

January 30, 1998

HOUSE BILL No. 1010

DIGEST OF HB 1010 (Updated January 29, 1998 1:50 pm - DI 51)

Citations Affected: IC 35-38.

Synopsis: HIV testing of sex offenders. Allows a court to order HIV testing of a person charged with a sex crime, upon written request of the victim, after a finding of probable cause by the court that an exposure has occurred. Makes the results of the testing confidential until conviction. (Current law requires HIV testing only after conviction of a sex crime.).

Effective: July 1, 1998.

Dvorak, Gulling

January 6, 1998, read first time and referred to Committee on Courts and Criminal Code.
January 29, 1998, amended, reported — Do Pass.

HB 1010—LS 6161/DI 41



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January 30, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

HOUSE BILL No. 1010

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-38-1-10.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10.5. (a) The court:
3 (1) shall order that a person undergo a screening test for the
4 human immunodeficiency virus (HIV) if the person is:
5 (†) (A) convicted of a sex crime listed in section 7.1(e) of this
6 chapter and the crime created an epidemiologically
7 demonstrated risk of transmission of the human
8 immunodeficiency virus (HIV) as described in section
9 7.1(b)(8) of this chapter; or
10 (‡) (B) convicted of an offense related to controlled substances
11 listed in section 7.1(f) of this chapter and the offense involved
12 the conditions described in section 7.1(b)(9)(A) of this
13 chapter; and
14 (2) may order that a person undergo a screening test for the
15 human immunodeficiency virus (HIV) if the court has made
16 a finding of probable cause after a hearing under section 10.7
17 of this chapter.

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1 (b) If the screening test required by this section indicates the
 2 presence of antibodies to HIV, the court shall order the person to
 3 undergo a confirmatory test.

4 (c) If the confirmatory test confirms the presence of the HIV
 5 antibodies, the court shall report the results to the state department of
 6 health and require a probation officer to conduct a presentence
 7 investigation to:

8 (1) obtain the medical record of the convicted person from the
 9 state department of health under IC 16-41-8-1(a)(3); and

10 (2) determine whether the convicted person had received risk
 11 counseling that included information on the behavior that
 12 facilitates the transmission of HIV.

13 (d) A person who, in good faith:

14 (1) makes a report required to be made under this section; or

15 (2) testifies in a judicial proceeding on matters arising from the
 16 report;

17 is immune from both civil and criminal liability due to the offering of
 18 that report or testimony.

19 (e) The privileged communication between a husband and wife or
 20 between a health care provider and the health care provider's patient is
 21 not a ground for excluding information required under this section.

22 (f) A mental health service provider (as defined in IC 34-4-12.4-1)
 23 who discloses information that must be disclosed to comply with this
 24 section is immune from civil and criminal liability under Indiana
 25 statutes that protect patient privacy and confidentiality.

26 SECTION 2. IC 35-38-1-10.6 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 10.6. (a) The state
 28 department of health shall notify victims of the crimes listed in section
 29 7.1(e) and 7.1(f) of this chapter if tests conducted under section 10.5
 30 **or section 10.7** of this chapter confirm **that** the person ~~who committed~~
 31 ~~the crime tested~~ had antibodies for the human immunodeficiency virus
 32 (HIV).

33 (b) The state department of health shall provide counseling to
 34 persons notified under this section.

35 SECTION 3. IC 35-38-1-10.7 IS ADDED TO THE INDIANA
 36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 1998]: **Sec. 10.7. (a) Upon:**

38 **(1) written request made to a prosecuting attorney by an alleged**
 39 **victim of a sex offense listed in section 7.1(e) of this chapter; and**

40 **(2) after a hearing held under this section, a court entering a**
 41 **finding that there is probable cause to believe the alleged victim**
 42 **is a victim of a sex offense listed in section 7.1(e) of this chapter**



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1 that was committed by the defendant;
2 the court may order an individual named as defendant in the
3 prosecution of the offense to undergo a screening test for human
4 immunodeficiency virus (HIV).

5 (b) Before issuing an order for testing under subsection (a), the
6 court shall conduct a hearing at which both the alleged victim and
7 the defendant have the right to be present. Both the alleged victim
8 and the defendant must be notified of:

- 9 (1) the date, time, and location of the hearing; and
10 (2) their right to be present at the hearing.

11 (c) During the hearing only affidavits, counter-affidavits, and
12 medical records that relate to the material facts of the case used to
13 support or rebut a finding of probable cause to believe the alleged
14 victim was exposed to human immunodeficiency virus (HIV) as a
15 result of the alleged sex offense may be admissible.

16 (d) The written request of the alleged victim made under
17 subsection (a) must be filed by the prosecuting attorney with the
18 court and sealed by a court.

19 (e) The requirements of section 10.5 of this chapter apply to
20 testing ordered by a court under this section.

21 (f) If the defendant has not been convicted, the results of a test
22 conducted under this section shall be kept confidential. The results
23 may not be made available to any person or public or private
24 agency other than the following:

- 25 (1) The defendant and the defendant's counsel.
26 (2) The prosecuting attorney.
27 (3) The department of correction.
28 (4) The victim and the victim's counsel.

29 (g) A victim may disclose the results of a test to an individual or
30 organization to protect the health and safety of or to seek
31 compensation for:

- 32 (1) the victim;
33 (2) the victim's sexual partner; or
34 (3) the victim's family.

35 (h) A person that knowingly or intentionally:

36 (1) receives notification or disclosure of the results of a test
37 under this section; and
38 (2) discloses the results of the test in violation of this section;
39 commits a Class B misdemeanor.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1010, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 41, after "victim" insert **"is a victim of a sex offense listed in section 7.1(e) of this chapter that was committed by the defendant;"**.

Page 2, delete line 42.

Page 3, delete line 1.

Page 3, after line 20, begin a new paragraph and insert:

"(f) If the defendant has not been convicted, the results of a test conducted under this section shall be kept confidential. The results may not be made available to any person or public or private agency other than the following:

- (1) The defendant and the defendant's counsel.**
- (2) The prosecuting attorney.**
- (3) The department of correction.**
- (4) The victim and the victim's counsel.**

(g) A victim may disclose the results of a test to an individual or organization to protect the health and safety of or to seek compensation for:

- (1) the victim;**
- (2) the victim's sexual partner; or**
- (3) the victim's family.**

(h) A person that knowingly or intentionally:

(1) receives notification or disclosure of the results of a test under this section; and
(2) discloses the results of the test in violation of this section; commits a Class B misdemeanor."

and when so amended that said bill do pass.

(Reference is to House Bill 1010 as introduced.)

DVORAK, Chair

Committee Vote: yeas 15, nays 0.



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