

STATE'S MOTION FOR ORDER REQUIRING DEFENDANT TO BE TESTED FOR THE HUMAN IMMUNODEFICIENCY VIRUS

Under A.R.S. § 13-1415, a trial court has the authority to order a defendant to submit to a test to determine if he has the Human Immunodeficiency Virus. The caveat to this is that the defendant has to have been charged with "a sexual offense or another offense involving significant exposure."

The State of Arizona, by and through undersigned counsel, requests this Court to issue an order requiring the defendant to be tested for the Human Immunodeficiency Virus. This motion is supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

Facts:

The defendant in this case has been charged with two counts of Aggravated Assault, Class 5 felonies, against Maricopa County Sheriff Deputy H. B. Deputy B. was acting in an official capacity in Judge Mangum's court on January 13, 1997, when the defendant spit on Deputy B's face several times. The defendant was appearing before Judge Mangum regarding CR 96-10620, in which he was charged with sexual assault. Deputy B. suffered significant exposure to the saliva of the defendant.

Law:

A.R.S. § 13-1415 states that:

A. A defendant, including a defendant who is a minor, who is alleged to have committed a sexual offense or other crime which involved significant exposure is subject to a court order that requires the defendant to submit to a test for the human immunodeficiency virus and to consent to the release of the test result to the victim.

B. Pursuant to subsection A of this section, the prosecuting attorney, if requested by the victim, or, if the victim is a minor, by the parent or guardian of the minor, shall petition the court for an order requiring that the person be tested by the state department of corrections or the department of health services for the presence of the human immunodeficiency virus. The court shall, within ten days, determine if sufficient evidence exists that

indicates that significant exposure occurred. If the court makes this finding or the act committed against the victim is a sexual offense it shall order that the test be performed in compliance with rules adopted by the department of health services.

The Arizona Court of Appeals has upheld the constitutionality of A.R.S. § 13-1415. The Court stated that the government's interest in finding out if a defendant has Human Immunodeficiency Virus substantially outweighs the defendant's privacy expectations under the Fourth Amendment. *State v. Superior Court*, 187 Ariz. 411, 930 P2d 488 (1997).

CONCLUSION

Therefore, pursuant to A.R.S. § 13-1415, this Court has the authority to enter such an order. Additionally, the victim in this matter has requested this motion be made on his behalf.

ORDER

Upon motion of the State and good cause appearing,

IT IS HEREBY ORDERED that within 30 days from the date of this order, the Arizona Department of Health Services shall have the defendant tested for the human immunodeficiency virus. The Department of Health Services shall then notify the victim of the result of such test. The victim's address will be on file with the Maricopa County Attorney's Office.