

SUBJECT: Allowing HIV test results release upon subpoena in criminal proceeding

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 4 ayes — Herrero, Moody, Shaheen, Simpson

0 nays

3 absent — Canales, Hunter, Leach

SENATE VOTE: On final passage, May 6 — 20-11 (Ellis, Garcia, Hinojosa, Lucio, Menéndez, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: None

BACKGROUND: Health and Safety Code, ch. 81, subch. F deals with tests for HIV and AIDS. Under Health and Safety Code, sec. 81.103, test results are confidential, and a person who possesses or has knowledge of a test result cannot release or disclose the result or allow it to become known except under certain conditions.

DIGEST: SB 779 would make test results under Health and Safety Code, sec. 81.103, subject to release and disclosure in criminal proceedings under the Code of Criminal Procedure's subpoena provisions for both grand jury and other subpoenas. A person releasing or disclosing test results under these provisions in a criminal proceeding would not be subject to criminal or civil liability or professional disciplinary action, except in a case of gross negligence or willful misconduct.

Before entering the results into evidence or releasing or disclosing the test results, a court would have to issue a protective order or take other action to limit the release or disclosure of results. If the result was obtained under a grand jury subpoena, the court would have to issue the order or take action to limit release of the test before it was presented to the grand jury.

This bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**SUPPORTERS
SAY:**

SB 779 would fill a gap in current law that prohibits certain test results from being obtained for use in criminal proceedings. The confidentiality requirement in Health and Safety Code, sec. 81.103 can hinder criminal cases in which the transmission of HIV may be at issue. This problem has been brought to light by sexual assault and other cases in which exposure to HIV was related to an alleged criminal offense.

The bill would address this issue by allowing very limited access to these results for criminal proceedings. The access in the bill would be consistent with federal health care law that protects the privacy of medical records and would better align the handling of these tests with those of other diseases. The results could be accessed only through a subpoena, and both the defense and the prosecution could obtain the information.

The bill would impose additional privacy protections to ensure test results were not used to invade a defendant's privacy. Courts would have to issue protective orders or take other action to limit the release or disclosure, and other provisions in current law would help keep the results confidential.

**OPPONENTS
SAY:**

SB 779 could result in test results obtained under the bill as part of a criminal proceeding being used to stigmatize defendants or to invade their privacy.