

Act 614 of the 1989 Regular Session.

Act 614

HB1496

By: Representatives Hogue and Tullis

"AN ACT TO CREATE A CRIME FOR KNOWINGLY AND WILLFULLY EXPOSING ANOTHER PERSON TO HUMAN IMMUNODEFICIENCY VIRUS, THE VIRUS WHICH CAUSES ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS); AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. A person with Acquired Immunodeficiency Syndrome (AIDS) or who tests positive for the presence of Human Immunodeficiency Virus (HIV) antigen or antibodies is infectious to others through the exchange of body fluids during sexual intercourse and through the parenteral transfer of blood or blood products and under these circumstances is a danger to the public.

SECTION 2. (1) A person commits the offense of exposing another to HIV if the person knows he or she has tested positive for HIV and exposes another person to such viral infection through the parenteral transfer of blood or blood products or engages in sexual penetration with another person without first having informed the other person of the presence of HIV. Exposing another to HIV is Class A felony.

(2) As used in this section, "sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

SECTION 3. A physician whose patient is determined to have Acquired Immunodeficiency Syndrome (AIDS) or who tests positive for the presence of Human Immunodeficiency Virus (HIV) antigen or antibodies shall immediately make a report to the Arkansas Department of Health in such manner and form as the Department shall direct.

SECTION 4. All information and reports in connection with persons suffering from or suspected to be suffering from the diseases specified in this act shall be regarded as confidential by any and every person, body or committee whose duty it is or may be to obtain, make, transmit and receive such information and reports. However, any prosecuting attorney of this state may subpoena such information as may be necessary to enforce the provisions of this act, provided that any information acquired pursuant to such subpoena shall not be disclosed except to the courts to enforce the provisions of this act.

SECTION 5. (1) Any person arrested and charged with violating 5-14-103, 5-14-104, 5-14-105, 5-14-106, 5-14-107, 5-14-108, 5-14-109, 5-14-120, 5-14-121, 5-14-122, and 5-70-102 may be required by the court having jurisdiction of the criminal prosecution, upon a finding of reasonable cause to believe that the person committed the offense and subject to constitutional limitations, to be tested for the presence of HIV or any antibody to HIV unless the court determines that testing the defendant would be inappropriate and document the reasons for that determination in the

court record. The test shall be confidentially administered by a licensed physician, the Department of Health, or a local health department.

(2) If the victim or person with whom the defendant engaged in sexual penetration during the course of the crime consents, the court shall provide the person or agency administering the test with the name, address, and telephone number of the victim or person with whom the defendant engaged in sexual penetration during the course of the crime. After the defendant is tested as to the presence of HIV or an antibody to HIV, the person or agency administering the test shall immediately provide the test results to the victim or person with whom the defendant engaged in sexual penetration during the course of the crime, and shall refer the victim or other person for appropriate counseling.

SECTION 6. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 7. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 8. EMERGENCY. It is hereby found and determined by the General Assembly that a person with Acquired Immunodeficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV) antigen or antibodies who acts irresponsibly with respect to sexual contact or with respect to transfer of blood or blood products constitutes a deadly threat to the public and health and welfare of the people of the state of Arkansas; that the incidence of Acquired Immunodeficiency Syndrome (AIDS) is increasing at an alarming rate and that Acquired Immunodeficiency Syndrome (AIDS) results in enormous social, health and economic costs, ultimately causing premature death of all those infected with Human Immunodeficiency Virus (HIV). Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 16, 1989

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