN THIS SECTION SHALL PRECLUDE A CRIME VICTIM, WHO IS OTHERWISE ENTITLED TO TRANSMISSIBLE DISEASE TESTING AT STATE EXPENSE PURSUANT TO SUBDIVISION ONE-A OF SECTION 390.15 OF THE CRIMINAL PROCEDURE LAW OR SUBDIVISION ONE-A OF SECTION 347.1 OF THE FAMILY COURT ACT, FROM ELECTING TO UNDERGO SUCH TESTING THROUGH HIS OR HER PHYSICIAN OR MEDICAL CAREGIVER. THE COST FOR SUCH TESTING SHALL BE A STATE CHARGE. THE COMMISSIONER SHALL PROMULGATE REGULATIONS CONSISTENT WITH THIS SECTION AND SUBDIVISION ONE-A OF SECTION 390.15 OF THE CRIMINAL PROCEDURE LAW AND SUBDIVISION ONE-A OF SECTION 347.1 OF THE FAMILY COURT ACT TO IMPLEMENT THE PROVISIONS OF THIS SUBDIVISION.

S 8. This act shall take effect immediately and, where otherwise permitted by this act, shall authorize the testing of persons against whom charges are pending and the testing of persons who are convicted on or after such date.