

The Senate Committee on Judiciary offered the following substitute to HB 996:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated,
2 relating to procedure for sentencing and imposition of punishment, so as to provide for time
3 frames for HIV testing; to provide for additional testing; to provide for disclosure of test
4 results; to amend Article 1 of Chapter 4 of Title 42 of the Official Code of Georgia
5 Annotated, relating to general provisions relative to jails, so as to provide jailers with arrest
6 powers; to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 1 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
10 procedure for sentencing and imposition of punishment, is amended by revising Code
11 Section 17-10-15, relating to AIDS transmitting crimes, requiring defendant to submit to HIV
12 test, and report of results, as follows:

13 "17-10-15.

14 (a)(1) Any term used in this Code section and defined in Code Section 31-22-9.1 shall
15 have the meaning provided for such term in Code Section 31-22-9.1.

16 (2) As used in this Code section, the term 'significant exposure to HIV' means contact
17 of the victim's ruptured or broken skin or mucous membranes with the blood or body
18 fluids of the person arrested for such offense, other than tears, saliva, or perspiration, of
19 a magnitude that the Centers for Disease Control and Prevention have epidemiologically
20 demonstrated can result in transmission of HIV.

21 (b) In any case in which a person has been arrested for, charged by accusation or
22 indictment with, or alleged by petition for delinquency to have committed an AIDS
23 transmitting crime or other crime which involves the transmission of body fluids from one
24 person to another or significant exposure to HIV, upon request by the A victim or the
25 parent or legal guardian of a minor or incompetent victim, ~~of a sexual offense as defined~~
26 ~~in Code Section 31-22-9.1 or other crime which involves significant exposure as defined~~
27 ~~by subsection (f) of this Code section may request that the agency responsible for~~
28 ~~prosecuting the arrest or the prosecution of the alleged offense shall request that the person~~
29 ~~arrested for such offense submit to a test for the human immunodeficiency virus~~ an HIV
30 test and consent to the release of the test results to the victim. If the person so arrested
31 declines to submit to such a test, the judge of the superior court in which the criminal or
32 delinquency charge is pending, upon a showing of probable cause that the person arrested
33 for the offense committed the alleged crime and that significant exposure occurred, may
34 shall order the HIV test to be performed in compliance with the rules adopted by the
35 Department of Public Health. ~~The cost of the test shall be borne by the victim or by the~~
36 ~~arrested person, in the discretion of the court. Such testing shall be required to be~~
37 performed within 48 hours after:

38 (1) The accused person consents to the test;

39 (2) The date on which the indictment or accusation is presented or the petition for
40 delinquency is filed and the accused is in custody or has been served with the indictment,
41 accusation, or petition for delinquency; or

42 (3) If more than 48 hours have elapsed since the indictment or accusation was presented
43 or the petition for delinquency was filed, and the accused is in custody or has been served
44 with the indictment, accusation, or petition for delinquency, within 48 hours of a request
45 for testing by request by the victim or the parent or legal guardian of a minor or
46 incompetent victim.

47 (c) Upon a verdict or plea of guilty or a plea of nolo contendere or an adjudication of
48 delinquency to any AIDS transmitting crime, the court in which that verdict or adjudication
49 is returned or plea entered shall require the ~~defendant~~ accused in such case to submit to an
50 HIV test ~~within 45 days~~ as soon as practicable, but no later than 48 hours following the
51 date of such verdict or adjudication or plea, if an HIV test has not been undertaken in
52 accordance with subsection (b) of this Code section.

53 (d) Any person required under this Code section to submit to the HIV test who fails or
54 refuses to submit to the test shall be subject to such measures deemed necessary by the
55 court in which the order was entered, verdict or adjudication was returned, or plea was
56 entered to require involuntary submission to the HIV test, and submission thereto may also
57 be made a condition of suspending or probating any part of that person's sentence for the
58 AIDS transmitting crime.

59 (e) If deemed medically appropriate, follow-up HIV tests shall be provided when testing
60 has been ordered under subsections (b), (c), or (d) of this Code section. The medical
61 propriety of follow-up HIV testing shall be based upon a determination by a physician and
62 does not require an additional court order. Notification to the victim or the parent or legal
63 guardian of a minor or incompetent victim and the defendant of the results of each
64 follow-up test result shall be given as soon as practicable in accordance with the
65 regulations and requirements of the Department of Public Health and this Code section.

66 ~~(e)(f)~~ (f) If a person is required by this Code section to submit to an HIV test, ~~and is thereby~~
67 ~~determined to be infected with HIV, that determination and the name of the person and~~
68 such HIV test results shall be reported to:

69 (1) The Department of Public Health, which shall disclose the name of the person and
 70 results of the HIV test as necessary to provide counseling to each victim of that person's
 71 AIDS transmitting crime if that crime is other than one specified in
 72 subparagraph (a)(3)(J) of Code Section 31-22-9.1 or to any parent or guardian of any
 73 such victim who is a minor or incompetent person;

74 (2) The court which ordered the HIV test, which court shall make that report a part of
 75 that person's criminal or delinquency record. That report shall be sealed by the court; and

76 (3) The officer in charge of any penal institution or other facility in which the person has
 77 been confined by order or sentence of the court for purposes of enabling that officer to
 78 confine the person separately from those not infected with HIV.

79 ~~(f) For the purpose of subsection (b) of this Code section, 'significant exposure' means~~
 80 ~~contact of the victim's ruptured or broken skin or mucous membranes with the blood or~~
 81 ~~body fluids of the person arrested for such offense, other than tears, saliva, or perspiration,~~
 82 ~~of a magnitude that the Centers for Disease Control and Prevention have epidemiologically~~
 83 ~~demonstrated can result in transmission of the human immunodeficiency virus.~~

84 (g) The state may not use the fact that a medical procedure or test was performed on a
 85 person under this Code section or use the results of the procedure or test in any criminal
 86 proceeding arising out of the alleged offense."

87 **SECTION 2.**

88 Article 1 of Chapter 4 of Title 42 of the Official Code of Georgia Annotated, relating to
 89 general provisions relative to jails, is amended by revising Code Section 42-4-1, relating to
 90 appointment of county and municipal jailers, as follows:

91 "42-4-1.

92 (a) By virtue of their offices, sheriffs are jailers of the counties and have the authority to
 93 appoint other jailers, subject to the supervision of the county governing authority, as
 94 prescribed by law.

95 (b) By virtue of their offices, chiefs of police are the jailers of the municipal corporations
96 and have the authority to appoint other jailers, subject to the supervision of the municipal
97 governing authority, as prescribed by law. Each jailer of a municipal corporation shall
98 maintain the records required of sheriffs by subsection (a) of Code Section 42-4-7.

99 (c) Jailers who have been certified by the Georgia Peace Officer Standards and Training
100 Council as having successfully completed the course of training required by Chapter 8 of
101 Title 35, the 'Georgia Peace Officer Standards and Training Act,' shall be authorized to
102 arrest any person found to be in violation of a criminal law that occurs within the jail or
103 within the perimeter guard lines of such jail established pursuant to subsection (j) of Code
104 Section 42-4-13. Jailers shall be further authorized to exercise arrest powers upon any
105 person for whom a complaint or arrest warrant is pending who surrenders into custody."

106

SECTION 3.

107 All laws and parts of laws in conflict with this Act are repealed.