

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

As Engrossed: S3/1/21

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) 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)(A) ~~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 (B)(i) If the person arrested and charged with the offense
20 is in the custody of the Department of Corrections, the test shall be
21 administered by a medical professional working within the Department of
22 Corrections.

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

26 (c)(1) If the victim or person with whom the defendant engaged in
27 sexual penetration during the course of the crime consents, the court shall
28 provide the person or agency administering the test with the name, address,
29 and telephone number of the victim or person with whom the defendant engaged
30 in sexual penetration during the course of the crime.

31 (2) After the defendant is tested ~~as to~~ for the presence of
32 human immunodeficiency virus (HIV) or an antibody to human immunodeficiency
33 virus (HIV), the person or agency administering the test shall immediately
34 provide the test results to the victim or person with whom the defendant
35 engaged in sexual penetration during the course of the crime, and shall refer
36 the victim or other person for appropriate counseling.

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

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

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

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

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

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

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

23 (A) Appropriate counseling;

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

25 (C) Referral or delivery for appropriate health care and
26 support services.

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28 */s/K. Hammer*
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