

*Policy*

DEPARTMENT: County Counsel BY: Jeffrey G. Green PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes \_\_\_ No X)

Pass and adopt the Resolution attached hereto that requires HIV testing of inmates, as deemed appropriate by the County Health Officer. Penal Code sections 7500 et seq. allows HIV testing of inmates when requested by law enforcement personnel or a fellow inmate if such a request is approved by the chief medical officer (Health Officer). These sections became inoperative after July 1, 1994, however, SB 728 extended the operation of this program until July 1, 1999 only if the County adopts a Resolution ratifying the provisions of Penal Code sections 7500 et seq.

The District Attorney, Sheriff, and Health Officer all agree that the adoption of such a Resolution would be beneficial and important to law enforcement personnel and the people of Mariposa County.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

None on this action.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

- Adopt Resolution as drafted.
- Do not adopt Resolution. The provisions of Penal Code sections 7500 et seq. would remain inoperative.

COSTS: (X) Not Applicable

A. Budgeted current FY \$ \_\_\_\_\_

B. Total anticipated costs \$ \_\_\_\_\_

C. Required additional funding \$ \_\_\_\_\_

D. Internal transfers \$ \_\_\_\_\_

SOURCE: ( ) 4/5ths Vote Required

A. Unanticipated revenues \$ \_\_\_\_\_

B. Reserve for contingencies \$ \_\_\_\_\_

C. Source description: \_\_\_\_\_

Balance in Reserve for Contingencies, if approved: \$ \_\_\_\_\_

SPECIAL INSTRUCTIONS:  
List the attachments and number the pages consecutively:

Resolution.  
Memo to Christene Johnson from DA Association.  
Memo from Undersheriff Pelk Richards.

\_\_\_\_\_

\_\_\_\_\_

CLERK'S USE ONLY:

Res. No.: 95-198 Ord. No. \_\_\_\_\_

Vote - Ayes: 5 Noes: \_\_\_\_\_

Absent: \_\_\_\_\_ Abstained: \_\_\_\_\_

Approved ( ) Denied ( )

Minute Order Attached ( ) No Action Necessary ( )

The foregoing instrument is a correct copy of the original on file in this office.

Date: \_\_\_\_\_

ATTEST: MARGIE WILLIAMS, Clerk of the Board  
County of Mariposa, State of California

By: \_\_\_\_\_  
Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:

This item on agenda as:

Recommended

Not Recommended

For Policy Determination

Submitted with Comment

Returned for Further Action

Comment: \_\_\_\_\_

\_\_\_\_\_

A.O. Initials: R

MARIPOSA COUNTY RESOLUTION NO. 95-198

RESOLUTION REQUIRING HIV TESTING OF INMATES

WHEREAS, the public peace, health, and safety is endangered by the spread of acquired immune deficiency syndrome (AIDS); and

WHEREAS, the spread of AIDS presents a grave danger to law enforcement personnel who come into contact with arrestees and prisoners infected with the AIDS virus, and

WHEREAS, law enforcement personnel are particularly vulnerable to this danger, due to assaults and other violent acts to which they are exposed in the course and scope of their duties; and

WHEREAS, the protection of the health and safety of these personnel is of great importance to the people of Mariposa County; and

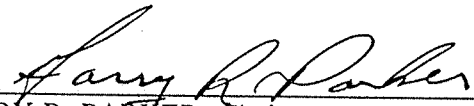
WHEREAS, the testing of individuals in custody of law enforcement for evidence of infection by the HIV virus, AIDS or AIDS related complex would help provide a level of information necessary for effective disease control within custodial institutions, and would help preserve the health of law enforcement personnel, inmates and the public at large; and

WHEREAS, such testing would be undertaken only in those cases deemed appropriate by the chief medical officer and in compliance with all legal requirements, including those provisions pertaining to the confidentiality of test results.

NOW, THEREFORE, BE IT RESOLVED that the provisions of Title 8 of Part 3 of the Penal Code (sections 7500 et seq.) regarding the medical testing of persons therein designated for the HIV virus, AIDS or AIDS related complex, shall be operative in Mariposa County.

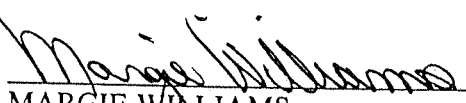
PASSED AND ADOPTED by the Mariposa County Board of Supervisors the 9th day of May, 1995 by the following vote:

AYES:	REILLY, BALMAIN, STEWART, PARKER, TABER
NOES:	NONE
ABSENT:	NONE
ABSTAINED:	NONE

  
\_\_\_\_\_  
GARRY R. PARKER, Chairman  
Board of Supervisors

ATTEST:

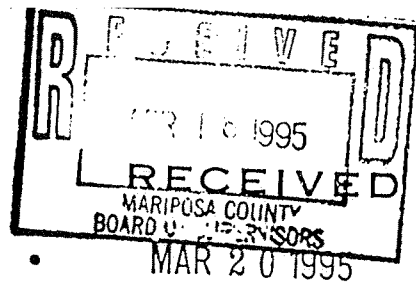
APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
MARGIE WILLIAMS  
Clerk of the Board

  
\_\_\_\_\_  
JEFFREY G. GREEN  
County Counsel



California District Attorneys Association



• M E M O R A N D U M •

MARIPOSA COUNTY D.A.  
CRIMINAL DIVISION

## IMMEDIATE ATTENTION REQUIRED

March 15, 1995

TO: ALL ELECTED DISTRICT ATTORNEYS, CITY ATTORNEYS, AND CITY PROSECUTORS

FROM: GREGORY D. TOTTEN, Executive Director *G. T.*

RE: HIV TESTING OF INMATES - REQUIREMENT OF LOCAL RESOLUTION

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Penal Code section 7500 et seq. provides for the testing of inmates for the HIV virus when requested by law enforcement personnel or a fellow inmate, if such a request is deemed appropriate by the chief medical officer. This section was to sunset on July 1, 1994. As a result of SB 728 (Presley) from last session, the sunset clause has been extended to July 1, 1999. There is, however, a provision in SB 728 of which many counties are apparently not aware, namely Penal Code section 7505.

Section 7505 provides that HIV testing of inmates "shall only be operative in a city, county, or city and county the governing body of which adopts a resolution affirming that it shall be operative in that city, county, or city and county." This provision was amended into SB 728 on August 8, 1994 while the bill was on the Assembly floor. We have been told by the Department of Corrections that the amendment was placed in the bill at the request of the Governor's office to avoid the program from being considered a state mandate. Apparently, counties such as Los Angeles had been billing the state for the cost of the testing.

We would strongly recommend that each district attorney and city attorney office determine immediately whether their county has such a resolution in place. If your county does not have an enabling resolution, attached is a sample resolution drafted by the Ventura County District Attorney's office.

If I can answer any further questions, please do not hesitate to contact me.

GDT/ar

## CHAPTER 1190

An act to amend Sections 1365 and 7555 of, and to add Sections 1366 and 7505 to, the Penal Code, relating to prisons, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

## LEGISLATIVE COUNSEL'S DIGEST

SB 728, Presley. Prisons: experimental treatment of sex offenders: HIV testing.

(1) Existing law requires the State Department of Mental Health to develop a voluntary experimental treatment program for persons convicted of specified sex offenses, which shall remain operative until June 30, 1995.

This bill would extend the operation of this program to January 1, 1998.

(2) Existing law sets forth procedures for requiring HIV testing of an inmate of any state or local correctional institution, a person not in a correctional institution who has been arrested or taken into custody, and a person on probation or parole, and provides that those provisions shall remain operative only until July 1, 1994.

This bill would make those provisions operative in a city, county, or city and county only when its governing body adopts a resolution affirming that the provisions shall be operative in that city, county, or city and county, and would extend the operation of those provisions to July 1, 1999.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1365 of the Penal Code is amended to read: 1365. The program described in Section 1364 shall be established according to a valid experimental design in order that the most effective, newest, and promising methods of treatment of sex offenders may be rigorously tested. The State Department of Mental Health shall submit an evaluation report to the Legislature by July 1, 1985. Subsequent evaluation reports shall include treatment outcome measures and shall be submitted every two years thereafter until the termination of the program. The program established pursuant to Section 1364 shall terminate on January 1, 1998.

SEC. 2. Section 1366 is added to the Penal Code, to read:

1366. This chapter is repealed on January 1, 1998, unless a later enacted statute, which becomes effective on or before January 1,

1998, deletes or extends that date.

SEC. 3. Section 7505 is added to the Penal Code, to read:

7505. This title is intended to provide the authority for correctional, custodial, and law enforcement agencies to perform medical testing for the purposes specified herein. However, notwithstanding any other provision of this title, this title shall only be operative in a city, county, or city and county the governing body of which adopts a resolution affirming that it shall be operative in that city, county, or city and county.

SEC. 4. Section 7555 of the Penal Code is amended to read: 7555. This title shall remain operative only until July 1, 1999, and as of January 1, 2000, is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends the dates upon which this title becomes inoperative and is repealed.

Notwithstanding this section, whenever, prior to July 1, 1999, a law enforcement agency employee has filed a report pursuant to Section 7510, or a request for a human immunodeficiency virus (HIV) test has been filed pursuant to Section 7512, or any other procedure for requiring a test has been commenced pursuant to this title, the proceedings shall be permitted to continue on or after July 1, 1999, until they have been concluded.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

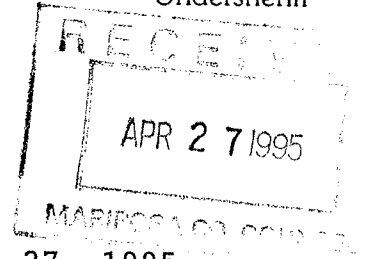
In order to continue the operation of provisions enacted to reduce the spread of AIDS in correctional institutions, which would otherwise become inoperative on July 1, 1994, it is necessary that this act go into immediate effect.



# Office Of The Sheriff - Coroner

ROGER MATLOCK  
Sheriff-Coroner

C. A. "PELK" RICHARDS  
Undersheriff



April 27, 1995

TO: Jeffrey Green, County Counsel  
FROM: Pelk Richards, Undersheriff  
RE: HIV Testing of Inmates - Requirement of Local Res.

Dear Jeff,

I have reviewed the information concerning the HIV Testing of Inmates. Additionally, I have spoken to our Jail Lieutenant and we both agree that a similar Resolution as drafted by Ventura County would be beneficial.

Very truly yours,

A handwritten signature in cursive script that reads "Pelk Richards".

Pelk Richards  
Undersheriff

RESOLUTION OF THE BOARD OF SUPERVISORS

COUNTY OF VENTURA

WHEREAS, the public peace, health, and safety is endangered by the spread of acquired immune deficiency syndrome (AIDS); and

WHEREAS, the spread of AIDS presents a grave danger to law enforcement personnel who come into contact with arrestees and prisoners infected with the AIDS virus; and

WHEREAS, law enforcement personnel are particularly vulnerable to this danger, due to assaults and other violent acts to which they are exposed in the course and scope of their duties; and

WHEREAS, the protection of the health and safety of these personnel is of great importance to the people of Ventura County; and

WHEREAS, the testing of individuals in custody of law enforcement for evidence of infection by the HIV virus, AIDS or AIDS related complex would help provide a level of information necessary for effective disease control within custodial institutions, and would help preserve the health of law enforcement personnel, inmates and the public at large; and

WHEREAS, such testing would be undertaken only in those cases deemed appropriate by the chief medical officer and in compliance with all legal requirements, including those provisions pertaining to the confidentiality of test results.

NOW THEREFORE, BE IT RESOLVED that the provisions of Title 8 of Part 3 of the Penal Code (sections 7500 et seq.) regarding the medical testing of persons therein designated for the HIV virus, AIDS or AIDS related complex, shall be operative in Ventura County.

Date: \_\_\_\_\_

\_\_\_\_\_  
CHAIR, BOARD OF SUPERVISORS  
County of Ventura

I hereby certify that the foregoing is a true copy of the resolution adopted by the Board of Supervisors of the County of Ventura on \_\_\_\_\_ by the following vote:

Ayes:  
Noes:  
Absent:

By: \_\_\_\_\_  
Deputy County Clerk  
County of Ventura