

Bill No. SB 2158

Amendment No. ____ Barcode 711352

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senators Crist, Silver and Wasserman Schultz moved the following amendment:

Senate Amendment (with title amendment)

On page 3, between lines 17 and 18,

insert:

Section 3. Section 960.033, Florida Statutes, is amended to read:

960.003 Human immunodeficiency virus testing for persons charged with or alleged by petition for delinquency to have committed certain offenses; disclosure of results to victims.--

(1) LEGISLATIVE INTENT.--The Legislature finds that a victim of a criminal offense that ~~which~~ involves the transmission of body fluids, or that involves certain sexual offenses in which the victim is a minor, disabled adult, or elderly person, is entitled to know at the earliest possible opportunity whether the person charged with or alleged by petition for delinquency to have committed the offense has tested positive for human immunodeficiency virus (HIV)

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1 infection. The Legislature finds that to deny victims access
2 to HIV test results causes unnecessary mental anguish in
3 persons who have already suffered trauma. The Legislature
4 further finds that since medical science now recognizes that
5 early diagnosis is a critical factor in the treatment of HIV
6 infection, both the victim and the person charged with or
7 alleged by petition for delinquency to have committed the
8 offense benefit from prompt disclosure of HIV test results.

9 (2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY
10 PETITION FOR DELINQUENCY TO HAVE COMMITTED CERTAIN OFFENSES.--

11 (a) In any case in which a person has been charged by
12 information or indictment with or alleged by petition for
13 delinquency to have committed any offense enumerated in s.
14 775.0877(1)(a)-(n), which involves the transmission of body
15 fluids from one person to another, upon request of the victim
16 or the victim's legal guardian, or of the parent or legal
17 guardian of the victim if the victim is a minor, the court
18 shall order such person to undergo HIV testing.

19 (b) However, when a victim of any sexual offense
20 enumerated in s. 775.0877(1)(a)-(n) is under the age of 18 at
21 the time the offense was committed or when a victim of any
22 sexual offense enumerated in s. 775.0877(1)(a)-(n) or s.
23 825.1025 is a disabled adult or elderly person as defined in
24 s. 825.1025 regardless of whether the offense involves the
25 transmission of bodily fluids from one person to another, upon
26 the request of the victim or the victim's parent or legal
27 guardian, the court shall order the defendant to undergo HIV
28 testing.The testing shall be performed under the direction of
29 the Department of Health in accordance with s. 381.004. The
30 results of an HIV test performed on a defendant or juvenile
31 offender pursuant to this subsection shall not be admissible

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1 in any criminal or juvenile proceeding arising out of the
2 alleged offense.

3 (3) DISCLOSURE OF RESULTS.--

4 (a) The results of the test shall be disclosed no
5 later than 2 weeks after the court receives such results,
6 under the direction of the Department of Health, to the person
7 charged with or alleged by petition for delinquency to have
8 committed or to the person convicted of or adjudicated
9 delinquent for any offense enumerated in s.
10 775.0877(1)(a)-(n), which involves the transmission of body
11 fluids from one person to another, and, upon request, to the
12 victim or the victim's legal guardian, or the parent or legal
13 guardian of the victim if the victim is a minor, and to public
14 health agencies pursuant to s. 775.0877. If the alleged
15 offender is a juvenile, the test results shall also be
16 disclosed to the parent or guardian. If the victim is a victim
17 described in (2)(b), the test results must also be disclosed
18 no later than 2 weeks after the court receives such results,
19 to the person charged with or alleged by petition for
20 delinquency to have committed or to the person convicted of or
21 adjudicated delinquent for any offense enumerated in s.
22 775.0877(1)(a)-(n) or s. 825.1025, regardless of whether the
23 offense involves the transmission of bodily fluids from one
24 person to another, and, upon request, to the victim, or the
25 victim's parent or legal guardian, and to public health
26 agencies pursuant to s. 775.0877. Otherwise, HIV test results
27 obtained pursuant to this section are confidential and exempt
28 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
29 the State Constitution and shall not be disclosed to any other
30 person except as expressly authorized by law or court order.

31 (b) At the time that the results are disclosed to the

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1 victim or the victim's legal guardian, or to the parent or
2 legal guardian of a victim if the victim is a minor, the same
3 immediate opportunity for face-to-face counseling which must
4 be made available under s. 381.004(3)(e) to those who undergo
5 HIV testing shall also be afforded to the victim or the
6 victim's legal guardian, or to the parent or legal guardian of
7 the victim if the victim is a minor.

8 (4) POSTCONVICTION TESTING.--If, for any reason, the
9 testing requested under subsection (2) has not been
10 undertaken, then upon request of the victim or the victim's
11 legal guardian, or the parent or legal guardian of the victim
12 if the victim is a minor, the court shall order the offender
13 to undergo HIV testing following conviction or delinquency
14 adjudication. The testing shall be performed under the
15 direction of the Department of Health, and the results shall
16 be disclosed in accordance with the provisions of subsection
17 (3).

18 (5) EXCEPTIONS.--The provisions of subsections (2) and
19 (4) do not apply if:

20 (a) The person charged with or convicted of or alleged
21 by petition for delinquency to have committed or been
22 adjudicated delinquent for an offense described in subsection
23 (2) has undergone HIV testing voluntarily or pursuant to
24 procedures established in s. 381.004(3)(h)6. or s. 951.27, or
25 any other applicable law or rule providing for HIV testing of
26 criminal defendants, inmates, or juvenile offenders,
27 subsequent to his or her arrest, conviction, or delinquency
28 adjudication for the offense for which he or she was charged
29 or alleged by petition for delinquency to have committed; and

30 (b) The results of such HIV testing have been
31 furnished to the victim or the victim's legal guardian, or the

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1 parent or legal guardian of the victim if the victim is a
2 minor.

3 (6) TESTING DURING INCARCERATION, DETENTION, OR
4 PLACEMENT; DISCLOSURE.--In any case in which a person
5 convicted of or adjudicated delinquent for an offense
6 described in subsection (2) has not been tested under
7 subsection (2), but undergoes HIV testing during his or her
8 incarceration, detention, or placement, the results of the
9 initial HIV testing shall be disclosed in accordance with the
10 provisions of subsection (3). Except as otherwise requested by
11 the victim or the victim's legal guardian, or the parent or
12 guardian of the victim if the victim is a minor, if the
13 initial test is conducted within the first year of the
14 imprisonment, detention, or placement, the request for
15 disclosure shall be considered a standing request for any
16 subsequent HIV test results obtained within 1 year after the
17 initial HIV test performed, and need not be repeated for each
18 test administration. Where the inmate or juvenile offender has
19 previously been tested pursuant to subsection (2) the request
20 for disclosure under this subsection shall be considered a
21 standing request for subsequent HIV results conducted within 1
22 year of the test performed pursuant to subsection (2). If the
23 HIV testing is performed by an agency other than the
24 Department of Health, that agency shall be responsible for
25 forwarding the test results to the Department of Health for
26 disclosure in accordance with the provisions of subsection
27 (3). This subsection shall not be limited to results of HIV
28 tests administered subsequent to June 27, 1990, but shall also
29 apply to the results of all HIV tests performed on inmates
30 convicted of or juvenile offenders adjudicated delinquent for
31 sex offenses as described in subsection (2) during their

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1 incarceration, detention, or placement prior to June 27, 1990.

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3 (Redesignate subsequent sections.)

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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 On page 1, line 21, after the semicolon,

9

10 insert:

11 amending s. 960.003; providing for the testing
12 of certain persons for HIV under certain
13 circumstances; requiring the disclosure of the
14 results of such a test within a proscribed time
15 period;

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