

AMENDED IN ASSEMBLY MAY 8, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2870

Introduced by Assembly Member De La Torre

February 24, 2006

An act to amend Sections 7500, 7501, 7502, 7510, 7511, 7512, 7512.5, 7513, 7514, 7515, 7518, 7520, 7521, 7522, 7530 and 7552 of the Penal Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

AB 2870, as amended, De La Torre. Correctional institutions: communicable diseases.

Existing law provides for the confidential testing of inmates and other enumerated persons for HIV and AIDS under specified circumstances. The test is initiated by a request from a law enforcement employee, as defined, or another inmate, to the chief medical officer of the facility, when the requesting person has come into contact with the bodily fluids of an inmate or other specified persons in a correctional institution, as defined.

This bill would allow testing for other infectious, contagious, or communicable diseases as well as HIV and AIDS. This bill would add prosecutors and public defender staff to the list of persons who may request testing, and include court facilities in the locations where the contact with bodily fluids may be made. This bill would further provide that the person making the request shall be informed of the results of the tests. Because the bill would impose additional duties on local agencies, the bill would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 7500 of the Penal Code is amended to
 2 read:
 3 7500. The Legislature finds and declares all of the following:
 4 (a) The public peace, health, and safety is endangered by the
 5 spread of the human immunodeficiency virus (HIV) acquired
 6 immunodeficiency syndrome (AIDS), and other infectious,
 7 contagious, or communicable diseases within state and local
 8 correctional institutions.
 9 (b) The spread of AIDS and other infectious, contagious, or
 10 communicable diseases within prison and jail populations
 11 presents a grave danger to inmates within those populations, law
 12 enforcement personnel, and other persons in contact with a
 13 prisoner infected with the AIDS virus as well as other infectious,
 14 contagious, or communicable diseases , both during and after the
 15 prisoner’s confinement. Law enforcement personnel and
 16 prisoners are particularly vulnerable to this danger, due to the
 17 high number of assaults, violent acts, and transmissions of bodily
 18 fluids that occur within correctional institutions.
 19 (c) HIV, as well as other infectious, contagious, or
 20 communicable diseases have the potential of spreading more
 21 rapidly within the closed society of correctional institutions than
 22 outside these institutions. These major public health problems are
 23 compounded by the further potential of rapid spread of
 24 communicable disease outside correctional institutions, through
 25 contacts of an infected prisoner who is not treated and monitored
 26 upon his or her release, or by law enforcement employees who
 27 are unknowingly infected.
 28 (d) New diseases of epidemic proportions such as AIDS may
 29 suddenly and tragically infect large numbers of people. This title

1 primarily addresses a current problem of this nature, the spread
2 of HIV as well as other infectious, contagious, or communicable
3 diseases among those in correctional institutions and among the
4 people of California.

5 (e) HIV AIDS, and other infectious, contagious, or
6 communicable diseases pose a major threat to the public health
7 and safety of those governmental employees and others whose
8 responsibilities bring them into direct contact with persons
9 afflicted with those illnesses, and the protection of the health and
10 safety of these personnel is of equal importance to the people of
11 the State of California as the protection of the health of those
12 afflicted with the diseases who are held in custodial situations.

13 (f) Testing described in this title of individuals housed within
14 state and local correctional facilities for evidence of infection by
15 HIV and other infectious, contagious, or communicable diseases
16 would help to provide a level of information necessary for
17 effective disease control within these institutions and would help
18 to preserve the health of public employees, inmates, and persons
19 in custody, as well as that of the public at large. This testing is
20 not intended to be, and shall not be construed as, a prototypical
21 method of disease control for the public at large.

22 SEC. 2. Section 7501 of the Penal Code is amended to read:

23 7501. In order to address the public health crisis described in
24 Section 7500, it is the intent of the Legislature to do all of the
25 following:

26 (a) Establish a procedure through which custodial and law
27 enforcement personnel are required to report certain situations
28 and may request and be granted a confidential test for HIV or for
29 other infectious, contagious, or communicable diseases of an
30 inmate convicted of a crime, or a person arrested or taken into
31 custody, if the custodial or law enforcement officer has reason to
32 believe that he or she has come into contact with the blood or
33 semen of an inmate or in any other manner has come into contact
34 with the inmate in a way that could result in HIV infection, or the
35 transmission of other infectious, contagious, or communicable
36 disease, based on the latest determinations and conclusions by
37 the federal Centers for Disease Control and the State Department
38 of Health Services on means for the transmission of AIDS or
39 other infectious, contagious, or communicable diseases, and if

1 appropriate medical authorities, as provided in this title,
2 reasonably believe there is good medical reason for the test.

3 (b) Permit inmates to file similar requests stemming from
4 contacts with other inmates.

5 (c) Require that probation and parole officers be notified when
6 an inmate being released from incarceration is infected with
7 AIDS or other infectious, contagious, or communicable diseases,
8 and permit these officers to notify certain persons who will come
9 into contact with the parolee or probationer, if authorized by law.

10 (d) Authorize prison medical staff authorities to require tests
11 of a jail or prison inmate under certain circumstances, if they
12 reasonably believe, based upon the existence of supporting
13 evidence, that the inmate may be suffering from HIV infection or
14 AIDS or other infectious, contagious, or communicable diseases
15 and is a danger to other inmates or staff.

16 (e) Require supervisory and medical personnel of correctional
17 institutions to which this title applies to notify staff if they are
18 coming into close and direct contact with persons in custody who
19 have tested positive or who have AIDS or other infectious,
20 contagious, or communicable diseases, and provide appropriate
21 counseling and safety equipment.

22 SEC. 3. Section 7502 of the Penal Code is amended to read:

23 7502. As used in this title, the following terms shall have the
24 following meanings:

25 (a) "Correctional institution" means any state prison, county
26 jail, city jail, California Youth Authority facility, county or
27 city-operated juvenile facility, including juvenile halls, camps, or
28 schools, or any other state or local correctional institution,
29 including a court facility.

30 (b) "Counseling" means counseling by a licensed physician
31 and surgeon, registered nurse, or other health professional who
32 meets guidelines which shall be established by the State
33 Department of Health Services for purposes of providing
34 counseling on AIDS and other infectious, contagious, or
35 communicable diseases to inmates, persons in custody, and other
36 persons pursuant to this title.

37 (c) "Law enforcement employee" means correctional officers,
38 peace officers, and other staff of a correctional institution,
39 California Highway Patrol officers, county sheriff's deputies, city
40 police officers, parole officers, probation officers, and city,

1 county, or state employees including but not limited to, judges,
2 bailiffs, court personnel, prosecutors and staff, and public
3 defenders and staff, who, as part of the judicial process involving
4 an inmate of a correctional institution, or a person charged with a
5 crime, including a minor charged with an offense for which he or
6 she may be made a ward of the court under Section 602 of the
7 Welfare and Institutions Code, are engaged in the custody,
8 transportation, prosecution, representation, or care of these
9 persons.

10 (d) "AIDS" means acquired immune deficiency syndrome.

11 (e) "Human immunodeficiency virus" or "HIV" means the
12 etiologic virus of AIDS.

13 (f) "HIV test" or "HIV testing" means any clinical laboratory
14 test approved by the federal Food and Drug Administration for
15 HIV, component of HIV, or antibodies to HIV.

16 (g) "Infectious, contagious, or communicable disease" means
17 any disease that was transferable through the exposure incident
18 *and could result in a life-threatening or chronic illness or*
19 *condition if left untreated*, as determined by the chief medical
20 officer as defined in subdivision (c) of Section 7510.

21 (h) "Inmate" means any of the following:

22 (1) A person in a state prison, or city and county jail, who has
23 been either convicted of a crime or arrested or taken into custody,
24 whether or not he or she has been charged with a crime.

25 (2) Any person in a California Youth Authority facility, or
26 county- or city-operated juvenile facility, who has committed an
27 act, or been charged with committing an act specified in Section
28 602 of the Welfare and Institutions Code.

29 (i) "Bodily fluids" means blood, semen, or any other bodily
30 fluid identified by either the federal Centers for Disease Control
31 or State Department of Health Services in appropriate regulations
32 as capable of transmitting HIV.

33 (j) "Minor" means a person under 15 years of age.

34 SEC. 4. Section 7510 of the Penal Code is amended to read:

35 7510. (a) A law enforcement employee who believes that he
36 or she came into contact with bodily fluids of either an inmate of
37 a correctional institution, a person not in a correctional institution
38 who has been arrested or taken into custody whether or not the
39 person has been charged with a crime, including a person
40 detained for or charged with an offense for which he or she may

1 be made a ward of the court under Section 602 of the Welfare
2 and Institutions Code, a person charged with any crime, whether
3 or not the person is in custody, or a person on probation or parole
4 due to conviction of a crime, shall report the incident through the
5 completion of a form provided by the State Department of Health
6 Services. The form shall be directed to the chief medical officer,
7 as defined in subdivision (c), who serves the applicable law
8 enforcement employee. Utilizing this form the law enforcement
9 employee may request a test for HIV or other infectious,
10 contagious, or communicable disease of the person who is the
11 subject of the report. The forms may be combined with regular
12 incident reports or other forms used by the correctional
13 institution or law enforcement agency, however the processing of
14 a form by the chief medical officer containing a request for HIV
15 or other infectious, contagious, or communicable disease testing
16 of the subject person shall not be delayed by the processing of
17 other reports or forms.

18 (b) The report required by subdivision (a) shall be submitted
19 by the end of the law enforcement employee's shift during which
20 the incident occurred, or if not practicable, as soon as possible,
21 but no longer than two days after the incident, except that the
22 chief medical officer may waive this filing period requirement if
23 he or she finds that good cause exists. The report shall include
24 names of witnesses to the incident, names of persons involved in
25 the incident, and if feasible, any written statements from these
26 parties. The law enforcement employee shall assist in the
27 investigation of the incident, as requested by the chief medical
28 officer.

29 (c) For purposes of this section, Section 7502, and Section
30 7511, "chief medical officer" means:

31 (1) In the case of a report filed by a staff member of a state
32 prison, the chief medical officer of that facility.

33 (2) In the case of a parole officer filing a report, the chief
34 medical officer of the nearest state prison.

35 (3) In the case of a report filed by an employee of the
36 Department of the Youth Authority, the chief medical officer of
37 the facility.

38 (4) In the case of a report filed against a subject who is an
39 inmate of a city or county jail or a county- or city-operated
40 juvenile facility, or a court facility, or who has been arrested or

1 taken into custody whether or not the person has been charged
2 with a crime, but who is not in a correctional facility, including a
3 person detained for or charged with an offense for which he or
4 she may be made a ward of the court under Section 602 of the
5 Welfare and Institutions Code, or a person charged with a crime,
6 whether or not the person is in custody, the county health officer
7 of the county in which the individual is jailed or charged with the
8 crime.

9 (5) In the case of a report filed by a probation officer, a
10 prosecutor, a public defender attorney or staff person, the county
11 health officer of the county in which the probation officer,
12 prosecutor, a public defender attorney or staff person, is
13 employed.

14 (6) In any instance where the chief medical officer, as
15 determined pursuant to this subdivision, is not a physician and
16 surgeon, the chief medical officer shall designate a physician and
17 surgeon to perform his or her duties under this title.

18 SEC. 5. Section 7511 of the Penal Code is amended to read:

19 7511. (a) The chief medical officer shall, regardless of
20 whether a report filed pursuant to Section 7510 contains a request
21 for HIV or other infectious, contagious, or communicable disease
22 testing, decide whether or not to require HIV or other infectious,
23 contagious, or communicable disease testing of the inmate or
24 other person who is the subject of the report filed pursuant to
25 Section 7510, within 24 hours of receipt of the report. If the chief
26 medical officer decides to require HIV or other infectious,
27 contagious, or communicable disease testing, he or she shall
28 specify in his or her decision the circumstances, if any, under
29 which followup testing will also be required.

30 (b) The chief medical officer shall order an HIV or other
31 infectious, contagious, or communicable disease test only if he or
32 she finds that, considering all of the facts and circumstances,
33 there is a significant risk that HIV or other infectious, contagious,
34 or communicable disease was transmitted. In making this
35 decision, the chief medical officer shall take the following factors
36 into consideration:

37 (1) Whether an exchange of bodily fluids occurred which
38 could have resulted in a significant risk of AIDS or other
39 infectious, contagious, or communicable disease infection, based
40 on the latest written guidelines and standards established by the

1 federal Centers for Disease Control and the State Department of
2 Health Services.

3 (2) Whether the person exhibits medical conditions or clinical
4 findings consistent with HIV or other infectious, contagious, or
5 communicable disease infection.

6 (3) Whether the health of the institution staff or inmates may
7 have been endangered as to HIV or other infectious, contagious,
8 or communicable disease infection resulting from the reported
9 incident.

10 (c) Prior to reaching a decision, the chief medical officer may
11 if needed receive written or oral testimony from the law
12 enforcement employee filing the report, from the subject of the
13 report, and from witnesses to the incident, as he or she deems
14 necessary for a complete investigation. The decision shall be in
15 writing and shall state the reasons for the decision. A copy shall
16 be provided by the chief medical officer to the law enforcement
17 employee who filed the report and to the subject of the report,
18 and where the subject is a minor, to the parents or guardian of the
19 minor, unless the parent or guardian of the minor cannot be
20 located.

21 SEC. 6. Section 7512 of the Penal Code is amended to read:

22 7512. (a) An inmate of a correctional institution may request
23 testing for HIV or other infectious, contagious, or communicable
24 disease of another inmate of that institution if he or she has
25 reason to believe that he or she has come into contact with the
26 bodily fluids of that inmate, in situations, which may include, but
27 are not limited to, rape or sexual contact with a potentially
28 infected inmate, tattoo or drug needle sharing, an incident
29 involving injury in which bodily fluids are exchanged, or
30 confinement with a cellmate under circumstances involving
31 possible mingling of bodily fluids. A request may be filed under
32 this section only within two calendar days of the date when the
33 incident causing the request occurred, except that the chief
34 medical officer may waive this filing period requirement when he
35 or she finds that good cause exists.

36 (b) An inmate in a California Youth Authority facility or any
37 county- or city-operated juvenile facility who is 15 years of age
38 or older, may file a request for a test of another inmate in that
39 facility, in the same manner as an inmate in a state prison, and is
40 subject to the same procedures and rights. An inmate in a

1 California Youth Authority facility or a county- or city-operated
2 juvenile facility who is a minor may file ~~such~~ a request *for*
3 *testing* through a staff member of the facility in which he or she
4 is confined. A staff member may file this request on behalf of a
5 minor on his or her own volition if he or she believes that a
6 situation meeting the criteria specified in subdivision (a) has
7 occurred warranting the request. The filing of a request by staff
8 on behalf of an inmate of a California Youth Authority facility or
9 a local juvenile facility shall be within two calendar days of its
10 discovery by staff, except that the chief medical officer may
11 waive this filing period requirement if he or she finds that good
12 cause exists.

13 When a request is filed on behalf of a minor, the facility shall
14 notify the parent or guardian of the minor of the request and seek
15 permission from the parent or guardian for the test request to
16 proceed. If the parent or guardian refuses to grant permission for
17 the test, the Director of the Youth Authority may request the
18 juvenile court in the county in which the facility is located, to
19 rule on whether the test request procedure set forth in this title
20 shall continue. The juvenile court shall make a ruling within five
21 days of the case being brought before the court.

22 If the parent or guardian cannot be located, the superintendent
23 of the facility shall approve or disapprove the request for a test.

24 (c) Upon receipt of a request for testing as provided in this
25 section, a law enforcement employee shall submit the request to
26 the chief medical officer, the identity of which shall be
27 determined as if the request had been made by an employee of
28 the facility. The chief medical officer shall follow the procedures
29 set forth in Section 7511 with respect to investigating the request
30 and reaching a decision as to mandatory testing of the inmate
31 who is the subject of the request. The inmate submitting the
32 request shall provide names or testimony of witnesses within the
33 limits of his or her ability to do so. The chief medical officer
34 shall make his or her decision based on the criteria set forth in
35 Section 7511. A copy of the chief medical officer's decision shall
36 be provided to the person submitting the request for HIV or other
37 infectious, contagious, or communicable disease testing, to the
38 subject of the request, and to the superintendent of the
39 correctional institution. In the case of a minor, a copy of the
40 decision shall be provided to the parents or guardian of the

1 minor, unless the parent or guardian of the minor cannot be
2 located.

3 SEC. 7. Section 7512.5 of the Penal Code is amended to read:

4 7512.5. In the absence of the filing of a report pursuant to
5 Section 7510 or a request pursuant to Section 7512, the chief
6 medical officer, may order a test of an inmate if he or she
7 concludes there are clinical symptoms of HIV infection, AIDS,
8 or other infectious, contagious, or communicable disease, as
9 recognized by the Centers for Disease Control and Prevention or
10 the Department of Health Services.

11 A copy of the decision shall be provided to the inmate, and
12 where the inmate is a minor, to the parents or guardian of the
13 minor, unless the parent or guardian of the minor cannot be
14 located. Any decision made pursuant to this section shall not be
15 appealable to a three-member panel provided for under Section
16 7515.

17 SEC. 8. Section 7513 of the Penal Code is amended to read:

18 7513. An inmate who is the subject of an HIV test report filed
19 pursuant to Section 7510 or an HIV or other infectious,
20 contagious, or communicable disease test report filed pursuant to
21 Section 7512 shall receive, in conjunction with the decision of
22 the chief medical officer to order a test, a copy of this title, a
23 written description of the right to appeal the chief medical
24 officer's decision which includes the applicable timelines, and
25 notification of his or her right to receive pretest and posttest
26 counseling by staff that have been certified as HIV test
27 counselors.

28 SEC. 9. Section 7514 of the Penal Code is amended to read:

29 7514. (a) It shall be the chief medical officer's responsibility
30 to see that personal counseling is provided to a law enforcement
31 employee filing a report pursuant to Section 7510, an inmate
32 filing a request pursuant to Section 7512, and any potential test
33 subject, at the time the initial report or request for tests is made,
34 at the time when tests are ordered, and at the time when test
35 results are provided to the employee, inmate, or test subject.

36 The chief medical officer may provide additional counseling to
37 any of these individuals, upon his or her request, or whenever the
38 chief medical officer deems advisable, and may arrange for the
39 counseling to be provided in other jurisdictions. The chief
40 medical officer shall encourage the subject of the report or

1 request, the law enforcement employee who filed the report, the
2 person who filed the request pursuant to Section 7512, or in the
3 case of a minor, the minor on whose behalf the request was filed,
4 to undergo voluntary HIV or other infectious, contagious, or
5 communicable disease testing if the chief medical officer deems
6 it medically advisable. All testing required by this title or any
7 voluntary testing resulting from the provisions of this title, shall
8 be at the expense of the appropriate correctional institution.

9 (b) Notwithstanding the repeal of this section in accordance
10 with Section 7555, the duties imposed by this subdivision shall
11 continue in effect until they have been complied with.

12 SEC. 10. Section 7515 of the Penal Code is amended to read:

13 7515. (a) A decision of the chief medical officer made
14 pursuant to Section 7511, 7512, or 7516 may be appealed, within
15 three calendar days of receipt of the decision, to a three-person
16 panel, either by the person required to be tested, his or her parent
17 or guardian when the subject is a minor, the law enforcement
18 employee filing a report pursuant to either Section 7510 or 7516,
19 or the person requesting testing pursuant to Section 7512,
20 whichever is applicable, or the chief medical officer, upon his or
21 her own motion. If no request for appeal is filed under this
22 subdivision, the chief medical officer's decision shall be final.

23 (b) Depending upon which entity has jurisdiction over the
24 person requesting or appealing a test, the Department of
25 Corrections, the Department of the Youth Authority, the county,
26 the city, or the county and city shall convene the appeal panel
27 and shall ensure that the appeal is heard within seven calendar
28 days.

29 (c) A panel required pursuant to subdivision (a) or (b) shall
30 consist of three members, as follows:

31 (1) The chief medical officer making the original decision.

32 (2) A physician and surgeon who has knowledge in the
33 diagnosis, treatment, and transmission of HIV or other infectious,
34 contagious, or communicable disease, selected by the
35 Department of Corrections, the Department of the Youth
36 Authority, the county, the city, or the county and city. The
37 physician and surgeon appointed pursuant to this paragraph shall
38 preside at the hearing and serve as chairperson.

39 (3) A physician and surgeon not on the staff of, or under
40 contract with, a state, county, city, or county and city correctional

1 institution or with an employer of a law enforcement employee
2 as defined in subdivision (b) of Section 7502, and who has
3 knowledge of the diagnosis, treatment, and transmission of HIV
4 or other infectious, contagious, or communicable disease. The
5 physician and surgeon appointed pursuant to this paragraph shall
6 be selected by the State Department of Health Services from a
7 list of persons to be compiled by that department. The State
8 Department of Health Services shall adopt standards for selecting
9 persons for the list required by this paragraph, as well as for their
10 reimbursement, and shall, to the extent possible, utilize its
11 normal process for selecting consultants in compiling this list.

12 The Legislature finds and declares that the presence of a
13 physician and surgeon on the panel who is selected by the State
14 Department of Health Services enhances the objectivity of the
15 panel, and it is the intent of the Legislature that the State
16 Department of Health Services make every attempt to comply
17 with this subdivision.

18 (d) The Department of Corrections, the county, the city, or the
19 county and city shall notify the Office of AIDS in the State
20 Department of Health Services when a panel must be convened
21 under subdivision (a) wherein AIDS testing has been requested.
22 Within two calendar days of the notification, a physician and
23 surgeon appointed under paragraph (3) of subdivision (c) shall
24 reach agreement with the Department of Corrections, the county,
25 the city, or the county and city on a date for the hearing that
26 complies with subdivision (b).

27 (e) If the Office of AIDS in the State Department of Health
28 Services fails to comply with subdivision (d) or the physician and
29 surgeon appointed under paragraph (3) of subdivision (c) fails to
30 attend the scheduled hearing, the Department of Corrections, the
31 county, the city, or the county and city shall appoint a physician
32 or surgeon who has knowledge of the diagnosis, treatment, and
33 transmission of HIV to serve on the appeals panel to replace the
34 physician and surgeon required under paragraph (3) of
35 subdivision (c). The Department of Corrections, the county, the
36 city, or the county and city shall have standards for selecting
37 persons under this subdivision and for their reimbursement.

38 The Department of Corrections, the Department of the Youth
39 Authority, the county, the city, or the county and city shall,
40 whenever feasible, create, and utilize ongoing panels to hear

1 appeals under this section. The membership of the panel shall
2 meet the requirements of paragraphs (1), (2), and (3) of
3 subdivision (c).

4 No panel shall be created pursuant to this paragraph by a
5 county, city, or county and city correctional institution except
6 with the prior approval of the local health officer.

7 (f) A hearing conducted pursuant to this section shall be
8 closed, except that each of the following persons shall have the
9 right to attend the hearing, speak on the issues presented at the
10 hearing, and call witnesses to testify at the hearing:

11 (1) The chief medical officer, who may also bring staff
12 essential to the hearing, as well as the other two members of the
13 panel.

14 (2) The subject of the chief medical officer's decision, except
15 that a subject who is a minor may attend only with the consent of
16 his or her parent or guardian and, if the subject is a minor, his or
17 her parent or guardian.

18 (3) The law enforcement employee filing the report pursuant
19 to Section 7510, or the person requesting HIV testing pursuant to
20 Section 7512, whichever is applicable and, if the person is a
21 minor, his or her parent or guardian.

22 (g) The subject of the test, or the person requesting the test
23 pursuant to Section 7512, or who filed the report pursuant to
24 Section 7510, whichever is applicable, may appoint a
25 representative to attend the hearing in order to assist him or her.

26 (h) When a hearing is sought pursuant to this section, or filed
27 by a law enforcement employee pursuant to a request made under
28 Section 7510, the decision shall be rendered within two days of
29 the hearing. A unanimous vote of the panel shall be necessary in
30 order to require that the subject of the hearing undergo HIV or
31 other infectious, contagious, or communicable disease testing.

32 The criteria specified in Section 7511 for use by the chief
33 medical officer shall also be utilized by the panel in making its
34 decision.

35 The decision shall be in writing, stating reasons for the
36 decision, and shall be signed by the members. A copy shall be
37 provided by the chief medical officer to the person requesting the
38 test, or filing the report, whichever is applicable, to the subject of
39 the test, and, when the subject is in a correctional institution, to
40 the superintendent of the institution, except that, when the subject

1 of the test or the person upon whose behalf the request for the
2 test was made is a minor, copies shall also be provided to the
3 parent or guardian of the person, unless the parent or guardian
4 cannot be located.

5 SEC. 11. Section 7518 of the Penal Code is amended to read:

6 7518. (a) The Department of Corrections and Rehabilitation
7 and local health officers shall adopt guidelines for the making of
8 decisions pursuant to this chapter in consultation with the Office
9 of AIDS in the State Department of Health Services. The
10 guidelines shall be based on the latest written guidelines of HIV
11 or other infectious, contagious, or communicable disease
12 transmission and infection established by the federal Centers for
13 Disease Control and Prevention and the State Department of
14 Health.

15 (b) Oversight responsibility for implementation of the
16 applicable provisions of this title, including the oversight of
17 reports involving parole officers and the staff of state adult and
18 youth correctional facilities shall be vested with the Chief of
19 Medical Services in the Department of Corrections and
20 Rehabilitation.

21 Oversight responsibility at the county, the city, or the county
22 and city level shall rest with the local health officer.

23 SEC. 12. Section 7520 of the Penal Code is amended to read:

24 7520. Upon the release of an inmate from a correctional
25 institution, a medical representative of the institution shall notify
26 the inmate's parole or probation officer, where it is the case, that
27 the inmate has tested positive for infection with HIV, or has been
28 diagnosed as having AIDS or other infectious, contagious, or
29 communicable disease. The representative of the correctional
30 institution shall obtain the latest available medical information
31 concerning any precautions which should be taken under the
32 circumstances, and shall convey that information to the parole or
33 probation officer.

34 When a parole or probation officer learns from responsible
35 medical authorities that a parolee or probationer under his or her
36 jurisdiction has AIDS or has tested positive for HIV infection, or
37 other infectious, contagious, or communicable disease the parole
38 or probation officer shall be responsible for ensuring that the
39 parolee or probationer contacts the county health department in
40 order to be, or through his or her own physician and surgeon is,

1 made aware of counseling and treatment for AIDS or other
2 infectious, contagious, or communicable disease commensurate
3 with that available to the general population of that county.

4 SEC. 13. Section 7521 of the Penal Code is amended to read:

5 7521. (a) When a parole or probation officer learns from
6 responsible medical authorities that a parolee or probationer in
7 his or her custody has any of the conditions listed in Section
8 7520, but that the parolee or probationer has not properly
9 informed his or her spouse, the officer may ensure that this
10 information is relayed to the spouse only through either the chief
11 medical officer of the institution from which the person was
12 released or the physician and surgeon treating the spouse or the
13 parolee or probationer. The parole or probation officer shall seek
14 to ensure that proper counseling accompanies release of this
15 information to the spouse, through the person providing the
16 information to the inmate's spouse.

17 (b) If a parole or probation officer has received information
18 from appropriate medical authorities that one of his or her
19 parolees or probationers is HIV infected or has AIDS or other
20 infectious, contagious, or communicable disease, and the parolee
21 or probationer has a record of assault on a peace officer, and the
22 officer seeks the aid of local law enforcement officers to
23 apprehend or take into custody the parolee or probationer, he or
24 she shall inform the officers assisting him or her in apprehending
25 or taking into custody the parolee or probationer, of the person's
26 condition, to aid them in protecting themselves from contracting
27 AIDS or other infectious, contagious, or communicable disease.

28 (c) Local law enforcement officers receiving information
29 pursuant to this subdivision shall maintain confidentiality of
30 information received pursuant to subdivision (b). Willful use or
31 disclosure of this information is a misdemeanor. Parole or
32 probation officers who willfully or negligently disclose
33 information about AIDS or other infectious, contagious, or
34 communicable disease infection, other than as prescribed under
35 this title or any other provision of law, shall also be guilty of a
36 misdemeanor.

37 SEC. 14. Section 7522 of the Penal Code is amended to read:

38 7522. (a) Supervisory and medical personnel in correctional
39 institutions shall notify all law enforcement employees when
40 those employees have had direct contact with the bodily fluids of,

1 inmates or persons charged or in custody who either have tested
2 positive for infection with HIV, or been diagnosed as having
3 AIDS or other infectious, contagious, or communicable disease.

4 (b) Supervisory and medical personnel at correctional
5 institutions shall provide to employees covered by this section
6 the latest medical information regarding precautions to be taken
7 under the circumstances, and shall furnish proper protective
8 clothing and other necessary protective devices or equipment,
9 and instruct staff on the applicability of this title.

10 (c) The law enforcement employee who reported an incident
11 pursuant to Section 7510 shall be notified of the results of any
12 test administered to any person as a result of the reporting of the
13 incident pursuant to Section 7510.

14 SEC. 15 Section 7530 of the Penal Code is amended to read:
15 7530. The following procedures shall apply to testing
16 conducted under this title:

17 (a) The withdrawal of blood shall be performed in a medically
18 approved manner. Only a physician, registered nurse, licensed
19 vocational nurse, licensed medical technician, or licensed
20 phlebotomist may withdraw blood specimens for the purposes of
21 this title.

22 (b) The chief medical officer, as specified in Chapter 2
23 (commencing with Section 7510), shall order that the blood
24 specimens be transmitted to a licensed medical laboratory which
25 has been approved by the State Department of Health Services
26 for the conducting of HIV testing, and that tests including all
27 readily available confirmatory tests, be conducted thereon for
28 medically accepted indications of exposure to or infection with
29 HIV. The State Department of Health Services shall adopt
30 standards for the approval of medical laboratories for the
31 conducting of HIV testing under this title. The State Department
32 of Health Services shall adopt standards for the conducting of
33 tests under Section 7530. Testing for other infectious contagious,
34 or communicable diseases may be conducted by any licensed
35 medical laboratory approved by the chief medical officer.

36 (c) Copies of the test results shall be sent by the laboratory to
37 the chief medical officer who made the decision under either
38 Section 7511 or 7512 or who convened the panel under Section
39 7515 or 7516. The laboratory shall be responsible for protecting
40 the confidentiality of these test results. Willful or negligent

1 breach of this responsibility shall be grounds for a violation of
2 the contract.

3 (d) The test results shall be sent by the chief medical officer to
4 the designated recipients with the following disclaimer:

5 “The tests were conducted in a medically approved manner but
6 tests cannot determine exposure to or infection by AIDS or other
7 communicable diseases with absolute accuracy. Persons
8 receiving this test result should continue to monitor their own
9 health and should consult a physician as appropriate.”

10 (e) If the person subject to the test is a minor, copies of the test
11 result shall also be sent to the minor’s parents or guardian.

12 (f) All persons, other than the test subject, who receive test
13 results shall maintain the confidentiality of personal identifying
14 data relating to the test results, except for disclosure which may
15 be necessary to obtain medical or psychological care or advice,
16 or to comply with this title.

17 (g) The specimens and the results of the tests shall not be
18 admissible evidence in any criminal or disciplinary proceeding.

19 (h) Any person performing testing, transmitting test results, or
20 disclosing information in accordance with this title shall be
21 immune from civil liability for any action undertaken in
22 accordance with this title.

23 SEC. 16 Section 7552 of the Penal Code is amended to read:

24 7552. (a) It is recommended that every city or county
25 correctional, custodial, and law enforcement agency to which this
26 title applies have a comprehensive AIDS and HIV prevention and
27 education program in operation, by March 31, 1989.
28 Recommended goals for the programs include all of the
29 following:

30 (1) Education. Implementation of an educational plan which
31 includes education and training for officers, support staff, and
32 inmates on the prevention and transmission of HIV, with regular
33 updates, at least every three months, with all persons held in
34 custody for at least 12 hours in a correctional institution being
35 provided at least with a pamphlet approved by the county health
36 officer, with more detailed education for persons kept beyond
37 three days.

38 (2) Body fluid precautions. Because all bodily fluids are
39 considered as potentially infectious, supplying all employees of
40 correctional institutions with the necessary equipment and

1 supplies to follow accepted universal bodily fluids precautions,
2 including gloves and devices to administer cardiopulmonary
3 resuscitation, when dealing with infected persons or those in
4 high-risk groups for HIV or other infectious, contagious, or
5 communicable diseases.

6 (3) Separate housing for infected individuals. Making
7 available adequate separate housing facilities for housing inmates
8 who have tested positive for HIV infection and who continue to
9 engage in activities which transmit HIV, with facilities
10 comparable to those of other inmates with access to recreational
11 and educational facilities, commensurate with the facilities
12 available in the correctional institution.

13 (4) Adequate AIDS medical services. The provision of
14 medical services appropriate for the diagnosis and treatment of
15 HIV infection.

16 (5) These guidelines are advisory only and do not constitute a
17 state mandate.

18 (b) The program shall require confidentiality of information in
19 accordance with this title and other provisions of the law.

20 (c) The Board of Corrections and the State Department of
21 Health Services shall assist in developing the programs.

22 SEC. 17. If the Commission on State Mandates determines
23 that this act contains costs mandated by the state, reimbursement
24 to local agencies and school districts for those costs shall be
25 made pursuant to Part 7 (commencing with Section 17500) of
26 Division 4 of Title 2 of the Government Code.