



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1492

Introduced 2/21/2007, by Rep. Mike Bost

SYNOPSIS AS INTRODUCED:

720 ILCS 5/12-18

from Ch. 38, par. 12-18

Amends provisions of the Criminal Code of 1961 requiring a State's Attorney to seek a court order to compel a person accused of criminal sexual assault, aggravated criminal sexual assault, or predatory criminal sexual assault of a child to be tested for any sexually transmissible disease, including human immunodeficiency virus. Provides that the State's Attorney shall seek to compel the accused to be tested not later than 48 hours after the date on which the information or indictment is presented. Effective immediately.

LRB095 03359 RLC 23363 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 ~~attorney~~ shall seek an order
14 from the court to compel the accused to be tested, not later
15 than 48 hours after the date on which the information or
16 indictment is presented, for any sexually transmissible
17 disease, including a test for infection with human
18 immunodeficiency virus (HIV). The medical tests shall be
19 performed only by appropriately licensed medical
20 practitioners. The test for infection with human
21 immunodeficiency virus (HIV) shall consist of an enzyme-linked
22 immunosorbent assay (ELISA) test, or such other test as may be
23 approved by the Illinois Department of Public Health; in the
24 event of a positive result, the Western Blot Assay or a more
25 reliable confirmatory test shall be administered. The results
26 of the tests shall be kept strictly confidential by all medical

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

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

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

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

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

26 (3) A disclosure to the victim that all controlled

1 substances or alcohol ingested by the victim will be
2 disclosed by the test.

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

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

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

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

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

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

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