

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1149

Short Title: Tests to Protect Police Officers.

(Public)

Sponsors: Representatives Balmer; Abernethy, Albertson, Barbee, Beard, Blue, Bowie, Brawley, Brown, Brubaker, Chapin, Creech, Decker, DeVane, Dickson, Diggs, Esposito, L. Etheridge, Flaherty, Foster, Gardner, Grady, Greenwood, Grimmer, Hasty, Hege, Holmes, Howard, Huffman, Hurley, Isenhower, Justus, Kerr, Kimsey, Ligon, Lilley, Loflin, McLaughlin, Miller, Mills, Pope, Privette, Robinson, Sizemore, Stam, Stewart, Weatherly, P. Wilson, G. Wilson, Wood, and Woodard.

Referred to: Judiciary.

April 10, 1989

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT A PERSON WHO MAY HAVE EXPOSED A LAW
2 ENFORCEMENT OFFICER TO THE AIDS VIRUS OR HEPATITIS B VIRUS
3 WHILE THE OFFICER WAS ENGAGED IN OFFICIAL DUTIES MAY BE
4 ORDERED TO SUBMIT TO MEDICAL TESTING FOR THE AIDS VIRUS AND
5 HEPATITIS B VIRUS.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. Chapter 15A is amended by adding a new Article to read:

9 **"ARTICLE 15A.**

10 **"AIDS VIRUS AND HEPATITIS B VIRUS TESTS.**

11 **"§ 15A-284.1. Legislative findings.**

12 The General Assembly finds that the law enforcement officers of North Carolina
13 perform essential functions in protecting the health, safety, and welfare of the State's
14 citizens. The General Assembly further finds that law enforcement officers are
15 frequently exposed to health and safety risks in their profession not encountered by
16 other citizens and therefore are entitled to certain safeguards to protect their health and
17 safety while carrying out their professional responsibilities.

18 **"§ 15A-284.2. AIDS defined.**

1 For purposes of this Article the term 'AIDS' means acquired immune deficiency
2 syndrome.

3 **"§ 15A-284.3. Authority to issue order.**

4 If a law enforcement officer is injured or subjected to physical contact that may
5 transmit disease by a person while the officer is carrying out his or her official duties, an
6 order may be issued by any judge in accordance with this Article to test the person
7 inflicting the injury or contact for infection by the AIDS virus or Hepatitis B virus. For
8 purposes of this Article, 'physical contact that may transmit disease' shall include but is
9 not limited to aggressive conduct such as biting and passive acts such as drug needle
10 pricks resulting from a legal frisk or search conducted by a law enforcement officer or
11 other contact that exposes the officer to the body fluids of the other person.

12 **"§ 15A-284.4. Time of application.**

13 A request for an order may be made by the law enforcement officer after a person is
14 taken into legal custody, arrested, or convicted for the criminal offense during which the
15 possible exposure to the AIDS virus or Hepatitis B virus occurred.

16 **"§ 15A-284.5. Basis for order.**

17 An order may issue only on an affidavit or affidavits sworn to before the judge and
18 establishing the following grounds for the order:

- 19 (1) That while the officer was engaged in his or her official duties the
20 person injured or had physical contact with the law enforcement
21 officer in a manner that may transmit disease;
- 22 (2) That the results of specific medical tests and procedures will be of
23 material aid in determining whether the person named in the affidavit
24 is infected with AIDS virus or Hepatitis B virus.

25 **"§ 15A-284.6. Issuance of order; modification of order.**

26 (a) Upon a showing that the grounds specified in G.S. 15A-284.3 exist, the judge
27 may issue an order requiring the person named in the affidavit to submit to appropriate
28 medical tests and procedures at a designated time and place. Unless a delay will
29 adversely affect the health of the law enforcement officer or general public, the order
30 must be served at least 72 hours before the time designated for the medical tests and
31 procedures.

32 (b) At the request of a person ordered to appear, the judge may modify the order
33 with respect to time and place of appearance whenever it appears reasonable under the
34 circumstances to do so.

35 **"§ 15A-284.7. Failure to appear.**

36 Any person who fails without adequate excuse to obey an order to appear served
37 upon him or her pursuant to this Article may be held in contempt of the court which
38 issued the order.

39 **"§ 15A-284.8. Service of order.**

40 An order to appear pursuant to this Article may be served by a law enforcement
41 officer. The order must be served upon the person named or described in the affidavit by
42 delivery of a copy to him or her personally. The order must be served at least 72 hours
43 in advance of the time of compliance, unless the judge issuing the order has determined,

1 in accordance with G.S. 15A-284.4, that delay will adversely affect the health of the law
2 enforcement officer or the general public.

3 **"§ 15A-284.9. Contents of order.**

4 The order to appear shall be signed by the judge and shall state:

- 5 (1) That the presence of the person named in the affidavit is required for
6 the purpose of permitting medical testing and procedures to determine
7 whether the person is infected with the AIDS virus or Hepatitis B
8 virus;
- 9 (2) The time and place of the required appearance;
- 10 (3) The medical tests and procedures to be conducted, the methods to be
11 used, and the approximate length of time such procedures will require;
- 12 (4) The grounds to suspect that the person named in the affidavit is
13 infected with the AIDS virus or Hepatitis B virus;
- 14 (5) That the person will not be subjected to any interrogation or asked to
15 make any statement during the period of his or her appearance;
- 16 (6) That the results of the medical tests and procedures are confidential as
17 provided by G.S. 130A-143 and may not be used as evidence against
18 the person in a civil or criminal proceeding based on the facts of the
19 incident in which the officer was injured or subjected to the physical
20 contact addressed by the affidavit;
- 21 (7) That the person may request the judge to make a reasonable
22 modification of the order with respect to time and place of appearance,
23 including a request to have any medical test or procedure conducted at
24 his or her place of residence when possible; and
- 25 (8) That the person, if he or she fails to appear, may be held in contempt
26 of court.

27 **"§ 15A-284.10. Implementation of order.**

28 (a) Medical tests and procedures may be conducted by any qualified health
29 professional or other person designated by the judge issuing the order. The extraction of
30 any bodily fluid must be conducted by a qualified member of the health professions, and
31 the judge may require medical supervision for any other medical test or procedure
32 ordered pursuant to this Article when he or she considers such supervision necessary.

33 (b) In conducting authorized medical tests or procedures, no unreasonable or
34 unnecessary force may be used.

35 (c) No person who appears under an order of appearance issued under this
36 Article may be detained longer than is reasonably necessary to conduct the appropriate
37 medical tests and procedures, and in no event for longer than six hours.

38 (d) Any person who resists compliance with the authorized medical testing
39 procedures may be held in contempt of the court which issued the order pursuant to the
40 provisions of G.S. 5A-12(a) and G.S. 5A-21(b).

41 (e) No person may be ordered to undergo a medical test or procedure if he or she
42 was previously subject to a medical test or procedure to determine whether he or she
43 was infected with the AIDS virus or Hepatitis B virus unless there is different evidence

1 which was not reasonably available when the previous tests or procedures were
2 conducted.

3 **"§ 15A-284.11. Return.**

4 Within 30 days after the medical tests or procedures, a return must be made to the
5 judge who issued the order or to a judge designated in the order setting forth the results
6 of the medical tests and procedures obtained from the person named in the affidavit.

7 **"§ 15A-284.12. Results given to person involved and law enforcement officer.**

8 Both the law enforcement officer and the person ordered to submit to the medical
9 tests or procedures shall be provided with a copy of the report of test results findings of
10 the medical proceedings as soon as the reports are available."

11 Sec. 2. This act shall become effective October 1, 1989, and shall apply to
12 acts occurring on or after that date.