

Senate File 2067 - Introduced

SENATE FILE 2067

BY DRISCOLL

A BILL FOR

1 An Act relating to victims of sexual assault including sexual
2 abuse evidence, notification of rights, HIV-related testing
3 of a convicted or alleged assailant, and testing, reporting,
4 and counseling of a victim, and making penalties applicable.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 709.10, subsections 6 and 7, Code 2024,
2 are amended to read as follows:

3 6. The law enforcement agency shall store the kit in a
4 clean, dry location for a minimum of ~~fifteen~~ twenty years, or
5 in the case of a minor victim for ~~a minimum of fifteen years~~
6 ~~after the minor reaches the age of majority~~ the lifetime of the
7 minor victim, even if the reported victim of sexual abuse has
8 not filed a criminal complaint.

9 7. Prior to the disposal of a kit by a law enforcement
10 agency, the law enforcement agency shall notify the reported
11 victim ~~of~~ in writing, not later than sixty days before the
12 intended date of disposal of the kit, the reason for disposal
13 of the kit, and the options that remain available for retention
14 and analysis of the kit, if any. The law enforcement agency
15 shall obtain written approval from the appropriate county
16 attorney and retain that approval in the victim's case file
17 prior to disposal. Any kit disposed of shall be documented
18 by a law enforcement agency in the kit tracking system within
19 forty-eight hours of disposal. Upon written request of the
20 reported victim, the law enforcement agency shall provide
21 further preservation of the kit or its probative contents.

22 Sec. 2. Section 709.22, subsection 1, paragraph c, Code
23 2024, is amended to read as follows:

24 c. Providing a victim with immediate and adequate notice
25 of the victim's rights. The notice shall consist of handing
26 the victim a document that includes the telephone numbers of
27 shelters, support groups, and crisis lines operating in the
28 area and contains the following statement of rights written in
29 English and Spanish; asking the victim to read the document;
30 and asking whether the victim understands the following rights:

31 [1] You have the right to ask the court for help with any of
32 the following on a temporary basis:

33 [a] Keeping your attacker away from you, your home, and your
34 place of work.

35 [b] The right to stay at your home without interference from

1 your attacker.

2 [c] The right to seek a no-contact order under Iowa Code
3 section 664A.3 or 915.22, if your attacker is arrested for
4 sexual assault.

5 [2] You have the right to register as a victim with the
6 county attorney under Iowa Code section 915.12.

7 [3] You have the right to file a complaint for threats,
8 assaults, or other related crimes.

9 [4] You have the right to seek restitution against your
10 attacker for harm to you or your property.

11 [5] You have the right to apply for victim compensation.

12 [6] You have the right to contact the county attorney or
13 local law enforcement to determine the status of your case.

14 [7] If you are in need of medical treatment, you have
15 the right to request that the officer present assist you in
16 obtaining transportation to the nearest hospital or otherwise
17 assist you.

18 [8] You have the right to a sexual assault examination
19 performed at state expense and the right not to be prevented
20 from receiving a sexual assault examination. If you choose to
21 have a sexual assault examination:

22 [a] You have the right to have a sexual assault examination
23 kit or its probative contents preserved, without charge,
24 for twenty years, or in the case of a minor victim, for the
25 lifetime of the minor victim. This is your right even if you do
26 not file a criminal complaint, pursuant to Iowa Code section
27 709.10, subsection 6.

28 [b] You have the right to be informed of the results of a
29 sexual examination kit if such disclosure will not impede or
30 compromise an ongoing investigation.

31 [c] You have the right to be informed of the status and
32 location of a sexual assault evidence collection kit.

33 [d] At least sixty days prior to the intended disposal of
34 your sexual assault examination kit, you have the right to be
35 notified in writing by a law enforcement agency of the intended

1 disposal. This notice is required so that you can make a
2 written request for further preservation of the kit or its
3 probative contents.

4 [9] You have the right to request the presence of a
5 victim counselor, as defined in Iowa Code section 915.20A,
6 at any proceeding related to an assault including a medical
7 examination.

8 [10] If you believe that police protection is needed for your
9 physical safety, you have the right to request that the officer
10 present remain at the scene until you and other affected
11 parties can leave or until safety is otherwise ensured.

12 Sec. 3. Section 915.42, Code 2024, is amended to read as
13 follows:

14 **915.42 Right to ~~HIV-testing~~ HIV testing of convicted or**
15 **alleged assailant.**

16 1. Unless a petitioner chooses to be represented by private
17 counsel, the county attorney shall represent the victim's
18 interest in all proceedings under this subchapter.

19 2. ~~If a person is convicted of sexual assault or adjudicated~~
20 ~~delinquent for an act of sexual assault, the county attorney,~~
21 ~~if requested by the petitioner, shall petition the court for~~
22 ~~an order requiring the convicted offender to submit to an~~
23 ~~HIV-related test, provided that all of the following conditions~~
24 ~~are met:~~ A person who is an alleged offender shall, at the
25 direction of the court upon the court's own motion or upon
26 the request of the victim of the alleged offense, undergo a
27 standard diagnostic test approved by the United States food
28 and drug administration for HIV infection and other sexually
29 transmitted infections. If the person refuses to submit
30 voluntarily to the test, the court shall order the person to
31 submit to the test. On request of the victim of the alleged
32 offense, the court shall order the defendant to undergo the
33 test within forty-eight hours after a charge for the offense is
34 presented against the defendant.

35 ~~a. The sexual assault for which the offender was convicted~~

1 ~~or adjudicated delinquent included sufficient contact~~
2 ~~between the victim and the convicted offender to be deemed a~~
3 ~~significant exposure pursuant to [section 915.40](#).~~

4 ~~b. The authorized representative of the petitioner, the~~
5 ~~county attorney, or the court sought to obtain written informed~~
6 ~~consent from the convicted offender to the testing.~~

7 ~~c. Written informed consent was not provided by the~~
8 ~~convicted offender.~~

9 3. ~~If a person is an alleged offender, the county attorney,~~
10 ~~if requested by the victim, shall make application to the~~
11 ~~court for the issuance of a search warrant, in accordance with~~
12 ~~[chapter 808](#), for the purpose of requiring the alleged offender~~
13 ~~to submit to an HIV-related test, if all of the following~~
14 ~~conditions are met: If the victim requests testing of the~~
15 ~~defendant and a law enforcement agency is unable to locate~~
16 ~~the defendant during the forty-eight-hour period provided in~~
17 ~~subsection 2, the running of the forty-eight-hour period is~~
18 ~~tolled until a law enforcement agency locates the defendant and~~
19 ~~the defendant is present in the jurisdiction.~~

20 ~~a. The application states that the victim believes that~~
21 ~~the sexual assault for which the alleged offender is charged~~
22 ~~included sufficient contact between the victim and the alleged~~
23 ~~offender to be deemed a significant exposure pursuant to~~
24 ~~[section 915.40](#) and states the factual basis for the belief that~~
25 ~~a significant exposure exists.~~

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

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

31 4. ~~Upon receipt of the petition or application filed under~~
32 ~~[subsection 2 or 3](#), the court shall:~~

33 ~~a. Prior to the scheduling of a hearing, refer the victim~~
34 ~~for counseling by a victim counselor or a person requested~~
35 ~~by the victim to provide counseling regarding the nature,~~

1 ~~reliability, and significance of the HIV-related test and of~~
2 ~~the serologic status of the convicted or alleged offender.~~

3 ~~b. Schedule a hearing to be held as soon as is practicable.~~

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

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

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

18 ~~5. a. A hearing under [this section](#) shall be conducted in~~
19 ~~an informal manner consistent with orderly procedure and in~~
20 ~~accordance with the Iowa rules of evidence. The hearing shall~~
21 ~~be limited in scope to the review of questions of fact only~~
22 ~~as to the issue of whether the sexual assault for which the~~
23 ~~offender was convicted or adjudicated delinquent or for which~~
24 ~~the alleged offender was charged provided sufficient contact~~
25 ~~between the victim and the convicted or alleged offender to be~~
26 ~~deemed a significant exposure, and to questions of law.~~

27 ~~b. In determining whether the contact should be deemed a~~
28 ~~significant exposure for a convicted offender, the court shall~~
29 ~~base the determination on the testimony presented during the~~
30 ~~proceedings on the sexual assault charge, the minutes of the~~
31 ~~testimony or other evidence included in the court record, or if~~
32 ~~a plea of guilty was entered, based upon the complaint or upon~~
33 ~~testimony provided during the hearing. In determining whether~~
34 ~~the contact should be deemed a significant exposure for an~~
35 ~~alleged offender, the court shall base the determination on the~~

1 ~~application and the factual basis provided in the application~~
2 ~~for the belief of the applicant that a significant exposure~~
3 ~~exists.~~

4 ~~c. The victim may testify at the hearing but shall not~~
5 ~~be compelled to testify. The court shall not consider the~~
6 ~~refusal of a victim to testify at the hearing as material to~~
7 ~~the court's decision regarding issuance of an order or search~~
8 ~~warrant requiring testing.~~

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

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

18 ~~6. Following the hearing, the court shall require a~~
19 ~~convicted or alleged offender to undergo an HIV-related test~~
20 ~~only if the petitioner or victim proves all of the following by~~
21 ~~a preponderance of the evidence:~~

22 ~~a. The sexual assault constituted a significant exposure.~~

23 ~~b. An authorized representative of the petitioner or victim,~~
24 ~~the county attorney, or the court sought to obtain written~~
25 ~~informed consent from the convicted or alleged offender.~~

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

28 ~~7. A convicted offender who is required to undergo an~~
29 ~~HIV-related test may appeal to the court for review of~~
30 ~~questions of law only, but may appeal questions of fact if the~~
31 ~~findings of fact are clearly erroneous.~~

32 ~~Sec. 4. Section 915.43, Code 2024, is amended to read as~~
33 ~~follows:~~

34 **915.43 Testing, reporting, and counseling — penalties.**

35 ~~1. The physician or other practitioner who orders the test~~

1 ~~of a convicted or alleged offender for HIV~~ results of a test
2 ordered under this subchapter shall ~~disclose the results of the~~
3 ~~test be disclosed~~ to the convicted or alleged offender, and to
4 the victim counselor or a person requested by the victim to
5 ~~provide counseling regarding the HIV-related test and results~~
6 ~~who shall disclose the results to the petitioner~~ as soon as
7 practicable.

8 2. All testing under this chapter shall be accompanied by
9 counseling as required under section 141A.7.

10 3. ~~Subsequent testing arising out of the same incident of~~
11 ~~exposure shall be conducted in accordance with the procedural~~
12 ~~and confidentiality requirements of~~ this subchapter.

13 4. 3. Results of a test performed under this subchapter,
14 except as provided in subsection 13 11, shall be disclosed only
15 to the physician or other practitioner who ~~orders~~ performs the
16 test of the convicted or alleged offender; the convicted or
17 alleged offender; the victim; the victim counselor or person
18 requested by the victim to provide counseling regarding the
19 HIV-related test and results; the physician of the victim if
20 requested by the victim; the parent, guardian, or custodian of
21 the victim, if the victim is a minor; and the county attorney
22 ~~who filed the petition for HIV-related testing under this~~
23 ~~chapter~~. Results of a test performed under this subchapter
24 shall not be disclosed to any other person without the written
25 informed consent of the convicted or alleged offender. A
26 person to whom the results of a test have been disclosed under
27 this subchapter is subject to the confidentiality provisions of
28 section 141A.9, and shall not disclose the results to another
29 person except as authorized by section 141A.9, subsection 2,
30 paragraph "i".

31 5. 4. If testing is ordered under this subchapter, the
32 court shall also order periodic testing of the convicted or
33 alleged offender prior to trial and during the period of
34 incarceration, probation, or parole ~~or of the alleged offender~~
35 ~~during a period of six months following the initial test if~~

1 ~~the physician or other practitioner who ordered the initial~~
2 ~~test of the convicted or alleged offender certifies that, based~~
3 ~~upon prevailing scientific opinion regarding the maximum period~~
4 ~~during which the results of an HIV-related test may be negative~~
5 ~~for a person after being HIV-infected, additional testing~~
6 ~~is necessary to determine whether the convicted or alleged~~
7 ~~offender was HIV-infected at the time the sexual assault or~~
8 ~~alleged sexual assault was perpetrated as medically necessary.~~
9 The results of ~~the test~~ tests conducted pursuant to this
10 subsection shall be released only to the physician or other
11 practitioner who ~~orders~~ performs the test of the convicted or
12 alleged offender, i the convicted or alleged offender, i the
13 victim counselor or person requested by the victim to provide
14 the counseling regarding the HIV-related test and results, l who
15 shall disclose the results to the petitioner, i the physician
16 of the victim, if requested by the victim, i and the county
17 attorney ~~who filed the petition for HIV-related testing under~~
18 section 915.42.

19 ~~6.~~ 5. 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 ~~7.~~ 6. The fact that an HIV-related test was performed
23 under this subchapter and the results of the test shall not be
24 included in the convicted offender's medical or criminal record
25 unless otherwise included in department of corrections records.

26 ~~8.~~ 7. The fact that an HIV-related test was performed under
27 this subchapter and the results of the test shall not be used
28 as a basis for further prosecution of a convicted offender
29 in relation to the incident ~~which~~ that is the subject of the
30 testing, to enhance punishments, or to influence sentencing.

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

1 ~~an initial test under [this subchapter](#), and the rights to a~~
2 ~~predislosure hearing and to appeal provided under section~~
3 ~~915.42 shall apply.~~

4 ~~10.~~ 8. HIV-related testing required under [this subchapter](#)
5 shall be conducted by the state hygienic laboratory.

6 ~~11.~~ 9. Notwithstanding the provisions of [this subchapter](#)
7 requiring initial testing, ~~if a petition is filed with the~~
8 ~~court under [section 915.42](#) requesting an order for testing~~
9 ~~and the order is granted, and if a test has previously been~~
10 performed on the convicted or alleged offender while under the
11 control of the department of corrections, the test results
12 shall be provided in lieu of the performance of an initial test
13 of the convicted or alleged offender, in accordance with this
14 subchapter.

15 ~~12.~~ 10. In addition to the counseling received by a victim,
16 referral to appropriate health care and support services shall
17 be provided.

18 ~~13.~~ 11. In addition to persons to whom disclosure of
19 the results of a convicted or alleged offender's HIV-related
20 test results is authorized under [this subchapter](#), the victim
21 may also disclose the results to the victim's spouse, persons
22 with whom the victim has engaged in vaginal, anal, or oral
23 intercourse subsequent to the sexual assault, or members of the
24 victim's family within the third degree of consanguinity.

25 ~~14.~~ 12. A person to whom disclosure of a convicted or
26 alleged offender's HIV-related test results is authorized
27 under [this subchapter](#) shall not disclose the results to any
28 other person for whom disclosure is not authorized under this
29 subchapter. A person who intentionally or recklessly makes
30 an unauthorized disclosure in violation of [this subsection](#)
31 is subject to a civil penalty of one thousand dollars.
32 The attorney general or the attorney general's designee
33 may maintain a civil action to enforce [this subchapter](#).
34 Proceedings maintained under [this subsection](#) shall provide for
35 the anonymity of the test subject and all documentation shall

1 be maintained in a confidential manner.

2 EXPLANATION

3 The inclusion of this explanation does not constitute agreement with
4 the explanation's substance by the members of the general assembly.

5 This bill relates to victims of sexual assault including
6 sexual abuse evidence, notification of rights, HIV testing of
7 a convicted or alleged assailant, and testing, reporting, and
8 counseling of a victim.

9 Current law requires a law enforcement agency to store a
10 sexual abuse evidence collection kit (kit) for a minimum of 15
11 years, or in the case of a minor victim for a minimum of 15
12 years after the minor reaches the age of majority.

13 The bill provides that the law enforcement agency shall
14 store the kit in a clean, dry location for a minimum of 20
15 years, or in the case of a minor victim for the lifetime of the
16 minor victim, even if the reported victim of sexual abuse has
17 not filed a criminal complaint.

18 The bill requires the law enforcement agency to notify the
19 reported victim in writing, not later than 60 days before the
20 intended date of disposal of the kit, the reason for disposal
21 of the kit, and the options that remain available for retention
22 and analysis of the kit, if any. Upon written request of the
23 reported victim, the law enforcement agency shall provide
24 further preservation of the kit or its probative contents.

25 Code section 709.22 provides that if a law enforcement
26 officer has reason to believe that a sexual assault has
27 occurred, the officer is required to provide the victim with
28 immediate and adequate notice of the victim's rights.

29 The bill amends the information required to be included in
30 the document explaining the victim's right to include: you
31 have the right to a sexual assault examination performed at
32 state expense and the right not to be prevented from receiving
33 a sexual assault examination. If you choose to have a sexual
34 assault examination, you have the right to have a sexual
35 assault examination kit or its probative contents preserved,

1 without charge, for 20 years, or in the case of a minor victim,
2 for the lifetime of the minor victim. This is your right even
3 if you do not file a criminal complaint, pursuant to Code
4 section 709.10(6). You have the right to be informed of the
5 results of a sexual examination kit if such disclosure will not
6 impede or compromise an ongoing investigation. You have the
7 right to be informed of the status and location of a sexual
8 assault evidence collection kit, and at least 60 days prior
9 to the intended disposal of your sexual assault examination
10 kit, you have the right to be notified in writing by a law
11 enforcement agency of the intended disposal. This notice is
12 required so that you can make a written request for further
13 preservation of the kit or its probative contents.

14 Current law provides that if a person is convicted of
15 sexual assault or adjudicated delinquent for an act of sexual
16 assault, the county attorney, if requested by the petitioner,
17 shall petition the court for an order requiring the convicted
18 offender to submit to an HIV-related test, and provides for a
19 hearing.

20 The bill removes the petition and hearing requirements and
21 provides that unless a petitioner chooses to be represented
22 by private counsel, the county attorney shall represent
23 the victim's interest. A person who is an alleged sexual
24 assault offender shall, at the direction of the court or upon
25 the request of the victim of the alleged offense, undergo a
26 standard diagnostic test approved by the United States food
27 and drug administration for HIV infection and other sexually
28 transmitted infections. If the person refuses to submit
29 voluntarily to the test, the court shall order the person
30 to submit to the test. On request of the victim, the court
31 shall order the defendant to undergo the test within 48 hours
32 after the defendant is charged for the offense. If the victim
33 requests testing of the defendant and a law enforcement agency
34 is unable to locate the defendant during the 48-hour period,
35 the running of the 48-hour period is tolled until a law

1 enforcement agency locates the defendant and the defendant is
2 present in the jurisdiction.

3 The bill provides that the results of a test ordered under
4 Code section 915.42 shall be disclosed to the convicted or
5 alleged offender and to the victim as soon as practicable. In
6 addition to the victim and the convicted or alleged offender,
7 test results shall only be disclosed to: the physician or
8 other practitioner who performs the test; the victim counselor
9 or person requested by the victim to provide counseling
10 regarding the HIV-related test and results; the physician of
11 the victim if requested by the victim; the parent, guardian,
12 or custodian of the victim, if the victim is a minor; and
13 the county attorney. If testing is ordered, the court shall
14 also order periodic testing of the convicted or alleged
15 offender prior to trial and during the period of incarceration,
16 probation, or parole or as medically necessary.