

# AN ACT

To amend sections 2903.11, 2907.27, 2907.28, and 3701.243 of the Revised Code to include within the offense of felonious assault a prohibition against any person, who knows that the person tested positive for HIV, engaging in sexual conduct with a minor or an unsuspecting adult partner and to require that a person arrested for violating that prohibition be tested for HIV under certain circumstances.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 2903.11, 2907.27, 2907.28, and 3701.243 of the Revised Code be amended to read as follows:

Sec. 2903.11. (A) No person shall knowingly do either of the following:

- (1) Cause serious physical harm to another or to another's unborn;
- (2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance, ~~as defined in section 2923.11 of the Revised Code.~~

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly do any of the following:

(1) Engage in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct;

(2) Engage in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome;

(3) Engage in sexual conduct with a person under eighteen years of age who is not the spouse of the offender.

(C) The prosecution of a person under this section does not preclude prosecution of that person under section 2907.02 of the Revised Code.

(D) Whoever violates this section is guilty of felonious assault, a felony of the second degree. If the victim of ~~the offense~~ a violation of division (A)

~~of this section~~ is a peace officer, ~~as defined in section 2935.01 of the Revised Code~~, felonious assault is a felony of the first degree. If the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, and if the victim suffered serious physical harm as a result of the commission of the offense, felonious assault is a felony of the first degree, and the court, pursuant to division (F) of section 2929.13 of the Revised Code, shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(E) As used in this section:

(1) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.

(2) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

(3) "Sexual conduct" has the same meaning as in section 2907.01 of the Revised Code, except that, as used in this section, it does not include the insertion of an instrument, apparatus, or other object that is not a part of the body into the vaginal or anal cavity of another, unless the offender knew at the time of the insertion that the instrument, apparatus, or other object carried the offender's bodily fluid.

Sec. 2907.27. (A)(1) If a person is charged with a violation of section 2907.02, 2907.03, 2907.04, 2907.24, 2907.241, or 2907.25 of the Revised Code or with a violation of a municipal ordinance that is substantially equivalent to any of those sections, the arresting authorities or a court, upon the request of the prosecutor in the case or upon the request of the victim, shall cause the accused to submit to one or more appropriate tests to determine if the accused is suffering from a venereal disease.

(2) If the accused is found to be suffering from a venereal disease in an infectious stage, the accused shall be required to submit to medical treatment for that disease. The cost of the medical treatment shall be charged to and paid by the accused who undergoes the treatment. If the accused is indigent, the court shall order the accused to report to a facility operated by a city health district or a general health district for treatment. If the accused is convicted of or pleads guilty to the offense with which the accused is charged and is placed on probation, a condition of probation shall be that the offender submit to and faithfully follow a course of medical treatment for the venereal disease. If the offender does not seek the required medical treatment, the court may revoke the offender's probation and order the offender to undergo medical treatment during the period of the offender's incarceration and to pay the cost of that treatment.

(B)(1)(a) Notwithstanding the requirements for informed consent in

section 3701.242 of the Revised Code, if a person is charged with a violation of division (B) of section 2903.11 or of section 2907.02, 2907.03, 2907.04, 2907.05, 2907.12, 2907.24, 2907.241, or 2907.25 of the Revised Code or with a violation of a municipal ordinance that is substantially equivalent to that division or any of those sections, the court, upon the request of the prosecutor in the case, upon the request of the victim, or upon the request of any other person whom the court reasonably believes had contact with the accused in circumstances related to the violation that could have resulted in the transmission to that person of a virus that causes acquired immunodeficiency syndrome, shall cause the accused to submit to one or more tests designated by the director of health under section 3701.241 of the Revised Code to determine if the accused is a carrier of a virus that causes acquired immunodeficiency syndrome. The court, upon the request of the prosecutor in the case, upon the request of the victim with the agreement of the prosecutor, or upon the request of any other person with the agreement of the prosecutor, may cause an accused who is charged with a violation of any other section of the Revised Code or with a violation of any other municipal ordinance to submit to one or more tests so designated by the director of health if the circumstances of the violation indicate probable cause to believe that the accused, if the accused is infected with the virus that causes acquired immunodeficiency syndrome, might have transmitted the virus to any of the following persons in committing the violation:

(i) In relation to a request made by the prosecuting attorney, to the victim or to any other person;

(ii) In relation to a request made by the victim, to the victim making the request;

(iii) In relation to a request made by any other person, to the person making the request.

(b) The results of a test performed under division (B)(1)(a) of this section shall be communicated in confidence to the court, and the court shall inform the accused of the result. The court shall inform the victim that the test was performed and that the victim has a right to receive the results on request. If the test was performed upon the request of a person other than the prosecutor in the case and other than the victim, the court shall inform the person who made the request that the test was performed and that the person has a right to receive the results upon request. Additionally, regardless of who made the request that was the basis of the test being performed, if the court reasonably believes that, in circumstances related to the violation, a person other than the victim had contact with the accused that could have

resulted in the transmission of the virus to that person, the court may inform that person that the test was performed and that the person has a right to receive the results of the test on request. If the accused tests positive for a virus that causes acquired immunodeficiency syndrome, the test results shall be reported to the department of health in accordance with section 3701.24 of the Revised Code and to the sheriff, head of the state correctional institution, or other person in charge of any jail or prison in which the accused is incarcerated. If the accused tests positive for a virus that causes acquired immunodeficiency syndrome and the accused was charged with, and was convicted of or pleaded guilty to, a violation of section 2907.24, 2907.241, or 2907.25 of the Revised Code or a violation of a municipal ordinance that is substantially equivalent to any of those sections, the test results also shall be reported to the law enforcement agency that arrested the accused, and the law enforcement agency may use the test results as the basis for any future charge of a violation of division (B) of any of those sections or a violation of a municipal ordinance that is substantially equivalent to division (B) of any of those sections. No other disclosure of the test results or the fact that a test was performed shall be made, other than as evidence in a grand jury proceeding or as evidence in a judicial proceeding in accordance with the Rules of Evidence. If the test result is negative, and the charge has not been dismissed or if the accused has been convicted of the charge or a different offense arising out of the same circumstances as the offense charged, the court shall order that the test be repeated not earlier than three months nor later than six months after the original test.

(2) If an accused who is free on bond refuses to submit to a test ordered by the court pursuant to division (B)(1) of this section, the court may order that the accused's bond be revoked and that the accused be incarcerated until the test is performed. If an accused who is incarcerated refuses to submit to a test ordered by the court pursuant to division (B)(1) of this section, the court shall order the person in charge of the jail or prison in which the accused is incarcerated to take any action necessary to facilitate the performance of the test, including the forcible restraint of the accused for the purpose of drawing blood to be used in the test.

(3) A state agency, a political subdivision of the state, or an employee of a state agency or of a political subdivision of the state is immune from liability in a civil action to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with the performance of the duties required under division (B)(2) of this section unless the acts or omissions are with malicious purpose, in bad faith,

or in a wanton or reckless manner.

Sec. 2907.28. (A) Any cost incurred by a hospital or other emergency medical facility in conducting a medical examination of a victim of an offense under any provision of sections 2907.02 to 2907.06 of the Revised Code for the purpose of gathering physical evidence for a possible prosecution shall be charged to and paid by the appropriate local government as follows:

(1) Cost incurred by a county facility shall be charged to and paid by the county;

(2) Cost incurred by a municipal facility shall be charged to and paid by the municipal corporation;

(3) Cost incurred by a private facility shall be charged to and paid by the municipal corporation in which the alleged offense was committed, or charged to and paid by the county, if committed within an unincorporated area. If separate counts of an offense or separate offenses under any provisions of sections 2907.02 to 2907.06 of the Revised Code took place in more than one municipal corporation or more than one unincorporated area, or both, the local governments shall share the cost of the examination.

(B) Any cost incurred by a hospital or other emergency medical facility in conducting a medical examination and test of any person who is charged with a violation of division (B) of section 2903.11 or of section 2907.02, 2907.03, 2907.04, 2907.05, 2907.12, 2907.24, 2907.241, or 2907.25 of the Revised Code or with a violation of a municipal ordinance that is substantially equivalent to that division or any of those sections, pursuant to division (B) of section 2907.27 of the Revised Code, shall be charged to and paid by the accused who undergoes the examination and test, unless the court determines that the accused is unable to pay, in which case the cost shall be charged to and paid by the municipal corporation in which the offense allegedly was committed, or charged to and paid by the county if the offense allegedly was committed within an unincorporated area. If separate counts of an alleged offense or alleged separate offenses under section 2907.02, 2907.03, 2907.04, 2907.05, 2907.12, 2907.24, 2907.241, or 2907.25 of the Revised Code or under a municipal ordinance that is substantially equivalent to any of those sections took place in more than one municipal corporation or more than one unincorporated area, or both, the local governments shall share the cost of the examination and test. If a hospital or other emergency medical facility has submitted charges for the cost of a medical examination and test to an accused and has been unable to collect payment for the charges after making good faith attempts to collect for a period of six months or more, the cost shall be charged to and paid by

the appropriate municipal corporation or county as specified in division (B) of this section.

Sec. 3701.243. (A) Except as provided in this section or section 3701.248 of the Revised Code, no person or agency of state or local government that acquires the information while providing any health care service or while in the employ of a health care facility or health care provider shall disclose or compel another to disclose any of the following:

- (1) The identity of any individual on whom an HIV test is performed;
- (2) The results of an HIV test in a form that identifies the individual tested;
- (3) The identity of any individual diagnosed as having AIDS or an AIDS-related condition.

(B)(1) Except as provided in divisions (B)(2), (C), (D), and (F) of this section, the results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed as having AIDS or an AIDS-related condition may be disclosed only to the following:

- (a) The individual who was tested or the individual's legal guardian, and ~~his~~ the individual's spouse or any sexual partner;
- (b) A person to whom disclosure is authorized by a written release, executed by the individual tested or by ~~his~~ the individual's legal guardian and specifying to whom disclosure of the test results or diagnosis is authorized and the time period during which the release is to be effective;
- (c) The individual's physician;
- (d) The department of health or a health commissioner to which reports are made under section 3701.24 of the Revised Code;
- (e) A health care facility or provider that procures, processes, distributes, or uses a human body part from a deceased individual, donated for a purpose specified in Chapter 2108. of the Revised Code, and that needs medical information about the deceased individual to ensure that the body part is medically acceptable for its intended purpose;
- (f) Health care facility staff committees or accreditation or oversight review organizations conducting program monitoring, program evaluation, or service reviews;
- (g) A health care provider, emergency medical services worker, or peace officer who sustained a significant exposure to the body fluids of another individual, if that individual was tested pursuant to division (E)(6) of section 3701.242 of the Revised Code, except that the identity of the individual tested shall not be revealed;
- (h) To law enforcement authorities pursuant to a search warrant or a subpoena issued by or at the request of a grand jury, a prosecuting attorney,

a city director of law or similar chief legal officer of a municipal corporation, or a village solicitor, in connection with a criminal investigation or prosecution.

(2) The results of an HIV test or a diagnosis of AIDS or an AIDS-related condition may be disclosed to a health care provider, or an authorized agent or employee of a health care facility or a health care provider, if the provider, agent, or employee has a medical need to know the information and is participating in the diagnosis, care, or treatment of the individual on whom the test was performed or who has been diagnosed as having AIDS or an AIDS-related condition.

This division does not impose a standard of disclosure different from the standard for disclosure of all other specific information about a patient to health care providers and facilities. Disclosure may not be requested or made solely for the purpose of identifying an individual who has a positive HIV test result or has been diagnosed as having AIDS or an AIDS-related condition in order to refuse to treat the individual. Referral of an individual to another health care provider or facility based on reasonable professional judgment does not constitute refusal to treat the individual.

(3) Not later than ninety days after November 1, 1989, each health care facility in this state shall establish a protocol to be followed by employees and individuals affiliated with the facility in making disclosures authorized by division (B)(2) of this section. A person employed by or affiliated with a health care facility who determines in accordance with the protocol established by the facility that a disclosure is authorized by division (B)(2) of this section is immune from liability to any person in a civil action for damages for injury, death, or loss to person or property resulting from the disclosure.

(C)(1) Any person or government agency may seek access to or authority to disclose the HIV test records of an individual in accordance with the following provisions:

(a) The person or government agency shall bring an action in a court of common pleas requesting disclosure of or authority to disclose the results of an HIV test of a specific individual, who shall be identified in the complaint by a pseudonym but whose name shall be communicated to the court confidentially, pursuant to a court order restricting the use of the name. The court shall provide the individual with notice and an opportunity to participate in the proceedings if ~~he~~ the individual is not named as a party. Proceedings shall be conducted in chambers unless the individual agrees to a hearing in open court.

(b) The court may issue an order granting the plaintiff access to or

rity to disclose the test results only if the court finds by clear and convincing evidence that the plaintiff has demonstrated a compelling need for disclosure of the information that cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy right of the individual tested and against any disservice to the public interest that might result from the disclosure, such as discrimination against the individual or the deterrence of others from being tested.

(c) If the court issues an order, it shall guard against unauthorized disclosure by specifying the persons who may have access to the information, the purposes for which the information shall be used, and prohibitions against future disclosure.

(2) A person or government agency that considers it necessary to disclose the results of an HIV test of a specific individual in an action in which it is a party may seek authority for the disclosure by filing an in camera motion with the court in which the action is being heard. In hearing the motion, the court shall employ procedures for confidentiality similar to those specified in division (C)(1) of this section. The court shall grant the motion only if it finds by clear and convincing evidence that a compelling need for the disclosure has been demonstrated.

(3) Except for an order issued in a criminal prosecution or an order under division (C)(1) or (2) of this section granting disclosure of the result of an HIV test of a specific individual, a court shall not compel a blood bank, hospital blood center, or blood collection facility to disclose the result of HIV tests performed on the blood of voluntary donors in a way that reveals the identity of any donor.

(4) In a civil action in which the plaintiff seeks to recover damages from an individual defendant based on an allegation that the plaintiff contracted the HIV virus as a result of actions of the defendant, the prohibitions against disclosure in this section do not bar discovery of the results of any HIV test given to the defendant or any diagnosis that the defendant suffers from AIDS or an AIDS-related condition.

(D) The results of an HIV test or the identity of an individual on whom an HIV test is performed or who is diagnosed as having AIDS or an AIDS-related condition may be disclosed to a federal, state, or local government agency, or the official representative of such an agency, for purposes of the medical assistance program established under section 5111.01 of the Revised Code, the medicare program established under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935) 42 U.S.C.A. 301, as amended, or any other public assistance program.

(E) Any disclosure pursuant to this section shall be in writing and accompanied by a written statement that includes the following or substantially similar language: "This information has been disclosed to you from confidential records protected from disclosure by state law. You shall make no further disclosure of this information without the specific, written, and informed release of the individual to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is not sufficient for the purpose of the release of HIV test results or diagnoses."

(F) An individual who knows that ~~he~~ the individual has received a positive result on an HIV test or has been diagnosed as having AIDS or an AIDS-related condition; shall disclose this information to any other person with whom ~~he~~ the individual intends to make common use of a hypodermic needle or engage in sexual conduct as defined in section 2907.01 of the Revised Code. An individual's compliance with this division does not prohibit a prosecution of the individual for a violation of division (B) of section 2903.11 of the Revised Code.

(G) Nothing in this section prohibits the introduction of evidence concerning ~~and~~ AN HIV test of a specific individual in a criminal proceeding.

SECTION 2. That existing sections 2903.11, 2907.27, 2907.28, and 3701.243 of the Revised Code are hereby repealed.

SECTION 3. Section 2907.28 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 40 and Am. Sub. H.B. 445 of the 121st General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_