

HOUSE BILL No. 1010

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-1.

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. (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.



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 (1) (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 (2) (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.



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 **was exposed to human immunodeficiency virus (HIV) as a result**



- 1 **of the alleged sex offense;**
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.**

