

Senate Bill No. 239

CHAPTER 537

An act to amend Sections 1603.3 and 1644.5 of, to repeal Sections 1621.5, 120291, and 120292 of, and to repeal and add Section 120290 of, the Health and Safety Code, and to amend Sections 1001, 1001.1, and 1202.1 of, to add Sections 1170.21 and 1170.22 to, to repeal Sections 647f, 1001.10, 1001.11, and 1463.23 of, and to repeal and add Section 1202.6 of, the Penal Code, relating to infectious and communicable diseases.

[Approved by Governor October 6, 2017. Filed with
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LEGISLATIVE COUNSEL'S DIGEST

SB 239, Wiener. Infectious and communicable diseases: HIV and AIDS: criminal penalties.

(1) Existing law makes it a felony punishable by imprisonment for 3, 5, or 8 years in the state prison to expose another person to the human immunodeficiency virus (HIV) by engaging in unprotected sexual activity when the infected person knows at the time of the unprotected sex that he or she is infected with HIV, has not disclosed his or her HIV-positive status, and acts with the specific intent to infect the other person with HIV. Existing law makes it a felony punishable by imprisonment for 2, 4, or 6 years for any person to donate blood, tissue, or, under specified circumstances, semen or breast milk, if the person knows that he or she has acquired immunodeficiency syndrome (AIDS), or that he or she has tested reactive to HIV. Existing law provides that a person who is afflicted with a contagious, infectious, or communicable disease who willfully exposes himself or herself to another person, or any person who willfully exposes another person afflicted with the disease to someone else, is guilty of a misdemeanor.

This bill would repeal those provisions. The bill would instead make the intentional transmission of an infectious or communicable disease, as defined, a misdemeanor punishable by imprisonment in a county jail for not more than 6 months if certain circumstances apply, including that the defendant knows he or she or a 3rd party is afflicted with the disease, that the defendant acts with the specific intent to transmit or cause an afflicted 3rd party to transmit the disease to another person, that the defendant or the afflicted 3rd party engages in conduct that poses a substantial risk of transmission, as defined, that the defendant or the afflicted 3rd party transmits the disease to the other person, and if the exposure occurs through interaction with the defendant and not a 3rd party, that the person exposed to the disease during voluntary interaction with the defendant did not know that the defendant was afflicted with the disease. The bill would also make

it a misdemeanor to attempt to intentionally transmit an infectious and communicable disease, as specified, punishable by imprisonment in a county jail for not more than 90 days. This bill would make willful exposure to an infectious or communicable disease, as defined, a misdemeanor punishable by imprisonment in a county jail for not more than 6 months, and would prohibit a health officer, or a health officer's designee, from issuing a maximum of 2 instructions to a defendant that would result in a violation of this provision. The bill would impose various requirements upon the court in order to prevent the public disclosure of the identifying characteristics, as defined, of the complaining witness and the defendant. By creating new crimes, the bill would impose a state-mandated local program.

(2) Under existing law, if a defendant has been previously convicted of prostitution or of another specified sexual offense, and in connection with the conviction a blood test was administered, as specified, with positive test results for AIDS, of which the defendant was informed, the previous conviction and positive blood test results are to be charged in any subsequent accusatory pleading charging a violation of prostitution. Existing law makes the defendant guilty of a felony if the previous conviction and informed test results are found to be true by the trier of fact or are admitted by the defendant.

This bill would delete that provision. The bill would also vacate any conviction, dismiss any charge, and legally deem that an arrest under the deleted provision never occurred. The bill would also authorize a person serving a sentence as a result of a violation of the deleted provision to petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case. The bill would require a court to vacate the conviction and resentence the person to any remaining counts while giving credit for any time already served.

(3) Existing law requires the court to order a defendant convicted for a violation of soliciting or engaging in prostitution for the first time to complete instruction in the causes and consequences of acquired immunodeficiency syndrome (AIDS) and to submit to testing for AIDS. Existing law requires such a defendant, as a condition of either probation or participating in a drug diversion program, to participate in an AIDS education program, as specified.

This bill would repeal those provisions.

(4) The bill would also make other conforming changes.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 1603.3 of the Health and Safety Code is amended to read:

1603.3. (a) Before donation of blood or blood components, a donor shall be notified in writing of, and shall have signed a written statement confirming the notification of, all of the following:

(1) That the blood or blood components shall be tested for evidence of antibodies to HIV.

(2) That the donor shall be notified of the test results in accordance with the requirements described in subdivision (c).

(3) That the donor blood or blood component that is found to have the antibodies shall not be used for transfusion.

(4) That blood or blood components shall not be donated for transfusion purposes by a person if the person may have reason to believe that he or she has been exposed to HIV or AIDS.

(5) That the donor is required to complete a health screening questionnaire to assist in the determination as to whether he or she may have been exposed to HIV or AIDS.

(b) A blood bank or plasma center shall incorporate voluntary means of self-deferral for donors. The means of self-deferral may include, but are not limited to, a form with checkoff boxes specifying that the blood or blood components are for research or test purposes only and a telephone callback system for donors to use in order to inform the blood bank or plasma center that blood or blood components donated should not be used for transfusion. The blood bank or plasma center shall inform the donor, in a manner that is understandable to the donor, that the self-deferral process is available and should be used if the donor has reason to believe that he or she is infected with HIV.

(c) Blood or blood components from any donor initially found to have serologic evidence of antibodies to HIV shall be retested for confirmation. Only if a further test confirms the conclusion of the earlier test shall the donor be notified of a reactive result by the blood bank or plasma center.

The department shall develop permissive guidelines for blood banks and plasma centers on the method to be used to notify a donor of a test result.

(d) Each blood bank or plasma center operating in California shall prominently display at each of its collection sites a notice that provides the addresses and telephone numbers of sites, within the proximate area of the blood bank or plasma center, where anonymous HIV antibody testing provided pursuant to Chapter 3 (commencing with Section 120885) of Part 4 of Division 105 may be administered without charge.

(e) The department may promulgate any additional regulations it deems necessary to enhance the safety of donated blood and blood components. The department may also promulgate regulations it deems necessary to safeguard the consistency and accuracy of HIV test results by requiring any confirmatory testing the department deems appropriate for the particular

types of HIV tests that have yielded “reactive,” “positive,” “indeterminate,” or other similarly labeled results.

(f) Notwithstanding any other provision of law, civil liability or criminal sanction shall not be imposed for disclosure of test results to a local health officer if the disclosure is necessary to locate and notify a blood or blood components donor of a reactive result if reasonable efforts by the blood bank or plasma center to locate the donor have failed. Upon completion of the local health officer’s efforts to locate and notify a blood or blood components donor of a reactive result, all records obtained from the blood bank or plasma center pursuant to this subdivision, or maintained pursuant to this subdivision, including, but not limited to, any individual identifying information or test results, shall be expunged by the local health officer.

SEC. 2. Section 1621.5 of the Health and Safety Code is repealed.

SEC. 3. Section 1644.5 of the Health and Safety Code is amended to read:

1644.5. (a) Except as provided in subdivision (c) or (d), tissues shall not be transferred into the body of another person by means of transplantation, unless the donor of the tissues has been screened and found nonreactive by laboratory tests for evidence of infection with human immunodeficiency virus (HIV), agents of viral hepatitis (HBV and HCV), and syphilis. For tissues that are rich in viable leukocytes, the tissue shall be tested for evidence of infection with human T-lymphotropic virus (HTLV) and found nonreactive. The department may adopt regulations requiring additional screening tests of donors of tissues when, in the opinion of the department, the action is necessary for the protection of the public, donors, or recipients.

(b) Notwithstanding subdivision (a), infectious disease screening of blood and blood products shall be carried out solely in accordance with Article 2 (commencing with Section 1602.5) of Chapter 4.

(c) All donors of sperm shall be screened and found nonreactive as required under subdivision (a), except in the following instances:

(1) A recipient of sperm, from a sperm donor known to the recipient, may waive a second or other repeat testing of that donor if the recipient is informed of the requirements for testing donors under this section and signs a written waiver.

(2) A recipient of sperm may consent to therapeutic insemination of sperm or use of sperm in other assisted reproductive technologies even if the sperm donor is found reactive for hepatitis B, hepatitis C, syphilis, HIV, or HTLV if the sperm donor is the spouse of, partner of, or designated donor for that recipient. The physician providing insemination or assisted reproductive technology services shall advise the donor and recipient of the potential medical risks associated with receiving sperm from a reactive donor. The donor and the recipient shall sign a document affirming that each person comprehends the potential medical risks of using sperm from a reactive donor for the proposed procedure and that each consents to it. Copies of the document shall be placed in the medical records of the donor and the recipient.

(3) (A) Sperm whose donor has tested reactive for syphilis may be used for the purposes of insemination or assisted reproductive technology only after the donor has been treated for syphilis. Sperm whose donor has tested reactive for hepatitis B may be used for the purposes of insemination or assisted reproductive technology only after the recipient has been vaccinated against hepatitis B.

(B) (i) Sperm whose donor has tested reactive for HIV or HTLV may be used for the purposes of insemination or assisted reproductive technology for a recipient testing negative for HIV or HTLV only after the donor's sperm has been effectively processed to minimize the likelihood of transmission through the sperm for that specific donation and if informed and mutual consent has occurred.

(ii) The department shall adopt regulations regulating facilities that perform sperm processing, pursuant to this subparagraph, that prescribe standards for the handling and storage of sperm samples of carriers of HIV, HTLV, or any other virus as deemed appropriate by the department. The department may propose to adopt, as initial regulations, the most relevant and up-to-date recommendations published by the American Society for Reproductive Medicine. Notice of the department's proposed adoption of the regulations shall be posted on the department's Internet Web site for at least 45 days. Public comment shall be accepted by the department for at least 30 days after the conclusion of the 45-day posting period. If a member of the public requests a public hearing during the 30-day comment period, the hearing shall be held prior to the adoption of the regulations. If no member of the public requests a public hearing, the regulations shall be deemed adopted at the conclusion of the 30-day comment period. Comments received shall be considered prior to the adoption of the final initial regulations. The department may modify any recommendations published by the American Society for Reproductive Medicine. Adoption of initial regulations by the department pursuant to this subdivision shall not be subject to the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and written responses to public comments shall not be required. Updates to the regulations shall be adopted pursuant to the same process. Until the department adopts these regulations, facilities that perform sperm processing pursuant to this section shall follow facility and sperm processing recommendations for the reduction of viral transmission developed by the American Society for Reproductive Medicine. This section does not prevent the department from monitoring and inspecting facilities that process sperm to ensure adherence to the regulations, or, until regulations are adopted, to the recommendations set forth by the American Society for Reproductive Medicine.

(iii) Before insemination or other assisted reproductive technology services are performed, the physician providing the services shall inform the recipient of sperm from a spouse, partner, or designated donor who has tested reactive for HIV or HTLV of all of the following:

(I) That sperm processing may not eliminate all of the risks of HIV or HTLV transmission.

(II) That the sperm may be tested to determine whether or not it is reactive for HIV or HTLV.

(III) That the recipient shall provide documentation to the physician providing insemination or assisted reproductive technology services prior to treatment that she has established an ongoing relationship with another physician to provide for her medical care during and after completion of fertility services.

(IV) The most relevant and up-to-date recommendations published by the American Society for Reproductive Medicine regarding followup testing for HIV and HTLV after use of sperm from an HIV or HTLV reactive donor and have the recommendations regarding followup testing be documented in the recipient's medical record.

(iv) The physician providing insemination or assisted reproductive technology services shall also verify, and document in the recipient's medical record, that the donor of sperm who tests reactive for HIV or HTLV is under the care of a physician managing the HIV or HTLV.

(v) The physician providing insemination or assisted reproductive technology services shall recommend to the physician who will be providing ongoing care to the recipient recommended followup testing for HIV and HTLV according to the most relevant and up-to-date guidelines published by the American Society for Reproductive Medicine, which shall be documented in the recipient's medical record.

(vi) If the recipient becomes HIV or HTLV positive, the physician assuming ongoing care of the recipient shall treat or provide information regarding referral to a physician who can provide ongoing treatment of the HIV or HTLV.

(4) A recipient of sperm donated by a sexually intimate partner of the recipient for reproductive use may waive a second or repeat testing of that donor if the recipient is informed of the donor testing requirements of this section and signs a written waiver. For purposes of this paragraph, "sexually intimate partner of the recipient" includes a known or designated donor to whose sperm the recipient has previously been exposed in a nonmedical setting in an attempt to conceive.

(d) Subdivision (a) does not apply to the transplantation of tissue from a donor who has not been tested or, with the exception of HTLV, has been found reactive for the infectious diseases listed in subdivision (a) or for which the department has, by regulation, required additional screening tests, if all of the following conditions are satisfied:

(1) The physician and surgeon performing the transplantation has determined any one or more of the following:

(A) Without the transplantation the intended recipient will most likely die during the period of time necessary to obtain other tissue or to conduct the required tests.

(B) The intended recipient already is diagnosed with the infectious disease for which the donor has tested positive.

(C) The symptoms from the infectious disease for which the donor has tested positive will most likely not appear during the intended recipient's likely lifespan after transplantation with the tissue or may be treated prophylactically if they do appear.

(2) The physician and surgeon performing the transplantation has ensured that an organ from an individual who has been found reactive for HIV may be transplanted only into an individual who satisfies both of the following:

(A) The individual has been found reactive for HIV before receiving the organ.

(B) The individual is either participating in clinical research approved by an institutional review board under the criteria, standards, and regulations described in subsections (a) and (b) of Section 274f-5 of Title 42 of the United States Code, or, if the United States Secretary of Health and Human Services determines under subsection (c) of Section 274f-5 of Title 42 of the United States Code that participation in this clinical research is no longer warranted as a requirement for transplants, the individual is receiving the transplant under the standards and regulations under subsection (c) of Section 274f-5 of Title 42 of the United States Code.

(3) Consent for the use of the tissue has been obtained from the recipient, if possible, or if not possible, from a member of the recipient's family, or the recipient's legal guardian. For purposes of this section, "family" means spouse, adult son or daughter, either parent, adult brother or sister, or grandparent.

(e) The penalties prescribed in Section 120290 do not apply to a sperm donor covered under subdivision (c) or an organ or tissue donor who donates an organ or tissue for transplantation or research purposes.

(f) Human breast milk from donors who test reactive for agents of viral hepatitis (HBV and HCV), HTLV, HIV, or syphilis shall not be used for deposit into a milk bank for human ingestion in California.

SEC. 4. Section 120290 of the Health and Safety Code is repealed.

SEC. 5. Section 120290 is added to the Health and Safety Code, to read:

120290. (a) (1) A defendant is guilty of intentional transmission of an infectious or communicable disease if all of the following apply:

(A) The defendant knows that he or she or a third party is afflicted with an infectious or communicable disease.

(B) The defendant acts with the specific intent to transmit or cause an afflicted third party to transmit that disease to another person.

(C) The defendant or the afflicted third party engages in conduct that poses a substantial risk of transmission to that person.

(D) The defendant or the third party transmits the infectious or communicable disease to the other person.

(E) If exposure occurs through interaction with the defendant and not a third party, the person exposed to the disease during voluntary interaction with the defendant did not know that the defendant was afflicted with the disease. A person's interaction with the defendant is not involuntary solely on the basis of his or her lack of knowledge that the defendant was afflicted with the disease.

(2) A defendant is guilty of willful exposure to an infectious or communicable disease if a health officer, or the health officer's designee, acting under circumstances that make securing a quarantine or health officer order infeasible, has instructed the defendant not to engage in particularized conduct that poses a substantial risk of transmission of an infectious or communicable disease, and the defendant engages in that conduct within 96 hours of the instruction. A health officer, or the health officer's designee, may issue a maximum of two instructions to a defendant that may result in a violation of this paragraph.

(b) The defendant does not act with the intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) if the defendant takes, or attempts to take, practical means to prevent transmission.

(c) Failure to take practical means to prevent transmission alone is insufficient to prove the intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(d) Becoming pregnant while infected with an infectious or communicable disease, continuing a pregnancy while infected with an infectious or communicable disease, or declining treatment for an infectious or communicable disease during pregnancy does not constitute a crime for purposes of this section.

(e) For purposes of this section, the following definitions shall apply:

(1) "Conduct that poses a substantial risk of transmission" means an activity that has a reasonable probability of disease transmission as proven by competent medical or epidemiological evidence. Conduct posing a low or negligible risk of transmission as proven by competent medical or epidemiological evidence does not meet the definition of conduct posing a substantial risk of transmission.

(2) "Infectious or communicable disease" means a disease that spreads from person to person, directly or indirectly, that has significant public health implications.

(3) "Practical means to prevent transmission" means a method, device, behavior, or activity demonstrated scientifically to measurably limit or reduce the risk of transmission of an infectious or communicable disease, including, but not limited to, the use of a condom, barrier protection or prophylactic device, or good faith compliance with a medical treatment regimen for the infectious or communicable disease prescribed by a health officer or physician.

(f) This section does not preclude a defendant from asserting any common law defense.

(g) (1) A violation of paragraph (1) of subdivision (a) or paragraph (2) of subdivision (a) is a misdemeanor, punishable by imprisonment in a county jail for not more than six months.

(2) A person who attempts to intentionally transmit an infectious or communicable disease by engaging in the conduct described in subparagraphs (A), (B), (C), and (E) of paragraph (1) of subdivision (a) is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than 90 days.

(h) (1) When alleging a violation of subdivision (a), the prosecuting attorney or the grand jury shall substitute a pseudonym for the true name of a complaining witness. The actual name and other identifying characteristics of a complaining witness shall be revealed to the court only in camera, unless the complaining witness requests otherwise, and the court shall seal the information from further disclosure, except by counsel as part of discovery.

(2) Unless the complaining witness requests otherwise, all court decisions, orders, petitions, and other documents, including motions and papers filed by the parties, shall be worded so as to protect the name or other identifying characteristics of the complaining witness from public disclosure.

(3) Unless the complaining witness requests otherwise, a court in which a violation of this section is filed shall, at the first opportunity, issue an order that prohibits counsel, their agents, law enforcement personnel, and court staff from making a public disclosure of the name or any other identifying characteristic of the complaining witness.

(4) Unless the defendant requests otherwise, a court in which a violation of this section is filed, at the earliest opportunity, shall issue an order that counsel and their agents, law enforcement personnel, and court staff, before a finding of guilt, not publicly disclose the name or other identifying characteristics of the defendant, except by counsel as part of discovery or to a limited number of relevant individuals in its investigation of the specific charges under this section. In any public disclosure, a pseudonym shall be substituted for the true name of the defendant.

(5) For purposes of this subdivision, “identifying characteristics” includes, but is not limited to, the name or any part of the name, address or any part of the address, city or unincorporated area of residence, age, marital status, relationship of the defendant and complaining witness, place of employment, or race or ethnic background.

(i) (1) A court, upon a finding of probable cause that an individual has violated this section, shall order the production of the individual’s medical records or the attendance of a person with relevant knowledge thereof, so long as the return of the medical records or attendance of the person pursuant to the subpoena is submitted initially to the court for an in-camera inspection. Only upon a finding by the court that the medical records or proffered testimony are relevant to the pleading offense, the information produced pursuant to the court’s order shall be disclosed to the prosecuting entity and admissible if otherwise permitted by law.

(2) A defendant’s medical records, medications, prescriptions, or medical devices shall not be used as the sole basis of establishing the specific intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(3) Surveillance reports and records maintained by state and local health officials shall not be subpoenaed or released for the purpose of establishing the specific intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(4) A court shall take judicial notice of any fact establishing an element of the offense upon the defendant’s motion or stipulation.

(5) A defendant is not prohibited from submitting medical evidence to show the absence of the stated intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(j) Before sentencing, a defendant shall be assessed for placement in one or more community-based programs that provide counseling, supervision, education, and reasonable redress to the victim or victims.

(k) (1) This section does not apply to a person who donates an organ or tissue for transplantation or research purposes.

(2) This section does not apply to a person, whether a paid or volunteer donor, who donates breast milk to a medical center or breast milk bank that receives breast milk for purposes of distribution.

SEC. 6. Section 120291 of the Health and Safety Code is repealed.

SEC. 7. Section 120292 of the Health and Safety Code is repealed.

SEC. 8. Section 647f of the Penal Code is repealed.

SEC. 9. Section 1001 of the Penal Code is amended to read:

1001. It is the intent of the Legislature that this chapter, Chapter 2.5 (commencing with Section 1000) of this title, or any other provision of law not be construed to preempt other current or future pretrial or precomplaint diversion programs. It is also the intent of the Legislature that current or future posttrial diversion programs not be preempted, except as provided in Section 13201 or 13352.5 of the Vehicle Code. Sections 1001.2 to 1001.9, inclusive, of this chapter apply only to pretrial diversion programs as defined in Section 1001.1.

SEC. 10. Section 1001.1 of the Penal Code is amended to read:

1001.1. As used in Sections 1001.2 to 1001.9, inclusive, of this chapter, pretrial diversion refers to the procedure of postponing prosecution of an offense filed as a misdemeanor either temporarily or permanently at any point in the judicial process from the point at which the accused is charged until adjudication.

SEC. 11. Section 1001.10 of the Penal Code is repealed.

SEC. 12. Section 1001.11 of the Penal Code is repealed.

SEC. 13. Section 1170.21 is added to the Penal Code, to read:

1170.21. A conviction for a violation of Section 647f as it read on December 31, 2017, is invalid and vacated. All charges alleging violation of Section 647f are dismissed and all arrests for violation of Section 647f are deemed to have never occurred. An individual who was arrested, charged, or convicted for a violation of Section 647f may indicate in response to any question concerning his or her prior arrest, charge, or conviction under Section 647f that he or she was not arrested, charged, or convicted for a violation of Section 647f. Notwithstanding any other law, information pertaining to an individual's arrest, charge, or conviction for violation of Section 647f shall not, without the individual's consent, be used in any way adverse to his or her interests, including, but not limited to, denial of any employment, benefit, license, or certificate.

SEC. 14. Section 1170.22 is added to the Penal Code, to read:

1170.22. (a) A person who is serving a sentence as a result of a violation of Section 647f as it read on December 31, 2017, whether by trial or by

open or negotiated plea, may petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case.

(b) If the court's records show that the petitioner was convicted for a violation of Section 647f as it read on December 31, 2017, the court shall vacate the conviction and resentence the person for any remaining counts.

(c) A person who is serving a sentence and resentenced pursuant to subdivision (b) shall be given credit for any time already served and shall be subject to whatever supervision time he or she would have otherwise been subject to after release, whichever is shorter, unless the court, in its discretion, as part of its resentencing order, releases the person from supervision.

(d) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

(e) Upon completion of sentence for a conviction under Section 647f as it read on December 31, 2017, the provisions of Section 1170.21 shall apply.

(f) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this section.

(g) A resentencing hearing ordered under this section shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution.

(h) The provisions of this section apply to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not have been guilty of an offense or would not have been guilty of an offense governed by this section.

(i) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of petitions and applications provided in this section.

SEC. 15. Section 1202.1 of the Penal Code is amended to read:

1202.1. (a) Notwithstanding Sections 120975 and 120990 of the Health and Safety Code, the court shall order every person who is convicted of, or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of a violation of, a sexual offense listed in subdivision (e), whether or not a sentence or fine is imposed or probation is granted, to submit to a blood or oral mucosal transudate saliva test for evidence of antibodies to the probable causative agent of acquired immunodeficiency syndrome (AIDS) within 180 days of the date of conviction. Each person tested under this section shall be informed of the results of the blood or oral mucosal transudate saliva test.

(b) Notwithstanding Section 120980 of the Health and Safety Code, the results of the blood or oral mucosal transudate saliva test to detect antibodies to the probable causative agent of AIDS shall be transmitted by the clerk of the court to the Department of Justice and the local health officer.

(c) Notwithstanding Section 120980 of the Health and Safety Code, the Department of Justice shall provide the results of a test or tests as to persons under investigation or being prosecuted under Section 12022.85, if the results are on file with the department, to the defense attorney upon request and the results also shall be available to the prosecuting attorney upon request for the purpose of either preparing counts for a sentence enhancement under Section 12022.85 or complying with subdivision (d).

(d) (1) In every case in which a person is convicted of a sexual offense listed in subdivision (e) or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of the commission of a sexual offense listed in subdivision (e), the prosecutor or the prosecutor's victim-witness assistance bureau shall advise the victim of his or her right to receive the results of the blood or oral mucosal transudate saliva test performed pursuant to subdivision (a). The prosecutor or the prosecutor's victim-witness assistance bureau shall refer the victim to the local health officer for counseling to assist him or her in understanding the extent to which the particular circumstances of the crime may or may not have placed the victim at risk of transmission of the human immunodeficiency virus (HIV) from the accused, to ensure that the victim understands the limitations and benefits of current tests for HIV, and to assist the victim in determining whether he or she should make the request.

(2) Notwithstanding any other law, upon the victim's request, the local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, as specified in subdivision (g), positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances as follows:

(A) To help the victim understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the perpetrator.

(B) To ensure that the victim understands both the benefits and limitations of the current tests for HIV.

(C) To obtain referrals to appropriate health care and support services.

(e) For purposes of this section, "sexual offense" includes any of the following:

(1) Rape in violation of Section 261 or 264.1.

(2) Unlawful intercourse with a person under 18 years of age in violation of Section 261.5 or 266c.

(3) Rape of a spouse in violation of Section 262 or 264.1.

(4) Sodomy in violation of Section 266c or 286.

(5) Oral copulation in violation of Section 266c or 288a.

(6) (A) Any of the following offenses if the court finds that there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the defendant to the victim:

(i) Sexual penetration in violation of Section 264.1, 266c, or 289.

(ii) Aggravated sexual assault of a child in violation of Section 269.

- (iii) Lewd or lascivious conduct with a child in violation of Section 288.
- (iv) Continuous sexual abuse of a child in violation of Section 288.5.
- (v) The attempt to commit any offense described in clauses (i) to (iv), inclusive.

(B) For purposes of this paragraph, the court shall note its finding on the court docket and minute order if one is prepared.

(f) Any blood or oral mucosal transudate saliva tested pursuant to subdivision (a) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the person who is tested unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances.

(h) The local health officer and the victim shall comply with all laws and policies relating to medical confidentiality, subject to the disclosure authorized by subdivisions (g) and (i).

(i) Any victim who receives information from the local health officer pursuant to subdivision (g) may disclose the information as he or she deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person who transmits test results or discloses information pursuant to this section shall be immune from civil liability for any action taken in compliance with this section.

SEC. 16. Section 1202.6 of the Penal Code is repealed.

SEC. 17. Section 1202.6 is added to the Penal Code, to read:

1202.6. Notwithstanding Sections 120975, 120980, and 120990 of the Health and Safety Code, upon the first conviction of a person for a violation of subdivision (b) of Section 647, the court shall refer the defendant, where appropriate, to a program under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code or to a drug diversion program, or to both.

SEC. 18. Section 1463.23 of the Penal Code is repealed.

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7

(commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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