

1993 Assembly Bill 592

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## 1993 WISCONSIN ACT 32

AN ACT to amend 48.299 (4) (b), 48.373 (1), 143.07 (5m), 143.07 (7), 146.025 (2) (a) 6, 146.025 (5) (a) 17, 146.81 (4), 901.05 (2) (intro.), 901.05 (3) and 968.38 (4) (intro.); and to create 48.296 and 48.346 (1) (e) of the statutes, relating to: human immunodeficiency virus infection and sexually transmitted diseases testing of juvenile sex offenders and disclosure of human immunodeficiency virus infection and sexually transmitted diseases test results to juvenile and adult sex offenders.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 48.296 of the statutes is created to read:  
**48.296 Testing for HIV infection and certain diseases.** (1) In this section:

(a) "Health care professional" has the meaning given in s. 146.025 (1) (am).

(b) "HIV" has the meaning given in s. 146.025 (1) (b).

(c) "Sexually transmitted disease" has the meaning given in s. 143.07 (1).

(d) "Significantly exposed" has the meaning given in s. 146.025 (1) (em).

(2) In a proceeding under s. 48.12 or 48.13 (12) in which the child is alleged to have violated s. 940.225, 948.02, 948.05 or 948.06, the district attorney or corporation counsel shall apply to the court for an order requiring the child to submit to a test or a series of tests administered by a health care professional to detect the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease and to disclose the results of that test or series of tests as specified in sub. (4) (a) to (e), if all of the following apply:

(a) The victim or alleged victim, if an adult, or the parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child, requests the district attorney or corporation counsel to apply for that order.

(b) The district attorney or corporation counsel has probable cause to believe that the child has significantly exposed the victim or alleged victim.

(3) The district attorney or corporation counsel may apply for an order under sub. (2) at any of the following times:

(a) At or after the plea hearing and before a dispositional order is entered.

(b) If the child is adjudicated delinquent or found to be in need of protection or services, within 53 days after the dispositional order is entered.

(4) On receipt of an application for an order under sub. (2), the court shall set a time for a hearing on the application. If, after hearing, the court finds probable cause to believe that the child has significantly exposed the victim or alleged victim, the court, except as provided in sub. (5), shall order the child to submit to a test or a series of tests administered by a health care professional to detect the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease. The court shall require the health care professional who performs the test or series of tests to refrain, notwithstanding s. 146.025 (4) (c), from making the test results part of the child's permanent medical record and to disclose the results of the test to any of the following:

(a) The parent, guardian or legal custodian of the child, if the court determines that it is in the child's best

interest that the parent, guardian or legal custodian receive that information.

(b) The victim or alleged victim, if the victim or alleged victim is an adult.

(c) The parent, guardian or legal custodian of the victim or alleged victim, if the victim or alleged victim is a child and if the court determines that it is in the victim's or alleged victim's best interest that the parent, guardian or legal custodian receive that information.

(d) The health care professional that provides care for the child, upon request by the parent, guardian or legal custodian of the child.

(e) The health care professional that provides care for the victim or alleged victim, upon request by the victim or alleged victim or, if the victim or alleged victim is a child, upon request by the parent, guardian or legal custodian of the victim or alleged victim.

(5) Notwithstanding sub. (4), the court is not required to order the child to submit to a test or series of tests under sub. (4) if the court finds substantial reason relating to the health or life of the child not to order those tests or series of tests and states the reason on the record.

(6) The court may order the county to pay for the cost of a test or series of tests ordered under sub. (4). This subsection does not prevent recovery of reasonable contribution toward the cost of that test or series of tests from the parent or guardian of the child as the court may order based on the ability of the parent or guardian to pay. This subsection is subject to s. 46.03 (18).

**SECTION 2.** 48.299 (4) (b) of the statutes is amended to read:

48.299 (4) (b) Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a waiver hearing under s. 48.18, a hearing for a child held in custody under s. 48.21, a runaway home hearing under s. 48.227 (4), a hearing under s. 48.296 (4) for a child who is alleged to have violated s. 940.225, 948.02, 948.05 or 948.06, a dispositional hearing, or a hearing about changes in placement, revision of dispositional orders or extension of dispositional orders. At those hearings, the court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The court shall give effect to the rules of privilege recognized by law. The court shall apply the basic principles of relevancy, materiality and probative value to proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

**SECTION 3.** 48.346 (1) (e) of the statutes is created to read:

48.346 (1) (e) The procedure under s. 48.296 under which the victim, if an adult, or the parent, guardian or

legal custodian of the victim, if the victim is a child, may request an order requiring a child who is alleged to have violated s. 940.225, 948.02, 948.05 or 948.06 to submit to a test or a series of tests to detect the presence of HIV, as defined in s. 146.025 (1) (b), antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease, as defined in s. 143.07 (1), and to have the results of that test or series of tests disclosed as provided in s. 48.296 (4) (a) to (e).

**SECTION 4.** 48.373 (1) of the statutes is amended to read:

48.373 (1) The court assigned to exercise jurisdiction under this chapter may authorize medical services including surgical procedures when needed if the court assigned to exercise jurisdiction under this chapter determines that reasonable cause exists for the services and that the minor is within the jurisdiction of the court assigned to exercise jurisdiction under this chapter and, except as provided in s. 48.296 (4), consents.

**SECTION 5.** 143.07 (5m) of the statutes is amended to read:

143.07 (5m) A health care professional, as defined in s. 48.296 (1) (a), or a health care professional, as defined in s. 968.38 (1) (a), acting under an order of a court under s. 48.296 (4) or 968.38 (4) may, without first obtaining informed consent to the testing, subject a defendant an individual to a test or a series of tests to ascertain whether ~~the defendant~~ that individual is infected with a sexually transmitted disease. No sample used for performance of a test under this subsection may disclose the name of the test subject.

**SECTION 6.** 143.07 (7) of the statutes is amended to read:

143.07 (7) Reports, examinations and inspections and all records concerning sexually transmitted diseases are confidential and not open to public inspection, and shall not be divulged except as may be necessary for the preservation of the public health, in the course of commitment proceedings under sub. (5) or as provided under s. 48.296 (4) or 968.38 (4). If a physician has reported a case of sexually transmitted disease to the department under sub. (4), information regarding the presence of the disease and treatment is not privileged when the patient or physician is called upon to testify to the facts before any court of record.

**SECTION 7.** 146.025 (2) (a) 6. of the statutes is amended to read:

146.025 (2) (a) 6. A health care professional acting under an order of the court under subd. 7 or s. 48.296 (4) or 968.38 (4) may, without first obtaining consent to the testing, subject an individual to a test or a series of tests to detect the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. No sample used for laboratory test purposes under this subdivision may disclose the name of the test subject, and, notwithstand-

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ing sub. (4) (c), the test results may not be made part of the individual's permanent medical record.

**SECTION 8.** 146.025 (5) (a) 17. of the statutes is amended to read:

146.025 (5) (a) 17. To an alleged victim or victim, to a health care professional, upon request as specified in s. 48.296 (4) (e) or 968.38 (4) (c), who provides care to the alleged victim or victim and, if the alleged victim or victim is a minor, to the parent or guardian of the alleged victim or victim, under s. 48.296 (4) or 968.38 (4).

**SECTION 9.** 146.81 (4) of the statutes is amended to read:

146.81 (4) "Patient health care records" means all records related to the health of a patient prepared by or under the supervision of a health care provider, including the records required under s. 146.82 (2) (d) and (3) (c), but not those records subject to s. 51.30, reports collected under s. 69.186, records of tests administered under s. 48.296 (4), 146.025 (2) (a) 7., 343.305 or 968.38 (4), fetal monitor tracings, as defined under s. 146.817 (1), or a pupil's physical health records maintained by a school under s. 118.125.

**SECTION 10.** 901.05 (2) (intro.) of the statutes is amended to read:

901.05 (2) (intro.) Except as provided in sub. (3), the results of a test or tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and the fact that a person has been ordered or required to submit to such a test or tests under s. 48.296 (4) or 968.38 (4) are not admissible during the course of a civil or criminal action or proceeding or an administrative proceeding, as evidence of a person's character or a trait of his or her character for the purpose of proving that he or she acted in conformity with that character on a particular occasion unless the evidence is admissible under s. 904.04 (1) or 904.05 (2) and unless the following procedures are used:

**SECTION 11.** 901.05 (3) of the statutes is amended to read:

901.05 (3) The results of a test or tests under s. 48.296 (4) or 968.38 (4) and the fact that a person has been ordered to submit to such a test or tests under s. 48.296 (4) or 968.38 (4) are not admissible during the course of a civil or criminal action or proceeding or an administrative proceeding.

**SECTION 12.** 968.38 (4) (intro.) of the statutes is amended to read:

968.38 (4) (intro.) The court shall set a time for a hearing on the matter under sub. (2) during the preliminary examination, if sub. (3) (a) applies; after the defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b) applies; or before 60 days after conviction, if sub. (3) (c) applies. The court shall give the district attorney and the defendant notice of the hearing at least 72 hours prior to the hearing. The defendant may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the defendant has significantly exposed the victim or alleged victim, the court shall, except as provided in sub. (5), order the defendant to submit to a test or a series of tests administered by a health care professional to detect the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV or a sexually transmitted disease. The court may require the health care professional who performs the test to disclose the test results to the defendant. The court shall require the health care professional who performs the test ~~to refrain from disclosing the test results to the defendant;~~ to refrain, notwithstanding s. 146.025 (4) (c), from making the test results part of the defendant's permanent medical record; and to disclose the results of the test to any of the following: