

records of a patient under the board's review. A person participating in good faith in releasing medical record information in response to a board subpoena is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

Sec. 4. Section 136C.15, subsection 2, paragraph d, Code 1993, is amended by striking the paragraph.

Sec. 5. NEW SECTION. 144.32 BURIAL TRANSIT PERMIT.

If a person other than a funeral director assumes custody of a dead body or fetus, the person shall secure a burial-transit permit. To be valid, the burial-transit permit must be issued by the county medical examiner, a funeral director, or the county registrar of the county where the certificate of death or fetal death was filed. The permit shall be obtained prior to the removal of the body or fetus from the place of death and the permit shall accompany the body or fetus to the place of final disposition.

To transfer a dead body or fetus outside of this state, the funeral director who first assumes custody of the dead body or fetus shall obtain a burial-transit permit prior to the transfer. The permit shall accompany the dead body or fetus to the place of final disposition.

A dead body or fetus brought into this state for final disposition shall be accompanied by a burial-transit permit under the law of the state in which the death occurred.

A burial-transit permit shall not be issued to a person other than a funeral director when the cause of death is or is suspected to be a communicable disease as defined by rule of the department.

Sec. 6. Section 235C.2, Code 1993, is amended by adding the following new subsection: NEW SUBSECTION. 4A. The director of the department of corrections or the director's designee, as a nonvoting ex officio member.

Sec. 7. Section 321.1, subsection 8, Code 1993, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A person is not a chauffeur when the operation is by a home care aide in the course of the home care aide's duties.

Sec. 8. Section 321.176A, Code 1993, is amended by adding the following new subsection: NEW SUBSECTION. 7. A home care aide operating a motor vehicle in the course of the home care aide's duties.

Approved May 19, 1993

CHAPTER 140

HIV-RELATED TESTS FOR CONVICTED SEXUAL ASSAULT OFFENDERS

H.F. 418

AN ACT relating to the testing of a person for the human immunodeficiency virus following conviction for certain offenses, making relief provisions applicable for violation of confidentiality, and providing a penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 709B.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "AIDS" means acquired immune deficiency syndrome as defined by the centers for disease control of the United States department of health and human services.
2. "Convicted offender" means a person convicted of a sexual assault.

3. "Department" means the Iowa department of public health.
4. "Division" means the crime victims assistance division of the office of the attorney general.
5. "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.
6. "HIV-related test" means a test for the antibody or antigen to HIV.
7. "Petitioner" means a person who is the victim of a sexual assault which resulted in alleged significant exposure or the parent, guardian, or custodian of a victim if the victim is a minor, for whom the county attorney files a petition with the district court to require the convicted offender to undergo an HIV-related test.
8. "Sexual assault" means sexual abuse as defined in section 709.1, or any other sexual offense by which a victim has allegedly had sufficient contact with a convicted offender to be deemed a significant exposure.
9. "Significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or bodily fluids, other than tears, saliva, or perspiration of the convicted offender. "Significant exposure" is presumed to have occurred when there is a showing that there was penetration of the convicted offender's penis into the victim's vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the offender and the genitalia or anus of the victim.
10. "Victim counselor" means a person who is engaged in a crime victim center as defined in section 236A.1, who is certified as a counselor by the crime victim center, and who has completed at least twenty hours of training provided by the Iowa coalition against sexual assault or a similar agency.

Sec. 2. NEW SECTION. 709B.2 HIV-RELATED TEST — CONVICTED SEXUAL ASSAULT OFFENDER.

1. If a person is convicted of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the person convicted to submit to an HIV-related test, provided that all of the following conditions are met:

a. The sexual assault for which the offender was convicted included sufficient contact between the victim and the offender to be deemed a significant exposure pursuant to section 709B.1.

b. The authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted offender to the testing.

c. Written informed consent was not provided by the convicted offender.

2. Upon receipt of the petition, the court shall:

a. Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, regarding the nature, reliability, and significance of the HIV-related test and of the serologic status of the convicted offender.

b. Schedule a hearing to be held as soon as is practicable.

c. Cause written notice to be served on the convicted offender who is the subject of the proceeding, in accordance with the rules of civil procedure relating to the service of original notice, or if the convicted offender is represented by legal counsel, provide written notice to the convicted offender and the convicted offender's legal counsel.

d. Provide for the appointment of legal counsel for a convicted offender if the convicted offender desires but is financially unable to employ counsel.

e. Furnish legal counsel with copies of the petition.

3. Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim's interest in all proceedings under this section.

4. a. A hearing under this section shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa rules of evidence. The hearing shall be limited in scope to the review of questions of fact only as to the issue of whether the sexual assault for which the offender was convicted provided sufficient contact between the victim and the offender to be deemed a significant exposure and to questions of law.

b. In determining whether the contact should be deemed a significant exposure, the court shall base the determination on the testimony presented during the proceedings on the sexual

assault charge, the minutes of the testimony or other evidence included in the court record, or if a plea of guilty was entered, based upon the complaint or upon testimony provided during the hearing.

c. The victim may testify at the hearing, but shall not be compelled to testify. The court shall not consider the refusal of a victim to testify at the hearing as material to the court's decision regarding issuance of an order requiring testing.

d. The hearing shall be in camera unless the convicted offender and the petitioner agree to a hearing in open court and the court approves. The report of the hearing proceedings shall be sealed and no report of the proceedings shall be released to the public, except with the permission of all parties and the approval of the court.

e. Stenographic notes or electronic or mechanical recordings shall be taken of all court hearings unless waived by the parties.

5. Following the hearing, the court may require a convicted offender to undergo an HIV-related test only if the petitioner proves all of the following by a preponderance of the evidence:

a. The sexual assault constituted a significant exposure.

b. An authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent from the convicted offender.

c. Written informed consent was not provided by the convicted offender.

6. A convicted offender who is required to undergo an HIV-related test may appeal to the court for review of questions of law only, but may appeal questions of fact if the findings of fact are clearly erroneous.

Sec. 3. NEW SECTION. 709B.3 TESTING, REPORTING, AND COUNSELING — PENALTIES.

1. The physician or other practitioner who orders the test of a convicted offender for HIV under this chapter shall disclose the results of the test to the convicted offender and to the victim counselor or a person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, who shall disclose the results to the petitioner.

2. All testing under this chapter shall be accompanied by pretest and posttest counseling as required under section 141.22.

3. Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of this chapter.

4. Results of a test performed under this chapter, except as provided in subsection 6, shall be disclosed only to the physician or other practitioner who orders the test of the convicted offender, the convicted offender, the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, the physician of the victim if requested by the victim, and the parent, guardian, or custodian of the victim, if the victim is a minor. Results of a test performed under this chapter shall not be disclosed to any other person without the written, informed consent of the convicted offender. A person to whom the results of a test have been disclosed under this chapter is subject to the confidentiality provisions of section 141.23, and shall not disclose the results to another person except as authorized by section 141.23, subsection 1.

5. Notwithstanding subsection 4, test results shall not be disclosed to a convicted offender who elects against disclosure.

6. If testing is ordered under this chapter, the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole if the physician or other practitioner who ordered the initial test of the convicted offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted offender was HIV-infected at the time the sexual assault was perpetrated. The results of the test conducted pursuant to this subsection shall be released only to the physician or other practitioner who orders the test of the convicted offender, the convicted offender, the victim counselor or person requested by the

victim who is authorized to provide the counseling required pursuant to section 141.22, who shall disclose the results to the petitioner, and the physician of the victim, if requested by the victim.

7. The court shall not consider the disclosure of an alleged offender's serostatus to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

8. The fact that an HIV-related test was performed under this chapter and the results of the test shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

9. The fact that an HIV-related test was performed under this chapter and the results of the test shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

10. If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV-related test other than a test which is authorized as a result of the procedures established in this chapter, legal protections which attach to such testing shall be the same as those which attach to an initial test under this chapter, and the rights to a prediscovery hearing and to appeal provided under this chapter shall apply.

11. HIV-related testing required under this chapter shall be conducted by the state hygienic laboratory.

12. Notwithstanding the provisions of this chapter requiring initial testing, if a petition is filed with the court under section 709B.1* requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted offender, in accordance with this chapter.

13. In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided.

14. In addition to persons to whom disclosure of the results of a convicted offender's HIV-related test results is authorized under this chapter, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

15. A person to whom disclosure of a convicted offender's HIV-related test results is authorized under this chapter shall not disclose the results to any other person for whom disclosure is not authorized under this chapter. A person who intentionally or recklessly makes an unauthorized disclosure under this chapter is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this chapter. Proceedings maintained under this subsection shall provide for the anonymity of the test subject and all documentation shall be maintained in a confidential manner.

Sec. 4. Section 135.11, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 24. Adopt rules which provide for the testing of a convicted offender for the human immunodeficiency virus pursuant to chapter 709B. The rules shall provide for the provision of counseling, health care, and support services to the victim.

Sec. 5. Section 141.23, subsection 1, Code 1993, is amended by adding the following new paragraph:

NEW PARAGRAPH. i. The convicted offender, the physician or other practitioner who orders the test of the convicted offender, the victim, the parent, guardian, or custodian of the victim if the victim is a minor, the physician of the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22, and the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the fourth degree of consanguinity.

Approved May 19, 1993

*Section 709B.2 probably intended

CHAPTER 141**CLEANUP OF CLANDESTINE LABORATORY SITES***H.F. 419*

AN ACT relating to the recovery by the department of public safety of costs associated with the cleanup of a clandestine laboratory site.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 124C.1 DEFINITIONS.

As used in this section, unless the context clearly requires otherwise:

1. "Clandestine laboratory site" means a location or operation, including but not limited to buildings or vehicles equipped with glassware, heating devices, and precursors or related reagents and solvents needed to unlawfully prepare or manufacture controlled substances defined in chapter 124.

2. "Cleanup" means actions necessary to contain, collect, control, identify, analyze, disassemble, treat, remove or otherwise disperse all substances and materials, including but not limited to those found to be hazardous waste as defined in section 455B.411 and controlled substances defined in chapter 124, including contamination caused by those chemicals or substances.

3. "Commissioner" means the commissioner of public safety.

4. "Department" means the department of public safety.

5. "Hazardous substance" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, and other substances defined in rules adopted pursuant to section 455B.381 and controlled substances as defined in chapter 124.

6. "Person having control over a clandestine laboratory site" means a person who at any time possesses, produces, handles, stores, uses, transports, or disposes of a hazardous substance or controlled substance used or intended for use at a clandestine laboratory site. A person having control over a clandestine laboratory site does not include persons performing duties listed in section 124C.2 at the direction of the commissioner and does not include a person who is the owner of the property or a person holding a security interest in the property in or upon which the clandestine laboratory site is located unless the person knew that a clandestine laboratory existed in or upon the person's property.

Sec. 2. NEW SECTION. 124C.2 POWERS AND DUTIES OF THE COMMISSIONER.

1. The commissioner or the commissioner's designee may use funds appropriated or otherwise available to the department for the following purposes:

a. Administrative services for the identification, assessment, and cleanup of clandestine laboratory sites.

b. Payments to other government agencies or private contractors for services consistent with the management and cleanup of a clandestine laboratory site.

c. Emergency response activities involving clandestine laboratory sites, including surveillance, entry, security, cleanup, and disposal.

The commissioner may request the assistance of other state, federal, and local agencies as necessary.

2. The commissioner shall proceed, pursuant to this section, to collect all costs incurred in cleanup of a clandestine laboratory site from the person having control over a clandestine laboratory site.

3. The commissioner shall make all reasonable efforts to recover the full amount of moneys expended, through litigation or otherwise. Moneys recovered shall be deposited with the treasurer of state and credited to the department of public safety.

Sec. 3. NEW SECTION. 124C.3 LIABILITY TO THE STATE.

A person having control over a clandestine laboratory site shall be strictly liable to the state for all of the following: