

ORDINANCE NO. 10123 (N.S.)

AN ORDINANCE ADDING  
CHAPTER 13, DIVISION 2 OF TITLE 3  
TO THE SAN DIEGO COUNTY CODE OF REGULATORY ORDINANCES,  
RELATING TO MANDATORY TESTING  
OF CRIMINAL DEFENDANTS FOR  
THE HUMAN IMMUNODEFICIENTY VIRUS (HIV)

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that state and local laws do not meet the United States Department of Justice (DOJ) requirements for grant recipients of the Office on Violence Against Women's (OVW) Grants to Encourage Arrest Policies and Enforcement of Protection Orders to which the County is a recipient. To comply with DOJ guidelines, this ordinance requires that the initial process for administering HIV testing occur within 48 hours of the filing of a criminal information or indictment at the request of the victim.

Section 2. Section. 32.1301 of the San Diego County Code is hereby added to read as follows:

SEC. 32.1301. PURPOSE

(a) California law permits the human immunodeficiency virus (HIV) testing of pre-convicted criminal defendants where the criminal defendant is accused of specific sex related crimes against a victim. The State of California does not have a time requirement for such testing.

(b) The United States Department of Justice (DOJ) requires grant recipients of the Office on Violence Against Women's (OVW) Grants to Encourage Arrest Policies and Enforcement of Protection Orders to administer the testing pursuant to a mandatory obligation either through state law or local Ordinance, including the condition that the collection of a blood sample occur within 48 hours of the filing of a criminal information or indictment at the request of the victim. The County is a recipient of this grant.

(c) It is the intent of the Board of Supervisors in enacting this chapter to comply with DOJ guidelines requiring the initial process for administering HIV testing occur within 48 hours of the filing of a criminal information or indictment at the request of the victim.

(d) Testing and disclosure provided in this Chapter benefits the victim of a crime by informing the victim whether the defendant is infected with the HIV virus. It is also the intent of the Board to further the purpose of mandatory HIV testing of criminal defendants to protect the health of victims of crime, those accused of committing a crime and the public at large.

Section 3. Section. 32.1302 of the San Diego County Code is hereby added to read as follows:

SEC. 32.1302. DEFINITIONS.

The following definitions shall apply to this chapter:

(a) "HIV " means infection with the Human Immunodeficiency Virus which, although separate and distinct from a diagnosis of Acquired Immune Deficiency Syndrome, commonly known as AIDS, is a precursor to an AIDS diagnosis.

(b) "Grant" means the United States Department of Justice's (DOJ) Office on Violence Against Women's (OVW) Grants to Encourage Arrest Policies and Enforcement of Protection Orders to which the County is a recipient.

(c) "Guidelines" refers to 42 USCS § 3796hh(d).

(d) "HIV testing" refers to the process in which a blood sample is analyzed by the County of San Diego, Health and Human Services Agency Public Health Laboratory to determine the presence of HIV. The process begins with sample collection in which the collection of the defendant's blood is drawn within 48 hours of the filing of a criminal information or indictment at the request of the victim.

Section 4. Section. 32.1303 of the San Diego County Code is hereby added to read as follows:

SEC. 32.1303. CONDITIONS FOR MANDATORY HIV TESTING OF CRIMINAL DEFENDANTS.

(a) In all cases where a defendant is charged with a crime in which by force or threat of force, the defendant compels the victim to engage in sexual activity, testing of the defendant for the immunodeficiency virus (HIV) shall be administered, at the request of the victim, no later than 48 hours after the filing of the information or indictment. Follow up HIV testing shall be conducted as medically appropriate. Notification of the original test results or results of follow-up tests if applicable shall be provided to the victim or parent or guardian as soon as practicable.

Section 5. Section. 32.1304 of the San Diego County Code is hereby added to read as follows:

SEC. 32.1304. LIABILITY.

There shall be no civil liability created upon the County of San Diego for the failure to administer the testing within 48 hours, unless the failure of the County to test within a reasonable period of time from the request by the victim following the filing of a criminal information or indictment against the defendant is the proximate cause of injury to the victim.

Section 6. Section. 32.1305 of the San Diego County Code is hereby added to read as follows:

SEC. 32.1305. PREEMPTION.

Nothing in this section shall preempt any testing or medical procedure authorized by the laws of the United States, the State of California or the County of San Diego or any testing or medical procedure required by the County Department of Health Services to protect the public health.

Section 7. Section. 32.1306 of the San Diego County Code is hereby added to read as follows:

SEC. 32.1306. AUTOMATIC REPEAL.

Should the State of California establish legislation requiring the collection of blood samples for HIV testing within 48 hours of the filing of a criminal information or indictment at the request of the victim as described in subsection (a), then this Chapter shall be automatically repealed and the state legislation shall govern.

Section 8. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of the Board voting for and against it in the Daily Transcript a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY  
COUNTY COUNSEL

BY

Dana L. Begley, Deputy County Counsel

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of San Diego this 1<sup>st</sup> day of March, 2011.