

2A:4A-43.1

LEGISLATIVE HISTORY CHECKLIST
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(Sex offenders--AIDS)

NJSA: 2A:4A-43.1

LAWS OF: 1993 CHAPTER: 364

BILL NO: A897

SPONSOR(S): Stuhltrager

DATE INTRODUCED: February 13, 1992

COMMITTEE: ASSEMBLY: Judiciary; Appropriations

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes

Assembly committee
substitute for A897/220
enacted

DATE OF PASSAGE: ASSEMBLY: March 8, 1993

SENATE: December 13, 1993

DATE OF APPROVAL: January 4, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT:

COMMITTEE STATEMENT: ASSEMBLY: Yes 4-6-92 & ²~~A~~-22-93

SENATE: Yes

FISCAL NOTE: YES

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--attached:

"Sex assault victims with disclosure right," 1-5-94, Star Ledger.

"State oks testing of suspects...", 1-5-94, Bergen Record.

KBG:pp

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 897 and 220 (ACS)

STATE OF NEW JERSEY

ADOPTED FEBRUARY 22, 1993

Sponsored by Assemblymen STUHLTRAGER, CATANIA,
WOLFE, ZECKER, Frelinghuysen, Kamin, Assemblywoman
J. Smith, Assemblyman Bagger, Assemblywoman Farragher,
Assemblymen Gibson, Kavanaugh, Lance, Mattison,
Romano and Watson

1 AN ACT concerning testing of persons convicted, indicted or
2 formally charged for the commission of certain crimes,
3 amending P.L.1985, c.404, P.L.1991, c.329, and supplementing
4 Titles 2A and 2C of the New Jersey Statutes.

5

6 BE IT ENACTED *by the Senate and General Assembly of the*
7 *State of New Jersey:*

8 1. Section 6 of P.L.1985, c.404 (C.52:4B-44) is amended to
9 read as follows:

10 6. a. The Attorney General shall, through the Office of
11 Victim-Witness Advocacy in the Division of Criminal Justice in
12 the Department of Law and Public Safety and in consultation
13 with the county prosecutors, promulgate standards for law
14 enforcement agencies to ensure that the rights of crime victims
15 are enforced.

16 b. The standards shall require that the Office of
17 Victim-Witness Advocacy in the Division of Criminal Justice and
18 each county prosecutor's office provide the following services
19 upon request for victims and witnesses involved in the
20 prosecution of a case:

21 (1) Orientation information about the criminal justice system
22 and the victim's and witness's role in the criminal justice
23 process;

24 (2) Notification of any change in the case status and of final
25 disposition;

26 (3) Information on crime prevention and on available responses
27 to witness intimidation;

28 (4) Information about available services to meet needs
29 resulting from the crime and referrals to service agencies, where
30 appropriate;

31 (5) Advance notice of the date, time and place of the
32 defendant's initial appearance before a judicial officer,
33 submission to the court of any plea agreement, the trial and
34 sentencing;

35 (6) Advance notice of when presence in court is not needed;

36 (7) Advice about available compensation, restitution and other
37 forms of recovery and assistance in applying for government
38 compensation;

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (8) A waiting or reception area separate from the defendant
2 for use during court proceedings;

3 (9) An escort or accompaniment for intimidated victims or
4 witnesses during court appearances;

5 (10) Information about directions, parking, courthouse and
6 courtroom locations, transportation services and witness fees, in
7 advance of court appearances;

8 (11) Assistance for victims and witnesses in meeting special
9 needs when required to make court appearances, such as
10 transportation and child care arrangements;

11 (12) Assistance in making travel and lodging arrangements for
12 out-of-State witnesses;

13 (13) Notification to employers of victims and witnesses, if
14 cooperation in the investigation or prosecution causes absence
15 from work;

16 (14) Notification of the case disposition, including the trial and
17 sentencing;

18 (15) Assistance to victims in submitting a written statement to
19 a representative of the county prosecutor's office about the
20 impact of the crime prior to the prosecutor's final decision
21 concerning whether formal charges will be filed;

22 (16) Advice to victims about their right to make a statement
23 about the impact of the crime for inclusion in the presentence
24 report or at time of parole consideration, if applicable;

25 (17) Notification to victims of the right to make an in-person
26 statement, prior to sentencing, directly to the sentencing court
27 concerning the impact of the crime; [and]

28 (18) Expediting the return of property when no longer needed
29 as evidence; and

30 (19) Advise and counsel, or refer for advice or counseling,
31 victims of sexual assault, or other criminal acts involving a risk
32 of transmission of disease, concerning available medical testing
33 and assist such victims, or refer such victims for assistance, in
34 obtaining appropriate testing, counseling and medical care and in
35 making application to the Violent Crimes Compensation Board
36 for compensation for the costs of such testing, counseling and
37 care.

38 c. In a case involving a victim of aggravated sexual assault or
39 sexual assault as defined in subsection a. or c. of N.J.S.2C:14-2,
40 the Office of Victim-Witness Advocacy or the county
41 prosecutor's office involved in the case shall:

42 (1) Notify the victim of the victim's right to obtain an
43 approved serological test for acquired immune deficiency
44 syndrome (AIDS) or infection with the human immunodeficiency
45 virus (HIV) or any other related virus identified as a probable
46 causative agent of AIDS, and assist the victim, or refer the
47 victim for assistance, in obtaining a test and appropriate
48 counseling and medical care;

49 (2) Notify the victim of the victim's right to obtain a court
50 order pursuant to subsection a. of section 4 of P.L., c. ... (C.
51)(now pending before the Legislature as this bill) requiring
52 the offender to submit to an approved serological test for
53 acquired immune deficiency syndrome (AIDS) or infection with
54 the human immunodeficiency virus (HIV) or any other related

1 virus identified as a probable causative agent of AIDS in the
2 event that the offender is indicted, formally charged, convicted
3 or adjudicated delinquent;

4 (3) Communicate the request of a victim who agrees to seek
5 an order pursuant to subsection a. of section 4 of P.L., c. ...
6 (C.)(now pending before the Legislature as this bill) to the
7 prosecutor handling the case and notify the victim or arrange for
8 the victim to be notified of the test result; and

9 (4) Assist the victim in applying to the Violent Crimes
10 Compensation Board for compensation for the costs of testing,
11 counseling and medical care.

12 (cf: P.L.1991, c.44, s.2)

13 2. Section 20 of P.L.1991, c.329 (C.52:4B-43.1) is amended to
14 read as follows:

15 20. a. The Victim and Witness Advocacy Fund, established in
16 the State Treasury by section 2 of P.L.1979, c.396 (C.2C:43-3.1),
17 administered by the Department of Law and Public Safety
18 through the Division of Criminal Justice, pursuant to rules and
19 regulations promulgated by the Director of the Division of
20 Criminal Justice, to support the development and provision of
21 services to victims and witnesses of crimes and for related
22 administrative costs, is hereby continued.

23 b. The division is authorized to continue disbursing moneys
24 deposited in the Victim and Witness Advocacy Fund to fund the
25 operation of the State Office of Victim and Witness Advocacy,
26 the 21 county offices of Victim and Witness Advocacy and to
27 provide funding to other public entities as deemed appropriate for
28 the implementation of the Attorney General Standards to Ensure
29 the Rights of Crime Victims.

30 c. In addition, the division, pursuant to rules and regulations to
31 be promulgated by the director to ensure that funds are given to
32 qualified entities that will provide services consistent with this
33 act, shall award grants to qualified public entities and
34 not-for-profit organizations that provide direct services to
35 victims and witnesses, including but not limited to such services
36 as:

- 37 (1) shelter, food and clothing;
38 (2) medical and legal advocacy services;
39 (3) 24-hour crisis response services and 24-hour hotlines;
40 (4) information and referral and community education;
41 (5) psychiatric treatment programs;
42 (6) expanded services for victims' families and significant
43 others;
44 (7) short and long term counseling and support groups;
45 (8) emergency locksmith and carpentry services; [and]
46 (9) financial services; and
47 (10) medical testing ordered by a court pursuant to section 4
48 of P.L., c. ... (C.....)(now pending before the Legislature as
49 this bill).

50 d. Organizations eligible to apply for grants under subsection
51 c. of this section include but are not limited to:

- 52 (1) member programs of the New Jersey Coalition for Battered
53 Women, including but not limited to
54 (a) Atlantic County Women's Center;

- 1 (b) Shelter Our Sisters, (Bergen County);
- 2 (c) Providence House/ Willingboro Shelter, (Burlington County);
- 3 (d) YWCA/SOLACE, (Camden County);
- 4 (e) Family Violence Project and The Safe House, (Essex
- 5 County);
- 6 (f) People Against Spouse Abuse, (Gloucester County);
- 7 (g) Battered Women's Program, (Hudson County);
- 8 (h) Women's Crisis Services, (Hunterdon County);
- 9 (i) Womanspace, Inc., (Mercer County);
- 10 (j) Women Aware, Inc., (Middlesex County);
- 11 (k) Women's Resource and Survival Center, (Monmouth
- 12 County);
- 13 (l) Jersey Battered Women's Services, Inc., (Morris County);
- 14 (m) Passaic County Women's Center, (Passaic County);
- 15 (n) Salem County Women's Services, (Salem County);
- 16 (o) Resource Center for Women and Their Families, (Somerset
- 17 County);
- 18 (p) Domestic Abuse Services, Inc., (Sussex County);
- 19 (q) Project Protect, (Union County);
- 20 (r) Domestic Abuse and Rape Crisis Center, Inc., (Warren
- 21 County); and
- 22 (s) Ocean County Women's Center; and
- 23 (2) rape care services and programs, including, but not limited
- 24 to:
- 25 (a) Atlantic County Women's Center, (Atlantic County);
- 26 (b) Bergen County Rape Crisis Center, (Bergen County);
- 27 (c) Women Against Rape, (Burlington County);
- 28 (d) Women Against Rape, (Camden County);
- 29 (e) Coalition against Rape and Abuse, (Cape May County);
- 30 (f) Cumberland County Guidance Center;
- 31 (g) North Essex Helpline and Sexual Assault Support Service,
- 32 (Essex County);
- 33 (h) Gloucester County Rape Assault Prevention Program;
- 34 (i) Christ Hospital Mental Health Center, serving Hudson
- 35 County;
- 36 (j) Women's Crisis Services, (Hunterdon County);
- 37 (k) Rape Crisis Program Mercer County YWCA, (Mercer
- 38 County);
- 39 (l) Rape Crisis Intervention Center Roosevelt Hospital,
- 40 (Middlesex County);
- 41 (m) Women's Resource Center, (Monmouth County);
- 42 (n) Parenting Center, Morristown Hospital, (Morris County);
- 43 (o) Ocean County Advisory Commission on the Status of
- 44 Women, (Ocean County);
- 45 (p) Passaic County Women's Center, (Passaic County);
- 46 (q) Salem County Rape Crisis Service, (Salem County);
- 47 (r) Rape Crisis Service of Somerset and Richard Hall Mental
- 48 Health Center Somerset County Coalition for the prevention and
- 49 Treatment of Sexual Abuse;
- 50 (s) Project Against Sexual Assault Abuse, (Sussex County);
- 51 (t) Union County Rape Crisis Center;
- 52 (u) Domestic Abuse and Rape Crisis Center, (Warren County);
- 53 and
- 54 (v) Alternatives to Domestic Violence of Hackensack, N.J.

1 (Bergen County).

2 e. The Director shall report annually to the Governor and the
3 Legislature concerning the administration of the Victim and
4 Witness Advocacy Fund and the administration and award of
5 grants authorized by this section.

6 (cf: P.L.1991, c.329, s.20)

7 3. (New section) In accordance with section 4 of P.L., c. ...
8 (C.)(now pending before the Legislature as this bill) and in
9 addition to any other disposition authorized pursuant to
10 N.J.S.2A:4A-43, a court shall order a juvenile charged with
11 delinquency or adjudicated delinquent for an act which if
12 committed by an adult would constitute aggravated sexual assault
13 or sexual assault as defined in subsection a. or c. of
14 N.J.S.2C:14-2 to submit to an approved serological test for
15 acquired immune deficiency syndrome (AIDS) or infection with
16 the human immunodeficiency virus (HIV) or any other related
17 virus identified as a probable causative agent of AIDS.

18 4. (New section) a. In addition to any other disposition made
19 pursuant to law, a court shall order a person convicted of,
20 indicted for or formally charged with, or a juvenile charged with
21 delinquency or adjudicated delinquent for an act which if
22 committed by an adult would constitute, aggravated sexual
23 assault or sexual assault as define in subsection a. or c. of
24 N.J.S.2C:14-2 to submit to an approved serological test for
25 acquired immune deficiency syndrome (AIDS) or infection with
26 the human immunodeficiency virus (HIV) or any other related
27 virus identified as a probable causative agent of AIDS. The court
28 shall issue such an order only upon the request of the victim and
29 upon application of the prosecutor made at the time of
30 indictment, charge, conviction or adjudication of delinquency.
31 The person or juvenile shall be ordered by the court to submit to
32 such repeat or confirmatory tests as may be medically
33 necessary.

34 As used in this section, "formal charge" includes a proceeding
35 by accusation in the event that the defendant has waived the
36 right to an indictment.

37 b. A court order issued pursuant to subsection a. of this
38 section shall require testing to be performed as soon as
39 practicable by the Commissioner of the Department of
40 Corrections pursuant to authority granted to the commissioner by
41 sections 6 and 10 of P.L.1976, c.98 (C.30:1B-6 and 30:1B-10), by
42 a provider of health care or at a health facility licensed pursuant
43 to P.L.1991, c.187 (C.26:2H-12). The order shall also require that
44 the results of the test be reported to the offender and to the
45 appropriate Office of Victim-Witness Advocacy.

46 c. The Office of Victim-Witness Advocacy, established
47 pursuant to P.L.1985, c.404 (C.52:4B-43 et seq.), shall reimburse
48 the Department of Corrections or Department of Health for the
49 direct costs incurred by these departments for any tests ordered
50 by a court pursuant to subsection a. of this section.
51 Reimbursement shall be made following a request from the
52 department.

53 d. In addition to any other disposition authorized, a court may
54 order an offender at the time of sentencing to reimburse the

1 State for the costs of the tests ordered by subsection a. of this
2 section.

3 e. Upon receipt of the result of a test ordered pursuant to
4 subsection a. of this section, the Office of Victim-Witness
5 Advocacy shall provide the victim with appropriate counseling,
6 referral for counseling and if appropriate, referral for health
7 care. The office shall notify the victim or make appropriate
8 arrangements for the victim to be notified of the test result.

9 f. The result of a test ordered pursuant to subsection a. of this
10 section shall be confidential and a health care provider and
11 employees of the Department of Corrections, the Office of
12 Victim-Witness Advocacy, a health care provider, health care
13 facility or counseling service shall not disclose the result of a
14 test performed pursuant to this section except as authorized
15 herein or as otherwise authorized by law or court order. The
16 provisions of this section shall not be deemed to prohibit
17 disclosure of a test result to the person tested.

18 g. Persons who perform tests ordered pursuant to subsection a.
19 of this section in accordance with accepted medical standards for
20 the performance of such tests shall be immune from civil and
21 criminal liability arising from their conduct.

22 h. This section shall not be construed to preclude or limit any
23 other testing for acquired immune deficiency syndrome (AIDS) or
24 infection with the human immunodeficiency virus (HIV) or any
25 other related virus identified as a probable causative agent of
26 AIDS which is otherwise permitted by statute, court rule or
27 common law.

28 5. This act shall take effect immediately.
29
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31

32
33 _____
34 Requires persons convicted, indicted or formally charged for
35 certain offenses to be tested for AIDS and HIV infection under
certain circumstances.

ASSEMBLY, No. 897

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 13, 1992

By Assemblyman STUHLTRAGER

1 AN ACT concerning medical testing of persons charged with
2 certain offenses or acts of delinquency and supplementing Title
3 2C of the New Jersey Statutes and Title 26 of the Revised
4 Statues.

5

6 BE IT ENACTED by the Senate and General Assembly of the
7 State of New Jersey:

8 1. a. In addition to any other disposition made pursuant to
9 law, the court shall, upon the victim's request, order a person
10 indicted or formally charged with, or a juvenile charged with
11 delinquency for an act which, if committed by an adult, would
12 constitute aggravated sexual assault, sexual assault or aggravated
13 criminal sexual contact if the commission of the offense
14 involved, or was likely to involve, the transmission of bodily
15 fluids, to submit to an approved serological test for sexually
16 transmitted diseases. The prosecutor shall advise the victim that
17 this testing procedure is available.

18 "Sexually transmitted diseases" shall include, but not be
19 limited to, venereal disease such as chancroid, gonorrhea,
20 syphilis, herpes virus or any of the varieties or stages of such
21 diseases; Hepatitis B; infection by the acquired immunodeficiency
22 syndrome (AIDS) or HIV infection (infection with the human
23 immunodeficiency virus or any related virus identified as a
24 probable causative agent of AIDS).

25 "Formal charge" includes a proceeding by accusation in the
26 event that the defendant has waived his right to an indictment.

27 b. The results of any serological test ordered pursuant to this
28 section shall be disclosed to the court which ordered the test, the
29 person tested and the person requesting the test and shall be
30 made part of the defendant's criminal or juvenile record. In the
31 case of a juvenile, the results shall be disclosed also to the
32 juvenile's parent or guardian. If the results of the serological
33 test ordered pursuant to this section are positive for sexually
34 transmitted disease, the results shall not provide the basis for a
35 subsequent criminal proceeding for knowingly committing an act
36 of sexual penetration while infected with a venereal disease
37 pursuant to N.J.S.2C:34-5.

38 2. a. In addition to any other disposition made pursuant to
39 law, the court shall, upon the victim's request, order a person
40 indicted or formally charged with, or a juvenile charged with
41 delinquency for an act which, if committed by an adult, would
42 constitute any offense, other than aggravated sexual assault,
43 sexual assault or aggravated criminal sexual contact as provided
44 in section 1 of this act, to submit to an approved serological test
45 for sexually transmitted diseases under the following
46 circumstances:

1 (1) If the commission of the offense involved or was likely to
2 involve the transmission of bodily fluids; or

3 (2) If, in the course of the commission of the offense, including
4 the immediate flight thereafter or during any investigation or
5 arrest related to that offense, a law enforcement officer, a
6 victim of the offense or any other person suffered a prick from a
7 hypodermic needle, provided there is probable cause to believe
8 that the defendant is an intravenous user of controlled dangerous
9 substances and the person who suffered the prick requests the
10 court to order the test. The prosecutor shall advise the victim,
11 or the person who suffered a needle prick, that this testing
12 procedure is available.

13 "Sexually transmitted diseases" shall include, but not be
14 limited to, venereal disease such as chancroid, gonorrhea,
15 syphilis, herpes virus or any of the varieties or stages of such
16 diseases; Hepatitis B; infection by the acquired immunodeficiency
17 syndrome (AIDS) or HIV infection (infection with the human
18 immunodeficiency virus or any related virus identified as a
19 probable causative agent of AIDS).

20 "Formal charge" includes a proceeding by accusation in the
21 event that the defendant has waived his right to an indictment.

22 b. The results of any serological test ordered pursuant to this
23 section shall be disclosed to the court which ordered the test, the
24 person tested and the person requesting the test and shall be
25 made part of the defendant's criminal or juvenile record. In the
26 case of a juvenile, the results shall be disclosed also to the
27 juvenile's parent or guardian. If the results of the serological
28 test ordered pursuant to this section are positive for sexually
29 transmitted disease, the results shall not provide the basis for a
30 subsequent criminal proceeding for knowingly committing an act
31 of sexual penetration while infected with a venereal disease
32 pursuant to N.J.S.2C:34-5.

33 3. a. If the results of a serological test ordered pursuant to
34 section 1 or section 2 of P.L. , c. (C.)(now pending before
35 the Legislature as this bill) are positive, the results shall be
36 forwarded to the Department of Health together with the name
37 and address of the person tested and any other information
38 requested by the Department.

39 b. The Commissioner of the Department of Health shall
40 maintain a record of the names and addresses forwarded to him
41 pursuant to subsection a. of this section. These records shall not
42 be open to any person other than personnel within the
43 Department of Health.

44 c. A victim of aggravated sexual assault, sexual assault or
45 aggravated criminal sexual contact if the commission of the
46 offense involved, or was likely to involve, the transmission of
47 bodily fluids; a victim of any other offense which involved, or was
48 likely to involve, the transmission of bodily fluids, or a person
49 who suffered a needle prick in accordance with the circumstances
50 set out in section 2 of this act shall be provided by the
51 Commissioner of the Department of Health with counseling
52 regarding HIV disease and AIDS and Hepatitis B, with testing for
53 these diseases if requested and with referral for appropriate
54 health care and support services.

1 d. The Commissioner of the Department of Health may notify
2 persons who tested positive for any other sexually transmitted
3 disease of available treatment for the disease and any other
4 information which the Commissioner deems appropriate.

5 4. a. The Commissioner of the Department of Health shall
6 approve satisfactory techniques, methods and facilities for the
7 serological testing for infection by the acquired
8 immunodeficiency syndrome (AIDS), HIV infection (infection with
9 the human immunodeficiency virus or any related virus identified
10 as a probable causative agent of AIDS) and all other sexually
11 transmitted diseases as required pursuant to section 1 and section
12 2 of P.L....., c.... (C.....) (now pending before the Legislature as
13 this bill); ascertain the qualifications and competence of
14 individuals to conduct and evaluate the serological testing, and
15 certify these individuals. Certification shall be subject to
16 termination, revocation or suspension at the discretion of the
17 Commissioner.

18 b. The Commissioner may by regulation add to the list of
19 sexually transmitted diseases provided in section 1 and section 2
20 of P.L. , c. (C.)(now pending before the Legislature as
21 this bill).

22 5. The Commissioner of Health shall promulgate rules and
23 regulations in accordance with the "Administrative Procedure
24 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the
25 purposes of this act.

26 6. This act shall take effect on the 90th day following
27 enactment, except for sections 4 and 5 which shall take effect
28 immediately.

29
30

31 STATEMENT

32

33 This bill would require a person indicted for, or formally
34 charged with, aggravated sexual assault, sexual assault or
35 aggravated criminal contact if these offenses involved, or were
36 likely to involve, the transmission of bodily fluids, to be tested by
37 means of an approved serological test for diseases which are
38 transmitted by these means, if the victim requests. The same
39 provision is made with respect to any offense involving the
40 exchange of bodily fluids or the likelihood of that exchange or for
41 any offense if, in the course of the commission of the offense,
42 including the immediate flight thereafter or during any
43 investigation or arrest related to that offense, a law enforcement
44 officer, a victim of the offense or any other person suffered a
45 prick from a hypodermic needle, provided there is probable cause
46 to believe that the defendant is an intravenous user of controlled
47 dangerous substances and the person who suffered the prick
48 requests the court to order the test. The prosecutor shall advise
49 the victim, or the person who suffered a needle prick, that this
50 testing procedure is available for diseases which are transmitted
51 by these means. These provisions are made applicable also to
52 juveniles charged with acts of delinquency which, if committed
53 by an adult, would constitute these offenses.

54 The defendant would be tested for AIDS, for other sexually

1 transmitted diseases and for Hepatitis B.

2 Under the bill, the victim, or the person suffering the needle
3 prick, and the defendant would be informed of the test results. In
4 the case of a juvenile, the juvenile's parent or guardian would be
5 advised as well. Positive test results may not be used against a
6 defendant in a subsequent criminal proceeding for knowingly
7 committing an act of sexual penetration while infected with
8 venereal disease. The victim or other person would be provided
9 with counseling regarding HIV disease and AIDS and Hepatitis B
10 testing for these diseases, if requested, and with referrals for
11 appropriate health care and support services.

12 The Department of Health would be notified of any positive
13 test result and a positive test result would also become part of
14 the defendant's criminal or juvenile record.

15 The Commissioner of the Department of Health is given
16 rule-making authority to implement the act and to add to the list
17 of sexually transmitted diseases.

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22 Requires persons charged with offenses to be tested for AIDS,
23 sexually transmitted diseases and Hepatitis B in certain
24 circumstances.

ASSEMBLY, No. 220

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Assemblymen CATANIA and ZECKER

1 AN ACT requiring testing for the AIDS virus in persons arrested
2 for certain offenses and supplementing Title 2A of the New
3 Jersey Statutes and Title 26 of the Revised Statutes.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. a. Any person arrested for a violation of N.J.S.2C:14-2,
8 N.J.S.2C:14-3 or N.J.S.2C:34-1 or N.J.S.2C:35-5 or N.J.S.
9 2C:35-10 or any of the provisions of chapter 36 of Title 2C of the
10 New Jersey Statutes, may voluntarily submit to an approved
11 serological test for antibodies to human T-cell lymphotropic
12 virus, type III, the causative agent for acquired immunodeficiency
13 syndrome (AIDS).

14 b. In addition to any disposition made pursuant to the
15 provisions of N.J.S.2C:43-2, any person convicted of an offense
16 under N.J.S.2C:14-2, N.J.S.2C:14-3, N.J.S.2C:34-1,
17 N.J.S.2C:35-5, N.J.S.2C:35-10 or any of the provisions of chapter
18 36 of Title 2C of the New Jersey Statutes, shall be required to
19 submit to an approved serological test for antibodies to the
20 human T-cell lymphotropic virus, type III, the causative agent for
21 acquired immunodeficiency syndrome (AIDS) unless the person
22 has voluntarily submitted to such a test pursuant to subsection a.
23 of this section, and shall be assessed a penalty of \$10.00.

24 c. Any person who provides proof of a positive serological test
25 for antibodies to the human T-cell lymphotropic virus, type III,
26 shall be exempt from the provisions of this act.

27 d. The prosecuting authority shall make positive test results
28 obtained pursuant to this section part of a convicted person's
29 criminal history record.

30 2. The person evaluating the results of the serological test for
31 antibodies to human T-cell lymphotropic virus, type III, the
32 causative agent for acquired immunodeficiency syndrome (AIDS),
33 required pursuant to section 1 of P.L....., c..... (C.....)
34 (now pending before the Legislature as this bill), shall forward to
35 the prosecuting authority the test results, and the prosecuting
36 authority shall notify the State Department of Health of the
37 name and address of any person with positive test results on
38 forms prescribed by the State Commissioner of Health for this
39 purpose and shall provide any other relevant information
40 requested by the commissioner. The prosecuting authority shall
41 immediately notify the arrested or convicted person and the
42 victim of the offense if the arrested or convicted person tests
43 positive for AIDS. Persons who perform the serological test at
44 the request of a law enforcement officer shall be entitled to
45 immunity under the provisions of P.L.1986, c.189 (C.2A:62A-10
46 et seq.).

1 3. a. The commissioner shall maintain a record of the names
2 and addresses forwarded to him pursuant to section 2 of this act.
3 These records shall not be open to any person other than those
4 within the State Department of Health.

5 b. The commissioner shall notify these persons when treatment
6 for AIDS becomes available and may notify them of any other
7 information concerning AIDS which he deems appropriate.

8 c. The commissioner shall develop a program for testing the
9 victim of the offense.

10 d. The commissioner shall develop a counseling program for
11 the victim of the offense who tests positive for AIDS.

12 4. The commissioner, after consultation with the Attorney
13 General, shall approve satisfactory techniques, methods and
14 facilities for the serological testing required pursuant to section
15 1 of P.L. c. (C. now pending before the Legislature
16 as this bill); ascertain the qualifications and competence of
17 individuals to conduct and evaluate the serological testing; and
18 certify these individuals. Certification shall be subject to
19 termination, revocation or suspension at the discretion of the
20 commissioner. The commissioner shall prescribe a uniform form
21 for reports of the results of the serological testing to be used by
22 persons acting in accordance with the provisions of this act. The
23 forms shall be sequentially numbered. Sufficient forms shall be
24 distributed to all approved testing facilities.

25 5. The commissioner shall promulgate rules and regulations in
26 accordance with the "Administrative Procedure Act," P.L.1968,
27 c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this act.

28 6. This act shall take effect on the 90th day after enactment,
29 except for sections 4 and 5 which shall take effect immediately.

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STATEMENT

This bill permits persons arrested for sexual assault, criminal sexual contact, prostitution and certain violations of the "Comprehensive Drug Reform Act of 1987," P.L.1987, c.106 (N.J.S.2C:35-1 et al.) to voluntarily submit to an approved serological test for the AIDS virus, and requires such testing if the person is convicted. Positive test results of convicted persons shall become part of that individual's criminal history record. Such test results are to be forwarded to the State Department of Health. The State Commissioner of Health is to maintain a record of the names and addresses reported and is required to notify these people when treatment for AIDS becomes available.

The commissioner shall develop a testing program for the victims of the offenses as well as a counseling program for victims who test positive for AIDS. After consultation with the Attorney General, the commissioner is required to approve the techniques, methods, and facilities for the testing. In addition thereto, the commissioner in consultation with the Attorney General shall ascertain the qualifications of those individuals who conduct and evaluate the test results and certify those individuals.

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Concerns testing of persons arrested or convicted of certain crimes for AIDS.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 897 and 220 (ACS)

STATE OF NEW JERSEY

DATED: FEBRUARY 22, 1993

The Assembly Appropriations Committee reports favorably the Assembly Committee Substitute for Assembly Bill Nos. 897 and 220 (ACS).

Pursuant to this Assembly Committee Substitute for Assembly Bill Nos. 897 and 220 (ACS), a court is required, upon the application of a prosecutor and upon a victim's request, to order a person convicted, indicted or formally charged for aggravated sexual assault or sexual assault, or a juvenile charged with delinquency or adjudicated delinquent for the commission of either of these two crimes, to be tested for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS.

The test would be performed by the Department of Corrections, or by a licensed health care provider or facility. Repeat and confirmatory tests would be ordered by the court when medically necessary.

The Office of Victim-Witness Advocacy in the Division of Criminal Justice in the Department of Law and Public Safety would reimburse the Department of Corrections (DOC) or the Department of Health (DOH) upon request for the cost of testing offenders. The provision of law concerning the Victim and Witness Advocacy Fund is amended to permit this expenditure of funds. In the alternative, a court may order an offender at the time of sentencing to pay for the test.

The bill requires the Office of Victim-Witness Advocacy to provide counseling, assistance in securing testing, assistance in applying for compensation through the Violent Crimes Compensation Board and other appropriate services to any victim of a sexual assault. Such services may also be provided to any victim of a crime where risk of disease transmission is indicated.

In order to avoid the loss of 10% of federal grants currently received by the State for victim support services, a state must enact a statute requiring persons convicted of sexual assault to be tested at the victim's request for AIDS or HIV infection. Test results are to be provided to both the offender and victim and a state is required to provide victims of such offenses with counseling, testing and other appropriate support services. Such a statute must be enacted by October 1993. This bill would meet that federal requirement.

A victim may obtain any of the services required by the federal law from a combination of sources including the Office of Victim-Witness Advocacy, DOH Rape-Care programs, and the Violent Crimes Compensation Board. These existing programs would continue to be the primary methods of providing the services to the victim.

FISCAL IMPACT

According to the Division of Criminal Justice in the Department of Law and Public Safety, the enactment of this bill would avoid the loss in the next federal fiscal year of 10% (or \$1.2 million) of federal grants received by the State for victim support services.

According to the division, the actual percentage of cases in which a victim would request testing of a criminal offender for AIDS or HIV infection is unknown; however, an estimate can be made based on the number of convictions annually. There were approximately 1,300 arrests for sexual assault in the State for the calendar year 1992. Assuming an unlikely 100% request rate, assuming that approximately 1,300 persons are arrested for sexual assault each year and assuming all offenders are tested at the victim's request, the division estimates the cost for all initial tests would be approximately \$13,000, using figures for the cost of testing provided DOH.

The division anticipates that most of these tests can be performed by DOC. DOC already tests inmates for AIDS and HIV infection on a voluntary basis and may be able, according to the division, to accommodate the additional testing required under this bill.

ASSEMBLY JUDICIARY, LAW AND PUBLIC
SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY, Nos. 897 and 220

STATE OF NEW JERSEY

DATED: APRIL 6, 1992

The Assembly Judiciary, Law and Public Safety Committee reports favorably an Assembly Committee Substitute for Assembly Bills Nos. 897/220.

This substitute would require a person convicted of aggravated sexual assault or sexual assault, or a juvenile adjudicated delinquent for an act which if committed by an adult would constitute those two crimes, to be tested by means of an approved serological test for sexually transmitted diseases, if the victim requests. The substitute provides that for any offense within the meaning of subsection k. of N.J.S.2C:1-14 for which an adult is indicted or formally charged or a juvenile is charged with an act of delinquency for an act which, if committed by an adult, would constitute any offense within the meaning of subsection k. of N.J.S.2C:1-14 the court shall order this test under the following circumstances:

(1) Upon the victim's request, if the commission of the offense involved or was likely to involve the transmission of bodily fluids under circumstances which, if the charged person were infected, demonstrate a risk of contracting a sexually transmitted disease; or

(2) If, in the course of the commission of the offense, including the immediate flight thereafter or during any investigation or arrest related to that offense, a law enforcement officer, a victim of the offense or any other person suffered a prick from a hypodermic needle in the defendant's possession and the person who suffered the prick requests the court to order the test. The prosecutor shall advise the victim, or the person who suffered a needle prick, that this testing procedure is available in all these circumstances.

The substitute differs somewhat from the bill in its original form in this regard. The bill did not address testing upon conviction or an adjudication of delinquency which has been included now for aggravated sexual assault and sexual assault regardless of any showing that the offense involved or was likely to involve the transmission of bodily fluids. This requirement comports with requirements for states for eligibility for Drug Control and System Improvement Formula Grants pursuant to 42 U.S.C.A.3756(f). For any other offenses for which a person is indicted or formally charged, or charged with an act of delinquency, the court shall order testing if (1) the victim requests and the commission of the offense involved or was likely to involve the transmission of bodily fluids under circumstances which demonstrate a risk of contracting a sexually transmitted disease; or (2) any person suffered a prick from a hypodermic

needle in the defendant's possession and the person who suffered the prick requests the test. Under these provisions a person indicted for or charged with aggravated sexual assault of sexual assault, or criminal sexual contact as the bill originally provided, or any other offense, may be tested prior to conviction if the commission of the offense involved or was likely to involve the transmission of bodily fluids under circumstances which, if the charged person were infected, demonstrate a risk of contracting a sexually transmitted disease.

The substitute includes the provision that any order issued shall include a requirement that follow-up tests for HIV infection shall be performed six months and 12 months after the date of the initial test, if necessary after the committee heard testimony indicating that a single, initial test for HIV infection may not show the infection.

The results of any serological test ordered pursuant to this act shall be forwarded to the Department of Health, together with the name and address of the person tested and any other information requested by the department. The bill in its original form would have forwarded the results to the court. The Department of Health shall notify the person tested, the person who requested the test, and if either is a juvenile, the juvenile's parent or guardian of the test results. If the results of the serological test ordered pursuant to this act are positive for sexually transmitted disease, the results shall not be used in any criminal, quasi-criminal or juvenile proceeding concerning the alleged offense for which testing was ordered.

The Commissioner of the Department of Health shall maintain a record of the names and addresses forwarded and these records shall not be open to any person other than personnel within the Department of Health. The court shall order all persons, other than the test subject, who receive test results pursuant to this act to maintain the confidentiality of identifying information. With respect to confidentiality, the committee noted that it is not the intention of the committee to infringe in any manner on a person's ability to communicate freely with a physician about the results of the test and possible courses of treatment. The substitute changes the original provision that the test results could be made part of a criminal or juvenile record.

A person at whose request a test is ordered shall be provided by the Commissioner of the Department of Health with counseling regarding HIV infection and AIDS and Hepatitis B and with referral for appropriate health care and support services.

The Commissioner of the Department of Health may notify persons who tested positive for any other sexually transmitted disease of available treatment for the disease and any other information which the Commissioner deems appropriate.

The substitute added a new subsection to provide that persons who perform the serological testing in accordance with the provisions of this act are entitled to immunity under the provisions of P.L.1986, c.189 (C.2A:62A-10 et seq.).

The Commissioner of the Department of Health shall approve satisfactory techniques, methods and facilities for the serological testing for AIDS (acquired immune deficiency syndrome), HIV infection (infection with the human immunodeficiency virus or

any other related virus identified as a probable causative agent of AIDS) and all other sexually transmitted diseases.

The Commissioner of the Department of Health is given rule-making authority to implement the act and to add to the list of sexually transmitted diseases. The substitute provides a definition of this term.

SENATE JUDICIARY COMMITTEE
STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 897 and 220
STATE OF NEW JERSEY

DATED: JUNE 14, 1993

The Senate Judiciary Committee reports favorably Assembly Committee Substitute for Assembly Bill Nos. 897 and 220.

Under Assembly Committee Substitute for Assembly Bill Nos. 897 and 220, a court is required, upon the application of a prosecutor and upon a victim's request, to order a person convicted, indicted or formally charged for aggravated sexual assault or sexual assault, or a juvenile charged with delinquency or adjudicated delinquent for the commission of either of these two crimes, to be tested for acquired immune deficiency syndrome (AIDS) or infection with the human immunodeficiency virus (HIV) or any other related virus identified as a probable causative agent of AIDS.

The test would be performed by the Department of Corrections, or by a licensed health care provider or facility. Repeat and confirmatory tests would be ordered by the court when medically necessary.

The Office of Victim-Witness Advocacy in the Division of Criminal Justice would reimburse the Department of Corrections (DOC) or the Department of Health (DOH) upon request for the cost of testing offenders. In the alternative, the substitute provides that a court may order an offender at the time of sentencing to pay for the test.

The bill requires the Office of Victim-Witness Advocacy to provide counseling, assistance in securing testing, assistance in applying for compensation through the Violent Crimes Compensation Board and other appropriate services to any victim of a sexual assault. Such services may also be provided to any victim of a crime where risk of disease transmission is indicated.

In order to avoid the loss of federal grants currently received for victim support services, states are required to enact a statute requiring persons convicted of sexual assault to be tested at the victim's request for AIDS or HIV infection. Test results are to be provided to both the offender and victim and a state is required to provide victims of such offenses with counseling, testing and other appropriate support services. Such a statute must be enacted by October 1993. ACS for 897 and 220 would meet that federal requirement.

FISCAL NOTE TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 897 and 220

STATE OF NEW JERSEY

DATED: June 10, 1992

Assembly Committee Substitute for Assembly Bill Nos. 897 and 220 of 1992 requires:

- (a) a person convicted of aggravated sexual assaults to be tested for sexually transmitted disease, if the victim requests; and
- (b) persons who are indicted or formally charged with "a disorderly persons or a petty disorderly persons offense" (N.J.S. 2C:1-14K) to be tested for sexually transmitted diseases upon the victim's request (if the offense involved or was likely to involve the transmission of bodily fluids) or if the defendant pricked someone with a hypodermic needle during the investigation or arrest.

The sexually transmitted diseases to be tested for include AIDS or HIV infection, Hepatitis B and various sexually transmitted diseases such as chancroid, gonorrhea, syphilis and the herpes virus. Follow-up tests for HIV infection are to be performed six and 12 months after the initial test.

The Department of Health (DOH) is required to: maintain records on those persons tested; notify various parties about the test results; provide counseling regarding HIV infection and AIDS and Hepatitis B; refer cases of HIV infection, AIDS or Hepatitis B to appropriate health care and support services; and inform persons who test positive for any sexually transmitted disease of available treatment.

The DOH and the Office of Management and Budget have provided fiscal information which is not in accord with the requirements of the Assembly Committee Substitute for Assembly Bill Nos. 897 and 220 of 1992 in that it (a) is limited to testing for the HIV virus and does not include data on the cost of testing for other sexually transmitted diseases; (b) includes costs associated with the treatment of persons with HIV or AIDS; and (c) broadly interprets the crimes subject to testing to include persons arrested for drug offenses and aggravated assaults even though such offenses are generally not disorderly persons or petty disorderly persons offenses.

The costs cited by DOH and OMB are as follows:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Health Administration	\$1,005,000	\$1,053,000	\$1,102,000
Other Services	<u>3,102,000</u>	<u>3,257,000</u>	<u>3,420,000</u>
\$4,107,000	\$4,310,000	\$4,522,000	

DOH's administrative costs primarily involve hiring 26 Public Health Representatives. "Other Services" costs involve HIV tests for up to 20,000 persons and counseling and treatment for an estimated 6,000 persons.

As indicated, the fiscal information provided by DOH and OMB is not in strict accord with the provisions of the Assembly Committee Substitute and, therefore, is not correct.

The Office of Legislative Services cannot accurately estimate the cost of the Substitute, as the number of disorderly persons or petty disorderly persons offenses which involve the pricking of "a law enforcement officer, a victim of the offense or any other person" by a hypodermic needle in the defendant's possession is not known. However, subject to the limitations discussed below, it is conservatively estimated that testing costs would total a minimum of \$220,000. Testing costs are likely to be higher as the cost for certain tests are not known. Also, if testing costs are charged off against federal accounts, testing costs will be higher as the federal government is billed for fringe benefits. The following assumptions are used in deriving this estimate:

1. There were about 220 convictions during 1990 under N.J.S.2C:14-2a. and c.

2. Only persons charged with the disorderly persons or petty disorderly persons sex offenses are considered. In 1990, there were nearly 5,000 arrests for such offenses and it assumed that such persons were all indicted or formally charged. (This excludes a significant number of disorderly persons or petty disorderly persons offenses such as "assault," "bigamy," "criminal mischief," etc. which might be subject to the Substitute's provisions.)

3. The unit cost of the various tests are as follows:

ELISA (for HIV) - \$4.75

Confirmatory HIV - \$20.41

Syphilis Initial - \$1.48

Syphilis Confirmatory - \$7.29

Gonorrhea - \$2.54

Chancroid - Not available

Herpes - Not available

Hepatitis B - \$20.00

4. (a) 6 percent of all persons tested for HIV/AIDS will test positive and be subject to further tests and follow-up tests will be conducted six and 12 months after the initial test. (The 6 percent figure represents the number which DOH reports tested positive in its various programs. It is also noted that the HIV virus may go undetected for up to 10 years.)

(b) 7 percent of all persons tested for syphilis will test positive and will be subject to a confirmatory test.

(c) 17 percent of all persons tested for gonorrhea will test positive and will be subject to a confirmatory test.

5. Existing DOH staff and staff at various programs will provide counseling and referral information to persons with HIV, AIDS, Hepatitis B or other sexually transmitted diseases.

6. Treatment costs will be absorbed by available funding. No new treatment costs will be incurred, as the Substitute does not mandate that treatment be provided.

This fiscal note has been prepared pursuant to P.L.1980, c.67.