

AN ACT

relating to the requirement that certain defendants in a criminal case undergo testing for HIV infection and other diseases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 21.31, Code of Criminal Procedure, is amended by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (b-1) to read as follows:

(a) A person who is indicted for or who waives indictment for an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code, shall, at the direction of the court on the court's own motion or on the request of the victim of the alleged offense, undergo a standard diagnostic test approved by the United States Food and Drug Administration for human immunodeficiency virus (HIV) infection and other sexually transmitted diseases [~~medical procedure or test designed to show or help show whether the person has a sexually transmitted disease or has acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. The court may direct the person to undergo the procedure or test on its own motion or on the request of the victim of the alleged offense~~]. If the person refuses to submit voluntarily to the [~~procedure or~~] test, the court shall require the person to submit to the [~~procedure or~~] test. On request of the victim of the alleged offense, the court shall order the defendant

1 to undergo the test not later than 48 hours after an indictment for  
2 the offense is presented against the defendant or the defendant  
3 waives indictment. Except as provided by Subsection (b-1), the  
4 [The] court may require a defendant previously required under this  
5 article to undergo a diagnostic [medical procedure or] test on  
6 indictment for an offense to undergo a subsequent [medical  
7 procedure or] test only after [following] conviction of the  
8 offense. A [The] person performing a [the procedure or] test under  
9 this subsection shall make the test results available to the local  
10 health authority, and the local health authority shall be required  
11 to make the notification of the test results [result] to the victim  
12 of the alleged offense and to the defendant.

13 (a-1) If the victim requests the testing of the defendant  
14 and a law enforcement agency is unable to locate the defendant  
15 during the 48-hour period allowed for that testing under Subsection  
16 (a), the running of the 48-hour period is tolled until the law  
17 enforcement agency locates the defendant and the defendant is  
18 present in the jurisdiction.

19 (b) The court shall order a person who is charged with an  
20 offense under Section 22.11, Penal Code, to undergo in the manner  
21 provided by Subsection (a) a diagnostic [medical procedure or] test  
22 designed to show or help show whether the person has HIV, hepatitis  
23 A, hepatitis B, tuberculosis, or any other disease designated as a  
24 reportable disease under Section 81.048, Health and Safety  
25 Code. The person charged with the offense shall pay the costs of  
26 testing under this subsection.

27 (b-1) If the results of a diagnostic test conducted under

1 Subsection (a) or (b) are positive for HIV, the court shall order  
2 the defendant to undergo any necessary additional testing within a  
3 reasonable time after the test results are released.

4 (c) The state may not use the fact that a [~~medical procedure~~  
5 ~~or~~] test was performed on a person under Subsection (a) or use the  
6 results of a [~~procedure or~~] test conducted under Subsection (a) in  
7 any criminal proceeding arising out of the alleged offense.

8 SECTION 2. The change in law made by this Act applies only  
9 to an offense committed on or after the effective date of this Act.  
10 An offense committed before the effective date of this Act is  
11 covered by the law in effect when the offense was committed, and the  
12 former law is continued in effect for that purpose. For purposes of  
13 this section, an offense was committed before the effective date of  
14 this Act if any element of the offense occurred before that date.

15 SECTION 3. This Act takes effect September 1, 2009.

---

President of the Senate

---

Speaker of the House

I certify that H.B. No. 1985 was passed by the House on April 22, 2009, by the following vote: Yeas 148, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1985 on May 23, 2009, by the following vote: Yeas 144, Nays 0, 1 present, not voting.

---

Chief Clerk of the House

I certify that H.B. No. 1985 was passed by the Senate, with amendments, on May 21, 2009, by the following vote: Yeas 31, Nays 0.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor