



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2355

Introduced 2/14/2008, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-18

from Ch. 38, par. 12-18

Amends the Criminal Code of 1961. Provides that the time period in which a prosecuting State's Attorney at the request of the victim must seek a court order to compel the accused to be tested for a sexually transmissible disease, including HIV, if the accused has been charged with criminal sexual assault, aggravated criminal sexual assault, or predatory criminal sexual assault of a child is within 48 hours after the finding at the preliminary hearing that there is probable cause that the accused has committed the offense or within 48 hours after return of the indictment or within 48 hours after a finding of unfitness of the defendant to stand trial. Provides that follow-up tests shall be kept confidential and the results of the tests must be personally delivered in a sealed envelope to the defendant. Provides that the costs of the tests shall (rather than may) be taxed as costs against the accused if convicted. Effective immediately.

LRB095 18741 RLC 44854 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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) (Blank).

1 (d) (Blank).

2 (e) After a finding at a preliminary hearing that there is
3 probable cause to believe that an accused has committed a
4 violation of Section 12-13, 12-14, or 12-14.1 of this Code, or
5 after an indictment is returned charging an accused with a
6 violation of Section 12-13, 12-14, or 12-14.1 of this Code, or
7 after a finding that a defendant charged with a violation of
8 Section 12-13, 12-14, or 12-14.1 of this Code is unfit to stand
9 trial pursuant to Section 104-16 of the Code of Criminal
10 Procedure of 1963 where the finding is made prior to
11 preliminary hearing, at the request of the person who was the
12 victim of the violation of Section 12-13, 12-14, or 12-14.1,
13 the prosecuting State's attorney shall, within 48 hours, seek
14 an order from the court to compel the accused to be tested for
15 any sexually transmissible disease, including a test for
16 infection with human immunodeficiency virus (HIV). The medical
17 tests shall be performed only by appropriately licensed medical
18 practitioners. The test for infection with human
19 immunodeficiency virus (HIV) shall consist of an enzyme-linked
20 immunosorbent assay (ELISA) test, or such other test as may be
21 approved by the Illinois Department of Public Health; in the
22 event of a positive result, the Western Blot Assay or a more
23 reliable confirmatory test shall be administered. The results
24 of the tests and any follow-up tests shall be kept strictly
25 confidential by all medical personnel involved in the testing
26 and must be personally delivered in a sealed envelope to the

1 victim, to the defendant, and to the judge who entered the
2 order, for the judge's inspection in camera. Acting in
3 accordance with the best interests of the victim and the
4 public, the judge shall have the discretion to determine to
5 whom, if anyone, the result of the testing may be revealed;
6 however, in no case shall the identity of the victim be
7 disclosed. The court shall order that the cost of the tests
8 shall be paid by the county, and shall ~~may~~ be taxed as costs
9 against the accused if convicted.

10 (f) Whenever any law enforcement officer has reasonable
11 cause to believe that a person has been delivered a controlled
12 substance without his or her consent, the law enforcement
13 officer shall advise the victim about seeking medical treatment
14 and preserving evidence.

15 (g) Every hospital providing emergency hospital services
16 to an alleged sexual assault survivor, when there is reasonable
17 cause to believe that a person has been delivered a controlled
18 substance without his or her consent, shall designate personnel
19 to provide:

20 (1) An explanation to the victim about the nature and
21 effects of commonly used controlled substances and how such
22 controlled substances are administered.

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

25 (3) A disclosure to the victim that all controlled
26 substances or alcohol ingested by the victim will be

1 disclosed by the test.

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

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

6 A physician licensed to practice medicine in all its
7 branches may agree to be a designated person under this
8 subsection.

9 No sample analysis may be performed unless the victim
10 returns a signed written authorization within 30 days after the
11 sample was collected.

12 Any medical treatment or care under this subsection shall
13 be only in accordance with the order of a physician licensed to
14 practice medicine in all of its branches. Any testing under
15 this subsection shall be only in accordance with the order of a
16 licensed individual authorized to order the testing.

17 (Source: P.A. 93-958, eff. 8-20-04; 94-397, eff. 1-1-06.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.