**STATE’S PETITION TO COMPEL TEST FOR GONORRHEA ON DEFENDANT**

**Commonwealth of Pennsylvania**

**TO THE HONORABLE\_\_\_\_\_\_\_\_\_\_\_\_\_:**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,** District Attorney of Philadelphia County, by his Assistant, \_\_\_\_\_\_\_\_\_\_\_\_, Child Abuse Unit, respectfully represents the following:

1. D.S., a seven-year-old girl, was diagnosed on July 20, 1990 as having gonorrhea, a sexually transmitted disease.
2. D.S. then revealed that the defendant had sexually assaulted her.
3. The defendant was arrested on August 2, 1990 for charges stemming from the sexual assault of D.S.
4. A preliminary hearing was held on August 10, 1990 at which the defendant was held for court on all charges.
5. The defendant has remained in custody since his arrest of August 2, 1990.
6. It is possible to test the defendant to ascertain if he has gonorrhea that has gone untreated and undetected while he has been incarcerated.
7. The performance of a gonorrhea test upon the defendant is relevant to the inquiry of whether or not the defendant sexually assaulted the complainant. Testing for sexually transmitted diseases has been sanctioned explicitly by come courts. *Daniel v. State,* 536 So. 2d 1319 (Miss. 1988); *In the Matter of Jose Antonio R.,* 496 N.Y.S.2d 683 (N.Y. Fam. Ct. 1985); *State v. Mitchell,* 424 N.W.2d 698 (Wis. 1988); *State v. Morrow*, 334 S.E.2d 344 (Ga. Ct. App. 1985); *State v. Carthan*, 377 So. 2d 308 (La. 1979); *McIntosh v. State*, 443 So. 2d 1275, *rev’d on other grounds*, 443 So. 2d 1283 (Ala. 1983).
8. By comparison, the taking of blood from a defendant for blood typing purposes, when done by a medically trained professional, is a procedure sanctioned by the courts and does not violate either the Fourth or Fifth Amendments of the United States Constitution, *Schmerber v. California*, 384 U.S. 757 (1966); *Commonwealth v. Gordon*, 246 A.2d 325, *cert. Denied,* 394 U.S. 937 (1968); *Commonwealth v. Anderl,* 477 A.2d 1356 (1984); *Commonwealth v. Graves,* 456 A.2d 561 (1983); *Commonwealth v. Funk,* 73 A.2d 688 (1950).

 WHEREFORE, the Commonwealth requests that the Honorable Court order the defendant to allow a trained medical person to perform a test for gonorrhea on the defendant, the results of said test to be forwarded immediately to the District Attorney’s Office and to counsel for the defendant.

 Respectfully submitted,

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 Assistant District Attorney

 Child Abuse Unit