

By: Hegar

S.B. No. 712

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the requirement that certain defendants in a criminal
3 case undergo testing for HIV infection and other diseases.

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

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

8 (a) A person who is indicted for or who waives indictment
9 for an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021,
10 Penal Code, shall, at the direction of the court on the court's own
11 motion or on the request of the victim of the alleged offense,
12 undergo a standard diagnostic test approved by the United States
13 Food and Drug Administration for human immunodeficiency virus (HIV)
14 infection and other sexually transmitted diseases [~~medical~~
15 ~~procedure or test designed to show or help show whether the person~~
16 ~~has a sexually transmitted disease or has acquired immune~~
17 ~~deficiency syndrome (AIDS) or human immunodeficiency virus (HIV)~~
18 ~~infection, antibodies to HIV, or infection with any other probable~~
19 ~~causative agent of AIDS. The court may direct the person to undergo~~
20 ~~the procedure or test on its own motion or on the request of the~~
21 ~~victim of the alleged offense]~~. If the person refuses to submit
22 voluntarily to the [~~procedure or~~] test, the court shall require the
23 person to submit to the [~~procedure or~~] test. On request of the
24 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.