§ 390.15 Requirement of HIV related testing in certain cases.

1. (a) In any case where the defendant is convicted of a felony offense enumerated in any section of article one hundred thirty of the penal law, or any subdivision of section 130.20 of such law, where an act of "vaginal sexual contact", "oral sexual contact" or "anal sexual contact," as those terms are defined in section 130.00 of the penal law, is required as an essential element for the commission thereof, the court must, upon a request of the victim, order that the defendant submit to human immunodeficiency (HIV) related testing. The testing is to be conducted by a state, county, or local public health officer designated by the order. Test results, which shall not be disclosed to the court, shall be communicated to the defendant and the victim named in the order in accordance with the provisions of section twenty-seven hundred eighty-five-a of the public health law, but such results and disclosure need not be completed prior to the imposition of sentence.

(b) For the purposes of this section, the terms "defendant", "conviction" and "sentence" mean and include, respectively, an "eligible youth," a "youthful offender finding" and a "youthful offender sentence" as those terms are defined in section 720.10 of this chapter. The term "victim" means the person with whom the defendant engaged in an act of "vaginal sexual contact", "oral sexual contact" or "anal sexual contact", as those terms are defined in section 130.00 of the penal law, where such conduct with such victim was the basis for the defendant's conviction of an offense specified in paragraph (a) of this subdivision.

2. Any request made by the victim pursuant to this section must be in writing, filed with the court 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 ten days after entry of the defendant's conviction; provided that, for good cause shown, the court may permit such request to be filed at any time before sentence is imposed.

3. 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.

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

5. The court shall conduct a hearing only if necessary to determine if the applicant is the victim of the offense of which the defendant was convicted. The court ordered test must be performed within fifteen days 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.

6. (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;

(ii) disclosure of confidential HIV related information shall be limited to the person making the application; redisclosure shall be permitted only to the victim, the victim's immediate family, guardian, physicians, attorneys, medical or mental health providers and to his or her past and future contacts to whom there was or is a reasonable risk

of HIV transmission and shall not be permitted to any other person or the court.

(b) Unless inconsistent with this section, the court's order shall direct compliance with and conform to the provisions of article twenty-seven-F of the public health law. Such 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.

7. Any failure to comply with the provisions of this section or section twenty-seven hundred eighty-five-a of the public health law shall not impair or affect the validity of any sentence imposed by the court.

8. 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 the defendant's conviction, provided however that nothing herein 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.