

AMENDED IN ASSEMBLY MAY 23, 2002

AMENDED IN ASSEMBLY APRIL 25, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2794

Introduced by Assembly Member Reyes

February 25, 2002

An act to amend Sections 121050, 121055, 121060, and 121065 of the Health and Safety Code, and to amend Section 1202.1 of the Penal Code, relating to offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 2794, as amended, Reyes. Offenders: HIV and AIDS tests.

~~Existing law, added by an initiative measure, requires a court, upon the petition of designated persons in criminal and juvenile cases, to order persons or minors alleged to have committed specified sex offenses or certain assaults on a peace officer, firefighter, or emergency medical personnel to provide specimens of blood for testing for AIDS.~~

~~This bill would expand these provisions to require the court to order the persons or minors to provide specimens of blood or saliva. The bill would revise the list of enumerated sexual offenses for which specimens are required for testing under these provisions.~~

~~The bill would provide that its provisions that affect an initiative measure shall only become effective when submitted to, and approved by, the voters.~~

Existing law requires the court to order every person who is convicted of, or adjudged to be a ward of the court by reason of, a

violation of a sexual offense, as specified, to submit to a blood test for evidence of antibodies to the probable causative agent of AIDS.

This bill would revise this provision to require the person to submit to a blood or saliva test. The bill also would revise the list of enumerated sexual offenses for which blood or saliva testing of the person would be required. Because the bill would increase the duties of local officials in connection with disclosing the results of blood tests for AIDS, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 121050 of the Health and Safety Code~~
2 ~~is amended to read:~~
3 ~~121050.—The people of the State of California find and declare~~
4 ~~that AIDS, AIDS related conditions, and other communicable~~
5 ~~diseases pose a major threat to the public health and safety.~~
6 ~~The health and safety of the public, victims of a sexual offense,~~
7 ~~and peace officers, firefighters, and custodial personnel who may~~
8 ~~come into contact with infected persons, have not been adequately~~
9 ~~protected by law. The purpose of this chapter is to require that~~
10 ~~information that may be vital to the health and safety of the public,~~
11 ~~victims of certain offenses, certain persons and minors alleged to~~
12 ~~have committed certain offenses, and custodial personnel,~~
13 ~~custodial medical personnel, peace officers, firefighters, and~~
14 ~~emergency medical personnel put at risk in the course of their~~
15 ~~official duties, be obtained and disclosed in an appropriate manner~~
16 ~~in order that precautions can be taken to preserve their health and~~



1 ~~the health of others or that those persons can be relieved from~~
2 ~~groundless fear of infection.~~

3 ~~It is the intent of this chapter to supersede, in case of conflict,~~
4 ~~existing statutes or case law on the subjects covered, including, but~~
5 ~~not limited to, the confidentiality and consent provisions~~
6 ~~contained in Chapter 7 (commencing with Section 120975),~~
7 ~~Chapter 8 (commencing with Section 121025), and Chapter 10~~
8 ~~(commencing with Section 121075).~~

9 ~~SEC. 2. Section 121055 of the Health and Safety Code is~~
10 ~~amended to read:~~

11 ~~121055. (a) Any person charged in any criminal complaint~~
12 ~~filed with a magistrate or in an information or indictment filed with~~
13 ~~a court, and any minor with respect to whom a petition has been~~
14 ~~filed in a juvenile court, in which it is alleged that the person~~
15 ~~charged or minor committed a sexual offense, shall be subject to~~
16 ~~an order of a court having jurisdiction of the complaint,~~
17 ~~information, indictment, or petition that requires testing as~~
18 ~~provided in this chapter.~~

19 ~~(b) For purposes of this section, "sexual offense" is any~~
20 ~~offense specified in subdivision (c) of Section 1202.1 of the Penal~~
21 ~~Code.~~

22 ~~(c) (1) If an alleged victim listed in the complaint,~~
23 ~~information, indictment, or petition makes a written request for~~
24 ~~testing under this section, the prosecuting attorney or the alleged~~
25 ~~victim may petition the court for an order authorized under this~~
26 ~~section.~~

27 ~~(2) The court shall promptly conduct a hearing upon the~~
28 ~~petition. If the court finds that probable cause exists to believe that~~
29 ~~a possible transfer of blood, saliva, semen, or other bodily fluid~~
30 ~~took place between the person charged or the minor and the alleged~~
31 ~~victim in an act specified in this section, the court shall order that~~
32 ~~the person charged or the minor provide two specimens of blood~~
33 ~~or oral mucosal transudate saliva for testing as provided in this~~
34 ~~chapter.~~

35 ~~(d) Copies of the test results shall be sent to the person charged~~
36 ~~or the minor, each requesting victim, and, if the person charged or~~
37 ~~the minor is incarcerated or detained, to the officer in charge and~~
38 ~~the chief medical officer of the facility where the person or minor~~
39 ~~is incarcerated or detained.~~



1 ~~SEC. 3.—Section 121060 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~121060.—(a) Any person charged in any criminal complaint~~
4 ~~filed with a magistrate or in an information or indictment filed with~~
5 ~~a court and any minor with respect to whom a petition has been~~
6 ~~filed in juvenile court, in which it is alleged in whole or in part that~~
7 ~~the person charged or the minor interfered with the official duties~~
8 ~~of a peace officer, firefighter, or emergency medical personnel by~~
9 ~~biting, scratching, spitting, or transferring blood or other bodily~~
10 ~~fluids on, upon, or through the skin or membranes of a peace~~
11 ~~officer, firefighter, or emergency medical personnel, shall, in~~
12 ~~addition to any penalties provided by law, be subject to an order~~
13 ~~of a court having jurisdiction of the complaint, information~~
14 ~~indictment, or petition that requires testing as provided in this~~
15 ~~chapter.~~

16 ~~(b) (1) The peace officer, firefighter, emergency medical~~
17 ~~personnel, or the employing agency, officer, or entity may petition~~
18 ~~the court for an order authorized under this section.~~

19 ~~(2) The court shall promptly conduct a hearing upon the~~
20 ~~petition. If the court finds that probable cause exists to believe that~~
21 ~~a possible transfer of blood, saliva, semen, or other bodily fluid~~
22 ~~took place between the person charged or the minor and the peace~~
23 ~~officer, firefighter, or emergency medical personnel, as specified~~
24 ~~in this section, the court shall order that the person charged or the~~
25 ~~minor provide two specimens of blood or oral mucosal transudate~~
26 ~~saliva for testing as provided in this chapter.~~

27 ~~(c) Copies of the test results shall be sent to the person charged~~
28 ~~or the minor, each peace officer, firefighter, and emergency~~
29 ~~medical personnel named in the petition and his or her employing~~
30 ~~agency, officer, or entity, and if the person charged or the minor is~~
31 ~~incarcerated or detained, to the officer in charge and the chief~~
32 ~~medical officer of the facility where the person is incarcerated or~~
33 ~~detained.~~

34 ~~SEC. 4.—Section 121065 of the Health and Safety Code is~~
35 ~~amended to read:~~

36 ~~121065.—(a) The withdrawal of blood or collection of oral~~
37 ~~mucosal transudate saliva shall be performed in a medically~~
38 ~~approved manner. Only a physician, registered nurse, licensed~~
39 ~~vocational nurse, licensed medical technician, or licensed~~



1 ~~phlebotomist may withdraw blood specimens for the purposes of~~
2 ~~this chapter.~~

3 ~~(b) The court shall order that the specimens be transmitted to~~
4 ~~a licensed medical laboratory and that tests be conducted thereon~~
5 ~~for medically accepted indications of exposure to or infection by~~
6 ~~HIV, acquired immunity deficiency syndrome (AIDS) virus,~~
7 ~~AIDS-related conditions, and those communicable diseases for~~
8 ~~which medically approved testing is readily and economically~~
9 ~~available as determined by the court.~~

10 ~~(c) Copies of test results that indicate exposure to or infection~~
11 ~~by HIV, AIDS, AIDS-related conditions, or other communicable~~
12 ~~diseases shall also be transmitted to the department.~~

13 ~~(d) (1) The test results shall be sent to the designated recipients~~
14 ~~with the following disclaimer:~~

15 ~~“The tests were conducted in a medically approved manner but~~
16 ~~tests cannot determine exposure to or infections by HIV, AIDS, or~~
17 ~~other communicable diseases with absolute accuracy. Persons~~
18 ~~receiving this test result should continue to monitor their own~~
19 ~~health and should consult a physician as appropriate.”~~

20 ~~(2) If the person subject to the test is a minor, copies of the test~~
21 ~~result shall also be sent to the minor’s parents or guardian.~~

22 ~~(e) The court shall order all persons, other than the test subject,~~
23 ~~who receive test results pursuant to Section 121055, 121056, or~~
24 ~~121060, to maintain the confidentiality of personal identifying~~
25 ~~data relating to the test results except for disclosure that may be~~
26 ~~necessary to obtain medical or psychological care or advice.~~

27 ~~(f) The specimens and the results of tests ordered pursuant to~~
28 ~~Sections 121055, 121056, and 121060 shall not be admissible~~
29 ~~evidence in any criminal or juvenile proceeding.~~

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

34 ~~SEC. 5.—~~

35 *SECTION 1.* ~~Section 1202.1 of the Penal Code is amended to~~
36 ~~read:~~

37 1202.1. (a) Notwithstanding Sections 120975 and 120990 of
38 the Health and Safety Code, the court shall order every person who
39 is convicted of, or adjudged by the court to be a person described
40 by Section 601 or 602 of the Welfare and Institutions Code as



1 provided in Section 725 of the Welfare and Institutions Code by
2 reason of a violation of, a sexual offense listed in subdivision (e),
3 whether or not a sentence or fine is imposed or probation is
4 granted, to submit to a blood or oral mucosal transudate saliva test
5 for evidence of antibodies to the probable causative agent of
6 acquired immune deficiency syndrome (AIDS) within 180 days of
7 the date of conviction. Each person tested under this section shall
8 be informed of the results of the blood or oral mucosal transudate
9 saliva test.

10 (b) Notwithstanding Section 120980 of the Health and Safety
11 Code, the results of the blood or oral mucosal transudate saliva test
12 to detect antibodies to the probable causative agent of AIDS shall
13 be transmitted by the clerk of the court to the Department of Justice
14 and the local health officer.

15 (c) Notwithstanding Section 120980 of the Health and Safety
16 Code, the Department of Justice shall provide the results of a test
17 or tests as to persons under investigation or being prosecuted under
18 Section 647f or 12022.85, if the results are on file with the
19 department, to the defense attorney upon request and the results
20 also shall be available to the prosecuting attorney upon request for
21 the purpose of either preparing counts for a subsequent offense
22 under Section 647f or sentence enhancement under Section
23 12022.85 or complying with subdivision (d).

24 (d) (1) In every case in which a person is convicted of a sexual
25 offense listed in subdivision (e) or adjudged by the court to be a
26 person described by Section 601 or 602 of the Welfare and
27 Institutions Code as provided in Section 725 of the Welfare and
28 Institutions Code by reason of the commission of a sexual offense
29 listed in subdivision (e), the prosecutor or the prosecutor's
30 victim-witness assistance bureau shall advise the victim of his or
31 her right to receive the results of the blood or oral mucosal
32 transudate saliva test performed pursuant to subdivision (a). The
33 prosecutor or the prosecutor's victim-witness assistance bureau
34 shall refer the victim to the local health officer for counseling to
35 assist him or her in understanding the extent to which the particular
36 circumstances of the crime may or may not have placed the victim
37 at risk of transmission of human immunodeficiency virus (HIV)
38 from the accused, to ensure that the victim understands the
39 limitations and benefits of current tests for HIV, and to assist the
40 victim in determining whether he or she should make the request.



1 (2) Notwithstanding any other law, upon the victim's request,
2 the local health officer shall be responsible for disclosing test
3 results to the victim who requested the test and the person who was
4 tested. However, as specified in subdivision (g), positive test
5 results shall not be disclosed to the victim or the person who was
6 tested without offering or providing professional counseling
7 appropriate to the circumstances as follows:

8 (A) To help the victim understand the extent to which the
9 particular circumstances of the crime may or may not have put the
10 victim at risk of transmission of HIV from the perpetrator.

11 (B) To ensure that the victim understands both the benefits and
12 limitations of the current tests for HIV.

13 (C) To obtain referrals to appropriate health care and support
14 services.

15 (e) For purposes of this section, "sexual offense" includes any
16 of the following:

17 (1) Rape in violation of Section 261 or 264.1.

18 (2) Unlawful intercourse with a person under 18 years of age
19 in violation of Section 261.5 or 266c.

20 (3) Rape of a spouse in violation of Section 262 or 264.1.

21 (4) Sodomy in violation of Section 266c or 286.

22 (5) Oral copulation in violation of Section 266c or 288a.

23 (6) (A) Any of the following offenses if the court finds that
24 there is probable cause to believe that blood, semen, or any other
25 bodily fluid capable of transmitting HIV has been transferred from
26 the defendant to the victim:

27 (i) Sexual penetration in violation of Section 264.1, 266c, or
28 289.

29 (ii) Aggravated sexual abuse of a child in violation of Section
30 269.

31 (iii) Lewd or lascivious conduct with a child in violation of
32 Section 288.

33 (iv) Continuous sexual abuse of a child in violation of Section
34 288.5.

35 (v) The attempt to commit any offense described in clauses (i)
36 to (iv), inclusive.

37 (B) For purposes of this paragraph, the court shall note its
38 finding on the court docket and minute order if one is prepared.

39 (f) Any blood or oral mucosal transudate saliva tested pursuant
40 to subdivision (a) shall be subjected to appropriate confirmatory



1 tests to ensure accuracy of the first test results, and under no
2 circumstances shall test results be transmitted to the victim or the
3 person who is tested unless any initially reactive test result has
4 been confirmed by appropriate confirmatory tests for positive
5 reactors.

6 (g) The local health officer shall be responsible for disclosing
7 test results to the victim who requested the test and the person who
8 was tested. However, positive test results shall not be disclosed to
9 the victim or the person who was tested without offering or
10 providing professional counseling appropriate to the
11 circumstances.

12 (h) The local health officer and the victim shall comply with all
13 laws and policies relating to medical confidentiality, subject to the
14 disclosure authorized by subdivisions (g) and (i).

15 (i) Any victim who receives information from the local health
16 officer pursuant to subdivision (g) may disclose the information as
17 he or she deems necessary to protect his or her health and safety
18 or the health and safety of his or her family or sexual partner.

19 (j) Any person who transmits test results or discloses
20 information pursuant to this section shall be immune from civil
21 liability for any action taken in compliance with this section.

22 ~~SEC. 6. Sections 1, 2, 3, and 4 of this act amend initiative~~
23 ~~statutes and shall become effective only when submitted to, and~~
24 ~~approved by, the voters of California, pursuant to subdivision (e)~~
25 ~~of Section 10 of Article II of the California Constitution.~~

26 ~~SEC. 7.—~~

27 *SEC. 2.* Notwithstanding Section 17610 of the Government
28 Code, if the Commission on State Mandates determines that this
29 act contains costs mandated by the state, reimbursement to local
30 agencies and school districts for those costs shall be made pursuant
31 to Part 7 (commencing with Section 17500) of Division 4 of Title
32 2 of the Government Code. If the statewide cost of the claim for
33 reimbursement does not exceed one million dollars (\$1,000,000),
34 reimbursement shall be made from the State Mandates Claims
35 Fund.

