

2189--A

2013-2014 Regular Sessions

I N S E N A T E

January 14, 2013

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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1 the legislature hereby declares that all inmates presently under
2 confinement and all inmates to be newly admitted to the department of
3 corrections and community supervision must be expeditiously tested for
4 such syndromes, diseases or viruses. The department of corrections and
5 community supervision shall take immediate action to care for afflicted
6 inmates including separation from the general inmate population in a
7 special medical facility.

8 S 2. Section 10.00 of the penal law is amended by adding two new
9 subdivisions 22 and 23 to read as follows:

10 22. "AIDS" MEANS ACQUIRED IMMUNE DEFICIENCY SYNDROME, AS MAY BE
11 DEFINED FROM TIME TO TIME BY THE CENTERS FOR DISEASE CONTROL OF THE
12 UNITED STATES PUBLIC HEALTH SERVICE.

13 23. "HIV INFECTION" MEANS INFECTION WITH THE HUMAN IMMUNODEFICIENCY
14 VIRUS OR ANY OTHER RELATED VIRUS IDENTIFIED AS A PROBABLE CAUSATIVE
15 AGENT OF AIDS.

16 S 3. The opening paragraph of subdivision 1 of section 70.25 of the
17 penal law, as amended by chapter 372 of the laws of 1981, is amended to
18 read as follows:

19 Except as provided in subdivisions two, two-a [and], five AND SIX of
20 this section, when multiple sentences of imprisonment are imposed on a
21 person at the same time, or when a person who is subject to any undisc-
22 charged term of imprisonment imposed at a previous time by a court of
23 this state is sentenced to an additional term of imprisonment, the
24 sentence or sentences imposed by the court shall run either concurrently
25 or consecutively with respect to each other and the undischarged term or
26 terms in such manner as the court directs at the time of sentence. If
27 the court does not specify the manner in which a sentence imposed by it
28 is to run, the sentence shall run as follows:

29 S 4. Section 70.25 of the penal law is amended by adding a new subdi-
30 vision 6 to read as follows:

31 6. WHEN A PERSON IS CONVICTED OF RECKLESS ENDANGERMENT OF THE PUBLIC
32 HEALTH IN THE FIRST DEGREE, AS DEFINED IN SECTION 120.26 OF THIS CHAP-
33 TER, OR RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN THE SECOND DEGREE,
34 AS DEFINED IN SECTION 120.27 OF THIS CHAPTER, AND A TERM OF IMPRISONMENT
35 WHICH MAY BE IMPOSED AS A SENTENCE UPON SUCH CONVICTION, SHALL RUN
36 CONSECUTIVELY TO ANY OTHER TERM OF IMPRISONMENT IMPOSED AS THE SENTENCE
37 UPON THE CONVICTION OF ANY OTHER OFFENSE COMMITTED THROUGH THE SAME ACT
38 OR OMISSION, OR THROUGH AN ACT OR OMISSION WITH ITSELF CONSTITUTED ONE
39 OF THE MATERIAL ELEMENTS OF SUCH RECKLESS ENDANGERMENT OF THE PUBLIC
40 HEALTH OFFENSE.

41 S 5. The penal law is amended by adding four new sections 120.26,
42 120.27, 120.28 and 170.36 to read as follows:

43 S 120.26 RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN THE FIRST
44 DEGREE.

45 A PERSON IS GUILTY OF RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN
46 THE FIRST DEGREE WHEN HE OR SHE IS AWARE THAT HE OR SHE HAS TESTED POSI-
47 TIVELY FOR HIV/AIDS AND THEN RECKLESSLY ENGAGES IN CONDUCT WHICH RESULTS
48 IN THE TRANSMISSION OF HIV/AIDS TO ANOTHER PERSON WHO WAS UNAWARE OF
49 SUCH CONDITION.

50 RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN THE FIRST DEGREE IS A
51 CLASS B FELONY.

52 S 120.27 RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN THE SECOND
53 DEGREE.

54 A PERSON IS GUILTY OF RECKLESS ENDANGERMENT OF THE PUBLIC HEALTH IN
55 THE SECOND DEGREE WHEN HE OR SHE IS AWARE THAT HE OR SHE HAS TESTED
56 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.