

Introduced by Senator Rubio

February 17, 2011

An act to amend Section 1524.1 of the Penal Code, relating to search warrants.

LEGISLATIVE COUNSEL'S DIGEST

SB 531, as introduced, Rubio. Search warrants: HIV testing.

Existing law provides that when a defendant or minor has been charged with a specified sexual offense, the court may, under certain circumstances and at the request of the victim, issue a search warrant for the purpose of testing the accused's blood or saliva with any HIV test.

This bill would make technical, nonsubstantive changes to this provision.

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

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

1 SECTION 1. Section 1524.1 of the Penal Code is amended to
2 read:
3 1524.1. (a) The primary purpose of the testing and disclosure
4 provided in this section is to benefit the victim of a crime by
5 informing the victim whether the defendant is infected with the
6 HIV virus. It is also the intent of the Legislature in enacting this
7 section to protect the health of both victims of crime and those
8 accused of committing a crime. Nothing in this section shall be
9 construed to authorize mandatory testing or disclosure of test
10 results for the purpose of a charging decision by a prosecutor, nor,

1 except as specified in subdivisions (g) and (i), shall this section
2 be construed to authorize breach of the confidentiality provisions
3 contained in Chapter 7 (commencing with Section 120975) of Part
4 4 of Division 105 of the Health and Safety Code.

5 (b) (1) Notwithstanding the provisions of Chapter 7
6 (commencing with Section 120975) of Part 4 of Division 105 of
7 the Health and Safety Code, when a defendant has been charged
8 by complaint, information, or indictment with a crime, or a minor
9 is the subject of a petition filed in juvenile court alleging the
10 commission of a crime, the court, at the request of the victim, may
11 issue a search warrant for the purpose of testing the accused's
12 blood or oral mucosal transudate saliva with any HIV test, as
13 defined in Section 120775 of the Health and Safety Code, only
14 under the following circumstances: when the court finds, upon the
15 conclusion of the hearing described in paragraph (3); or in those
16 cases in which a preliminary hearing is not required to be held,
17 that there is probable cause to believe that the accused committed
18 the offense, and that there is probable cause to believe that blood,
19 semen, or any other bodily fluid identified by the State Department
20 of Health Services in appropriate regulations as capable of
21 transmitting the human immunodeficiency virus has been
22 transferred from the accused to the victim.

23 (2) Notwithstanding Chapter 7 (commencing with Section
24 120975) of Part 4 of Division 105 of the Health and Safety Code,
25 when a defendant has been charged by complaint, information, or
26 indictment with a crime under Section 220, 261, 261.5, 262, 264.1,
27 266c, 269, 286, 288, 288a, 288.5, 289, or 289.5, or with an attempt
28 to commit any of the offenses, and is the subject of a police report
29 alleging the commission of a separate, uncharged offense that
30 could be charged under Section 220, 261, 261.5, 262, 264.1, 266c,
31 269, 286, 288, 288a, 288.5, 289, or 289.5, or of an attempt to
32 commit any of the offenses, or a minor is the subject of a petition
33 filed in juvenile court alleging the commission of a crime under
34 Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288, 288a,
35 288.5, 289, or 289.5, or of an attempt to commit any of the
36 offenses, and is the subject of a police report alleging the
37 commission of a separate, uncharged offense that could be charged
38 under Section 220, 261, 261.5, 262, 264.1, 266c, 269, 286, 288,
39 288a, 288.5, 289, or 289.5, or of an attempt to commit any of the
40 offenses, the court, at the request of the victim of the uncharged

1 offense, may issue a search warrant for the purpose of testing the
2 accused’s blood or oral mucosal transudate saliva with any HIV
3 test, as defined in Section 120775 of the Health and Safety Code,
4 only under the following circumstances: when the court finds that
5 there is probable cause to believe that the accused committed the
6 uncharged offense, and that there is probable cause to believe that
7 blood, semen, or any other bodily fluid identified by the State
8 Department of Health Services in appropriate regulations as capable
9 of transmitting the human immunodeficiency virus has been
10 transferred from the accused to the victim. As used in this
11 paragraph, “Section 289.5” refers to the statute enacted by Chapter
12 293 of the Statutes of 1991, penetration by an unknown object.

13 (3) (A) Prior to the issuance of a search warrant pursuant to
14 paragraph (1), the court, where applicable and at the conclusion
15 of the preliminary examination if the defendant is ordered to answer
16 pursuant to Section 872, shall conduct a hearing at which both the
17 victim and the defendant have the right to be present. During the
18 hearing, only affidavits, counter affidavits, and medical reports
19 regarding the facts that support or rebut the issuance of a search
20 warrant under paragraph (1) shall be admissible.

21 (B) Prior to the issuance of a search warrant pursuant to
22 paragraph (2), the court, where applicable, shall conduct a hearing
23 at which both the victim and the defendant are present. During the
24 hearing, only affidavits, counter affidavits, and medical reports
25 regarding the facts that support or rebut the issuance of a search
26 warrant under paragraph (2) shall be admissible.

27 (4) A request for a probable cause hearing made by a victim
28 under paragraph (2) shall be made before sentencing in the superior
29 court, or before disposition on a petition in a juvenile court, of the
30 criminal charge or charges filed against the defendant.

31 (c) (1) In all cases in which the person has been charged by
32 complaint, information, or indictment with a crime, or is the subject
33 of a petition filed in a juvenile court alleging the commission of a
34 crime, the prosecutor shall advise the victim of his or her right to
35 make this request. To assist the victim of the crime to determine
36 whether he or she should make this request, the prosecutor shall
37 refer the victim to the local health officer for prerequest counseling
38 to help that person understand the extent to which the particular
39 circumstances of the crime may or may not have put the victim at
40 risk of transmission of HIV from the accused, to ensure that the

1 victim understands both the benefits and limitations of the current
2 tests for HIV, to help the victim decide whether he or she wants
3 to request that the accused be tested, and to help the victim decide
4 whether he or she wants to be tested.

5 (2) The Department of Justice, in cooperation with the California
6 District Attorneys Association, shall prepare a form to be used in
7 providing victims with the notice required by paragraph (1).

8 (d) (1) If the victim decides to request HIV testing of the
9 accused, the victim shall request the issuance of a search warrant,
10 as described in subdivision (b).

11 ~~Neither~~

12 (2) *Neither* the failure of a prosecutor to refer or advise the
13 victim as provided in this subdivision, nor the failure or refusal by
14 the victim to seek or obtain counseling, shall be considered by the
15 court in ruling on the victim's request.

16 (e) The local health officer shall make provision for
17 administering all HIV tests ordered pursuant to subdivision (b).

18 (f) Any blood or oral mucosal transudate saliva tested pursuant
19 to subdivision (b) shall be subjected to appropriate confirmatory
20 tests to ensure accuracy of the first test results, and under no
21 circumstances shall test results be transmitted to the victim or the
22 accused unless any initially reactive test result has been confirmed
23 by appropriate confirmatory tests for positive reactors.

24 (g) The local health officer shall have the responsibility for
25 disclosing test results to the victim who requested the test and to
26 the accused who was tested. However, no positive test results shall
27 be disclosed to the victim or to the accused without also providing
28 or offering professional counseling appropriate to the
29 circumstances.

30 (h) The local health officer and victim shall comply with all
31 laws and policies relating to medical confidentiality subject to the
32 disclosure authorized by subdivisions (g) and (i). Any individual
33 who files a false report of sexual assault in order to obtain test
34 result information pursuant to this section shall, in addition to any
35 other liability under law, be guilty of a misdemeanor punishable
36 as provided in subdivision (c) of Section 120980 of the Health and
37 Safety Code. Any individual as described in the preceding sentence
38 who discloses test result information obtained pursuant to this
39 section shall also be guilty of an additional misdemeanor
40 punishable as provided for in subdivision (c) of Section 120980

1 of the Health and Safety Code for each separate disclosure of that
2 information.

3 (i) ~~Any~~ A victim who receives information from the health
4 officer pursuant to subdivision (g) may disclose the test results as
5 the victim deems necessary to protect his or her health and safety
6 or the health and safety of his or her family or sexual partner.

7 (j) ~~Any~~ A person transmitting test results or disclosing
8 information pursuant to this section shall be immune from civil
9 liability for any actions taken in compliance with this section.

10 (k) The results of any blood or oral mucosal transudate saliva
11 tested pursuant to subdivision (b) shall not be used in any criminal
12 proceeding as evidence of either guilt or innocence.

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