

ENGROSSED HOUSE  
BILL NO. 1012

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(ELMER)

( CRIMES AND PUNISHMENTS - AMENDING SECTIONS IN  
TITLES 21, 22 AND 63 - H.I.V. RELATED OFFENSES -  
SENTENCING POWERS OF THE COURTS - TESTING FOR  
CERTAIN COMMUNICABLE DISEASES -  
EFFECTIVE DATE )

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 21 O.S. 1981, Section 1031, is amended to read as follows:

Section 1031. Any person violating any of the provisions of ~~this act~~ Section 1028 or 1029 of this title shall:

1. on a first or second offense, be guilty of a misdemeanor and, upon conviction, shall be imprisoned in the county jail for not less than thirty (30) days nor more than one (1) year; and ~~the~~

2. on a third or subsequent offense in a district court or for conviction in a municipal court of record for the third or subsequent violation of a municipal ordinance prohibiting the offense provided for in Section 1028 or 1029 of this title, be guilty of a felony and, upon conviction, shall be imprisoned in the State Penitentiary for not less than one (1) year nor more than five (5) years.

Any conviction of the defendant for violation of Section 1028 or 1029 of this title or conviction in a municipal court of record for

violation of a municipal ordinance prohibiting such offense occurring prior to September 1, 1991, shall be counted as an offense for determination of the offense as a felony or misdemeanor pursuant to paragraphs 1 and 2 of this section.

The court in which any such conviction is had shall notify the county superintendent of public health of such conviction.

SECTION 2. AMENDATORY Section 3, Chapter 153, O.S.L. 1988 (21 O.S. Supp. 1990, Section 1192.1), is amended to read as follows:

Section 1192.1 A. ~~It shall be unlawful for any person to engage in any activity with the intent to infect or cause to be infected any other person with the human immunodeficiency virus knowing that he or she has Acquired Immune Deficiency Syndrome (AIDS) or is a carrier of the human immunodeficiency virus (HIV) and with intent to infect another, to engage in conduct reasonably likely to result in the transfer of the person's own blood, bodily fluids containing visible blood, semen, or vaginal secretions into the bloodstream of another, or through the skin or other membranes of another person, except during in utero transmission of blood or bodily fluids, and:~~

1. the other person did not consent to the transfer of blood, bodily fluids containing blood, semen, or vaginal secretions; or

2. the other person consented to the transfer but at the time of giving consent had not been informed by the person that the person transferring such blood or fluids had AIDS or was a carrier of HIV.

B. It shall be unlawful for any person knowing that he or she has acquired immune deficiency syndrome or is a carrier of the human immunodeficiency virus to work as a food handler in any restaurant in this state.

C. Any person convicted of violating the provisions of subsection A of this section shall be guilty of a felony, punishable

by imprisonment in the custody of the Department of Corrections for not more than five (5) years. Any person convicted of violating the provisions of subsection B of this section shall be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than thirty (30) days, or by a fine not to exceed Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

SECTION 3. AMENDATORY 22 O.S. 1981, Section 991a, as last amended by Section 1, Chapter 152, O.S.L. 1990 (22 O.S. Supp. 1990, Section 991a), is amended to read as follows:

Section 991a. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, when a defendant is convicted of a crime and no death sentence is imposed, the court shall either:

1. suspend the execution of sentence in whole or in part, with or without probation. The court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence to do one or more of the following:

- a. To provide restitution to the victim according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the court, if he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family and if the extent of the damage to the victim is determinable with reasonable certainty, or
- b. To reimburse any state agency for amounts paid by the state agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the

state agency, with interest accruing thereon at the rate of twelve percent (12%) per annum, or

- c. To engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted, or
- d. To pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, and which provides restitution payments by convicted defendants to victims of crimes committed within the State of Oklahoma wherein such victim has incurred a financial loss, or
- e. To confinement in the county jail for a period not to exceed six (6) months, or
- f. To reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which he is being sentenced.

However, any such order for restitution, community service or confinement in the county jail, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence; or

2. impose a fine prescribed by law for the offense, with or without probation or commitment and with or without restitution or service as provided for in this section;

3. commit such person for confinement provided for by law with or without restitution as provided for in this section;

4. in the case of nonviolent felony offenses, sentence such person to the Community Service Sentencing Program created pursuant to Section 991a-4 of this title; or

5. in addition to the other sentencing powers of the court, in the case of a person convicted of operating or being in control of a

motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol or another intoxicating substance, or convicted of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person:

- a. To participate in an alcohol and drug substance abuse course, pursuant to Sections 11-902.2 and 11-902.3 of Title 47 of the Oklahoma Statutes,
- b. To attend a victims impact panel program sponsored by the Highway Safety Division of the Oklahoma Department of Transportation, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not to exceed Five Dollars (\$5.00), to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee,
- c. To both participate in the alcohol and drug substance abuse course, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph; or

6. in addition to the other sentencing powers of the court, in the case of a person convicted of prostitution pursuant to Section 1029 of Title 21 of the Oklahoma Statutes as a felony offense, require such person to receive counseling for the behavior which may have caused such person to engage in prostitution activities. Such person may be required to receive counseling in areas including but not limited to alcohol and substance abuse, sexual behavior problems, or domestic abuse or child abuse problems.

B. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. The provisions of paragraph 1 of subsection A of this section shall not

apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony.

C. Probation, for purposes of subsection A of this section, is a procedure by which a defendant found guilty of a crime is released by the court subject to conditions imposed by the court and subject to the supervision of the Department of Corrections. Such supervision shall be initiated upon an order of probation from the court, and shall not exceed two (2) years. However, such supervision may be extended for a period not to exceed the expiration of the maximum term or terms of the sentence upon a determination by the Division of Probation and Parole of the Department of Corrections that the best interests of the public and the releasee will be served by an extended period of supervision.

D. The Department of Corrections, or such other agency as the court may designate, shall be responsible for the monitoring and administration of the restitution and service programs provided for by subparagraphs a, c, and d of paragraph 1 of subsection A of this section, and shall ensure that restitution payments are forwarded to the victim and that service assignments are properly performed.

E. 1. The Division of Probation and Parole of the Department of Corrections is hereby authorized, subject to funds available through appropriation by the Legislature, to contract with counties for the administration of county Community Service Sentencing Programs.

2. Any offender eligible to participate in the Program pursuant to this act shall be eligible to participate in a county Program; provided, participation in county-funded Programs shall not be limited to offenders who would otherwise be sentenced to confinement with the Department of Corrections.

3. The Division shall establish criteria and specifications for contracts with counties for such Programs. A county may apply to the Division for a contract for a county-funded Program for a

specific period of time. The Department shall be responsible for ensuring that any contracting county complies in full with specifications and requirements of the contract. The contract shall set appropriate compensation to the county for services to the Division.

4. The Division is hereby authorized to provide technical assistance to any county in establishing a Program, regardless of whether the county enters into a contract pursuant to this subsection. Technical assistance shall include appropriate staffing, development of community resources, sponsorship, supervision and any other requirements set forth in this act.

5. The Department shall annually make a report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House on the number of such Programs, the number of participating offenders, the success rates of each Program according to criteria established by the Department and the costs of each Program.

SECTION 4. AMENDATORY Section 2, Chapter 153, O.S.L. 1988, as amended by Section 3, Chapter 27, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-502.2), is amended to read as follows:

Section 1-502.2 A. Unless otherwise provided by law, all information and records which identify any person who has or may have any communicable or venereal disease which is required to be reported pursuant to Sections 1-501 through 1-532.1 of ~~Title 63 of the Oklahoma Statutes~~ this title and which are held or maintained by any state agency, health care provider or facility, physician, health professional, laboratory, clinic, blood bank, funeral director, third party payor, or any other agency, person, or organization in the state shall be confidential. Any information authorized to be released pursuant to paragraphs 1 through 6 of this subsection shall be released in such a way that no person can be identified unless otherwise provided for in such paragraph or by

law. Such information shall not be released except under the following circumstances:

1. Release is made upon court order;

2. Release is made by or with the informed written consent of the person whose information is being kept confidential or with the informed written consent of the legal guardian or legal custodian of such person, or if such person is a minor, with the informed written consent of the parent or legal guardian of such minor;

3. Release is necessary as determined by the State Department of Health to protect the health and well-being of the general public. Any such order for release by the Department and any review of such order shall be in accordance with the procedures specified in Sections 309 through 323 of Title 75 of the Oklahoma Statutes. Only the initials of the person whose information is being kept confidential shall be on public record for such proceedings unless the order by the Department specifies the release of the name of such person and such order is not appealed by such person or such order is upheld by the reviewing court;

4. Release is made of medical or epidemiological information to those persons who have had risk exposures pursuant to Section 1-502.1 of this title;

5. Release is made of medical or epidemiological information to health professionals, appropriate state agencies, or district courts to enforce the provisions of Sections 1-501 through 1-532.1 of ~~Title 63 of the Oklahoma Statutes~~ this title and related rules and regulations concerning the control and treatment of communicable or venereal diseases; ~~or~~

6. Release is made of specific medical or epidemiological information for statistical purposes in such a way that no person can be identified; or

7. Release is made of specific medical information to victims of certain offenses as provided for in Section 6 of this act.

B. 1. The State Department of Health may convene a confidential meeting of a multidisciplinary team for recommendation on school placement of an HIV-infected student. The multidisciplinary team shall include, but not be limited to the following:

- a. the parent, parents, legal representative, or legal guardian or legal custodian of the student;
- b. the physician of the student;
- c. a representative from the superintendent's office of the affected school district;
- d. a representative from the State Department of Education; and
- e. a representative from the State Department of Health.

Each member of the team shall be responsible for protecting the confidentiality of the student and any information made available to such person as a member of the team. The multidisciplinary team shall be exempt from the requirements of Sections 301 through 314 of Title 25 of the Oklahoma Statutes and Sections 24A.1 through 24A.19 of Title 51 of the Oklahoma Statutes.

2. Each member of the local school board having jurisdiction over the student shall also be responsible for protecting the confidentiality of the student and any information made available to such person as a school board member.

C. Any person who negligently, knowingly or intentionally discloses or fails to protect medical or epidemiological information classified as confidential pursuant to this section, upon conviction, shall be guilty of a misdemeanor punishable by the imposition of a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

D. Any person who negligently, knowingly or intentionally discloses or fails to protect medical or epidemiological information

classified as confidential pursuant to this section shall be civilly liable to the person who is the subject of the disclosure for court costs, attorneys fees, exemplary damages and all actual damages, including damages for economic, bodily or psychological harm which is proximately caused by the disclosure.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-502.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any hospital or other health care facility in this state may test any patient receiving care in that hospital or other health care facility for the human immunodeficiency virus without first obtaining consent for such test from the patient. No physician or other health care worker shall be civilly liable for such tests authorized by this section.

SECTION 6. AMENDATORY 63 O.S. 1981, Section 1-524, is amended to read as follows:

Section 1-524. (a) The keeper of any prison or penal institution in this state shall cause to be examined every person confined in such prison or penal institution, to determine whether such person is an infected person.

(b) The State Commissioner of Health ~~and~~, local health officers, ~~or their authorized deputies who are~~ and licensed physicians, may examine persons who are arrested by lawful warrant for ~~vagrancy,~~ prostitution, ~~rape~~ or other sex crimes not specified in subsection (c) of this section, for the purpose of determining if they are infected with a venereal disease or a communicable disease including, but not limited to, the human immunodeficiency virus (HIV). ~~Every such person shall submit to the examination and permit specimens to be taken for laboratory examinations. Such person may be detained until the results of the examination are known. The required examination shall be made by the Commissioner or local health officer or, at the option of the person to be examined, by an~~

~~approved licensed physician. Such~~ Any such examination shall be made subsequent to arrest and a upon order of the court issued at the arraignment of the arrested person. Every person shall submit to the examination and shall permit specimens to be taken for laboratory examinations. Such person may be detained until the results of the examination are known. The examination shall be made by a licensed physician. A determination as to whether or not the person is infected shall not be based on any prior examination. Any person found to be infected with a venereal disease shall be treated by the Commissioner or local health officer, or a physician of such person's own choice, until such person is noninfectious or dismissed by the Commissioner or local health officer or physician. In the event a person infected with a venereal disease refuses or fails to submit to treatment, then such person may be quarantined for the purpose of treatment, and a report thereof shall be made to the State Commissioner of Health.

(c) The State Commissioner of Health, a municipal or county health officer or a licensed physician shall examine persons who are arrested by lawful warrant for the offense of first or second degree rape, forcible sodomy or the intentional infection or attempt to intentionally infect a person with the human immunodeficiency virus pursuant to Section 1192.1 of Title 21 of the Oklahoma Statutes, for the purpose of determining if they are infected with a venereal disease or a communicable disease including, but not limited to, the human immunodeficiency virus (HIV). The court shall issue an order for this examination upon the arraignment of the person arrested for any of the offenses specified in this subsection. The order requiring such test shall include the name and address of the alleged victim which shall be used for the sole purpose of providing such victim with test results.

(d) No licensed medical doctor, licensed osteopathic physician, licensed chiropractic physician, registered nurse, licensed

practical nurse, physician's assistant certified by the State Board of Medical Licensure and Supervision, employee of a hospital or other health care facility authorized by the hospital or health care facility to withdraw blood, or other qualified person authorized by the Board of Tests for Alcohol and Drug Influence shall be civilly or criminally liable for the withdrawal of blood for the testing of the blood for the human immunodeficiency virus pursuant to this section if the test is ordered by the court and is done in a reasonable manner according to generally accepted clinical practices. The State Department of Health shall promulgate rules and regulations establishing an evidentiary chain of custody for samples which come into the possession of the Department for testing pursuant to this section.

SECTION 7. AMENDATORY 63 O.S. 1981, Section 1-525, is amended to read as follows:

Section 1-525. ~~The~~ A. Except as otherwise provided by law, the prescription and records required by the foregoing provisions to be filed and kept shall not be exposed to any person other than the State Commissioner of Health or local health officer, or when properly ordered by a court of competent jurisdiction to be used as evidence in such court, and no information whatever shall be given to any person concerning any infected person except to appropriate persons for use in the proper courts of this state. Provided, ~~however,~~ that records of diagnosis and treatment may be transmitted to physicians and to health authorities in this and other states upon written request of the person affected. Provided further, results of examinations conducted on persons arrested by lawful warrant for the offense of first or second degree rape, forcible sodomy, or intentional infection or attempted infection of a person with the human immunodeficiency virus, shall be provided to the alleged victim of the crime upon the request of the victim, the parent of the victim if the victim is a minor, or upon request of

the legal guardian or custodian of the victim. The name of the arrested and examined person shall not be disclosed on the transmitted record. The State Department of Health shall provide to victims the test results of examinations of arrestees made pursuant to this section upon notification of the results by the licensed physician conducting such test. The Department shall provide free testing to the alleged victim for any venereal or communicable disease for which the arrestee tests positive, as indicated in the transmitted record of diagnosis. Such testing shall be accompanied with pretest and post-test counseling. Such counseling shall include the provision of information to the victim or the parent, legal guardian or custodian of the victim concerning the venereal or communicable disease indicated in the transmitted record and the location of public and private facilities in the vicinity offering tests and counseling for persons who have the venereal or communicable disease.

B. The State Board of Health shall promulgate rules and regulations for the examination authorized or required by Section 1 of this act and for the release of records containing results of examinations authorized by subsection A of this section. The rules and regulations shall establish procedural guidelines which respect the rights of the person arrested for the alleged offense and the victim of the alleged offense.

SECTION 8. This act shall become effective September 1, 1991.

Passed the House of Representatives the 6th day of March, 1991.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1991.

President of the Senate