

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: S3/1/21 S3/11/21
A Bill

SENATE BILL 308

By: Senator K. Hammer
By: Representative L. Fite

For An Act To Be Entitled

AN ACT REQUIRING THE STATE TO OFFER A VICTIM OF SEXUAL ASSAULT THE CHOICE TO REQUIRE THE PERSON ACCUSED OF COMMITTING A SEXUAL ASSAULT ON THE VICTIM TO TAKE AN HIV TEST WITHIN FORTY-EIGHT HOURS AFTER THE DATE ON WHICH THE INFORMATION OR INDICTMENT IS PRESENTED; AND FOR OTHER PURPOSES.

Subtitle

REQUIRING THE STATE TO OFFER A VICTIM OF SEXUAL ASSAULT THE CHOICE TO REQUIRE THE PERSON ACCUSED OF COMMITTING A SEXUAL ASSAULT ON THE VICTIM TO TAKE AN HIV TEST.

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 – Sexual offenses.

(a) A person with acquired immunodeficiency syndrome (AIDS) or who tests positive for the presence of human immunodeficiency virus (HIV) antigen or antibodies 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~~ is therefore a potential danger to the public.

(b)(1)(A) ~~Any~~ A person arrested and charged with violating §§ § 5-14-103, § 5-14-110, §§ 5-14-124 – 5-14-127, § 5-26-202, ~~and~~ or § 5-70-102 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, to be tested for the presence of human immunodeficiency virus (HIV) or ~~any~~ an 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.

(B)(i)(a) Subject to constitutional limitations, the victim of an offense listed under subdivision (b)(1)(A) of this section may request that the person arrested and charged with the offense be tested for the presence of human immunodeficiency virus (HIV) or an antibody to human immunodeficiency virus (HIV), whether or not he or she is in custody, and the results of the tests provided to the victim.

(b) Upon the victim's request under subdivision (b)(1)(B)(i)(a) of this section, the court shall require that the person be tested within forty-eight (48) hours of the information's or indictment's being presented to the person if the court finds that there is a reasonable cause to believe that the person committed the offense and the charge against the person has an element of forcible compulsion or the threat of forcible compulsion.

(ii) Subsequent tests for the presence of human immunodeficiency virus (HIV) or an antibody to human immunodeficiency virus (HIV) shall be required as medically appropriate with results of the subsequent tests also provided to the victim as soon as practicable.

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

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

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

(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) After the defendant is tested ~~as to~~ for the presence of human immunodeficiency virus (HIV) or an antibody to human immunodeficiency virus (HIV), 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 refer the victim or other person for appropriate counseling.

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

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

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

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

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

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

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

(A) Appropriate counseling;

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

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

/s/K. Hammer