

LEGISLATIVE BILL 693

Approved by the Governor March 7, 1994

Introduced by Crosby, 29

AN ACT relating to criminal procedure; to amend section 29-2290, Revised Statutes Supplement, 1992; to change provisions relating to human immunodeficiency virus antibody or antigen tests; to provide powers and duties for the Department of Correctional Services and the Department of Health; to provide for the payment of the cost of the test; to define terms; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 29-2290, Revised Statutes Supplement, 1992, be amended to read as follows:

29-2290. (1) Notwithstanding any other provision of law, when a person has been convicted of sexual assault pursuant to sections 28-317 to 28-320, or sexual assault of a child pursuant to section 28-320.01, or any other offense under Nebraska law when sexual contact or sexual penetration is an element of the offense, the presiding judge shall, at the request of the victim as part of the sentence of the convicted person when the circumstances of the case demonstrate a possibility of transmission of the human immunodeficiency virus, order the convicted person to submit to a human immunodeficiency virus antibody or antigen test. Such test shall be conducted under the jurisdiction of the Department of Correctional Services. The Department of Correctional Services shall make the results of the test shall be reported available only to the victim, of the sexual assault or to the parents or guardian of the victim if the victim is a minor or is mentally incompetent, to the convicted person, to the parents or guardian of the convicted person if the convicted person is a minor or mentally incompetent, to the court issuing the order for testing, and to the Department of Health.

(2) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Department of Correctional Services shall provide counseling to the convicted person regarding human immunodeficiency virus disease and referral to appropriate health care and support services.

(3) The Department of Correctional Services shall provide to the Department of Health the result of any human immunodeficiency virus test conducted pursuant to this section and information regarding the request of the victim. The Department of Health shall notify the victim or the parents or guardian of the victim if the victim is a minor or mentally incompetent and shall make available to the victim counseling and testing regarding human immunodeficiency virus disease and referral to appropriate health care and support services.

(4) The cost of testing under this section shall be paid by the convicted person tested unless the court has determined the convicted person to be indigent.

(5) Filing of a notice of appeal shall not automatically stay an order that the convicted person submit to a human immunodeficiency virus test.

(6) For purposes of this section:

(a) Convicted shall include adjudicated under juvenile proceedings;

(b) Convicted person shall include a child adjudicated of an offense described in subsection (1) of this section; and

(c) Sentence shall include a disposition under juvenile proceedings.

(7) The Department of Correctional Services, in consultation with the Department of Health, The department shall adopt and promulgate rules and regulations to carry out this section.

Sec. 2. That original section 29-2290, Revised Statutes Supplement, 1992, is repealed.