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S-3/19/98 Do Pass

FEB 20 1998  
Place On Calendar

HOUSE FILE 2369  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2108)

Passed House, <sup>(P.717)</sup> Date 3/16/98 Passed Senate, <sup>(P.866)</sup> Date 3/24/98  
Vote: Ayes 100 Nays 0 Vote: Ayes 49 Nays 0  
Approved April 13, 1998

A BILL FOR

1 An Act relating to the human immunodeficiency virus including the  
2 testing of an alleged offender for the human immunodeficiency  
3 virus, the intentional transmission of the human  
4 immunodeficiency virus, making penalties applicable,  
5 establishing penalties, and providing for an affirmative  
6 defense.

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

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HF 2369

1 Section 1. Section 135.11, subsection 24, Code Supplement  
2 1997, is 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 1997, 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, and the county attorney who filed the  
21 petition for HIV-related testing under chapter 709B, who may  
22 use the results to file charges for criminal transmission of  
23 HIV under chapter 709C. For the purposes of this paragraph,  
24 "victim" means victim as defined in section 709B.1.

25 Sec. 3. Section 709B.1, Code 1997, is amended by adding  
26 the following new subsections:

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

32 NEW SUBSECTION. 9A. "Victim" means a petitioner or a  
33 person who is the victim of a sexual assault which resulted in  
34 significant exposure, or the parent, guardian, or custodian of  
35 such a victim if the victim is a minor, for whom the victim or

1 the peace officer files an application for a search warrant to  
2 require the alleged offender to undergo an HIV-related test.  
3 "Victim" includes an alleged victim.

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

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

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

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

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

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

33 b. The authorized representative of the victim, the peace  
34 officer, or the court sought to obtain written informed  
35 consent to the testing from the alleged offender.

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

1 significant exposure, the court shall base the determination  
2 on the application and the factual basis provided in the  
3 application for the belief of the applicant that a significant  
4 exposure exists.

5 c. The victim may testify at the hearing, but shall not be  
6 compelled to testify. The court shall not consider the  
7 refusal of a victim to testify at the hearing as material to  
8 the court's decision regarding the issuance of a search  
9 warrant.

10 d. The hearing shall be in camera unless the alleged  
11 offender and the victim agree to a hearing in open court and  
12 the court approves. The report of the hearing proceedings  
13 shall be sealed and no report of the proceedings shall be  
14 released to the public, except with the permission of all  
15 parties and the approval of the court.

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

19 4. Following the hearing, the court shall issue a search  
20 warrant to require that the alleged offender undergo HIV-  
21 related testing if the court finds all of the following which  
22 constitute probable cause for grounds to issue a search  
23 warrant:

24 a. The alleged sexual assault constituted a significant  
25 exposure.

26 b. An authorized representative of the victim, the peace  
27 officer, or the court sought to obtain written informed  
28 consent from the alleged offender.

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

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

35 Sec. 6. Section 709B.3, subsections 1, 4, 5, 14, and 15,

1 Code 1997, are amended to read as follows:

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

9 4. Results of a test performed under this chapter, except  
10 as provided in subsection 6, shall be disclosed only to the  
11 physician or other practitioner who orders the test of the  
12 convicted or alleged offender, the convicted or alleged  
13 offender, the victim, the victim counselor or person requested  
14 by the victim who is authorized to provide the counseling  
15 required pursuant to section 141.22, the physician of the  
16 victim if requested by the victim, and the parent, guardian,  
17 or custodian of the victim, if the victim is a minor, and the  
18 county attorney who filed the petition for HIV-related testing  
19 under this chapter, who may use the results to file charges of  
20 criminal transmission of HIV under chapter 709C. Results of a  
21 test performed under this chapter shall not be disclosed to  
22 any other person without the written, informed consent of the  
23 convicted or alleged offender. A person to whom the results  
24 of a test have been disclosed under this chapter is subject to  
25 the confidentiality provisions of section 141.23, and shall  
26 not disclose the results to another person except as  
27 authorized by section 141.23, subsection 1.

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

31 14. In addition to persons to whom disclosure of the  
32 results of a convicted or alleged offender's HIV-related test  
33 results is authorized under this chapter, the victim may also  
34 disclose the results to the victim's spouse, persons with whom  
35 the victim has engaged in vaginal, anal, or oral intercourse

1 subsequent to the sexual assault, or members of the victim's  
2 family within the third degree of consanguinity.

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

14 Sec. 7. NEW SECTION. 709C.1 CRIMINAL TRANSMISSION OF  
15 HUMAN IMMUNODEFICIENCY VIRUS.

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

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

29 2. For the purposes of this section:

30 a. "Human immunodeficiency virus" means the human  
31 immunodeficiency virus identified as the causative agent of  
32 acquired immune deficiency syndrome.

33 b. "Intimate contact" means the intentional exposure of  
34 the body of one person to a bodily fluid of another person in  
35 a manner that could result in the transmission of the human

1 immunodeficiency virus.

2 c. "Intravenous or intramuscular drug paraphernalia" means  
3 any equipment, product, or material of any kind which is  
4 peculiar to and marketed for use in injecting a substance into  
5 or withdrawing a bodily fluid from the human body.

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

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

12 5. It is an affirmative defense that the person exposed to  
13 the human immunodeficiency virus knew that the infected person  
14 had a positive human immunodeficiency virus status at the time  
15 of the action of exposure, knew that the action of exposure  
16 could result in transmission of the human immunodeficiency  
17 virus, and consented to the action of exposure with that  
18 knowledge.

19 EXPLANATION

20 This bill provides for the HIV-related testing of an  
21 alleged offender who is charged with sexual assault, based  
22 upon the application for and issuance of a search warrant to  
23 require the testing. The bill provides for the holding of a  
24 hearing on the application for a search warrant, prescribes  
25 the conditions to be met if grounds for probable cause to  
26 issue the search warrant are to be found, and makes  
27 confidentiality provisions and penalties for unauthorized  
28 disclosure of test results applicable.

29 This bill also establishes the crime of criminal  
30 transmission of the human immunodeficiency virus (HIV). The  
31 bill provides that a person who, knowing that the person's HIV  
32 status is positive, does one of three things: engages in  
33 intimate contact with another person; in some manner  
34 administers the person's blood, tissue, semen, organs, or  
35 other potentially infectious bodily fluids to another; or in



1 some manner transfers to another person nonsterile intravenous  
2 or intramuscular drug paraphernalia previously used by the  
3 person infected with the human immunodeficiency virus.  
4 Criminal transmission of HIV is a class "B" felony, the  
5 maximum sentence for which is confinement for no more than 25  
6 years. The bill also provides that it is an affirmative  
7 defense that the person exposed knew that the other person had  
8 a positive HIV status, knew that the action of exposure could  
9 result in transmission of HIV, and consented to the action  
10 with this knowledge.

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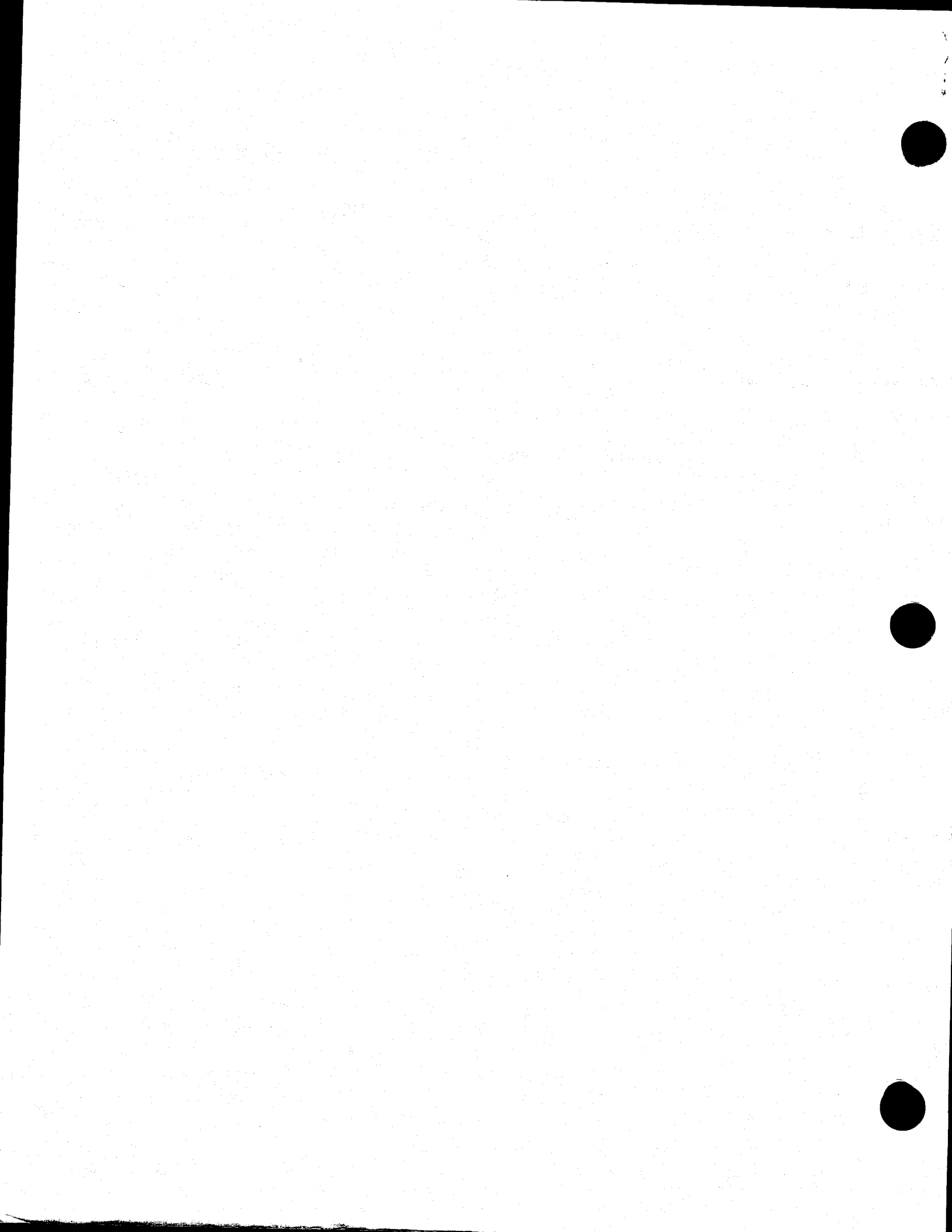
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## HOUSE FILE 2369

H-8304

1 Amend House File 2369 as follows:

2 1. Page 1, by striking lines 20 through 23 and  
3 inserting the following: "degree of consanguinity,  
4 and the county attorney who may use the results as  
5 evidence in the prosecution of sexual assault or  
6 prosecution of the offense of criminal transmission of  
7 HIV under chapter 709C. For the purposes of this  
8 paragraph".

9 2. Page 1, by inserting after line 31, the  
10 following:

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

15 a. The parent, guardian, or custodian of the  
16 victim if the victim is a minor.

17 b. The physician of the victim.

18 c. The victim counselor or person requested by the  
19 victim who is authorized to provide the counseling  
20 required pursuant to section 141.22.

21 d. The victim's spouse.

22 e. The victim's legal counsel."

23 3. By striking page 2, line 20, through page 4,  
24 line 34, and inserting the following:

25 "Sec. \_\_\_\_ . Section 709B.2, Code 1997, is amended  
26 to read as follows:

27 709B.2 HIV-RELATED TEST -- CONVICTED OR ALLEGED  
28 SEXUAL ASSAULT OFFENDER.

29 1. If a person is convicted of sexual assault or  
30 adjudicated delinquent for an act of sexual assault,  
31 the county attorney, if requested by the petitioner,  
32 shall petition the court for an order requiring the  
33 convicted offender to submit to an HIV-related test,  
34 provided that all of the following conditions are met:

35 a. The sexual assault for which the offender was  
36 convicted or adjudicated delinquent included  
37 sufficient contact between the victim and the  
38 convicted offender to be deemed a significant exposure  
39 pursuant to section 709B.1.

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

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

46 2. If a person is an alleged offender, the county  
47 attorney, if requested by the victim, shall make  
48 application to the court for the issuance of a search  
49 warrant, in accordance with chapter 808, for the  
50 purpose of requiring the alleged offender to submit to

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1 an HIV-related test, if all of the following  
2 conditions are met:

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

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

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

16 ~~2-~~ 3. Upon receipt of the petition or application,  
17 the court shall:

18 a. Prior to the scheduling of a hearing, refer the  
19 victim for counseling by a victim counselor or a  
20 person requested by the victim who is authorized to  
21 provide the counseling required pursuant to section  
22 141.22, regarding the nature, reliability, and  
23 significance of the HIV-related test and of the  
24 serologic status of the convicted offender.

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

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

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

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

44 ~~3-~~ 4. Unless a petitioner chooses to be  
45 represented by private counsel, the county attorney  
46 shall represent the victim's interest in all  
47 proceedings under this section.

48 ~~4-~~ 5. a. A hearing under this section shall be  
49 conducted in an informal manner consistent with  
50 orderly procedure and in accordance with the Iowa

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1 rules of evidence. The hearing shall be limited in  
2 scope to the review of questions of fact only as to  
3 the issue of whether the sexual assault for which the  
4 offender was convicted or adjudicated delinquent or  
5 for which the alleged offender was charged provided  
6 sufficient contact between the victim and the  
7 convicted or alleged offender to be deemed a  
8 significant exposure, and to questions of law.

9 b. In determining whether the contact should be  
10 deemed a significant exposure for a convicted  
11 offender, the court shall base the determination on  
12 the testimony presented during the proceedings on the  
13 sexual assault charge, the minutes of the testimony or  
14 other evidence included in the court record, or if a  
15 plea of guilty was entered, based upon the complaint  
16 or upon testimony provided during the hearing. In  
17 determining whether the contact should be deemed a  
18 significant exposure for an alleged offender, the  
19 court shall base the determination on the application  
20 and the factual basis provided in the application for  
21 the belief of the applicant that a significant  
22 exposure exists.

23 c. The victim may testify at the hearing, but  
24 shall not be compelled to testify. The court shall  
25 not consider the refusal of a victim to testify at the  
26 hearing as material to the court's decision regarding  
27 issuance of an order or search warrant requiring  
28 testing.

29 d. The hearing shall be in camera unless the  
30 convicted or alleged offender and the petitioner or  
31 victim agree to a hearing in open court and the court  
32 approves. The report of the hearing proceedings shall  
33 be sealed and no report of the proceedings shall be  
34 released to the public, except with the permission of  
35 all parties and the approval of the court.

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

39 ~~5-~~ 6. Following the hearing, the court shall  
40 require a convicted or alleged offender to undergo an  
41 HIV-related test only if the petitioner or victim  
42 proves all of the following by a preponderance of the  
43 evidence:

44 a. The sexual assault constituted a significant  
45 exposure.

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

50 c. Written informed consent was not provided by

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Page 4

1 the convicted or alleged offender.

2 6- 7. A convicted offender who is required to  
3 undergo an HIV-related test may appeal to the court  
4 for review of questions of law only, but may appeal  
5 questions of fact if the findings of fact are clearly  
6 erroneous."

7 4. Page 4, line 35, by inserting after the figure  
8 "5," the following: "6,".

9 5. Page 5, by striking lines 28 through 30, and  
10 inserting the following:

11 ~~"5.--Notwithstanding-subsection-47-test-results  
12 shall-not-be-disclosed-to-a-convicted-offender-who  
13 elects-against-disclosure-~~"

14 6. Page 5, by inserting before line 31, the  
15 following:

16 "6. If testing is ordered under this chapter, the  
17 court shall also order periodic testing of the  
18 convicted offender during the period of incarceration,  
19 probation, or parole or of the alleged offender during  
20 a period of six months following the initial test if  
21 the physician or other practitioner who ordered the  
22 initial test of the convicted or alleged offender  
23 certifies that, based upon prevailing scientific  
24 opinion regarding the maximum period during which the  
25 results of an HIV-related test may be negative for a  
26 person after being HIV-infected, additional testing is  
27 necessary to determine whether the convicted or  
28 alleged offender was HIV-infected at the time the  
29 sexual assault or alleged sexual assault was  
30 perpetrated. The results of the test conducted  
31 pursuant to this subsection shall be released only to  
32 the physician or other practitioner who orders the  
33 test of the convicted or alleged offender, the  
34 convicted or alleged offender, the victim counselor or  
35 person requested by the victim who is authorized to  
36 provide the counseling required pursuant to section  
37 141.22, who shall disclose the results to the  
38 petitioner, and the physician of the victim, if  
39 requested by the victim and the county attorney who  
40 may use the results as evidence in the prosecution of  
41 the sexual assault or in the prosecution of the  
42 offense of criminal transmission of HIV under chapter  
43 709C."

By HOLVECK of Polk  
GARMAN of Story

H-8304 FILED MARCH 10, 1998

*Adopted*  
*3/16/98*  
*(p.717)*

**HOUSE FILE 2369  
FISCAL NOTE**

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The estimate for House File 2369 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.

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House File 2369 provides for human immunodeficiency virus (HIV) related testing of alleged offenders charged with sexual assault, based upon an issuance of a search warrant requiring the testing. A hearing is to be held to issue the search warrant. The Bill also establishes a Class B felony for knowingly transmitting the HIV virus.

**ASSUMPTIONS**

1. Charge, conviction, and sentencing patterns will remain stable. Prisoner length of stay, revocation rates, and other corrections policies will also remain stable.
2. There will be a six-month lag between implementation of the law and the first offenders entering the correctional system.
3. There are approximately 600 individuals annually who are charged with a sex offense and have charges dismissed or are acquitted. There are approximately 230 offenders convicted annually who currently can be required to be tested for HIV after conviction. For purposes of this estimate, all 830 persons will be considered alleged offenders.
4. The cost for the hearing to determine whether the alleged offender will be tested for HIV is estimated to be \$3,350. The costs are distributed as follows: \$1,400 in court costs, \$650 for the Public Defender, and \$1,300 for the county attorney.
5. It is estimated that one convicted sex offender and four persons convicted of prostitution can be currently prosecuted annually for knowingly transmitting HIV. There may be others who are not currently being convicted of sex-oriented crimes who will also be convicted of the new crime. The estimate is based on five persons annually being convicted of knowingly transmitting HIV.
6. The Class B felony trial for knowingly transmitting HIV is estimated to cost approximately \$14,000. The costs are distributed as follows: \$5,000 for court costs; \$3,000 for the Public Defender costs; and \$6,000 for county attorney costs. The estimated five cases per year can be absorbed within the current budgets.
7. The marginal cost to add another inmate to the prison system is \$12 per day.
8. The alleged offenders will be tested by the State Hygienic Laboratory at the University of Iowa. The cost of an HIV test is \$30. The Bill does not specify what entity will pay these costs.

**CORRECTIONAL IMPACT**

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The new crime of knowingly transmitting the HIV virus is projected to increase the prison population by two inmates in FY 1999, six inmates in FY 2000, and 22 inmates in FY 2003.

FISCAL IMPACT

Because it is unknown how many alleged offenders will be required to submit to HIV testing, the costs associated with hearings and lab tests cannot be determined. However, if all offenders (830 maximum) who are currently charged with or convicted of a sex crime are required to submit to HIV testing the annual cost would be:

Hearings

Court	\$1.2 million
Public Defender	.5 million
County Attorney	<u>1.1 million</u>
Total	<u>\$2.8 million</u>

Lab Tests

Bill does not identify who is responsible	\$25,000
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Class B Felony Trials

Court	\$25,000
Public Defender	15,000
County Attorney	<u>30,000</u>
Total	<u>\$70,000</u>

The cost for the Department of Corrections for the incarceration of persons convicted of knowingly transmitting HIV is projected to be \$9,000 in FY 1999, \$26,000 in FY 2000, and \$96,000 in FY 2003.

SOURCES

Criminal and Juvenile Justice Planning Division,  
Department of Human Rights  
Department of Corrections  
Judicial Branch  
Office of the Public Defender  
Department of Health

(LSB 3421hv, MDF)

FILED MARCH 5, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR



S-31110 J. [unclear]

HOUSE FILE 2369  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2108)

(As Amended and Passed by the House, March 16, 1998)

Passed House, Date \_\_\_\_\_ Passed Senate, Date <sup>(p. 866)</sup> 3/24/98  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes 49 Nays 0  
Approved April 13, 1998

**A BILL FOR**

1 An Act relating to the human immunodeficiency virus including the  
2 testing of an alleged offender for the human immunodeficiency  
3 virus, the intentional transmission of the human  
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6 defense.

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

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New Language \_\_\_\_\_

1 Section 1. Section 135.11, subsection 24, Code Supplement  
2 1997, is 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 1997, 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, and the county attorney who may use  
21 the results as evidence in the prosecution of sexual assault  
22 or prosecution of the offense of criminal transmission of HIV  
23 under chapter 709C. For the purposes of this paragraph  
24 "victim" means victim as defined in section 709B.1.

25 Sec. 3. Section 709B.1, Code 1997, is amended by adding  
26 the following new subsections:

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

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

1 a. The parent, guardian, or custodian of the victim if the  
2 victim is a minor.

3 b. The physician of the victim.

4 c. The victim counselor or person requested by the victim  
5 who is authorized to provide the counseling required pursuant  
6 to section 141.22.

7 d. The victim's spouse.

8 e. The victim's legal counsel.

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

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

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

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

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

34 709B.2 HIV-RELATED TEST -- CONVICTED OR ALLEGED SEXUAL  
35 ASSAULT OFFENDER.

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

7 a. The sexual assault for which the offender was convicted  
8 or adjudicated delinquent included sufficient contact between  
9 the victim and the convicted offender to be deemed a  
10 significant exposure pursuant to section 709B.1.

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

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

16 2. If a person is an alleged offender, the county  
17 attorney, if requested by the victim, shall make application  
18 to the court for the issuance of a search warrant, in  
19 accordance with chapter 808, for the purpose of requiring the  
20 alleged offender to submit to an HIV-related test, if all of  
21 the following conditions are met:

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

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

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

33 2- 3. Upon receipt of the petition or application, the  
34 court shall:

35 a. Prior to the scheduling of a hearing, refer the victim

1 for counseling by a victim counselor or a person requested by  
2 the victim who is authorized to provide the counseling  
3 required pursuant to section 141.22, regarding the nature,  
4 reliability, and significance of the HIV-related test and of  
5 the serologic status of the convicted offender.

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

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

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

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

22 3- 4. Unless a petitioner chooses to be represented by  
23 private counsel, the county attorney shall represent the  
24 victim's interest in all proceedings under this section.

25 4- 5. a. A hearing under this section shall be conducted  
26 in an informal manner consistent with orderly procedure and in  
27 accordance with the Iowa rules of evidence. The hearing shall  
28 be limited in scope to the review of questions of fact only as  
29 to the issue of whether the sexual assault for which the  
30 offender was convicted or adjudicated delinquent or for which  
31 the alleged offender was charged provided sufficient contact  
32 between the victim and the convicted or alleged offender to be  
33 deemed a significant exposure, and to questions of law.

34 b. In determining whether the contact should be deemed a  
35 significant exposure for a convicted offender, the court shall

1 base the determination on the testimony presented during the  
2 proceedings on the sexual assault charge, the minutes of the  
3 testimony or other evidence included in the court record, or  
4 if a plea of guilty was entered, based upon the complaint or  
5 upon testimony provided during the hearing. In determining  
6 whether the contact should be deemed a significant exposure  
7 for an alleged offender, the court shall base the  
8 determination on the application and the factual basis  
9 provided in the application for the belief of the applicant  
10 that a significant exposure exists.

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

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

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

25 5- 6. Following the hearing, the court shall require a  
26 convicted or alleged offender to undergo an HIV-related test  
27 only if the petitioner or victim proves all of the following  
28 by a preponderance of the evidence:

29 a. The sexual assault constituted a significant exposure.

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

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

35 6- 7. A convicted offender who is required to undergo an

1 HIV-related test may appeal to the court for review of  
2 questions of law only, but may appeal questions of fact if the  
3 findings of fact are clearly erroneous.

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

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

13 4. Results of a test performed under this chapter, except  
14 as provided in subsection 6, shall be disclosed only to the  
15 physician or other practitioner who orders the test of the  
16 convicted or alleged offender, the convicted or alleged  
17 offender, the victim, the victim counselor or person requested  
18 by the victim who is authorized to provide the counseling  
19 required pursuant to section 141.22, the physician of the  
20 victim if requested by the victim, and the parent, guardian,  
21 or custodian of the victim, if the victim is a minor, and the  
22 county attorney who filed the petition for HIV-related testing  
23 under this chapter, who may use the results to file charges of  
24 criminal transmission of HIV under chapter 709C. Results of a  
25 test performed under this chapter shall not be disclosed to  
26 any other person without the written, informed consent of the  
27 convicted or alleged offender. A person to whom the results  
28 of a test have been disclosed under this chapter is subject to  
29 the confidentiality provisions of section 141.23, and shall  
30 not disclose the results to another person except as  
31 authorized by section 141.23, subsection 1.

32 ~~5.--Notwithstanding-subsection-47-test-results-shall-not-be~~  
33 ~~disclosed-to-a-convicted-offender-who-elects-against~~  
34 ~~disclosure.~~

35 6. If testing is ordered under this chapter, the court

1 shall also order periodic testing of the convicted offender  
2 during the period of incarceration, probation, or parole or of  
3 the alleged offender during a period of six months following  
4 the initial test if the physician or other practitioner who  
5 ordered the initial test of the convicted or alleged offender  
6 certifies that, based upon prevailing scientific opinion  
7 regarding the maximum period during which the results of an  
8 HIV-related test may be negative for a person after being HIV-  
9 infected, additional testing is necessary to determine whether  
10 the convicted or alleged offender was HIV-infected at the time  
11 the sexual assault or alleged sexual assault was perpetrated.  
12 The results of the test conducted pursuant to this subsection  
13 shall be released only to the physician or other practitioner  
14 who orders the test of the convicted or alleged offender, the  
15 convicted or alleged offender, the victim counselor or person  
16 requested by the victim who is authorized to provide the  
17 counseling required pursuant to section 141.22, who shall  
18 disclose the results to the petitioner, and the physician of  
19 the victim, if requested by the victim and the county attorney  
20 who may use the results as evidence in the prosecution of the  
21 sexual assault or in the prosecution of the offense of  
22 criminal transmission of HIV under chapter 709C.

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

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



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

6 Sec. 7. NEW SECTION. 709C.1 CRIMINAL TRANSMISSION OF  
7 HUMAN IMMUNODEFICIENCY VIRUS.

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

12 a. Engages in intimate contact with another person.

13 b. Transfers, donates, or provides the person's blood,  
14 tissue, semen, organs, or other potentially infectious bodily  
15 fluids for transfusion, transplantation, insemination, or  
16 other administration to another person.

17 c. Dispenses, delivers, exchanges, sells, or in any other  
18 way transfers to another person any nonsterile intravenous or  
19 intramuscular drug paraphernalia previously used by the person  
20 infected with the human immunodeficiency virus.

21 2. For the purposes of this section:

22 a. "Human immunodeficiency virus" means the human  
23 immunodeficiency virus identified as the causative agent of  
24 acquired immune deficiency syndrome.

25 b. "Intimate contact" means the intentional exposure of  
26 the body of one person to a bodily fluid of another person in  
27 a manner that could result in the transmission of the human  
28 immunodeficiency virus.

29 c. "Intravenous or intramuscular drug paraphernalia" means  
30 any equipment, product, or material of any kind which is  
31 peculiar to and marketed for use in injecting a substance into  
32 or withdrawing a bodily fluid from the human body.

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

35 4. This section shall not be construed to require that an

1 infection with the human immunodeficiency virus has occurred  
2 for a person to have committed criminal transmission of the  
3 human immunodeficiency virus.

4 5. It is an affirmative defense that the person exposed to  
5 the human immunodeficiency virus knew that the infected person  
6 had a positive human immunodeficiency virus status at the time  
7 of the action of exposure, knew that the action of exposure  
8 could result in transmission of the human immunodeficiency  
9 virus, and consented to the action of exposure with that  
10 knowledge.

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HOUSE FILE 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, subaection 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.

2+ 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 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.

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RON J. CORBETT  
Speaker of the House

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MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2369, Seventy-seventh General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved April 13, 1998

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TERRY E. BRANSTAD  
Governor

HF 2369

