

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: H4/10/13
A Bill

HOUSE BILL 1521

By: Representative Hammer

For An Act To Be Entitled

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

Subtitle

TO ALLOW A VICTIM OF CERTAIN SEXUAL CRIMINAL OFFENSES TO REQUIRE TESTING OF A DEFENDANT FOR SEXUALLY TRANSMITTED DISEASES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 16-82-101 is amended to read as follows:

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

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

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



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

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

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

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

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

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

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

(i) Furthers the interests of justice; or

(ii) Is needed for a legitimate law enforcement

purpose.

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

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

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

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

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

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

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

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

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

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

~~(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

~~(C)(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