

Senate Bill 320

By: Senators Rhett of the 33rd, Strickland of the 17th, Jones II of the 22nd, Parent of the 42nd, Butler of the 55th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated,
2 relating to procedure for sentencing and imposition of punishment, so as to provide for time
3 frames for HIV testing; to provide for additional testing; to provide for disclosure of test
4 results; to provide for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 style="text-align:center">**SECTION 1.**

7 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
8 procedure for sentencing and imposition of punishment, is amended by revising Code
9 Section 17-10-15, relating to AIDS transmitting crimes, requiring defendant to submit to HIV
10 test, and report of results, as follows:

11 "17-10-15.

12 (a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have
13 the meaning provided for such term in Code Section 31-22-9.1.

14 (b) A victim or the parent or legal guardian of a minor or incompetent victim of a sexual
15 offense as defined in Code Section 31-22-9.1 or other crime which involves significant
16 exposure as defined by subsection ~~(f)~~ (g) of this Code section may request that the agency
17 responsible for prosecuting the alleged offense request that the person arrested for such

18 offense submit to a test for the human immunodeficiency virus and consent to the release
19 of the test results to the victim, and such testing shall be required to be performed within 48
20 hours after the date on which the indictment or accusation is presented and the defendant
21 is in custody or has been served with the indictment or accusation. If the person so arrested
22 declines to submit to such a test, the judge of the superior court in which the criminal
23 charge is pending, upon a showing of probable cause that the person arrested for the
24 offense committed the alleged crime and that significant exposure occurred, may order the
25 test to be performed within 48 hours after the date on which the indictment or accusation
26 is presented in compliance with the rules adopted by the Department of Public Health. The
27 cost of the test shall be borne ~~by the victim or~~ by the arrested person, in the discretion of
28 the court.

29 (c) Upon a verdict or plea of guilty or a plea of nolo contendere to any AIDS transmitting
30 crime, the court in which that verdict is returned or plea entered shall require the defendant
31 in such case to submit to an HIV test ~~within 45 days~~ as soon as practicably possible, but
32 no later than 48 hours following the date of such verdict or plea, if an HIV test has not been
33 undertaken in accordance with subsection (b) of this Code section.

34 (d) Any person required under this Code section to submit to the HIV test who fails or
35 refuses to submit to the test shall be subject to such measures deemed necessary by the
36 court in which the order was entered, verdict was returned, or plea was entered to require
37 involuntary submission to the HIV test, and submission thereto may also be made a
38 condition of suspending or probating any part of that person's sentence for the AIDS
39 transmitting crime.

40 (e) If deemed medically appropriate, follow-up tests for HIV shall be provided when
41 testing has been ordered under subsections (b), (c), or (d) of this Code section. The
42 medical propriety of follow-up HIV testing shall be based upon a determination by a
43 physician and does not require an additional court order. Notification to the victim or the
44 parent or legal guardian of a minor or incompetent victim and the defendant of the results

45 of each follow-up test result shall be given as soon as practicable in accordance with the
46 regulations and requirements of the Department of Public Health and this Code section.

47 (f) If a person is required by this Code section to submit to an HIV test and is thereby
48 determined to be infected with HIV, that determination and the name of the person shall
49 be reported to:

50 (1) The Department of Public Health, which shall disclose the name of the person and
51 results of the HIV test as necessary to provide counseling to each victim of that person's
52 AIDS transmitting crime if that crime is other than one specified in
53 subparagraph (a)(3)(J) of Code Section 31-22-9.1 or to any parent or guardian of any
54 such victim who is a minor or incompetent person;

55 (2) The court which ordered the HIV test, which court shall make that report a part of
56 that person's criminal record. That report shall be sealed by the court; and

57 (3) The officer in charge of any penal institution or other facility in which the person has
58 been confined by order or sentence of the court for purposes of enabling that officer to
59 confine the person separately from those not infected with HIV.

60 ~~(f)~~(g) For the purpose of subsection (b) of this Code section, the term 'significant exposure'
61 means contact of the victim's ruptured or broken skin or mucous membranes with the blood
62 or body fluids of the person arrested for such offense, other than tears, saliva, or
63 perspiration, of a magnitude that the Centers for Disease Control and Prevention have
64 epidemiologically demonstrated can result in transmission of the human immunodeficiency
65 virus.

66 ~~(G)~~(h) The state may not use the fact that a medical procedure or test was performed on
67 a person under this Code section or use the results of the procedure or test in any criminal
68 proceeding arising out of the alleged offense."

69 **SECTION 2.**

70 All laws and parts of laws in conflict with this Act are repealed.