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

1795

2011-2012 Regular Sessions

I N S E N A T E

January 12, 2011

Introduced by Sens. KLEIN, ADAMS, DIAZ, MAZIARZ, PARKER, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to requiring HIV related testing in certain cases

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

Section 1. Subdivisions 1, 2, 4, 5 and 8 of section 390.15 of the criminal procedure law, subdivision 1 as amended by chapter 264 of the laws of 2003, and subdivisions 2, 4, 5 and 8 as added by chapter 76 of the laws of 1995, are amended to read as follows:

1. (a) In any case where the defendant is [convicted of] CHARGED IN AN INDICTMENT WITH 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 "INDICTMENT" MEANS AND INCLUDES AN INDICTMENT SEALED PURSUANT TO SECTION

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

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720.15 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 INDICTMENT OR conviction of an offense specified in paragraph (a) of this subdivision.

2. Any request made by the victim pursuant to 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] FILING of the defendant's [conviction; provided that, for good cause shown, the court may permit such request to be filed] INDICTMENT AND at any time before sentence is imposed.

4. The application for an order to compel [a convicted] AN INDICTED person to undergo an HIV related test may be made by the victim but, if the victim 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 application must state that (a) the applicant was the victim of the offense enumerated in paragraph (a) of subdivision one of this section of which the defendant stands [convicted] INDICTED; and (b) 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 on the proposed subject; (ii) current scientific assessments of the risk of transmission of HIV 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.

5. 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] INDICTED. The court ordered test must be performed within fifteen days of 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.

8. 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 defendant's INDICTMENT OR conviction, provided however that nothing [herein] IN THIS SUBDIVISION 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.

S 2. This act shall take effect immediately.