

SENATE BILL NO. 12

INTRODUCED BY GAGE
BY REQUEST OF THE BOARD OF CRIME CONTROL

IN THE SENATE

DECEMBER 22, 1992	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 4, 1993	FIRST READING.
JANUARY 14, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 15, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
JANUARY 16, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 47; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 18, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 1, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
FEBRUARY 4, 1993	SECOND READING, CONCURRED IN.
FEBRUARY 6, 1993	THIRD READING, CONCURRED IN. AYES, 91; NOES, 6.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

FEBRUARY 10, 1993	RECEIVED FROM HOUSE.
	SECOND READING, AMENDMENTS CONCURRED IN.

FEBRUARY 11, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 SENATE BILL NO. 12

2 INTRODUCED BY GAGE

3 BY REQUEST OF THE BOARD OF CRIME CONTROL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING SEXUALLY
6 TRANSMITTED DISEASE TESTING OF A PERSON CONVICTED OF A
7 SEXUAL OFFENSE MANDATORY AT THE REQUEST OF THE VICTIM;
8 REVISING THE LIST OF SEXUALLY TRANSMITTED DISEASES FOR WHICH
9 A PERSON CONVICTED OF A SEXUAL OFFENSE MAY BE TESTED BY
10 INCLUDING HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND DELETING
11 ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS); INCLUDING CERTAIN
12 JUVENILES IN THE MANDATORY TESTING PROVISIONS; AMENDING
13 SECTIONS 46-18-256 AND 50-18-101, MCA; AND PROVIDING AN
14 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
15 DATE."
16

17 STATEMENT OF INTENT

18 It is the intent of the legislature to amend 46-18-256
19 and 50-18-101 in order to comply with federal requirements
20 of the Crime Control Act of 1990 that requires states to
21 enact laws related to human immunodeficiency virus (HIV)
22 testing of certain convicted offenders or be subject to
23 reduced federal funding.

24 With the frightening spread of acquired immunodeficiency
25 syndrome (AIDS) and its HIV precursor, transmitted as they

1 are by sexual contact, an often terrifying concern has been
2 introduced into the lives of victims of the crimes of sexual
3 abuse offenses. Therefore, it is additionally the intent of
4 the legislature, by requiring that persons convicted of
5 sexual abuse offenses undergo HIV testing, to eliminate at
6 least part of the traumatic aftermath of such crimes upon
7 the victims. Because testing will be required, the victims
8 will know that they have not been exposed to the deadly
9 virus, or if, tragically, they have been exposed, they can
10 seek medical treatment and take steps to protect others from
11 the further spread of the epidemic.

12 This bill is intended to be a benefit to public health
13 and safety by attempting to control and limit the potential
14 spread and impact of disease. It is not intended to add
15 additional sanctions or penalties for conviction of sexual
16 abuse offenses or to make criminals of the victims of
17 disease.
18

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

20 Section 1. Section 46-18-256, MCA, is amended to read:

21 "46-18-256. Sexually transmitted disease testing --
22 test procedure. (1) A Following entry of judgment, a person
23 convicted of a sexual offense, as defined in 46-23-502, may,
24 following-entry-of-judgment, must, at the request of the
25 victim of the sexual offense or the parent or guardian of

the victim if the victim is a minor, be administered a standard test to determine whether the person suffers from a detect in the person the presence of antibodies indicative of the presence of human immunodeficiency virus (HIV) or other sexually transmitted disease diseases, 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) The county attorney of the county in which the person was convicted shall 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) At the request of the victim of a sexual offense or the parent or guardian of the victim if the victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance with applicable law), and referral for appropriate health care and support services.

(5) For purposes of this section, "convicted" includes an adjudication, under the provisions of 41-5-521, finding a

youth to be a delinquent youth or a youth in need of supervision.

(4)(6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this section."

Section 2. Section 50-18-101, MCA, is amended to read:

"50-18-101. Sexually transmitted diseases defined.

Acquired----immunodeficiency----syndrome----{AIDS} Human immunodeficiency virus (HIV), syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are sexually transmitted diseases. Sexually transmitted diseases are contagious, infectious, communicable, and dangerous to public health."

NEW SECTION. Section 3. Retroactive applicability.

[Section 1] applies retroactively, within the meaning of 1-2-109, to persons convicted prior to [the effective date of this act] who are, at the time a test is sought, in jail, prison, or other incarceration; on probation or parole; or otherwise still under state supervision for a sexual offense defined in 46-23-502.

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 12

INTRODUCED BY GAGE

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING SEXUALLY TRANSMITTED DISEASE TESTING OF A PERSON CONVICTED OF A SEXUAL OFFENSE MANDATORY AT THE REQUEST OF THE VICTIM; REVISING THE LIST OF SEXUALLY TRANSMITTED DISEASES FOR WHICH A PERSON CONVICTED OF A SEXUAL OFFENSE MAY BE TESTED BY INCLUDING HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND DELETING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS); INCLUDING CERTAIN JUVENILES IN THE MANDATORY TESTING PROVISIONS; AMENDING SECTIONS 46-18-256 AND 50-18-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

It is the intent of the legislature to amend 46-18-256 and 50-18-101 in order to comply with federal requirements of the Crime Control Act of 1990 that requires states to enact laws related to human immunodeficiency virus (HIV) testing of certain convicted offenders or be subject to reduced federal funding.

~~With the frightening spread of acquired immunodeficiency syndrome (AIDS) and its HIV precursor, transmitted as they~~

~~are by sexual contact, an often terrifying concern has been introduced into the lives of victims of the crimes of sexual abuse offenses. Therefore, it is additionally the intent of the legislature, by requiring that persons convicted of sexual abuse offenses undergo HIV testing, to eliminate at least part of the traumatic aftermath of such crimes upon the victims. Because testing will be required, the victims will know that they have not been exposed to the deadly virus, or if, tragically, they have been exposed, they can seek medical treatment and take steps to protect others from the further spread of the epidemic.~~

This bill is intended to be a benefit to public health and safety by attempting to control and limit the potential spread and impact of disease. It is not intended to add additional sanctions or penalties for conviction of sexual abuse offenses or to make criminals of the victims of disease.

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

Section 1. Section 46-18-256, MCA, is amended to read:

"46-18-256. Sexually transmitted disease testing -- test procedure. (1) A following entry of judgment, a person convicted of a sexual offense, as defined in 46-23-502, may, following entry of judgment, must, at the request of the victim of the sexual offense or the parent or guardian of

1 the victim, if the victim is a minor, be administered a
 2 standard test TESTING ACCORDING TO CURRENTLY ACCEPTED
 3 PROTOCOL, USING GUIDELINES ESTABLISHED BY THE CENTERS FOR
 4 DISEASE CONTROL, U.S. DEPARTMENT OF HEALTH AND HUMAN
 5 SERVICES, to determine whether the person suffers from a
 6 detect in the person the presence of antibodies indicative
 7 of the presence of human immunodeficiency virus (HIV) or
 8 other sexually transmitted disease diseases, as defined in
 9 50-18-101.

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

14 (3) The county attorney of the county in which the
 15 person was convicted shall release the information
 16 concerning the test results to:

17 (a) the convicted person; and

18 (b) the victim of the offense committed by the
 19 convicted person or to the parent or guardian of the victim
 20 if the victim is a minor.

21 (4) At the request of the victim of a sexual offense or
 22 the parent or guardian of the victim if the victim is a
 23 minor, the victim must be provided counseling regarding HIV
 24 disease, HIV testing (in accordance with applicable law),
 25 and referral for appropriate health care and support

1 services.

2 (5) For purposes of this section, "convicted" includes
 3 an adjudication, under the provisions of 41-5-521, finding a
 4 youth to be a delinquent youth or a youth in need of
 5 supervision.

6 (4)(6) The provisions of the AIDS Prevention Act, Title
 7 50, chapter 16, part 10, do not apply to this section."

8 **Section 2.** Section 50-18-101, MCA, is amended to read:

9 **"50-18-101. Sexually transmitted diseases defined.**
 10 **Acquired---immunodeficiency---syndrome---(AIDS) Human**
 11 **immunodeficiency virus (HIV), syphilis, gonorrhea,**
 12 **chancroid, chlamydia genital infections, lymphogranuloma**
 13 **venereum, and granuloma inguinale are sexually transmitted**
 14 **diseases. Sexually transmitted diseases are contagious,**
 15 **infectious, communicable, and dangerous to public health."**

16 **NEW SECTION. Section 3. Retroactive applicability.**
 17 **[Section 1] applies retroactively, within the meaning of**
 18 **1-2-109, to persons convicted prior to [the effective date**
 19 **of this act] who are, at the time a test is sought, in jail,**
 20 **prison, or other incarceration; on probation or parole; or**
 21 **otherwise still under state supervision for a sexual offense**
 22 **defined in 46-23-502.**

23 **NEW SECTION. Section 4. Effective date. [This act] is**
 24 **effective on passage and approval.**

-End-

SENATE BILL NO. 12

INTRODUCED BY GAGE

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT MAKING SEXUALLY TRANSMITTED DISEASE TESTING OF A PERSON CONVICTED OF A SEXUAL OFFENSE MANDATORY AT THE REQUEST OF THE VICTIM; REVISING THE LIST OF SEXUALLY TRANSMITTED DISEASES FOR WHICH A PERSON CONVICTED OF A SEXUAL OFFENSE MAY BE TESTED BY INCLUDING HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND DELETING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS); INCLUDING CERTAIN JUVENILES IN THE MANDATORY TESTING PROVISIONS; AMENDING SECTIONS 46-18-256 AND 50-18-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

It is the intent of the legislature to amend 46-18-256 and 50-18-101 in order to comply with federal requirements of the Crime Control Act of 1990 that requires states to enact laws related to human immunodeficiency virus (HIV) testing of certain convicted offenders or be subject to reduced federal funding.

With the frightening spread of acquired immunodeficiency syndrome (AIDS) and its HIV precursor, transmitted as they

are by sexual contact, an often terrifying concern has been introduced into the lives of victims of the crimes of sexual abuse offenses. Therefore, it is additionally the intent of the legislature, by requiring that persons convicted of sexual abuse offenses undergo HIV testing, to eliminate at least part of the traumatic aftermath of such crimes upon the victims. Because testing will be required, the victims will know that they have not been exposed to the deadly virus, or if, tragically, they have been exposed, they can seek medical treatment and take steps to protect others from the further spread of the epidemic.

This bill is intended to be a benefit to public health and safety by attempting to control and limit the potential spread and impact of disease. It is not intended to add additional sanctions or penalties for conviction of sexual abuse offenses or to make criminals of the victims of disease.

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

Section 1. Section 46-18-256, MCA, is amended to read:

"46-18-256. Sexually transmitted disease testing -- test procedure. (1) A Following entry of judgment, a person convicted of a sexual offense, as defined in 46-23-502, may, following entry of judgment, must, at the request of the victim of the sexual offense or the parent or guardian of

the victim, if the victim is a minor, be administered a standard test TESTING ACCORDING TO CURRENTLY ACCEPTED PROTOCOL, USING GUIDELINES ESTABLISHED BY THE CENTERS FOR DISEASE CONTROL, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, to determine whether the person suffers from a defect in the person the presence of antibodies indicative of the presence of human immunodeficiency virus (HIV) or other sexually transmitted diseases, 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) The county attorney of the county in which the person was convicted shall 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) At the request of the victim of a sexual offense or the parent or guardian of the victim if the victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance with applicable law), and referral for appropriate health care and support

services.

(5) For purposes of this section, "convicted" includes an adjudication, under the provisions of 41-5-521, finding a youth to be a delinquent youth or a youth in need of supervision.

~~(4)~~(6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this section."

Section 2. Section 50-18-101, MCA, is amended to read:

"50-18-101. Sexually transmitted diseases defined. Acquired----immunodeficiency----syndrome----~~(AIDS)~~ Human immunodeficiency virus (HIV), syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are sexually transmitted diseases. Sexually transmitted diseases are contagious, infectious, communicable, and dangerous to public health."

NEW SECTION. Section 3. Retroactive applicability. [Section 1] applies retroactively, within the meaning of 1-2-109, to persons convicted prior to [the effective date of this act] who are, at the time a test is sought, in jail, prison, or other incarceration; on probation or parole; or otherwise still under state supervision for a sexual offense defined in 46-23-502.

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

-End-

HOUSE STANDING COMMITTEE REPORT

January 28, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 12 (third reading copy -- blue) be concurred in as amended .

Signed: 
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Peterson

1. Page 2, lines 7 through 9.

Strike: "Because" on line 7 through end of line 9

Insert: "Upon the request of the victim or the victim's representatives, testing and the test results must be made available for the victim's information. Testing information may or may not reveal exposure to the HIV virus. If exposed, the victim can"

Committee Vote:
Yes 18, No 2.

HOUSE

1 SENATE BILL NO. 12

2 INTRODUCED BY GAGE

3 BY REQUEST OF THE BOARD OF CRIME CONTROL

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING SEXUALLY
6 TRANSMITTED DISEASE TESTING OF A PERSON CONVICTED OF A
7 SEXUAL OFFENSE MANDATORY AT THE REQUEST OF THE VICTIM;
8 REVISING THE LIST OF SEXUALLY TRANSMITTED DISEASES FOR WHICH
9 A PERSON CONVICTED OF A SEXUAL OFFENSE MAY BE TESTED BY
10 INCLUDING HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND DELETING
11 ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS); INCLUDING CERTAIN
12 JUVENILES IN THE MANDATORY TESTING PROVISIONS; AMENDING
13 SECTIONS 46-18-256 AND 50-18-101, MCA; AND PROVIDING AN
14 IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY
15 DATE."

16
17 STATEMENT OF INTENT

18 It is the intent of the legislature to amend 46-18-256
19 and 50-18-101 in order to comply with federal requirements
20 of the Crime Control Act of 1990 that requires states to
21 enact laws related to human immunodeficiency virus (HIV)
22 testing of certain convicted offenders or be subject to
23 reduced federal funding.

24 With the frightening spread of acquired immunodeficiency
25 syndrome--(AIDS)--and its HIV-precursory-transmitted-as-they

1 are-by-sexual-contact,an-often-terrifying-concern-has--been
2 introduced-into-the-lives-of-victims-of-the-crimes-of-sexual
3 abuse--offenses. Therefore, it is additionally the intent of
4 the legislature, by requiring that persons convicted of
5 sexual abuse offenses undergo HIV testing, to eliminate at
6 least part of the traumatic aftermath of such crimes upon
7 the victims. Because testing will be required, the victims
8 will know that they have not been exposed to the deadly
9 virus, or if, tragically, they have been exposed, they can
10 UPON THE REQUEST OF THE VICTIM OR THE VICTIM'S
11 REPRESENTATIVES, TESTING AND THE TEST RESULTS MUST BE MADE
12 AVAILABLE FOR THE VICTIM'S INFORMATION. TESTING INFORMATION
13 MAY OR MAY NOT REVEAL EXPOSURE TO THE HIV VIRUS. IF EXPOSED,
14 THE VICTIM CAN seek medical treatment and take steps to
15 protect others from the further spread of the epidemic.

16 This bill is intended to be a benefit to public health
17 and safety by attempting to control and limit the potential
18 spread and impact of disease. It is not intended to add
19 additional sanctions or penalties for conviction of sexual
20 abuse offenses or to make criminals of the victims of
21 disease.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 Section 1. Section 46-18-256, MCA, is amended to read:

25 "46-18-256. Sexually transmitted disease testing --



test procedure. (1) A Following entry of judgment, a person convicted of a sexual offense, as defined in 46-23-502, may, following-entry-of-judgment, must, at the request of the victim of the sexual offense or the parent or guardian of the victim, if the victim is a minor, be administered a standard test TESTING ACCORDING TO CURRENTLY ACCEPTED PROTOCOL, USING GUIDELINES ESTABLISHED BY THE CENTERS FOR DISEASE CONTROL, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, to determine-whether-the--person--suffers--from--a detect in the person the presence of antibodies indicative of the presence of human immunodeficiency virus (HIV) or other sexually transmitted disease diseases, 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) The county attorney of the county in which the person was convicted shall 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) At the request of the victim of a sexual offense or

the parent or guardian of the victim if the victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance with applicable law), and referral for appropriate health care and support services.

(5) For purposes of this section, "convicted" includes an adjudication, under the provisions of 41-5-521, finding a youth to be a delinquent youth or a youth in need of supervision.

(4)(6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this section."

Section 2. Section 50-18-101, MCA, is amended to read:

"50-18-101. Sexually transmitted diseases defined. Acquired----immunodeficiency----syndrome----(AIDS) Human immunodeficiency virus (HIV), syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are sexually transmitted diseases. Sexually transmitted diseases are contagious, infectious, communicable, and dangerous to public health."

NEW SECTION. Section 3. Retroactive applicability. [Section 1] applies retroactively, within the meaning of 1-2-109, to persons convicted prior to [the effective date of this act] who are, at the time a test is sought, in jail, prison, or other incarceration; on probation or parole; or otherwise still under state supervision for a sexual offense

1 defined in 46-23-502.

2 NEW SECTION. **Section 4. Effective date.** [This act] is

3 effective on passage and approval.

-End-