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

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2009-2010 Regular Sessions

I N A S S E M B L Y

February 10, 2009

Introduced by M. of A. GIGLIO, QUINN, ERRIGO, FINCH, WALKER, KOLB -- Multi-Sponsored by -- M. of A. BALL, BARCLAY, BURLING, CALHOUN, CROUCH, HAWLEY, McDONOUGH, McKEVITT, MILLER, MOLINARO, OAKS, SAYWARD, TOWNSEND -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, the criminal procedure law and the correction law, in relation to criminalizing the reckless transmission of HIV/AIDS and to require testing for AIDS and HIV for certain persons

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

Section 1. Legislative intent. The legislature finds that HIV/AIDS infection poses a serious threat to the public health of all New Yorkers whenever HIV/AIDS infected persons act in a manner which is likely to spread this horrible disease to other persons. When HIV/AIDS infected persons commit such actions as having unprotected sex or sharing needles without the consent of their partners, they endanger the public health and frustrate the efforts of health officials to contain and, hopefully, reverse the spread of HIV/AIDS.

The legislature further finds that in order to allow the victims of alleged sex crimes or crimes which endanger their health to obtain the most effective health care treatment, the HIV status of their offenders must be determined.

The legislature further finds that the increasing reports of acquired immune deficiency syndrome, human immunodeficiency virus, tuberculosis and hepatitis in state correctional facilities have reached an alarming level. These inmates and others who may have an undiagnosed case of any of these syndromes, diseases or viruses are extremely detrimental to the health, safety and welfare of the correction officers and other staff who work in such facilities as well as inmates who are incarcerated therein. In order to maintain proper security and working conditions, the legislature hereby declares that all inmates presently under

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

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confinement and all inmates to be newly admitted to the department of correctional services must be expeditiously tested for such syndromes, diseases or viruses. The department of correctional services shall take immediate action to care for afflicted inmates including separation from the general inmate population in a special medical facility.

S 2. Section 10.00 of the penal law is amended by adding two new subdivisions 21 and 22 to read as follows:

21. "AIDS" MEANS ACQUIRED IMMUNE DEFICIENCY SYNDROME, AS MAY BE DEFINED FROM TIME TO TIME BY THE CENTERS FOR DISEASE CONTROL OF THE UNITED STATES PUBLIC HEALTH SERVICE.

22. "HIV INFECTION" MEANS INFECTION WITH THE HUMAN IMMUNODEFICIENCY VIRUS OR ANY OTHER RELATED VIRUS IDENTIFIED AS A PROBABLE CAUSATIVE AGENT OF AIDS.

S 3. The opening paragraph of subdivision 1 of section 70.25 of the penal law, as amended by chapter 372 of the laws of 1981, is amended to read as follows:

Except as provided in subdivisions two, two-a [and], five AND SIX of this section, when multiple sentences of imprisonment are imposed on a person at the same time, or when a person who is subject to any undischarged term of imprisonment imposed at a previous time by a court of this state is sentenced to an additional term of imprisonment, the sentence or sentences imposed by the court shall run either concurrently or consecutively with respect to each other and the undischarged term or terms in such manner as the court directs at the time of sentence. If the court does not specify the manner in which a sentence imposed by it is to run, the sentence shall run as follows:

S 4. Section 70.25 of the penal law is amended by adding a new subdivision 6 to read as follows:

6. WHEN A PERSON IS CONVICTED OF RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN THE FIRST DEGREE, AS DEFINED IN SECTION 120.26 OF THIS CHAPTER, OR RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN THE SECOND DEGREE, AS DEFINED IN SECTION 120.27 OF THIS CHAPTER, AND A TERM OF IMPRISONMENT WHICH MAY BE IMPOSED AS A SENTENCE UPON SUCH CONVICTION, SHALL RUN CONSECUTIVELY TO ANY OTHER TERM OF IMPRISONMENT IMPOSED AS THE SENTENCE UPON THE CONVICTION OF ANY OTHER OFFENSE COMMITTED THROUGH THE SAME ACT OR OMISSION, OR THROUGH AN ACT OR OMISSION WITH ITSELF CONSTITUTED ONE OF THE MATERIAL ELEMENTS OF SUCH RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH OFFENSE.

S 5. The penal law is amended by adding four new sections 120.26, 120.27, 120.28 and 170.36 to read as follows:

S 120.26 RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN THE FIRST DEGREE.

A PERSON IS GUILTY OF RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN THE FIRST DEGREE WHEN HE OR SHE IS AWARE THAT HE OR SHE HAS TESTED POSITIVELY FOR HIV/AIDS AND THEN RECKLESSLY ENGAGES IN CONDUCT WHICH RESULTS IN THE TRANSMISSION OF HIV/AIDS TO ANOTHER PERSON WHO WAS UNAWARE OF SUCH CONDITION.

RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN THE FIRST DEGREE IS A CLASS B FELONY.

S 120.27 RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN THE SECOND DEGREE.

A PERSON IS GUILTY OF RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN THE SECOND DEGREE WHEN HE OR SHE IS AWARE THAT HE OR SHE HAS TESTED POSITIVELY FOR HIV/AIDS AND THEN RECKLESSLY ENGAGES IN CONDUCT WHICH CREATES A SUBSTANTIAL RISK OF THE TRANSMISSION OF HIV/AIDS TO ANOTHER PERSON WHO WAS UNAWARE OF SUCH CONDITION.

RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN THE SECOND DEGREE IS A CLASS C FELONY.

S 120.28 RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH; DEFENSE.

IN ANY PROSECUTION UNDER SECTION 120.26 OR 120.27 OF THIS ARTICLE, IT SHALL BE AN ABSOLUTE DEFENSE THAT THE DEFENDANT, AT THE TIME SHE WAS ENGAGED IN THE CONDUCT CONSTITUTING THE OFFENSE, WAS A WOMAN WHO TRANSMITTED THE HIV/AIDS VIRUS TO HER CHILD AS THE RESULT OF GIVING BIRTH TO SUCH CHILD.

S 170.36 OFFERING A FALSE INSTRUMENT WHICH ENDANGERS THE PUBLIC HEALTH.

A PERSON IS GUILTY OF OFFERING A FALSE INSTRUMENT WHICH ENDANGERS THE PUBLIC HEALTH WHEN HE OR SHE IS AWARE THAT HE OR SHE HAS TESTED POSITIVE FOR HIV/AIDS AND THEN KNOWING THAT A WRITTEN INSTRUMENT CONTAINS A FALSE STATEMENT OR FALSE INFORMATION REGARDING HIS OR HER HIV STATUS AND WITH THE INTENT TO DEFRAUD THE DEPARTMENT OF HEALTH, ANY SUBDIVISION OR AGENT THEREOF, OR ANY OTHER HEALTH CARE PROVIDER, HE OR SHE OFFERS OR PRESENTS SUCH INSTRUMENT TO AN AGENT OF THAT OFFICE OR OTHER HEALTH CARE PROVIDER WITH THE KNOWLEDGE OR BELIEF THAT IT WILL BE FILED WITH, REGISTERED OR RECORDED IN OR OTHERWISE BECOME A PART OF THE RECORDS OF SUCH PUBLIC OFFICE OR PUBLIC SERVANT.

OFFERING A FALSE INSTRUMENT WHICH ENDANGERS THE PUBLIC HEALTH IS A CLASS E FELONY.

S 6. Section 1.20 of the criminal procedure law is amended by adding two new subdivisions 44 and 45 to read as follows:

44. "HIV RELATED ILLNESS" MEANS ANY ILLNESS THAT MAY RESULT FROM OR MAY BE ASSOCIATED WITH HIV INFECTION.

45. "HIV RELATED TEST" MEANS ANY LABORATORY TEST OR SERIES OF TESTS FOR ANY VIRUS, ANTIBODY, ANTIGEN OR ETIOLOGIC AGENT WHATSOEVER THOUGHT TO CAUSE OR TO INDICATE THE PRESENCE OF AIDS.

S 7. The criminal procedure law is amended by adding a new section 160.46 to read as follows:

S 160.46 HIV RELATED TESTING OF ALLEGED SEX AND PUBLIC HEALTH OFFENDERS.

1. A POLICE OFFICER WHO MAKES AN ARREST FOR ANY CRIME SET FORTH IN ARTICLE ONE HUNDRED THIRTY OR SECTION 120.26 OR 120.27 OF THE PENAL LAW, EITHER WITH OR WITHOUT A WARRANT, SHALL, FOLLOWING SUCH ARREST OR THE ARRAIGNMENT UPON A LOCAL CRIMINAL COURT ACCUSATORY INSTRUMENT OF A DEFENDANT WHOSE COURT ATTENDANCE HAS BEEN SECURED BY A SUMMONS OR AN APPEARANCE TICKET, CAUSE SUCH DEFENDANT TO BE IMMEDIATELY GIVEN AN HIV RELATED TEST TO DETERMINE IF SUCH DEFENDANT HAS HIV INFECTION, HIV RELATED ILLNESS OR AIDS.

2. THE HIV RELATED TEST PRESCRIBED IN SUBDIVISION ONE OF THIS SECTION AND THE SUBMISSION OF AVAILABLE INFORMATION CONCERNING THE DEFENDANT AND THE FACTS AND CIRCUMSTANCES OF THE CRIME CHARGED MUST BE IN ACCORDANCE WITH THE RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER OF CRIMINAL JUSTICE SERVICES.

3. THE RESULT OF AN HIV RELATED TEST PERFORMED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, SHALL, UPON REQUEST, BE MADE AVAILABLE TO THE VICTIM OR ALLEGED VICTIM OF SUCH CRIME AND TO THE DEFENDANT.

S 8. Section 71 of the correction law is amended by adding a new subdivision 8 to read as follows:

8. (A) PERSONS WHO ARE COMMITTED, TRANSFERRED, CERTIFIED TO OR PLACED IN THE CARE OR CUSTODY OF THE DEPARTMENT SHALL BE IMMEDIATELY TESTED FOR EVIDENCE OF ACQUIRED IMMUNE DEFICIENCY SYNDROME, HUMAN IMMUNODEFICIENCY VIRUS, TUBERCULOSIS AND HEPATITIS AND MONITORED FOR THE POSSIBILITY OF DEVELOPMENT OF SUCH SYNDROMES, DISEASES OR VIRUSES IN ACCORDANCE WITH PROPER MEDICAL PROCEDURES.

(B) FOR THOSE PERSONS WHO GENERATE A POSITIVE RESULT, THE DEPARTMENT SHALL PROVIDE, IN EACH FACILITY UNDER ITS CONTROL, THE INSTRUCTION OF APPROPRIATE STAFF, INMATES AND SIGNIFICANT OTHERS REGARDING THE NATURE OF ACQUIRED IMMUNE DEFICIENCY SYNDROME AND AIDS RELATED COMPLEX (ARC), HUMAN IMMUNODEFICIENCY VIRUS, TUBERCULOSIS AND HEPATITIS, POTENTIAL PROBLEMS, AND STEPS WHICH MAY BE TAKEN TO MINIMIZE SUCH PROBLEMS.

S 9. Section 141 of the correction law, as amended by chapter 476 of the laws of 1970, is amended to read as follows:

S 141. Contagious disease in facility. 1. In case any pestilence or contagious disease shall break out among the inmates in any of the correctional facilities, or in the vicinity of such facilities, the commissioner [of correction] may cause the inmates confined in such facility, or any of them, to be removed to some suitable place of security, where such of them as may be sick shall receive all necessary care and medical assistance; such inmates shall be returned as soon as may be feasible to the facility from which they were taken, to be confined therein according to their respective sentences.

2. TO REDUCE THE POSSIBILITY OF ANY PESTILENCE OR CONTAGIOUS DISEASE IN CORRECTIONAL FACILITIES, EVERY INMATE SHALL BE REGULARLY ADMINISTERED A BLOOD TEST DESIGNED TO TEST FOR THE VIRAL AGENT KNOWN AS HTLV-III/LAV WHICH CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME AND A BLOOD TEST DESIGNED TO TEST FOR TUBERCULOSIS AND HEPATITIS. THE COMMISSIONER SHALL TAKE ALL NECESSARY PRECAUTIONS WHICH SHALL INCLUDE MONITORING, EDUCATION AND COUNSELING FOR THOSE INMATES WHO TEST POSITIVE FOR THESE ILLNESSES.

S 10. The correction law is amended by adding a new section 141-a to read as follows:

S 141-A. NOTIFICATION OF DISEASE SYMPTOMS. UPON THE DIAGNOSIS OF A FACILITY HEALTH DIRECTOR OR ANY OTHER MEDICAL SERVICE PROVIDER AUTHORIZED BY THE DEPARTMENT TO EXAMINE INMATES, THAT AN INMATE HAS SYMPTOMS OF ACQUIRED IMMUNE DEFICIENCY SYNDROME, NOTICE OF THE DIAGNOSIS SHALL BE PROVIDED TO ALL EMPLOYEES OF THE DEPARTMENT WHO CAN REASONABLY BE EXPECTED TO BE INVOLVED IN THE SUPERVISION AND CARE OF SAID INMATE.

S 11. This act shall take effect on the first of January next succeeding the date on which it shall have become law; provided however that sections three, four and five of this act shall take effect on the first of November next succeeding the date on which it shall have become a law; and provided, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the provisions of this act on its effective date are authorized and directed to be made and completed within 180 days after the date on which this act shall have become a law.