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JUDICIARY

HOUSE FILE
BY RANTS

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

A BILL FOR

1 An Act relating to the human immunodeficiency virus, establishing
2 penalties, and making penalties applicable.

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

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HF 76

1 Section 1. Section 135.11, subsection 24, Code 1997, 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 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. For the purposes of this paragraph,
21 "victim" means victim as defined in section 709B.1.

22 Sec. 3. Section 707.11, Code 1997, is amended to read as
23 follows:

24 707.11 ATTEMPT TO COMMIT MURDER.

25 1. A person commits a class "B" felony when, with the
26 intent to cause the death of another person and not under
27 circumstances which would justify the person's actions, the
28 person does any act by which the person expects to set in
29 motion a force or chain of events which will cause or result
30 in the death of the other person.

31 2. For the purposes of this section, "any act" includes an
32 act engaged in by an actor in a manner capable of transmitting
33 the human immunodeficiency virus, as determined by the centers
34 for disease control and prevention of the United States
35 department of health and human services and adopted by rule of

1 the Iowa department of public health, when the actor knew at
2 the time of the commission of the act that the actor's human
3 immunodeficiency virus status was positive.

4 It is not a defense to an indictment for attempt to commit
5 murder that the acts proved could not have caused the death of
6 any person, provided that the actor intended to cause the
7 death of some person by so acting, and the actor's
8 expectations were not unreasonable in the light of the facts
9 known to the actor.

10 Sec. 4. Section 709B.1, Code 1997, is amended by adding
11 the following new subsections:

12 NEW SUBSECTION. 1A. "Alleged offender" means a person who
13 has been charged with the commission of a sexual assault or a
14 juvenile who has been charged in juvenile court with being a
15 delinquent as the result of alleged actions that would
16 constitute a sexual assault.

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

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

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

30 9. "Significant exposure" means contact of the victim's
31 ruptured or broken skin or mucous membranes with the blood or
32 bodily fluids, other than tears, saliva, or perspiration of
33 the convicted or alleged offender. "Significant exposure" is
34 presumed to have occurred when there is a showing that there
35 was penetration of the convicted or alleged offender's penis

1 into the victim's vagina or anus, contact between the mouth
2 and genitalia, or contact between the genitalia of the
3 convicted or alleged offender and the genitalia or anus of the
4 victim.

5 Sec. 6. Section 709B.2, subsection 2, paragraph e, Code
6 1997, is amended to read as follows:

7 e. ~~Furnish legal-counsel-with~~ the alleged offender with
8 copies of the petition or, if the alleged offender is
9 represented by legal counsel, provide copies of the petition
10 to the alleged offender and the alleged offender's legal
11 counsel.

12 Sec. 7. NEW SECTION. 709B.2A HIV-RELATED TEST -- ALLEGED
13 SEXUAL ASSAULT OFFENDER.

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

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

25 b. The application states that the authorized
26 representative of the victim, the peace officer, or the court
27 sought to obtain written informed consent to the testing from
28 the alleged offender.

29 c. The application states that written informed consent
30 was not provided by the alleged offender.

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

32 a. Prior to the scheduling of a hearing on the
33 application, refer the victim for counseling by a victim
34 counselor or a person requested by the victim who is
35 authorized to provide the counseling required pursuant to

1 section 141.22, regarding the nature, reliability, and
2 significance of the HIV-related test and of the serologic
3 status of the alleged offender.

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

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

12 d. Provide for the appointment of legal counsel for an
13 alleged offender if the alleged offender desires but is
14 financially unable to employ counsel.

15 e. Furnish the alleged offender with copies of the
16 application or, if the alleged offender is represented by
17 legal counsel, provide copies of the application to the
18 alleged offender and the alleged offender's legal counsel.

19 3. a. A hearing under this section shall be conducted in
20 an informal manner consistent with orderly procedure and in
21 accordance with the Iowa rules of evidence. The hearing shall
22 be limited in scope to the review of questions of fact only as
23 to the issue of whether the alleged sexual assault for which
24 the alleged offender is charged provided sufficient contact
25 between the victim and the alleged offender to be deemed a
26 significant exposure and thereby constitutes probable cause
27 for the issuance of a search warrant.

28 b. In determining whether the contact should be deemed a
29 significant exposure, the court shall base the determination
30 on the application and the factual basis provided in the
31 application for the belief of the applicant that a significant
32 exposure occurred.

33 c. The victim may testify at the hearing, but shall not be
34 compelled to testify. The court shall not consider the
35 refusal of a victim to testify at the hearing as material to

1 the court's decision regarding the issuance of a search
2 warrant.

3 d. The hearing shall be in camera unless the alleged
4 offender and the victim agree to a hearing in open court and
5 the court approves. The report of the hearing proceedings
6 shall be sealed and the report shall not be released to the
7 public, except with the permission of all parties and the
8 approval of the court.

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

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

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

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

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

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

28 Sec. 8. Section 709B.3, subsections 1, 4, 5, 14, and 15,
29 Code 1997, are amended to read as follows:

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

1 disclose the results to the petitioner.

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

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

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

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

1 chapter. Proceedings maintained under this subsection shall
2 provide for the anonymity of the test subject and all
3 documentation shall be maintained in a confidential manner.

4 EXPLANATION

5 This bill provides for the HIV-related testing of an
6 alleged offender who is charged with sexual assault, based
7 upon the application for and issuance of a search warrant to
8 require the testing. The bill provides for a hearing on the
9 application for a search warrant, prescribes the grounds for
10 probable cause to issue the search warrant, and makes
11 confidentiality provisions and penalties for unauthorized
12 disclosure of test results applicable. The bill also makes a
13 technical correction in the existing Code chapter 709B
14 relating to provision of the petition for an order for testing
15 to the alleged offender as well as to the alleged offender's
16 legal counsel.

17 The bill also includes the knowing transmission of the
18 human immunodeficiency virus as attempted murder, which is a
19 class "B" felony.

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