

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1331 Session of
1989

INTRODUCED BY CALTAGIRONE, REBER, MOEHLMANN, McNALLY, VEON AND
KOSINSKI, APRIL 26, 1989

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 26, 1989

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, requiring district justices and judges
3 to provide information about AIDS testing and counseling to
4 persons charged and their victims in cases involving
5 transmission of body fluids; authorizing the ordering of AIDS
6 testing of certain persons; and providing for procedures.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Title 18 of the Pennsylvania Consolidated
10 Statutes is amended by adding a section to read:

11 § 1109. AIDS testing.

12 (a) General rule.--At the time of an appearance before a
13 district justice or common pleas court judge on a criminal
14 charge, the district justice or judge shall inform every person
15 arrested and charged with a crime, in which it appears that the
16 transmission of body fluids from one person to another may have
17 been involved, of the availability of AIDS testing and
18 counseling. The district justice or judge shall cause the
19 alleged victim of the crime, if any, to be notified that AIDS

1 testing and counseling is available.

2 (b) Procedure upon conviction.--Upon conviction of a person
3 for any crime which the court determines from the facts of the
4 case involved, or was likely to have involved, the transmission
5 of body fluids from one person to another, the court:

6 (1) may order the convicted person to submit to an AIDS
7 test; or

8 (2) shall order the convicted person to submit to an
9 AIDS test if the victim of the crime or the legal guardian of
10 the victim requests the court to make such order.

11 (c) Receipt of test results.--If an AIDS test is ordered
12 under subsection (b), the victim of the crime, if any, who is
13 not a minor shall designate a health care provider or counselor
14 to receive the test results on behalf of the victim. If the
15 victim is a minor or incapacitated person, the parent or legal
16 guardian of the victim shall designate a health care provider or
17 counselor to receive the results. If the test results in a
18 negative reaction, the court shall order the convicted person to
19 submit to another AIDS test six months after the first test was
20 administered.

21 (d) Disclosure of test results.--The results of any AIDS
22 test ordered under subsection (b) shall be disclosed to the
23 court that ordered the test, to the convicted person and to the
24 person designated under subsection (c) to receive the
25 information. If the AIDS test ordered under this section results
26 in a positive reaction, the results shall be reported to the
27 Department of Health and to the Department of Corrections, and
28 such counseling as directed by the Department of Health shall be
29 provided to the victim or victims.

30 (e) Costs.--The costs of any counseling provided under

1 subsection (d) by the Department of Health shall be paid from
2 amounts appropriated for such purpose to the Department of
3 Health. Restitution to the Commonwealth for payment of the costs
4 of any counseling provided under this section and for payment of
5 the costs of any test ordered under this section shall be
6 included by the court in any order requiring the convicted
7 person to pay restitution or costs.

8 (f) Withdrawal of blood.--

9 (1) When a court orders a convicted person to submit to
10 an AIDS test under subsection (b), the withdrawal of blood
11 may be performed only by:

12 (i) a person licensed to practice medicine and
13 surgery or a person acting under the supervision of any
14 such licensed person;

15 (ii) a licensed professional nurse or a licensed
16 practical nurse; or

17 (iii) a qualified medical technician.

18 (2) No person authorized by paragraph (1) to withdraw
19 blood, no person assisting in the performance of the AIDS
20 test nor any medical care facility where blood is withdrawn
21 or tested that has been ordered by the court to withdraw or
22 test blood shall be liable in any civil or criminal action
23 when the act is performed in a reasonable manner according to
24 generally accepted medical practices.

25 (g) Confidentiality.--The results of tests or reports, or
26 information therein, obtained under this section shall be
27 confidential and shall not be divulged to any person not
28 authorized by this section to receive the results or
29 information. A person who violates this subsection commits a
30 misdemeanor of the third degree.

1 (h) Definitions.--As used in this section, the following
2 words and phrases shall have the meanings given to them in this
3 subsection:

4 "AIDS test." A test approved by the Department of Health to
5 detect antibodies to the probable causative agent for acquired
6 immune deficiency syndrome (AIDS).

7 "Positive reaction." A positive AIDS test with a positive
8 confirmatory test result as specified by the Department of
9 Health.

10 Section 2. This act shall take effect immediately.