
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1794 Session of
2011

INTRODUCED BY MUSTIO, BARRAR, DENLINGER, GABLER, GEIST, HESS,
KAUFFMAN, LONGIETTI, METZGAR, MILLARD, MILLER, MILNE, MURT,
OBERLANDER, O'NEILL, PYLE, READSHAW, STERN, SWANGER, TOEPEL
AND VULAKOVICH, JULY 20, 2011

REFERRED TO COMMITTEE ON JUDICIARY, JULY 20, 2011

AN ACT

1 Providing for HIV-related testing for certain sex offenders; and
2 making a related repeal.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 CHAPTER 1

6 PRELIMINARY PROVISIONS

7 Section 101. Short title.

8 This act shall be known and may be cited as the HIV-Related
9 Testing for Sex Offenders Act.

10 Section 102. Legislative intent.

11 In order to comply with section 2101 of the Omnibus Crime
12 Control and Safe Streets Act of 1968 (Public Law 90-351, 42
13 U.S.C. § 3796hh) and to further the care and treatment of
14 victims of sexual assault by providing them with critical
15 medical information about their assailants, it is the intent of
16 the General Assembly to provide a statutory mechanism whereby a
17 court may order HIV-related testing of individuals who are

1 accused of committing certain sexual offenses.

2 Section 103. Definitions.

3 The following words and phrases when used in this act shall
4 have the meanings given to them in this section unless the
5 context clearly indicates otherwise:

6 "AIDS." Acquired immune deficiency syndrome.

7 "Bodily fluids." Blood, saliva, semen or other bodily fluid
8 which the most current guidelines of the Centers for Disease
9 Control and Prevention indicate is capable of transmitting human
10 immunodeficiency virus or acquired immune deficiency syndrome.

11 "Conviction." Includes conviction by entry of a plea of
12 guilty or nolo contendere, conviction after trial, a finding of
13 not guilty due to insanity or a finding of guilty but mentally
14 ill.

15 "Court." In the First Judicial District, the term shall mean
16 the Philadelphia Municipal Court or the Court of Common Pleas,
17 whichever has jurisdiction over the criminal case at the time
18 the request for HIV-related testing is made. In all other
19 judicial districts, the term shall mean a court of common pleas.

20 "HIV." The human immunodeficiency virus.

21 "HIV-related testing." A laboratory test or series of tests
22 for a virus, antibody, antigen or etiologic agent which is
23 thought to cause or to indicate the presence of human
24 immunodeficiency virus or acquired immune deficiency syndrome.

25 "Victim." Includes a parent or legal guardian of a minor or
26 mentally disabled adult.

27 CHAPTER 3

28 HIV-RELATED TESTING

29 Section 301. Court ordered HIV-related testing.

30 In accordance with section 302 or 303, upon a finding of

1 probable cause to believe there is a probable transmission of
2 bodily fluids between a defendant and victim, the court shall
3 order the defendant to submit to HIV-related testing.

4 Section 302. Procedure.

5 (a) General rule.--In all judicial districts within this
6 Commonwealth, the attorney for the Commonwealth shall, upon
7 request of the victim and with notice to the defendant, make
8 application to the court for HIV-related testing of the
9 defendant for a violation of any of the following provisions
10 under 18 Pa.C.S. (relating to crimes and offenses):

11 Section 3121 (relating to rape).

12 Section 3122.1 (relating to statutory sexual assault).

13 Section 3123 (relating to involuntary deviate sexual
14 intercourse).

15 Section 3124.1 (relating to sexual assault).

16 Section 3124.2 (relating to institutional sexual
17 assault).

18 Section 3125 (relating to aggravated indecent assault).

19 Section 3126 (relating to indecent assault).

20 Section 4302 (relating to incest).

21 Section 4304 (relating to endangering welfare of
22 children) if the offense involved sexual contact with the
23 victim.

24 Section 6301 (relating to corruption of minors) if the
25 offense involved sexual contact with the victim.

26 Section 6312 (relating to sexual abuse of children) if
27 the offense involved sexual contact with the victim.

28 Section 6320 (relating to sexual exploitation of
29 children) if the offense involved sexual contact with the
30 victim.

1 (b) Timing.--In the case of the Commonwealth proceeding
2 under subsection (a):

3 (1) In the First Judicial District, the HIV-related test
4 shall be administered no later than 48 hours after the filing
5 of the bill of information.

6 (2) In judicial districts other than the First Judicial
7 District, the HIV-related test shall be administered no later
8 than 48 hours after the filing of the criminal information.

9 (c) Alternative.--In the event the victim fails to request
10 HIV-related testing of the defendant as set forth in subsection
11 (a), the victim may request that HIV-related testing be
12 performed on the defendant at any point after the time period
13 set forth in subsection (b) expires until six weeks after the
14 date of conviction. In such an event, the attorney for the
15 Commonwealth shall make application to the court, at the request
16 of the victim, with notice to the defendant, for HIV-related
17 testing of the defendant.

18 Section 303. Transfer of child defendant to criminal court.

19 (a) General rule.--In the case of a minor who is transferred
20 to criminal court pursuant to Pa.R.J.C.P. No.394 (relating to
21 transfer hearing), the attorney for the Commonwealth shall, upon
22 request of the victim and with notice to the defendant, make
23 application to the court for HIV-related testing of the
24 defendant.

25 (b) Timing.--In the case of the Commonwealth proceeding
26 under subsection (a):

27 (1) In the First Judicial District, the HIV-related test
28 shall be administered no later than 48 hours after the filing
29 of the bill of information.

30 (2) In judicial districts other than the First Judicial

1 District, the HIV-related test shall be administered no later
2 than 48 hours after the filing of the criminal information.

3 (c) Alternative.--In the event the victim fails to request
4 HIV-related testing of the defendant as set forth in subsection
5 (a), the victim may request that HIV-related testing be
6 performed on the defendant at any point after the time period
7 set forth in subsection (b) expires until six weeks after the
8 date of conviction. In such an event, the attorney for the
9 Commonwealth shall make application to the court, at the request
10 of the victim, with notice to the defendant, for HIV-related
11 testing of the defendant.

12 Section 304. Prohibition.

13 The following apply to HIV-related testing and any follow-up
14 testing of a defendant conducted pursuant to this act:

15 (1) The results of HIV-related testing of the defendant
16 may not be used to establish guilt of the defendant.

17 (2) The results of HIV-related testing may only be
18 disclosed to the following:

19 (i) The victim.

20 (ii) The defendant.

21 (iii) The attorney for the Commonwealth.

22 (iv) Health care providers treating the victim or
23 the defendant.

24 (v) The attorney for the defendant.

25 (vi) The court.

26 (vii) Any other individual designated by the court.

27 (3) Notice shall be given to the victim and to the
28 defendant regarding the results of the HIV-related testing of
29 the defendant as soon as is practicable. Counseling regarding
30 HIV and AIDS for the victim and for the defendant shall be

1 provided. In addition, follow-up HIV-related testing for the
2 defendant shall be provided as medically appropriate. Notice
3 of the results of any follow-up HIV-related testing shall be
4 provided to the victim and the defendant as soon as is
5 practicable.

6 (4) HIV-related testing shall only be performed by
7 licensed health care providers. Except for fulfilling the
8 reporting requirements of the act of April 23, 1956 (1955
9 P.L.1510, No.500), known as the Disease Prevention and
10 Control Law of 1955, the results of the HIV-related testing
11 of the defendant and any follow-up tests of the defendant
12 shall be kept confidential.

13 (5) Licensed health care professionals who conduct
14 testing or perform counseling or other HIV-related and AIDS-
15 related services pursuant to this act shall not be subject to
16 civil liability for acts committed in good faith.

17 (6) The court may order that the cost of the HIV-related
18 testing and any follow-up testing of the defendant be borne
19 by the Department of Health or the Department of Corrections
20 or by the defendant if the defendant is an adult, as
21 appropriate. However, upon conviction, the court shall order
22 that the cost of the defendant's HIV-related testing and the
23 cost of any follow-up testing be assessed against the
24 defendant if the defendant is an adult. In no event shall the
25 victim pay for HIV-related testing.

26 CHAPTER 11

27 MISCELLANEOUS PROVISIONS

28 Section 1101. Conflict.

29 In the event any provision of this act conflicts with the act
30 of November 29, 1990 (P.L.585, No.148), known as the

1 Confidentiality of HIV-Related Information Act, the provisions
2 of this act shall prevail.

3 Section 1102. Repeal.

4 Repeals are as follows:

5 (1) The General Assembly declares that the repeal under
6 paragraph (2) is necessary to effectuate this act.

7 (2) Section 11.1 of the act of April 23, 1956 (1955 P.L.
8 1510, No.500), known as the Disease Prevention and Control
9 Law of 1955, is repealed.

10 Section 1103. Applicability.

11 This act shall apply to offenses committed on or after the
12 effective date of this act.

13 Section 1104. Effective date.

14 This act shall take effect in 60 days.