



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

HB6890

Introduced 2/9/2004, by John J. Millner

SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-18

from Ch. 38, par. 12-18

Amends the Criminal Code of 1961. Provides that if a person is charged with criminal sexual abuse or aggravated criminal sexual abuse, the prosecuting State's Attorney shall seek an order from the court to compel the accused to be tested for a sexually transmissible disease, including a test for infection with HIV. Presently, the test is only required for persons charged with criminal sexual assault, aggravated criminal sexual assault, or predatory criminal sexual assault of a child.

LRB093 18458 RLC 44170 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Section 12-18 as follows:

6 (720 ILCS 5/12-18) (from Ch. 38, par. 12-18)

7 Sec. 12-18. General Provisions.

8 (a) No person accused of violating Sections 12-13, 12-14,
9 12-15 or 12-16 of this Code shall be presumed to be incapable
10 of committing an offense prohibited by Sections 12-13, 12-14,
11 12-14.1, 12-15 or 12-16 of this Code because of age, physical
12 condition or relationship to the victim, except as otherwise
13 provided in subsection (c) of this Section. Nothing in this
14 Section shall be construed to modify or abrogate the
15 affirmative defense of infancy under Section 6-1 of this Code
16 or the provisions of Section 5-805 of the Juvenile Court Act of
17 1987.

18 (b) Any medical examination or procedure which is conducted
19 by a physician, nurse, medical or hospital personnel, parent,
20 or caretaker for purposes and in a manner consistent with
21 reasonable medical standards is not an offense under Sections
22 12-13, 12-14, 12-14.1, 12-15 and 12-16 of this Code.

23 (c) Prosecution of a spouse of a victim under this
24 subsection for any violation by the victim's spouse of Section
25 12-13, 12-14, 12-15 or 12-16 of this Code is barred unless the
26 victim reported such offense to a law enforcement agency or the
27 State's Attorney's office within 30 days after the offense was
28 committed, except when the court finds good cause for the
29 delay.

30 (d) In addition to the sentences provided for in Sections
31 12-13, 12-14, 12-14.1, 12-15 and 12-16 of the Criminal Code of
32 1961 the Court may order any person who is convicted of

1 violating any of those Sections to meet all or any portion of
2 the financial obligations of treatment, including but not
3 limited to medical, psychiatric, rehabilitative or
4 psychological treatment, prescribed for the victim or victims
5 of the offense.

6 (e) After a finding at a preliminary hearing that there is
7 probable cause to believe that an accused has committed a
8 violation of Section 12-13, 12-14, ~~or 12-14.1,~~ 12-15, or 12-16
9 of this Code, or after an indictment is returned charging an
10 accused with a violation of Section 12-13, 12-14, ~~or 12-14.1,~~
11 12-15, or 12-16 of this Code, or after a finding that a
12 defendant charged with a violation of Section 12-13, 12-14, ~~or~~
13 12-14.1, 12-15, or 12-16 of this Code is unfit to stand trial
14 pursuant to Section 104-16 of the Code of Criminal Procedure of
15 1963 where the finding is made prior to preliminary hearing, at
16 the request of the person who was the victim of the violation
17 of Section 12-13, 12-14, ~~or 12-14.1,~~ 12-15, or 12-16, the
18 prosecuting State's attorney shall seek an order from the court
19 to compel the accused to be tested for any sexually
20 transmissible disease, including a test for infection with
21 human immunodeficiency virus (HIV). The medical tests shall be
22 performed only by appropriately licensed medical
23 practitioners. The test for infection with human
24 immunodeficiency virus (HIV) shall consist of an enzyme-linked
25 immunosorbent assay (ELISA) test, or such other test as may be
26 approved by the Illinois Department of Public Health; in the
27 event of a positive result, the Western Blot Assay or a more
28 reliable confirmatory test shall be administered. The results
29 of the tests shall be kept strictly confidential by all medical
30 personnel involved in the testing and must be personally
31 delivered in a sealed envelope to the victim and to the judge
32 who entered the order, for the judge's inspection in camera.
33 Acting in accordance with the best interests of the victim and
34 the public, the judge shall have the discretion to determine to
35 whom, if anyone, the result of the testing may be revealed;
36 however, in no case shall the identity of the victim be

1 disclosed. The court shall order that the cost of the tests
2 shall be paid by the county, and may be taxed as costs against
3 the accused if convicted.

4 (f) Whenever any law enforcement officer has reasonable
5 cause to believe that a person has been delivered a controlled
6 substance without his or her consent, the law enforcement
7 officer shall advise the victim about seeking medical treatment
8 and preserving evidence.

9 (g) Every hospital providing emergency hospital services
10 to an alleged sexual assault survivor, when there is reasonable
11 cause to believe that a person has been delivered a controlled
12 substance without his or her consent, shall designate personnel
13 to provide:

14 (1) An explanation to the victim about the nature and
15 effects of commonly used controlled substances and how such
16 controlled substances are administered.

17 (2) An offer to the victim of testing for the presence
18 of such controlled substances.

19 (3) A disclosure to the victim that all controlled
20 substances or alcohol ingested by the victim will be
21 disclosed by the test.

22 (4) A statement that the test is completely voluntary.

23 (5) A form for written authorization for sample
24 analysis of all controlled substances and alcohol ingested
25 by the victim.

26 A physician licensed to practice medicine in all its
27 branches may agree to be a designated person under this
28 subsection.

29 No sample analysis may be performed unless the victim
30 returns a signed written authorization within 48 hours after
31 the sample was collected.

32 Any medical treatment or care under this subsection shall
33 be only in accordance with the order of a physician licensed to
34 practice medicine in all of its branches. Any testing under
35 this subsection shall be only in accordance with the order of a
36 licensed individual authorized to order the testing.

1 (Source: P.A. 91-271, eff. 1-1-00; 91-357, eff. 7-29-99; 92-81,
2 eff. 7-12-01.)