

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

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) The victim of an offense listed in subdivision
 9 (b)(1)(A) of this section may request, and the court shall require upon the
 10 victim's request, that the person arrested and charged with the offense be
 11 tested for the presence of human immunodeficiency virus (HIV) or an antibody
 12 to human immunodeficiency virus (HIV) within forty-eight (48) hours of the
 13 information or indictment being presented to the person, whether or not he or
 14 she is in custody.

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

19 (c)(1) If the victim or person with whom the defendant engaged in
 20 sexual penetration during the course of the crime consents, the court shall
 21 provide the person or agency administering the test with the name, address,
 22 and telephone number of the victim or person with whom the defendant engaged
 23 in sexual penetration during the course of the crime.

24 (2) After the defendant is tested ~~as to~~ for the presence of
 25 human immunodeficiency virus (HIV) or an antibody to human immunodeficiency
 26 virus (HIV), the person or agency administering the test shall immediately
 27 provide the test results to the victim or person with whom the defendant
 28 engaged in sexual penetration during the course of the crime, and shall refer
 29 the victim or other person for appropriate counseling.

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

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

36 (A) ~~The term "convicted"~~ "Convicted" includes ~~adjudicated~~

1 an adjudication under juvenile proceedings; and

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

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

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

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

- 16 (A) Appropriate counseling;
- 17 (B) Human immunodeficiency virus (HIV) testing; and
- 18 (C) Referral or delivery for appropriate health care and
- 19 support services.

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