

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S3/1/21 S3/11/21

A Bill

SENATE BILL 308

5 By: Senator K. Hammer
6 By: Representative L. Fite
7

For An Act To Be Entitled

9 AN ACT REQUIRING THE STATE TO OFFER A VICTIM OF
10 SEXUAL ASSAULT THE CHOICE TO REQUIRE THE PERSON
11 ACCUSED OF COMMITTING A SEXUAL ASSAULT ON THE VICTIM
12 TO TAKE AN HIV TEST WITHIN FORTY-EIGHT HOURS AFTER
13 THE DATE ON WHICH THE INFORMATION OR INDICTMENT IS
14 PRESENTED; AND FOR OTHER PURPOSES.
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Subtitle

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18 REQUIRING THE STATE TO OFFER A VICTIM OF
19 SEXUAL ASSAULT THE CHOICE TO REQUIRE THE
20 PERSON ACCUSED OF COMMITTING A SEXUAL
21 ASSAULT ON THE VICTIM TO TAKE AN HIV
22 TEST.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code § 16-82-101 is amended to read as follows:

28 16-82-101. Testing for human immunodeficiency virus – Sexual offenses.

29 (a) A person with acquired immunodeficiency syndrome (AIDS) or who
30 tests positive for the presence of human immunodeficiency virus (HIV) antigen
31 or antibodies is infectious to others through the exchange of body fluids
32 during sexual intercourse and through the parenteral transfer of blood or
33 blood products and ~~under these circumstances is a~~ is therefore a potential
34 danger to the public.

35 (b)(1)(A) ~~Any~~ A person arrested and charged with violating §§ § 5-14-
36 103, § 5-14-110, §§ 5-14-124 – 5-14-127, § 5-26-202, ~~and~~ or § 5-70-102 may be



1 required by the court having jurisdiction of the criminal prosecution, upon a
2 finding of reasonable cause to believe that the person committed the offense
3 and subject to constitutional limitations, to be tested for the presence of
4 human immunodeficiency virus (HIV) or ~~any~~ an antibody to human
5 immunodeficiency virus (HIV) unless the court determines that testing the
6 defendant would be inappropriate and documents the reasons for that
7 determination in the court record.

8 (B)(i)(a) Subject to constitutional limitations, the
9 victim of an offense listed under subdivision (b)(1)(A) of this section may
10 request that the person arrested and charged with the offense be tested for
11 the presence of human immunodeficiency virus (HIV) or an antibody to human
12 immunodeficiency virus (HIV), whether or not he or she is in custody, and the
13 results of the tests provided to the victim.

14 (b) Upon the victim's request under
15 subdivision (b)(1)(B)(i)(a) of this section, the court shall require that the
16 person be tested within forty-eight (48) hours of the information's or
17 indictment's being presented to the person if the court finds that there is a
18 reasonable cause to believe that the person committed the offense and the
19 charge against the person has an element of forcible compulsion or the threat
20 of forcible compulsion.

21 (ii) Subsequent tests for the presence of human
22 immunodeficiency virus (HIV) or an antibody to human immunodeficiency virus
23 (HIV) shall be required as medically appropriate with results of the
24 subsequent tests also provided to the victim as soon as practicable.

25 (2)(A) ~~The test~~ A test under this subsection shall be
26 confidentially administered by a licensed physician, the ~~Division of Health~~
27 ~~of the Department of Health and Human Services~~ Department of Health, or a
28 local health department.

29 (B)(i) If the person arrested and charged with the offense
30 is in the custody of the Department of Corrections, the test shall be
31 administered by a medical professional working within the Department of
32 Corrections.

33 (ii) If the test is requested by an entity for
34 forensic purposes and not by the Department of Corrections, the cost for the
35 test shall be the responsibility of the requesting entity.

36 (c)(1) If the victim or person with whom the defendant engaged in

1 sexual penetration during the course of the crime consents, the court shall
2 provide the person or agency administering the test with the name, address,
3 and telephone number of the victim or person with whom the defendant engaged
4 in sexual penetration during the course of the crime.

5 (2) After the defendant is tested ~~as to~~ for the presence of
6 human immunodeficiency virus (HIV) or an antibody to human immunodeficiency
7 virus (HIV), the person or agency administering the test shall immediately
8 provide the test results to the victim or person with whom the defendant
9 engaged in sexual penetration during the course of the crime, and shall refer
10 the victim or other person for appropriate counseling.

11 (d)(1) ~~It shall be mandatory that upon~~ Upon request of the victim, and
12 conviction of the defendant, a court of competent jurisdiction shall order
13 the convicted person to submit to testing to detect in the defendant the
14 presence of the etiologic agent for acquired immunodeficiency syndrome
15 (AIDS).

16 (2) ~~For purposes of~~ As used in this subsection:

17 (A) ~~The term "convicted"~~ "Convicted" includes ~~adjudicated~~
18 an adjudication under juvenile proceedings; and

19 (B) ~~The term "sexual~~ "Sexual offense" ~~shall mean those~~
20 ~~offenses enumerated~~ means an offense listed in subdivision (b)(1)(A) of this
21 section.

22 (3) The testing of a person convicted of a sexual offense ~~as~~
23 ~~enumerated in subdivision (b)(1) of this section~~ shall be conducted by the
24 ~~division~~ Department of Health upon an order of a circuit court.

25 (4) The results of any tests performed ~~pursuant to~~ under this
26 subsection shall immediately be released to the victim and to the defendant;
27 otherwise, the results of any tests performed shall be confidential and not
28 subject to disclosure as public information under the Freedom of Information
29 Act of 1967, § 25-19-101 et seq.

30 (5) ~~Any~~ A victim of a sexual offense ~~as enumerated in~~
31 ~~subdivision (b)(1) of this section~~ shall, upon request of the victim,
32 receive:

33 (A) Appropriate counseling;

34 (B) Human immunodeficiency virus (HIV) testing; and

35 (C) Referral or delivery for appropriate health care and
36 support services.

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/s/K. Hammer

APPROVED: 4/12/21