

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 seek an order from the  
14 court to compel the accused to be tested within 48 hours 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, to the State's Attorney, and to the  
2 judge who entered the order, for the judge's inspection in  
3 camera. The judge shall provide to the victim a referral to the  
4 Illinois Department of Public Health HIV/AIDS toll-free  
5 hotline for counseling and information in connection with the  
6 test result. Acting in accordance with the best interests of  
7 the victim and the public, the judge shall have the discretion  
8 to determine to whom, if anyone, the result of the testing may  
9 be revealed; however, in no case shall the identity of the  
10 victim be disclosed. The court shall order that the cost of the  
11 tests shall be paid by the county, and shall ~~may~~ be taxed as  
12 costs against the accused if convicted.

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

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

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

26 (2) An offer to the victim of testing for the presence

1 of such controlled substances.

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

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

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

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

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

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

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

21 Section 99. Effective date. This Act takes effect upon  
22 becoming law.