

# STATE OF NEW YORK

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3646

2021-2022 Regular Sessions

## IN SENATE

January 30, 2021

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Introduced by Sen. ORTT -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

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,  
21 the legislature hereby declares that all inmates presently under  
22 confinement and all inmates to be newly admitted to the department of  
23 corrections and community supervision must be expeditiously tested for

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

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1 such syndromes, diseases or viruses. The department of corrections and  
2 community supervision shall take immediate action to care for afflicted  
3 inmates including separation from the general inmate population in a  
4 special medical facility.

5 § 2. Section 10.00 of the penal law is amended by adding two new  
6 subdivisions 22 and 23 to read as follows:

7 22. "AIDS" means acquired immune deficiency syndrome, as may be  
8 defined from time to time by the centers for disease control of the  
9 United States public health service.

10 23. "HIV infection" means infection with the human immunodeficiency  
11 virus or any other related virus identified as a probable causative  
12 agent of AIDS.

13 § 3. The opening paragraph of subdivision 1 of section 70.25 of the  
14 penal law, as amended by chapter 372 of the laws of 1981, is amended to  
15 read as follows:

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

26 § 4. Section 70.25 of the penal law is amended by adding a new subdi-  
27 vision 6 to read as follows:

28 6. When a person is convicted of reckless endangerment of the public  
29 health in the first degree, as defined in section 120.26 of this chap-  
30 ter, or reckless endangerment of the public health in the second degree,  
31 as defined in section 120.27 of this chapter, the term of imprisonment  
32 which may be imposed as a sentence upon such conviction, shall run  
33 consecutively to any other term of imprisonment imposed as the sentence  
34 upon the conviction of any other offense committed through the same act  
35 or omission, or through an act or omission with itself constituted one  
36 of the material elements of such reckless endangerment of the public  
37 health offense.

38 § 5. The penal law is amended by adding four new sections 120.26,  
39 120.27, 120.28 and 170.36 to read as follows:

40 § 120.26 Reckless endangerment of the public health in the first  
41 degree.

42 A person is guilty of reckless endangerment of the public health in  
43 the first degree when he or she is aware that he or she has tested posi-  
44 tively for HIV/AIDS and then recklessly engages in conduct which results  
45 in the transmission of HIV/AIDS to another person who was unaware of  
46 such condition.

47 Reckless endangerment of the public health in the first degree is a  
48 class B felony.

49 § 120.27 Reckless endangerment of the public health in the second  
50 degree.

51 A person is guilty of reckless endangerment of the public health in  
52 the second degree when he or she is aware that he or she has tested  
53 positively for HIV/AIDS and then recklessly engages in conduct which  
54 creates a substantial risk of the transmission of HIV/AIDS to another  
55 person who was unaware of such condition.

1 Reckless endangerment of the public health in the second degree is a  
2 class C felony.

3 § 120.28 Reckless endangerment of the public health; defense.

4 In any prosecution under section 120.26 or 120.27 of this article, it  
5 shall be an absolute defense that the defendant, at the time she was  
6 engaged in the conduct constituting the offense, was a woman who trans-  
7 mitted the HIV/AIDS virus to her child as the result of giving birth to  
8 such child.

9 § 170.36 Offering a false instrument which endangers the public health.

10 A person is guilty of offering a false instrument which endangers the  
11 public health when he or she is aware that he or she has tested positive  
12 for HIV/AIDS and then knowing that a written instrument contains a false  
13 statement or false information regarding his or her HIV status and with  
14 the intent to defraud the department of health, any subdivision or agent  
15 thereof, or any other health care provider, he or she offers or presents  
16 such instrument to an agent of that office or other health care provider  
17 with the knowledge or belief that it will be filed with, registered or  
18 recorded in or otherwise become a part of the records of such public  
19 office or public servant.

20 Offering a false instrument which endangers the public health is a  
21 class E felony.

22 § 6. Section 1.20 of the criminal procedure law is amended by adding  
23 two new subdivisions 46 and 47 to read as follows:

24 46. "HIV related illness" means any illness that may result from or  
25 may be associated with HIV infection.

26 47. "HIV related test" means any laboratory test or series of tests  
27 for any virus, antibody, antigen or etiologic agent whatsoever thought  
28 to cause or to indicate the presence of AIDS.

29 § 7. The criminal procedure law is amended by adding a new section  
30 160.46 to read as follows:

31 § 160.46 HIV related testing of alleged sex and public health offenders.

32 1. A police officer who makes an arrest for any crime set forth in  
33 article one hundred thirty or section 120.26 or 120.27 of the penal law,  
34 either with or without a warrant, shall, following such arrest or the  
35 arraignment upon a local criminal court accusatory instrument of a  
36 defendant whose court attendance has been secured by a summons or an  
37 appearance ticket, cause such defendant to be immediately given an HIV  
38 related test to determine if such defendant has HIV infection, HIV  
39 related illness or AIDS.

40 2. The HIV related test prescribed in subdivision one of this section  
41 and the submission of available information concerning the defendant and  
42 the facts and circumstances of the crime charged must be in accordance  
43 with the rules and regulations promulgated by the commissioner of crimi-  
44 nal justice services.

45 3. The result of an HIV related test performed pursuant to subdivision  
46 one of this section, shall, upon request, be made available to the  
47 victim or alleged victim of such crime and to the defendant.

48 § 8. Section 71 of the correction law is amended by adding a new  
49 subdivision 9 to read as follows:

50 9. (a) Persons who are committed, transferred, certified to or placed  
51 in the care or custody of the department shall be immediately tested for  
52 evidence of acquired immune deficiency syndrome, human immunodeficiency  
53 virus, tuberculosis and hepatitis and monitored for the possibility of  
54 development of such syndromes, diseases or viruses in accordance with  
55 proper medical procedures.

1 (b) For those persons who generate a positive result, the department  
2 shall provide, in each facility under its control, the instruction of  
3 appropriate staff, inmates and significant others regarding the nature  
4 of acquired immune deficiency syndrome and AIDS Related Complex (ARC),  
5 human immunodeficiency virus, tuberculosis and hepatitis, potential  
6 problems, and steps which may be taken to minimize such problems.

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

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

18 2. To reduce the possibility of any pestilence or contagious disease  
19 in correctional facilities, every inmate shall be regularly administered  
20 a blood test designed to test for the viral agent known as HTLV-III/LAV  
21 which causes acquired immune deficiency syndrome and a blood test  
22 designed to test for tuberculosis and hepatitis. The commissioner shall  
23 take all necessary precautions which shall include monitoring, education  
24 and counseling for those inmates who test positive for these illnesses.

25 § 10. The correction law is amended by adding a new section 141-a to  
26 read as follows:

27 § 141-a. Notification of disease symptoms. Upon the diagnosis of a  
28 facility health director or any other medical service provider author-  
29 ized by the department to examine inmates, that an inmate has symptoms  
30 of acquired immune deficiency syndrome, notice of the diagnosis shall be  
31 provided to all employees of the department who can reasonably be  
32 expected to be involved in the supervision and care of said inmate.

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