

Measure R391

INSTRUCTIONS:

Please carefully read the following description of a ballot measure that was written by a disinterested expert. Feel free to take notes or outline passages as you read.

This should take approximately 10 minutes.

BALLOT MEASURE R391

BACKGROUND

Communicable Diseases. State law gives health officials the authority to take certain actions to prevent the spread of communicable diseases such as diphtheria, typhoid, tuberculosis, and various venereal diseases, among others. For example, health authorities may isolate certain individuals infected with a communicable disease, if they feel it is necessary in order to protect the health of others, or they may quarantine individuals who have been exposed to an infectious disease. However, the law currently makes no provision for individuals to be tested for any disease against their will. Further, a person's health status is generally held confidential by health authorities. For example, health authorities who treat a person for venereal disease may contact others who have been sexually involved with that person and advise them to see a physician for examination, but officials will not disclose the identity of the person with the venereal disease.

AIDS. Acquired immune deficiency syndrome (AIDS) is a disease that impairs the body's normal ability to resist serious diseases and infections. The disease is caused by a virus—the human immunodeficiency virus (HIV)—that is spread through intimate sexual contact or exposure to the blood of an infected person. At the time this analysis was prepared (June 1988), there was no readily available method to detect whether a person actually has HIV, but a test does exist to detect whether a person has developed antibodies to the virus. The presence of the HIV antibody indicates that the person has been infected with the virus. However, a person may have been infected with the HIV and still have negative test results for HIV antibodies, because it usually takes about six weeks, but can take up to six months or longer, for the antibodies to develop in response to the infection. A person infected with the HIV may or may not develop AIDS after a period of years. There is no known cure for AIDS, which is ultimately fatal.

Although health officials have the authority to take the same actions to prevent the spread of AIDS as for other communicable diseases, specific laws govern HIV testing and confidentiality. They specifically prohibit involuntary HIV testing, and require that results of voluntary tests be kept confidential. A person may not be tested for antibodies to the HIV without his or her written consent, unless the testing is part of a scientific investigation in which blood samples are obtained anonymously. With few exceptions, no one may disclose the results of an HIV antibody test except for physicians who have been authorized in writing by the person tested. Anyone who makes an

unauthorized disclosure may be subject to civil or criminal penalties. In addition, no one can be compelled to identify an individual who has been tested for HIV antibodies in any criminal or other governmental proceeding.

These provisions also apply to inmates housed in state prisons, county jails, and juvenile detention facilities who may be infected with the HIV or any communicable disease.

PROPOSAL

This measure allows courts to require that certain individuals be tested for HIV infection and other communicable diseases without their consent, and permits limited disclosure of the test results, in two situations:

1. Victims of certain sex crimes may obtain a court order requiring the person charged with the crime to be tested for the HIV antibodies and other communicable diseases, if the court determines that there is reason to believe that bodily fluids may have been exchanged during the alleged crime.
2. Peace officers (including city police officers, deputy sheriffs, members of the California Highway Patrol, correctional officers, and certain other types of law enforcement officers), firefighters, or emergency medical workers who have been bitten, scratched, spit upon, or otherwise involved in a potential exchange of blood or other bodily fluids by someone interfering with their duties may obtain a court order requiring the individual to be tested for HIV antibodies and other communicable diseases, if the individual has been charged in a criminal complaint, and if the court determines that there is reason to believe that a transfer of bodily fluids may have occurred.

Under the measure, the court determines which communicable disease tests, in addition to the HIV antibody test, should be administered.

Copies of the test results are to be given to the person requesting the court order, to the person tested, and, if the person tested is in prison, in jail, or in a juvenile detention facility, to the officer in charge of his or her detention or incarceration.

The measure also provides that if medical personnel in prisons, jails, and juvenile detention facilities learn that an inmate of the facility has been exposed to the HIV or other communicable diseases, they must inform the officer in charge of the facility. The officer in charge must then inform all staff and volunteers who may come in contact with that inmate that the inmate has been exposed.

Anyone who deliberately discloses the identity and health status of the person who was tested for HIV antibodies or other communicable diseases, beyond the disclosures required by this measure, is guilty of a misdemeanor, punishable by imprisonment in county jail for up to six months, or by a fine of up to \$1,000, or by both imprisonment and a fine.



STOP!

Please go to the online survey, enter the 4-character code for this ballot measure (printed at the top and bottom of this page) and answer the survey questions.