

HOUSE BILL ANALYSIS

HB 1227

Title: An act relating to human immunodeficiency virus testing for persons arrested for prostitution and patronizing a prostitute.

Brief Description: Requiring HIV testing for persons arrested for being involved with prostitution.

Sponsors: Representatives Scott, Koster, Mielke, Backlund, O'Brien and Sheldon.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Edie Adams (786-7180).

Background: The public health chapter covering sexually transmitted diseases provides that local health departments may investigate, examine, and counsel persons reasonably believed to be infected with or to have been exposed to a sexually transmitted disease, including the human immunodeficiency virus (HIV).

A person may not be required to undergo HIV testing without the person's consent except in a few circumstances. The following people may be compelled to undergo an HIV test: (1) a person convicted of a sex offense; (2) a person convicted of a drug offense associated with the use of a hypodermic needle; and (3) a person convicted of prostitution or an offense relating to prostitution.

All mandatory HIV testing for persons convicted of a specified offense must occur soon after sentencing and upon an order of the sentencing judge. The tests are performed by the local health department and must include both pretest and posttest counseling.

The results of an HIV test may not be disclosed, except in limited circumstances, to protect the privacy of the tested person. Anyone who obtains the test results under one of the exceptions may not disclose the results to anyone else, with certain limited exceptions. A violation of the confidentiality restriction is a gross misdemeanor.

Assault in the second degree may be committed under a number of circumstances which involve the infliction or potential infliction of bodily injury or substantial bodily injury. A person is guilty of assault in the second degree if the person, with intent to inflict bodily harm, administers to or causes to be taken by another the human immunodeficiency virus, or exposes to or transmits to another the human

immunodeficiency virus. Second-degree assault is a class B felony ranked at seriousness level IV under the Sentencing Reform Act.

Summary of Bill: A person who is arrested for prostitution or patronizing a prostitute must submit to an HIV test approved by the State Board of Health. The person must pay \$100 for the cost of the test if the person is convicted of the charge.

The results of the HIV test must be transmitted to the arresting law enforcement agency. The agency must inform the court of the test results if the results are negative. If the results are positive, the agency must mail the results by certified mail, return receipt requested, to the person arrested and place the returned receipt in the agency's file or, if the person is in custody, personally deliver the results to the person and place an affidavit of service in the agency's file.

A person arrested for prostitution or patronizing a prostitute must appear before the court 45 days after arraignment, unless the court is notified by the arresting law enforcement agency that the results of the test were negative or by the person in writing that the person received the test results.

At the reappearance, the person must indicate whether or not the person received the results of the test. If the person answers that the test results were received, the court must note the answer in the court records. If the person answers that the test results have not been received, the court must order the results delivered to the person and direct that an affidavit of service be placed in the agency's file. The court may cause a bench warrant to be issued for any person who does not reappear as ordered.

A person is guilty of assault in the second degree if the person violates the offense of prostitution or patronizing a prostitute after testing positive for HIV in a test approved by the State Board of Health and receiving notice of the positive test result.

Fiscal Note: Requested January 27, 1997.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research