

AMENDED IN SENATE MAY 6, 1997
AMENDED IN SENATE MAY 1, 1997
AMENDED IN SENATE APRIL 16, 1997
AMENDED IN SENATE APRIL 7, 1997

SENATE BILL

No. 705

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 amended, 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, when the infected person knows at the time of the unprotected sex that he or she is infected with HIV, has not disclosed certain information, and with the specific intent to infect the other



person with HIV is instead guilty of a felony punishable by imprisonment in the state prison for 5, 7, or 9 years.

~~The bill would also provide that any person who exposes another to the human immunodeficiency virus by engaging in unprotected sexual activity when the infected person knows at the time of the unprotected sex that 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, or in a county jail not to exceed one year, or by fine not to exceed \$10,000, or by both fine and imprisonment.~~

The bill would provide that it shall be a defense to the above ~~actions~~ *action* that the sexual activity took place between 2 consenting adults after ~~certain disclosures have been made full disclosure by the infected person of his or her HIV-positive status.~~

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

(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. 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.



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
24 agency or department unless the test results are disclosed
25 as otherwise required by law pursuant to any one of the
26 following:



1 (1) A search warrant issued pursuant to Section 1524
2 of the Penal Code.

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

7 (3) An order of a court.

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

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

15 120290. Except as provided in Section 120291 or in the
16 case of the removal of an afflicted person in a manner the
17 least dangerous to the public health, any person afflicted
18 with any contagious, infectious, or communicable disease
19 who willfully exposes himself or herself to another person,
20 and any person who willfully exposes another person
21 afflicted with the disease to someone else, is guilty of a
22 misdemeanor.

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

25 120291. (a) Any person who exposes another to the
26 human immunodeficiency virus (HIV) by engaging in
27 unprotected sexual activity when the infected person
28 knows at the time of the unprotected sex that he or she
29 is infected with HIV, has not disclosed the information
30 described in subdivision—~~(d)~~ (c), and with the specific
31 intent to infect the other person with HIV, is guilty of a
32 felony punishable by imprisonment in the state prison for
33 five, seven, or nine years.

34 ~~(b) Any person who exposes another to HIV by~~
35 ~~engaging in unprotected sexual activity when the person~~
36 ~~knows at the time of the unprotected sex that he or she~~
37 ~~is infected with HIV and has not disclosed the information~~
38 ~~described in subdivision (d), is guilty of a felony~~
39 ~~punishable by imprisonment in the state prison for two,~~
40 ~~three, or four years, or in a county jail not to exceed one~~



1 ~~year, or by a fine not to exceed ten thousand dollars~~
2 ~~(\$10,000), or by both fine and imprisonment.~~

3 ~~(e)~~

4 (b) As used in this section, the following definitions
5 shall apply:

6 (1) “Sexual activity” means insertive vaginal or anal
7 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) “Unprotected sexual activity” means sexual
13 activity without the use of a condom.

14 ~~(d)~~

15 (c) It shall be a defense to a violation of subdivision (a)
16 ~~or (b)~~ that the sexual activity took place between
17 consenting adults after full disclosure by the infected
18 person of his or her HIV-positive status.

19 ~~(e)~~

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

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

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



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

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

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

19 (1) An order shall not be based on the sexual
20 orientation of the defendant.

21 (2) In deciding whether to issue an order, the court
22 shall weigh the public interest and the need for disclosure
23 against any potential harm to the defendant, including,
24 but not limited to, damage to the physician-patient
25 relationship and to treatment services. Upon the issuance
26 of an order of this nature, the court, in determining the
27 extent to which any disclosure of all or any part of any
28 record is necessary, shall impose safeguards determined
29 appropriate by the court against unauthorized disclosure.
30 However, the court shall not order disclosure under this
31 paragraph for any purpose other than a proceeding under
32 this section. Any order for disclosure under this
33 subdivision shall limit disclosure to those who need the
34 information for the proceeding, and shall direct those to
35 whom disclosure is made to make no further disclosure
36 without permission of the court. The court shall grant
37 permission for further disclosure when necessary for a
38 proceeding under this section. Any disclosure in violation
39 of an order issued under this section shall be remedied or
40 punished as provided in Section 120980.



1 (b) Nothing in this section is intended to compel the
2 testing to determine the HIV status of any victim of an
3 alleged crime or crimes.

4 (c) Nothing in this section is intended to restrict or
5 eliminate the anonymous AIDS testing programs
6 provided for in Sections 120885 to 120895, inclusive.
7 Identifying characteristics of persons who submit to that
8 testing shall not be ordered disclosed pursuant to this
9 section, nor shall an order be issued authorizing the
10 search of the records of a testing program of that nature.

11 SEC. 5. No reimbursement is required by this act
12 pursuant to Section 6 of Article XIII B of the California
13 Constitution because the only costs that may be incurred
14 by a local agency or school district will be incurred
15 because this act creates a new crime or infraction,
16 eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section
18 17556 of the Government Code, or changes the definition
19 of a crime within the meaning of Section 6 of Article
20 XIII B of the California Constitution.

21 Notwithstanding Section 17580 of the Government
22 Code, unless otherwise specified, the provisions of this act
23 shall become operative on the same date that the act
24 takes effect pursuant to the California Constitution.

