



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

July 9, 1999

Jim Ryan
ATTORNEY GENERAL

FILE NO. 99-017

CRIMINAL LAW AND PROCEDURE:
AIDS Testing of Sex Offenders

The Honorable Paul A. Logli
State's Attorney, Winnebago County
County Administration Building
404 Elm Street
Rockford, Illinois 61101

Dear Mr. Logli:

I have your letter wherein you inquire, on behalf of the chief judge of your circuit court, whether positive test results of persons referred by the court for HIV testing pursuant to section 5-5-3 of the Unified Code of Corrections (730 ILCS 5/5-5-3 (West 1997 Supp.)) and subsection 5-710(b)(9) of the Juvenile Court Act of 1987 (705 ILCS 405/5-710(b)(9), added by Public Act 90-590, effective January 1, 1999) must be reported to the Department of Public Health pursuant to section 4 of the Illinois Sexually Transmissible Disease Control Act (410 ILCS 325/4 (West 1997 Supp.)). For the reasons hereinafter stated, it is my opinion that positive HIV test results pertaining to

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criminal defendants or delinquent minors referred for testing by the court must be reported to the Department of Public Health by the laboratory or physician performing the test.

Section 5-5-3 of the Unified Code of Corrections and section 5-710 of the Juvenile Court Act require, respectively, that offenders convicted of one of several enumerated offenses, and minors adjudicated delinquent for committing one of those offenses, undergo testing for sexually transmissible diseases, including HIV and AIDS. The tests may be performed only by licensed medical practitioners. Each of these statutory provisions contains the following language:

" * * *

* * * Except as otherwise provided by law, the results of the test shall be kept strictly confidential by all medical personnel involved in the testing and must be personally delivered in a sealed envelope to the judge of the court in which the disposition order was entered for the judge's inspection in camera. Acting in accordance with the best interests of the victim and the public, the judge shall have the discretion to determine to whom the results of the testing may be revealed. * * *

* * *

(Emphasis added.)

Section 4 of the Sexually Transmissible Disease Control Act provides, in pertinent part:

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"Reporting required. (a) A physician licensed under the provisions of the Medical Practice Act of 1987 who makes a diagnosis of or treats a person with a sexually transmissible disease and each laboratory that performs a test for a sexually transmissible disease which concludes with a positive result shall report such facts as may be required by the Department by rule, within such time period as the Department may require by rule, but in no case to exceed 2 weeks.

* * *

"

The pertinent provisions of section 5-5-3 of the Unified Code of Corrections and section 5-710 of the Juvenile Court Act were originally enacted during the same session of the General Assembly as was section 4 of the Sexually Transmissible Disease Control Act, and all became effective within a 30 day period. (See P.A. 85-935, eff. December 2, 1987; P.A. 85-681, eff. January 1, 1988.) Both enactments were intended to help protect the public from the spread of AIDS. (Remarks of Rep. Pullen, June 29, 1987, House Debate on House Bill No. 2044, at 94; Remarks of Rep. Barnes, June 23, 1987, House Debate on Senate Bill No. 651, at 65; Remarks of Sen. Geo-Karis, May 20, 1987, Senate Debate on Senate Bill No. 651, at 133-135.) It must be assumed that legislators acting on one measure were, therefore, cognizant of the pendency and content of the other, and perceived of no conflict between the provisions.

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Indeed, as a principle of statutory construction, two statutes relating to the same subject matter are considered to be governed by one spirit and one policy, and are to be construed consistently and harmoniously. (Pedigo v. Johnson (1985), 130 Ill. App. 3d 392, 397.) Statutes adopted at the same session of the General Assembly should be construed, if possible, so as to harmonize and give force and effect to the provisions of each. People ex rel. Vuagniaux v. City of Edwardsville (1996), 284 Ill. App. 3d 407, 413.

Given the proximity in time of the enactment of these provisions, it would be illogical to conclude that the General Assembly intended that positive HIV or AIDS test results obtained from convicted criminals or adjudicated minors were not to be reported to the Department of Public Health by the physicians or laboratories performing the tests. Had that been the intent, the General Assembly no doubt would have expressly excluded such tests from the reporting requirements of the Sexually Transmissible Disease Control Act. It did not do so. Further, the inclusion of the phrase "except as otherwise provided by law" in the first clause of the quoted portion of the Code of Corrections and Juvenile Court Act provisions clearly contemplates that exceptions may be made to the strict confidentiality requirements for

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such test results. In my opinion, the Sexually Transmissible Disease Control Act establishes just such an exception.

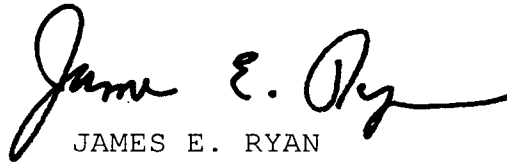
You have mentioned concerns relating to the use of the names of persons who are referred for testing by the court. With respect to adult offenders, a conviction for one of the offenses for which testing is required is a matter of public record, as is the requirement for testing. The use of the offender's name in connection with the referral itself will disclose no information apart from that which is already public. Even with respect to juveniles, the disclosure of the limited information needed for a referral to a health care professional, who is prohibited from further disclosure, should be viewed as a necessarily implied exception to the otherwise strict confidentiality requirements of the Juvenile Court Act.

For the reasons stated, it is my opinion that a positive test result with respect to an offender referred for testing by the court pursuant to section 5-5-3 of the Criminal Code or section 5-710 of the Juvenile Court Act is reportable under

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section 4 of the Sexually Transmissible Disease Control Act, just
as is any other positive test result.

Sincerely,

A handwritten signature in cursive script, reading "James E. Ryan". The signature is written in black ink and is positioned above the typed name and title.

JAMES E. RYAN
ATTORNEY GENERAL