

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1187

BY: ISTOOK

AS INTRODUCED

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING 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), WHICH RELATES TO CONFIDENTIALITY OF INFORMATION WHICH IDENTIFY PERSONS AS HAVING CERTAIN DISEASES; AUTHORIZING RELEASE OF INFORMATION TO VICTIMS OF CERTAIN CRIMES; AMENDING 63 O.S. 1981, SECTION 1-524, WHICH RELATES TO EXAMINATIONS OF CERTAIN PRISONERS; AUTHORIZING THE TESTING FOR CERTAIN COMMUNICABLE DISEASES UPON COURT ORDER; REQUIRING TESTING FOR PERSONS ARRESTED OF CERTAIN OFFENSES; PROVIDING EXEMPTION FROM CIVIL AND CRIMINAL LIABILITY FOR CERTAIN PERSONS WITHDRAWING BLOOD FOR EXAMINATIONS; AMENDING 63 O.S. 1981, SECTION 1-525, WHICH RELATES TO CONFIDENTIALITY OF CERTAIN RECORDS; REQUIRING PROVISION OF TEST RESULTS TO CERTAIN VICTIMS; REQUIRING THE PROVISION OF CERTAIN INFORMATION; REQUIRING STATE BOARD OF HEALTH TO PROMULGATE CERTAIN RULES AND REGULATIONS; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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 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~~ 7 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 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 the victim of a rape or other sexual assault pursuant to Section 3 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 2. 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, city or county health officers, or their authorized deputies who are physicians, a licensed physician~~ 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 upon such order shall submit to the examination and shall permit specimens to be taken for laboratory examinations. The person may be detained until the results of the examination are known. 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 city 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 venereal or communicable disease 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 3. 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 Commissioner of Health, city or county health officer or licensed physician conducting such test.

B. The State Board of Health shall promulgate rules and regulations for the examination authorized or required by Section 2 of this act and for the release of records containing results of examinations authorized by Section 1 of this act and 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 4. This act shall become effective September 1, 1991.