

## **COMMITTEE BILL ANALYSIS**

**Bill:** House Bill 1794

**Printer's No.:** 2472

**Sponsor:** Rep. Mustio

**Prepared by:** Gregg Warner

**Synopsis:** This bill enacts the HIV-Related Testing for Sex Offenders Act providing a statutory mechanism for victims of certain sex crimes to request that a court order the defendant to submit to HIV testing.

### **Summary:**

#### **Request for testing**

Upon the request of the victim and with notice to the defendant, the attorney for the Commonwealth shall make application to the court for HIV-related testing of the defendant for a violation of any of the enumerated sexual offenses. Upon a finding of probable cause to believe there is a probable transmission of bodily fluids between a defendant and the victim, the court shall order the defendant to submit to HIV-related testing.

#### **Timing**

The HIV-related testing shall be administered no later than 48 hours after the filing of the criminal information. However, if the victim fails to make the request in time, the victim may request that HIV-related testing be performed on the defendant at any point after the time period expires until six weeks after the date of conviction.

#### **Prohibitions**

The results of the HIV-related testing of the defendant may not be used to establish the guilt of the defendant. Disclosure of the results of the testing is restricted. Notice shall be given to the victim and to the defendant regarding the results of the HIV-related testing.

#### **Costs**

The court may order that the costs of the HIV-related testing be borne by the Department of Health or the Department of Corrections or by the defendant if the defendant is an adult. However, upon conviction, the court shall order that the costs of the testing be assessed against the defendant if the defendant is an adult. In no event shall the victim pay for the HIV-testing.

**Applicability**

This legislation shall apply to offenses committed on or after the effective date.

**Effective date**

This act takes effect in 60 days.

**Background:** The House of Representatives passed House Bill 1794 on October 18, 2011 by a vote of 197 to 1.

**Federal law**

House Bill 1794 is intended to put Pennsylvania in compliance with the Violence Against Women Act (VAWA). VAWA requires all 50 states to enact a statute allowing for the testing of certain sexual offenders within 48 hours after the filing of a criminal information against the defendant when the request for testing is made by the victim. Failure to enact such a provision results in a 5% reduction in federal grants made under VAWA. As of the fiscal year 2010, \$303,186 has been withheld from Pennsylvania because Pennsylvania does not have the necessary statute. At least 13 states have enacted a statute.