

SB146 L.011

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

SB16-146 be amended as follows:

- 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".
- 15 Page 8, line 22, strike "NEGLECT." and substitute "NEGLECT; OR
- 16 (e) PURSUANT TO SECTION 18-3-415.5, C.R.S., TO A DISTRICT
- 17 ATTORNEY FOR THE INFORMATION SPECIFIED IN SAID SECTION, OR, FOR THE
- 18 PURPOSES OF A SENTENCING HEARING, ORAL AND DOCUMENTARY
- 19 EVIDENCE LIMITED TO WHETHER A PERSON WHO HAS BEEN BOUND OVER
- 20 FOR TRIAL FOR ANY SEXUAL OFFENSE, AS DESCRIBED IN SECTION
- 21 18-3-415.5, C.R.S., WAS PROVIDED WITH NOTICE OR DISCUSSION THAT HE
- 22 OR SHE HAD TESTED POSITIVE FOR A SEXUALLY TRANSMITTED INFECTION
- 23 AND THE DATE OF SUCH NOTICE OR DISCUSSION."
- 24 Page 10, line 24, after "FOR" insert "PUBLIC SAFETY WORKERS AND".
- 25 Page 11, line 7, strike "ORGANIZATIONS" and substitute "ORGANIZATIONS,
- 26 INCLUDING THOSE EMPLOYING PUBLIC SAFETY WORKERS,".



- 1 Page 13, line 9, strike "FACT OF AN" and substitute "POTENTIAL FOR".
- 2 Page 14, line 9, strike "TREATMENT," and substitute "TREATMENT FOR A
3 SEXUALLY TRANSMITTED INFECTION,".
- 4 Page 14, strike line 15 and substitute "PREREQUISITE TO TREATMENT OR
5 PREVENTION SERVICES FOR SEXUALLY TRANSMITTED INFECTIONS FOR".
- 6 Page 15, lines 20 and 21, strike "ARE MEDICALLY DEMONSTRATED TO
7 POSE A" and substitute "POSE AN EVIDENCE-BASED".
- 8 Page 16, line 6, strike "LABOR," and substitute "LABOR IN A HOSPITAL,".
- 9 Page 17, line 1, after "WOMAN" insert "SEEKING PRENATAL CARE".
- 10 Page 17, line 6, strike "THE" and substitute "A".
- 11 Page 17, line 19, strike "AN" and substitute "POTENTIAL FOR".
- 12 Page 18, line 20, strike "A TESTING" and substitute "AN ANONYMOUS
13 TESTING".
- 14 Page 18, line 24, strike "A TESTING" and substitute "AN ANONYMOUS
15 TESTING".
- 16 Page 19, line 4, strike "ALL".
- 17 Page 19, lines 8 through 10, strike "THESE PUBLIC HEALTH PROCEDURES
18 WILL BE TRIGGERED BY SPECIFIC INSTANCES AS DETERMINED BY THE STATE
19 BOARD.".
- 20 Page 21, line 25, strike "ATTORNEY" and substitute "ATTORNEY, OR
21 DISTRICT PUBLIC HEALTH AGENCY,".
- 22 Page 21, line 26, strike "ATTORNEY" and substitute "ATTORNEY, OR
23 DISTRICT PUBLIC HEALTH AGENCY,".
- 24 Page 21, line 27, strike "OR LOCAL DIRECTOR".
- 25 Page 22, after line 14 add:



1 "(IV) AN OFFICER OR EMPLOYEE OF THE STATE DEPARTMENT OR
2 A LOCAL PUBLIC HEALTH AGENCY MUST NOT BE EXAMINED IN ANY
3 JUDICIAL, LEGISLATIVE, EXECUTIVE, OR OTHER PROCEEDINGS AS TO THE
4 EXISTENCE OR CONTENT OF ANY INDIVIDUAL'S REPORT, OTHER THAN THE
5 RESPONDENT IN A PROCEEDING AUTHORIZED BY THIS SECTION, MADE BY
6 SUCH DEPARTMENT OR AGENCY PURSUANT TO THIS PART 4; THE EXISTENCE
7 OF THE CONTENT OF THE REPORTS RECEIVED PURSUANT TO SECTION
8 25-4-405; OR THE RESULT OF AN INVESTIGATION CONDUCTED PURSUANT
9 TO SECTION 25-5-408."

10 Renumber succeeding subparagraph accordingly.

11 Page 23, line 17, strike "OR LOCAL DIRECTOR".

12 Page 35, lines 6 and 7, strike "18-1.3-1004 (1) (d), 18-3-415.5,".

13 Page 37, after line 3 add:

14 "**SECTION 8.** In Colorado Revised Statutes, 18-1.3-1004, **amend**
15 (1) (d) as follows:

16 "**18-1.3-1004. Indeterminate sentence.** (1) (d) If the sex offender
17 committed a sex offense that constitutes a sexual offense, as defined in
18 section 18-3-415.5, and the sex offender, prior to committing the offense,
19 had notice that he or she had tested positive for the human
20 immunodeficiency virus (HIV) ~~that causes acquired immune deficiency~~
21 ~~syndrome~~ AND HIV INFECTION, the district court shall sentence the sex
22 offender to the custody of the department for an indeterminate term of at
23 least ~~three times~~ the upper limit of the presumptive range for the level of
24 offense committed and a maximum of the sex offender's natural life."

25 Renumber succeeding sections accordingly.

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

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

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

1 Page 37, after line 27 add:

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

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

10 (2) THE COURT SHALL ORDER any adult or juvenile who is bound
11 over for trial subsequent to a preliminary hearing or after having waived
12 the right to a preliminary hearing on a charge of committing a sexual
13 offense ~~shall be ordered by the court~~ to submit to a diagnostic test for the
14 human immunodeficiency virus (HIV) ~~that causes acquired immune~~
15 ~~deficiency syndrome~~ AND HIV INFECTION, said diagnostic test to be
16 ordered in conjunction with the diagnostic test ordered pursuant to section
17 18-3-415. The results of said THE diagnostic test ~~shall~~ MUST be reported
18 to the district attorney. The district attorney shall keep the results of such
19 diagnostic test strictly confidential, except for purposes of pleading and
20 proving the mandatory sentencing provisions specified in subsection (5)
21 of this section.

22 (3) (a) If the person tested pursuant to subsection (2) of this
23 section tests positive for the human immunodeficiency virus (HIV) ~~that~~
24 ~~causes acquired immune deficiency syndrome~~ AND HIV INFECTION, the
25 district attorney may contact the state department of public health and
26 environment or any county, district, or municipal public health agency to
27 determine whether said THE person had been notified prior to the date of
28 the offense for which the person has been bound over for trial that he or
29 she tested positive for the human immunodeficiency virus (HIV) ~~that~~
30 ~~causes acquired immune deficiency syndrome~~ AND HIV INFECTION.

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

38 (c) The state department of public health and environment or any
39 county, district, or municipal public health agency shall provide
40 documentary evidence limited to whether the person tested pursuant to

1 subsection (2) of this section had notice of or had discussion concerning
2 his or her HIV infection and the date of such notice or discussion. The
3 parties may stipulate that the person identified in said THE documents as
4 having notice or discussion of his or her HIV infection is the person
5 tested pursuant to subsection (2) of this section. Such stipulation shall
6 constitute conclusive proof that said person had notice of his or her HIV
7 infection prior to committing the substantive offense; and the court shall
8 sentence said person in accordance with subsection (5) of this section.

9 (d) If the parties do not stipulate as provided in paragraph (c) of
10 this subsection (3), an officer or employee of the state department of
11 public health and environment or of the county, district, or municipal
12 public health agency who has had contact with the person tested pursuant
13 to subsection (2) of this section regarding his or her HIV infection and
14 can identify said THE person shall provide, for purposes of pretrial
15 preparation and in court proceedings, oral and documentary evidence
16 limited to whether said THE person had notice of or had discussion
17 concerning his or her HIV infection and the date of such notice or
18 discussion. If the state department or the county, district, or municipal
19 public health agency no longer employs an officer or employee who has
20 had contact with the person tested pursuant to subsection (2) of this
21 section regarding the person's HIV infection, the state department or the
22 county, district, or municipal public health agency shall provide:

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

27 (II) Documentary evidence concerning whether the person tested
28 pursuant to subsection (2) of this section was provided notice of or had
29 discussion concerning his or her HIV infection and the date of such notice
30 or discussion; and

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

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

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

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

14 (II) THE INFECTIOUS AGENT OF THE HIV INFECTION WAS IN FACT
15 TRANSMITTED.

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

24 Renumber succeeding sections accordingly.

25 Page 38, line 6, strike "~~18-3-415.5~~" and substitute "18-3-415,
26 18-3-415.5,".

** ** ** ** **

