

ASSEMBLY, No. 2167

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

By Assemblymen BAGGER and AUGUSTINE

1 AN ACT concerning testing of certain adults and juveniles charged,
2 convicted or adjudicated delinquent for certain criminal offenses or
3 acts and supplementing Titles 2A and 2C of the New Jersey
4 Statutes.

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

8
9 1. a. In addition to any other disposition made pursuant to law, a
10 court shall order a person convicted of, indicted for or formally
11 charged with, a criminal offense to submit to an approved serological
12 test for acquired immune deficiency syndrome (AIDS) or infection
13 with the human immunodeficiency virus (HIV) or any other related
14 virus identified as a probable causative agent of AIDS if:

15 (1) in the course of the commission of the offense, including the
16 immediate flight thereafter or during any investigation or arrest related
17 to that offense, a law enforcement officer, the victim or other person
18 suffered a prick from a hypodermic needle, provided there is probable
19 cause to believe that the defendant is an intravenous user of controlled
20 dangerous substances; or

21 (2) in the course of the commission of the offense, including the
22 immediate flight thereafter or during any investigation or arrest related
23 to that offense, a law enforcement officer, the victim or other person
24 had contact with the defendant which involved or was likely to involve
25 the transmission of bodily fluids.

26 The court shall issue such an order only upon the request of the law
27 enforcement officer, victim of the offense or other affected person and
28 upon application of the prosecutor made at the time of indictment,
29 charge or conviction. The person shall be ordered by the court to
30 submit to such repeat or confirmatory tests as may be medically
31 necessary.

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

35 b. A court order issued pursuant to subsection a. of this section
36 shall require testing to be performed as soon as practicable by the
37 Commissioner of the Department of Corrections pursuant to authority

1 granted to the commissioner by sections 6 and 10 of P.L.1976, c.98
2 (C.30:1B-6 and 30:1B-10) or by a provider of health care or at a
3 health facility licensed pursuant to section 12 of P.L.1971, c.136
4 (C.26:2H-12). The order shall also require that the results of the test
5 be reported to the offender and to the appropriate Office of
6 Victim-Witness Advocacy if a victim of an offense is tested. Upon
7 receipt of the result of a test ordered pursuant to subsection a. of this
8 section, the Office of Victim-Witness Advocacy shall provide the
9 victim with appropriate counseling, referral for counseling and if
10 appropriate, referral for health care. The office shall notify the victim
11 or make appropriate arrangements for the victim to be notified of the
12 test result.

13 c. In addition to any other disposition authorized, a court may
14 order an offender at the time of sentencing to reimburse the State for
15 the costs of the tests ordered by subsection a. of this section.

16 d. The result of a test ordered pursuant to subsection a. of this
17 section shall be confidential and a health care provider and employees
18 of the Department of Corrections, the Office of Victim-Witness
19 Advocacy, a health care provider, health care facility or counseling
20 service shall not disclose the result of a test performed pursuant to this
21 section except as authorized herein or as otherwise authorized by law
22 or court order. The provisions of this section shall not be deemed to
23 prohibit disclosure of a test result to the person tested.

24 e. Persons who perform tests ordered pursuant to subsection a. of
25 this section in accordance with accepted medical standards for the
26 performance of such tests shall be immune from civil and criminal
27 liability arising from their conduct.

28 f. This section shall not be construed to preclude or limit any other
29 testing for acquired immune deficiency syndrome (AIDS) or infection
30 with the human immunodeficiency virus (HIV) or any other related
31 virus identified as a probable causative agent of AIDS which is
32 otherwise permitted by statute, court rule or common law.

33
34 2. a. In addition to any other disposition made pursuant to law, a
35 court shall order a juvenile charged with delinquency or adjudicated
36 delinquent for an act which, if committed by an adult would constitute
37 a criminal offense, to submit to an approved serological test for
38 acquired immune deficiency syndrome (AIDS) or infection with the
39 human immunodeficiency virus (HIV) or any other related virus
40 identified as a probable causative agent of AIDS if:

41 (1) in the course of the commission of the act, including the
42 immediate flight thereafter or during any investigation or arrest related
43 to that act, a law enforcement officer, the victim or other person
44 suffered a prick from a hypodermic needle, provided there is probable
45 cause to believe that the juvenile is an intravenous user of controlled
46 dangerous substances; or

1 (2) in the course of the commission of the act, including the
2 immediate flight thereafter or during any investigation or arrest related
3 to that act, a law enforcement officer, the victim or other person had
4 contact with the juvenile which involved or was likely to involve the
5 transmission of bodily fluids.

6 The court shall issue such an order only upon the request of the law
7 enforcement officer, victim of the offense or other affected person and
8 upon application of the prosecutor made at the time of adjudication of
9 delinquency. The juvenile shall be ordered by the court to submit to
10 such repeat or confirmatory tests as may be medically necessary.

11 b. A court order issued pursuant to subsection a. of this section
12 shall require testing to be performed as soon as practicable by the
13 Commissioner of the Department of Corrections pursuant to authority
14 granted to the commissioner by sections 6 and 10 of P.L.1976, c.98
15 (C.30:1B-6 and 30:1B-10) or by a provider of health care or at a
16 health facility licensed pursuant to section 12 of P.L.1971, c.136
17 (C.26:2H-12). The order shall also require that the results of the test
18 be reported to the offender and to the appropriate Office of
19 Victim-Witness Advocacy if a victim of an offense is tested. Upon
20 receipt of the result of a test ordered pursuant to subsection a. of this
21 section, the Office of Victim-Witness Advocacy shall provide the
22 victim with appropriate counseling, referral for counseling and if
23 appropriate, referral for health care. The office shall notify the victim
24 or make appropriate arrangements for the victim to be notified of the
25 test result.

26 c. In addition to any other disposition authorized, a court may
27 order a juvenile at the time of sentencing to reimburse the State for the
28 costs of the tests ordered by subsection a. of this section.

29 d. The result of a test ordered pursuant to subsection a. of this
30 section shall be confidential and a health care provider and employees
31 of the Department of Corrections, the Office of Victim-Witness
32 Advocacy, a health care provider, health care facility or counseling
33 service shall not disclose the result of a test performed pursuant to this
34 section except as authorized herein or as otherwise authorized by law
35 or court order. The provisions of this section shall not be deemed to
36 prohibit disclosure of a test result to the person tested.

37 e. Persons who perform tests ordered pursuant to subsection a. of
38 this section in accordance with accepted medical standards for the
39 performance of such tests shall be immune from civil and criminal
40 liability arising from their conduct.

41 f. This section shall not be construed to preclude or limit any other
42 testing for acquired immune deficiency syndrome (AIDS) or infection
43 with the human immunodeficiency virus (HIV) or any other related
44 virus identified as a probable causative agent of AIDS which is
45 otherwise permitted by statute, court rule or common law.

1 3. This act shall take effect immediately.

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STATEMENT

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6 This bill provides that adults convicted of, indicted for or formally
7 charged with a criminal offense and juveniles charged or adjudicated
8 delinquent for an act which if committed by an adult would constitute
9 a criminal offense, shall be tested for acquired immune deficiency
10 syndrome (AIDS) or infection with the human immunodeficiency virus
11 (HIV) if, in the course of the commission of the offense, including the
12 immediate flight thereafter or during any investigation or arrest related
13 to that offense, a law enforcement officer, the victim or other person
14 suffered a prick from a hypodermic needle, provided there is probable
15 cause to believe that the defendant or juvenile is an intravenous user
16 of controlled dangerous substances or a law enforcement officer, the
17 victim or other person had contact with the defendant or juvenile
18 which involved or was likely to involve the transmission of bodily
19 fluids.

20 The provisions of the bill are similar to the provisions of P.L.1993,
21 c.364 concerning testing of persons convicted, indicted or charged
22 with aggravated sexual assault or sexual assault or charged or
23 adjudicated delinquent for acts which if committed by an adult would
24 constitute those crimes.

25 Performance of the testing requires the issuance of a court order.
26 The court shall issue such an order only upon the request of the law
27 enforcement officer, victim of the offense or other person and upon
28 application of the prosecutor made at the time of indictment, charge,
29 conviction or adjudication of delinquency. Repeat or confirmatory
30 tests as may be medically necessary may be ordered. The court order
31 shall require testing to be performed as soon as practicable by the
32 Commissioner of the Department of Corrections or by a provider of
33 health care or at a health facility licensed pursuant to section 12 of
34 P.L.1971, c.136 (C.26:2H-12). The order shall also require that the
35 results of the test be reported to the offender and to the appropriate
36 Office of Victim-Witness Advocacy if a victim of an offense is tested.
37 A court may order an offender at the time of sentencing to reimburse
38 the State for the costs of the tests.

39 The result of a test shall be confidential and a health care provider
40 and employees of the Department of Corrections and other employees
41 involved shall not disclose the result of a test performed pursuant to
42 this section except as authorized herein or as otherwise authorized by
43 law or court order.

44 Persons who perform these tests in accordance with accepted
45 medical standards for the performance of such tests shall be immune
46 from civil and criminal liability arising from their conduct.

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3 Requires adults and juveniles to be tested for AIDS and HIV infection

4 under certain circumstances involving the commission of certain

5 criminal offenses or acts.

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