

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H4/10/13

A Bill

HOUSE BILL 1521

5 By: Representative Hammer
6

For An Act To Be Entitled

8 AN ACT TO ALLOW A VICTIM OF CERTAIN SEXUAL CRIMINAL
9 OFFENSES TO REQUIRE TESTING OF A DEFENDANT FOR
10 SEXUALLY TRANSMITTED DISEASES; AND FOR OTHER
11 PURPOSES.
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Subtitle

14 TO ALLOW A VICTIM OF CERTAIN SEXUAL
15 CRIMINAL OFFENSES TO REQUIRE TESTING OF A
16 DEFENDANT FOR SEXUALLY TRANSMITTED
17 DISEASES.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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23 *SECTION 1. Arkansas Code § 16-82-101 is amended to read as follows:*

24 *16-82-101. Testing for ~~human immunodeficiency virus~~ sexually*
25 *transmitted disease – Sexual offenses.*

26 *(a) A The General Assembly finds that a person with acquired*
27 *immunodeficiency syndrome (AIDS) or who tests positive for the presence of*
28 *human immunodeficiency virus (HIV) antigen or antibodies a sexually*
29 *transmitted disease is infectious to others through the exchange of body*
30 *fluids during sexual intercourse and through the parenteral transfer of blood*
31 *or blood products and under these circumstances is a danger to the public.*

32 *(b)(1)(A) Any person ~~arrested and~~ charged with violating §§ 5-14-103,*
33 *§ 5-14-110, § 5-14-124, – § 5-14-125, § 5-14-126, § 5-14-127, § 5-26-202, ~~and~~*
34 *or § 5-70-102 or an offense involving sexual activity in which the sexual*
35 *activity was forced, was committed under threat of violence, or was otherwise*
36 *compelled against the wishes of the victim may be required by the court*



1 ~~having jurisdiction of the criminal prosecution, upon a finding of reasonable~~
2 ~~cause to believe that the person committed the offense and subject to~~
3 ~~constitutional limitations, after the filing of an information or indictment~~
4 ~~and upon the specific request of the victim, to be tested for the presence of~~
5 ~~human immunodeficiency virus (HIV) or any antibody to human immunodeficiency~~
6 ~~virus (HIV) unless the court determines that testing the defendant would be~~
7 ~~inappropriate and documents the reasons for that determination in the court~~
8 ~~record a sexually transmitted disease, including human immunodeficiency virus~~
9 ~~(HIV) or an antibody to human immunodeficiency virus (HIV).~~

10 (B)(i) A victim's request under subdivision (b)(1)(A) of
11 this section shall be made to the prosecuting attorney.

12 (ii) If a victim makes a request under subdivision
13 (b)(1)(A) of this section to the prosecuting attorney, the prosecuting
14 attorney shall file a petition with the court requesting a test be conducted.

15 (2) The test shall be ~~confidentially~~ administered confidentially
16 by a licensed physician, the ~~Division of Health of the Department of Health~~
17 ~~and Human Services~~, or a local health department within forty-eight (48)
18 hours after the date the information or indictment is filed or after the
19 specific request of the victim to the court, whichever occurs later.

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

25 (2)(A) After the defendant is tested ~~as to~~ for the presence of
26 human immunodeficiency virus (HIV), ~~or an antibody to human immunodeficiency~~
27 ~~virus (HIV), or a sexually transmitted disease,~~ the person or agency
28 administering the test shall immediately provide the test results to the
29 ~~victim or person with whom the defendant engaged in sexual penetration during~~
30 ~~the course of the crime, and shall~~ court, which shall set a hearing to be
31 conducted in camera to determine whether the result of the test shall be
32 provided to the victim or a parent or guardian of the victim, if applicable.

33 (B) The court shall determine whether releasing the result
34 of the test:

35 (i) Furthers the interests of justice; or

36 (ii) Is needed for a legitimate law enforcement

1 purpose.

2 (C) If the court makes a finding as required under
3 subdivision (c)(2)(B) of this section, the results of the test shall be
4 released to the victim or a parent or guardian of the victim, if applicable.

5 (D) The court shall also refer the victim or other person
6 for appropriate counseling.

7 (d) The court may order subsequent testing under this section for a
8 sexually transmitted disease, including the human immunodeficiency virus
9 (HIV), as medically appropriate, upon the request of the prosecuting
10 attorney.

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

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

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

20 (B) ~~The term "sexual"~~ "Sexual ~~offense" shall mean those~~
21 ~~offenses enumerated in subdivision (b)(1) of this section~~ means an offense
22 under §§ 5-14-103, 5-14-110, 5-14-124 – 5-14-127, 5-26-202, and 5-70-102.

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

26 ~~(4)(f) The results of any tests performed pursuant to this subsection~~
27 ~~shall immediately be released to the victim and to the defendant; otherwise,~~
28 Except as provided under this section, the results result of any tests a test
29 performed shall be under this section is confidential and not subject to
30 disclosure as public information under the Freedom of Information Act of
31 1967, § 25-19-101 et seq.

32 ~~(5)(g) Any A victim of a sexual offense as enumerated in subdivision~~
33 ~~(b)(1) of this section shall~~ or an offense involving sexual activity in which
34 the sexual activity was forced, was committed under threat of violence, or
35 was otherwise compelled against the wishes of the victim, upon request of the
36 victim, may receive:

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~~(A)(1)~~ *Appropriate counseling;*

~~(B)(2)~~ *Human immunodeficiency virus (HIV) testing Testing for a sexually transmitted disease, including the human immunodeficiency virus (HIV) or an antibody to the human immunodeficiency virus (HIV); and*

~~(G)(3)~~ *Referral for or delivery ~~for~~ of appropriate health care and support services.*

(h) Costs for a test under this section may be assessed by the court against the person tested if he or she pleads guilty or nolo contendere or is found guilty of the charges contained in the information or indictment described in subdivision (b)(1)(A) of this section.

/s/Hammer