

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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1

HOUSE BILL 211

Short Title: Sex Assault: VD Test Results.

(Public)

Sponsors: Representative Privette.

Referred to: Judiciary.

February 14, 1989

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THAT PERSONS CONVICTED OF SEXUAL ASSAULT BE
2 TESTED FOR VENEREAL DISEASE, INCLUDING THE AIDS VIRUS
3 INFECTION, AND THAT THE VICTIM OF THE SEXUAL ASSAULT BE
4 NOTIFIED OF THE RESULTS OF THE TESTS.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. G.S. 15A-1353(a) reads as rewritten:

8 "(a) When a sentence includes a term or terms of imprisonment, the court must
9 issue an order of commitment setting forth the judgment. Unless otherwise specified in
10 the order of commitment, the date of the order is the date service of the sentence is to
11 begin.

12 If the defendant is convicted of first or second degree rape or first or second degree
13 sexual offense, the court shall specify in the order of commitment that within 30 days of
14 the issuance of the order the defendant shall be examined for venereal disease, such
15 examination to include testing for Acquired Immune Deficiency Syndrome (AIDS)
16 virus infection, and that within 30 days of examination of the defendant the
17 victim of the sexual assault shall be notified of the results of the examination. The order
18 shall further specify that the examination shall be made under the direction of the
19 Department of Human Resources pursuant to the provisions of G.S. 148-10 and G.S.
20 130A-148 and that notification of the results of the examination shall be made to the
21 victim by the Department of Human Resources pursuant to the provisions of G.S. 130A-
22 140.1 and G.S. 130A-143.

23 If a female defendant is convicted of a nonviolent crime and the court is provided
24 medical evidence from a licensed physician that the defendant is pregnant or the court

1 otherwise determines that the defendant is pregnant, the court may specify in the order
2 that the date of service of the sentence is not to begin until at least six weeks after the
3 birth of the child or other termination of the pregnancy unless the defendant requests to
4 serve her term as the court would otherwise order. The court may impose reasonable
5 conditions upon defendant during such waiting period to insure that defendant will
6 return to begin service of the sentence.

7 If the court sentences a defendant pursuant to G.S. 15A-1351(a), the period during
8 which that defendant is awaiting imprisonment shall be considered part of the
9 probationary sentence and such defendant shall be subject to all incidents and conditions
10 of probation."

11 Sec. 2. G.S. 15A-1342(c) reads as rewritten:

12 "(c) Conditions; Suspended Sentence.

13 When the court places a convicted offender on probation, it must determine
14 conditions of probation as provided in G.S. 15A-1343. In addition, it must impose a
15 suspended sentence of imprisonment, determined as provided in Article 83,
16 Imprisonment, which may be activated upon violation of conditions of probation. If the
17 court places a person convicted of second degree rape or second degree sexual offense
18 on probation, the court shall order that before being released on probation the convicted
19 person shall be examined for venereal disease, such examination to include testing for
20 Acquired Immune Deficiency Syndrome (AIDS) virus infection, and that within
21 30 days of the examination the victim of the sexual assault shall be notified of the
22 results of the examination. The court shall further order that the examination shall be
23 made under the direction of the Department of Human Resources pursuant to the
24 provisions of G.S. 130A-148 and that notification of the results of the examination shall
25 be made to the victim by the Department of Human Resources under the provisions of
26 G.S. 130A-140.1 and G.S. 130A-143."

27 Sec. 3. G.S. 148-10 reads as rewritten:

28 "**§ 148-10. Department of Human Resources to supervise sanitary and health**
29 **conditions of prisoners.**

30 (a) The Department of Human Resources shall have general supervision over the
31 sanitary and health conditions of the central prison, over the prison camps, or other
32 places of confinement of prisoners under the jurisdiction of the State Department of
33 Correction, and shall make periodic examinations of the same and report to the State
34 Department of Correction the conditions found there with respect to the sanitary and
35 hygienic care of such prisoners.

36 (b) The Department of Human Resources shall have general supervision over
37 examinations of prisoners for venereal disease, including testing for Acquired Immune
38 Deficiency Syndrome (AIDS) virus infection, which examinations have been specified
39 in an order of commitment issued pursuant to the provisions of G.S. 15A-1353. A
40 prisoner may be taken, when necessary, to a medical facility outside the State prison
41 system for examinations made in accordance with the provisions of G.S. 15A-1353.
42 Costs incurred in administering examinations ordered under G.S. 15A-1353 may be
43 paid from applicable appropriations to the Department of Human Resources and
44 reimbursed from applicable appropriations to the Department of Correction."

1 Sec. 4. Article 6, Part 1 of Chapter 130A of the General Statutes is amended
2 by adding a new section to read:

3 **"§ 130A-140.1. Sexual Assault: Testing and Notification of Results.**

4 Upon issuance of a court order made pursuant to G.S. 15A-1353, G.S. 15A-1342,
5 and G.S. 7A-649, the Department of Human Resources shall examine persons convicted
6 of rape and sexual offense for the presence of venereal disease, including Acquired
7 Immune Deficiency Syndrome (AIDS) virus infection, and shall notify the victim of
8 the rape or sexual offense of the results of the examination. The Department shall
9 provide the victim with the results of the examination within 30 days of the performance
10 of the examination, and shall also provide the results of the examination to the person or
11 persons examined. The Department shall provide examination results without cost to
12 the victim of the sexual assault or to the person examined."

13 Sec. 5. G.S. 7A-649 reads as rewritten:

14 **"§ 7A-649. Dispositional alternatives for delinquent juvenile.**

15 (a) In the case of any juvenile who is delinquent, the judge may:

- 16 (1) Suspend imposition of a more severe, statutorily permissible
17 disposition with the provision that the juvenile meet certain conditions
18 agreed to by him and specified in the dispositional order. The
19 conditions shall not exceed the maximum criminal sanction
20 permissible for the offense;
- 21 (2) Require restitution, full or partial, payable within a 12-month period to
22 any person who has suffered loss or damage as a result of the offense
23 committed by the juvenile. The judge may determine the amount,
24 terms, and conditions of the restitution. If the juvenile participated
25 with another person or persons, all participants should be jointly and
26 severally responsible for the payment of restitution; however, the
27 judge shall not require the juvenile to make restitution if the juvenile
28 satisfies the court that he does not have, and could not reasonably
29 acquire, the means to make restitution;
- 30 (3) Impose a fine related to the seriousness of the juvenile's offense. If the
31 juvenile has the ability to pay the fine, it shall not exceed the
32 maximum fine for the offense if committed by an adult;
- 33 (4) Order the juvenile to perform supervised community service consistent
34 with the juvenile's age, skill, and ability, specifying the nature of the
35 work and the number of hours required. The work shall be related to
36 the seriousness of the juvenile's offense and in no event may the
37 obligation to work exceed 12 months;
- 38 (5) Order the juvenile to a supervised day program, requiring him to be
39 present at a specified place for all or part of every day or of certain
40 days. The judge also may require the juvenile to comply with any other
41 reasonable conditions specified in the dispositional order that are
42 designed to facilitate supervision;
- 43 (6) Order the juvenile to a community-based program of academic or
44 vocational education or to a professional residential or nonresidential

1 treatment program. Participation in the programs shall not exceed 12
2 months;

3 (7) Impose confinement on an intermittent basis in an approved detention
4 facility. Confinement shall be limited to:

5 a. Night custody for no more than a total of five nights; or

6 b. Weekend custody for no more than a total of two weekends;

7 Confinement in either case shall be completed within a period of 60
8 days from the date of disposition;

9 (8) Place the juvenile on probation under the supervision of a court
10 counselor. In any case where a juvenile is placed on probation, the
11 court counselor shall have the authority to visit the juvenile where he
12 resides. The judge shall specify conditions of probation that are related
13 to the needs of the juvenile including any of the following which
14 apply:

15 a. That the juvenile shall remain on good behavior and not violate
16 any laws;

17 b. That the juvenile attend school regularly;

18 c. That the juvenile not associate with specified persons or be in
19 specified places;

20 d. That the juvenile report to a court counselor as often as required
21 by a court counselor;

22 e. That the juvenile make specified financial restitution or pay a
23 fine in accordance with subdivisions (2) and (3);

24 f. That the juvenile be employed regularly if not attending school.

25 An order of probation shall remain in force for a period not to exceed one year from
26 the date entered. Prior to expiration of an order of probation, the judge may extend it for
27 an additional period of one year after a hearing if he finds that the extension is necessary
28 to protect the community or to safeguard the welfare of the juvenile;

29 (9) Order that the juvenile shall not be licensed to operate a motor vehicle
30 in the State of North Carolina for as long as the court retains
31 jurisdiction over the juvenile or for any shorter period of time;

32 (10) Commit the juvenile to the Division of Youth Services in accordance
33 with G.S. 7A-652.

34 (b) In the case of any juvenile who is adjudicated delinquent on the basis of
35 having committed the crime of first or second degree rape, or first or second degree
36 sexual offense, the judge shall order the juvenile to undergo examination for venereal
37 disease, such examination to include testing for Acquired Immune Deficiency
38 Syndrome virus infection. The examination shall be conducted under the supervision of
39 the Department of Human Resources within 30 days of the adjudication of delinquency,
40 and the victim of the sexual assault shall be notified by the Department of the results of
41 the examination in the same manner as set forth in G.S. 130A-140.1. The requirements
42 of this subsection shall also apply to juveniles transferred to the jurisdiction of the
43 superior court under the provisions of G.S. 7A-608."

1 Sec. 6. This act shall become effective October 1, 1989, and shall apply to
2 persons convicted of or adjudicated delinquent on the basis of having committed the
3 crime of rape or sexual offense on or after that date.