

CHAPTER 254

CRIMINAL LAW AND PROCEDURE

SENATE BILL 99-119

BY SENATORS Wham, Congrove, Powers, and Tebedo;
also REPRESENTATIVES Kaufman, Chavez, Gagliardi, Kester, Lawrence, Lee, May, Morrison, Paschall, and S. Williams.

AN ACT

CONCERNING HIV TESTING IN CASES WHERE THE PERSON TESTED IS CHARGED WITH A CRIME INVOLVING
SEXUAL BEHAVIOR.

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

SECTION 1. Legislative declaration. The general assembly recognizes the crucial importance of confidentiality with regard to testing for infection with human immunodeficiency virus (HIV), the virus that causes acquired immune deficiency syndrome. The general assembly hereby declares, however, that any person who tests positive for HIV and who subsequently commits a criminal offense involving sexual behavior creates an extraordinarily and unacceptably high risk to society by knowingly exposing others to HIV. The general assembly therefore adopts this act to allow access to HIV test results by prosecutors in extremely limited circumstances in order to protect the public health and safety and prevent the spread of HIV.

SECTION 2. 18-7-201.5, Colorado Revised Statutes, is amended to read:

18-7-201.5. Acquired immune deficiency syndrome testing for persons convicted of prostitution. (1) Any person who is convicted of prostitution pursuant to section 18-7-201 OR A COMPARABLE MUNICIPAL ORDINANCE shall be ordered by the court to submit to a blood test for the human immunodeficiency virus (HIV) ~~which~~ THAT causes acquired immune deficiency syndrome. The court shall order that such person shall pay the cost of such test as a part of the costs of the action.

(2) The results of ~~such test~~ ANY TEST PERFORMED PURSUANT TO THIS SECTION shall be reported to the person tested and TO the district attorney OR THE MUNICIPAL PROSECUTING ATTORNEY OF THE JURISDICTION IN WHICH THE PERSON IS PROSECUTED. The district attorney OR MUNICIPAL PROSECUTING ATTORNEY shall keep the results of such test STRICTLY confidential unless ~~the person is charged with a violation of~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

~~section 18-7-201.7 or 18-7-205.7~~ and the results of such test indicate the presence of the human immunodeficiency virus (HIV) ~~which~~ THAT causes acquired immune deficiency syndrome AND:

(a) THE PERSON IS SUBSEQUENTLY CHARGED WITH A VIOLATION OF SECTION 18-7-201.7 OR 18-7-205.7; OR

(b) THE PERSON IS SUBSEQUENTLY CHARGED WITH A VIOLATION OF SECTION 18-7-201 OR 18-7-205 OR A COMPARABLE MUNICIPAL ORDINANCE AND THE DISTRICT ATTORNEY OR MUNICIPAL PROSECUTING ATTORNEY FOR THE CHARGING JURISDICTION SEEKS THE TEST RESULTS FOR PURPOSES OF CASE EVALUATION, CHARGING, AND SENTENCING. IN SUCH CASE, THE DISTRICT ATTORNEY OR MUNICIPAL PROSECUTING ATTORNEY WHO OBTAINED THE ORIGINAL CONVICTION PURSUANT TO SECTION 18-7-201 OR A COMPARABLE MUNICIPAL ORDINANCE MAY RELEASE THE TEST RESULTS ONLY TO THE DISTRICT ATTORNEY OR MUNICIPAL PROSECUTING ATTORNEY IN THE CHARGING JURISDICTION OR THE SAID DISTRICT ATTORNEY'S OR MUNICIPAL PROSECUTING ATTORNEY'S DESIGNEE. ANY DISTRICT ATTORNEY OR MUNICIPAL PROSECUTING ATTORNEY WHO RECEIVES TEST RESULTS PURSUANT TO THIS PARAGRAPH (b) SHALL KEEP SAID TEST RESULTS STRICTLY CONFIDENTIAL, EXCEPT AS PROVIDED IN THIS SUBSECTION (2).

(3) (a) THE TEST ORDERED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE PERFORMED BY A FACILITY THAT PROVIDES ONGOING HEALTH CARE.

(b) AN EMPLOYEE OF THE FACILITY THAT PERFORMS THE TEST SHALL PROVIDE, FOR PURPOSES OF PRETRIAL PREPARATION AND IN COURT PROCEEDINGS, ORAL AND DOCUMENTARY EVIDENCE LIMITED TO WHETHER THE PERSON TESTED PURSUANT TO SUBSECTION (1) OF THIS SECTION AND SUBSEQUENTLY CHARGED UNDER SECTION 18-7-201.7 OR 18-7-205.7 WAS PROVIDED NOTICE PRIOR TO THE DATE OF THE OFFENSE THAT HE OR SHE HAD TESTED POSITIVE FOR THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) THAT CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME AND THE DATE OF SUCH NOTICE.

SECTION 3. 18-7-201.7, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

18-7-201.7. Prostitution with knowledge of being infected with acquired immune deficiency syndrome. (3) (a) IN SENTENCING ANY PERSON CONVICTED OF PROSTITUTION WITH KNOWLEDGE OF BEING INFECTED WITH ACQUIRED IMMUNE DEFICIENCY SYNDROME PURSUANT TO THIS SECTION, THE COURT MAY ORDER THAT SUCH PERSON SUBMIT TO AN ASSESSMENT FOR THE USE OF CONTROLLED SUBSTANCES OR ALCOHOL DEVELOPED PURSUANT TO SECTION 16-11.5-102 (1) (a), C.R.S. THE COURT MAY FURTHER ORDER THAT SUCH PERSON COMPLY WITH THE RECOMMENDATIONS OF SUCH ASSESSMENT AS PART OF ANY SENTENCE TO PROBATION, COUNTY JAIL, COMMUNITY CORRECTIONS, OR INCARCERATION WITH THE DEPARTMENT OF CORRECTIONS. THE ASSESSMENT AND COMPLIANCE WITH THE RECOMMENDATIONS OF THE ASSESSMENT SHALL BE AT THE PERSON'S OWN EXPENSE, UNLESS THE PERSON IS INDIGENT.

(b) IN ADDITION TO TREATMENT FOR ABUSE OF CONTROLLED SUBSTANCES AND ALCOHOL, THE COURT MAY REQUIRE THE PERSON TO PARTICIPATE IN MENTAL HEALTH

TREATMENT IF SUCH TREATMENT IS RECOMMENDED IN THE PERSON'S PRESENTENCE REPORT PREPARED PURSUANT TO SECTION 16-11-102, C.R.S. THE MENTAL HEALTH TREATMENT SHALL BE AT THE PERSON'S OWN EXPENSE, UNLESS THE PERSON IS INDIGENT.

SECTION 4. 18-7-205.5, Colorado Revised Statutes, is amended to read:

18-7-205.5. Acquired immune deficiency syndrome testing for persons convicted of patronizing a prostitute. (1) Any person who is convicted of patronizing a prostitute pursuant to section 18-7-205 OR A COMPARABLE MUNICIPAL ORDINANCE shall be ordered by the court to submit to a blood test for the human immunodeficiency virus (HIV) ~~which~~ THAT causes acquired immune deficiency syndrome. The court shall order that such person shall pay the cost of such test as a part of the costs of the action.

(2) The results of ~~such test~~ ANY TEST PERFORMED PURSUANT TO THIS SECTION shall be reported to the person tested and TO the district attorney OR THE MUNICIPAL PROSECUTING ATTORNEY OF THE JURISDICTION IN WHICH THE PERSON IS PROSECUTED. The district attorney OR THE MUNICIPAL PROSECUTING ATTORNEY shall keep the results of such test STRICTLY confidential unless ~~the person is charged with a violation of section 18-7-201.7 or section 18-7-205.7~~ and the results of such test indicate the presence of the human immunodeficiency virus (HIV) ~~which~~ THAT causes acquired immune deficiency syndrome AND:

(a) THE PERSON IS SUBSEQUENTLY CHARGED WITH A VIOLATION OF SECTION 18-7-201.7 OR 18-7-205.7; OR

(b) THE PERSON IS SUBSEQUENTLY CHARGED WITH A VIOLATION OF SECTION 18-7-201 OR 18-7-205 OR A COMPARABLE MUNICIPAL ORDINANCE AND THE DISTRICT ATTORNEY OR THE MUNICIPAL PROSECUTING ATTORNEY FOR THE CHARGING JURISDICTION SEEKS THE TEST RESULTS FOR PURPOSES OF CASE EVALUATION, CHARGING, AND SENTENCING. IN SUCH CASE, THE DISTRICT ATTORNEY OR MUNICIPAL PROSECUTING ATTORNEY WHO OBTAINED THE ORIGINAL CONVICTION PURSUANT TO SECTION 18-7-205 OR A COMPARABLE MUNICIPAL ORDINANCE MAY RELEASE THE TEST RESULTS ONLY TO THE DISTRICT ATTORNEY OR MUNICIPAL PROSECUTING ATTORNEY IN THE CHARGING JURISDICTION OR THE SAID DISTRICT ATTORNEY'S OR MUNICIPAL PROSECUTING ATTORNEY'S DESIGNEE. ANY DISTRICT ATTORNEY OR MUNICIPAL PROSECUTING ATTORNEY WHO RECEIVES TEST RESULTS PURSUANT TO THIS PARAGRAPH (b) SHALL KEEP SAID TEST RESULTS STRICTLY CONFIDENTIAL, EXCEPT AS PROVIDED IN THIS SUBSECTION (2).

(3) (a) THE TEST ORDERED PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL BE PERFORMED BY A FACILITY THAT PROVIDES ONGOING HEALTH CARE.

(b) AN EMPLOYEE OF THE FACILITY THAT PERFORMS THE TEST SHALL PROVIDE, FOR PURPOSES OF PRETRIAL PREPARATION AND IN COURT PROCEEDINGS, ORAL AND DOCUMENTARY EVIDENCE LIMITED TO WHETHER THE PERSON TESTED PURSUANT TO SUBSECTION (1) OF THIS SECTION AND SUBSEQUENTLY CHARGED UNDER SECTION 18-7-201.7 OR 18-7-205.7 WAS PROVIDED NOTICE PRIOR TO THE DATE OF THE OFFENSE THAT HE OR SHE HAD TESTED POSITIVE FOR THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) THAT CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME AND THE DATE

OF SUCH NOTICE.

SECTION 5. Part 4 of article 3 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

18-3-415.5. Acquired immune deficiency syndrome testing for persons charged with any sexual offense -mandatory sentencing. (1) FOR PURPOSES OF THIS SECTION, "SEXUAL OFFENSE" IS LIMITED TO A SEXUAL OFFENSE THAT CONSISTS OF SEXUAL PENETRATION, AS DEFINED IN SECTION 18-3-401 (6), INVOLVING SEXUAL INTERCOURSE OR ANAL INTERCOURSE.

(2) ANY ADULT OR JUVENILE WHO IS BOUND OVER FOR TRIAL SUBSEQUENT TO A PRELIMINARY HEARING OR AFTER HAVING WAIVED THE RIGHT TO A PRELIMINARY HEARING ON A CHARGE OF COMMITTING A SEXUAL OFFENSE SHALL BE ORDERED BY THE COURT TO SUBMIT TO A BLOOD TEST FOR THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) THAT CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME, SAID TEST TO BE ORDERED IN CONJUNCTION WITH THE BLOOD TEST ORDERED PURSUANT TO SECTION 18-3-415. THE RESULTS OF SAID TEST SHALL BE REPORTED TO THE DISTRICT ATTORNEY. THE DISTRICT ATTORNEY SHALL KEEP THE RESULTS OF SUCH TEST STRICTLY CONFIDENTIAL, EXCEPT FOR PURPOSES OF PLEADING AND PROVING THE MANDATORY SENTENCING PROVISIONS SPECIFIED IN SUBSECTION (5) OF THIS SECTION.

(3) (a) IF THE PERSON TESTED PURSUANT TO SUBSECTION (2) OF THIS SECTION TESTS POSITIVE FOR THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) THAT CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME, THE DISTRICT ATTORNEY MAY CONTACT THE STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OR ANY LOCAL HEALTH DEPARTMENT TO DETERMINE WHETHER SAID PERSON HAD BEEN NOTIFIED PRIOR TO THE DATE OF THE OFFENSE FOR WHICH THE PERSON HAS BEEN BOUND OVER FOR TRIAL THAT HE OR SHE TESTED POSITIVE FOR THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) THAT CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME.

(b) IF THE DISTRICT ATTORNEY DETERMINES THAT THE PERSON TESTED PURSUANT TO SUBSECTION (2) OF THIS SECTION HAD NOTICE OF HIS OR HER HIV INFECTION PRIOR TO THE DATE THE OFFENSE WAS COMMITTED, THE DISTRICT ATTORNEY MAY FILE AN INDICTMENT OR INFORMATION ALLEGING SUCH KNOWLEDGE AND SEEKING THE MANDATORY SENTENCING PROVISIONS AUTHORIZED IN SUBSECTION (5) OF THIS SECTION. ANY SUCH ALLEGATION SHALL BE KEPT CONFIDENTIAL FROM THE JURY AND UNDER SEAL OF COURT.

(c) THE STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OR ANY LOCAL HEALTH DEPARTMENT SHALL PROVIDE DOCUMENTARY EVIDENCE LIMITED TO WHETHER THE PERSON TESTED PURSUANT TO SUBSECTION (2) OF THIS SECTION HAD NOTICE OF OR HAD DISCUSSION CONCERNING HIS OR HER HIV INFECTION AND THE DATE OF SUCH NOTICE OR DISCUSSION. THE PARTIES MAY STIPULATE THAT THE PERSON IDENTIFIED IN SAID DOCUMENTS AS HAVING NOTICE OR DISCUSSION OF HIS OR HER HIV INFECTION IS THE PERSON TESTED PURSUANT TO SUBSECTION (2) OF THIS SECTION. SUCH STIPULATION SHALL CONSTITUTE CONCLUSIVE PROOF THAT SAID PERSON HAD NOTICE OF HIS OR HER HIV INFECTION PRIOR TO COMMITTING THE SUBSTANTIVE OFFENSE, AND THE COURT SHALL SENTENCE SAID PERSON IN ACCORDANCE WITH SUBSECTION (5) OF THIS SECTION.

(d) IF THE PARTIES DO NOT STIPULATE AS PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (3), AN OFFICER OR EMPLOYEE OF THE STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OR OF THE LOCAL HEALTH DEPARTMENT WHO HAS HAD CONTACT WITH THE PERSON TESTED PURSUANT TO SUBSECTION (2) OF THIS SECTION REGARDING HIS OR HER HIV INFECTION AND CAN IDENTIFY SAID PERSON SHALL PROVIDE, FOR PURPOSES OF PRETRIAL PREPARATION AND IN COURT PROCEEDINGS, ORAL AND DOCUMENTARY EVIDENCE LIMITED TO WHETHER SAID PERSON HAD NOTICE OF OR HAD DISCUSSION CONCERNING HIS OR HER HIV INFECTION AND THE DATE OF SUCH NOTICE OR DISCUSSION. IF THE STATE DEPARTMENT OR THE LOCAL HEALTH DEPARTMENT NO LONGER EMPLOYS AN OFFICER OR EMPLOYEE WHO HAS HAD CONTACT WITH THE PERSON TESTED PURSUANT TO SUBSECTION (2) OF THIS SECTION REGARDING THE PERSON'S HIV INFECTION, THE STATE DEPARTMENT OR THE LOCAL HEALTH DEPARTMENT SHALL PROVIDE:

(I) THE NAMES OF AND CURRENT ADDRESSES, IF AVAILABLE, FOR EACH FORMER OFFICER OR EMPLOYEE WHO HAD CONTACT WITH THE PERSON TESTED PURSUANT TO SUBSECTION (2) OF THIS SECTION REGARDING THE PERSON'S HIV INFECTION;

(II) DOCUMENTARY EVIDENCE CONCERNING WHETHER THE PERSON TESTED PURSUANT TO SUBSECTION (2) OF THIS SECTION WAS PROVIDED NOTICE OF OR HAD DISCUSSION CONCERNING HIS OR HER HIV INFECTION AND THE DATE OF SUCH NOTICE OR DISCUSSION; AND

(III) IF NONE OF SAID FORMER OFFICERS OR EMPLOYEES ARE AVAILABLE, ANY OFFICER OR EMPLOYEE WHO HAS KNOWLEDGE REGARDING WHETHER THE PERSON TESTED PURSUANT TO SUBSECTION (2) OF THIS SECTION WAS PROVIDED NOTICE OF OR HAD DISCUSSION CONCERNING HIS OR HER HIV INFECTION AND THE DATE OF SUCH NOTICE OR DISCUSSION. SAID OFFICER OR EMPLOYEE SHALL PROVIDE SUCH EVIDENCE FOR PURPOSES OF PRETRIAL PREPARATION AND IN COURT PROCEEDINGS.

(4) NOTHING IN THIS SECTION SHALL BE INTERPRETED AS ABRIDGING THE CONFIDENTIALITY REQUIREMENTS IMPOSED ON THE STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND THE LOCAL HEALTH DEPARTMENTS PURSUANT TO PART 14 OF ARTICLE 4 OF TITLE 25, C.R.S., WITH REGARD TO ANY PERSON OR ENTITY OTHER THAN AS SPECIFIED IN THIS SECTION.

(5) (a) IF A VERDICT OF GUILTY IS RETURNED ON THE SUBSTANTIVE OFFENSE WITH WHICH THE PERSON TESTED PURSUANT TO SUBSECTION (2) OF THIS SECTION IS CHARGED, THE COURT SHALL CONDUCT A SEPARATE SENTENCING HEARING AS SOON AS PRACTICABLE TO DETERMINE WHETHER SAID PERSON HAD NOTICE OF HIS OR HER HIV INFECTION PRIOR TO THE DATE THE OFFENSE WAS COMMITTED, AS ALLEGED. THE SENTENCING HEARING SHALL BE CONDUCTED BY THE JUDGE WHO PRESIDED AT TRIAL OR BEFORE WHOM THE GUILTY PLEA WAS ENTERED OR A REPLACEMENT FOR SAID JUDGE IN THE EVENT HE OR SHE DIES, RESIGNS, IS INCAPACITATED, OR IS OTHERWISE DISQUALIFIED AS PROVIDED IN SECTION 16-6-201, C.R.S. AT THE SENTENCING HEARING, THE DISTRICT ATTORNEY SHALL HAVE THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT SAID PERSON HAD NOTICE OF HIS OR HER HIV INFECTION PRIOR TO THE DATE THE OFFENSE WAS COMMITTED, AS ALLEGED.

(b) IF THE COURT DETERMINES THAT THE PERSON TESTED PURSUANT TO SUBSECTION (2) OF THIS SECTION HAD NOTICE OF HIS OR HER HIV INFECTION PRIOR

TO THE DATE THE OFFENSE WAS COMMITTED, THE JUDGE SHALL SENTENCE SAID PERSON TO A MANDATORY TERM OF INCARCERATION OF AT LEAST THREE TIMES THE UPPER LIMIT OF THE PRESUMPTIVE RANGE FOR THE LEVEL OF OFFENSE COMMITTED, UP TO THE REMAINDER OF THE PERSON'S NATURAL LIFE, AS PROVIDED IN SECTION 16-13-804, C.R.S.

SECTION 6. 16-13-804 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

16-13-804. Indeterminate sentence. (1) (d) IF THE SEX OFFENDER COMMITTED A SEX OFFENSE THAT CONSTITUTES A SEXUAL OFFENSE AS DEFINED IN SECTION 18-3-415.5, C.R.S., AND THE SEX OFFENDER, PRIOR TO COMMITTING THE OFFENSE, HAD NOTICE THAT HE OR SHE HAD TESTED POSITIVE FOR THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) THAT CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME, THE DISTRICT COURT SHALL SENTENCE THE SEX OFFENDER TO THE CUSTODY OF THE DEPARTMENT FOR AN INDETERMINATE TERM OF AT LEAST THREE TIMES THE UPPER LIMIT OF THE PRESUMPTIVE RANGE FOR THE LEVEL OF OFFENSE COMMITTED AND A MAXIMUM OF THE SEX OFFENDER'S NATURAL LIFE.

SECTION 7. 25-4-1404 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

25-4-1404. Use of reports. (1) The public health reports required to be submitted by sections 25-4-1402 and 25-4-1403 and records resulting from compliance with section 25-4-1405 (1) and held by the state department of public health and environment, any local department of health, or any health care provider or facility, third-party payor, physician, clinic, laboratory, blood bank, or other agency shall be strictly confidential information. Such information shall not be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except under any of the following circumstances:

(e) THE STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND ANY LOCAL DEPARTMENT OF HEALTH, UPON BEING CONTACTED BY A DISTRICT ATTORNEY PURSUANT TO SECTION 18-3-415.5, C.R.S., SHALL PROVIDE THE INFORMATION SPECIFIED IN SAID SECTION.

(f) AN OFFICER OR EMPLOYEE OF THE STATE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OR OF A LOCAL DEPARTMENT OF HEALTH, PURSUANT TO SECTION 18-3-415.5, C.R.S., SHALL PROVIDE, FOR PURPOSES OF A SENTENCING HEARING, ORAL AND DOCUMENTARY EVIDENCE LIMITED TO WHETHER A PERSON WHO HAS BEEN BOUND OVER FOR TRIAL FOR ANY SEXUAL OFFENSE, AS DESCRIBED IN SECTION 18-3-415.5, C.R.S., WAS PROVIDED NOTICE THAT HE OR SHE HAD TESTED POSITIVE FOR THE HUMAN IMMUNODEFICIENCY VIRUS (HIV) THAT CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME OR HAD DISCUSSION CONCERNING HIS OR HER HIV INFECTION, AND THE DATE OF SUCH NOTICE OR DISCUSSION.

SECTION 8. 25-4-1404 (2), Colorado Revised Statutes, is amended to read:

25-4-1404. Use of reports. (2) No officer or employee of the state department of public health and environment or local department of health shall be examined in

any judicial, executive, legislative, or other proceeding as to the existence or content of any individual's report retained by such department pursuant to this part 14 or as to the existence of the contents of reports received pursuant to sections 25-4-1402 and 25-4-1403 or the results of investigations in section 25-4-1405. This provision shall not apply to ~~individuals who are under restrictive actions~~ ADMINISTRATIVE OR JUDICIAL PROCEEDINGS pursuant to section 25-4-1406 or 25-4-1407 OR SECTION 18-3-415.5, C.R.S.

SECTION 9. 25-4-1405 (8) (a) (V), Colorado Revised Statutes, is amended to read:

25-4-1405. Disease control by the state department of public health and environment and local health departments. (8) (a) No physician, health worker, or other person and no hospital, clinic, sanitarium, laboratory, or other private or public institution shall test, or shall cause by any means to have tested, any specimen of any patient for HIV infection without the knowledge and consent of the patient; except that knowledge and consent need not be given:

(V) When a person is bound over for trial of a sexual offense as set forth in ~~section 18-3-415, C.R.S.,~~ SECTION 18-3-415 OR 18-3-415.5, C.R.S., OR SUBJECT TO TESTING UNDER SECTION 18-7-201.5 OR 18-7-205.5, C.R.S., and is tested by a health care provider or facility other than one ~~which~~ THAT exclusively provides HIV testing and counseling.

SECTION 10. 18-3-415, Colorado Revised Statutes, is amended to read:

18-3-415. Acquired immune deficiency syndrome testing for persons charged with any sexual offense. Any adult or juvenile who is bound over for trial for any sexual offense involving sexual penetration as defined in section 18-3-401 (6), subsequent to a preliminary hearing or after having waived the right to a preliminary hearing, or any person who is indicted for or is convicted of any such offense, shall be ordered by the court to submit to a blood test for the human immunodeficiency virus (HIV) ~~which~~ THAT causes acquired immune deficiency syndrome, SAID TEST TO BE ORDERED IN CONJUNCTION WITH THE BLOOD TEST ORDERED PURSUANT TO SECTION 18-3-415.5. The results of such test shall be reported to the court or the court's designee, who shall then disclose the results to any victim of the sexual offense who requests such disclosure. Review and disclosure of blood test results by the courts shall be closed and confidential, and any transaction records relating thereto shall also be closed and confidential. If the person who is bound over for trial or who is indicted for or convicted of any such offense voluntarily submits to a blood test for the human immunodeficiency virus (HIV), the fact of such person's voluntary submission shall be admissible in mitigation of sentence if the person is convicted of the charged offense.

SECTION 11. 18-4-412 (2) (c), Colorado Revised Statutes, is amended to read:

18-4-412. Theft of medical records or medical information - penalty. (2) As used in this section:

(c) "Proper authorization" means:

(I) A written authorization signed by the patient or his OR HER duly designated representative; or

(II) An appropriate order of court; or

(III) Authorized possession pursuant to law or regulation for claims processing, possession for medical audit or quality assurance purposes, possession by a consulting physician to the patient, or possession by hospital personnel for record-keeping and billing purposes; OR

(IV) AUTHORIZED POSSESSION PURSUANT TO SECTION 18-7-201.5, 18-7-205.5, OR 18-3-415.5.

SECTION 12. Exception to the requirements of section 2-2-703, Colorado Revised Statutes. The general assembly hereby finds that section 18-3-415.5, Colorado Revised Statutes, enacted in this act would require a five-year appropriation pursuant to the requirements of section 2-2-703, Colorado Revised Statutes, for prison bed construction and operating costs. However, it is the intent of the general assembly that any prison bed construction and operating costs resulting from the passage of this act be offset by prison bed savings and operating costs savings created by the amendment to section 42-2-206, Colorado Revised Statutes, in House Bill 99-1168, that are anticipated to be equal to or greater than the costs resulting from the passage of this act.

SECTION 13. Effective date - applicability. (1) This act shall take effect upon passage and sections 5 and 6 of this act shall apply to offenses committed on or after said date; except that sections 5 and 6 of this act shall only take effect if:

(a) Section 42-2-206, Colorado Revised Statutes, is amended in House Bill 99-1168 to change the penalty for driving with a revoked license from a class 6 felony to a class 1 misdemeanor and the final fiscal note for such bill shows prison bed savings and operating costs savings that are equal to or greater than the prison bed construction and operating costs shown in the final fiscal note for this act; and

(b) House Bill 99-1168 is enacted and becomes law.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 29, 1999

Editor's note: House Bill 99-1168, referred to in sections 12 and 13 of this act, was signed by the Governor on May 24, 1999.