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Indicates New Matter

COMMITTEE REPORT

April 6, 2011

**H. 3679**

Introduced by Reps. Bannister and Weeks

S. Printed 4/6/11--H. [SEC 4/7/11 3:34 PM]

Read the first time February 15, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3679) to amend Section 16‑3‑740, as amended, Code of Laws of South Carolina, 1976, relating to testing of certain offenders for Hepatitis B and Human Immunodeficiency, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND SECTION 16‑3‑740, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TESTING OF CERTAIN OFFENDERS FOR HEPATITIS B AND HUMAN IMMUNODEFICIENCY VIRUS (HIV), SO AS TO FURTHER CLARIFY OFFENDERS WHO MUST BE TESTED AND THE TIME FRAME THAT TESTING MUST BE CONDUCTED AND PROVIDE FOR FOLLOW‑UP TESTING FOR HIV WHEN MEDICALLY APPROPRIATE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑3‑740(B) of the 1976 Code, as last amended by Act 292 of 2010, and (D) is further amended to read:

“(B) Upon the request of a person who is the victim of a criminal offense which involves the sexual penetration of the victim’s body or who has been exposed to body fluids during the commission of a criminal offense, or upon the request of the legal guardian of a person who is the victim of a criminal offense which involves the sexual penetration of the victim’s body or who has been exposed to body fluids during the commission of a criminal offense, the solicitor ~~must, within forty‑eight hours, excluding weekends and legal holidays as defined in Chapter 5, Title 53~~, after the offender is charged, ~~or within forty‑eight hours, excluding weekends and legal holidays, as defined in Chapter 5, Title 53, after a petition has been filed against an offender in family court,~~ must petition the court for an order to have the offender tested for Hepatitis B and HIV. An offender must ~~not~~ be tested ~~under~~ pursuant to this section for Hepatitis B and HIV ~~without a court order~~ as soon as practicable after the court order is issued but not later than forty‑eight hours after the date the person is indicted for the offense or waives indictment for the offense. If the offender is subject to the jurisdiction of the family court, he must be tested not later than forty‑eight hours after the petition is filed with the family court alleging he is delinquent for committing the offense. If the offender cannot be located before the end of the forty‑eight hour period as provided in this subsection, the forty‑eight hour period is tolled until the offender is located by law enforcement. To obtain a court order, the solicitor must demonstrate the following, that the:

(1) ~~the~~ victim or the victim’s legal guardian requested the tests;

(2) ~~there is probable cause that the~~ offender ~~committed the offense~~ has been charged with, indicted for, or waived indictment for an offense which involved the sexual penetration of the victim’s body or that there is probable cause that during the commission of the criminal offense there was a risk that body fluids were transmitted from one person to another; and

(3) ~~there is probable cause that during the commission of the offense there was a risk that body fluids were transmitted from one person to another; and~~

~~(4)~~ ~~the~~ offender has received notice of the petition and notice of his right to have counsel represent him at a hearing.

The results of the tests must be kept confidential ~~and~~ but disclosed ~~only~~ to the solicitor who obtained the court order. ~~The~~ As soon as practicable, the solicitor shall ~~then~~ notify only those persons designated in subsection (C) of the results of the initial Hepatitis B and HIV tests and the results of any follow‑up HIV tests.

(D) ~~At the request of the victim or the victim’s legal guardian, the court may order a follow‑up HIV test and counseling for the offender if the initial HIV test was negative.~~ If deemed medically appropriate, the offender must undergo follow‑up testing for HIV. The follow‑up ~~test~~ testing, and any counseling which may be ordered, shall be performed on dates that occur six weeks, three months, and six months following the initial test. ~~An order for a~~ Any follow‑up ~~test~~ testing shall be terminated if the offender obtains an acquittal on, ~~or~~ dismissal of, or is not adjudicated delinquent for all charges for which testing was ordered.”

SECTION 2. This act takes effect upon approval by the Governor.

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