

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: S3/30/11

A Bill

HOUSE BILL 2056

5 By: Representatives Clemmer, Hammer
6

For An Act To Be Entitled

8 AN ACT TO REQUIRE HIV TESTING FOR ALL DEFENDANTS
9 CHARGED WITH CERTAIN SEX OFFENSES; AND FOR OTHER
10 PURPOSES.

Subtitle

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13 TO REQUIRE HIV TESTING FOR ALL
14 DEFENDANTS CHARGED WITH CERTAIN SEX
15 OFFENSES.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 5-14-202 is amended to read as follows:

22 5-14-202. Access by prosecutors to medical records of persons charged
23 with sex crimes – Victim notification of health risk.

24 (a)(1) Through a warrant issued by a judicial officer under Rule 13 of
25 the Arkansas Rules of Criminal Procedure, a prosecuting attorney of this
26 state is entitled access to a relevant medical record of ~~any~~ a person charged
27 with having committed a sex crime against another person, which act could
28 have exposed the victim to a disease carried by the alleged offender.

29 (2)(A) An application by a prosecuting attorney for a relevant
30 medical record shall describe with particularity the person whose relevant
31 medical record is to be obtained and shall be supported by one (1) or more
32 affidavits or recorded testimony before a judicial officer particularly
33 setting forth the facts and circumstances tending to show that the person may
34 present a danger to the health of a victim of a sex crime.

35 (B) If the judicial officer finds that the application
36 meets the requirements of subdivision (a)(2)(A) of this section and that, on



1 the basis of the proceeding before the judicial officer, there is reasonable
2 cause to believe that the relevant medical record should be disclosed, the
3 judicial officer shall issue a warrant directing disclosure of the medical
4 record to the prosecuting attorney.

5 (b) Upon service of a warrant, a person having custody of a relevant
6 medical record shall grant access to the prosecuting attorney and is not
7 subject to any liability for granting the access.

8 (c)(1) If a prosecuting attorney after reviewing a medical record
9 determines that a victim is subject to a health risk as a result of a sex
10 crime, the prosecuting attorney may convey that health risk information to
11 the victim, and the prosecuting attorney is not subject to any liability for
12 disclosing that health risk information to the victim.

13 (2)(A) The prosecuting attorney may disclose the health risk
14 information to the victim only.

15 (B) However, if the victim is a minor or is mentally
16 incompetent, then the prosecuting attorney may disclose the health risk
17 information to the victim's parent or legal guardian only.

18 (d) For medical records of testing done under § 12-12-107, the
19 prosecuting attorney shall:

20 (1) Be notified of any human immunodeficiency virus (HIV)
21 testing done under § 12-12-107;

22 (2) Be given a copy of the results of the human immunodeficiency
23 virus (HIV) test; and

24 (3) Notify the victim, his or her parent or parents or guardian
25 if the victim is a minor, and the defendant of the results of the human
26 immunodeficiency virus (HIV) test as soon as is practicable.

27 ~~(d)~~(e) The prosecuting attorney is not subject to any liability to the
28 victim for failing to obtain a medical record or failing to disclose health
29 risk information to the victim.

30 ~~(e)~~(f) This subchapter does not repeal or supersede any rule of
31 evidence or rule of criminal procedure that would allow the admissibility of
32 a medical record as evidence in a criminal proceeding.

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/s/Clemmer

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APPROVED: 04/04/2011