

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:

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

5 1. (a) In any case where the defendant is [convicted of] CHARGED IN AN
6 INDICTMENT WITH a felony offense enumerated in any section of article
7 one hundred thirty of the penal law, or any subdivision of section
8 130.20 of such law, where an act of "sexual intercourse", "oral sexual
9 conduct" or "anal sexual conduct," as those terms are defined in section
10 130.00 of the penal law, is required as an essential element for the
11 commission thereof, the court must, upon a request of the victim, order
12 that the defendant submit to human immunodeficiency (HIV) related test-
13 ing. The testing is to be conducted by a state, county, or local public
14 health officer designated by the order. Test results, which shall not be
15 disclosed to the court, shall be communicated to the defendant and the
16 victim named in the order in accordance with the provisions of section
17 twenty-seven hundred eighty-five-a of the public health law, but such
18 results and disclosure need not be completed prior to the imposition of
19 sentence.

20 (b) For the purposes of this section, the terms "defendant",
21 "conviction" and "sentence" mean and include, respectively, an "eligible
22 youth," a "youthful offender finding" and a "youthful offender sentence"
23 as those terms are defined in section 720.10 of this chapter. THE TERM
24 "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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1 720.15 OF THIS CHAPTER. The term "victim" means the person with whom the
2 defendant engaged in an act of "sexual intercourse", "oral sexual
3 conduct" or "anal sexual conduct", as those terms are defined in section
4 130.00 of the penal law, where such conduct with such victim was the
5 basis for the defendant's INDICTMENT OR conviction of an offense speci-
6 fied in paragraph (a) of this subdivision.

7 2. Any request made by the victim pursuant to this section must be in
8 writing, filed with the court and provided by the court to the defendant
9 or his or her counsel. The request must be filed with the court [prior
10 to or within ten days] after [entry] FILING of the defendant's
11 [conviction; provided that, for good cause shown, the court may permit
12 such request to be filed] INDICTMENT AND at any time before sentence is
13 imposed.

14 4. The application for an order to compel [a convicted] AN INDICTED
15 person to undergo an HIV related test may be made by the victim but, if
16 the victim is an infant or incompetent person, the application may also
17 be made by a representative as defined in section twelve hundred one of
18 the civil practice law and rules. The application must state that (a)
19 the applicant was the victim of the offense enumerated in paragraph (a)
20 of subdivision one of this section of which the defendant stands
21 [convicted] INDICTED; and (b) the applicant has been offered counseling
22 by a public health officer and been advised of (i) the limitations on
23 the information to be obtained through an HIV test on the proposed
24 subject; (ii) current scientific assessments of the risk of transmission
25 of HIV from the exposure he or she may have experienced, and (iii) the
26 need for the applicant to undergo HIV related testing to definitively
27 determine his or her HIV status.

28 5. The court shall conduct a hearing only if necessary to determine if
29 the applicant is the victim of the offense of which the defendant was
30 [convicted] INDICTED. The court ordered test must be performed within
31 fifteen days of the date on which the court ordered the test, provided,
32 however, that whenever the defendant is not tested within the period
33 prescribed by the court, the court must again order that the defendant
34 undergo an HIV related test.

35 8. No information obtained as a result of a consent, hearing or court
36 order for testing issued pursuant to this section nor any information
37 derived therefrom may be used as evidence in any criminal or civil
38 proceeding against the defendant which relates to events that were the
39 basis for the defendant's INDICTMENT OR conviction, provided however
40 that nothing [herein] IN THIS SUBDIVISION shall prevent prosecution of a
41 witness testifying in any court hearing held pursuant to this section
42 for perjury pursuant to article two hundred ten of the penal law.

43 S 2. This act shall take effect immediately.