

CHAPTER 1087**HIV-RELATED TESTING OF ALLEGED OFFENDERS —
CRIMINAL TRANSMISSION OF HIV***H.F. 2369*

AN ACT relating to the human immunodeficiency virus including the testing of an alleged offender for the human immunodeficiency virus, the intentional transmission of the human immunodeficiency virus, making penalties applicable, establishing penalties, and providing for an affirmative defense.

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

Section 1. Section 135.11, subsection 24, Code Supplement 1997, is amended to read as follows:

24. Adopt rules which provide for the testing of a convicted or alleged 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. 2. Section 141.23, subsection 1, paragraph i, Code 1997, is amended to read as follows:

i. The convicted or alleged offender, the physician or other practitioner who orders the test of the convicted or alleged 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 third degree of consanguinity, and the county attorney who may use the results as evidence in the prosecution of sexual assault or prosecution of the offense of criminal transmission of HIV under chapter 709C. For the purposes of this paragraph "victim" means victim as defined in section 709B.1.

Sec. 3. Section 709B.1, Code 1997, is amended by adding the following new subsections:
NEW SUBSECTION. 1A. "Alleged offender" means a person who has been charged with the commission of a sexual assault or a juvenile who has been charged in juvenile court with being a delinquent as the result of actions that would constitute a sexual assault.

NEW SUBSECTION. 1B. "Authorized representative" means an individual authorized by the victim to request an HIV-related test of a convicted or alleged offender who is any of the following:

- a. The parent, guardian, or custodian of the victim if the victim is a minor.
- b. The physician of the victim.
- c. The victim counselor or person requested by the victim who is authorized to provide the counseling required pursuant to section 141.22.
- d. The victim's spouse.
- e. The victim's legal counsel.

NEW SUBSECTION. 9A. "Victim" means a petitioner or a person who is the victim of a sexual assault which resulted in significant exposure, or the parent, guardian, or custodian of such a victim if the victim is a minor, for whom the victim or the peace officer files an application for a search warrant to require the alleged offender to undergo an HIV-related test. "Victim" includes an alleged victim.

Sec. 4. Section 709B.1, subsections 8 and 9, Code 1997, are amended to read as follows:

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 or an alleged 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 or alleged offender. "Significant exposure" is presumed to have occurred when there is a showing that there was penetration of the convicted or alleged offender's penis into the victim's vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the convicted or alleged offender and the genitalia or anus of the victim.

Sec. 5. Section 709B.2, Code 1997, is amended to read as follows:

709B.2 HIV-RELATED TEST — CONVICTED OR ALLEGED SEXUAL ASSAULT OFFENDER.

1. If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender 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 or adjudicated delinquent included sufficient contact between the victim and the convicted 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. If a person is an alleged offender, the county attorney, if requested by the victim, shall make application to the court for the issuance of a search warrant, in accordance with chapter 808, for the purpose of requiring the alleged offender to submit to an HIV-related test, if all of the following conditions are met:

a. The application states that the victim believes that the sexual assault for which the alleged offender is charged included sufficient contact between the victim and the alleged offender to be deemed a significant exposure pursuant to section 709B.1 and states the factual basis for the belief that a significant exposure exists.

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

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

3. Upon receipt of the petition or application, 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 or alleged 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 or alleged offender is represented by legal counsel, provide written notice to the convicted or alleged offender and the convicted or alleged offender's legal counsel.

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

e. Furnish legal counsel with copies of the petition or application, written informed consent, if obtained, and copies of all other documents related to the petition or application, including, but not limited to, the charges and orders.

3. 4. 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. 5. 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 or adjudicated delinquent or for which

the alleged offender was charged provided sufficient contact between the victim and the convicted or alleged offender to be deemed a significant exposure, and to questions of law.

b. In determining whether the contact should be deemed a significant exposure for a convicted offender, 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. In determining whether the contact should be deemed a significant exposure for an alleged offender, the court shall base the determination on the application and the factual basis provided in the application for the belief of the applicant that a significant exposure exists.

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 or search warrant requiring testing.

d. The hearing shall be in camera unless the convicted or alleged offender and the petitioner or victim 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-~~ 6. Following the hearing, the court shall require a convicted or alleged offender to undergo an HIV-related test only if the petitioner or victim 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 or alleged offender.

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

~~6-~~ 7. 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. 6. Section 709B.3, subsections 1, 4, 5, 6, 14, and 15, Code 1997, are amended to read as follows:

1. The physician or other practitioner who orders the test of a convicted or alleged offender for HIV under this chapter shall disclose the results of the test to the convicted or alleged 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.

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 or alleged offender, the convicted or alleged 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, and the county attorney who filed the petition for HIV-related testing under this chapter, who may use the results to file charges of criminal transmission of HIV under chapter 709C.~~ Results of a test performed under this chapter shall not be disclosed to any other person without the written, informed consent of the convicted or alleged 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 or of the alleged

* Convicted or alleged offender probably intended

offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged 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 or alleged offender was HIV-infected at the time the sexual assault or alleged 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 or alleged offender, the convicted or alleged 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 and the county attorney who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV under chapter 709C.

14. In addition to persons to whom disclosure of the results of a convicted or alleged 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 or alleged 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. 7. NEW SECTION. 709C.1 CRIMINAL TRANSMISSION OF HUMAN IMMUNODEFICIENCY VIRUS.

1. A person commits criminal transmission of the human immunodeficiency virus if the person, knowing that the person's human immunodeficiency virus status is positive, does any of the following:

- a. Engages in intimate contact with another person.
- b. Transfers, donates, or provides the person's blood, tissue, semen, organs, or other potentially infectious bodily fluids for transfusion, transplantation, insemination, or other administration to another person.
- c. Dispenses, delivers, exchanges, sells, or in any other way transfers to another person any nonsterile intravenous or intramuscular drug paraphernalia previously used by the person infected with the human immunodeficiency virus.

2. For the purposes of this section:

- a. "Human immunodeficiency virus" means the human immunodeficiency virus identified as the causative agent of acquired immune deficiency syndrome.
- b. "Intimate contact" means the intentional exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of the human immunodeficiency virus.
- c. "Intravenous or intramuscular drug paraphernalia" means any equipment, product, or material of any kind which is peculiar to and marketed for use in injecting a substance into or withdrawing a bodily fluid from the human body.

3. Criminal transmission of the human immunodeficiency virus is a class "B" felony.

4. This section shall not be construed to require that an infection with the human immunodeficiency virus has occurred for a person to have committed criminal transmission of the human immunodeficiency virus.

5. It is an affirmative defense that the person exposed to the human immunodeficiency virus knew that the infected person had a positive human immunodeficiency virus status at

the time of the action of exposure, knew that the action of exposure could result in transmission of the human immunodeficiency virus, and consented to the action of exposure with that knowledge.

Approved April 13, 1998

CHAPTER 1088

PENALTIES FOR HOMICIDE BY VEHICLE

H.F. 2394

AN ACT providing for service of one hundred percent of the maximum sentence by and the suspension of a driver's license of a person charged with homicide by vehicle.

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

Section 1. **NEW SECTION. 321.210C VEHICULAR HOMICIDE SUSPENSION — TERMINATION UPON REVOCATION OF LICENSE — REOPENING OF SUSPENSION.**

1. If a trial information or indictment is filed charging a person with the offense of homicide by vehicle under section 707.6A, subsection 1 or 2, the clerk of the district court shall, upon the filing of the information or indictment, forward notice to the department including the name and address of the party charged, the registration number of the vehicle involved, if known, the nature of the offense, and the date of the filing of the indictment or information.

2. Upon receiving notice from the clerk of the district court that an indictment or information has been filed charging an operator with homicide by vehicle under section 707.6A, subsection 1, and if the person's license has not previously been suspended under chapter 321J, or under section 707.6A, subsection 2, the department shall notify the person that the person's motor vehicle license will be suspended effective ten days from the date of issuance of the notice. The department shall adopt rules relating to the suspension of the license of an operator pursuant to this section which shall include, but are not limited to, procedures for the surrender of the person's license to the department upon the effective date of the suspension.

3. If a person whose motor vehicle license has been suspended pursuant to this section is not convicted of the charge of homicide by vehicle under section 707.6A, subsection 1 or 2, upon record entry of disposition of the charge, the clerk of the district court shall forward a notice including the name and address of the party charged, the registration number of the vehicle involved, the nature of the offense charged by indictment or information, the date of the filing of the indictment or information, and of the disposition of the charge to the department. Upon receipt of the notice from the clerk, the department shall automatically rescind the suspension and reinstate the person's motor vehicle license without payment of any charge or penalty.

4. Upon receiving a record of conviction under section 321.206, for a violation of section 707.6A, subsection 1 or 2, and upon revocation of the person's license or operating privileges under section 321.209, the suspension under subsection 2 shall automatically terminate in favor of the revocation.

Sec. 2. Section 321A.17, Code 1997, is amended by adding the following new subsection: