



NEW YORK STATE SENATOR

Brad Hoylman-Sigal

## Floor Statement by State Senator Hoylman on S4487

BRAD HOYLMAN June 4, 2013

*On June 4, 2013, on the floor of the New York State Senate, Senator Hoylman opposed **S4487**, a bill which would amend the Criminal Procedure Law to authorize a court to order a defendant, at the request of a victim, to submit to HIV testing within 48 hours of the filing of an indictment or superior court information charging the defendant with certain enumerated sex offenses.*

*Senator Hoylman made the following statement on the Senate floor explaining his vote against the bill:*

This bill allows a victim of a sexual assault to have the court order the defendant to submit to an HIV test within 48 hours of the filing of the indictment.

I am aware that the current law in New York State allows the victim of a sex offense to petition the court for an order to have the defendant tested within six months after the date of the crime occurred if it is found medically necessary.

I am also fully aware that the intent of this bill is to comply with federal standards to receive the full amount of federal Grants to Encourage Arrest Policies (GTEAP) and that the New York State Department of Criminal Justice Services estimates New York is losing 5% of complete funding and netted a loss of about \$150,000 in 2011 because New York is not complying with the federal 48 hour standard.

\$150,000 – statewide – for not complying with bad federal guidelines, Mr. President.

In my opinion, that is money well spent.

It's money well spent because we should do everything we can to assist survivors of sexual assault. The federal guidelines are dangerous policy with potential tragic consequences.

The only way a person can determine if they have HIV is to get tested themselves. Period.

The bill before us is well-meaning but classic feel good stuff. It may provide some comfort to us or the victim to have the opportunity to test a perpetrator for HIV but in the meantime the victim is sitting on a time bomb.

What any person should do if they are sexually assaulted is to immediately start a round of Post-exposure Prophylaxis for HIV infection.

There are countless respected scientific studies and directives, including from our own State Department of Health, which state, in the clearest possible terms that post-exposure prophylaxis should be initiated as rapidly as possible after possible exposure – with the greatest benefit coming within 36 hours and no longer than 72 hours.

It is important to point out this legislation requires testing 48 hours from indictment. Not the actual crime, not the arrest. The indictment could come days, weeks or months from the time of the crime.

And the accused could actually be the wrong person. False arrests are sadly a reality of our criminal justice system. So the testing of a suspect could not only be too late, but also completely misplaced.

The New York State Department of Health cites studies stating treatment should begin immediately – even before the results of a victim's HIV test are confirmed.

In fact we promote this policy in our Public Health Law§ 2805-i, which requires that every hospital must provide treatment to alleged victims of a sexual offense where exposure to HIV may have occurred with “available appropriate HIV post-exposure treatment therapies; including a seven day starter pack of HIV post-exposure prophylaxis” and follow up treatment and counseling from rape crisis centers.

Suggesting to a victim that he or she should wait and rely on the HIV testing of a defendant has the potential to victimize an individual not once, but twice, which is the cruel irony of this bill. It is dangerous, sets false hopes and is all around bad medicine.

The fact that the federal government is enticing our state to adopt this policy for about \$150,000 worth of funding – funding which we've already missed this year – does not make this bill any less dangerous or the medical science any less sound.

Thank you, Mr. President. I vote in the negative.