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

2825

2011-2012 Regular Sessions

I N A S S E M B L Y

January 20, 2011

Introduced by M. of A. CALHOUN, KOLB -- Multi-Sponsored by -- M. of A. CONTE, CROUCH, FINCH, TEDISCO -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law and the penal law, in relation to authorizing court ordered blood testing of violent felons

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 article 165 to read as follows:

ARTICLE 165--COURT AUTHORIZED BLOOD TESTING

SECTION 165.00 COURT AUTHORIZATION FOR BLOOD TESTING OF CERTAIN OFFENDERS.

S 165.00 COURT AUTHORIZATION FOR BLOOD TESTING OF CERTAIN OFFENDERS.

1. UPON MOTION OF THE PROSECUTOR WITH THE CONSENT OF THE VICTIM, OR UPON MOTION OF THE VICTIM, A SUPERIOR COURT MAY ORDER A DEFENDANT CHARGED WITH A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THE PENAL LAW, TO UNDERGO A BLOOD TEST FOR ANY TRANSMISSIBLE DISEASE WHERE THE VICTIM HAS ALLEGEDLY BEEN EXPOSED TO BLOOD OR OTHER BODY FLUIDS OF THE DEFENDANT, AND WHEN THERE IS REASONABLE CAUSE TO BELIEVE THAT SUCH EXPOSURE OCCURRED DURING THE COMMISSION OF A VIOLENT FELONY OFFENSE OR AS A PROXIMATE RESULT THERETO.

2. A TRANSMISSIBLE DISEASE SHALL INCLUDE: THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) OR ANY OF ITS DERIVATIVES; ANY SEXUALLY TRANSMISSIBLE DISEASE INCLUDING BUT NOT LIMITED TO SYPHILIS, GONORRHEA, LYMPHOGRANULOMA VENEREUM, HERPES AND GENITAL WARTS; HEPATITIS AND ANY OF ITS DERIVATIVES; AND ANY OTHER DISEASE WHICH THE COURT FINDS THE VICTIM COULD HAVE A REASONABLE EXPECTATION OF CONTRACTING FROM THE ALLEGED OFFENDER AS A RESULT OF THE ALLEGED EXPOSURE.

3. UPON RECEIVING AN APPLICATION FOR AN ORDER AUTHORIZING A BLOOD TEST PURSUANT TO THIS SECTION, THE COURT SHALL ENTER AN ORDER DIRECTING THAT ALL PLEADINGS, PAPERS, AFFIDAVITS, JUDGMENTS, ORDERS OF THE COURT,

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

LBD02853-01-1

BRIEFS AND MEMORANDA OF LAW WHICH ARE PART OF THE APPLICATION OR THE DECISION THEREON, BE SEALED AND NOT MADE AVAILABLE TO ANY PERSON, EXCEPT TO THE EXTENT NECESSARY TO CONDUCT ANY PROCEEDINGS IN CONNECTION WITH THE DETERMINATION OF WHETHER TO GRANT OR DENY THE APPLICATION, INCLUDING ANY APPEAL. SUCH AN ORDER SHALL FURTHER DIRECT THAT ALL SUBSEQUENT PROCEEDINGS IN CONNECTION WITH THE APPLICATION SHALL BE CONDUCTED IN CAMERA, AND, WHERE APPROPRIATE TO PREVENT THE UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL BLOOD TEST RELATED INFORMATION, THAT ANY PLEADINGS, PAPERS, AFFIDAVITS, JUDGMENTS, ORDERS OF THE COURT, BRIEFS AND MEMORANDA OF LAW WHICH ARE PART OF THE APPLICATION OR THE DECISION THEREON, NOT STATE THE NAME OF THE DEFENDANT WHO IS THE PROPOSED SUBJECT OF THE BLOOD TEST.

4. IN ASSESSING THE APPLICATION THE COURT SHALL PROVIDE WRITTEN FINDINGS OF FACT, INCLUDING SCIENTIFIC OR MEDICAL FINDINGS, CITING SPECIFIC EVIDENCE IN THE RECORD WHICH SUPPORTS EACH FINDING, AND SHALL WEIGH THE APPLICANT'S NEED FOR THE INFORMATION TO BE OBTAINED FROM COURT ORDERED BLOOD TESTING AGAINST THE POTENTIAL HARM TO THE DEFENDANT WHICH MAY RESULT FROM THE COURT ORDERED BLOOD TESTING.

5. AT ANY TIME PRIOR TO, OR DURING THE PENDENCY OF AN APPLICATION FOR A BLOOD TEST UNDER THIS SECTION, THE DEFENDANT MAY CONSENT TO SUBMIT TO A VOLUNTARY BLOOD TEST, TO SCREEN FOR THE DISEASES AS REQUESTED BY THE VICTIM. THE RESULTS OF SUCH VOLUNTARY BLOOD TESTS SHALL BE PROVIDED TO THE VICTIM, THE COURT, AND ALL PARTIES IN THE CRIMINAL PROCEEDING AND SHALL THEREAFTER BE PROVIDED WITH THE SAME DEGREE OF CONFIDENTIALITY AS IF THE BLOOD TEST HAD BEEN ORDERED BY THE COURT. UPON THE SUBMISSION OF THE ALLEGED VIOLENT FELONY OFFENDER TO A VOLUNTARY BLOOD TEST, ANY APPLICATION FOR A COURT ORDERED TEST SHALL BE DEEMED WITHDRAWN. UNLESS THE VICTIM OR ANOTHER THIRD PARTY AGREES IN WRITING TO PAY FOR THE COST OF A VOLUNTARY BLOOD TEST, ALL SUCH COSTS SHALL BE PAID FOR BY THE DEFENDANT.

6. THE COURT, IN GRANTING AN APPLICATION FOR AN ORDER AUTHORIZING A BLOOD TEST PURSUANT TO THIS SECTION, SHALL SPECIFY THE DISEASES TO BE SCREENED FOR BY SUCH TEST, AND SHALL ORDER SUCH REASONABLE MEASURES AS IT DEEMS NECESSARY TO PREVENT THE UNAUTHORIZED DISCLOSURE OF CONFIDENTIAL BLOOD TEST RELATED INFORMATION. THE COST OF A COURT ORDERED BLOOD TEST SHALL BE PAID FROM THE CRIMINAL JUSTICE IMPROVEMENT ACCOUNT, ESTABLISHED PURSUANT TO SECTION NINETY-SEVEN-BB OF THE STATE FINANCE LAW, AND IN THE EVENT OF A CONVICTION, THE COST OF SUCH BLOOD TEST SHALL BE DEEMED A MANDATORY SURCHARGE ASSESSED AGAINST THE DEFENDANT PURSUANT TO SECTION 60.35 OF THE PENAL LAW.

7. NO INFORMATION OBTAINED OR DISCOVERED DURING A HEARING ON AN APPLICATION PURSUANT TO THIS SECTION OR AS A RESULT OF A COURT ORDER ISSUED PURSUANT TO THIS SECTION RELATING TO THE VIOLENT FELONY OFFENDER'S SUBMISSION TO A BLOOD TEST MAY BE USED AS EVIDENCE IN THE TRIAL OF THE ALLEGED VIOLENT FELONY OFFENDER.

S 2. Paragraph (a) of subdivision 1 of section 60.35 of the penal law, is amended by adding a new subparagraph (vi) to read as follows:

(VI) A PERSON CONVICTED OF A VIOLENT FELONY OFFENSE, AS DEFINED IN SECTION 70.02 OF THIS CHAPTER, OR WHO IS CHARGED WITH SUCH A VIOLENT FELONY OFFENSE AND WHO ACCEPTS A PLEA BARGAIN, SHALL PAY THE COSTS OF ANY BLOOD TEST AUTHORIZED PURSUANT TO SECTION 165.00 OF THE CRIMINAL PROCEDURE LAW.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law.