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

February 20, 2009

Introduced by M. of A. HAYES, ALFANO, BARRA, CROUCH, FINCH, GIGLIO, RAIA, WALKER -- Multi-Sponsored by -- M. of A. BACALLES, BARCLAY, CALHOUN, KOLB, P. LOPEZ, McDONOUGH, MOLINARO, RABBITT, SAYWARD, TEDISCO, TOWNSEND -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to HIV related testing of alleged rapists

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

Section 1. The criminal procedure law is amended by adding a new section 160.46 to read as follows:

S 160.46 HIV RELATED TESTING OF RAPE SUSPECTS.

1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

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

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

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

(D) "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.

2. A POLICE OFFICER WHO MAKES AN ARREST FOR RAPE IN THE FIRST, SECOND OR THIRD DEGREE, OR CRIMINAL SEXUAL ACT IN THE FIRST, SECOND OR THIRD DEGREE ALL AS PROVIDED FOR IN ARTICLE ONE HUNDRED THIRTY 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

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

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RELATED TEST TO DETERMINE IF SUCH DEFENDANT HAS HIV INFECTION, HIV RELATED ILLNESS OR AIDS.

3. THE HIV RELATED TEST PRESCRIBED IN SUBDIVISION TWO 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 PROMULGATED BY THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES.

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

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the foregoing section of this act on its effective date is authorized and directed to be made and completed within 180 days after the date on which this act becomes a law.