

HOUSE BILL NO. 761

INTRODUCED BY PECK, T. NELSON, KENNEDY, PIPINICH, MCCARTHY,
HOFFMAN, J. DEBRUYCKER, JERGESON, HOCKETT, MANNING

IN THE HOUSE

FEBRUARY 12, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON HUMAN SERVICES & AGING.

FIRST READING.

FEBRUARY 23, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 25, 1991 PRINTING REPORT.

FEBRUARY 26, 1991 SECOND READING, DO PASS AS AMENDED.

ENGROSSING REPORT.

FEBRUARY 27, 1991 THIRD READING, PASSED.
AYES, 100; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON PUBLIC HEALTH, WELFARE, & SAFETY.

FIRST READING.

APRIL 2, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

APRIL 4, 1991 SECOND READING, CONCURRED IN.

APRIL 5, 1991 THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 9, 1991 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 10, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1
2
3
4

*House BILL NO. 761 Bob Pipinich
Cathy Conedy
P. McCarley Hoffman J. DeBruyckere Ferguson H. Holt
Richard E. Manning*

5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SEXUALLY
6 TRANSMITTED DISEASE TESTING OF PERSONS CONVICTED OF A SEXUAL
7 OFFENSE; SPECIFYING WHO IS ENTITLED TO RECEIVE THE RESULTS
8 OF THE TESTING AND HOW THOSE RESULTS MAY BE USED; PROVIDING
9 IMMUNITY FROM LIABILITY FOR DISCLOSURE; AND PROVIDING CIVIL
10 REMEDIES FOR UNAUTHORIZED DISCLOSURE."

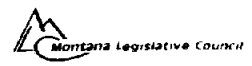
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. **Section 1.** Sexually transmitted disease
13 testing -- test procedure. (1) A person convicted of a
14 sexual offense, as defined in 46-23-502, must, following
15 entry of judgment, be administered a standard serological
16 test to determine whether the person suffers from a sexually
17 transmitted disease, as defined in 50-18-101.

18 (2) Arrangements for the test required by subsection
19 (1) must be made by the county attorney of the county in
20 which the person was convicted. The test must be conducted
21 by a health care provider, as defined in 50-16-504.

22 NEW SECTION. **Section 2.** Dissemination and use of test
23 results. (1) The results of the test required by [section 1]
24 must be forwarded to the county attorney who arranged for
25 the test. The county attorney may release the test results

1 only to the following:
2 (a) the warden of Montana state prison, if the person
3 tested is sentenced to incarceration at the prison;
4 (b) the administrator of a Montana state institution,
5 an institution of another state, or a city, county, or
6 regional detention center in which the person is
7 incarcerated;
8 (c) the probation officer assigned to supervise the
9 person tested, if a probationary sentence is imposed;
10 (d) a person determined by the probation office
11 preparing a presentence investigation and report on the
12 convicted person to be a victim of that person or, if the
13 victim is a minor, to the parent or guardian of the victim;
14 (e) appropriate personnel of the department of health
15 and environmental sciences;
16 (f) a physician, by written consent of the person
17 tested;
18 (g) a local health officer; or
19 (h) a local board of health.
20 (2) The results of the test may be released by the
21 department of health and environmental sciences and a local
22 health officer or local board of health only as provided in
23 Title 50, chapter 16, part 6.
24 (3) A person or agency receiving test results
25 indicating that the tested person suffers from a sexually



INTRODUCED BILL
HB 761

1 transmitted disease may use the test results for the purpose
2 of determining appropriate custodial care, for statistical
3 recordkeeping, or for treatment.

4 NEW SECTION. **Section 3.** Liability for disclosure --
5 civil remedies. (1) A person or agency, including an
6 officer, agent, or employee of an agency, authorized by
7 [section 2] to receive results of the test required by
8 [section 1] is not liable for a disclosure authorized or
9 required by [section 2].

10 (2) A person aggrieved by a disclosure made contrary to
11 the provisions of [section 2] may bring a civil action for
12 damages for pecuniary loss sustained as a result of the
13 disclosure. If the disclosure results from willful or
14 grossly negligent conduct, the aggrieved person may recover,
15 in addition to any damages sustained, a civil penalty of not
16 more than \$5,000 from the person or agency making the
17 disclosure.

18 (3) A person who is or may be aggrieved by a disclosure
19 made contrary to the provisions of [section 2] may, in
20 addition to or in place of an action for damages and any
21 civil penalty under subsection (2), bring an action for
22 temporary or permanent injunctive relief to prevent the
23 disclosure.

24 (4) If a person bringing an action for damages, civil
25 penalty, or injunctive relief under this section prevails,

1 the court may assess against the person making the
2 disclosure and award to the plaintiff reasonable attorney
3 fees and all other expenses of the plaintiff that were
4 reasonably incurred in the litigation.

5 (5) An action for damages or penalty brought pursuant
6 to this section is barred unless the action is brought
7 within 3 years after the cause of action accrued. The
8 remedies provided in this section are cumulative and do not
9 replace other available remedies.

10 NEW SECTION. **Section 4.** Codification instruction.
11 [Sections 1 through 3] are intended to be codified as an
12 integral part of Title 45, chapter 5, part 5, and the
13 provisions of Title 45, chapter 5, part 5, apply to
14 [sections 1 through 3].

15 NEW SECTION. **Section 5.** Requirement for approval of
16 immunity provision -- severability. Because [section 3]
17 grants a public entity immunity from suit, a vote of
18 two-thirds of the members of each house of the legislature
19 is required for enactment of [section 3]. If [section 3] is
20 not approved by the required vote, [section 3] is void. The
21 remaining sections of [this act] are valid and remain in
22 effect in all valid applications upon enactment.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0761, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill requiring the county attorney to conduct sexually transmitted disease testing of persons convicted of a sexual offense; specifying who is entitled to receive the results of the testing and how those results may be used; providing immunity from liability for disclosure; and providing civil remedies for unauthorized disclosure.

FISCAL IMPACT:

None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The county attorney's office would incur minor costs associated with testing individuals convicted of sexual offense.


ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning 2-16-91


RAY PECK, PRIMARY SPONSOR DATE
2/15/91

Fiscal Note for HB0761, as introduced.

HB 761

APPROVED BY COMM. ON
HUMAN SERVICES AND AGING

HOUSE BILL NO. 761

INTRODUCED BY PECK, T. NELSON, KENNEDY, PIPINICH, MCCARTHY,
HOFFMAN, J. DEBRUYCKER, JERGESON, HOCKETT, MANNING

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AUTHORIZING
SEXUALLY TRANSMITTED DISEASE TESTING OF PERSONS CONVICTED OF
A SEXUAL OFFENSE; PROVIDING FOR COUNSELING OF THE CONVICTED
PERSON AND THE VICTIM; SPECIFYING WHO ~~IS ENTITLED TO~~ MUST
RECEIVE THE RESULTS OF THE TESTING AND HOW THOSE RESULTS MAY
BE USED; PROVIDING IMMUNITY FROM LIABILITY FOR DISCLOSURE;
AND PROVIDING CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Sexually transmitted disease
testing -- test procedure. (1) A person convicted of a
sexual offense, as defined in 46-23-502, must MAY, following
entry of judgment, be administered a standard serological
test to determine whether the person suffers from a sexually
transmitted disease, as defined in 50-18-101.

(2) Arrangements for the test required by subsection
(1) must be made by the county attorney of the county in
which the person was convicted. The test must be conducted
by a health care provider, as defined in 50-16-504.

(3) IF THE RESULTS OF THE TEST AUTHORIZED BY THIS
SECTION INDICATE THAT THE CONVICTED PERSON SUFFERS FROM A

SEXUALLY TRANSMITTED DISEASE, THE COUNTY ATTORNEY OF THE
COUNTY IN WHICH THE PERSON WAS CONVICTED SHALL ARRANGE FOR
POSTTEST COUNSELING OF THE CONVICTED PERSON AND OF ANY
VICTIM OF THE CONVICTED PERSON.

(4) THE PROVISIONS OF THE AIDS PREVENTION ACT DO NOT
APPLY TO [SECTIONS 1 THROUGH 3].

NEW SECTION. Section 2. Dissemination and use of test
results. (1) The results of the test required by [section 1]
must be forwarded to the county attorney who arranged for
the test. The county attorney may SHALL release the test
results only to the following:

~~(a) the warden of Montana state prison, if the person~~
~~tested is sentenced to incarceration at the prison;~~

~~(b) the administrator of a Montana state institution,~~
~~an institution of another state, or a city, county, or~~
~~regional detention center in which the person is~~
~~incarcerated;~~

~~(c) the probation officer assigned to supervise the~~
~~person tested, if a probationary sentence is imposed;~~

~~(d) a person determined by the probation office~~
~~preparing a presentence investigation and report on the~~
~~convicted person to be a victim of that person or, if the~~
~~victim is a minor, to the parent or guardian of the victim;~~

~~(e) appropriate personnel of the department of health~~
~~and environmental sciences;~~

1 ~~(f) a physician, by written consent of the person~~
 2 ~~tested;~~

3 ~~(g) a local health officer; or~~

4 ~~(h) a local board of health;~~

5 (A) THE HEALTH CARE PROVIDER WHO CONDUCTED THE TEST,
 6 WHO SHALL RELEASE THE TEST RESULTS TO THE CONVICTED PERSON
 7 AND TO ANY VICTIM OF THE CONVICTED PERSON;

8 (B) THE HEALTH OFFICER TO WHOM THE DEPARTMENT HAS
 9 REQUIRED THE REPORTING OF COMMUNICABLE DISEASES UNDER
 10 50-1-202; AND

11 (C) THE DEFENSE COUNSEL FOR THE CONVICTED PERSON.

12 (2) The results of the test may be released by the
 13 department of health and environmental sciences and a local
 14 health officer ~~or local board of health~~ only as provided in
 15 Title 50, chapter 16, part 6.

16 (3) A person or agency receiving test results
 17 indicating that the tested person suffers from a sexually
 18 transmitted disease may use the test results ~~for the purpose~~
 19 ~~of determining appropriate custodial care, for statistical~~
 20 ~~recordkeeping, or for treatment~~ OR PROSECUTION OR DEFENSE OF
 21 THE CONVICTED PERSON.

22 NEW SECTION. Section 3. Liability for disclosure --
 23 civil remedies. (1) A person or agency, including an
 24 officer, agent, or employee of an agency, authorized
 25 REQUIRED by [section 2] to receive results of the test

1 required by [section 1] is not liable for a disclosure
 2 authorized or required by [section 2].

3 (2) A person aggrieved by a disclosure made contrary to
 4 the provisions of [section 2] may bring a civil action for
 5 damages for pecuniary loss sustained as a result of the
 6 disclosure. If the disclosure results from willful or
 7 grossly negligent conduct, the aggrieved person may recover,
 8 in addition to any damages sustained, a civil penalty of not
 9 more than \$5,000 from the person or agency making the
 10 disclosure.

11 (3) A person who is or may be aggrieved by a disclosure
 12 made contrary to the provisions of [section 2] may, in
 13 addition to or in place of an action for damages and any
 14 civil penalty under subsection (2), bring an action for
 15 temporary or permanent injunctive relief to prevent the
 16 disclosure.

17 (4) If a person bringing an action for damages, civil
 18 penalty, or injunctive relief under this section prevails,
 19 the court may assess against the person making the
 20 disclosure and award to the plaintiff reasonable attorney
 21 fees and all other expenses of the plaintiff that were
 22 reasonably incurred in the litigation.

23 (5) An action for damages or penalty brought pursuant
 24 to this section is barred unless the action is brought
 25 within 3 years after the cause of action accrued. The

1 remedies provided in this section are cumulative and do not
2 replace other available remedies.

3 NEW SECTION. Section 4. Codification instruction.
4 [Sections 1 through 3] are intended to be codified as an
5 integral part of Title 45, chapter 5, part 5, and the
6 provisions of Title 45, chapter 5, part 5, apply to
7 [sections 1 through 3].

8 NEW SECTION. Section 5. Requirement for approval of
9 immunity provision -- severability. Because [section 3]
10 grants a public entity immunity from suit, a vote of
11 two-thirds of the members of each house of the legislature
12 is required for enactment of [section 3]. If [section 3] is
13 not approved by the required vote, [section 3] is void. The
14 remaining sections of [this act] are valid and remain in
15 effect in all valid applications upon enactment.

-End-

1 HOUSE BILL NO. 761

2 INTRODUCED BY PECK, T. NELSON, KENNEDY, PIPINICH, MCCARTHY,
3 HOFFMAN, J. DEBRUYCKER, JERGSON, HOCKETT, MANNING

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AUTHORIZING
6 SEXUALLY TRANSMITTED DISEASE TESTING OF PERSONS CONVICTED OF
7 A SEXUAL OFFENSE; PROVIDING FOR COUNSELING OF THE CONVICTED
8 PERSON-AND-THE VICTIM; SPECIFYING WHO IS--ENTITLED--TO MUST
9 RECEIVE THE RESULTS OF THE TESTING AND HOW THOSE RESULTS MAY
10 BE USED; PROVIDING IMMUNITY FROM LIABILITY FOR DISCLOSURE;
11 AND PROVIDING CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE;
12 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
13 APPLICABILITY DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 NEW SECTION. Section 1. Sexually transmitted disease
17 testing -- test procedure. (1) A person convicted of a
18 sexual offense, as defined in 46-23-502, must MAY, following
19 entry of judgment, be administered a standard serological
20 test to determine whether the person suffers from a sexually
21 transmitted disease, as defined in 50-18-101.

22 (2) Arrangements for the test required by subsection
23 (1) must be made by the county attorney of the county in
24 which the person was convicted. The test must be conducted
25 by a health care provider, as defined in 50-16-504.

1 (3) IF THE RESULTS OF THE TEST AUTHORIZED BY THIS
2 SECTION INDICATE THAT THE CONVICTED PERSON SUFFERS FROM A
3 SEXUALLY TRANSMITTED DISEASE, THE COUNTY ATTORNEY OF THE
4 COUNTY IN WHICH THE PERSON WAS CONVICTED SHALL ARRANGE FOR
5 POSTTEST COUNSELING OF--THE--CONVICTED--PERSON--AND OF ANY
6 VICTIM OF THE CONVICTED PERSON.

7 (4) THE PROVISIONS OF THE AIDS PREVENTION ACT DO NOT
8 APPLY TO [SECTIONS 1 THROUGH 3].

9 NEW SECTION. Section 2. Dissemination and use of test
10 results. (1) The results of the test required by [section 1]
11 must be forwarded to the county attorney who arranged for
12 the test. The county attorney may SHALL release the test
13 results only to the following:

14 (a)--the-warden-of-Montana-state-prison,-if--the--person
15 tested-is-sentenced-to-incarceration-at-the-prison;

16 (b)--the--administrator--of-a-Montana-state-institution,
17 an-institution-of-another--state,-or--a--city,-county,-or
18 regional--detention--center--in--which--the--person--is
19 incarcerated;

20 (c)--the-probation-officer--assigned--to--supervise--the
21 person-tested,-if-a-probationary-sentence-is-imposed;

22 (d)--a--person--determined--by--the--probation--office
23 preparing-a-presentence--investigation--and--report--on--the
24 convicted--person--to--be-a-victim-of-that-person-or,-if-the
25 victim-is-a-minor,-to-the-parent-or-guardian-of-the-victim;

1 ~~(e) appropriate personnel of the department of health~~
 2 ~~and environmental sciences;~~

3 ~~(f) a physician, by written consent of the person~~
 4 ~~tested;~~

5 ~~(g) a local health officer, or~~

6 ~~(h) a local board of health;~~

7 (A) THE HEALTH CARE PROVIDER WHO CONDUCTED THE TEST,
 8 WHO SHALL RELEASE THE TEST RESULTS TO THE CONVICTED PERSON
 9 AND TO ANY VICTIM OF THE CONVICTED PERSON;

10 (B) THE HEALTH OFFICER TO WHOM THE DEPARTMENT HAS
 11 REQUIRED THE REPORTING OF COMMUNICABLE DISEASES UNDER
 12 50-1-202; AND

13 (C) THE DEFENSE COUNSEL FOR THE CONVICTED PERSON.

14 (2) The results of the test may be released by the
 15 department of health and environmental sciences and a local
 16 health officer ~~or local board of health~~ only as provided in
 17 Title 50, chapter 16, part 6.

18 (3) A person or agency receiving test results
 19 indicating that the tested person suffers from a sexually
 20 transmitted disease may use the test results ~~for the purpose~~
 21 ~~of determining appropriate custodial care, for statistical~~
 22 ~~recordkeeping, or for treatment~~ OR PROSECUTION OR DEFENSE OF
 23 THE CONVICTED PERSON.

24 NEW SECTION. Section 3. Liability for disclosure --
 25 civil remedies. (1) A person or agency, including an

1 officer, agent, or employee of an agency, authorized
 2 REQUIRED by [section 2] to receive results of the test
 3 required by [section 1] is not liable for a disclosure
 4 authorized or required by [section 2].

5 (2) A person aggrieved by a disclosure made contrary to
 6 the provisions of [section 2] may bring a civil action for
 7 damages for pecuniary loss sustained as a result of the
 8 disclosure. If the disclosure results from willful or
 9 grossly negligent conduct, the aggrieved person may recover,
 10 in addition to any damages sustained, a civil penalty of not
 11 more than \$5,000 from the person or agency making the
 12 disclosure.

13 (3) A person who is or may be aggrieved by a disclosure
 14 made contrary to the provisions of [section 2] may, in
 15 addition to or in place of an action for damages and any
 16 civil penalty under subsection (2), bring an action for
 17 temporary or permanent injunctive relief to prevent the
 18 disclosure.

19 (4) If a person bringing an action for damages, civil
 20 penalty, or injunctive relief under this section prevails,
 21 the court may assess against the person making the
 22 disclosure and award to the plaintiff reasonable attorney
 23 fees and all other expenses of the plaintiff that were
 24 reasonably incurred in the litigation.

25 (5) An action for damages or penalty brought pursuant

1 to this section is barred unless the action is brought
 2 within 3 years after the cause of action accrued. The
 3 remedies provided in this section are cumulative and do not
 4 replace other available remedies.

5 NEW SECTION. Section 4. Codification instruction.
 6 [Sections 1 through 3] are intended to be codified as an
 7 integral part of Title 45, chapter 5, part 5, and the
 8 provisions of Title 45, chapter 5, part 5, apply to
 9 [sections 1 through 3].

10 NEW SECTION. Section 5. Requirement for approval of
 11 immunity provision -- severability. Because [section 3]
 12 grants a public entity immunity from suit, a vote of
 13 two-thirds of the members of each house of the legislature
 14 is required for enactment of [section 3]. If [section 3] is
 15 not approved by the required vote, [section 3] is void. The
 16 remaining sections of [this act] are valid and remain in
 17 effect in all valid applications upon enactment.

18 NEW SECTION. SECTION 6. RETROACTIVE APPLICABILITY.
 19 [SECTIONS 1 THROUGH 3] APPLY RETROACTIVELY, WITHIN THE
 20 MEANING OF 1-2-109, TO PERSONS CONVICTED PRIOR TO [THE
 21 EFFECTIVE DATE OF THIS ACT] WHO ARE, AT THE TIME A TEST IS
 22 SOUGHT, IN JAIL, PRISON, OR OTHER INCARCERATION; ON
 23 PROBATION OR PAROLE; OR OTHERWISE STILL UNDER STATE
 24 SUPERVISION FOR A SEXUAL OFFENSE DEFINED IN 46-23-502.

25 NEW SECTION. SECTION 7. EFFECTIVE DATE. [THIS ACT] IS

1 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 761 (third reading copy -- blue), respectfully report that House Bill No. 761 be amended and as so amended be concurred in:

1. Title, lines 7 through 11.

Following: "OFFENSE;" on line 7

Strike: remainder of line 7 through "DISCLOSURE" on line 11

Insert: "REQUIRING RELEASE OF THE TEST RESULTS TO THE VICTIM AND
THE CONVICTED PERSON"

2. Page 2, lines 1 through 3.

Following: "(3)" on line 1

Strike: remainder of line 1 through "DISEASE," on line 3

3. Page 2, lines 4 through 6.

Following: "SHALL"

Strike: remainder of line 4 through "PERSON" on line 6

Insert: "release the information concerning the test results to:

(a) the convicted person; and

(b) the victim of the offense committed by the convicted person or to the parent or guardian of the victim if the victim is a minor"

4. Page 2, line 8.

Strike: "[SECTIONS 1 THROUGH 3]"

Insert: "this section"

5. Page 2, line 9 through page 5, line 17.

Strike: sections 2 through 5 in their entirety

Renumber: subsequent sections

6. Page 5, line 19.

Strike: "[SECTIONS 1 THROUGH 3] APPLY"

Insert: "[Section 1] applies"

Signed: _____

Dorothy Edk
Dorothy Edk, Chairman

LB 4/2/91
Amd. Coord.

SB 4/2
Sec. of Senate

SENATE
HB 761

HOUSE BILL NO. 761

INTRODUCED BY PECK, T. NELSON, KENNEDY, PIPINICH, MCCARTHY,
HOFFMAN, J. DEBRUYCKER, JERGESON, HOCKETT, MANNING

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING AUTHORIZING
SEXUALLY TRANSMITTED DISEASE TESTING OF PERSONS CONVICTED OF
A SEXUAL OFFENSE; PROVIDING FOR COUNSELING OF THE CONVICTED
PERSON AND THE VICTIM, SPECIFYING WHO IS ENTITLED TO MUST
RECEIVE THE RESULTS OF THE TESTING AND HOW THOSE RESULTS MAY
BE USED; PROVIDING IMMUNITY FROM LIABILITY FOR DISCLOSURE;
AND PROVIDING CIVIL REMEDIES FOR UNAUTHORIZED DISCLOSURE
REQUIRING RELEASE OF THE TEST RESULTS TO THE VICTIM AND THE
CONVICTED PERSON; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Sexually transmitted disease
testing -- test procedure. (1) A person convicted of a
sexual offense, as defined in 46-23-502, must MAY, following
entry of judgment, be administered a standard serological
test to determine whether the person suffers from a sexually
transmitted disease, as defined in 50-18-101.

(2) Arrangements for the test required by subsection
(1) must be made by the county attorney of the county in
which the person was convicted. The test must be conducted

by a health care provider, as defined in 50-16-504.

~~(3) IF THE RESULTS OF THE TEST AUTHORIZED BY THIS~~
~~SECTION INDICATE THAT THE CONVICTED PERSON SUFFERS FROM A~~
~~SEXUALLY TRANSMITTED DISEASE, THE COUNTY ATTORNEY OF THE~~
~~COUNTY IN WHICH THE PERSON WAS CONVICTED SHALL ARRANGE FOR~~
~~POSTTEST COUNSELING OF THE CONVICTED PERSON AND OF ANY~~
~~VICTIM OF THE CONVICTED PERSON RELEASE THE INFORMATION~~
~~CONCERNING THE TESTS RESULTS TO:~~

~~(A) THE CONVICTED PERSON; AND~~

~~(B) THE VICTIM OF THE OFFENSE COMMITTED BY THE~~
~~CONVICTED PERSON OR TO THE PARENT OR GUARDIAN OF THE VICTIM~~
~~IF THE VICTIM IS A MINOR.~~

~~(4) THE PROVISIONS OF THE AIDS PREVENTION ACT DO NOT~~
~~APPLY TO {SECTIONS 1 THROUGH 3} THIS SECTION.~~

~~NEW SECTION. Section 2. Dissemination and use of test~~
~~results. (1) The results of the test required by (section 1)~~
~~must be forwarded to the county attorney who arranged for~~
~~the test. The county attorney may SHALL release the test~~
~~results only to the following:~~

~~(a) the warden of Montana state prison, if the person~~
~~tested is sentenced to incarceration at the prison;~~

~~(b) the administrator of a Montana state institution,~~
~~an institution of another state, or a city, county, or~~
~~regional detention center in which the person is~~
~~incarcerated;~~



1 (c) the probation officer assigned to supervise the
 2 person tested, if a probationary sentence is imposed;
 3 (d) a person determined by the probation office
 4 preparing a presentence investigation and report on the
 5 convicted person to be a victim of that person or, if the
 6 victim is a minor, to the parent or guardian of the victim;
 7 (e) appropriate personnel of the department of health
 8 and environmental sciences;
 9 (f) a physician, by written consent of the person
 10 tested;
 11 (g) a local health officer; or
 12 (h) a local board of health.
 13 (A) THE HEALTH CARE PROVIDER WHO CONDUCTED THE TEST
 14 WHO SHALL RELEASE THE TEST RESULTS TO THE CONVICTED PERSON
 15 AND TO ANY VICTIM OF THE CONVICTED PERSON;
 16 (B) THE HEALTH OFFICER TO WHOM THE DEPARTMENT HAS
 17 REQUIRED THE REPORTING OF COMMUNICABLE DISEASES UNDER
 18 50-1-202, AND
 19 (C) THE DEFENSE COUNSEL FOR THE CONVICTED PERSON;
 20 (2) The results of the test may be released by the
 21 department of health and environmental sciences and a local
 22 health officer or local board of health only as provided in
 23 Title 50, chapter 16, part 6.
 24 (3) A person or agency receiving test results
 25 indicating that the tested person suffers from a sexually

1 transmitted disease may use the test results for the purpose
 2 of determining appropriate custodial care, for statistical
 3 recordkeeping, or for treatment OR PROSECUTION OR DEFENSE OF
 4 THE CONVICTED PERSON;
 5 NEW SECTION--Section 3, liability for disclosure---
 6 civil remedies-- (1) A person or agency, including an
 7 officer, agent, or employee of an agency, authorized
 8 REQUIRED by (section 2) to receive results of the test
 9 required by (section 1) is not liable for a disclosure
 10 authorized or required by (section 2);
 11 (2) A person aggrieved by a disclosure made contrary to
 12 the provisions of (section 2) may bring a civil action for
 13 damages for pecuniary loss sustained as a result of the
 14 disclosure. If the disclosure results from willful or
 15 grossly negligent conduct, the aggrieved person may recover,
 16 in addition to any damages sustained, a civil penalty of not
 17 more than \$5,000 from the person or agency making the
 18 disclosure;
 19 (3) A person who is or may be aggrieved by a disclosure
 20 made contrary to the provisions of (section 2) may, in
 21 addition to or in place of an action for damages and any
 22 civil penalty under subsection (2), bring an action for
 23 temporary or permanent injunctive relief to prevent the
 24 disclosure;
 25 (4) If a person bringing an action for damages, civil

1 penalty, or injunctive relief under this section prevails;
2 the court may assess against the person making the
3 disclosure and award to the plaintiff reasonable attorney
4 fees and all other expenses of the plaintiff that were
5 reasonably incurred in the litigation.

6 {5} An action for damages or penalty brought pursuant
7 to this section is barred unless the action is brought
8 within 3 years after the cause of action accrued. The
9 remedies provided in this section are cumulative and do not
10 replace other available remedies.

11 NEW SECTION: Section 4. Codification instruction
12 {Sections 1 through 3} are intended to be codified as an
13 integral part of Title 45, chapter 5, part 5, and the
14 provisions of Title 45, chapter 5, part 5, apply to
15 {sections 1 through 3}.

16 NEW SECTION: Section 5. Requirement for approval of
17 immunity provision severability. Because {section 3}
18 grants a public entity immunity from suit, a vote of
19 two thirds of the members of each house of the legislature
20 is required for enactment of {section 3}. If {section 3} is
21 not approved by the required vote, {section 3} is void. The
22 remaining sections of {this act} are valid and remain in
23 effect in all valid applications upon enactment.

24 NEW SECTION. SECTION 2. RETROACTIVE APPLICABILITY.
25 {SECTIONS 1 THROUGH 3} APPLY {SECTION 1} APPLIES

1 RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO PERSONS
2 CONVICTED PRIOR TO [THE EFFECTIVE DATE OF THIS ACT] WHO ARE,
3 AT THE TIME A TEST IS SOUGHT, IN JAIL, PRISON, OR OTHER
4 INCARCERATION; ON PROBATION OR PAROLE; OR OTHERWISE STILL
5 UNDER STATE SUPERVISION FOR A SEXUAL OFFENSE DEFINED IN
6 46-23-502.

7 NEW SECTION. SECTION 3. EFFECTIVE DATE. [THIS ACT] IS
8 EFFECTIVE ON PASSAGE AND APPROVAL.

-End-