

The Senate Committee on Judiciary offered the following substitute to SB 320:

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

14 (2) As used in this Code section, the term 'significant exposure' means contact of the  
15 victim's ruptured or broken skin or mucous membranes with the blood or body fluids of  
16 the person arrested for such offense, other than tears, saliva, or perspiration, of a

17 magnitude that the Centers for Disease Control and Prevention have epidemiologically  
18 demonstrated can result in transmission of HIV.

19 (b) In any case in which a person has been arrested for, charged by accusation or  
20 indictment with, or alleged by petition for delinquency to have committed an AIDS  
21 transmitting crime or other crime which involves the transmission of body fluids from one  
22 person to another or significant exposure to HIV, upon request by the A victim or the  
23 parent or legal guardian of a minor or incompetent victim, of a sexual offense as defined  
24 in Code Section 31-22-9.1 or other crime which involves significant exposure as defined  
25 by subsection (f) of this Code section may request that the agency responsible for the arrest  
26 or the prosecution of prosecuting the alleged offense shall request that the person arrested  
27 for such offense submit to a an HIV test for the human immunodeficiency virus and  
28 consent to the release of the test results to the victim. If the person so arrested declines to  
29 submit to such a test, the judge of the superior court in which the criminal or delinquency  
30 charge is pending, upon a showing of probable cause that the person arrested for the  
31 offense committed the alleged crime and that significant exposure occurred, may shall  
32 order the HIV test to be performed in compliance with the rules adopted by the Department  
33 of Public Health. Such testing shall be required to be performed within 48 hours after:

34 (1) The accused person consents to the test;

35 (2) The date on which the indictment or accusation is presented or the petition for  
36 delinquency is filed and the accused is in custody or has been served with the indictment,  
37 accusation, or petition for delinquency; or

38 (3) If more than 48 hours have elapsed since the indictment or accusation was presented  
39 or the petition for delinquency was filed, and the accused is in custody or has been served  
40 with the indictment, accusation, or petition for delinquency, within 48 hours of a request  
41 for testing by request by the victim or the parent or legal guardian of a minor or  
42 incompetent victim. The cost of the test shall be borne by the victim or by the arrested  
43 person, in the discretion of the court.

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

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

56 (e) If deemed medically appropriate, follow-up tests for HIV shall be provided when  
57 testing has been ordered under subsections (b), (c), or (d) of this Code section. The  
58 medical propriety of follow-up HIV testing shall be based upon a determination by a  
59 physician and does not require an additional court order. Notification to the victim or the  
60 parent or legal guardian of a minor or incompetent victim and the defendant of the results  
61 of each follow-up test result shall be given as soon as practicable in accordance with the  
62 regulations and requirements of the Department of Public Health and this Code section.

63 (f) If a person is required by this Code section to submit to an HIV test, ~~and is thereby~~  
64 ~~determined to be infected with HIV, that determination and the name of the person and~~  
65 such HIV test results shall be reported to:

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

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

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

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

81 (g) The state may not use the fact that a medical procedure or test was performed on a  
82 person under this Code section or use the results of the procedure or test in any criminal  
83 proceeding arising out of the alleged offense."

84

## SECTION 2.

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