

/* Arkansas has enacted laws concerning criminally exposing persons to the virus; and a "shield law." */

5-14-123. Exposing another person to human immunodeficiency virus.

(a) A person with Acquired Immunodeficiency Syndrome (AIDS) or who tests positive for the presence of human immunodeficiency virus (HIV) antigen or antibodies is infectious to others through the exchange of body fluids during sexual intercourse and through the parenteral transfer of blood or blood products and under these circumstances is a danger to the public.

(b) A person commits the offense of exposing another to HIV if the person knows he or she has tested positive for HIV and exposes another person to such viral infection through the parenteral transfer of blood or blood products or engages in sexual penetration with another person without first having informed the other person of the presence of HIV.

(c) As used in this section, "sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.

(d) Exposing another to HIV is a Class A felony.

CHAPTER 82 SEARCH AND SEIZURE. SUBCHAPTER 1. GENERAL PROVISIONS.

16-82-101. Testing for human immunodeficiency virus.

(a) A person with Acquired Immunodeficiency Syndrome (AIDS) or who tests positive for the presence of Human Immunodeficiency Virus (HIV) antigen or antibodies is infectious to others through the exchange of body fluids during sexual intercourse and through the parenteral transfer of blood or blood products and under these circumstances is a danger to the public.

(b) (1) Any person arrested and charged with violating 5-14-103 - 5-14-109, 5-14-120 - 5-14-122, and 5-70-102 may be required by the court having jurisdiction of the criminal prosecution, upon a finding of reasonable cause to believe that the person committed

the offense and subject to constitutional limitations, to be tested for the presence of HIV or any antibody to HIV, unless the court determines that testing the defendant would be inappropriate and documents the reasons for that determination in the court record.

(2) The test shall be confidentially administered by a licensed physician, the Department of Health, or a local health department.

(c) If the victim or person with whom the defendant engaged in sexual penetration during the course of the crime consents, the court shall provide the person or agency administering the test with the name, address, and telephone number of the victim or person with whom the defendant engaged in sexual penetration during the course of the crime. After the defendant is tested as to the presence of HIV or an antibody to HIV, the person or agency administering the test shall immediately provide the test results to the victim or person with whom the defendant engaged in sexual penetration during the course of the crime, and shall refer the victim or other person for appropriate counseling.

SUBCHAPTER 9 - ACQUIRED IMMUNE DEFICIENCY SYNDROME

SECTION.

20-15-901. Free testing program - Confidentiality.

20-15-902. Counseling - Seminars.

20-15-903. Advising physician or dentist required - Penalty.

20-15-904. Reporting - Confidentiality - Subpoenas.

20-15-905. HIV Shield Law.

20-15-906. Report to Department of Health required - Privileged communications.

20-15-901. Free testing program - Confidentiality.

(a) The Department of Health shall institute an acquired immune deficiency syndrome (AIDS) testing program whereby any citizen may be tested for the virus without charge.

(b) The program shall be so devised as to maintain secrecy as to the identification of persons voluntarily participating in the program.

20-15-902. Counseling - Seminars.

The Department of Education, the University of Arkansas for Medical Sciences, and the Department Of Health shall jointly provide counseling and shall also conduct public seminars designed to educate the public regarding acquired immune deficiency syndrome (AIDS).

20-15-903. Advising physician or dentist required - Penalty.

(a) Any person who is found to have human immunodeficiency virus (HIV) infection shall, prior to receiving any health care services of a physician or dentist, advise such physician or dentist that the person has HIV infection.

(b) Any person failing or refusing to comply with the provisions of subsection (a) of this section shall be guilty of a Class A misdemeanor and punished accordingly.

20-15-904. Reporting - Confidentiality - Subpoenas.

(a) A person with acquired immunodeficiency syndrome (AIDS) or who tests positive for the presence of human immunodeficiency virus (HIV) antigen or antibodies is infectious to others through the exchange of body fluids during sexual intercourse and through the parenteral transfer of blood or blood products and under these circumstances is a danger to the public.

(b) A physician whose patient is determined to have acquired immunodeficiency syndrome (AIDS) or who tests positive for the presence of human immunodeficiency virus (HIV) antigen or antibodies shall immediately make a report to the Arkansas Department of Health in such manner and form as the department shall direct.

(c) All information and reports in connection with persons suffering from or suspected to be suffering from the diseases specified in this section shall be regarded as confidential by any and every person, body, or committee whose duty it is or may

be to obtain, make, transmit, and receive such information and reports. However, any prosecuting attorney of this state may subpoena such information as may be necessary to enforce the provisions of this section and 5-14-123 and 16-82-101, provided that any information acquired pursuant to such subpoena shall not be disclosed except to the courts to enforce the provisions of this section.

20-15-905. HIV Shield Law.

(a) As used in this section:

(1) "Health care provider" means any physician, nurse, paramedic, or other person providing medical, nursing, or other health care services of any kind;

(2) "Health facility" means a hospital, nursing home, blood bank, blood center, sperm bank, or other health care institution;

(3) "HIV" means the human immunodeficiency virus or any other identified causative agent of acquired immunodeficiency syndrome (AIDS);

(4) "Person" includes any natural person, partnership, association, joint venture, trust, governmental entity, public or private corporation, health facility, or other legal entity;

(5) "Test" or "HIV test" means a test to determine the presence of the antibody or antigen to HIV, or of HIV infection.

(b) Informed consent is not required for a health care provider or health facility to perform a test when a health care provider or employee of a health facility is involved in a direct skin or mucous membrane contact with the blood or bodily fluids of an individual which is of a nature that may transmit HIV, as determined by a physician in his medical judgment. The results of the test shall be provided by the person ordering the test to the affected health care provider or employee of a health facility, to the health care provider's or employee's physician, to the patient, and to the patient's physician. Appropriate counseling along with the test results shall be provided.

(c) Informed consent, information, and counseling are not required for the performance of an HIV test when, in the judgment of the physician, such testing is medically indicated to provide appropriate diagnosis and treatment to the subject of the test, provided that the subject of the test has otherwise provided his or her consent to such physician for medical treatment. If confirmatory testing is positive for evidence of HIV infection, the patient shall be informed.

(d) Health care providers or facilities may not deny appropriate care based upon the results of an HIV test.

(e) (1) Nothing in this section shall be construed to impose civil liability or criminal sanction for performing a test without written informed consent pursuant to the provisions of subsection (b) or (c) of this section.

(2) Nothing in this section shall be construed to impose civil liability or criminal sanction for disclosure of a test result in accordance with the provisions of subsection (b) of this section; provided, however, that nothing in this section shall be construed to limit the confidentiality provided by 20-15-9()1 for AIDS testing unless testing is conducted pursuant to this section.

20-15-906. Report to Department of Health required - Privileged communications.

(a) Reports shall be made to the Arkansas Department of Health in such form and manner as may be required by the department for all persons who have been determined to have acquired immunodeficiency syndrome (AIDS) or who have tested positive for the presence of human immunodeficiency virus (HIV) antigen or antibodies.

(b) Reporting is required by the following persons:

(1) Physicians;

(2) Hospital infection control practitioners and the chairpersons of hospital infection control committees;

(3) Directors of laboratories doing business in the State of Arkansas;

- (4) Medical directors of in-home health agencies;
- (5) Program directors of state agencies to whom an HIV/AIDS diagnosis has been disclosed;
- (6) Nursing home medical directors; and
- (7) Those other persons as are required by the rules and regulations of the Arkansas Department of Health.

(c) notwithstanding the provisions of this section or any other law, the privileged communications provisions codified at 17-39-107 et seq. are not repealed, and no insurer or hospital and medical service corporation may deny payment of benefits for services rendered by those licensed pursuant to 17-39-301 et seq., for covered services.

20-27-301. Donation by minors.

(a) Any minor who has reached the age of seventeen (17) years may act as a blood donor to any nonprofit blood bank or any licensed hospital without consideration.

(b) The consent of the minor shall not be subject to disaffirmance because of the minority of the donor. The consent of the parent or guardian of the minor shall not be necessary to authorize the taking of blood from the minor.

(c) However, nothing in this section shall be construed to relieve any blood bank or hospital or its agents or employees from civil liability for any negligence in taking the blood of a minor.

20-27-302. Testing for blood-borne diseases.

(a) Any individual or company that collects blood products, including but not limited to red cells, white cells, platelets, clotting factors, immunoglobulins, or plasma for the purpose of resale or distribution used in the treatment of human disease, shall:

(1) Inform the donor that his blood will be tested for the presence of human immunodeficiency virus antigens or antibodies

(HIV-1), causative agents of acquired immunodeficiency syndrome (AIDS) and other blood-borne diseases and shall inform the donor of the test results. In addition, if the donor's blood tests are found to be reactive, the donor's name shall be made available to the Department of Health for the purpose of contact tracing and partner notification and to donor referral registries;

(2) Use no donations of blood products or plasma until the donor has been found to be free of evidence of the HIV infection by a United States Food and Drug Administration-approved screening test such as the Enzyme-Linked Immunosorbent Assay (ELISA) test;

(3) Repeat any screening test that is found to be positive. If the screening test is repeatedly positive, a confirmatory test, such as the Western Blot, Immunofluorescence Assay (IFA) or any other confirmatory test subsequently approved by the United States Food and Drug Administration shall be performed. If confirmatory testing is positive for evidence of HIV infection, the donor shall be informed and his blood shall not be accepted.

(b) Donors who test positive shall be encouraged to seek medical consultation from their physician or local public health facility.