

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

# 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.  
11

## Subtitle

12 TO REQUIRE HIV TESTING FOR ALL  
13 DEFENDANTS CHARGED WITH CERTAIN SEX  
14 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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34 SECTION 2. Arkansas Code Title 12, Chapter 12, Subchapter 1 is amended  
35 to add a new section to read as follows:

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1           12-12-107. HIV testing for defendants charged with certain sex  
 2 offenses.

3           (a) A person against whom a criminal information or indictment has  
 4 been filed for the following charges shall submit to testing for the human  
 5 immunodeficiency virus (HIV) within forty-eight (48) hours after the criminal  
 6 information or indictment has been filed:

7                   (1) Rape, § 5-14-103;

8                   (2) Sexual assault in the first degree, § 5-14-124; or

9                   (3) Sexual assault in the second degree, § 5-14-125.

10           (b) A test under this section shall be at a place designated by the  
 11 county sheriff of the county in which the criminal information or indictment  
 12 is filed.

13           (c) Notification of the results of any test under this section shall  
 14 be in accordance with § 5-14-202.

15           (d) Subsequent tests under this section shall be conducted as may be  
 16 medically appropriate, as determined by the circuit court in which the  
 17 criminal information or indictment is filed.

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