

2189--A

2013-2014 Regular Sessions

I N   S E N A T E

January 14, 2013

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Introduced by Sens. YOUNG, BONACIC, DeFRANCISCO, NOZZOLIO, O'MARA, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1     Section 1. Legislative intent. The legislature finds that HIV/AIDS  
2     infection poses a serious threat to the public health of all New Yorkers  
3     whenever HIV/AIDS infected persons act in a manner which is likely to  
4     spread this horrible disease to other persons. When HIV/AIDS infected  
5     persons commit such actions as having unprotected sex or sharing needles  
6     without the consent of their partners, they endanger the public health  
7     and frustrate the efforts of health officials to contain and, hopefully,  
8     reverse the spread of HIV/AIDS.  
9     The legislature further finds that in order to allow the victims of  
10    alleged sex crimes or crimes which endanger their health to obtain the  
11    most effective health care treatment, the HIV status of their offenders  
12    must be determined.  
13    The legislature further finds that the increasing reports of acquired  
14    immune deficiency syndrome, human immunodeficiency virus, tuberculosis  
15    and hepatitis in state correctional facilities have reached an alarming  
16    level. These inmates and others who may have an undiagnosed case of any  
17    of these syndromes, diseases or viruses are extremely detrimental to the  
18    health, safety and welfare of the correction officers and other staff  
19    who work in such facilities as well as inmates who are incarcerated  
20    therein. In order to maintain proper security and working conditions,

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

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the legislature hereby declares that all inmates presently under confinement and all inmates to be newly admitted to the department of corrections and community supervision must be expeditiously tested for such syndromes, diseases or viruses. The department of corrections and community supervision 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 22 and 23 to read as follows:

22. "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.

23. "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

1 CREATES A SUBSTANTIAL RISK OF THE TRANSMISSION OF HIV/AIDS TO ANOTHER  
2 PERSON WHO WAS UNAWARE OF SUCH CONDITION.

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

5 S 120.28 RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH; DEFENSE.

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

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

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

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

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

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

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

31 S 7. The criminal procedure law is amended by adding a new section  
32 160.46 to read as follows:

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

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

42 2. THE HIV RELATED TEST PRESCRIBED IN SUBDIVISION ONE OF THIS SECTION  
43 AND THE SUBMISSION OF AVAILABLE INFORMATION CONCERNING THE DEFENDANT AND  
44 THE FACTS AND CIRCUMSTANCES OF THE CRIME CHARGED MUST BE IN ACCORDANCE  
45 WITH THE RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER OF CRIMI-  
46 NAL JUSTICE SERVICES.

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

50 S 8. Section 71 of the correction law is amended by adding a new  
51 subdivision 9 to read as follows:

52 9. (A) PERSONS WHO ARE COMMITTED, TRANSFERRED, CERTIFIED TO OR PLACED  
53 IN THE CARE OR CUSTODY OF THE DEPARTMENT SHALL BE IMMEDIATELY TESTED FOR  
54 EVIDENCE OF ACQUIRED IMMUNE DEFICIENCY SYNDROME, HUMAN IMMUNODEFICIENCY  
55 VIRUS, TUBERCULOSIS AND HEPATITIS AND MONITORED FOR THE POSSIBILITY OF

1 DEVELOPMENT OF SUCH SYNDROMES, DISEASES OR VIRUSES IN ACCORDANCE WITH  
2 PROPER MEDICAL PROCEDURES.

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

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

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

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

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

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

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