

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2457

Session of
1994

INTRODUCED BY STISH, NYCE, DEMPSEY, HUTCHINSON, WOGAN,
COLAFELLA, NICKOL, PITTS, TIGUE, McCALL, CORRIGAN, FLICK,
BUNT, HENNESSEY, TRUE, BELFANTI, COY, FARGO, HARLEY, RAYMOND,
SAURMAN, SCHEETZ, SURRA, ROHRER, MASLAND, STABACK,
D. W. SNYDER, KING, VANCE, EGOLF, GEIST, BELARDI, M. COHEN,
LEDERER, ADOLPH AND DRUCE, JANUARY 26, 1994

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 8, 1994

AN ACT

1 Amending the act of April 23, 1956 (1955 P.L.1510, No.500),
2 entitled, as amended, "An act providing for the prevention
3 and control of communicable and non-communicable diseases
4 including venereal diseases, fixing responsibility for
5 disease prevention and control, requiring reports of
6 diseases, and authorizing treatment of venereal diseases, and
7 providing for premarital and prenatal blood tests; amending,
8 revising and consolidating the laws relating thereto; and
9 repealing certain acts," defining "HIV-related test"; and
10 providing for human immunodeficiency virus (HIV) testing of
11 sex offenders.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Section 2 of the act of April 23, 1956 (1955
15 P.L.1510, No.500), known as the Disease Prevention and Control
16 Law of 1955, is amended by adding a subsection to read:

17 Section 2. Definitions.--

18 The following terms, whenever used in this act, have the
19 meanings indicated in this section, except where the context
20 indicates a clearly different meaning:

1 * * *

2 (d.1) HIV-related test. Any laboratory test or series of
3 tests for any virus, antibody, antigen or etiologic agent
4 whatsoever thought to cause or to indicate the presence of HIV
5 infection.

6 * * *

7 ~~Section 2. Section 8 of the act, amended September 11, 1959~~ <—
8 ~~(P.L.868, No.345), is amended to read:~~

9 ~~Section 8. Venereal Disease and Human Immunodeficiency Virus~~
10 ~~(HIV) Testing.—~~

11 ~~(a) Any person taken into custody and charged with any crime~~
12 ~~involving lewd conduct or a sex offense, or any person to whom~~
13 ~~the jurisdiction of a juvenile court attaches, may be examined~~
14 ~~for a venereal disease by a qualified physician appointed by the~~
15 ~~department or by the local board or department of health or~~
16 ~~appointed by the court having jurisdiction over the person so~~
17 ~~charged.~~

18 ~~(b) Any person convicted of a crime or pending trial, who is~~
19 ~~confined in or committed to any State or local penal~~
20 ~~institution, reformatory or any other house of correction or~~
21 ~~detention, may be examined for venereal disease by a qualified~~
22 ~~physician appointed by the department or by the local board or~~
23 ~~department of health or by the attending physician of the~~
24 ~~institution, if any. An individual convicted or adjudicated~~
25 ~~delinquent of a sexual offense shall be deemed to consent to an~~
26 ~~HIV related test, which test shall be performed at the request~~
27 ~~of the victim. The individual convicted shall be notified that~~
28 ~~the test is being performed and shall be notified of the test~~
29 ~~results. As used in this subsection, the term "convicted"~~
30 ~~includes conviction by entry of a plea of guilty or nolo~~

~~contendere, conviction after trial and a finding of not guilty due to insanity or of guilty but mentally ill. As used in this subsection, the term "sexual offense" means a crime under the following provisions of 18 Pa.C.S. (relating to crimes and offenses):~~

~~Section 3121 (relating to rape).~~

~~Section 3122 (relating to statutory rape).~~

~~Section 3123 (relating to involuntary deviate sexual intercourse).~~

~~Section 3124 (relating to voluntary deviate sexual intercourse).~~

~~Section 3125 (relating to aggravated indecent assault).~~

~~Section 3126 (relating to indecent assault).~~

~~Section 4302 (relating to incest).~~

~~Section 6312(b) (relating to sexual abuse of children).~~

~~If the HIV related test results in a negative reaction, the court shall order the individual to submit to another HIV related test six months after the first test was administered.~~

~~The Department of Health shall:~~

~~(1) direct the administration of the test;~~

~~(2) notify the victim of the results of each test;~~

~~(3) make HIV counseling available to the victim; and~~

~~(4) refer the victim to appropriate health care and support services.~~

~~(c) Any such persons noted in paragraph (a) or (b) of this section found, upon such examination, to be infected with any venereal disease shall be given appropriate treatment by duly constituted health authorities or their deputies or by the attending physician of the institution, if any.~~

SECTION 2. THE ACT IS AMENDED BY ADDING A SECTION TO READ:

<—

SECTION 11.1. HUMAN IMMUNODEFICIENCY VIRUS (HIV) TESTING OF
CERTAIN CONVICTED OFFENDERS.--

(A) THIS SECTION IS ENACTED IN ORDER TO COMPLY WITH THE
REQUIREMENTS OF SECTION 506 OF THE OMNIBUS CRIME CONTROL AND
SAFE STREETS ACT OF 1968 (PUBLIC LAW 90-351, 42 U.S.C. § 3756)
WHICH COMPELS STATES TO ENACT A LAW REQUIRING ADMINISTRATION OF
HIV-RELATED TESTS TO INDIVIDUALS CONVICTED OF SPECIFIED OFFENSES
WHEN A VICTIM REQUESTS THAT SUCH A TEST BE PERFORMED.

(B) WHEN AN INDIVIDUAL HAS BEEN CONVICTED OR ADJUDICATED
DELINQUENT OF ONE OF THE OFFENSES LISTED IN SUBSECTION (C), THE
VICTIM OF THAT OFFENSE MAY REQUEST THAT AN HIV-RELATED TEST BE
PERFORMED ON THE INDIVIDUAL WHO HAS BEEN CONVICTED OR
ADJUDICATED DELINQUENT AND THE RESULTS OF THAT TEST SHALL BE
DISCLOSED TO THE VICTIM. IF THE VICTIM REQUESTS A TEST WITHIN
SIX WEEKS OF THE CONVICTION OR ADJUDICATION OF DELINQUENCY, THEN
THE INDIVIDUAL WHO HAS BEEN CONVICTED OR ADJUDICATED DELINQUENT
SHALL BE DEEMED TO HAVE CONSENTED TO THE PERFORMANCE OF AN HIV-
RELATED TEST AND TO THE RELEASE OF THE RESULTS OF THAT TEST TO
THE VICTIM NOTWITHSTANDING SECTIONS 5(A) AND 7(A)(3) OF THE ACT
OF NOVEMBER 29, 1990 (P.L.585, NO.148), KNOWN AS THE
"CONFIDENTIALITY OF HIV-RELATED INFORMATION ACT." THE TEST SHALL
OTHERWISE BE ADMINISTERED AND THE RESULTS RELEASED TO THE VICTIM
IN ACCORDANCE WITH THE PROVISIONS OF THE "CONFIDENTIALITY OF
HIV-RELATED INFORMATION ACT." AS USED IN THIS SUBSECTION, THE
TERM "VICTIM" SHALL INCLUDE THE PARENT OR LEGAL GUARDIAN OF A
MINOR OR MENTALLY DISABLED ADULT. AS USED IN THIS SUBSECTION,
THE TERM "CONVICTED" INCLUDES CONVICTION BY ENTRY OF A PLEA OF
GUILTY OR NOLO CONTENDERE, CONVICTION AFTER TRIAL AND A FINDING
OF NOT GUILTY DUE TO INSANITY OR A FINDING OF GUILTY BUT
MENTALLY ILL.

1 (C) THE HIV-RELATED TEST SHALL BE PERFORMED AT THE REQUEST
2 OF A VICTIM, IF THE INDIVIDUAL HAS BEEN CONVICTED OR ADJUDICATED
3 DELINQUENT, UNDER ONE OF THE FOLLOWING PROVISIONS OF 18 PA.C.S.
4 (RELATING TO CRIMES AND OFFENSES):

5 SECTION 3121 (RELATING TO RAPE).

6 SECTION 3122 (RELATING TO STATUTORY RAPE).

7 SECTION 3123 (RELATING TO INVOLUNTARY DEVIATE SEXUAL
8 INTERCOURSE).

9 SECTION 3128 (RELATING TO SPOUSAL SEXUAL ASSAULT).

10 SECTION 4302 (RELATING TO INCEST).

11 SECTION 6301 (RELATING TO CORRUPTION OF MINORS).

12 (D) WHEN A VICTIM REQUESTS THAT AN HIV-RELATED TEST BE
13 PERFORMED ON AN INDIVIDUAL CONVICTED OR ADJUDICATED DELINQUENT
14 OF ONE OF THE OFFENSES LISTED IN SUBSECTION (C), THE REQUEST
15 SHALL BE FORWARDED TO THE DEPARTMENT OR LOCAL BOARD OR LOCAL
16 HEALTH DEPARTMENT ALONG WITH THE NAME AND CURRENT ADDRESS OF THE
17 VICTIM AND THE INDIVIDUAL CONVICTED OR ADJUDICATED DELINQUENT,
18 IF KNOWN. ALL INFORMATION REGARDING THE REQUEST SHALL BE
19 MAINTAINED AS CONFIDENTIAL IN ACCORDANCE WITH SECTION 15 OF THIS
20 ACT.

21 (E) THE DEPARTMENT OR LOCAL BOARD OR LOCAL HEALTH DEPARTMENT
22 SHALL MAKE PROVISIONS FOR:

23 (1) THE ADMINISTRATION OF THE HIV-RELATED TEST TO THE
24 INDIVIDUAL CONVICTED OR ADJUDICATED DELINQUENT IN ACCORDANCE
25 WITH SUBSECTION (B) OF THIS SECTION.

26 (2) NOTIFICATION TO THE VICTIM OF THE RESULTS OF THE TEST
27 ADMINISTERED TO THE INDIVIDUAL CONVICTED OR ADJUDICATED
28 DELINQUENT.

29 (3) HIV-RELATED TESTING TO AND COUNSELING OF THE VICTIM IN
30 ACCORDANCE WITH THE "CONFIDENTIALITY OF HIV-RELATED INFORMATION

1 ACT," AT NO COST TO THE VICTIM.

2 (4) REFERRAL OF THE VICTIM TO APPROPRIATE HEALTH CARE AND
3 SUPPORT SERVICES.

4 Section 3. This act shall take effect in 60 days.