

SB3673



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3673

Introduced 2/10/2012, by Sen. Dale A. Righter

SYNOPSIS AS INTRODUCED:

410 ILCS 305/9

from Ch. 111 1/2, par. 7309

720 ILCS 5/12-5.01

was 720 ILCS 5/12-16.2

Amends the AIDS Confidentiality Act. Provides that the identity of any person upon whom an HIV test is performed, and the results of such a test in a manner which permits identification of the subject of the test may be disclosed to a court in accordance with the provisions of the statute concerning the offense of criminal transmission of HIV. Amends the Criminal Code of 1961 concerning criminal transmission of HIV. Requires the defendant to have the specific intent to commit the offense. Requires the defendant to know that he or she is infected with HIV. Changes an element of the offense from engaging in intimate contact with another to engaging in sexual activity with another without the use of a condom when the defendant knows that he or she is infected with HIV. Provides that a prosecuting entity may issue a subpoena duces tecum for the records of a person charged with the offense of criminal transmission of HIV or a subpoena for the attendance of a person with relevant knowledge thereof so long as the return of the records or attendance of the person pursuant to the subpoena is submitted initially to the court for an in camera inspection. Provides that only upon a finding by the court that the records or proffered testimony are relevant to the pending offense, the information sought by the subpoena shall be disclosed to the prosecuting entity and admissible if otherwise permitted by law. Effective immediately.

LRB097 17709 RLC 62923 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning human immunodeficiency virus.

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

4 Section 5. The AIDS Confidentiality Act is amended by
5 changing Section 9 as follows:

6 (410 ILCS 305/9) (from Ch. 111 1/2, par. 7309)

7 Sec. 9. No person may disclose or be compelled to disclose
8 the identity of any person upon whom a test is performed, or
9 the results of such a test in a manner which permits
10 identification of the subject of the test, except to the
11 following persons:

12 (a) The subject of the test or the subject's legally
13 authorized representative. A physician may notify the spouse of
14 the test subject, if the test result is positive and has been
15 confirmed pursuant to rules adopted by the Department, provided
16 that the physician has first sought unsuccessfully to persuade
17 the patient to notify the spouse or that, a reasonable time
18 after the patient has agreed to make the notification, the
19 physician has reason to believe that the patient has not
20 provided the notification. This paragraph shall not create a
21 duty or obligation under which a physician must notify the
22 spouse of the test results, nor shall such duty or obligation
23 be implied. No civil liability or criminal sanction under this

1 Act shall be imposed for any disclosure or non-disclosure of a
2 test result to a spouse by a physician acting in good faith
3 under this paragraph. For the purpose of any proceedings, civil
4 or criminal, the good faith of any physician acting under this
5 paragraph shall be presumed.

6 (b) Any person designated in a legally effective release of
7 the test results executed by the subject of the test or the
8 subject's legally authorized representative.

9 (c) An authorized agent or employee of a health facility or
10 health care provider if the health facility or health care
11 provider itself is authorized to obtain the test results, the
12 agent or employee provides patient care or handles or processes
13 specimens of body fluids or tissues, and the agent or employee
14 has a need to know such information.

15 (d) The Department and local health authorities serving a
16 population of over 1,000,000 residents or other local health
17 authorities as designated by the Department, in accordance with
18 rules for reporting and controlling the spread of disease, as
19 otherwise provided by State law. The Department, local health
20 authorities, and authorized representatives shall not disclose
21 information and records held by them relating to known or
22 suspected cases of AIDS or HIV infection, publicly or in any
23 action of any kind in any court or before any tribunal, board,
24 or agency. AIDS and HIV infection data shall be protected from
25 disclosure in accordance with the provisions of Sections 8-2101
26 through 8-2105 of the Code of Civil Procedure.

1 (e) A health facility or health care provider which
2 procures, processes, distributes or uses: (i) a human body part
3 from a deceased person with respect to medical information
4 regarding that person; or (ii) semen provided prior to the
5 effective date of this Act for the purpose of artificial
6 insemination.

7 (f) Health facility staff committees for the purposes of
8 conducting program monitoring, program evaluation or service
9 reviews.

10 (f-5) A court in accordance with the provisions of Section
11 12-5.01 of the Criminal Code of 1961.

12 (g) (Blank).

13 (h) Any health care provider or employee of a health
14 facility, and any firefighter or EMT-A, EMT-P, or EMT-I,
15 involved in an accidental direct skin or mucous membrane
16 contact with the blood or bodily fluids of an individual which
17 is of a nature that may transmit HIV, as determined by a
18 physician in his medical judgment.

19 (i) Any law enforcement officer, as defined in subsection
20 (c) of Section 7, involved in the line of duty in a direct skin
21 or mucous membrane contact with the blood or bodily fluids of
22 an individual which is of a nature that may transmit HIV, as
23 determined by a physician in his medical judgment.

24 (j) A temporary caretaker of a child taken into temporary
25 protective custody by the Department of Children and Family
26 Services pursuant to Section 5 of the Abused and Neglected

1 Child Reporting Act, as now or hereafter amended.

2 (k) In the case of a minor under 18 years of age whose test
3 result is positive and has been confirmed pursuant to rules
4 adopted by the Department, the health care provider who ordered
5 the test shall make a reasonable effort to notify the minor's
6 parent or legal guardian if, in the professional judgment of
7 the health care provider, notification would be in the best
8 interest of the child and the health care provider has first
9 sought unsuccessfully to persuade the minor to notify the
10 parent or legal guardian or a reasonable time after the minor
11 has agreed to notify the parent or legal guardian, the health
12 care provider has reason to believe that the minor has not made
13 the notification. This subsection shall not create a duty or
14 obligation under which a health care provider must notify the
15 minor's parent or legal guardian of the test results, nor shall
16 a duty or obligation be implied. No civil liability or criminal
17 sanction under this Act shall be imposed for any notification
18 or non-notification of a minor's test result by a health care
19 provider acting in good faith under this subsection. For the
20 purpose of any proceeding, civil or criminal, the good faith of
21 any health care provider acting under this subsection shall be
22 presumed.

23 (Source: P.A. 96-328, eff. 8-11-09.)

24 Section 10. The Criminal Code of 1961 is amended by
25 changing Section 12-5.01 as follows:

1 (720 ILCS 5/12-5.01) (was 720 ILCS 5/12-16.2)

2 Sec. 12-5.01. Criminal transmission of HIV.

3 (a) A person commits criminal transmission of HIV when he
4 or she, with the specific intent to commit the offense ~~knowing~~
5 ~~that he or she is infected with HIV:~~

6 (1) engages in sexual activity with another without the
7 use of a condom knowing that he or she is infected with HIV
8 ~~intimate contact with another;~~

9 (2) transfers, donates, or provides his or her blood,
10 tissue, semen, organs, or other potentially infectious
11 body fluids for transfusion, transplantation,
12 insemination, or other administration to another knowing
13 that he or she is infected with HIV; or

14 (3) dispenses, delivers, exchanges, sells, or in any
15 other way transfers to another any nonsterile intravenous
16 or intramuscular drug paraphernalia knowing that he or she
17 is infected with HIV.

18 (b) For purposes of this Section:

19 "HIV" means the human immunodeficiency virus or any other
20 identified causative agent of acquired immunodeficiency
21 syndrome.

22 "Sexual activity" means the insertive vaginal or anal
23 intercourse on the part of an infected male, receptive
24 consensual vaginal intercourse on the part of an infected woman
25 with a male partner, or receptive consensual anal intercourse

1 on the part of an infected man or woman with a male partner.

2 ~~"Intimate contact with another" means the exposure of the~~
3 ~~body of one person to a bodily fluid of another person in a~~
4 ~~manner that could result in the transmission of HIV.~~

5 "Intravenous or intramuscular drug paraphernalia" means
6 any equipment, product, or material of any kind which is
7 peculiar to and marketed for use in injecting a substance into
8 the human body.

9 (c) Nothing in this Section shall be construed to require
10 that an infection with HIV has occurred in order for a person
11 to have committed criminal transmission of HIV.

12 (d) It shall be an affirmative defense that the person
13 exposed knew that the infected person was infected with HIV,
14 knew that the action could result in infection with HIV, and
15 consented to the action with that knowledge.

16 (d-5) A court, upon a finding of reasonable suspicion that
17 an individual has committed the crime of criminal transmission
18 of HIV, shall order the production of records of a person
19 accused of the offense of criminal transmission of HIV or the
20 attendance of a person with relevant knowledge thereof so long
21 as the return of the records or attendance of the person
22 pursuant to the subpoena is submitted initially to the court
23 for an in camera inspection. Only upon a finding by the court
24 that the records or proffered testimony are relevant to the
25 pending offense, the information produced pursuant to the
26 court's order shall be disclosed to the prosecuting entity and

1 admissible if otherwise permitted by law.

2 (e) A person who commits criminal transmission of HIV
3 commits a Class 2 felony.

4 (Source: P.A. 96-1551, eff. 7-1-11.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.