

Introduced by Senator Rainey

February 25, 1997

An act to amend Sections 1621.5 and 120290 of, and to add Sections 120291 and 120292 to, the Health and Safety Code, relating to human immunodeficiency virus.

LEGISLATIVE COUNSEL'S DIGEST

SB 705, as introduced, Rainey. Human immunodeficiency virus.

(1) Existing law provides, except in the case of the removal of an afflicted person in a manner the least dangerous to the public health, that any person afflicted with any contagious, infectious, or communicable disease who willfully exposes himself or herself to another, and any person who willfully exposes another person afflicted with a disease of that nature, is guilty of a misdemeanor.

This bill would provide that any person who exposes another to the human immunodeficiency virus (HIV) by engaging in unprotected sexual activity, as defined, or sharing a hypodermic needle, as defined, when the infected person knows he or she is infected with HIV, has not disclosed certain information, and intends to infect the other person with HIV is instead guilty of a felony punishable by imprisonment for life with possibility of parole and shall not be eligible for probation.

The bill would also provide that any person who exposes another to the human immunodeficiency virus by engaging in unprotected sexual activity, or sharing a hypodermic needle, when the infected person knows he or she is infected

with HIV, and has not disclosed certain information, is guilty of a felony punishable by imprisonment in the state prison for 2, 3, or 4 years.

The bill would provide that it shall be a defense to the above actions that the sexual activity or needle sharing took place between 2 consenting adults after certain disclosures have been made.

The bill would provide for the protection of the confidentiality of the identity of the victim in the above actions.

(2) Existing law contains several provisions designed to protect the privacy of individuals who are the subject of blood testing for antibodies to the probable causative agent of acquired immune deficiency syndrome, including a provision making certain disclosures a misdemeanor, and provisions requiring written consent prior to testing a person's blood for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome.

This bill would require, notwithstanding those provisions, identifying information, as defined, and other records of the diagnosis, prognosis, testing, or treatment of any person relating to the human immunodeficiency virus to be disclosed in a criminal investigation for a violation of the provisions described in paragraph (1) if authorized by a court order, as prescribed. The bill would require a court, in deciding whether to issue an order, to weigh the public interest and the need for disclosure against any potential harm to the defendant, as prescribed, and upon issuance of an order, to impose safeguards against unauthorized disclosure, as prescribed. It would prohibit the court from ordering disclosure under this provision for any other type of proceeding.

This bill also would provide that a defendant may be compelled to submit to testing to determine HIV status in a criminal investigation for a violation of the provisions described in paragraph (1) if the testing is authorized by a court order, as prescribed. The bill would require a court, in deciding whether to issue an order, to weigh the public interest and the need for the testing against the interest of the defendant involved in keeping the information private, and



upon granting an order, to impose safeguards against unauthorized disclosure. It would prohibit the court from ordering disclosure under this provision for any other type of proceeding.

By creating new crimes this bill 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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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 1621.5 of the Health and Safety
2 Code is amended to read:

3 1621.5. (a) It is a felony punishable by imprisonment
4 in the state prison for two, four, or six years, for any person
5 to donate blood, body organs or other tissue, semen to any
6 medical center or semen bank that receives semen for
7 purposes of artificial insemination, or breast milk to any
8 medical center or breast milk bank that receives breast
9 milk for purposes of distribution, whether he or she is a
10 paid or a volunteer donor, who knows that he or she has
11 acquired immune deficiency syndrome, as diagnosed by
12 a physician and surgeon, or who knows that he or she has
13 tested reactive to the etiologic agent of AIDS or to the
14 antibodies to that agent. This section shall not apply to
15 any person who is mentally incompetent or who
16 self-defers his or her blood at a blood bank or plasma
17 center pursuant to subdivision (b) of Section 1603.3 or
18 who donates his or her blood for purposes of an autologous
19 donation.

20 (b) In a criminal investigation for a violation of this
21 section, no person shall disclose the results of a blood test
22 to detect the etiologic agent of AIDS or antibodies to that
23 agent to any officer, employee, or agent of a state or local



1 agency or department unless the test results are disclosed
2 as otherwise required by law pursuant to *any one of the*
3 *following*:

4 (1) A search warrant issued pursuant to Section ~~154~~
5 *1524* of the Penal Code.

6 (2) A judicial subpoena or subpoena duces tecum
7 issued and served in compliance with Chapter 2
8 (commencing with Section 1985) of Title 3 of Part 4 of the
9 Code of Civil Procedure.

10 (3) An order of a court.

11 For purposes of this section, “blood” means “human
12 whole blood” and “human whole blood derivatives,” as
13 defined for purposes of this chapter and includes “blood
14 components,” as defined in subdivision (l) of Section
15 1603.1.

16 SEC. 2. Section 120290 of the Health and Safety Code
17 is amended to read:

18 120290. Except *as provided in Section 120291* or in the
19 case of the removal of an afflicted person in a manner the
20 least dangerous to the public health, any person afflicted
21 with any contagious, infectious, or communicable disease
22 who ~~wilfully~~ *willfully* exposes himself *or herself* to
23 *another person*, and any person who ~~wilfully~~ *willfully*
24 exposes another person afflicted with the disease to
25 *someone else*, is guilty of a misdemeanor.

26 SEC. 3. Section 120291 is added to the Health and
27 Safety Code, to read:

28 120291. (a) Any person who exposes another to the
29 human immunodeficiency virus (HIV) by engaging in
30 unprotected sexual activity or sharing a hypodermic
31 needle, when the infected person knows he or she is
32 infected with HIV, has not disclosed the information
33 described in subdivision (d), and intends to infect the
34 other person with HIV, is guilty of a felony punishable by
35 imprisonment for life with possibility of parole and shall
36 not be eligible for probation.

37 (b) Any person who exposes another to HIV by
38 engaging in unprotected sexual activity or sharing a
39 hypodermic needle, when the person knows he or she is
40 infected with HIV and has not disclosed the information



1 described in subdivision (d), is guilty of a felony
2 punishable by imprisonment in the state prison for two,
3 three, or four years.

4 (c) As used in this section, the following definitions
5 shall apply.

6 (1) “Sexual activity” means insertive vaginal, anal, or
7 oral intercourse on the part of an infected male, receptive
8 consensual vaginal intercourse on the part of an infected
9 woman with a male partner, or receptive consensual anal
10 intercourse on the part of an infected man or woman with
11 a male partner.

12 (2) “Shares a hypodermic needle” means permitting
13 use for purposes of injection of a hypodermic needle or
14 syringe, or a part thereof that has been in contact with the
15 blood of a person infected with HIV.

16 (3) “Unprotected sexual activity” means sexual
17 activity without the use of a condom.

18 (d) It shall be a defense to a violation of subdivision (a)
19 or (b) that the sexual activity or needle sharing took place
20 between consenting adults after full disclosure by the
21 infected person of his or her HIV-positive status.

22 (e) (1) When alleging a violation of subdivision (a) or
23 (b), the prosecuting attorney or grand jury shall
24 substitute a pseudonym for the true name of the victim
25 involved. The actual name and other identifying
26 characteristics of the victim shall be revealed to the court
27 only in camera, and the court shall seal that information
28 from further revelation, except to defense counsel as part
29 of discovery.

30 (2) All court decisions, orders, petitions, and other
31 documents, including motions and papers filed by the
32 parties, shall be worded so as to protect the name or other
33 identifying characteristics of the victim from public
34 revelation.

35 (3) Unless the victim requests otherwise, a court in
36 which a violation of this section is filed shall, at the first
37 opportunity, issue an order that the parties, their counsel
38 and other agents, court staff, and all other persons subject
39 to the jurisdiction of the court shall make no public



1 revelation of the name or any other identifying
2 characteristics of the victim.

3 (4) As used in this subdivision, “identifying
4 characteristics” includes, but is not limited to, name or
5 any part thereof, address or any part thereof, city or
6 unincorporated area of residence, age, marital status,
7 relationship to defendant, and race or ethnic background.

8 SEC. 4. Section 120292 is added to the Health and
9 Safety Code, to read:

10 120292. (a) Notwithstanding Chapter 7
11 (commencing with Section 120975) and Chapter 8
12 (commencing with Section 121025) of Part 4, identifying
13 information and other records of the diagnosis, prognosis,
14 testing, or treatment of any person relating to the human
15 immunodeficiency virus (HIV) shall be disclosed in a
16 criminal investigation for a violation of Section 120291 if
17 authorized by an order of a court of competent
18 jurisdiction granted after application showing good cause
19 therefor. Any order of the court shall be issued in
20 accordance with the following conditions:

21 (1) An order shall not be based solely on the sexual
22 orientation of the defendant.

23 (2) In deciding whether to issue an order, the court
24 shall weigh the public interest and the need for disclosure
25 against any potential harm to the defendant, including,
26 but not limited to, damage to the physician-patient
27 relationship and to treatment services. Upon the issuance
28 of an order of this nature, the court, in determining the
29 extent to which any disclosure of all or any part of any
30 record is necessary, shall impose safeguards determined
31 appropriate by the court against unauthorized disclosure.
32 However, the court shall not order disclosure under this
33 paragraph for any purpose other than a proceeding under
34 this section. Any order for disclosure under this
35 subdivision shall limit disclosure to those who need the
36 information for the proceeding, and shall direct those to
37 whom disclosure is made to make no further disclosure
38 without permission of the court. The court shall grant
39 permission for further disclosure when necessary for a
40 proceeding under this section. Any disclosure in violation



1 of an order issued under this section shall be remedied or
2 punished as provided in Section 120980.

3 (b) Notwithstanding Chapter 7 (commencing with
4 Section 120975) and Chapter 8 (commencing with
5 Section 121025) of Part 4, a defendant may be compelled
6 to submit to testing to determine HIV status in a criminal
7 investigation for a violation of Section 120291 if the testing
8 is authorized by an order of a court of competent
9 jurisdiction granted after application showing good cause
10 therefor. Any order issued pursuant to this section shall be
11 subject to the following conditions:

12 (1) An order shall not be based solely on the sexual
13 orientation of the defendant.

14 (2) In deciding whether to issue an order, the court
15 shall weigh the public interest and need for testing
16 against the interest of the defendant in keeping the
17 information private. Upon granting of an order pursuant
18 to this subdivision, the court, in determining the extent
19 to which any disclosure of test results is necessary, shall
20 impose safeguards determined appropriate by the court
21 against unauthorized disclosure. However, the court shall
22 not order disclosure under this subdivision for any
23 purpose other than a proceeding under this section. Any
24 order for disclosure under this subdivision shall limit
25 disclosure to those who need the information for the
26 proceeding, and shall direct those to whom disclosure is
27 made to make no further disclosure without permission
28 of the court. The court shall grant permission for further
29 disclosure when necessary for a proceeding under this
30 section. Any disclosure in violation of an order issued
31 under this section shall be remedied or punished as
32 provided in Section 120980.

33 (c) Nothing in this section is intended to compel the
34 testing to determine the HIV status of any victim of an
35 alleged crime or crimes.

36 (d) Nothing in this section is intended to restrict or
37 eliminate the anonymous AIDS testing programs
38 provided for in Sections 120885 to 120895, inclusive.
39 Identifying characteristics of persons who submit to that
40 testing shall not be ordered disclosed pursuant to this



1 section, nor shall an order be issued authorizing the
2 search of the records of a testing program of that nature.

3 TEXT RETRIEVED FROM RN. 97 264

4 SEC. 5. No reimbursement is required by this act
5 pursuant to Section 6 of Article XIII B of the California
6 Constitution because the only costs that may be incurred
7 by a local agency or school district will be incurred
8 because this act creates a new crime or infraction,
9 eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section
11 17556 of the Government Code, or changes the definition
12 of a crime within the meaning of Section 6 of Article
13 XIII B of the California Constitution.

14 Notwithstanding Section 17580 of the Government
15 Code, unless otherwise specified, the provisions of this act
16 shall become operative on the same date that the act
17 takes effect pursuant to the California Constitution.

