I, March Fong Eu, Secretary of State of the State of California, do hereby certify that the foregoing measures will be submitted to the electors of the State of California at the GENERAL ELECTION to be held throughout the State on November 8, 1988, and that this pamphlet has been correctly prepared in accordance with law.

Witness my hand and the Great Seal of the State in Sacramento, California, this 18th day of August 1988.

March Fong Eu
Secretary of State
Reporting Exposure to AIDS Virus. Initiative Statute

Official Title and Summary Prepared by the Attorney General

REPORTING EXPOSURE TO AIDS VIRUS. INITIATIVE. Requires doctors, blood banks, and others, to report patients and blood donors, whom they reasonably believe to have been infected by or tested positive for AIDS virus, to local health officers. Restricts confidential testing. Requires reporting by persons infected or tested positive. Directs local health officers to notify reported person's spouse, sexual partners, and others possibly exposed. Repeals prohibition on use of AIDS virus tests for employment or insurability. Creates felony for persons with knowledge of infection or positive test to donate blood. Modifies fines and penalties for unauthorized disclosure of AIDS virus test results. Summary of Legislative Analyst’s estimate of net state and local government fiscal impact: Fiscal impact is unknown, possibly tens or hundreds of millions of dollars depending on costs of measures “reasonably necessary” to prevent spread of disease, number and types of cases investigated, testing criminal offenders, and public health care for those denied insurance or employment.

Analysis by the Legislative Analyst

Background

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. An HIV antibody test does exist to detect whether a person has ever been infected with HIV and, as a result, has developed antibodies to it. A person infected with HIV may or may not develop AIDS after a period of years. There is no known cure for AIDS, which is ultimately fatal.

AIDS became a recognized disease in 1981. Since then about 14,000 persons in California have been diagnosed as having the disease, and about 8,000 of them have died. The State Department of Health Services estimates that possibly 500,000 persons in California are infected with HIV. The department estimates that by 1991 a total of approximately 50,000 AIDS cases will have been identified in the 10 years since AIDS became a recognized disease.

Health Officers’ Authority to Prevent the Spread of Communicable Diseases. State law gives health officers broad authority to take actions they believe are necessary to protect the public health and to prevent the spread of communicable diseases such as tuberculosis and various venereal diseases, among others. The kind of action taken by health officers varies, depending on how easily the disease is spread from one person to another. For example, health officers may isolate or quarantine individuals infected with a communicable disease, or exclude them from certain jobs, if the health officer believes it is necessary in order to protect the health of others. Health officers may also investigate cases of communicable diseases in order to contact individuals who may have been exposed to a communicable disease. If a health officer carries out such an investigation, the law requires the infected person’s identity to be kept confidential.

According to the State Department of Health Services, persons who have AIDS and persons who are capable of spreading the HIV are subject to existing communicable disease laws. However, no health officer has ever taken any official action to require persons infected with HIV to be isolated or quarantined, because there is no medical evidence which demonstrates that HIV is spread by casual contact with an infected person. Many health officers, however, have initiated some limited investigations of cases.

Current Testing and Confidentiality Requirements Related to AIDS and HIV Infection. In addition to the laws relating specifically to communicable diseases, there are also laws relating to AIDS and HIV infection. These laws prohibit involuntary HIV antibody testing and require that voluntary test results be kept confidential. These laws also prohibit the use of the HIV antibody test for purposes of determining insurability or employability. With limited exceptions, a person may not be tested for antibodies to HIV without his or her written consent. With few exceptions, no one, except physicians who have been authorized in writing by the person tested, may disclose the results of an HIV antibody test. Anyone making an unauthorized disclosure may be subject to civil penalties or, if the disclosure causes harm to the person tested, the person making the disclosure may be charged with a misdemeanor and punished by imprisonment or a fine, or both. 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, nor can public health records of HIV antibody test results be used in those proceedings.

Current Reporting Requirements for Persons with AIDS and HIV Infection. Current law requires health care providers to report the names of persons with AIDS to local health officers. There are no requirements for reporting the names of persons who have tested positive for HIV infection. However, counties must report to the state the number of cases in which blood tests performed at certain facilities reveal that a person has been infected with HIV.

Existing Laws Governing Investigation of Persons with AIDS and HIV Infection. Although health officers have the authority under existing law to investigate cases of AIDS and HIV infection to identify the sources of infec-

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Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution. This initiative measure amends, adds and repeals sections of the Health and Safety Code, and adds sections to the Penal Code; therefore, existing sections proposed to be deleted are printed in **strikeout type** and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. This initiative and Chapter 1.11 (commencing with Section 190.20) of Part 1 of Division 1 of the Health and Safety Code shall be known and may be cited as the California Physicians for Logical AIDS Response Public Health Act of 1988.

SEC. 2. The people of the State of California find and declare all of the following:

(a) The Surgeon General of the United States, at the request of the President, has reported to the American public that the acquired immune deficiency syndrome (AIDS) epidemic is a major public health issue, and its impact on our society is presently, and will continue to become, increasingly devastating.

(b) The National Academy of Sciences Institute of Medicine has also reported to the American public that if the spread of the virus is not checked the present epidemic will become a world wide catastrophe.

(c) AIDS is a fatal, infectious, and communicable disease, dangerous to the public health.

(d) The provisions of this initiative are necessary for the preservation of public health.

SEC. 3. Section 199.19 is added to Chapter 1.11 (commencing with Section 190.20) of Part 1 of Division 1 of the Health and Safety Code, to read:

199.19. As used in this chapter, “AIDS” means acquired immune deficiency syndrome. For purposes of this chapter, the term “tested positive” refers only to results of a generally acceptable confirmatory test or tests and not to any screening test unless the test is also considered to be a generally acceptable confirmatory test.

SEC. 4. Section 190.20 of the Health and Safety Code is amended to read:

190.20. To protect the privacy of individuals who are the subject of blood testing for **antibodies to the evidence of infection by any probable causative agent of acquired immune deficiency syndrome AIDS** the following shall apply:

Except as provided in this chapter, Section 1603.1, or Section 1603.3, as amended by AB 139 of the 1986-88 Regular Session, no person shall be compelled in any state, county, city, or other local civil, criminal, administrative, legislative, or other proceedings to identify or provide identifying characteristics which would identify any individual who is the subject of a blood test to detect **antibodies to the evidence of infection by any probable causative agent of AIDS**.

SEC. 5. Section 190.21 of the Health and Safety Code is amended to read:

190.21. (a) Any person who, **without written authorization,** negligently discloses results of a blood test to detect **antibodies to the evidence of infection by any probable causative agent of acquired immune deficiency syndrome AIDS** to any third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (c), or except as provided in this chapter, Section 1603.1, or Section 1603.3, shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(b) Any person who, **without written authorization,** willfully discloses the results of a blood test to detect **antibodies to the evidence of infection by any probable causative agent of acquired immune deficiency syndrome AIDS** to any third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (c), or except as provided in this chapter, Section 1603.1, or Section 1603.3, shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who, **without written authorization,** willfully or negligently discloses the results of a blood test to detect **antibodies to the evidence of infection by any probable causative agent of acquired immune deficiency syndrome AIDS** to a third party, in a manner which identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (c), or except as provided in this chapter, Section 190.3.1, or Section 190.3.3, which results in economic, bodily, or psychological harm to the subject of the test, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year or a fine of not to exceed ten thousand dollars ($10,000) less than one thousand dollars ($1,000) or more than five thousand dollars ($5,000) or both.

(d) Any person who commits any act described in subdivision (a) or (b) shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm which is a proximate cause of the act.

(e) Each disclosure made in violation of this chapter is a separate and actionable offense.

(f) The results of a blood test to detect antibodies to the probable causative agent of acquired immune deficiency syndrome, which identifies or provides identifying characteristics of the person to whom the test results apply, shall not be used in any instance for the determination of insurability or suitability for employment.

(g) (f) “Written authorization,” as used in this section, applies only to the disclosure of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.

(h) (g) Nothing in this section limits or expands the right of an injured subject to recover damages under any other applicable law. Nothing in this section shall impose civil liability or criminal sanction for disclosure of the results of tests performed on cadavers to public health authorities or tissue banks.

(i) (h) Nothing in this section imposes liability or criminal sanction for disclosure of a blood test to detect antibodies to the evidence of infection by any probable causative agent of AIDS in accordance with any reporting requirement for a diagnosed case of AIDS by the state department by the State Department of Health Services or the Centers for Disease Control under the United States Public Health Service.

(j) (i) **The state department State Department of Health Services** may require blood banks and plasma centers to submit monthly reports summarizing statistical data concerning the results of tests to detect the presence of viral hepatitis and antibodies to the other blood tests indicative of infection by any probable causative agent of AIDS. This statistical summary shall not include the identity of individual donors or identifying characteristics which would identify individual donors.

(k) (j) “Disclosed,” as used in this section, means to disclose, release, reproduce, disseminate, or otherwise communicate any or all parts of any record orally, in writing, by or electronic means to any person or entity.

SEC. 6. Section 199.22 of the Health and Safety Code is amended to read:

199.22. (a) No Except as provided in this section, no person shall test a person’s blood for evidence which relates to the infection by any probable causative agent of AIDS without the written consent of the subject of the test; and the person giving the test shall have a written statement signed by the subject confirming that he or she obtained the consent from the subject.

This requirement does: This consent shall be no different than is required for any other diagnostic blood test.

(b) When the subject of the test is not competent to give consent, consent may be obtained from the subject’s parent, guardian, conservator, or other person lawfully authorized to make health care decisions for the subject. For purposes of this subdivision, a minor shall be deemed not competent to give consent, unless he or she is legally emancipated.

(c) The requirements of subdivision (a) do not apply to any of the following:

1. A test performed at an alternative site, as established pursuant to Article 8 (commencing with Section 1603) of Chapter 4 of Division 2. This requirement also does not apply to any.

2. Any blood and blood products specified in paragraph (2) of subdivision (a) of Section 1603.1. This requirement does not apply when testing is performed as part of the medical examination performed pursuant to Section 7192.

3. Tests conducted pursuant to Section 1202.1 of the Penal Code.

Nothing in this section shall preclude a medical examiner or other physician and surgeon from ordering or performing a blood test to

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Reporting Exposure to AIDS Virus. Initiative Statute

Argument in Favor of Proposition 102

Do you believe that infection by the AIDS virus should be treated like any other communicable disease and reported to the health department?

PROPOSITION 102 is specifically designed to stop the spread of AIDS. It does this by requiring confidential reporting to public health authorities.

Although AIDS is treatable, there is no cure—yet. But we can stop it from spreading.

Currently, doctors are required to confidentially report to public health authorities cases of venereal disease, such as syphilis. But, if a doctor were to report all who are infected with the AIDS virus, he would be subject to a $10,000 fine and/or up to a year imprisonment.

In short, UNDER CURRENT LAW, IF A DOCTOR TREATS AIDS INFECTION LIKE HE WOULD ANY OTHER DISEASE, HE WOULD COMMIT A CRIME.

Under PROPOSITION 102, persons found to be infected with the AIDS virus would be interviewed by the health department so that others with whom they have had sexual contact or shared drug needles can be confidentially counseled.

PROPOSITION 102 does not call for the quarantine of people with AIDS.

While AIDS is not curable, it is preventable, which is why it is so important to have the health department contact those who have been unknowingly exposed as well as those who have been unknowingly exposing others.

Current AIDS-related public health laws have been politically motivated and simply don’t work.

One fact says it all: THE OVERWHHELMING MAJORITY OF THOSE INFECTED BY THE AIDS VIRUS ARE UNAWARE OF THEIR CONDITION OR THE POTENTIAL THREAT THEY MAY POSE TO OTHERS.

For many decades, our public health officers have been confidentially testing, tracing and counseling those with communicable diseases. THE SYSTEM WORKS.

Rebuttal to Argument in Favor of Proposition 102

Proposition 102 isn’t “good medicine.” It’s a public health nightmare and fiscal disaster.

Don’t be fooled by the proponents’ “medical” arguments. The California Medical Association, California Nurses Association and Health Officers’ Association strongly oppose Proposition 102 as being counterproductive to the medical fight against AIDS.

The argument for Proposition 102 is based on the simple-minded idea that AIDS is “like any other communicable disease.” But all diseases aren’t alike, and public health officials have special strategies for dealing with each of them. Proposition 102 would destroy important policies designed by health experts to stop the spread of AIDS.

The argument for Proposition 102 is packed with mistruths. Proposition 102 wouldn’t “enhance confidentiality”—it actually repeals California’s AIDS confidentiality law. Anonymous AIDS testing has been highly successful in reducing the rate of new infections in high-risk communities. Proposition 102 would reverse this important progress.

Has “contact tracing” driven people “underground,” away from treatment? Of course not. Experience in Colorado with similar laws has shown that many more people have undergone voluntary testing than here in California.

Persons who believe that they may have been exposed to any disease have been able to turn to the public health department in complete reliance upon the time-honored system of confidentiality.

PROPOSITION 102 will enhance confidentiality by expanding the legal definition of the AIDS test.

PROPOSITION 102 will not give your employer the right to test you for AIDS without your consent.

Health and life insurance premiums will likely increase as a result of the AIDS epidemic. PROPOSITION 102 will help keep the cost of insurance down.

With AIDS, the only way to save a life is to prevent infection. That’s what PROPOSITION 102 is all about.

PROPOSITION 102 is both reasonable and effective. It will help stop the spread of a killer disease while respecting the confidentiality of those affected. It will save lives while providing early detection for countless thousands of victims. That’s why thousands of California physicians support PROPOSITION 102.

VOTE “YES” ON PROPOSITION 102. It’s GOOD MEDICINE.

WARREN L. BOSTICK, M.D.
Former President, California Medical Association
Former Dean of the College of Medicine, University of California, Irvine
Former President, American Society of Clinical Pathologists

LAURENCE J. MCNAMEE, M.D.
President, California Physicians for a Logical AIDS Response
Member, Los Angeles County Medical Association Committee on AIDS

PAUL GANN
President, People’s Advocate, Inc.

PROPOSITION 102 wouldn’t keep insurance costs down. It would shift millions of dollars of health care costs to the taxpayers. Proposition 102 wouldn’t prevent employers from forcing their employees to be tested—it repeals the law which prevents involuntary testing.

Proposition 102 would drive potentially infected individuals away from voluntary testing which is linked to counseling to educate them about how not to spread AIDS.

Proposition 102 would cost California taxpayers hundreds of millions of dollars and would only make the epidemic worse.

Vital research, treatment and education programs on AIDS would be closed down, endangering the lives of all Californians. Vote NO on Proposition 102!

LEO MCCARTHY
Lieutenant Governor

LAURENS P. WHITE, M.D.
President, California Medical Association

ROBERT J. MELTON, M.D., M.P.H.
President, Health Officers’ Association of California

Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency
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Argument Against Proposition 102

AIDS is a serious public health crisis. It should not be a political football.

Twice before, Californians have overwhelmingly rejected a misguided initiative on AIDS that was proposed by a politician with no medical expertise. We must do so again.

Proposition 102 must be defeated for the health and safety of all Californians.

This initiative would cripple the efforts of physicians, researchers and public health officials to halt the spread of AIDS. It would only make the epidemic worse.

Proposition 102 is as extreme and irrational as the AIDS Quarantine Initiative (Propositions 64 and 69), which voters defeated by margins of two to one. In fact, the proponent of Proposition 102 was the only major public official to support the Quarantine Initiative.

Like the AIDS Quarantine Initiative, Proposition 102 could cost California taxpayers hundreds of millions of dollars to enforce—money that would be far better spent on legitimate needs, including the prevention and treatment of AIDS. Worse yet, this initiative could cost many Californians their lives by creating a climate of fear that undermines research to find a vaccine and cure for AIDS.

Like the AIDS Quarantine Initiative, Proposition 102 would strongly discourage people from getting tested for AIDS because they could lose their jobs, homes or health care. Thus more people will unknowingly transmit the virus to others and more infected blood will be donated to blood banks. Fewer volunteers will participate in vital research studies and fewer infected people will receive the early treatment which could save their lives.

Proposition 102 is NOT about the reporting of AIDS cases. The law already requires that this be done. Rather, this initiative would require the public reporting of all persons who have positive AIDS antibody tests, tests which aren’t even always accurate.

Public health officials agree that voluntary, anonymous AIDS testing is one of the single greatest factors contributing to the reduction of new infections in high-risk communities. Proposition 102 would take away from medical professionals this vital tool to control the epidemic.

Like the AIDS Quarantine Initiative, Proposition 102 could force thousands of Californians out of their jobs in our schools and food service industries. It could throw many students out of school. None of them are any threat to the public health because medical science has proven that AIDS is not casually contagious.

Like the AIDS Quarantine Initiative, Proposition 102 would create disruption and division in our workplaces, all for no legitimate public health purpose.

Like the AIDS Quarantine Initiative, Proposition 102 would authorize widespread “witch hunts” and invasions of the privacy of Californians. The lives of even those who are perfectly healthy could be ruined by misguided people making irresponsible charges.

Proposition 102 is a punitive, political approach to AIDS that is totally at odds with modern medicine and science. Join us once again in supporting a sane, effective AIDS policy. Send the message again that California voters want medical solutions to AIDS, not politics.

Vote NO on Proposition 102.

LAURENS P. WHITE, M.D.
President, California Medical Association

MARILYN RODGERS
President, California Nurses Association

TOM BRADLEY
Mayor, City of Los Angeles

Rebuttal to Argument

Quarantine is not necessary to stop the spread of AIDS. That’s why PROPOSITION 102 says “nothing contained in this section shall be construed to require the use of quarantine or isolation.” The record is clear.

PROPOSITION 102 is not an AIDS quarantine initiative. To suggest otherwise only adds to the fear and confusion experienced by the victims of this terrible disease. Haven’t they suffered enough?

The purpose of reporting and contact tracing is to let those who are infected know that they pose a risk to others.

Current law calls for reporting of AIDS patients because that is good public health policy. But there are hundreds of thousands of others who carry the AIDS virus, and are contagious, but have not developed the advanced disease, yet.

Doesn’t it make sense for doctors to report these cases, too? Confidential contact tracing is a fair and effective way to balance the rights of victims with the rights of the public. That’s why the nation’s largest medical association has recommended that all states do it.

Opponents to PROPOSITION 102 say that contact tracing will lead to “witch hunts.” We say it’s time to stop peddling such fear and panic.

California’s present AIDS policy was proposed by the current mayor of San Francisco, a “politician without medical expertise.”

It is a miserable failure. PROPOSITION 102 was developed by doctors practicing in communities throughout California. It represents doctors doing what they do best—saving lives.

VOTE “YES” ON PROPOSITION 102.

LARIMORE CUMMINS, M.D.
Chairman, Santa Cruz County Medical Society AIDS Task Force
Former President, Santa Cruz County Medical Society

WILLIAM E. DANNEMEYER
United States Congressman, California

LAWRENCE J. MCNAMEE, M.D.
President, California Physicians for a Logical AIDS Response
Member, Los Angeles County Medical Association Committee on AIDS