

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, VULAKOVICH, GEORGE, SHAPIRO, HALUSKA AND DELOZIER, JULY 20, 2011

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 4, 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:

CHAPTER 1

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 AN ADDITIONAL statutory



1 mechanism whereby a court may order HIV-related testing of
2 individuals who are accused of committing certain sexual
3 offenses.

4 Section 103. Definitions.

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

8 "AIDS." Acquired immune deficiency syndrome.

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

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

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

22 "HIV." The human immunodeficiency virus.

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

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

29 CHAPTER 3

30 HIV-RELATED TESTING

1 Section 301. Court ordered HIV-related testing.

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

6 Section 302. Procedure.

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

13 Section 3121 (relating to rape).

14 Section 3122.1 (relating to statutory sexual assault).

15 Section 3123 (relating to involuntary deviate sexual
16 intercourse).

17 Section 3124.1 (relating to sexual assault).

18 Section 3124.2 (relating to institutional sexual
19 assault).

20 Section 3125 (relating to aggravated indecent assault).

21 Section 3126 (relating to indecent assault).

22 Section 4302 (relating to incest).

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

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

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

30 Section 6320 (relating to sexual exploitation of

1 children) if the offense involved sexual contact with the
2 victim.

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

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

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

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

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

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

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

29 (1) In the First Judicial District, the HIV-related test
30 shall be administered no later than 48 hours after the filing

1 of the bill of information.

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

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

14 Section 304. Prohibition.

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

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

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

21 (i) The victim.

22 (ii) The defendant.

23 (iii) The attorney for the Commonwealth.

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

26 (v) The attorney for the defendant.

27 (vi) The court.

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

29 (3) Notice shall be given to the victim and to the
30 defendant regarding the results of the HIV-related testing of

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

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

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

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


28 CHAPTER 11

29 MISCELLANEOUS PROVISIONS

30 ~~Section 1101. Conflict.~~



1 ~~In the event any provision of this act conflicts with the act~~
2 ~~of November 29, 1990 (P.L.585, No.148), known as the~~
3 ~~Confidentiality of HIV Related Information Act, the provisions~~
4 ~~of this act shall prevail.~~

5 SECTION 1101. CONSTRUCTION. 

6 THE FOLLOWING SHALL APPLY:

7 (1) THIS ACT SHALL NOT BE CONSTRUED TO PRECLUDE OR LIMIT
8 ANY OTHER HIV-RELATED TESTING THAT IS OTHERWISE LAWFULLY
9 PERMITTED BY SEARCH WARRANT, COURT ORDER, STATUTE OR COMMON
10 LAW.

11 (2) THIS ACT SHALL BE READ IN PARI MATERIA WITH THE ACT
12 OF NOVEMBER 29, 1990 (P.L.585, NO.148), KNOWN AS THE
13 CONFIDENTIALITY OF HIV-RELATED INFORMATION ACT.

14 Section 1102. Repeal.

15 Repeals are as follows:

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

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

21 Section 1103. Applicability.

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

24 Section 1104. Effective date.

25 This act shall take effect in 60 days.