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DEPARTMENT OF
POLICE

CITY OF SACRAMENTO
CALIFORNIA

HALL OF JUSTICE
813 SIXTH STREET
SACRAMENTO, CA
95814-2495

March 4, 1988

916-449-5121

Law and Legislation Committee
Council Chambers

JOHN P. KEARNS
CHIEF OF POLICE

Honorable Members in Session

Subject: COMMUNICABLE DISEASE TEST INITIATIVE STATUTE

SUMMARY

As the problems of AIDS becomes even more ominous in California and throughout the world, it behooves all of us to find ways to better cope with the problems. The short range thrust appears to focus on education and prevention. However, the health and safety of the public, victims of sexual crimes, peace officers, firefighters, and custodial personnel who may come into contact with infected persons have not been adequately protected by law. The purpose of the initiative is to require information that may be vital to the health and safety of the victims of certain crimes, peace officers, firefighters and emergency medical personnel, put at risk in the course of their official duties.

BACKGROUND

Present law does not permit an adult or child who is a victim of a sexual assault to find out if they have been infected with AIDS or any other sexually transmitted diseases. Peace officers, firefighters, and emergency medical personnel who are assaulted and exposed to blood or other body fluids have no right to learn if they have been contaminated with a possible fatal disease. Individuals that work in prisons, jails, or juvenile detention centers have no way of obtaining information as to which prisoners have been infected with AIDS related diseases. The Communicable Disease Test Initiative Statute requires courts in criminal and juvenile matters to order persons charged with certain sex offenses or certain assaults on peace officers, firefighters, or emergency medical personnel to provide specimens of blood for testing for Acquired Immune Deficiency Syndrome (AIDS), AIDS related conditions and other communicable diseases. It provides for notification to specified persons of test results. It also requires medical personnel in correctional

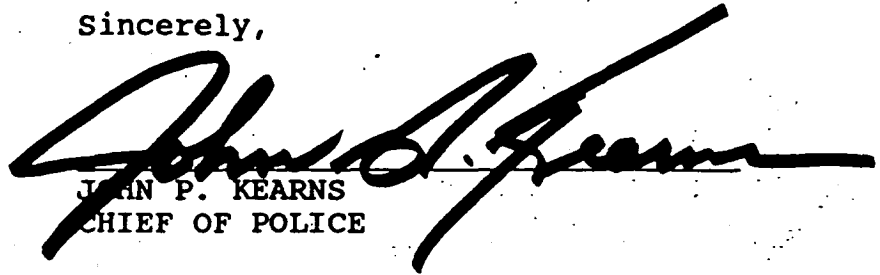
facilities to report inmate exposure to such diseases and notice to personnel who may come in contact with such inmates. It also provides for confidentiality of information reported.

The initiative is necessary because the Legislature has failed to pass a bill that would provide for these protections.

RECOMMENDATION

The City of Sacramento endorse the Communicable Disease Test Initiative Statute.

Sincerely,



JOHN P. KEARNS
CHIEF OF POLICE

JPK:lf

Ref: 3-19

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

COMMUNICABLE DISEASE TESTS. INITIATIVE STATUTE. Requires courts in criminal and juvenile cases, upon finding of probable cause to believe bodily fluids were possibly transferred, to order persons charged with certain sex offenses, or certain assaults on peace officers, fire-fighters, or emergency medical personnel, to provide specimens of blood for testing for acquired immune deficiency syndrome (AIDS), AIDS-related conditions and other communicable diseases. Provides notification to specified persons of test results. Requires medical personnel in correctional facilities to report inmate exposure to such diseases and notice to personnel who come in contact with such inmates. Provides confidentiality of information reported. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: The costs of judicial proceedings to local governments and laboratory costs to local and state governments could range up to \$1 million annually depending on length of proceedings, the nature of the tests, and the number of persons subject to them.

All signers of this petition must be registered in _____ County.

This column for official use only.

REGISTERED VOTERS ONLY

1	Sign as Registered To Vote: Print Your Name: _____	Residence Address: _____ City: _____ Zip: _____	
2	Sign as Registered To Vote: Print Your Name: _____	Residence Address: _____ City: _____ Zip: _____	
3	Sign as Registered To Vote: Print Your Name: _____	Residence Address: _____ City: _____ Zip: _____	
4	Sign as Registered To Vote: Print Your Name: _____	Residence Address: _____ City: _____ Zip: _____	
5	Sign as Registered To Vote: Print Your Name: _____	Residence Address: _____ City: _____ Zip: _____	
6	Sign as Registered To Vote: Print Your Name: _____	Residence Address: _____ City: _____ Zip: _____	
7	Sign as Registered To Vote: Print Your Name: _____	Residence Address: _____ City: _____ Zip: _____	
8	Sign as Registered To Vote: Print Your Name: _____	Residence Address: _____ City: _____ Zip: _____	
9	Sign as Registered To Vote: Print Your Name: _____	Residence Address: _____ City: _____ Zip: _____	
10	Sign as Registered To Vote: Print Your Name: _____	Residence Address: _____ City: _____ Zip: _____	

REGISTERED VOTERS ONLY

DECLARATION OF CIRCULATOR (To be completed after signatures have been obtained.)

I am registered to vote in the County (or City and County) of _____ . I circulated this petition and saw each of the appended signatures on this petition being signed. Each signature on this petition is, to the best of my information and belief, the genuine signature of the person whose name it purports to be. All signatures on this document were obtained between _____, 1988 and _____, 1988. I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Circulator _____ Executed at _____ City _____, CA on _____ Date _____ 1988.
Print Name _____ Residence Address _____ City _____ Zip _____

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In The Honorable Secretary of State of California:

We, the undersigned, registered, qualified voters of California, residents of [redacted] County for City and County, hereby propose amendments to the Health and Safety Code relating to testing of certain persons for exposure to or infection by the AIDS virus and communicable diseases and disclosure of certain information relating to AIDS and certain communicable diseases, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to the general election or otherwise provided by law. The proposed statutory amendments read as follows:

SECTION 1. Title — Adoption of Chapter.

A new Chapter 1.20 commencing with section 19939 entitled "AIDS Public Safety and Testing Disclosure" and new sections 19939, 19939.5, 19939.6, 19939.7, and 19939.8 are added to Part 1 of Division 1 of the Health and Safety Code to read as follows:

Section 19939. Purpose. The people of the State of California find and declare that AIDS, AIDS-related conditions, and other communicable diseases pose a major threat to the public health and safety.

The health and safety of the public, victims of sexual crimes, and peace officers, firefighters, and custodial personnel who, in the course of their duties, come in contact with infected persons, have not been adequately protected by law. The purpose of this chapter is to require that information that may be vital to the health and safety of the public, victims of sexual crimes, peace officers, firefighters and inmates, and custodial personnel, custodial medical personnel, peace officers, firefighters and emergency medical personnel be made available in the course of their official duties, be obtained and disclosed in an appropriate manner in order that precautions can be taken to preserve their health and the health of others or that such persons can be relieved from grounds for arrest.

It is the intent of this chapter to supersede in cases of conflict existing statutes or case law on the subjects covered including but not limited to the confidentiality and consent provisions contained in chapters 1.11, 1.12, and 1.13 of Part 1 of Division 1 of the Health and Safety Code.

Section 19939.5. Sexual Crimes. Any defendant charged in any criminal complaint filed with a magistrate or court with any violation of Penal Code Sections 261, 261.5, 262, 263b, 266c, 268, 268a or 268d and any minor with respect to whom a petition has been filed in a juvenile court alleging violation of any of the foregoing laws, shall be subject to an order of a court having jurisdiction of the complaint or petition requiring testing as provided in this chapter.

If an alleged victim listed in the complaint or petition makes a written request for testing under this section, the prosecuting attorney, or the alleged victim may petition the court for an order authorized under this section.

The court shall promptly conduct a hearing upon any such petition. If the court finds that probable cause exists to believe that a possible transfer of blood, saliva, semen, or other bodily fluid took place between the defendant or minor and the alleged victim in an act specified in this section, the court shall order that the defendant or minor provide two specimens of blood for testing as provided in this chapter.

Copies of the test results shall be sent to the defendant or minor, each requesting victim and, if the defendant or minor is incarcerated or detained, to the officer in charge and the chief medical officer of the facility in which such person is incarcerated or detained.

Section 19939.7. Assaults on Officers. Any person charged in any criminal complaint filed with a magistrate or court and any minor with respect to whom a petition has been filed in juvenile court, in which it is alleged in whole or in part that the defendant or minor interfered with the official duties of a peace officer, firefighter or emergency medical personnel by biting, scratching, spitting, or transferring blood or other bodily fluids on, upon, or through the skin or membranes of a peace officer, firefighter or emergency medical personnel shall, in addition to any penalties provided by law be subject to an order of a court having jurisdiction of the complaint or petition requiring testing as provided in this chapter.

The peace officer, firefighter, emergency medical personnel or the employing agency, officer, or entity may petition the court for an order authorized under this section.

The court shall promptly conduct a hearing upon any such petition. If the court finds that probable cause exists to believe that a possible transfer of blood, saliva, semen, or other bodily fluid took place between the defendant or minor and the peace officer, firefighter, or emergency medical personnel, as specified in this section, the court shall order that the defendant or minor provide two specimens of blood for testing as provided in this chapter.

Copies of the test results shall be sent to the defendant or minor, each peace officer, firefighter, and emergency medical personnel named in the petition and to his or her employing agency, officer, or entity, and if the defendant or minor is incarcerated or detained, to the officer in charge and the chief medical officer of the facility in which such person is incarcerated or detained.

Section 19939.8. Testing.

(a) The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, licensed medical technician, or licensed phlebotomist may withdraw blood specimens for the purposes of this chapter.

(b) The court shall order that the blood specimens be transmitted to a licensed medical laboratory and that tests be conducted thereon for medically accepted indications of exposure to or infection by acquired immune deficiency syndrome

(AIDS) virus, AIDS-related conditions, and such communicable diseases for which medically approved testing is readily and economically available as determined by the court.

(c) Copies of test results which indicate exposure to or infection by AIDS, AIDS-related conditions, or other communicable diseases shall also be furnished to the State Department of Health Services.

(d) The test results shall be sent to the designated recipients with the following disclaimer:

The tests were conducted in a medically approved manner but tests cannot determine exposure to or infection by AIDS or other communicable diseases with absolute accuracy. Persons receiving this test result should continue to monitor their own health and should consult a physician as appropriate.

If the person subject to the test is a minor, copies of the test result shall also be sent to the minor's parents or guardian.

(e) The court shall order all persons, other than the test subject, who receive test results pursuant to Sections 19939.6 or 19939.7, to maintain the confidentiality of personal identifying data relating to the test results except for disclosure which may be necessary to obtain medical or psychological care or advice.

(f) The specimens and the results of tests ordered pursuant to Sections 19939.5 and 19939.7 shall not be admissible evidence in any criminal or juvenile proceeding.

(g) Any person performing testing, transmitting test results, or disclosing information pursuant to the provisions of this chapter shall be immune from civil liability for any action undertaken in accordance with the provisions of this chapter.

Section 19939. Custodial Safety.

(a) Any medical personnel employed by, under contract to, or receiving payment from the State of California, any agency thereof, or any county, city, or city and county to provide service at any state prison, the Medical Facility, any Youth Authority institution, any county jail, city jail, hospital jail ward, juvenile hall, juvenile detention facility, or any other facility in which adults are held in custody or minors are detained, or any medical personnel employed, under contract, or receiving payment to provide services to persons in custody or detained at any of the foregoing facilities, who receives information as specified herein that an inmate or minor at such a facility has been exposed to or infected by the AIDS virus or has an AIDS-related condition or any communicable disease, shall communicate such information to the officer in charge of the facility in which such inmate or minor is in custody or detained.

(b) Information subject to disclosure under subsection (a) shall include the following: (1) laboratory test which indicates exposure to or infection by the AIDS virus, AIDS-related condition, or other communicable disease; (2) any statement by the inmate or minor to medical personnel that he or she has AIDS or an AIDS-related condition; (3) any medical personnel that he or she has AIDS or an AIDS-related condition; (4) any medical examination or test which indicates that the inmate or minor has tested positive for antibodies to the AIDS virus; (5) any communicable disease; (6) any medical examination or test which indicates that the inmate or minor has AIDS virus, has an AIDS-related condition, or is infected with AIDS or any communicable disease; provided that information subject to disclosure shall not include information communicated to or obtained by a scientific research staff pursuant to a prior written approval expressly waiving disclosure under this section by the officer in charge of the facility.

(c) The officer in charge of the facility shall notify all employees, medical personnel, contract personnel, and volunteers providing services at such facility who have or may have direct contact with the inmate or minor in question, or with facility staff from such inmate or minor, of the substance of the information received under subsection (a) and (b) so that such persons can take appropriate action to protect both the care of such inmate or minor, the safety of other inmates or minors, and their own safety.

(d) The officer in charge and all persons to whom information is disclosed pursuant to this section shall maintain the confidentiality of personal identifying data regarding such information, except for disclosure authorized hereunder or as may be necessary to obtain medical or psychological care or advice.

(e) Any person who willfully discloses personal identifying data regarding information obtained under this section to any person who is not a peace officer or an employee of a local, state, or local public health agency, except as authorized hereunder, by court order, with the written consent of the patient or as otherwise authorized by law, is guilty of a misdemeanor.

SECTION 2. Effective Date; Retrospective Application.

This initiative and its statutory amendments shall take effect the day after the election and shall be construed to apply retroactively to pending complaints and petitions, regardless of when the underlying actions took place, and to information subject to disclosure hereunder obtained prior to its effective date, to the maximum extent permitted by law.

LEGISLATIVE COMMENTS: Please refer to these instructions carefully:

1. Do not mark a requested vote.
2. Fill in county (or city and county) where person is to be counted on both sides of the petition.
3. Do not include persons in any county, but each person may be included in only one county.
4. The county name must be printed in full, but you may sign only one petition as a representative of the county.
5. Make sure the signature is in all information completely and accurately in ink with full post paid return address.
6. Do not use ink on the petition.
7. Do not use ink on the petition.
8. Do not use ink on the petition.
9. Do not use ink on the petition.
10. Do not use ink on the petition.

You must still complete the "Disclosure of Counter" committee.

RETURN PETITION AS SOON AS POSSIBLE TO:

Committee to Protect Crime Victims and Public Safety Officers
1715 Moorpark Street, Studio City, CA 91604

FINAL PETITIONS TURN IN DATE: APRIL 31, 1988.

For additional information call: (818) 760-0149