

HIV-RELATED TESTING FOR SEX OFFENDERS ACT - ENACTMENT

Act of Oct. 25, 2012, P.L. 1630, No. 201

Cl. 35

AN ACT

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

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

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CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

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

Section 102. Legislative intent.

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

Section 103. Definitions.

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

"AIDS." Acquired immune deficiency syndrome.

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

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

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

"HIV." The human immunodeficiency virus.

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

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

CHAPTER 3 HIV-RELATED TESTING

Section 301. Court-ordered HIV-related testing.

In accordance with section 302 or 303, upon a finding of probable cause to believe there is a probable transmission of bodily fluids between a defendant and victim, the court shall order the defendant to submit to HIV-related testing.

Section 302. Procedure.

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

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3124.2 (relating to institutional sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 4302 (relating to incest).

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

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

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

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

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

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

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

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

of the victim, with notice to the defendant, for HIV-related testing of the defendant.

Section 303. Transfer of child defendant to criminal court.

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

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

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

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

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

Section 304. Prohibition.

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

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

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

(i) The victim.

(ii) The defendant.

(iii) The attorney for the Commonwealth.

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

(v) The attorney for the defendant.

(vi) The court.

(vii) Any other individual designated by the court.

(3) Notice shall be given to the victim and to the defendant regarding the results of the HIV-related testing of the defendant as soon as is practicable. Counseling regarding HIV and AIDS for the victim and for the defendant shall be provided. In addition, follow-up HIV-related testing for the defendant shall be provided as medically appropriate. Notice of the results of any follow-up HIV-related testing shall be provided to the victim and the defendant as soon as is practicable.

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

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

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

CHAPTER 11
MISCELLANEOUS PROVISIONS

Section 1101. Construction.

The following shall apply:

(1) This act shall not be construed to preclude or limit any other HIV-related testing that is otherwise lawfully permitted by search warrant, court order, statute or common law.

(2) This act shall be read in pari materia with the act of November 29, 1990 (P.L.585, No.148), known as the Confidentiality of HIV-Related Information Act.

Section 1102. Repeal.

Repeals are as follows:

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

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

Section 1103. Applicability.

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

Section 1104. Effective date.

This act shall take effect in 60 days.