

**AMENDMENT -- To better protect rape victims from HIV/AIDS and other STDs by allowing for testing of assailants and providing treatment to survivors who are at risk or infected.**

In 2005, the Violence Against Women and Department of Justice Reauthorization Act passed with an important provision intended to protect women who have already been victimized once by sexual assault from being assaulted again by either HIV/AIDS or the legal system which may deny them potentially life-saving information.

This provision encouraged states and local governments to implement laws that provide victims of sexual assault and rape the ability to know if the person indicted for the attack is infected with HIV.

It required the Attorney General to withhold 5% of the funding under the Grants to Encourage Arrest Policies and Enforcement of Protection Orders to a state or local government grantee that does not implement such laws. Such laws must require the defendant to undergo testing no later than 48 hours after the date on which the information or indictment is presented, and as soon thereafter as is practicable, the results of the test must be made available to the victim.<sup>1</sup> *As a physician, I know that such timely testing can lead to effective treatment of a victim, significantly reducing the chance of infection.*

Unfortunately, most grantees choose to take the 5% penalty, rather than establish laws that require the offender to be tested.

This amendment would increase the protection of rape victims by 1) increasing the penalty from 5% to 20% to ensure more grantees provide offender testing; 2) expand the testing to all sexually-transmitted diseases (STDs) for which a diagnostic test exists; and 3) require the Justice Department to report annually on grantee compliance with such testing.

**Current VAWA Grantees Choose a Monetary Penalty over Protecting Victims**

Victims of sexual assault and rape should be the focus of HIV and other sexually-transmitted disease testing requirements. In 2005, many states had no laws that required testing of rape suspects for HIV, and the 2005 VAWA Reauthorization Act changed that.<sup>2</sup> However, according to the Congressional Research Service, few states and localities are actually in compliance with this section and have chosen, rather, to absorb the 5% loss of grant funds in lieu of establishing HIV offender testing regulations.

*I believe this is to the detriment of victims of sexual assault and hampers the ability of victims to receive immediate treatment, which is vital to fight off HIV.*

---

<sup>1</sup> 42 U.S.C. 3796hh(d)

<sup>2</sup> P.L. 109-162 (January 5, 2006)

In fact, even if a grantee chooses to meet the requirements of existing law by testing the offender, many are far past the date required for compliance. The 2005 VAWA Reauthorization Act mandated compliance by 2007, and provided a 4-year extension to non-complying grantees, which would have been the end of 2011. These deadlines have clearly come and gone without compliance by a majority of jurisdictions.

In order for Congress to perform effective oversight, my amendment also requires the Justice Department to submit an annual report to Congress on compliance with this provision. To-date, other than information collected by CRS upon request, there is no official report by the Justice Department to Congress on how many grantees have complied with this provision or how many victims received assistance as a result of such compliance.

### **Prompt Discovery of STDs is Vital to Effective Treatment of Sexual Assault Victims**

From a medical perspective, it is vitally important that those who are victims of rape do not also become victims of HIV/AIDS, and that requires timely medical attention, including prompt testing of the offender. Treatment with AIDS drugs in the immediate aftermath, usually within 72 hours, of exposure can significantly reduce the chance of infection. However, because of the toxicity and long-term side effects, these drugs should not be administered for long periods of time without knowing if HIV exposure has occurred.

Victims cannot rely solely on testing themselves because it can take weeks, sometimes months, before HIV antibodies can be detected. Therefore, testing the assailant is the *only* timely manner in which to determine if someone has been exposed to HIV. Furthermore, rapid tests are now available that can diagnose HIV infection within 20 minutes with more than 99% accuracy.

The American Medical Association supports this policy because “early knowledge that a defendant is HIV infected would allow the victim to gain access to the ever growing arsenal of new HIV treatment options. In addition, knowing that the defendant was HIV infected would help the victim avoid contact which might put others at risk of infection.”<sup>3</sup> Furthermore, the violent nature of the forced sexual contact actually increases the chances of transmission.

For example, Eliina Nicole Keitelman testified how she was raped at the age of 14 by a 40-year old online predator. Incredibly, the uncertainty regarding the HIV status of her assailant required Ms. Keitelman to continue living as a victim and extended the punishment of the sexual assault. As Ms. Keitelman testified:

My early teen years were spent getting tested and retested for HIV and pregnancy. It was completely humiliating for me to be a child of 14 and 15 going to see the doctor to be tested for HIV and then worrying for days that I could have been infected with HIV by my attacker. When I asked if it would be easier for him to be tested, I was informed that he could not be touched, while I was being poked, prodded and humiliated over and over again.

---

<sup>3</sup> Passage of the Violence Against Women Act of 2005 and Protecting Rape Survivors from HIV/AIDS, Extension of Remarks, Senator Tom Coburn, M.D., December 15, 2005.

**Sadly, Ms. Keitelman’s situation is not unique.** Deidre Raver, a survivor of sexual assault and the Co-Founder of Women Against Violence, also explained how receiving HIV information quickly is essential to protecting a victim of sexual assault: “The HIV status of an accused rapist provides necessary medical information that allows a victim or a child victim’s parents and/or legal guardians to make appropriate life saving decisions.”

Thus, obtaining timely HIV and other sexually transmitted disease information is essential to protecting victims of sexual assault. If any change should be made to this legislation, it should strengthen the ability of sexual assault victims to obtain sexually transmitted disease information.

Sadly, the 5% penalty for failure to comply with the testing provision has not effectively motivated the grantees and without such testing, victims are robbed of any meaningful hope to obtain this information. By allowing state and local governments to escape this testing requirement and through failed congressional enforcement, we eviscerate the bipartisan HIV testing amendment agreed to in 2005.

As Ms. Raver testified, “[t]esting the victim for HIV does not provide accurate information until a much later time period because of the time it takes for infection. Denying this data to victims is an outrage and is unacceptable. Half of all rapes remain unreported. Is it any wonder why, given that the privacy rights of rapists continue to be more sacred than the rights of rape victims?” The Children’s AIDS Fund has stated that “when it is a child—either a little girl or little boy—that has been brutalized, raped or sodomized the need to reduce lifetime negative psychological and emotional damage is equally great or greater.”

It is clear that testing the offender rather than the victim has incredible benefits to the victim. Some believe testing only the offender is somehow not in the best interest of the victim, or that somehow, as the ACLU claimed in 2005, “forced HIV testing, even of those *convicted* of a crime, infringes on constitutional rights and can only be justified by a compelling governmental interest. No such interest is present in the case of a rapist and his victim because the result of a rapist’s HIV test, even if accurate, will not indicate whether the rape victim has been infected.”

However, the medical facts are quite obvious why knowledge of HIV exposure is vital to victims of sexual assault, and it is astonishing that anyone would argue otherwise. In fact, numerous court decisions have concluded it is constitutional to test indicted rapists.<sup>4</sup>

When I worked successfully with Senators Specter and Biden to include HIV testing of offenders in the 2005 VAWA Reauthorization Act, I received numerous letters from individuals and organizations such as the AMA and Women Against Violence, providing countless examples of why it is so important for offenders to be tested as quickly as possible after an attack.

For example, in some circumstances, rape defendants have even used agreement to submit to and report the results of an HIV test to a victim—something that could save the life of the person they victimized—as a *plea bargaining tool* to reduce their sentence. Ms. Raver testified that “[t]he information concerning the HIV status of an accused rapist can be used to reduce

---

<sup>4</sup> See, e.g., State in Interest of J.G., 701 A.2d 1260 (N.J. 1997); Fosman v. State, 664 So. 2d 1163 (Fla.App. 4 Dist., 1995).

sentencing during plea bargaining and has been used as a tool in the past.” What could be more offensive to a victim than to know her assailant will serve less time merely because he submitted to a test that could be vital to her survival?

### **Conclusion**

**In the end, this is about victims.** It is about their right to make the choice whether to have their assailant tested. The 2005 language was intentionally drafted narrowly to ensure the indicted offender is only tested at the request of the victim. If sufficient evidence exists to arrest and jail a rape suspect, the victim should have the right to request that suspect be tested for HIV or any other sexually transmitted disease. Testing the victim immediately is too early for HIV and other STDs to manifest themselves in the victim, and waiting until the offender is convicted is too late for life-saving treatment if the victim is, in fact, infected.

**To ensure states and local governments receiving VAWA grant funds effectively serve the victims of sexual assault and rape, I urge my colleagues to support my amendment to increase the penalty for failure to comply, expand coverage to all STDs, and ensure effective oversight by the Department of Justice.**