

3/25/96 Judiciary

FILED FEB 29 1996

SENATE FILE **2379**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 2043)

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

A BILL FOR

1 An Act relating to the HIV-related testing of an alleged offender
2 following an alleged sexual assault and making penalties
3 applicable.

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

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S.F. 2379

1 Section 1. Section 135.11, subsection 24, Code 1995, is
2 amended to read as follows:

3 24. Adopt rules which provide for the testing of a
4 convicted or alleged offender for the human immunodeficiency
5 virus pursuant to chapter 709B. The rules shall provide for
6 the provision of counseling, health care, and support services
7 to the victim.

8 Sec. 2. Section 141.23, subsection 1, paragraph i, Code
9 1995, is amended to read as follows:

10 i. The convicted or alleged offender, the physician or
11 other practitioner who orders the test of the convicted or
12 alleged offender, the victim, the parent, guardian, or
13 custodian of the victim if the victim is a minor, the
14 physician of the victim, the victim counselor or person
15 requested by the victim who is authorized to provide the
16 counseling required pursuant to section 141.22, and the
17 victim's spouse, persons with whom the victim has engaged in
18 vaginal, anal, or oral intercourse subsequent to the sexual
19 assault, or members of the victim's family within the third
20 degree of consanguinity. For the purposes of this paragraph,
21 "victim" means victim as defined in section 709B.1.

22 Sec. 3. Section 709B.1, Code 1995, is amended by adding
23 the following new subsections:

24 NEW SUBSECTION. 1A. "Alleged offender" means a person who
25 has been charged with the commission of a sexual assault or a
26 juvenile who has been charged in juvenile court with being a
27 delinquent as the result of actions that would constitute a
28 sexual assault.

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

1 Sec. 4. Section 709B.1, subsections 8 and 9, Code 1995,
2 are amended to read as follows:

3 8. "Sexual assault" means sexual abuse as defined in
4 section 709.1, or any other sexual offense by which a victim
5 has allegedly had sufficient contact with a convicted or an
6 alleged offender to be deemed a significant exposure.

7 9. "Significant exposure" means contact of the victim's
8 ruptured or broken skin or mucous membranes with the blood or
9 bodily fluids, other than tears, saliva, or perspiration of
10 the convicted or alleged offender. "Significant exposure" is
11 presumed to have occurred when there is a showing that there
12 was penetration of the convicted or alleged offender's penis
13 into the victim's vagina or anus, contact between the mouth
14 and genitalia, or contact between the genitalia of the
15 convicted or alleged offender and the genitalia or anus of the
16 victim.

17 Sec. 5. NEW SECTION. 709B.2A HIV-RELATED TEST -- ALLEGED
18 SEXUAL ASSAULT OFFENDER.

19 1. If a person is an alleged offender, a victim or a peace
20 officer may make application to the court for the issuance of
21 a search warrant, in accordance with chapter 808, for the
22 purpose of requiring the alleged offender to submit to an HIV-
23 related test, if all of the following conditions are met:

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

30 b. The authorized representative of the victim, the peace
31 officer, or the court sought to obtain written informed
32 consent to the testing from the alleged offender.

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

35 2. Upon receipt of the application the court shall:

- 1 a. Prior to the scheduling of a hearing on the
2 application, refer the victim for counseling by a victim
3 counselor or a person requested by the victim who is
4 authorized to provide the counseling required pursuant to
5 section 141.22, regarding the nature, reliability, and
6 significance of the HIV-related test and of the serologic
7 status of the alleged offender.
- 8 b. Schedule a hearing to be held as soon as is
9 practicable.
- 10 c. Cause written notice to be served on the alleged
11 offender who is the subject of the proceeding, in accordance
12 with the rules of civil procedure relating to the service of
13 original notice, or if the alleged offender is represented by
14 legal counsel, provide written notice to the alleged offender
15 and the alleged offender's legal counsel.
- 16 d. Provide for the appointment of legal counsel for an
17 alleged offender if the alleged offender desires but is
18 financially unable to employ counsel.
- 19 e. Furnish legal counsel with copies of the application.
- 20 3. a. A hearing under this section shall be conducted in
21 an informal manner consistent with orderly procedure and in
22 accordance with the Iowa rules of evidence. The hearing shall
23 be limited in scope to the review of the questions of fact
24 only as to the issue of whether the alleged sexual assault for
25 which the alleged offender is charged provided sufficient
26 contact between the victim and the alleged offender to be
27 deemed a significant exposure and thereby constitute probable
28 cause for the issuance of a search warrant.
- 29 b. In determining whether the contact should be deemed a
30 significant exposure, the court shall base the determination
31 on the application and the factual basis provided in the
32 application for the belief of the applicant that a significant
33 exposure exists.
- 34 c. The victim may testify at the hearing, but shall not be
35 compelled to testify. The court shall not consider the

1 refusal of a victim to testify at the hearing as material to
2 the court's decision regarding the issuance of a search
3 warrant.

4 d. The hearing shall be in camera unless the alleged
5 offender and the victim agree to a hearing in open court and
6 the court approves. The report of the hearing proceedings
7 shall be sealed and no report of the proceedings shall be
8 released to the public, except with the permission of all
9 parties and the approval of the court.

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

13 4. Following the hearing, the court shall issue a search
14 warrant to require that the alleged offender undergo HIV-
15 related testing if the court finds all of the following which
16 constitute probable cause for grounds to issue a search
17 warrant:

18 a. The alleged sexual assault constituted a significant
19 exposure.

20 b. An authorized representative of the victim, the peace
21 officer, or the court sought to obtain written informed
22 consent from the alleged offender.

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

25 5. An alleged offender who is required to undergo an HIV-
26 related test may appeal to the court for review of questions
27 of law only, but may appeal questions of fact if the findings
28 of fact are clearly erroneous.

29 Sec. 6. Section 709B.3, subsections 1, 4, 5, 14, and 15,
30 Code Supplement 1995, are amended to read as follows:

31 1. The physician or other practitioner who orders the test
32 of a convicted or alleged offender for HIV under this chapter
33 shall disclose the results of the test to the convicted or
34 alleged offender, and to the victim counselor or a person
35 requested by the victim who is authorized to provide the

1 counseling required pursuant to section 141.22, who shall
2 disclose the results to the petitioner.

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

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

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

29 15. A person to whom disclosure of a convicted or alleged
30 offender's HIV-related test results is authorized under this
31 chapter shall not disclose the results to any other person for
32 whom disclosure is not authorized under this chapter. A
33 person who intentionally or recklessly makes an unauthorized
34 disclosure under this chapter is subject to a civil penalty of
35 one thousand dollars. The attorney general or the attorney

1 general's designee may maintain a civil action to enforce this
2 chapter. Proceedings maintained under this subsection shall
3 provide for the anonymity of the test subject and all
4 documentation shall be maintained in a confidential manner.

5 EXPLANATION

6 This bill provides for the HIV-related testing of an
7 alleged offender who is charged with sexual assault, based
8 upon the application for and issuance of a search warrant to
9 require the testing. The bill provides for the holding of a
10 hearing on the application for a search warrant, prescribes
11 the conditions to be met if grounds for probable cause to
12 issue the search warrant are to be found, and makes
13 confidentiality provisions and penalties for unauthorized
14 disclosure of test results applicable.

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**SENATE FILE 2379
FISCAL NOTE**

The estimate for Senate File 2379 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2379 provides for HIV-related testing of alleged offenders charged with sexual assault, based upon the application for and issuance of a search warrant. The Bill provides for holding a hearing on the application for the search warrant and prescribes the conditions to be met, and specifies requirements for confidentiality.

ASSUMPTIONS

1. The estimated costs for the Judicial Branch are \$200 per case.
2. The Public Defender estimates each case will cost \$430 per case.
3. The prosecuting attorney will incur the same costs as the Public Defender (\$430).
4. The Sheriff's Office will need two hours per case to escort the alleged offender for testing at a cost of \$30.
5. The State Hygienic Laboratory will incur a cost of \$20 per test.
6. There will be 1,200 adults and 775 juveniles annually charged with sex offenses that could result in a victim requesting the alleged offender be tested.

FISCAL IMPACT

The estimated total cost per case under Senate File 2379 is \$1,110. The total cost of Senate File 2379 cannot be determined due to insufficient information on how many victims will request the alleged offenders be tested.

SOURCES

Criminal and Juvenile Justice Planning Division, Department of Human Rights
Judicial Department
Public Defender
Department of Public Health

(LSB 3052SV, MDF)

FILED MARCH 14, 1996

BY DENNIS PROUTY, FISCAL DIRECTOR