

## SENATE BILL No. 305

By Committee on Judiciary

2-9

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AN ACT concerning infectious disease tests for adult and juvenile offenders; costs; amending K.S.A. 38-1692 and K.S.A. 2000 Supp. 65-6009 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 38-1692 is hereby amended to read as follows: 38-1692. (a) As used in this section:

(1) "Adjudicated person" means a person adjudged to be a juvenile offender or a person not adjudicated because of mental disease or defect.

(2) "Laboratory confirmation of HIV *or hepatitis B* infection" means positive test results from a confirmation test approved by the secretary of health and environment.

(3) "Sexual act" means contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva or the mouth and the anus. For purposes of this definition contact involving the penis occurs upon penetration, however slight.

(4) "Test for HIV *or hepatitis B* infection" means a test approved by the secretary of health and environment to detect the etiologic agent for the disease acquired immune deficiency syndrome *or hepatitis B*.

(5) "Body fluids" means blood, semen or vaginal secretions or any body fluid visibly contaminated with blood.

(b) At the time of the first appearance before the court of a person charged with an offense involving a sexual act committed while the person was a juvenile, or in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, the judge shall inform the person or the parent or legal guardian of the person of the availability of testing for HIV *or hepatitis B* infection and counseling and shall cause each alleged victim of the offense, if any, to be notified that testing for HIV *or hepatitis B* infection and counseling is available.

(c) If the victim of the offense requests the court to order infectious disease tests of the alleged offender or if the person charged with the offense stated to law enforcement officers that the person charged with the offense has an infectious disease or is infected with an infectious disease, or used words of like effect, the court shall order the person

1 charged with the offense to submit to infectious disease tests as defined  
2 in K.S.A. 65-6001 and amendments thereto.

3 (d) For any offense by an adjudicated person which the court deter-  
4 mines, from the facts of the case, involved or was likely to have involved  
5 the transmission of body fluids from one person to another or involved a  
6 sexual act, the court: (1) May order the adjudicated person to submit to  
7 a test for HIV *or hepatitis B* infection; or (2) shall order the adjudicated  
8 person to submit to a test for HIV *or hepatitis B* infection if a victim of  
9 the offense, or the parent or legal guardian of the victim if the victim is  
10 a minor, requests the court to make such order. If a test for HIV *or*  
11 *hepatitis B* infection is ordered under this subsection, a victim who is an  
12 adult shall designate a health care provider or counselor to receive the  
13 information on behalf of the victim. If a victim is a minor, the parent or  
14 legal guardian of the victim shall designate the health care provider or  
15 counselor to receive the information. If the test results in a negative re-  
16 action, the court shall order the adjudicated person to submit to another  
17 test for HIV *or hepatitis B* infection six months after the first test was  
18 administered.

19 (e) The results of any test for HIV *or hepatitis B* infection ordered  
20 under this section shall be disclosed to the court which ordered the test,  
21 to the adjudicated person, or the parent or legal guardian of the adjudi-  
22 cated person, and to each person designated under subsection (d) by a  
23 victim or by the parent or legal guardian of a victim. If a test for HIV *or*  
24 *hepatitis B* infection ordered under this section results in a laboratory  
25 confirmation of HIV *or hepatitis B* infection, the results shall be reported  
26 to the secretary of health and environment and to: (1) The commissioner  
27 of juvenile justice, in the case of a juvenile offender or a person not  
28 adjudicated because of mental disease or defect, for inclusion in such  
29 offender's or person's medical file; or (2) the secretary of corrections, in  
30 the case of a person under 16 years of age who has been convicted as an  
31 adult, for inclusion in such person's medical file. The secretary of health  
32 and environment shall provide to each victim of the crime or sexual act,  
33 at the option of such victim, counseling regarding the human immuno-  
34 deficiency virus *and hepatitis B*, testing for HIV *or hepatitis B* infection  
35 in accordance with K.S.A. 65-6001 *et seq.* and amendments thereto and  
36 referral for appropriate health care and services.

37 (f) The costs of any counseling and testing provided under subsection  
38 (e) by the secretary of health and environment shall be paid from amounts  
39 appropriated to the department of health and environment for that pur-  
40 pose. The court shall order the adjudicated person to pay restitution to  
41 the department of health and environment for the costs of any counseling  
42 provided under this section and the costs of any test ordered or otherwise  
43 performed under this section.

1 (g) When a court orders an adjudicated person to submit to a test for  
2 HIV *or hepatitis B* infection under this section, the withdrawal of the  
3 blood may be performed only by: (1) A person licensed to practice med-  
4 icine and surgery or a person acting under the supervision of any such  
5 licensed person; (2) a licensed professional nurse or a licensed practical  
6 nurse; or (3) a qualified medical technician. No person authorized by this  
7 subsection to withdraw blood, no person assisting in the performance of  
8 the test for HIV *or hepatitis B* infection nor any medical care facility  
9 where blood is withdrawn or tested that has been ordered by the court  
10 to withdraw or test blood shall be liable in any civil or criminal action  
11 when the test is performed in a reasonable manner according to generally  
12 accepted medical practices.

13 (h) The results of tests or reports, or information therein, obtained  
14 under this section shall be confidential and shall not be divulged to any  
15 person not authorized by this section to receive the results or information.  
16 Any violation of this section is a class C misdemeanor.

17 Sec. 2. K.S.A. 2000 Supp. 65-6009 is hereby amended to read as  
18 follows: 65-6009. (a) At the time of an appearance before a magistrate  
19 under K.S.A. 22-2901 and amendments thereto, the magistrate shall in-  
20 form any person arrested and charged with a crime in which it appears  
21 from the nature of the charge that the transmission of body fluids from  
22 one person to another may have been involved of the availability of in-  
23 fectious disease tests and shall cause the alleged victim of such a crime,  
24 if any, to be notified that infectious disease tests and counseling are avail-  
25 able. If the victim of the crime or the county or district attorney requests  
26 the court to order infectious disease tests of the alleged offender or if the  
27 person arrested and charged with a crime stated to the law enforcement  
28 officer making such arrest that the person arrested and charged with the  
29 crime has an infectious disease or is infected with an infectious disease,  
30 or used words of like effect, the court shall order the arrested person to  
31 submit to infectious disease tests. The results of any test obtained under  
32 this section shall be inadmissible in any criminal or civil proceeding.

33 (b) Upon conviction of a person for any crime which the court de-  
34 termines from the facts of the case involved or was likely to have involved  
35 the transmission of body fluids from one person to another, the court: (1)  
36 May order the convicted person to submit to infectious disease tests; or  
37 (2) shall order the convicted person to submit to infectious disease tests  
38 if the victim of the crime or the parent or legal guardian of the victim, if  
39 the victim is a minor, requests the court to issue such order. If infectious  
40 disease tests are ordered under this subsection, the victim of the crime,  
41 if any, who is not a minor, shall designate a health care provider or coun-  
42 selor to receive such information on behalf of the victim. If the victim is  
43 a minor, the parent or legal guardian of the victim shall designate the

1 health care provider or counselor to receive such information.

2 (c) The results of any infectious disease test ordered under subsection  
3 (a) shall be disclosed to the law enforcement officer making such arrest,  
4 the person arrested and such other persons as the court determines have  
5 a legitimate need to know the test result in order to provide for their  
6 protection. The results of any infectious disease test ordered under sub-  
7 section (b) shall be disclosed to the court which ordered the test, the  
8 convicted person and to the person designated under subsection (b) by  
9 the victim or victims of the crime or by the parent or legal guardian of a  
10 victim if the victim is a minor. If an infectious disease test ordered under  
11 this section results in a positive reaction, the results shall be reported to  
12 the secretary of health and environment and to the secretary of  
13 corrections.

14 (d) *As used in this section, infectious disease includes HIV and hep-*  
15 *atitis B.*

16 (e) *The costs of any counseling and testing provided under this section*  
17 *shall be paid from amounts appropriated to the department of health and*  
18 *environment for that purpose. The court shall order the adjudicated per-*  
19 *son to pay restitution to the department of health and environment for*  
20 *the costs of any counseling provided under this section and the costs of*  
21 *any test ordered or otherwise performed under this section.*

22 Sec. 3. K.S.A. 38-1692 and K.S.A. 2000 Supp. 65-6009 are hereby  
23 repealed.

24 Sec. 4. This act shall take effect and be in force from and after its  
25 publication in the Kansas register.

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