

**MARIN COUNTY SHERIFF'S OFFICE  
GENERAL ORDER MANUAL**

**CHAPTER 3 - SAFETY  
GO-03-03  
Page 1 of 7**

**DATE**

**NOVEMBER 3, 1992  
REV. 2/24/93**

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**HIV TEST PETITION**

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**POLICY**

The policy of this Department is to assist the peace officers, fire fighters, emergency medical persons or the victim of specified crimes in their right to have the arrestee tested for the AIDS virus. A safety officer or a victim of a specified crime may claim this right under the authority of the California Health & Safety Code Sections 199.95 through 199.99 and Penal Code Section 1524.1.

**RIGHT TO PETITION COURT**

The Right to petition the court for involuntary testing of a defendant for HIV, AIDS, AIDS related conditions (ARC) and other communicable diseases has been given to:

~~Any~~ victim of one of the following specified sex crimes where a possible transfer of blood, saliva, semen or any other bodily fluid took place between the accused and the victim has the right.

- Penal Code Section 261 - rape;
- Penal Code Section 261.5 - statutory rape;
- Penal Code Section 262 - spousal rape;
- Penal Code Section 266b - abduction for illicit relationship;
- Penal Code Section 266c - sexual relationship because of fraud or false pretense;
- Penal Code Section 296 - sodomy;
- Penal Code Section 288 - lewd or lascivious act with child under 19;
- 266a - oral copulation),

~~And~~ the prosecutor has charged a person with the crime

~~And~~ a possible transfer of blood, saliva, semen or any other bodily fluid took place between you and the accused during commission of the crime, you have the right to petition the court for an order to have the accused's blood tested for the AIDS virus and other communicable diseases. (Health and Safety Code, Section 199.96.

Any peace officer, fire fighter or emergency medical person ~~when the defendant is charged with a crime~~ and it is alleged that the defendant interfered with official duties by biting, scratching, spitting or transferring blood or other bodily fluid. (Health and Safety Code Section 199.97.

**PROCEDURE**

Any member who believes that he/she has the right to petition for communicable disease testing pursuant to Health and Safety Code Section 199.97 shall:

- Immediately report the incident to his/her supervisor.
- Write a crime report.
- File a Worker's Compensation Claim Form.
- Request that the defendant voluntarily consent to a blood test for communicable diseases.

If the defendant consents to a blood test:

The defendant must sign the "Consent to Withdrawal for Blood Testing" form. The defendant must be given a copy of the completed form.

The deputy will make copies and distribute them through inter-office mail in an envelope marked "CONFIDENTIAL" TO:

1. County Health Officer, 20 North San Pedro Road, Suite 2028, San Rafael, CA 94903
2. County Jail Medical Office
3. Attach one to evidence envelope containing the blood.

If the defendant does ~~NOT~~ consent to have his/her blood drawn for the purpose of this test, the "Petition for Order to Test Defendant's Blood" form must be completed.

The Deputy will write in the margin at the top of the Crime/Arrest report, using a red marker, HIV Test requested.

Record's Division will highlight the above on the copy of the report sent to the District Attorney's Office.

#### Custodial Sergeant's Responsibilities

The duty sergeant shall contact the laboratory technician who draws the blood for DUI defendants and request him to come to the jail to draw a Court Ordered HIV blood specimen.

The laboratory technician will draw the blood and transport the blood specimen to the County Laboratory at 920 Grand Ave., San Rafael. When the laboratory is closed, the blood specimen will be given to the duty Sergeant. The Sergeant will place the blood specimen in the locked evidence refrigerator. Notify the Evidence Custodian that the specimen is to be transported to the County lab on the first working day hence.

Upon receiving a Court ordered HIV test, the Sergeant will place the arresting agency's name and case number on it. He will have copies made and distribute as follows:

1. Arresting agency's Records Division
2. County Health Officer, 20 North San Pedro Rd., Suite 2028, San Rafael, CA 94901.
3. County Jail Medical Office
4. Attach one to the blood evidence package.

#### Evidence Custodian Responsibilities

On the first workday after a holiday or weekend, the Evidence Custodian will transfer the blood specimen to the County Medical Clinic Laboratory, 920 Grand Ave., San Rafael.

### **TEST RESULT NOTIFICATION PROCEDURE**

The County Laboratory will transmit the test results to the Chief Health Officer. The Chief Health Officer will give the test results ~~ONLY~~ to the following persons:

- The defendant,
- The individual who filed the petition, and
- The facility commander when the defendant is incarcerated.

The Court shall order all persons, except the defendant, who receive the results to maintain the confidentiality of personal identifying data relating to the test results, except for disclosure, which may be necessary to obtain medical or psychological care or advice. Any peace officer who violates this confidence may be guilty of a misdemeanor.

## Jail Nurse Responsibilities

If the defendant is in custody, the jail nurse will arrange for pre-test counseling for the inmate, ~~even~~ if the blood is obtained prior to the counseling. If the defendant is to be released after the blood specimen is drawn and counseling arrangements cannot be made, the nurse may give the defendant the appointment phone number of the AIDS Test Sites so he or she can arrange for pre-test counseling if they desire.

## Deputy Counseling

The County recommends that the petitioner also receive counseling services.

Counseling services are available through the Confidential Testing Site at the County Health Clinic, 920 Grand Ave., San Rafael, or the petitioner may wish to discuss the defendant's test results with his or her physician.

If the deputy has immediate questions after an exposure he or she may call the Northern California AIDS Hot Line, 1-800-367-2437. Confidential test site 499-6944.

## **NOTIFICATION UPON RELEASE**

In accordance with Penal Code Section 7520, "Upon the release of an inmate from a correctional institution, a medical representative of the institution shall notify the inmate's probation or parole officer where it is the case that the inmate tested positive for infection with HIV, or has been diagnosed as having AIDS or AIDS related conditions. The medical representative shall obtain the latest available medical information concerning any precautions which should be taken under the circumstances, and shall convey that information to the parole or probation officer."

Notification in the Marin County Detention Facilities will be conveyed by the facility-nursing department according to the procedure described below.

- When an inmate is confirmed by testing as being positive for HIV, the Senior RN, Family Nurse Practitioner or Supervising RN shall attach a "Nurses Flag" to the infected inmate's Court Card.
- When the inmate is released from custody, the releasing Deputy shall complete the "Nurses Flag" and return it to the nursing department.
- The Senior RN, FNP or Supervising RN shall send in a sealed envelope marked confidential, the completed notification form (attached) to the inmate's probation or parole officer.
- A copy of the notification shall be placed in the inmate's medical record.

If the name of the inmate's probation officer is unknown, the responsible nurse shall contact the receptionist in the Probation Department and obtain the probation officer's name.

Probation phone number: 499-6599

Probation address: Probation Dept., Room 265, Civic Center.

If the inmate is released on County parole, the nurse shall call the County Parole Office and obtain the name of the inmate's parole officer and his/her address and send the notification form to the officer at their address.

## **RELATED STANDARDS**

## **AFFECTED DIVISIONS**

ALL

## **DATE OF REVISIONS**

11/3/92  
2/24/93

**ATTACHMENTS**

Marin County Sheriff's Office HIV Petition for Order to Test Defendant's Blood Form  
Marin County Sheriff's Office Consent to Withdrawal of Blood and Testing Form

**By Order of**

ROBERT T. DOYLE, SHERIFF

**MARIN COUNTY SHERIFF'S OFFICE**  
**PETITION FOR ORDER TO TEST DEFENDANT'S BLOOD**  
(Health and Safety Code 199.97)

Marin Municipal Court  
Hall of Justice  
San Rafael, CA

Agency's Name: \_\_\_\_\_  
Agency's Case No. \_\_\_\_\_

DEFENDANT'S NAME: \_\_\_\_\_

To the Clerk of the Court:

I declare under penalty of perjury that the following is accurate and true to the best of my knowledge and belief:

1. My name is \_\_\_\_\_.(Print or type name)  
I am a \_\_\_\_\_ (Identify status as peace officer, etc.)
2. On \_\_\_\_\_ (Give date and time) the accused interfered with my official duties as a \_\_\_\_\_ (Identify status as peace officer, etc.) by biting, scratching, spitting or transferring blood or other bodily fluids to me. During commission of the charge offense, \_\_\_\_\_ (Identify the bodily fluid involved) was transferred from the accused to me.
3. **Briefly**, the possible transfer of bodily fluid took place as the result of one or more of the following acts: (Please check (X) one or more.)  
  
 assault or battery;  
 resisting arrest;  
 other (please describe)
4. On the basis of these facts and pursuant to Health and Safety Code Section 199.97, I request that this Court grant my petition for an order to test the accused's blood for the human immunodeficiency virus (HIV) and such other communicable diseases as the Court deems appropriate.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Officer's Signature)

- Distribution
- (a) District Attorney's Office
  - (b) County Health Officer, 20 North San Pedro Rd., San Rafael
  - (c) County Jail Medical Office
  - (d) Agency's Record Division

Note: Write in the margin at the top of the Crime/Arrest Report HIV TEST REQUESTED

OFFICER'S NAME: \_\_\_\_\_  
AGENCY'S NAME: \_\_\_\_\_  
AGENCY'S CASE: \_\_\_\_\_

### CONSENT TO WITHDRAWAL OF BLOOD AND TESTING

I, \_\_\_\_\_ do hereby freely and voluntarily consent to a court order, and the actual, withdrawal of my blood in a medically approved manner for the purpose of testing the blood specimens for medically accepted indications of exposure or infection by Acquired Immunity Deficiency Syndrome (AIDS) virus, AIDS-related conditions, and such communicable diseases for which medically approved testing is readily and economically available.

*Initials*

- \_\_\_\_\_ I understand that California Health and safety code 199.97 requires withdrawal of blood samples only after criminal charges are filed against me.
- \_\_\_\_\_ I consent to the withdrawal and testing of my blood even if criminal charges have not been or will not be filed against me.
- \_\_\_\_\_ I understand that the person requesting the test is required to file a petition with the court which alleges that I interfered with the official duties of a peace officer, fire fighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or other bodily fluids on, upon, or through the skin or membranes of the peace officer, fire fighter, or emergency personnel.
- \_\_\_\_\_ I give up the requirement that a petition be filed with the court.
- \_\_\_\_\_ I understand that if such petition were filed, the court would have to promptly conduct a hearing to determine that probable cause exists to believe that a possible transfer of blood, saliva, semen, or other bodily fluid took place between me and the peace officer, fire fighter, or emergency medical personnel.
- \_\_\_\_\_ I give up my right to such a probable cause hearing before the judge.
- \_\_\_\_\_ I understand that copies of the test results must be sent to me, the person requesting this test, and to his or her employer.
- \_\_\_\_\_ I understand that if I am incarcerated or otherwise detained, that the test results will be given to the officer in charge and the chief medical officer of the facility in which I am incarcerated or detained.
- \_\_\_\_\_ I understand that test results which indicate exposure to or infection by AIDS, AIDS-related conditions, or other communicable diseases must also be transmitted to the State Department of Health Services.
- \_\_\_\_\_ I understand that the court must order all persons who receive test results to maintain the confidentiality of personal identifying data relating to the test results, except for disclosure which may be necessary to obtain medical or psychological care or advice.
- \_\_\_\_\_ I am giving this written consent for withdrawal and testing of my blood freely and voluntarily and without any threats or promises.

Signature: \_\_\_\_\_

Date \_\_\_\_\_, 19 \_\_\_\_, Time

Witnesses: \_\_\_\_\_

Date \_\_\_\_\_, 19 \_\_\_\_, Time

WHEREAS \_\_\_\_\_ has consented to a withdrawal of blood and test in accordance with Health and Safety Code Section 199.95 ~~et seq.~~ IT IS HEREBY ORDERED that his/her blood be withdrawn in a medically approved manner and that it be tested in accordance with the procedure set forth in Health and Safety Code Section 199.95 ~~et seq.~~

Date \_\_\_\_\_, 19

\_\_\_\_\_

JUDGE OF THE MARIN SUPERIOR COURT

DISTRIBUTION:

- (a) DISTRICT ATTORNEY'S OFFICE
- (b) COUNTY HEALTH OFFICER, 20 NORTH SAN PEDRO RD., SAN RAFAEL, CA
- (c) COUNTY JAIL MEDICAL OFFICE
- (d) AGENCY'S RECORD DIVISION