

ENROLLED SENATE
BILL NO. 706

By: Pruitt of the Senate

and

Smith (Hopper), Balkman,
Cargill, Dank, Davis,
Ericson, Graves,
Greenwood, Nance, Piatt
and Vaughn of the House

An Act relating to public health and prisoners; amending 63 O.S. 2001, Section 1-524, as amended by Section 4, Chapter 348, O.S.L. 2002 (63 O.S. Supp. 2002, Section 1-524), which relates to venereal disease testing following sexual assault crime; deleting language; providing for examination and testing of persons arrested for certain sex crimes; providing for certain counties and municipalities to notify city-county health departments; requiring submission for examination; authorizing detention until certain test results are known; prohibiting use of prior examinations for determination of disease; requiring treatment of infected person by certain professionals; directing cost of treatment be responsibility of infected person; authorizing quarantine for failure to participate in treatment; requiring certain report; requiring district attorney to file a motion requesting certain examination and tests; authorizing certain standing court orders for certain purpose; directing rapid HIV test within certain time of offense by arresting officer without court order; requiring notification to physician upon certain test result; directing treatment of victim within certain time for certain purpose; specifying certain examination and test not be for evidentiary purpose; authorizing confirmation examination or test upon positive result of venereal disease; requiring certain provisions in certain court order; specifying time for certain results to be made known to certain persons; specifying costs be responsibility of certain facility with reimbursement on court order; directing the Victim Witness Coordinator to notify victim when test results are completed; providing for certain test results to be forwarded to certain persons for explanation to victim; providing treatment to victim for certain period; marking certain forms for expedited handling; providing court-ordered examination and testing upon refusal of certain person to be tested; providing for costs and reimbursement of costs for examination and testing; prohibiting cost to victim; defining term; stating

legislative findings; stating legislative intent that Department of Corrections and private prisons make faith-based programs available in correctional facilities; stating certain requirements; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-524, as amended by Section 4, Chapter 348, O.S.L. 2002 (63 O.S. Supp. 2002, 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. Any licensed physician may examine persons who are arrested by lawful warrant for prostitution, or other sex crimes not specified in ~~subsection C of this section~~ Section 2 of this act, 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). For purposes of expediting such examination, in counties with a population of greater than four hundred thousand (400,000), the county sheriff or the chief of police of any municipality with a population of greater than two hundred thousand (200,000) that is located within such county and that has a municipal court of record shall notify the city-county health department serving the county of any person who has been arrested by county or city officers for prostitution. Any such examination shall be made subsequent to arrest and if the examination is for the human immunodeficiency virus, upon order of the court issued at the initial appearance 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 State Commissioner of Health 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 Commissioner.

C. ~~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. At the request of the victim or the district attorney, the judge may order such examination and test at the initial appearance or thereafter upon a motion of the victim or the district attorney. The order requiring such examination and test shall not include the name and address of the alleged victim but shall provide that the alleged victim shall be notified of the test results~~

~~D.~~ For purposes of this section, the term "initial appearance" shall refer to the first court appearance of an individual, in person or by closed circuit television, before a magistrate on a presentment, indictment or preliminary information on a felony offense.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-524.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 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 for the purpose of determining if the person is infected with a venereal disease, including, but not limited to, the human immunodeficiency virus (HIV). For purposes of expediting such examination, in counties with a population of greater than four hundred thousand (400,000), the county sheriff or the chief of police of any municipality with a population of greater than two hundred thousand (200,000) that is located within such county and that has a municipal court of record shall notify the city-county health department serving the county of any person who has been arrested by county or city officers for such offense. Any such examination shall be made subsequent to arrest as provided in this section. 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. 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 State Commissioner of Health 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. The costs of such treatment shall be the responsibility of the person who is examined and tested and the court shall order the person to pay such costs. 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 Commissioner.

B. The district attorney shall file a motion for a court-ordered examination and testing of the person arrested for the offenses specified in subsection A of this section at the time the criminal charges are filed or the court may provide a standing order for such examination and testing which shall issue automatically at the time of arrest for the offenses specified in subsection A of this section.

C. Any peace officer in this state upon the arrest of a person within six (6) hours or less of the actual offense of first or second degree rape, forcible sodomy or intentional infection or attempt to intentionally infect a person with the human immunodeficiency virus shall immediately deliver and submit the person for a rapid test for human immunodeficiency virus (HIV) without a court order, if a rapid test site is available. If the rapid HIV test results are positive the physician examining the victim of such offense shall be immediately notified and the physician shall immediately provide the victim with preventive treatment, if the victim can be treated within the medically proscribed period for preventive measures.

D. The examination and testing required by this section shall not be for evidentiary purposes and shall be expedited and conducted solely to screen for and identify the need for the victim's treatment due to potential exposure to venereal diseases. A confirmation examination and test may be conducted following any examination or test yielding a positive result that is not conclusive of the presence of the human immunodeficiency virus (HIV) or other venereal diseases.

E. The court shall include the following provisions in its order and shall not include the name or address of the alleged victim:

1. A list of specific examinations and tests, including, but not limited to: blood tests for human immunodeficiency virus (HIV), hepatitis B, hepatitis C, and syphilis, and cultures or smears for gonorrhea and chlamydia, and visual examinations for evidence of genital herpes and genital warts for which examinations and tests are available;

2. A provision requiring the physician, clinic or hospital which provides the examination and testing to immediately notify the district attorney's office, through the Victim Witness Coordinator, when the test and examination results have been completed;

3. A provision requiring copies of the examination report and test results be forwarded by the physician, clinic or hospital that conducted such examination and tests to the designated physician or counseling site as made known to the Victim Witness Coordinator by the victim, or if not specified by the victim then copies of the reports and results shall be forwarded to the Victim Witness Coordinator. Results of examinations and tests shall be forwarded within three (3) days of completion of the examination or testing;

4. A provision that the victim be notified within three (3) days of the receipt of the examination report and test results by the designated physician or counseling site as designated by the victim or the Victim Witness Coordinator, if no designation has been made by the victim;

5. A provision directing the offender and victim to be treated for infection as indicated in any positive examination and test result; and

6. A provision directing the facility having custody of the arrested person to be responsible for the costs of examination and tests; provided, however, that the court may order reimbursement of such costs at the time of sentencing.

F. Upon notification that the results of the examination and tests are completed, the Victim Witness Coordinator shall instruct the physician, clinical laboratory or hospital that completed such results to forward copies of the results according to the victim's designation or, if no designation has been made, forward copies to the Victim Witness Coordinator's office. The Victim Witness Coordinator shall notify the victim's designated professional that the results are being forwarded and instruct the victim to set a time to receive the results in person.

G. When the examination and test results indicate infection of any venereal disease, the victim shall be treated by the State Commissioner of Health or local health officer, or a physician of the victim's own choice, until noninfectious or dismissed by the Commissioner, local health officer or physician.

H. All examinations and testing shall be performed by a licensed physician and/or clinical laboratory or hospital. The test forms shall include the words "Sex Crime" to expedite handling and shall include a criminal case number, if known.

I. If the arrested person refuses to be examined and tested upon arrest, the court shall issue an order for such examination and test at the initial appearance of the person arrested.

J. The cost of examination and testing authorized by this section shall be the responsibility of the facility having custody of the person at the time of arrest. The court shall order the defendant to reimburse such facility at the time of sentencing for all actual costs associated with examination and testing required by this section. No cost of any kind shall be incurred by any victim of such crimes for testing, obtaining the results of tests, or for treatment required by a victim due to a positive result for a test for venereal disease resulting from an offense specified in this section.

K. For purposes of this section, the term "initial appearance" shall refer to the first court appearance of an individual, in person or by closed circuit television, before a magistrate on a presentment, indictment or preliminary information on a felony offense.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 614 of Title 57, unless there is created a duplication in numbering, reads as follows:

The Legislature finds and declares that faith-based programs offered in state and private correctional institutions and facilities have the potential to facilitate inmate institutional adjustment, to help inmates assume personal responsibility, and to reduce recidivism. It is the intent of the Legislature that the Department of Corrections and private vendors operating private

correctional facilities work towards ensuring the availability and development of such programs at the correctional institutions and facilities of this state and shall continuously:

1. Measure recidivism rates for all inmates participating in faith-based or religious programs at the correctional institution or facility;

2. Work with volunteers ministering to inmates from various faith-based institutions in this state to improve the quality of faith-based programs at the correctional institution or facility;

3. Continue to develop community linkages with churches, synagogues, mosques, and other faith-based institutions to assist in the release of participants into the community; and

4. Monitor faith-based programs operating in the correctional institution or facility.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 20th day of May, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2003.

Presiding Officer of the House
of Representatives

