

BILL ANALYSIS

Senate Research Center
81R32648 SJM-D

C.S.H.B. 1985
By: Martinez Fischer et al. (Hegar)
Criminal Justice
5/14/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Violence Against Women Act (VAWA), 42 United States Code Annotated Section 3796, includes provisions for a grant program targeted at domestic violence, dating violence, sexual assault, and stalking called *Grants to Encourage Arrest Policies and Enforcement of Protective Orders*. This grant program has a speedy notice requirement, which requires that "[a] state or unit of local government shall not be entitled to five percent of the funds allocated under this part unless the state or unit of local government certifies that it has a law or regulation that requires the state or unit of local government at the request of a victim to administer to a defendant, against whom an information or indictment is presented for a crime in which by force or threat of force the perpetrator compels the victim to engage in sexual activity, testing for the human immunodeficiency virus (HIV) not later than 48 hours after the date on which the information or indictment is presented."

Article 21.31 (Testing for AIDS and Certain Other Diseases) of the Texas Code of Criminal Procedure currently allows for HIV/AIDS testing of an individual after indictment of certain sex offenses and upon discretion of the court. However, Article 21.31 does not impose a time limit for the testing and does not make the testing mandatory upon request of the victim. Thus, Texas is not in compliance with VAWA.

Compliance is required by 2008, in order to secure federal funding. Accordingly, several counties and cities may lose funding or see a decrease in funding within the next few years unless Texas amends Article 21.31 to bring the state into compliance with federal law.

Contracting HIV/AIDS is a top concern of sexual assault victims (*Rape in America: A Report to the Nation*), and by allowing for speedy HIV/AIDS testing of defendants indicted for a sex offense, victims will know whether they have contracted HIV/AIDS.

C.S.H.B. 1985 amends current law relating to the requirement that certain defendants in a criminal case undergo testing for HIV infection and other diseases.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 21.31, Code of Criminal Procedure, by amending Subsections (a), (b), and (c) and adding Subsections (a-1) and (b-1), as follows:

- (a) Requires a person who is indicted for or who waives indictment for an offense under Section 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11(a)(1) (regarding the circumstances that constitute an offense of indecency with a child), 22.011 (Sexual Assault), or 22.021 (Aggravated Sexual Assault), Penal Code, to, at the direction of the court on the court's own motion or on the request of the victim of the alleged offense, undergo a standard diagnostic test approved by the United States Food and Drug Administration (FDA) for human immunodeficiency virus (HIV) infection and other sexually transmitted diseases. Requires the court, if the person refuses to submit voluntarily to the test, rather than the procedure or test, to require the person to submit to the test. Requires the court, on request of the victim of the alleged offense, to order the

defendant to undergo the test not later than 48 hours after an indictment for the offense is presented against the defendant or the defendant waives indictment. Authorizes the court, except as provided by Subsection (b-1), to require a defendant previously required under this article to undergo a diagnostic test, rather than a medical procedure or test, on indictment for an offense to undergo a subsequent test only after conviction of the offense, rather than following conviction of the offense. Requires a person performing a test under this subsection to make the test results available to the local health authority, and requires the local authority to be required to make the notification of the test results to the victim of the alleged offense and to the defendant. Deletes existing text requiring a person who waives indictment for an offense under Section 21.02, 21.11(a)(1), 22.011, or 22.021, Penal Code, to, at the direction of the court, undergo a medical procedure or test designed to show or help show whether the person has a sexually transmitted disease or has acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) infection, antibodies to HIV, or infection with any other probable causative agent of AIDS. Deletes existing test authorizing the court to direct the person to undergo the procedure or test on its own motion or on the request of the victim of the alleged offense. Makes conforming and nonsubstantive changes.

(a-1) Provides that if the victim requests the testing of the defendant and a law enforcement agency is unable to locate the defendant during the 48-hour period allowed for that testing under Subsection (a), the running of the 48-hour period is tolled until the law enforcement agency locates the defendant and the defendant is present in the jurisdiction.

(b) Makes a conforming change.

(b-1) Requires the court, if the results of a diagnostic test conducted under Subsection (a) or (b) are positive for HIV, to order the defendant to undergo any necessary additional testing within a reasonable time after the test results are released.

(c) Makes conforming changes.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.