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

5467

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. BONACIC -- 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 the testing of certain criminal defendants for human immunodeficiency virus

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 section 210.17 to read as follows:

S 210.17 REQUIREMENT OF HIV RELATED TESTING IN CERTAIN CASES.

1. IN A CASE WHERE AN INDICTMENT OR A SUPERIOR COURT INFORMATION HAS BEEN FILED WITH A SUPERIOR COURT WHICH CHARGES THE DEFENDANT WITH A VIOLATION OF SECTION 120.08 OR 120.11 OF THE PENAL LAW, THE COURT SHALL, UPON A REQUEST OF THE PEACE OFFICER, POLICE OFFICER, FIREMAN OR EMERGENCY MEDICAL SERVICES PROFESSIONAL INVOLVED, ORDER THAT THE DEFENDANT SUBMIT TO HUMAN IMMUNODEFICIENCY VIRUS (HIV) RELATED TESTING, IF THE COURT DETERMINES THAT THERE WAS A SIGNIFICANT RISK OF TRANSMISSION PURSUANT TO THE PROVISIONS SET FORTH IN SECTION ONE HUNDRED SEVENTY-EIGHT OF THE CIVIL SERVICE LAW. TEST RESULTS, WHICH SHALL NOT BE DISCLOSED TO THE COURT, SHALL BE COMMUNICATED TO THE DEFENDANT AND THE REQUESTING PUBLIC PROTECTION OFFICIAL NAMED IN THE ORDER.

2. ANY REQUEST MADE BY THE PUBLIC PROTECTION OFFICIAL PURSUANT TO THIS SECTION MUST BE IN WRITING, FILED WITH THE COURT WITHIN SIX MONTHS OF THE DATE OF THE CRIME CHARGED, 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 FORTY-EIGHT HOURS AFTER THE INDICTMENT OR SUPERIOR COURT INFORMATION HAS BEEN FILED WITH THE SUPERIOR COURT; PROVIDED HOWEVER THAT, FOR GOOD CAUSE SHOWN, THE COURT MAY PERMIT SUCH REQUEST TO BE FILED AT A LATER STAGE OF THE ACTION WITHIN SIX MONTHS OF THE DATE OF THE CRIMES CHARGED.

3. AT ANY STAGE IN THE ACTION WITHIN SIX MONTHS OF THE DATE OF THE CRIMES CHARGED, PRIOR TO THE FINAL DISPOSITION OF THE INDICTMENT OR SUPERIOR COURT INFORMATION AND WHILE THE DEFENDANT IS CHARGED WITH AN OFFENSE SPECIFIED IN SUBDIVISION ONE OF THIS SECTION, THE PUBLIC PROTECTION OFFICIAL MAY REQUEST THAT THE DEFENDANT SUBMIT TO A FOLLOW-UP

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

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HIV RELATED TEST. SUCH REQUEST MUST BE IN WRITING, FILED WITH THE COURT AND PROVIDED BY THE COURT TO THE DEFENDANT OR HIS OR HER COUNSEL. UPON A FINDING THAT THE FOLLOW-UP HIV RELATED TEST IS MEDICALLY APPROPRIATE THE COURT MUST ORDER THAT THE DEFENDANT SUBMIT TO SUCH TEST. THE COURT SHALL NOT MAKE SUCH FINDING OF MEDICAL APPROPRIATENESS UNLESS THE FOLLOW-UP HIV RELATED TEST IS TO BE ADMINISTERED A SUFFICIENT TIME AFTER THE CHARGED OFFENSE TO BE CONSISTENT WITH GUIDELINES THAT MAY BE ISSUED BY THE COMMISSIONER OF HEALTH. THERE SHALL BE NO MORE THAN ONE FOLLOW-UP HIV RELATED TEST ABSENT A SHOWING OF EXTRAORDINARY CIRCUMSTANCES.

4. ANY REQUESTS, RELATED PAPERS AND ORDERS MADE OR FILED PURSUANT TO THIS SECTION, TOGETHER WITH ANY PAPERS OR PROCEEDINGS RELATED THERETO, SHALL BE SEALED BY THE COURT AND NOT MADE AVAILABLE FOR ANY PURPOSE, EXCEPT AS MAY BE NECESSARY FOR THE CONDUCT OF JUDICIAL PROCEEDINGS DIRECTLY RELATED TO THE PROVISIONS OF THIS SECTION. ALL PROCEEDINGS ON SUCH REQUESTS SHALL BE HELD IN CAMERA.

5. THE APPLICATION FOR AN ORDER TO COMPEL A DEFENDANT TO UNDERGO AN HIV RELATED TEST MUST STATE THAT THE APPLICANT WAS THE VICTIM OF THE OFFENSE ENUMERATED IN SUBDIVISION ONE OF THIS SECTION OF WHICH THE DEFENDANT IS CHARGED.

6. THE COURT SHALL CONDUCT A HEARING ONLY IF NECESSARY TO DETERMINE IF THE APPLICANT IS THE VICTIM OF THE OFFENSE OF WHICH THE DEFENDANT IS CHARGED OR TO DETERMINE WHETHER A FOLLOW-UP TEST IS MEDICALLY APPROPRIATE. THE COURT ORDERED TEST MUST BE PERFORMED WITHIN FORTY-EIGHT HOURS 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. THE DEFENDANT SHALL BE ADVISED OF INFORMATION AS TO HIV TESTING AND MEDICAL TREATMENT IN ACCORDANCE WITH ANY GUIDELINES THAT MAY BE ISSUED BY THE COMMISSIONER OF HEALTH.

7. (A) TEST RESULTS SHALL BE DISCLOSED SUBJECT TO THE FOLLOWING LIMITATIONS, WHICH SHALL BE SPECIFIED IN ANY ORDER ISSUED PURSUANT TO THIS SECTION:

(I) DISCLOSURE OF CONFIDENTIAL HIV RELATED INFORMATION SHALL BE LIMITED TO THAT INFORMATION WHICH IS NECESSARY TO FULFILL THE PURPOSE FOR WHICH THE ORDER IS GRANTED; AND

(II) DISCLOSURE OF CONFIDENTIAL HIV RELATED INFORMATION SHALL BE MADE TO THE DEFENDANT UPON HIS OR HER REQUEST, AND DISCLOSURE TO A PERSON OTHER THAN THE DEFENDANT SHALL BE LIMITED TO THE PERSON MAKING THE APPLICATION.

(B) THE COURT'S ORDER SHALL INCLUDE MEASURES TO PROTECT AGAINST DISCLOSURE TO OTHERS OF THE IDENTITY AND HIV STATUS OF THE APPLICANT AND OF THE PERSON TESTED AND MAY INCLUDE SUCH OTHER MEASURES AS THE COURT DEEMS NECESSARY TO PROTECT CONFIDENTIAL INFORMATION.

8. ANY FAILURE TO COMPLY WITH THE PROVISIONS OF THIS SECTION SHALL NOT IMPAIR OR AFFECT THE VALIDITY OF ANY PROCEEDING UPON THE INDICTMENT OR SUPERIOR COURT INFORMATION.

9. 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 CHARGING THE DEFENDANT WITH AN OFFENSE ENUMERATED IN SUBDIVISION ONE OF THIS SECTION, PROVIDED HOWEVER THAT NOTHING IN THIS SECTION 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.