

HOUSE BILL No. 1293

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-41-8-5; IC 34-30-2-81.3; IC 35-38-1-33.

Synopsis: Sexually transmitted disease tests. Requires that if an alleged victim is less than 18 years of age, a prosecuting attorney shall petition a court to order the defendant charged with the commission of a potentially disease transmitting offense or an offense involving the transmission of a bodily fluid to submit to a screening test to determine whether the defendant is infected with a dangerous disease. (Current law requires the prosecuting attorney to petition the court after receiving a request from the alleged victim's parent, guardian, or custodian (parent).) Requires that the health officer of the county where the alleged victim resides be provided the test results and discuss the results of the test with the alleged victim's parent and, if appropriate, any treatment or medical care that may be appropriate for the alleged victim. Provides that if the parent is unable to afford to pay for the medical treatment of a dangerous disease, the health officer shall assist the parent in applying for assistance from appropriate public and private programs and that if assistance is not provided by a public or private program the local health department shall pay for the alleged victim's medical treatment. Provides that a health officer is not liable for disclosing patient test information that is required to be disclosed to an alleged victim's parent. Provides that a court must require a defendant who has been found guilty of certain sexual crimes with a victim who is less than 18 years of age to submit to a test for a dangerous sexually transmitted disease. Requires that the test results be provided to the parent of the victim and the health officer.

Effective: July 1, 2017.

Bartlett

January 10, 2017, read first time and referred to Committee on Public Health.



First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1293

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-41-8-5, AS AMENDED BY P.L.65-2016,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 5. (a) This section does not apply to medical
4 testing of an individual for whom an indictment or information is filed
5 for a sex crime and for whom a request to have the individual tested
6 under section 6 of this chapter is filed.
7 (b) The following definitions apply throughout this section:
8 (1) "Bodily fluid" means blood, human waste, or any other bodily
9 fluid.
10 (2) "Dangerous disease" means any of the following:
11 (A) Chancroid.
12 (B) Chlamydia.
13 (C) Gonorrhea.
14 (D) Hepatitis.
15 (E) Human immunodeficiency virus (HIV).
16 (F) Lymphogranuloma venereum.
17 (G) Syphilis.



1 (H) Tuberculosis.

2 (3) "Offense involving the transmission of a bodily fluid" means
3 any offense (including a delinquent act that would be a crime if
4 committed by an adult) in which a bodily fluid is transmitted from
5 the defendant to the victim in connection with the commission of
6 the offense.

7 (c) This subsection applies only to a defendant who has been
8 charged with a potentially disease transmitting offense. At the request
9 of an alleged victim of the offense ~~the parent, guardian, or custodian of~~
10 ~~an alleged victim who is less than eighteen (18) years of age~~, or the
11 parent, guardian, or custodian of an alleged victim who is an
12 endangered adult (as defined in IC 12-10-3-2), **or if the alleged victim**
13 **is less than eighteen (18) years of age**, the prosecuting attorney shall
14 petition a court to order a defendant charged with the commission of a
15 potentially disease transmitting offense to submit to a screening test to
16 determine whether the defendant is infected with a dangerous disease.
17 In the petition, the prosecuting attorney must set forth information
18 demonstrating that the defendant has committed a potentially disease
19 transmitting offense. The court shall set the matter for hearing not later
20 than forty-eight (48) hours after the prosecuting attorney files a petition
21 under this subsection. The alleged victim, the parent, guardian, or
22 custodian of an alleged victim who is less than eighteen (18) years of
23 age, and the parent, guardian, or custodian of an alleged victim who is
24 an endangered adult (as defined in IC 12-10-3-2) are entitled to receive
25 notice of the hearing and are entitled to attend the hearing. The
26 defendant and the defendant's counsel are entitled to receive notice of
27 the hearing and are entitled to attend the hearing. If, following the
28 hearing, the court finds probable cause to believe that the defendant has
29 committed a potentially disease transmitting offense, the court may
30 order the defendant to submit to a screening test for one (1) or more
31 dangerous diseases. If the defendant is charged with battery
32 (IC 35-42-2-1) or domestic battery (IC 35-42-2-1.3) involving placing
33 a bodily fluid or waste on another person, the court may limit testing
34 under this subsection to a test only for human immunodeficiency virus
35 (HIV). However, the court may order additional testing for human
36 immunodeficiency virus (HIV) as may be medically appropriate. The
37 court shall take actions to ensure the confidentiality of evidence
38 introduced at the hearing.

39 (d) This subsection applies only to a defendant who has been
40 charged with an offense involving the transmission of a bodily fluid. At
41 the request of an alleged victim of the offense ~~the parent, guardian, or~~
42 ~~custodian of an alleged victim who is less than eighteen (18) years of~~



1 age, or the parent, guardian, or custodian of an alleged victim who is
2 an endangered adult (as defined in IC 12-10-3-2), **or if the alleged**
3 **victim is less than eighteen (18) years of age**, the prosecuting attorney
4 shall petition a court to order a defendant charged with the commission
5 of an offense involving the transmission of a bodily fluid to submit to
6 a screening test to determine whether the defendant is infected with a
7 dangerous disease. In the petition, the prosecuting attorney must set
8 forth information demonstrating that:

9 (1) the defendant has committed an offense; and

10 (2) a bodily fluid was transmitted from the defendant to the victim
11 in connection with the commission of the offense.

12 The court shall set the matter for hearing not later than forty-eight (48)
13 hours after the prosecuting attorney files a petition under this
14 subsection. The alleged victim of the offense, the parent, guardian, or
15 custodian of an alleged victim who is less than eighteen (18) years of
16 age, and the parent, guardian, or custodian of an alleged victim who is
17 an endangered adult (as defined in IC 12-10-3-2) are entitled to receive
18 notice of the hearing and are entitled to attend the hearing. The
19 defendant and the defendant's counsel are entitled to receive notice of
20 the hearing and are entitled to attend the hearing. If, following the
21 hearing, the court finds probable cause to believe that the defendant has
22 committed an offense and that a bodily fluid was transmitted from the
23 defendant to the alleged victim in connection with the commission of
24 the offense, the court may order the defendant to submit to a screening
25 test for one (1) or more dangerous diseases. If the defendant is charged
26 with battery (IC 35-42-2-1) or domestic battery (IC 35-42-2-1.3)
27 involving placing bodily fluid or waste on another person, the court
28 may limit testing under this subsection to a test only for human
29 immunodeficiency virus (HIV). However, the court may order
30 additional testing for human immunodeficiency virus (HIV) as may be
31 medically appropriate. The court shall take actions to ensure the
32 confidentiality of evidence introduced at the hearing.

33 (e) The testimonial privileges applying to communication between
34 a husband and wife and between a health care provider and the health
35 care provider's patient are not sufficient grounds for not testifying or
36 providing other information at a hearing conducted in accordance with
37 this section.

38 (f) A health care provider (as defined in IC 16-18-2-163) **or health**
39 **officer** who discloses information that must be disclosed to comply
40 with this section is immune from civil and criminal liability under
41 Indiana statutes that protect patient privacy and confidentiality.

42 (g) The results of a screening test conducted under this section shall



1 be kept confidential if the defendant ordered to submit to the screening
 2 test under this section has not been convicted of the potentially disease
 3 transmitting offense or offense involving the transmission of a bodily
 4 fluid with which the defendant is charged. The results may not be made
 5 available to any person or public or private agency other than the
 6 following:

- 7 (1) The defendant and the defendant's counsel.
 8 (2) The prosecuting attorney.
 9 (3) The department of correction or the penal facility, juvenile
 10 detention facility, or secure private facility where the defendant
 11 is housed.
 12 (4) The:
 13 (A) alleged victim; ~~or the~~
 14 (B) **alleged victim's** parent, guardian, or custodian ~~of~~ **and the**
 15 **health officer of the county where the alleged victim**
 16 **resides, if** an alleged victim ~~who~~ is less than eighteen (18)
 17 years of age; or ~~the~~
 18 (C) parent, guardian, or custodian of an alleged victim who is
 19 an endangered adult (as defined in IC 12-10-3-2). ~~and~~
 20 (5) The alleged victim's counsel.

21 The results of a screening test conducted under this section may not be
 22 admitted against a defendant in a criminal proceeding or against a child
 23 in a juvenile delinquency proceeding.

24 (h) As soon as practicable after a screening test ordered under this
 25 section has been conducted:

- 26 (1) the:
 27 (A) alleged victim; ~~or the~~
 28 (B) **alleged victim's** parent, guardian, or custodian ~~of~~ **and the**
 29 **health officer of the county where the alleged victim**
 30 **resides, if** an alleged victim ~~who~~ is less than eighteen (18)
 31 years of age; or ~~the~~
 32 (C) parent, guardian, or custodian of an alleged victim who is
 33 an endangered adult (as defined in IC 12-10-3-2); and
 34 (2) the victim's counsel;

35 shall be notified of the results of the test.

36 (i) An alleged victim may disclose the results of a screening test to
 37 which a defendant is ordered to submit under this section to an
 38 individual or organization to protect the health and safety of or to seek
 39 compensation for:

- 40 (1) the alleged victim;
 41 (2) the alleged victim's sexual partner; or
 42 (3) the alleged victim's family.



1 (j) A health officer who is notified of the results of a test under
 2 subsection (h)(1)(B) or IC 35-38-1-33 shall discuss the results of the
 3 test with the alleged victim's parent, guardian, or custodian and, if
 4 appropriate, any medical treatment or care that may be
 5 appropriate for the alleged victim. If the parent, guardian, or
 6 custodian is unable to afford to pay for the medical treatment of a
 7 dangerous disease, the health officer or health officer's designee
 8 shall assist the parent, guardian, or custodian in applying for
 9 assistance from appropriate public and private programs.
 10 However, if assistance is not provided by a public or private
 11 program, the local health department shall pay for the alleged
 12 victim's medical treatment.

13 (†) (k) The court shall order a petition filed and any order entered
 14 under this section sealed.

15 (†) (l) A person that knowingly or intentionally:

- 16 (1) receives notification or disclosure of the results of a screening
- 17 test under this section; and
- 18 (2) discloses the results of the screening test in violation of this
- 19 section;

20 commits a Class B misdemeanor.

21 SECTION 2. IC 34-30-2-81.3, AS AMENDED BY P.L.42-2011,
 22 SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2017]: Sec. 81.3. IC 16-41-8-5(f) (Concerning a health care
 24 provider or health officer who discloses information in compliance
 25 with IC 16-41-8-5).

26 SECTION 3. IC 35-38-1-33 IS ADDED TO THE INDIANA CODE
 27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 28 1, 2017]: Sec. 33. After a verdict, finding, or plea of guilty or guilty
 29 but mentally ill of:

- 30 (1) rape (IC 35-42-4-1);
- 31 (2) child molesting (IC 35-42-4-3(a));
- 32 (3) vicarious sexual gratification (IC 35-42-4-5);
- 33 (4) child solicitation (IC 35-42-4-6);
- 34 (5) child seduction (IC 35-42-4-7);
- 35 (6) sexual misconduct with a minor (IC 35-42-4-9); or
- 36 (7) incest (IC 35-46-1-3);

37 against a victim who was less than eighteen (18) years of age at the
 38 time the crime occurred and a new trial is not granted, the court
 39 shall require the defendant to submit to a test for a dangerous
 40 sexually transmitted disease. The results of the test must be
 41 provided to the parent, guardian, or custodian of the victim and
 42 the health officer under IC 16-41-8-5(h).

