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MAR 8 1993

Place On Calendar

HOUSE FILE 418
BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(SUCCESSOR TO HSB 71)

Passed House, ^(P.1087) Date 4-6-93 Passed Senate, Date 5/2/93
Vote: Ayes 93 Nays 6 Vote: Ayes 47 Nays 8
Approved May 19, 1993

A BILL FOR

1 An Act relating to the testing of a person for the human
2 immunodeficiency virus following conviction for certain
3 offenses, making relief provisions applicable for violation of
4 confidentiality, and providing a penalty.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HK 418

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

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

4 1. "AIDS" means acquired immune deficiency syndrome as
5 defined by the centers for disease control of the United
6 States department of health and human services.

7 2. "Convicted offender" means a person convicted of a
8 sexual assault.

9 3. "Department" means the Iowa department of public
10 health.

11 4. "Division" means the crime victims assistance division
12 of the office of the attorney general.

13 5. "HIV" means the human immunodeficiency virus identified
14 as the causative agent of AIDS.

15 6. "HIV-related test" means a test for the antibody or
16 antigen to HIV.

17 7. "Petitioner" means a person who is the victim of a
18 sexual assault which resulted in alleged significant exposure
19 for whom the county attorney files a petition with the
20 district court to require the convicted offender to undergo an
21 HIV-related test.

22 8. "Sexual assault" means sexual abuse as defined in
23 section 709.1, or any other sexual offense by which a victim
24 has allegedly had sufficient contact with a convicted offender
25 to be deemed a significant exposure.

26 9. "Significant exposure" means contact of the victim's
27 ruptured or broken skin or mucous membranes with the blood or
28 bodily fluids, other than tears, saliva, or perspiration of
29 the convicted offender. "Significant exposure" is presumed to
30 have occurred when there is a showing that there was
31 penetration of the convicted offender's penis into the
32 victim's vagina or anus, contact between the mouth and
33 genitalia, or contact between the genitalia of the offender
34 and the genitalia or anus of the victim.

35 Sec. 2. NEW SECTION. 709B.2 HIV-RELATED TEST --

1 CONVICTED SEXUAL ASSAULT OFFENDER.

2 1. If a person is convicted of sexual assault, the county
3 attorney, if requested by the victim or the parent, guardian,
4 or custodian of a minor victim, shall petition the court for
5 an order requiring the person convicted to submit to an HIV-
6 related test, provided that all of the following conditions
7 are met:

8 a. The sexual assault for which the offender was convicted
9 included sufficient contact between the victim and the
10 offender to be deemed a significant exposure pursuant to
11 section 709B.1 and the significant exposure as alleged creates
12 a significant risk of HIV infection.

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

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

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

19 a. Prior to the scheduling of a hearing, refer the victim
20 for counseling regarding the nature, reliability, and
21 significance of the HIV-related test and of the serologic
22 status of the convicted offender.

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

25 c. Cause written notice to be served on the convicted
26 offender who is the subject of the proceeding, in accordance
27 with the rules of civil procedure relating to the service of
28 original notice.

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

32 e. Furnish legal counsel with copies of the petition.

33 3. Unless a victim chooses to be represented by private
34 counsel, the county attorney shall represent the victim in a
35 proceeding under this section.

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

9 b. In determining whether the contact should be deemed a
10 significant exposure, the court shall base the determination
11 on the victim's account of the assault or if a plea of guilty
12 was entered, based upon the complaint.

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

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

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

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

31 a. The alleged significant exposure created a significant
32 risk of HIV infection.

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

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

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

7 Sec. 3. NEW SECTION. 709B.3 TESTING, REPORTING, AND
8 COUNSELING -- PENALTIES.

9 1. The physician or other practitioner who tests a
10 convicted offender for HIV under this chapter shall disclose
11 the results of the test to the convicted offender, the victim,
12 the physician of the victim if requested by the victim, and if
13 the victim is a minor, to the parent, guardian, or custodian
14 of the victim.

15 2. All testing under this chapter shall be accompanied by
16 pretest and posttest counseling as required under section
17 141.22.

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

21 4. Results of a test performed under this chapter, except
22 as provided in subsection 6, shall be disclosed only to the
23 physician or other practitioner who conducts the test of the
24 convicted offender, the convicted offender, the victim, the
25 physician of the victim if requested by the victim, and the
26 parent, guardian, or custodian of the victim, if the victim is
27 a minor. Results of a test performed under this chapter shall
28 not be disclosed to any other person without the written,
29 informed consent of the convicted offender. A person to whom
30 the results of a test have been disclosed under this chapter
31 is subject to the confidentiality provisions of section
32 141.23, and shall not disclose the results to another person
33 except as authorized by section 141.23, subsection 1.

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

1 disclosure.

2 6. If testing is ordered under this chapter, the court
3 shall also order periodic testing of the convicted offender
4 during the period of incarceration, probation, or parole. The
5 results of the test conducted pursuant to this subsection
6 shall be released only to the physician or other practitioner
7 who conducts the test of the convicted offender, the convicted
8 offender, the victim, the physician of the victim if requested
9 by the victim, the parent, guardian, or custodian of the
10 victim if the victim is a minor, and the director of the
11 department of corrections who shall make the results available
12 to the personnel of the institution in which the convicted
13 offender is incarcerated or to the probation or parole officer
14 assigned to the convicted offender, as applicable.

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

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

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

32 10. The costs of HIV-related testing under this chapter
33 shall be paid by the convicted offender. Any unpaid costs
34 shall be paid by the department of corrections.

35 11. Notwithstanding the provisions of this chapter

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

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

11 13. A person who intentionally or recklessly makes an
12 unauthorized disclosure under this chapter is subject to a
13 civil penalty of one thousand dollars. The attorney general
14 or the attorney general's designee may maintain a civil action
15 to enforce this chapter. Proceedings maintained under this
16 subsection shall provide for the anonymity of the test subject
17 and all documentation shall be maintained in a confidential
18 manner.

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

21 NEW SUBSECTION. 24. Adopt rules which provide for the
22 testing of a convicted offender for the human immunodeficiency
23 virus pursuant to chapter 709B. The rules shall provide
24 guidance to a court in issuance of an order for periodic
25 testing as often as is necessary in accordance with the
26 incubation period of the virus and shall provide for the
27 provision of counseling, health care, and support services to
28 the victim.

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

31 NEW PARAGRAPH. i. The convicted offender, the physician
32 or other practitioner who conducts the test of the convicted
33 offender, the victim, the parent, guardian, or custodian of
34 the victim if the victim is a minor, the physician of the
35 victim, and the director of the department of corrections who

1 shall make the results available to the personnel of the
2 institution in which a convicted offender is incarcerated, or
3 to the parole or probation officer assigned to the convicted
4 offender, as applicable, pursuant to chapter 709B.

5 EXPLANATION

6 This bill provides for the testing of a person, convicted
7 of sexual assault, for the human immunodeficiency virus if the
8 victim, or the parent, guardian, or custodian of a minor
9 victim requests the county attorney to petition the court for
10 an order authorizing the test. If the order is granted, the
11 court is required to order initial testing and periodic
12 testing of the convicted offender during the period of
13 incarceration, probation, or parole, based upon the incubation
14 period of the virus. The results of the test performed are
15 only to be released to the convicted offender, the physician
16 or other practitioner performing the test on the convicted
17 offender, the victim, the parent, guardian, or custodian of
18 the victim if the victim is a minor, the physician of the
19 victim if requested by the victim, and to the director of the
20 department of corrections who is to make the results available
21 to the personnel of the institution in which the convicted
22 offender is incarcerated or to the probation or parole officer
23 assigned to the convicted offender, as applicable. The Iowa
24 department of public health is required to develop rules for
25 the testing of convicted offenders. Remedies for violation of
26 provisions relating to confidentiality under section 141.24
27 are made applicable, providing for a right of action for
28 damages and the maintaining of a civil action by the attorney
29 general for violation of the provisions. The bill also
30 provides that a person who intentionally or recklessly makes
31 an unauthorized disclosure under the chapter is subject to a
32 civil penalty of \$1000 and provides that the attorney general
33 may maintain a civil action for violation of the chapter.

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HOUSE FILE 418
FISCAL NOTE

A fiscal note for House File 418 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 418 provides that if a person convicted of a sexual offense refuses to be tested for the human immunodeficiency virus (HIV), the victim or the parent, guardian, or custodian of a minor victim can request the county attorney to petition the court for the test. The court would hold an informal hearing to determine whether to order the testing of the offender. The test results are to be released only to the offender, the victim or a minor victim's parent, guardian or custodian, and the physicians for the offender and the victim. A penalty is established for reckless or intentional unauthorized disclosure of the test results.

Assumptions:

1. It is estimated there will be 318 eligible adult offenders and 199 eligible juvenile offenders in FY 1994 and 335 adult and 210 juvenile offenders in FY 1995.
2. The offender's legal counsel and the public defender will spend 4 hours for preparation and the informal hearing.
3. The judge, court reporter, and court attendant will spend one tenth of a day on the informal hearing.
4. One case will be contested and go to district court for a trial and then be appealed.
5. Two tests will be necessary in event of a negative initial test.
6. The DPH will provide victim counseling and testing through an Alternate Test Site and will pay for the services with federal funding as it now does for other HIV testing.
7. Fifty-four percent of the offenders will be incarcerated, and 46% will be under the supervision of the Community-Based Corrections District Departments (CBC) or DHS community treatment.
8. A 5% inflation rate is assumed.

Fiscal Impact:

| | FY 1994 | FY 1995 |
|--------------------------------|------------|------------|
| Petitions and Informal Hearing | | |
| State | \$ 102,165 | \$ 113,084 |
| Local | 69,589 | 77,026 |
| One Contested Case and Appeal | | |
| State | 48,862 | 51,306 |
| Local | 3,230 | 3,392 |
| Testing Costs - State | 58,642 | 64,927 |

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| | | |
|-------------------|------------|------------|
| Total State Costs | 209,669 | 229,317 |
| Total Local Costs | 72,819 | 80,418 |
| | <hr/> | <hr/> |
| Total Costs | \$ 282,488 | \$ 309,735 |
| | ===== | ===== |

To the extent that victim's do not request the offenders be tested, the costs will be reduced.

Without a bill permitting victims to request sex offenders be tested for HIV virus, the Governor's Alliance on Substance Abuse (GASA) will have its \$5.0 million federal grant reduced by 10% (\$500,000). The costs of this law are less than the federal funding for GASA that would be lost. The difference between the increased costs for testing and the \$500,000 that would be lost is \$217,512 in FY 1994 and \$190,265 in FY 1995.

Sources:

Department of Public Health

Department of Corrections

Supreme Court of Iowa

Public Defender

Attorney General

Criminal and Juvenile Justice Planning Division, Department of Human Rights

Governor's Alliance on Substance Abuse

(LSB 1830hv.2, MDF)

FILED MARCH 18, 1993

BY DENNIS PROUTY, FISCAL DIRECTOR

4-7-93 Senate - Judiciary
4-8-93 Senate - Without Recommendation

HOUSE FILE 418
BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(SUCCESSOR TO HSB 71)

(As Amended and Passed by the House April 6, 1993)

Passed House, Date ^(P.1978) 5/1/93 Passed Senate, Date ^(P.1556) 5/2/93
Vote: Ayes 77 Nays 20 Vote: Ayes 47 Nays 0
Approved May 19, 1993

A BILL FOR

1 An Act relating to the testing of a person for the human
2 immunodeficiency virus following conviction for certain
3 offenses, making relief provisions applicable for violation of
4 confidentiality, and providing a penalty.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments _____

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

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

4 1. "AIDS" means acquired immune deficiency syndrome as
5 defined by the centers for disease control of the United
6 States department of health and human services.

7 2. "Convicted offender" means a person convicted of a
8 sexual assault.

9 3. "Department" means the Iowa department of public
10 health.

11 4. "Division" means the crime victims assistance division
12 of the office of the attorney general.

13 5. "HIV" means the human immunodeficiency virus identified
14 as the causative agent of AIDS.

15 6. "HIV-related test" means a test for the antibody or
16 antigen to HIV.

17 7. "Petitioner" means a person who is the victim of a
18 sexual assault which resulted in alleged significant exposure
19 for whom the county attorney files a petition with the
20 district court to require the convicted offender to undergo an
21 HIV-related test.

22 8. "Sexual assault" means sexual abuse as defined in
23 section 709.1, or any other sexual offense by which a victim
24 has allegedly had sufficient contact with a convicted offender
25 to be deemed a significant exposure.

26 9. "Significant exposure" means contact of the victim's
27 ruptured or broken skin or mucous membranes with the blood or
28 bodily fluids, other than tears, saliva, or perspiration of
29 the convicted offender. "Significant exposure" is presumed to
30 have occurred when there is a showing that there was
31 penetration of the convicted offender's penis into the
32 victim's vagina or anus, contact between the mouth and
33 genitalia, or contact between the genitalia of the offender
34 and the genitalia or anus of the victim.

35 Sec. 2. NEW SECTION. 709B.2 HIV-RELATED TEST -- CONVICTED

1 SEXUAL ASSAULT OFFENDER.

2 1. If a person is convicted of sexual assault, the county
3 attorney, if requested by the victim or the parent, guardian,
4 or custodian of a minor victim, shall petition the court for
5 an order requiring the person convicted to submit to an HIV-
6 related test, provided that all of the following conditions
7 are met:

8 a. The sexual assault for which the offender was convicted
9 included sufficient contact between the victim and the
10 offender to be deemed a significant exposure pursuant to
11 section 709B.1 and the significant exposure as alleged creates
12 a significant risk of HIV infection.

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

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

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

19 a. Prior to the scheduling of a hearing, refer the victim
20 for counseling regarding the nature, reliability, and
21 significance of the HIV-related test and of the serologic
22 status of the convicted offender.

23 b. Schedule a hearing to be held as soon as is practicable
24 which shall be scheduled for the time of sentencing of the
25 offender.

26 c. Cause written notice to be served on the convicted
27 offender who is the subject of the proceeding, in accordance
28 with the rules of civil procedure relating to the service of
29 original notice, or if the convicted offender is represented
30 by legal counsel on the sexual assault charge provide notice
31 to the convicted offender's legal counsel in lieu of written
32 notice to be served on the convicted offender.

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

1 e. Furnish legal counsel with copies of the petition.

2 3. Unless a victim chooses to be represented by private
3 counsel, the county attorney shall represent the victim in a
4 proceeding under this section.

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

13 b. In determining whether the contact should be deemed a
14 significant exposure, the court shall base the determination
15 on the victim's account of the assault or if a plea of guilty
16 was entered, based upon the complaint.

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

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

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

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

35 a. The alleged significant exposure created a significant

1 risk of HIV infection.

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

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

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

11 Sec. 3. NEW SECTION. 709B.3 TESTING, REPORTING, AND
12 COUNSELING -- PENALTIES.

13 1. The physician or other practitioner who tests a
14 convicted offender for HIV under this chapter shall disclose
15 the results of the test to the convicted offender, the victim,
16 the physician of the victim if requested by the victim, and if
17 the victim is a minor, to the parent, guardian, or custodian
18 of the victim.

19 2. All testing under this chapter shall be accompanied by
20 pretest and posttest counseling as required under section
21 141.22.

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

25 4. Results of a test performed under this chapter, except
26 as provided in subsection 6, shall be disclosed only to the
27 physician or other practitioner who conducts the test of the
28 convicted offender, the convicted offender, the victim, the
29 physician of the victim if requested by the victim, and the
30 parent, guardian, or custodian of the victim, if the victim is
31 a minor. Results of a test performed under this chapter shall
32 not be disclosed to any other person without the written,
33 informed consent of the convicted offender. A person to whom
34 the results of a test have been disclosed under this chapter
35 is subject to the confidentiality provisions of section

1 141.23, and shall not disclose the results to another person
2 except as authorized by section 141.23, subsection 1.

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

6 6. If testing is ordered under this chapter, the court
7 shall also order periodic testing of the convicted offender
8 during the period of incarceration, probation, or parole. The
9 results of the test conducted pursuant to this subsection
10 shall be released only to the physician or other practitioner
11 who conducts the test of the convicted offender, the convicted
12 offender, the victim, the physician of the victim if requested
13 by the victim, the parent, guardian, or custodian of the
14 victim if the victim is a minor, and the director of the
15 department of corrections who shall make the results available
16 to the personnel of the institution in which the convicted
17 offender is incarcerated or to the probation or parole officer
18 assigned to the convicted offender, as applicable.

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

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

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

31 10. If the serologic status of a convicted offender, which
32 is conveyed to the victim, is based upon an HIV-related test
33 other than a test which is authorized as a result of the
34 procedures established in this chapter, legal protections
35 which attach to such testing shall be the same as those which

1 attach to an initial test under this chapter, and the rights
2 to a predisclosure hearing and to appeal provided under this
3 chapter shall apply.

4 11. The costs of the HIV-related testing under this
5 chapter shall be paid by the Iowa department of public health.

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

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

17 14. A person who intentionally or recklessly makes an
18 unauthorized disclosure under this chapter is subject to a
19 civil penalty of one thousand dollars. The attorney general
20 or the attorney general's designee may maintain a civil action
21 to enforce this chapter. Proceedings maintained under this
22 subsection shall provide for the anonymity of the test subject
23 and all documentation shall be maintained in a confidential
24 manner.

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

27 NEW SUBSECTION. 24. Adopt rules which provide for the
28 testing of a convicted offender for the human immunodeficiency
29 virus pursuant to chapter 709B. The rules shall provide
30 guidance to a court in issuance of an order for periodic
31 testing as often as is necessary in accordance with the
32 incubation period of the virus and shall provide for the
33 provision of counseling, health care, and support services to
34 the victim.

35 Sec. 5. Section 141.23, subsection 1, Code 1993, is

1 amended by adding the following new paragraph:

2 NEW PARAGRAPH. i. The convicted offender, the physician
3 or other practitioner who conducts the test of the convicted
4 offender, the victim, the parent, guardian, or custodian of
5 the victim if the victim is a minor, the physician of the
6 victim, and the director of the department of corrections who
7 shall make the results available to the personnel of the
8 institution in which a convicted offender is incarcerated, or
9 to the parole or probation officer assigned to the convicted
10 offender, as applicable, pursuant to chapter 709B.

11 Sec. 6. Section 141.24, Code 1993, is amended by adding
12 the following new subsection:

13 NEW SUBSECTION. 6. Notwithstanding section 141.23, this
14 subchapter shall not be construed to preclude the victim of a
15 sexual assault from disclosing the results of the HIV-related
16 test of a convicted sexual offender obtained pursuant to
17 chapter 709B in any civil or criminal action brought by the
18 victim.

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HOUSE FILE 418

H-3285

- 1 Amend House File 418 as follows:
- 2 1. Page 5, by striking lines 32 through 34 and
- 3 inserting the following:
- 4 "____. The costs of the HIV-related testing under
- 5 this chapter shall be paid through the expenditure of
- 6 funds received by the state through the federal Crime
- 7 Control Act of 1990, 42 U.S.C. § 3756(f)."
- 8 2. By renumbering as necessary.

By McNEAL of Hardin

H-3285 FILED MARCH 15, 1993

Adopted 4-6-93 (P. 1085)

HOUSE FILE 418

H-3561

- 1 Amend House File 418 as follows:
- 2 1. Page 7, by inserting after line 4, the
- 3 following:
- 4 "Sec. ____ . EFFECTIVE DATE. This Act takes effect
- 5 upon the effective date of an appropriation made by
- 6 the general assembly in an amount which is equal to
- 7 the projected cost of implementation of this Act as
- 8 determined by the legislative fiscal bureau."
- 9 2. Title page, line 4, by inserting after the
- 10 word "confidentiality" the following: ", providing a
- 11 conditional effective date".
- 12 3. By numbering and renumbering as necessary.

Lost 4-6-93 (P. 1087) By BRAMMER of Linn
H-3561 FILED MARCH 29, 1993

HOUSE FILE 418

H-3724

- 1 Amend the amendment, H-3285, to House File 418, as
- 2 follows:
- 3 1. Page 1, by striking lines 5 through 7, and
- 4 inserting the following: "this chapter shall be paid
- 5 by the Iowa department of public health."

By McNEAL of Hardin

H-3724 FILED APRIL 5, 1993

Adopted 4-6-93 (P. 1085)

HOUSE FILE 418

H-3729

- 1 Amend House File 418, as follows:
- 2 1. Page 2, line 24, by inserting after the word
- 3 "practicable" the following: "which shall be
- 4 scheduled for the time of sentencing of the offender".
- 5 2. Page 2, line 28, by inserting after the word
- 6 "notice" the following: ", or if the convicted
- 7 offender is represented by legal counsel on the sexual
- 8 assault charge provide notice to the convicted
- 9 offender's legal counsel in lieu of written notice to
- 10 be served on the convicted offender".

By McNEAL of Hardin

H-3729 FILED APRIL 5, 1993

Adopted 4-6-93 (P. 1055)

HOUSE FILE 418

758

Amend the amendment, H-3729, to House File 418 as follows:

1. Page 1, by striking lines 2 through 10 and inserting the following:

"_____. By striking everything after the enacting clause and inserting the following:

"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. "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

3. "HIV-related test" means a test for the antibody or antigen to HIV.

4. "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 an alleged offender to be deemed a significant exposure.

5. "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 alleged offender.

"Significant exposure" is presumed to have occurred when there is a showing that there was penetration of the alleged 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.

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

1. If a person is charged with the commission of sexual assault, and the offense as allegedly perpetrated is deemed a significant exposure, the court shall order the alleged perpetrator to submit to an HIV-related test.

2. The physician or other practitioner who tests an alleged offender for HIV under this chapter shall disclose the results of the test to the alleged offender, the victim, the physician of the victim if requested by the victim, and if the victim is a minor, to the parent, guardian, or custodian of the victim.

3. All testing under this chapter shall be accompanied by pretest and posttest counseling as required under section 141.22, and the victim shall also be provided counseling regarding the nature, reliability, and significance of the HIV-related test and of the serologic status of the alleged offender.

758

H-3758

Page 2

1 4. A person to whom the results of a test have
2 been disclosed under this chapter is subject to the
3 confidentiality provisions of section 141.23, and
4 shall not disclose the results to another person
5 except as authorized by section 141.23, subsection 1.

6 Sec. 3. Section 135.11, Code 1993, is amended by
7 adding the following new subsection:

8 NEW SUBSECTION. 24. Adopt rules which provide for
9 the testing of an alleged offender for the human
10 immunodeficiency virus pursuant to chapter 709B.

11 Sec. 4. Section 141.23, subsection 1, Code 1993,
12 is amended by adding the following new paragraph:

13 NEW PARAGRAPH. i. The alleged offender, the
14 physician or other practitioner who conducts the test
15 of the alleged offender, the victim, the parent,
16 guardian, or custodian of the victim if the victim is
17 a minor, and the physician of the victim, pursuant to
18 chapter 709B."

19 _____. Title page, by striking lines 2 through 4
20 and inserting the following: "immunodeficiency virus
21 following the alleged perpetration of a sexual assault
22 and making relief provisions applicable for violation
23 of confidentiality.""

24 2. By renumbering as necessary.

By CONNORS of Polk
BERNARD of Story
WISE of Lee

H-3758 FILED APRIL 6, 1993

Not German
4-6-93
(P. 1084)

HOUSE FILE 418

3755

Amend the amendment, H-3729, to House File 418, as follows:

1. Page 1, by inserting after line 1, the following:

"_____. Page 1, by inserting after line 34, the following:

"_____. "Victim counselor" means a person who is engaged in a crime victim center, is certified as a counselor by the Iowa coalition against sexual assault or by the Iowa coalition against sexual abuse or their successor agencies, and has completed at least twenty hours of training provided by the Iowa coalition against sexual assault or a similar organization."

_____. Page 2, by striking lines 19 and 20 and inserting the following:

"a. Prior to the scheduling of a hearing, schedule counseling for a victim, to be provided by a victim counselor regarding the nature, reliability, and".

2. Page 1, by inserting after line 10, the following:

"_____. Page 4, by striking lines 11 through 14, and inserting the following: "the results of the test to the offender and to the victim counselor who shall disclose the results to the petitioner."

_____. Page 4, by inserting after line 17, the following:

"_____. The results of the test of a convicted offender under this chapter shall not be disclosed to a petitioner until the petitioner has received counseling regarding the nature, reliability, and significance of the test and the results and confidential nature of the test.

_____. Counseling shall be provided by victim counselors."

_____. Page 4, line 24, by inserting after the words "the convicted offender," the following: "the victim counselor who is designated to notify the victim,".

_____. Page 5, line 8, by inserting after the word "offender," the following: "the victim counselor who is designated to notify the victim,".

3. By renumbering as necessary.

By BRAND of Benton

H-3755 FILED APRIL 6, 1993

Not Mermone 4-6-93
(P.1082)

HOUSE FILE 418

H-3759

1 Amend the amendment, H-3729, to House File 418, as
2 follows:

3 1. Page 1, by inserting after line 10, the
4 following:

5 "_____. Page 7, by inserting after line 4, the
6 following:

7 "Sec. _____. Section 141.24, Code 1993, is amended
8 by adding the following new subsection:

9 NEW SUBSECTION. 6. Notwithstanding section
10 141.23, this subchapter shall not be construed to
11 preclude the victim of a sexual assault from
12 disclosing the results of the HIV-related test of a
13 convicted sexual offender obtained pursuant to chapter
14 209B in any civil or criminal action brought by the
15 victim.""

16 2. By renumbering as necessary.

adopted 4-6-93 (p.1085) By DICKINSON of Jackson
H-3759 FILED APRIL 6, 1993

HOUSE FILE 418

H-3756

1 Amend the amendment, H-3729, to House File 418, as
2 follows:

3 1. Page 1, by inserting after line 10, the
4 following:

5 "_____. Page 5, by inserting after line 14, the
6 following:

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

11 2. By renumbering as necessary.

By BRAND of Benton
H-3756 FILED APRIL 6, 1993

Adopted 4-6-92 (p. 1082)

SENATE AMENDMENT TO HOUSE FILE 418

S-4435

- 1 Amend House File 418, as amended, passed, and
2 reprinted by the House, as follows:
- 3 1. Page 1, line 18, by inserting after the word
4 "exposure" the following: "or the parent, guardian,
5 or custodian of a victim if the victim is a minor,".
- 6 2. Page 1, by inserting after line 34 the
7 following:
8 "_____. "Victim counselor" means a person who is
9 engaged in a crime victim center as defined in section
10 236A.1, who is certified as a counselor by the crime
11 victim center, and who has completed at least twenty
12 hours of training provided by the Iowa coalition
13 against sexual assault or a similar agency."
- 14 3. Page 2, by striking lines 3 and 4, and
15 inserting the following: "attorney, if requested by
16 the petitioner, shall petition the court for".
- 17 4. Page 2, by striking lines 11 and 12, by
18 inserting the following: "section 709B.1."
- 19 5. Page 2, line 20, by inserting after the word
20 "counseling" the following: "by a victim counselor or
21 a person requested by the victim who is authorized to
22 provide the counseling required pursuant to section
23 141.22,".
- 24 6. Page 2, line 23, by striking the word
25 "practicable" and inserting the following:
"practicable."
- 26 7. Page 2, by striking lines 24 and 25.
- 27 8. Page 2, by striking lines 30 through 32 and
28 inserting the following: "by legal counsel, provide
29 written notice to the convicted offender and the
30 convicted offender's legal counsel."
- 31 9. Page 3, line 2, by striking the word "victim"
32 and inserting the following: "petitioner".
- 33 10. Page 3, line 3, by striking the word "victim"
34 and inserting the following: "victim's interest".
- 35 11. Page 3, lines 3 and 4, by striking the words
36 "a proceeding" and inserting the following: "all
37 proceedings".
- 38 12. Page 3, by striking lines 15 and 16, and
39 inserting the following: "on the testimony presented
40 during the proceedings on the sexual assault charge,
41 the minutes of the testimony or other evidence
42 included in the court record, or if a plea of guilty
43 was entered, based upon the complaint or upon
44 testimony provided during the hearing."
- 45 13. Page 3, line 23, by striking the word
46 "victim" and inserting the following: "petitioner".
- 47 14. By striking page 3, line 35 through page 4,
48 line 1, and inserting the following:
49 "a. The sexual assault constituted a significant
50

4406

H-4406

Page 2

1 exposure."

2 15. Page 4, line 13, by striking the word "tests"
3 and inserting the following: "orders the test of".

4 16. Page 4, by striking lines 15 through 18, and
5 inserting the following: "the results of the test to
6 the convicted offender and to the victim counselor or
7 a person requested by the victim who is authorized to
8 provide the counseling required pursuant to section
9 141.22, who shall disclose the results to the
10 petitioner."

11 17. Page 4, line 27, by striking the word

12 "conducts" and inserting the following: "orders".

13 18. Page 4, line 28, by inserting after the word
14 "victim," the following: "the victim counselor or
15 person requested by the victim who is authorized to
16 provide the counseling required pursuant to section
17 141.22,".

18 19. Page 5, line 8, by inserting after the word
19 "parole" the following: "if the physician or other
20 practitioner who ordered the initial test of the
21 convicted offender certifies that, based upon
22 prevailing scientific opinion regarding the maximum
23 period during which the results of an HIV-related test
24 may be negative for a person after being HIV-infected,
25 additional testing is necessary to determine whether
26 the convicted offender was HIV-infected at the time
27 the sexual assault was perpetrated".

28 20. Page 5, line 11, by striking the word
29 "conducts" and inserting the following: "orders".

30 21. Page 5, by striking lines 12 through 18, and
31 inserting the following: "offender, the victim
32 counselor or person requested by the victim who is
33 authorized to provide the counseling required pursuant
34 to section 141.22, who shall disclose the results to
35 the petitioner, and the physician of the victim, if
36 requested by the victim."

37 22. Page 6, by striking lines 4 and 5, and
38 inserting the following:

39 "____. HIV-related testing required under this
40 chapter shall be conducted by the state hygienic
41 laboratory."

42 23. Page 6, by inserting after line 16 the
43 following:

44 "13A. In addition to persons to whom disclosure of
45 the results of a convicted offender's HIV-related test
46 results is authorized under this chapter, the victim
47 may also disclose the results to the victim's spouse,
48 persons with whom the victim has engaged in vaginal,
49 anal, or oral intercourse subsequent to the sexual
50 assault, or members of the victim's family within the

H-4406

-2-

E-4406

Page 3

1 third degree of consanguinity."

2 24. Page 6, line 17, by inserting before the word
3 "A" the following: "A person to whom disclosure of a
4 convicted offender's HIV-related test results is
5 authorized under this chapter shall not disclose the
6 results to any other person for whom disclosure is not
7 authorized under this chapter."

8 25. Page 6, by striking lines 30 through 32 and
9 inserting the following: "for the".

10 26. Page 7, line 3, by striking the word
11 "conducts" and inserting the following: "orders".

12 27. Page 7, by striking lines 6 through 10 and
13 inserting the following: "victim, the victim
14 counselor or person requested by the victim who is
15 authorized to provide the counseling required pursuant
16 to section 141.22, and the victim's spouse, persons
17 with whom the victim has engaged in vaginal, anal, or
18 oral intercourse subsequent to the sexual assault, or
19 members of the victim's family within the fourth
20 degree of consanguinity."

21 28. Page 7, by striking lines 11 through 18.

22 29. By renumbering and relettering as necessary.

RECEIVED FROM THE SENATE

H-4406 FILED MAY 2, 1993

CONCURRED

HOUSE FILE 418

S-3636

1 Amend House File 418, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 6, by inserting after line 34 the
4 following:

5 "Sec. ____ . NEW SECTION. 139.43 STUDENT ATHLETES
6 -- TESTING REQUIRED -- HIV AND HBV.

7 1. A person enrolled in a secondary school or an
8 institution of higher education in this state, who
9 participates in extracurricular interscholastic
10 athletic contests or competitions which involve
11 physical contact between the contestants, shall
12 undergo the following tests under the following
13 conditions:

14 a. An HIV-related test subject to the testing
15 requirements of chapter 141. The results of the test
16 shall be made available to an opposing contestant
17 prior to the contest or competition subject to the
18 confidentiality provisions of chapter 141.

19 b. An HBV test. The results of the test shall be
20 made available to the opposing contestant prior to the
21 contest or competition.

22 2. For the purposes of this section, "HIV-related
23 test" means HIV-related test as defined in section
24 141.21 and "HBV" means HBV as defined in section
25 139C.1."

26 2. Page 7, by inserting after line 10 the
27 following:

28 "Sec. ____ . Section 141.23, subsection 1, Code
29 1993, is amended by adding the following new
30 paragraph:

31 NEW PARAGRAPH. j. An opponent prior to an
32 extracurricular interscholastic athletic contest or
33 competition and the physician of the opponent, if
34 requested by the opponent, pursuant to section
35 139.43."

36 3. Title page, lines 1 and 2, by striking the
37 words "a person for the human immunodeficiency virus"
38 and inserting the following: "certain persons for
39 certain viruses including student athletes and
40 persons".

41 4. By renumbering as necessary.

By RAY TAYLOR

S-3636 FILED APRIL 26, 1993

O/Order
5/1/93
(p. 1541)

HOUSE FILE 418

S-3621

- 1 Amend House File 418, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 6, by inserting after line 34 the
4 following:
5 "Sec. ____ . NEW SECTION. 139.43 STUDENT ATHLETES
6 --TESTING REQUIRED -- HIV AND HBV.
7 1. A person enrolled in a secondary school or an
8 institution of higher education in this state, who
9 participates in extracurricular interscholastic
10 athletic contests or competitions which involve
11 physical contact between the contestants, shall
12 undergo the following tests under the following
13 conditions:
14 a. An HIV-related test subject to the testing
15 requirements of chapter 141. The results of the test
16 shall be made available to an opposing contestant
17 prior to the contest or competition subject to the
18 confidentiality provisions of chapter 141.
19 b. An HBV test. The results of the test shall be
20 made available to the opposing contestant prior to the
21 contest or competition.
22 2. For the purposes of this section, "HIV-related
23 test" means HIV-related test as defined in section
24 141.21 and "HBV" means HBV as defined in section
25 139C.1."
26 2. Page 7, by inserting after line 10 the
27 following:
28 "Sec. ____ . Section 141.23, subsection 1, Code
29 1993, is amended by adding the following new
30 paragraph:
31 NEW PARAGRAPH. j. An opponent prior to an
32 extracurricular interscholastic athletic contest or
33 competition and the physician of the opponent, if
34 requested by the opponent, pursuant to section
35 139.43."
36 3. Title page, line 1, by striking the words "a
37 person" and inserting the following: "certain
38 persons".
39 4. Title page, line 2, by inserting after the
40 word "virus" the following: "including student
41 athletes and persons".
42 5. By renumbering as necessary.

By RAY TAYLOR

S-3621 FILED APRIL 23, 1993

WITHDRAWN

5/1/93

HOUSE FILE 418

S-3773

- 1 Amend House File 418, as amended, passed, and
2 reprinted by the House, as follows:
- 3 1. Page 1, line 18, by inserting after the word
4 "exposure" the following: "or the parent, guardian,
5 or custodian of a victim if the victim is a minor,".
6 2. Page 1, by inserting after line 34 the
7 following:
8 "_____. "Victim counselor" means a person who is
9 engaged in a crime victim center as defined in section
10 236A.1, who is certified as a counselor by the crime
11 victim center, and who has completed at least twenty
12 hours of training provided by the Iowa coalition
13 against sexual assault or a similar agency."
14 3. Page 2, by striking lines 3 and 4, and
15 inserting the following: "attorney, if requested by
16 the petitioner, shall petition the court for".
17 4. Page 2, by striking lines 11 and 12, by
18 inserting the following: "section 709B.1."
19 5. Page 2, line 20, by inserting after the word
20 "counseling" the following: "by a victim counselor or
21 a person requested by the victim who is authorized to
22 provide the counseling required pursuant to section
23 141.22,".
24 6. Page 2, line 23, by striking the word
25 "practicable" and inserting the following:
26 "practicable."
27 7. Page 2, by striking lines 24 and 25.
28 8. Page 2, by striking lines 30 through 32 and
29 inserting the following: "by legal counsel, provide
30 written notice to the convicted offender and the
31 convicted offender's legal counsel."
32 9. Page 3, line 2, by striking the word "victim"
33 and inserting the following: "petitioner".
34 10. Page 3, line 3, by striking the word "victim"
35 and inserting the following: "victim's interest".
36 11. Page 3, lines 3 and 4, by striking the words
37 "a proceeding" and inserting the following: "all
38 proceedings".
39 12. Page 3, by striking lines 15 and 16, and
40 inserting the following: "on the testimony presented
41 during the proceedings on the sexual assault charge,
42 the minutes of the testimony or other evidence
43 included in the court record, or if a plea of guilty
44 was entered, based upon the complaint or upon
45 testimony provided during the hearing."
46 13. Page 3, line 23, by striking the word
47 "victim" and inserting the following: "petitioner".
48 14. By striking page 3, line 35 through page 4,
49 line 1, and inserting the following:
50 "a. The sexual assault constituted a significant

S-3773

-1-

S-3773

Page 2

1 exposure."

2 15. Page 4, line 13, by striking the word "tests"
3 and inserting the following: "orders the test of".

4 16. Page 4, by striking lines 15 through 18, and
5 inserting the following: "the results of the test to
6 the convicted offender and to the victim counselor or
7 a person requested by the victim who is authorized to
8 provide the counseling required pursuant to section
9 141.22, who shall disclose the results to the
10 petitioner."

11 17. Page 4, line 27, by striking the word
12 "conducts" and inserting the following: "orders".

13 18. Page 4, line 28, by inserting after the word
14 "victim," the following: "the victim counselor or
15 person requested by the victim who is authorized to
16 provide the counseling required pursuant to section
17 141.22,".

18 19. Page 5, line 8, by inserting after the word
19 "parole" the following: "if the physician or other
20 practitioner who ordered the initial test of the
21 convicted offender certifies that, based upon
22 prevailing scientific opinion regarding the maximum
23 period during which the results of an HIV-related test
24 may be negative for a person after being HIV-infected,
25 additional testing is necessary to determine whether
26 the convicted offender was HIV-infected at the time
27 the sexual assault was perpetrated".

28 20. Page 5, line 11, by striking the word
29 "conducts" and inserting the following: "orders".

30 21. Page 5, by striking lines 12 through 18, and
31 inserting the following: "offender, the victim
32 counselor or person requested by the victim who is
33 authorized to provide the counseling required pursuant
34 to section 141.22, who shall disclose the results to
35 the petitioner, and the physician of the victim, if
36 requested by the victim."

37 22. Page 6, by striking lines 4 and 5, and
38 inserting the following:

39 "____. HIV-related testing required under this
40 chapter shall be conducted by the state hygienic
41 laboratory."

42 23. Page 6, by inserting after line 16 the
43 following:

44 "13A. In addition to persons to whom disclosure of
45 the results of a convicted offender's HIV-related test
46 results is authorized under this chapter, the victim
47 may also disclose the results to the victim's spouse,
48 persons with whom the victim has engaged in vaginal,
49 anal, or oral intercourse subsequent to the sexual
50 assault, or members of the victim's family within the

S-3773

-2-

S-3773

Page 3

1 third degree of consanguinity."

2 24. Page 6, line 17, by inserting before the word

3 "A" the following: "A person to whom disclosure of a

4 convicted offender's HIV-related test results is

5 authorized under this chapter shall not disclose the

6 results to any other person for whom disclosure is not

7 authorized under this chapter."

8 25. Page 6, by striking lines 30 through 32 and

9 inserting the following: "for the".

10 26. Page 7, line 3, by striking the word

11 "conducts" and inserting the following: "orders".

12 27. Page 7, by striking lines 6 through 10 and

13 inserting the following: "victim, the victim

14 counselor or person requested by the victim who is

15 authorized to provide the counseling required pursuant

16 to section 141.22, and the victim's spouse, persons

17 with whom the victim has engaged in vaginal, anal, or

18 oral intercourse subsequent to the sexual assault, or

19 members of the victim's family within the fourth

20 degree of consanguinity."

21 28. Page 7, by striking lines 11 through 18.

22 29. By renumbering and relettering as necessary.

By RALPH ROSENBERG

S-3773 FILED MAY 2, 1993

ADOPTED

McNeal, Chair
Larson
Brammer

HOUSE FILE 418
BY (PROPOSED COMMITTEE ON
JUDICIARY AND LAW ENFORCE-
MENT BILL BY CHAIRPERSON
MCNEAL)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the testing of a person for the human
2 immunodeficiency virus following conviction for certain
3 offenses and making relief provisions applicable for violation
4 of confidentiality.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. 709.17 PERSON CHARGED WITH
2 CERTAIN OFFENSES -- TESTING FOR HUMAN IMMUNODEFICIENCY VIRUS.

3 1. If a person is convicted of a sexual offense, including
4 but not limited to sexual abuse as defined in section 709.1, a
5 lascivious act with a child in section 709.8, assault with
6 intent to commit sexual abuse in section 709.11, or any other
7 sexual offense by which the human immunodeficiency virus may
8 be transmitted, the county attorney, if requested by the
9 victim or the parent, guardian, or custodian of a minor
10 victim, shall petition the court for an order requiring the
11 person convicted to be tested for the human immunodeficiency
12 virus in accordance with rules established by the Iowa
13 department of public health.

14 2. The results of the test conducted pursuant to an order
15 issued under subsection 1 shall be released only to the person
16 convicted of the offense, the physician of the person
17 convicted, the victim, the physician of the victim, and, if
18 the victim is a minor, to the parent, guardian, or custodian
19 of the victim.

20 3. The court shall also order periodic testing of the
21 convicted offender during the period of incarceration. The
22 results of the test conducted pursuant to this subsection
23 shall be released only to the convicted offender, the
24 physician of the convicted offender, the victim, the physician
25 of the victim, the parent, guardian, or custodian of the
26 victim if the victim is a minor, and the personnel of the
27 institution in which the convicted offender is incarcerated.

28 4. If the test results are positive, counseling shall be
29 provided to the victim regarding the human immunodeficiency
30 virus, in addition to referral to appropriate health care and
31 support services.

32 Sec. 2. Section 135.11, Code 1993, is amended by adding
33 the following new subsection:

34 NEW SUBSECTION. 24. Adopt rules which provide for the
35 testing of a convicted offender for the human immunodeficiency

1 virus pursuant to section 709.17. The rules shall provide
2 guidance to a court in issuance of an order for periodic
3 testing as often as is necessary in accordance with the
4 incubation period of the virus and shall provide for the
5 provision of counseling, health care, and support services to
6 the victim if the test results are positive.

7 Sec. 3. Section 141.23, subsection 1, Code 1993, is
8 amended by adding the following new paragraph:

9 NEW PARAGRAPH. i. The convicted offender, the physician
10 of the convicted offender, the victim, the parent, guardian,
11 or custodian of the victim if the victim is a minor, the
12 physician of the victim, and the personnel of the institution
13 in which a convicted offender is incarcerated, as applicable,
14 pursuant to section 709.17.

15 EXPLANATION

16 This bill provides for the testing of a person convicted of
17 a sexual offense, for the human immunodeficiency virus if the
18 victim, or the parent, guardian, or custodian of a minor
19 victim requests the prosecuting attorney to petition the court
20 for authorization of the test. The court is required to order
21 initial and periodic testing of the convicted offender during
22 the period of incarceration, based upon the incubation period
23 of the virus. The results of the test performed are only to
24 be released to the convicted offender, the physician of the
25 convicted offender, the victim, the parent, guardian, or
26 custodian of the victim if the victim is a minor, and the
27 personnel of the institution in which the convicted offender
28 is incarcerated, as applicable. The Iowa department of public
29 health is required to develop rules for the testing of
30 convicted offenders. Remedies for violation of provisions
31 relating to confidentiality are applicable under section
32 141.24 and provide the right to an action for damages or other
33 relief and the maintaining of a civil action by the attorney
34 general for violation of the provisions.

35

HOUSE FILE 418

AN ACT

RELATING TO THE TESTING OF A PERSON FOR THE HUMAN IMMUNO-DEFICIENCY 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 predislosure 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. 1. 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.

HAROLD VAN MAAREN
Speaker of the House

LEONARD L. BOSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 418, Seventy-fifth General Assembly.

Approved  1993

ELIZABETH ISAACSON
Chief Clerk of the House

TERRY E. BRANSTAD
Governor