

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 211

Short Title: Sex Assault: VD Test Results.

(Public)

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Sponsors: Representative Privette.

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Referred to: Judiciary.

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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.