

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 26, 2016

Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

SB16-146 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, page 4, strike lines 17 and 18 and substitute:

2 "(5) "LOCAL DIRECTOR" HAS THE SAME MEANING AS SET FORTH IN
3 SECTION 25-1-502 FOR "PUBLIC HEALTH DIRECTOR".

4 Page 6, after line 20 add:

5 "(c) THE STATE DEPARTMENT SHALL CREATE AND MAINTAIN
6 GUIDELINES, SUBJECT TO APPROVAL BY THE STATE BOARD, CONCERNING
7 THE PUBLIC HEALTH PROCEDURES DESCRIBED IN SECTIONS 25-4-412 AND
8 25-4-413."

9 Page 6, line 23, strike "AND 25-4-406," and substitute "25-4-406, AND
10 12-36-135, C.R.S.,".

11 Page 8, line 3, strike "MUST NOT" and substitute "MAY ONLY".

12 Page 8, line 4, strike the second and third "BE".

13 Page 8, line 6, strike "EXCEPT".

14 Page 8, line 16, strike the second "OR".

- 1 Page 8, line 22, strike "NEGLECT." and substitute "NEGLECT; OR
2 (e) PURSUANT TO SECTION 18-3-415.5, C.R.S., TO A DISTRICT
3 ATTORNEY FOR THE INFORMATION SPECIFIED IN SAID SECTION, OR, FOR THE
4 PURPOSES OF A SENTENCING HEARING, ORAL AND DOCUMENTARY
5 EVIDENCE LIMITED TO WHETHER A PERSON WHO HAS BEEN BOUND OVER
6 FOR TRIAL FOR ANY SEXUAL OFFENSE, AS DESCRIBED IN SECTION
7 18-3-415.5, C.R.S., WAS PROVIDED WITH NOTICE OR DISCUSSION THAT HE
8 OR SHE HAD TESTED POSITIVE FOR A SEXUALLY TRANSMITTED INFECTION
9 AND THE DATE OF SUCH NOTICE OR DISCUSSION."
- 10 Page 10, line 24, after "FOR" insert "PUBLIC SAFETY WORKERS AND".
- 11 Page 11, line 7, strike "ORGANIZATIONS" and substitute "ORGANIZATIONS,
12 INCLUDING THOSE EMPLOYING PUBLIC SAFETY WORKERS,".
- 13 Page 13, line 9, strike "FACT OF AN" and substitute "POTENTIAL FOR".
- 14 Page 14, line 9, strike "TREATMENT," and substitute "TREATMENT FOR A
15 SEXUALLY TRANSMITTED INFECTION,".
- 16 page 14, line 14, strike "THE" and substitute "EXCEPT FOR PREVENTATIVE
17 SERVICES, THE".
- 18 Page 14, strike line 15 and substitute "PREREQUISITE TO TREATMENT OR
19 PREVENTION SERVICES FOR SEXUALLY TRANSMITTED INFECTIONS FOR".
- 20 Page 14, line 21, strike "MAY" and substitute "SHALL".
- 21 Page 15, lines 20 and 21, strike "ARE MEDICALLY DEMONSTRATED TO
22 POSE A" and substitute "POSE AN EVIDENCE-BASED".
- 23 Page 16, line 6, strike "LABOR," and substitute "LABOR IN A HOSPITAL,".
- 24 Page 17, line 1, after "WOMAN" insert "SEEKING PRENATAL CARE".
- 25 Page 17, line 6, strike "THE" and substitute "A".
- 26 Page 17, line 19, strike "AN" and substitute "POTENTIAL FOR".
- 27 Page 18, line 20, strike "A TESTING" and substitute "AN ANONYMOUS

- 1 TESTING".
- 2 Page 18, line 24, strike "A TESTING" and substitute "AN ANONYMOUS
3 TESTING".
- 4 Page 19, line 4, strike "ALL".
- 5 Page 19, lines 8 through 10, strike "THESE PUBLIC HEALTH PROCEDURES
6 WILL BE TRIGGERED BY SPECIFIC INSTANCES AS DETERMINED BY THE STATE
7 BOARD."
- 8 Page 21, line 25, strike "ATTORNEY" and substitute "ATTORNEY, OR
9 DISTRICT PUBLIC HEALTH AGENCY,".
- 10 Page 21, line 26, strike "ATTORNEY" and substitute "ATTORNEY, OR
11 DISTRICT PUBLIC HEALTH AGENCY,".
- 12 Page 21, line 27, strike "OR LOCAL DIRECTOR".
- 13 Page 22, after line 14 add:
- 14 "(IV) AN OFFICER OR EMPLOYEE OF THE STATE DEPARTMENT OR
15 A LOCAL PUBLIC HEALTH AGENCY MUST NOT BE EXAMINED IN ANY
16 JUDICIAL, LEGISLATIVE, EXECUTIVE, OR OTHER PROCEEDINGS AS TO THE
17 EXISTENCE OR CONTENT OF ANY INDIVIDUAL'S REPORT, OTHER THAN THE
18 RESPONDENT IN A PROCEEDING AUTHORIZED BY THIS SECTION, MADE BY
19 SUCH DEPARTMENT OR AGENCY PURSUANT TO THIS PART 4; THE EXISTENCE
20 OF THE CONTENT OF THE REPORTS RECEIVED PURSUANT TO SECTION
21 25-4-405; OR THE RESULT OF AN INVESTIGATION CONDUCTED PURSUANT
22 TO SECTION 25-5-408."
- 23 Renumber succeeding subparagraph accordingly.
- 24 Page 23, line 17, strike "OR LOCAL DIRECTOR".
- 25 Page 35, lines 6 and 7, strike "18-1.3-1004 (1) (d), 18-3-415.5,".
- 26 Page 37, after line 3 add:
- 27 **"SECTION 8.** In Colorado Revised Statutes, 18-1.3-1004, **amend**

1 (1) (d) as follows:
2 **18-1.3-1004. Indeterminate sentence.** (1) (d) If the sex offender
3 committed a sex offense that constitutes a sexual offense, as defined in
4 section 18-3-415.5, and the sex offender, prior to committing the offense,
5 had notice that he or she had tested positive for the human
6 immunodeficiency virus (HIV) ~~that causes acquired immune deficiency~~
7 ~~syndrome~~ AND HIV INFECTION, AND THE INFECTIOUS AGENT OF THE HIV
8 INFECTION WAS IN FACT TRANSMITTED, the district court shall sentence the
9 sex offender to the custody of the department for an indeterminate term
10 of at least ~~three times~~ the upper limit of the presumptive range for the
11 level of offense committed and a maximum of the sex offender's natural
12 life."

13 Renumber succeeding sections accordingly.

14 Page 37, line 6, strike "Any" and substitute "~~Any~~ THE COURT SHALL
15 ORDER ANY".

16 Page 37, line 11, strike "~~shall~~ MUST be ordered by the court" and
17 substitute "~~shall be ordered by the court~~".

18 Page 37, strike line 15 and substitute "~~18-3-415.5~~ A SEXUALLY
19 TRANSMITTED INFECTION PURSUANT TO SECTION 18-3-415.5. The results
20 of ~~such~~ THE".

21 Page 37, after line 27 add:

22 "SECTION 10. In Colorado Revised Statutes, **amend** 18-3-415.5
23 as follows:

24 **18-3-415.5. Testing persons charged with certain sexual**
25 **offenses for serious sexually transmitted infections - mandatory**
26 **sentencing.** (1) For purposes of this section, "sexual offense" is limited
27 to a sexual offense that consists of sexual penetration, as defined in
28 section 18-3-401 (6), involving sexual intercourse or anal intercourse,
29 AND "HIV" HAS THE SAME MEANING SET FORTH IN SECTION 25-4-402 (4).

30 (2) THE COURT SHALL ORDER any adult or juvenile who is bound
31 over for trial subsequent to a preliminary hearing or after having waived
32 the right to a preliminary hearing on a charge of committing a sexual
33 offense ~~shall be ordered by the court~~ to submit to a diagnostic test for the
34 human immunodeficiency virus (HIV) ~~that causes acquired immune~~

1 ~~deficiency syndrome~~ AND HIV INFECTION, said diagnostic test to be
2 ordered in conjunction with the diagnostic test ordered pursuant to section
3 18-3-415. The results of ~~said~~ THE diagnostic test ~~shall~~ MUST be reported
4 to the district attorney. The district attorney shall keep the results of such
5 diagnostic test strictly confidential, except for purposes of pleading and
6 proving the mandatory sentencing provisions specified in subsection (5)
7 of this section.

8 (3) (a) If the person tested pursuant to subsection (2) of this
9 section tests positive for the human immunodeficiency virus (HIV) ~~that~~
10 ~~causes acquired immune deficiency syndrome~~ AND HIV INFECTION, the
11 district attorney may contact the state department of public health and
12 environment or any county, district, or municipal public health agency to
13 determine whether ~~said~~ THE person had been notified prior to the date of
14 the offense for which the person has been bound over for trial that he or
15 she tested positive for the human immunodeficiency virus (HIV) ~~that~~
16 ~~causes acquired immune deficiency syndrome~~ AND HIV INFECTION.

17 (b) If the district attorney determines that the person tested
18 pursuant to subsection (2) of this section had notice of his or her HIV
19 infection prior to the date the offense was committed, the district attorney
20 may file an indictment or information alleging such knowledge and
21 seeking the mandatory sentencing provisions authorized in subsection (5)
22 of this section. Any such allegation ~~shall~~ MUST be kept confidential from
23 the jury and under seal of court.

24 (c) The state department of public health and environment or any
25 county, district, or municipal public health agency shall provide
26 documentary evidence limited to whether the person tested pursuant to
27 subsection (2) of this section had notice of or had discussion concerning
28 his or her HIV infection and the date of such notice or discussion. The
29 parties may stipulate that the person identified in ~~said~~ THE documents as
30 having notice or discussion of his or her HIV infection is the person
31 tested pursuant to subsection (2) of this section. Such stipulation shall
32 constitute conclusive proof that ~~said~~ person had notice of his or her HIV
33 infection prior to committing the substantive offense, and the court shall
34 sentence ~~said~~ person in accordance with subsection (5) of this section.

35 (d) If the parties do not stipulate as provided in paragraph (c) of
36 this subsection (3), an officer or employee of the state department of
37 public health and environment or of the county, district, or municipal
38 public health agency who has had contact with the person tested pursuant
39 to subsection (2) of this section regarding his or her HIV infection and
40 can identify ~~said~~ THE person shall provide, for purposes of pretrial

1 preparation and in court proceedings, oral and documentary evidence
2 limited to whether ~~said~~ THE person had notice of or had discussion
3 concerning his or her HIV infection and the date of such notice or
4 discussion. If the state department or the county, district, or municipal
5 public health agency no longer employs an officer or employee who has
6 had contact with the person tested pursuant to subsection (2) of this
7 section regarding the person's HIV infection, the state department or the
8 county, district, or municipal public health agency shall provide:

9 (I) The names of and current addresses, if available, for each
10 former officer or employee who had contact with the person tested
11 pursuant to subsection (2) of this section regarding the person's HIV
12 infection;

13 (II) Documentary evidence concerning whether the person tested
14 pursuant to subsection (2) of this section was provided notice of or had
15 discussion concerning his or her HIV infection and the date of such notice
16 or discussion; and

17 (III) If none of said former officers or employees are available,
18 any officer or employee who has knowledge regarding whether the person
19 tested pursuant to subsection (2) of this section was provided notice of or
20 had discussion concerning his or her HIV infection and the date of such
21 notice or discussion. ~~Said~~ THE officer or employee shall provide such
22 evidence for purposes of pretrial preparation and in court proceedings.

23 (4) Nothing in this section shall be interpreted as abridging the
24 confidentiality requirements imposed on the state department of public
25 health and environment and the county, district, and municipal public
26 health agencies pursuant to part ~~14~~ 4 of article 4 of title 25, C.R.S., with
27 regard to any person or entity other than as specified in this section.

28 (5) (a) If a verdict of guilty is returned on the substantive offense
29 with which the person tested pursuant to subsection (2) of this section is
30 charged, the court shall conduct a separate sentencing hearing as soon as
31 practicable to determine whether said person had notice of his or her HIV
32 infection prior to the date the offense was committed, as alleged. ~~The~~
33 ~~sentencing hearing shall be conducted by~~ The judge who presided at trial
34 or before whom the guilty plea was entered or a replacement for said
35 judge in the event he or she dies, resigns, is incapacitated, or is otherwise
36 disqualified as provided in section 16-6-201, C.R.S, SHALL CONDUCT THE
37 HEARING. At the sentencing hearing, the district attorney ~~shall have~~ HAS
38 the burden of proving beyond a reasonable doubt that: ~~said person:~~

39 (I) THE PERSON had notice of his or her HIV infection prior to the
40 date the offense was committed, as alleged; AND

1 (II) THE INFECTIOUS AGENT OF THE HIV INFECTION WAS IN FACT
2 TRANSMITTED.
3 (b) If the court determines that the person tested pursuant to
4 subsection (2) of this section had notice of ~~his or her~~ THE HIV infection
5 prior to the date the offense was committed AND THE INFECTIOUS AGENT
6 OF THE HIV INFECTION WAS IN FACT TRANSMITTED, the judge shall
7 sentence ~~said~~ THE person to a mandatory term of incarceration of at least
8 ~~three times~~ the upper limit of the presumptive range for the level of
9 offense committed, up to the remainder of the person's natural life, as
10 provided in section 18-1.3-1004."

11 Renumber succeeding sections accordingly.

12 Page 38, line 7, strike "25-1-122" and substitute "18-3-415, 18-3-415.5,
13 25-1-122,".

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