

AMENDED IN SENATE JUNE 14, 2006

AMENDED IN ASSEMBLY MAY 8, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2870**

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**Introduced by Assembly Member De La Torre**

February 24, 2006

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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~~ *hepatitis B and C* 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~~ *hepatitis B and C* within  
 8 state and local correctional institutions.  
 9 (b) The spread of AIDS and ~~other infectious, contagious, or~~  
 10 ~~communicable diseases~~ *hepatitis B and C* within prison and jail  
 11 populations presents a grave danger to inmates within those  
 12 populations, law enforcement personnel, and other persons in  
 13 contact with a prisoner infected with the ~~AIDS virus as well as~~  
 14 ~~other infectious, contagious, or communicable diseases,~~ *HIV*  
 15 *virus as well as hepatitis B and C*, both during and after the  
 16 prisoner’s confinement. Law enforcement personnel and  
 17 prisoners are particularly vulnerable to this danger, due to the  
 18 high number of assaults, violent acts, and transmissions of bodily  
 19 fluids that occur within correctional institutions.  
 20 (c) HIV, as well as ~~other infectious, contagious, or~~  
 21 ~~communicable diseases~~ *hepatitis B and C*, have the potential of  
 22 spreading more rapidly within the closed society of correctional  
 23 institutions than outside these institutions. These major public  
 24 health problems are compounded by the further potential of *the*  
 25 rapid spread of communicable disease outside correctional

1 institutions; through contacts of an infected prisoner who is not  
2 treated and monitored upon his or her release, or by law  
3 enforcement employees who are unknowingly infected.

4 (d) New diseases of epidemic proportions such as AIDS may  
5 suddenly and tragically infect large numbers of people. This title  
6 primarily addresses a current problem of this nature, the spread  
7 of HIV, as well as ~~other infectious, contagious, or communicable~~  
8 ~~diseases~~ *hepatitis B and C*, among those in correctional  
9 institutions and among the people of California.

10 (e) ~~HIV, AIDS, and other infectious, contagious, or~~  
11 ~~communicable diseases~~ *HIV, AIDS, and hepatitis B and C* pose a  
12 major threat to the public health and safety of those  
13 governmental employees and others whose responsibilities bring  
14 them into direct contact with persons afflicted with those  
15 illnesses, and the protection of the health and safety of these  
16 personnel is of equal importance to the people of the State of  
17 California as the protection of the health of those afflicted with  
18 the diseases who are held in custodial situations.

19 (f) Testing described in this title of individuals housed within  
20 state and local correctional facilities for evidence of infection by  
21 HIV and ~~other infectious, contagious, or communicable diseases~~  
22 *hepatitis B and C* would help to provide a level of information  
23 necessary for effective disease control within these institutions  
24 and would help to preserve the health of public employees,  
25 inmates, and persons in custody, as well as that of the public at  
26 large. This testing is not intended to be, and shall not be  
27 construed as, a prototypical method of disease control for the  
28 public at large.

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

30 7501. In order to address the public health crisis described in  
31 Section 7500, it is the intent of the Legislature to do all of the  
32 following:

33 (a) Establish a procedure through which custodial and law  
34 enforcement personnel are required to report certain situations  
35 and may request and be granted a confidential test for HIV or for  
36 ~~other infectious, contagious, or communicable diseases~~ *hepatitis*  
37 *B or C* of an inmate convicted of a crime, or a person arrested or  
38 taken into custody, if the custodial or law enforcement officer has  
39 reason to believe that he or she has come into contact with the  
40 blood or semen of an inmate or in any other manner has come

1 into contact with the inmate in a way that could result in HIV  
2 infection, or the transmission of ~~other infectious, contagious, or~~  
3 ~~communicable disease~~ *hepatitis B or C*, based on the latest  
4 determinations and conclusions by the federal Centers for  
5 Disease Control *and Prevention* and the State Department of  
6 Health Services on means for the transmission of AIDS or ~~other~~  
7 ~~infectious, contagious, or communicable diseases~~ *hepatitis B and*  
8 *C*, and if appropriate medical authorities, as provided in this title,  
9 reasonably believe there is good medical reason for the test.

10 (b) Permit inmates to file similar requests stemming from  
11 contacts with other inmates.

12 (c) Require that probation and parole officers be notified when  
13 an inmate being released from incarceration is infected with  
14 AIDS or ~~other infectious, contagious, or communicable diseases~~  
15 *hepatitis B or C*, and permit these officers to notify certain  
16 persons who will come into contact with the parolee or  
17 probationer, if authorized by law.

18 (d) Authorize prison medical staff authorities to require tests  
19 of a jail or prison inmate under certain circumstances, if they  
20 reasonably believe, based upon the existence of supporting  
21 evidence, that the inmate may be suffering from HIV infection or  
22 AIDS or ~~other infectious, contagious, or communicable diseases~~  
23 *hepatitis B or C* and is a danger to other inmates or staff.

24 (e) Require supervisory and medical personnel of correctional  
25 institutions to which this title applies to notify staff if they are  
26 coming into close and direct contact with persons in custody who  
27 have tested positive or who have AIDS or ~~other infectious,~~  
28 ~~contagious, or communicable diseases~~ *hepatitis B or C*, and  
29 provide appropriate counseling and safety equipment.

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

31 7502. As used in this title, the following terms shall have the  
32 following meanings:

33 (a) "Correctional institution" means any state prison, county  
34 jail, city jail, California Youth Authority facility, county- or  
35 city-operated juvenile facility, including juvenile halls, camps, or  
36 schools, or any other state or local correctional institution,  
37 including a court facility.

38 (b) "Counseling" means counseling by a licensed physician  
39 and surgeon, registered nurse, or other health professional who  
40 meets guidelines which shall be established by the State

1 Department of Health Services for purposes of providing  
2 counseling on AIDS and ~~other infectious, contagious, or~~  
3 ~~communicable diseases~~ *hepatitis B and C* to inmates, persons in  
4 custody, and other persons pursuant to this title.

5 (c) “Law enforcement employee” means correctional officers,  
6 peace officers, and other staff of a correctional institution,  
7 California Highway Patrol officers, county sheriff’s deputies, city  
8 police officers, parole officers, probation officers, and city,  
9 county, or state employees including but not limited to, judges,  
10 bailiffs, court personnel, prosecutors and staff, and public  
11 defenders and staff, who, as part of the judicial process involving  
12 an inmate of a correctional institution, or a person charged with a  
13 crime, including a minor charged with an offense for which he or  
14 she may be made a ward of the court under Section 602 of the  
15 Welfare and Institutions Code, are engaged in the custody,  
16 transportation, prosecution, representation, or care of these  
17 persons.

18 (d) “AIDS” means acquired immune deficiency syndrome.

19 (e) “Human immunodeficiency virus” or “HIV” means the  
20 etiologic virus of AIDS.

21 (f) “HIV test” or “HIV testing” means any clinical laboratory  
22 test approved by the federal Food and Drug Administration for  
23 HIV, component of HIV, or antibodies to HIV.

24 ~~(g) “Infectious, contagious, or communicable disease” means~~  
25 ~~any disease that was transferable through the exposure incident~~  
26 ~~and could result in a life-threatening or chronic illness or~~  
27 ~~condition if left untreated, as determined by the chief medical~~  
28 ~~officer as defined in subdivision (e) of Section 7510.~~

29 (h)

30 (g) “Inmate” means any of the following:

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

34 (2) Any person in a California Youth Authority facility, or  
35 county- or city-operated juvenile facility, who has committed an  
36 act, or been charged with committing an act specified in Section  
37 602 of the Welfare and Institutions Code.

38 (i)

39 (h) “Bodily fluids” means blood, semen, or any other bodily  
40 fluid identified by either the federal Centers for Disease Control

1 *and Prevention* or State Department of Health Services in  
2 appropriate regulations as capable of transmitting HIV *or*  
3 *hepatitis B or C*.

4 (j)

5 (i) “Minor” means a person under 15 years of age.

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

7 7510. (a) A law enforcement employee who believes that he  
8 or she came into contact with bodily fluids of either an inmate of  
9 a correctional institution, a person not in a correctional institution  
10 who has been arrested or taken into custody whether or not the  
11 person has been charged with a crime, including a person  
12 detained for or charged with an offense for which he or she may  
13 be made a ward of the court under Section 602 of the Welfare  
14 and Institutions Code, a person charged with any crime, whether  
15 or not the person is in custody, or a person on probation or parole  
16 due to conviction of a crime, shall report the incident through the  
17 completion of a form provided by the State Department of Health  
18 Services. The form shall be directed to the chief medical officer,  
19 as defined in subdivision (c), who serves the applicable law  
20 enforcement employee. Utilizing this form the law enforcement  
21 employee may request a test for HIV ~~or other infectious,~~  
22 ~~contagious, or communicable disease~~ *hepatitis B or C* of the  
23 person who is the subject of the report. The forms may be  
24 combined with regular incident reports or other forms used by  
25 the correctional institution or law enforcement agency, however  
26 the processing of a form by the chief medical officer containing a  
27 request for HIV ~~or other infectious, contagious, or communicable~~  
28 ~~disease~~ *hepatitis B or C* testing of the subject person shall not be  
29 delayed by the processing of other reports or forms.

30 (b) The report required by subdivision (a) shall be submitted  
31 by the end of the law enforcement employee’s shift during which  
32 the incident occurred, or if not practicable, as soon as possible,  
33 but no longer than two days after the incident, except that the  
34 chief medical officer may waive this filing period requirement if  
35 he or she finds that good cause exists. The report shall include  
36 names of witnesses to the incident, names of persons involved in  
37 the incident, and if feasible, any written statements from these  
38 parties. The law enforcement employee shall assist in the  
39 investigation of the incident, as requested by the chief medical  
40 officer.

1 (c) For purposes of this section, Section 7502, and Section  
2 7511, “chief medical officer” means:

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

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

7 (3) In the case of a report filed by an employee of the  
8 Department of the Youth Authority, the chief medical officer of  
9 the facility.

10 (4) In the case of a report filed against a subject who is an  
11 inmate of a city or county jail or a county- or city-operated  
12 juvenile facility, or a court facility, or who has been arrested or  
13 taken into custody whether or not the person has been charged  
14 with a crime, but who is not in a correctional facility, including a  
15 person detained ~~for or charged with~~ *for, or charged with*, an  
16 offense for which he or she may be made a ward of the court  
17 under Section 602 of the Welfare and Institutions Code, or a  
18 person charged with a crime, whether or not the person is in  
19 custody, the county health officer of the county in which the  
20 individual is jailed or charged with the crime.

21 (5) In the case of a report filed by a probation officer, a  
22 prosecutor, a public defender attorney or staff person, the county  
23 health officer of the county in which the probation officer,  
24 prosecutor, a public defender attorney or staff person, is  
25 employed.

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

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

31 7511. (a) The chief medical officer shall, regardless of  
32 whether a report filed pursuant to Section 7510 contains a request  
33 for HIV ~~or other infectious, contagious, or communicable disease~~  
34 *hepatitis B or C* testing, decide whether or not to require HIV or  
35 ~~other infectious, contagious, or communicable disease~~ *hepatitis B*  
36 *or C* testing of the inmate or other person who is the subject of  
37 the report filed pursuant to Section 7510, within 24 hours of  
38 receipt of the report. If the chief medical officer decides to  
39 require HIV ~~or other infectious, contagious, or communicable~~  
40 ~~disease~~ *hepatitis B or C* testing, he or she shall specify in his or

1 her decision the circumstances, if any, under which followup  
 2 testing will also be required.

3 (b) The chief medical officer shall order an HIV or ~~other~~  
 4 ~~infectious, contagious, or communicable disease~~ *hepatitis B or C*  
 5 test only if he or she finds that, considering all of the facts and  
 6 circumstances, there is a significant risk that HIV or ~~other~~  
 7 ~~infectious, contagious, or communicable disease~~ *hepatitis B or C*  
 8 was transmitted. In making this decision, the chief medical  
 9 officer shall take the following factors into consideration:

10 (1) Whether an exchange of bodily fluids occurred which  
 11 could have resulted in a significant risk of AIDS or ~~other~~  
 12 ~~infectious, contagious, or communicable disease~~ *hepatitis B or C*  
 13 infection, based on the latest written guidelines and standards  
 14 established by the federal Centers for Disease Control *and*  
 15 *Prevention* and the State Department of Health Services.

16 (2) Whether the person exhibits medical conditions or clinical  
 17 findings consistent with HIV or ~~other infectious, contagious, or~~  
 18 ~~communicable disease~~ *hepatitis B or C* infection.

19 (3) Whether the health of the institution staff or inmates may  
 20 have been endangered as to HIV or ~~other infectious, contagious,~~  
 21 ~~or communicable disease~~ *hepatitis B or C* infection resulting  
 22 from the reported incident.

23 (c) Prior to reaching a decision, the chief medical officer may  
 24 if needed receive written or oral testimony from the law  
 25 enforcement employee filing the report, from the subject of the  
 26 report, and from witnesses to the incident, as he or she deems  
 27 necessary for a complete investigation. The decision shall be in  
 28 writing and shall state the reasons for the decision. A copy shall  
 29 be provided by the chief medical officer to the law enforcement  
 30 employee who filed the report and to the subject of the report,  
 31 and where the subject is a minor, to the parents or guardian of the  
 32 minor, unless the parent or guardian of the minor cannot be  
 33 located.

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

35 7512. (a) An inmate of a correctional institution may request  
 36 testing for HIV or ~~other infectious, contagious, or communicable~~  
 37 ~~disease~~ *hepatitis B or C* of another inmate of that institution if he  
 38 or she has reason to believe that he or she has come into contact  
 39 with the bodily fluids of that inmate, in situations, which may  
 40 include, but are not limited to, rape or sexual contact with a

1 potentially infected inmate, tattoo- or drug-needle sharing, an  
2 incident involving injury in which bodily fluids are exchanged,  
3 or confinement with a cellmate under circumstances involving  
4 possible mingling of bodily fluids. A request may be filed under  
5 this section only within two calendar days of the date when the  
6 incident causing the request occurred, except that the chief  
7 medical officer may waive this filing period requirement when he  
8 or she finds that good cause exists.

9 (b) An inmate in a California Youth Authority facility or any  
10 county- or city-operated juvenile facility who is 15 years of age  
11 or older may file a request for a test of another inmate in that  
12 facility, in the same manner as an inmate in a state prison, and is  
13 subject to the same procedures and rights. An inmate in a  
14 California Youth Authority facility or a county- or city-operated  
15 juvenile facility who is a minor may file a request for testing  
16 through a staff member of the facility in which he or she is  
17 confined. A staff member may file this request on behalf of a  
18 minor on his or her own volition if he or she believes that a  
19 situation meeting the criteria specified in subdivision (a) has  
20 occurred warranting the request. The filing of a request by staff  
21 on behalf of an inmate of a California Youth Authority facility or  
22 a local juvenile facility shall be within two calendar days of its  
23 discovery by staff, except that the chief medical officer may  
24 waive this filing period requirement if he or she finds that good  
25 cause exists.

26 When a request is filed on behalf of a minor, the facility shall  
27 notify the parent or guardian of the minor of the request and seek  
28 permission from the parent or guardian for the test request to  
29 proceed. If the parent or guardian refuses to grant permission for  
30 the test, the Director of the Youth Authority may request the  
31 juvenile court in the county in which the facility is located, to  
32 rule on whether the test request procedure set forth in this title  
33 shall continue. The juvenile court shall make a ruling within five  
34 days of the case being brought before the court.

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

37 (c) Upon receipt of a request for testing as provided in this  
38 section, a law enforcement employee shall submit the request to  
39 the chief medical officer, the identity of which shall be  
40 determined as if the request had been made by an employee of

1 the facility. The chief medical officer shall follow the procedures  
2 set forth in Section 7511 with respect to investigating the request  
3 and reaching a decision as to mandatory testing of the inmate  
4 who is the subject of the request. The inmate submitting the  
5 request shall provide names or testimony of witnesses within the  
6 limits of his or her ability to do so. The chief medical officer  
7 shall make his or her decision based on the criteria set forth in  
8 Section 7511. A copy of the chief medical officer's decision shall  
9 be provided to the person submitting the request for HIV or ~~other~~  
10 ~~infectious, contagious, or communicable disease~~ *hepatitis B or C*  
11 testing, to the subject of the request, and to the superintendent of  
12 the correctional institution. In the case of a minor, a copy of the  
13 decision shall be provided to the parents or guardian of the  
14 minor, unless the parent or guardian of the minor cannot be  
15 located.

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

17 7512.5. In the absence of the filing of a report pursuant to  
18 Section 7510 or a request pursuant to Section 7512, the chief  
19 medical officer; may order a test of an inmate if he or she  
20 concludes there are clinical symptoms of HIV infection, AIDS,  
21 or ~~other infectious, contagious, or communicable disease~~  
22 *hepatitis B or C*, as recognized by the *federal* Centers for Disease  
23 Control and Prevention or the *State* Department of Health  
24 Services.

25 A copy of the decision shall be provided to the inmate, and  
26 where the inmate is a minor, to the parents or guardian of the  
27 minor, unless the parent or guardian of the minor cannot be  
28 located. Any decision made pursuant to this section shall not be  
29 appealable to a three-member panel provided for under Section  
30 7515.

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

32 7513. An inmate who is the subject of an HIV test report filed  
33 pursuant to Section 7510 or an HIV or ~~other infectious,~~  
34 ~~contagious, or communicable disease~~ *hepatitis B or C* test report  
35 filed pursuant to Section 7512 shall receive, in conjunction with  
36 the decision of the chief medical officer to order a test, a copy of  
37 this title, a written description of the right to appeal the chief  
38 medical officer's decision which includes the applicable  
39 timelines, and notification of his or her right to receive pretest

1 and posttest counseling by staff that have been certified as HIV  
2 test counselors.

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

4 7514. (a) It shall be the chief medical officer's responsibility  
5 to see that personal counseling is provided to a law enforcement  
6 employee filing a report pursuant to Section 7510, an inmate  
7 filing a request pursuant to Section 7512, and any potential test  
8 subject, at the time the initial report or request for tests is made,  
9 at the time when tests are ordered, and at the time when test  
10 results are provided to the employee, inmate, or test subject.

11 ~~The~~

12 (b) *The* chief medical officer may provide additional  
13 counseling to any of these individuals, upon his or her request, or  
14 whenever the chief medical officer deems advisable, and may  
15 arrange for the counseling to be provided in other jurisdictions.  
16 The chief medical officer shall encourage the subject of the  
17 report or request, the law enforcement employee who filed the  
18 report, the person who filed the request pursuant to Section 7512,  
19 or in the case of a minor, the minor on whose behalf the request  
20 was filed, to undergo voluntary HIV or ~~other infectious,~~  
21 ~~contagious, or communicable disease~~ *hepatitis B or C* testing if  
22 the chief medical officer deems it medically advisable. All  
23 testing required by this title or any voluntary testing resulting  
24 from the provisions of this title, shall be at the expense of the  
25 appropriate correctional institution.

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

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

30 7515. (a) A decision of the chief medical officer made  
31 pursuant to Section 7511, 7512, or 7516 may be appealed, within  
32 three calendar days of receipt of the decision, to a three-person  
33 panel, either by the person required to be tested, his or her parent  
34 or guardian when the subject is a minor, the law enforcement  
35 employee filing a report pursuant to either Section 7510 or 7516,  
36 or the person requesting testing pursuant to Section 7512,  
37 whichever is applicable, or the chief medical officer, upon his or  
38 her own motion. If no request for appeal is filed under this  
39 subdivision, the chief medical officer's decision shall be final.

1 (b) Depending upon which entity has jurisdiction over the  
2 person requesting or appealing a test, the Department of  
3 Corrections, the Department of the Youth Authority, the county,  
4 the city, or the county and city shall convene the appeal panel  
5 and shall ensure that the appeal is heard within seven calendar  
6 days.

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

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

10 (2) A physician and surgeon who has knowledge in the  
11 diagnosis, treatment, and transmission of HIV or ~~other infectious,~~  
12 ~~contagious, or communicable disease~~ *hepatitis B and C*, selected  
13 by the Department of Corrections, the Department of the Youth  
14 Authority, the county, the city, or the county and city. The  
15 physician and surgeon appointed pursuant to this paragraph shall  
16 preside at the hearing and serve as chairperson.

17 (3) A physician and surgeon not on the staff of, or under  
18 contract with, a state, county, city, or county and city correctional  
19 institution or with an employer of a law enforcement employee  
20 as defined in subdivision (b) of Section 7502, and who has  
21 knowledge of the diagnosis, treatment, and transmission of HIV  
22 or ~~other infectious, contagious, or communicable disease~~  
23 *hepatitis B and C*. The physician and surgeon appointed pursuant  
24 to this paragraph shall be selected by the State Department of  
25 Health Services from a list of persons to be compiled by that  
26 department. The State Department of Health Services shall adopt  
27 standards for selecting persons for the list required by this  
28 paragraph, as well as for their reimbursement, and shall, to the  
29 extent possible, utilize its normal process for selecting  
30 consultants in compiling this list.

31 The Legislature finds and declares that the presence of a  
32 physician and surgeon on the panel who is selected by the State  
33 Department of Health Services enhances the objectivity of the  
34 panel, and it is the intent of the Legislature that the State  
35 Department of Health Services make every attempt to comply  
36 with this subdivision.

37 (d) The Department of Corrections, the county, the city, or the  
38 county and city shall notify the Office of AIDS in the State  
39 Department of Health Services when a panel must be convened  
40 under subdivision (a) wherein ~~AIDS~~ *HIV* testing has been

1 requested *or the State Department of Health Services when a test*  
2 *for hepatitis B or C has been requested.* Within two calendar  
3 days of the notification, a physician and surgeon appointed under  
4 paragraph (3) of subdivision (c) shall reach agreement with the  
5 Department of Corrections, the county, the city, or the county  
6 and city on a date for the hearing that complies with subdivision  
7 (b).

8 (e) If the Office of AIDS in the State Department of Health  
9 *Services or, in the case of a hepatitis B or C test, the State*  
10 *Department of Health Services,* fails to comply with subdivision  
11 (d) or the physician and surgeon appointed under paragraph (3)  
12 of subdivision (c) fails to attend the scheduled hearing, the  
13 Department of Corrections, the county, the city, or the county  
14 and city shall appoint a physician ~~or~~ *and* surgeon who has  
15 knowledge of the diagnosis, treatment, and transmission of HIV  
16 *and hepatitis B and C* to serve on the appeals panel to replace the  
17 physician and surgeon required under paragraph (3) of  
18 subdivision (c). The Department of Corrections, the county, the  
19 city, or the county and city shall have standards for selecting  
20 persons under this subdivision and for their reimbursement.

21 The Department of Corrections, the Department of the Youth  
22 Authority, the county, the city, or the county and city shall,  
23 whenever feasible, create, and utilize ongoing panels to hear  
24 appeals under this section. The membership of the panel shall  
25 meet the requirements of paragraphs (1), (2), and (3) of  
26 subdivision (c).

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

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

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

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

1 (3) The law enforcement employee filing the report pursuant  
2 to Section 7510, or the person requesting HIV or *hepatitis B or C*  
3 testing pursuant to Section 7512, whichever is applicable and, if  
4 the person is a minor, his or her parent or guardian.

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

9 (h) When a hearing is sought pursuant to this section, or filed  
10 by a law enforcement employee pursuant to a request made under  
11 Section 7510, the decision shall be rendered within two days of  
12 the hearing. A unanimous vote of the panel shall be necessary in  
13 order to require that the subject of the hearing undergo HIV or  
14 ~~other infectious, contagious, or communicable disease~~ *hepatitis B*  
15 *or C* testing.

16 The criteria specified in Section 7511 for use by the chief  
17 medical officer shall also be utilized by the panel in making its  
18 decision.

19 The decision shall be in writing, stating reasons for the  
20 decision, and shall be signed by the members. A copy shall be  
21 provided by the chief medical officer to the person requesting the  
22 test, or filing the report, whichever is applicable, to the subject of  
23 the test, and, when the subject is in a correctional institution, to  
24 the superintendent of the institution, except that, when the subject  
25 of the test or the person upon whose behalf the request for the  
26 test was made is a minor, copies shall also be provided to the  
27 parent or guardian of the ~~person~~ *minor*, unless the parent or  
28 guardian cannot be located.

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

30 7518. (a) The Department of Corrections and Rehabilitation  
31 and local health officers shall adopt guidelines for the making of  
32 decisions pursuant to this chapter in consultation with the Office  
33 of AIDS in the State Department of Health Services. The  
34 guidelines shall be based on the latest written guidelines of HIV  
35 ~~or other infectious, contagious, or communicable disease~~  
36 *hepatitis B and C* transmission and infection established by the  
37 federal Centers for Disease Control and Prevention and the State  
38 Department of Health *Services*.

39 (b) Oversight responsibility for implementation of the  
40 applicable provisions of this title, including the oversight of

1 reports involving parole officers and the staff of state adult and  
2 youth correctional facilities shall be vested with the Chief of  
3 Medical Services in the Department of Corrections and  
4 Rehabilitation.

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

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

8 7520. Upon the release of an inmate from a correctional  
9 institution, a medical representative of the institution shall notify  
10 the inmate's parole or probation officer, where it is the case, that  
11 the inmate has tested positive for infection with HIV, or has been  
12 diagnosed as having AIDS or ~~other infectious, contagious, or~~  
13 ~~communicable disease~~ *hepatitis B and C*. The representative of  
14 the correctional institution shall obtain the latest available  
15 medical information concerning any precautions which should be  
16 taken under the circumstances, and shall convey that information  
17 to the parole or probation officer.

18 When a parole or probation officer learns from responsible  
19 medical authorities that a parolee or probationer under his or her  
20 jurisdiction has AIDS or has tested positive for HIV infection, or  
21 ~~other infectious, contagious, or communicable disease~~ *hepatitis B*  
22 *or C*, the parole or probation officer shall be responsible for  
23 ensuring that the parolee or probationer contacts the county  
24 health department in order to be, or through his or her own  
25 physician and surgeon is, made aware of counseling and  
26 treatment for AIDS or ~~other infectious, contagious, or~~  
27 ~~communicable disease~~ *hepatitis B or C, as appropriate*  
28 commensurate with that available to the general population of  
29 that county.

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

31 7521. (a) When a parole or probation officer learns from  
32 responsible medical authorities that a parolee or probationer in  
33 his or her custody has any of the conditions listed in Section  
34 7520, but that the parolee or probationer has not properly  
35 informed his or her spouse, the officer may ensure that this  
36 information is relayed to the spouse only through either the chief  
37 medical officer of the institution from which the person was  
38 released or the physician and surgeon treating the spouse or the  
39 parolee or probationer. The parole or probation officer shall seek  
40 to ensure that proper counseling accompanies release of this

1 information to the spouse, through the person providing the  
2 information to the inmate's spouse.

3 (b) If a parole or probation officer has received information  
4 from appropriate medical authorities that one of his or her  
5 parolees or probationers is HIV infected or has AIDS or ~~other~~  
6 ~~infectious, contagious, or communicable disease~~ *hepatitis B or C*,  
7 and the parolee or probationer has a record of assault on a peace  
8 officer, and the officer seeks the aid of local law enforcement  
9 officers to apprehend or take into custody the parolee or  
10 probationer, he or she shall inform the officers assisting him or  
11 her in apprehending or taking into custody the parolee or  
12 probationer, of the person's condition, to aid them in protecting  
13 themselves from contracting AIDS or ~~other infectious,~~  
14 ~~contagious, or communicable disease~~ *hepatitis B or C*.

15 (c) Local law enforcement officers receiving information  
16 pursuant to this subdivision shall maintain confidentiality of  
17 information received pursuant to subdivision (b). Willful use or  
18 disclosure of this information is a misdemeanor. Parole or  
19 probation officers who willfully or negligently disclose  
20 information about AIDS or ~~other infectious, contagious, or~~  
21 ~~communicable disease~~ *hepatitis B or C* infection, other than as  
22 prescribed under this title or any other provision of law, shall  
23 also be guilty of a misdemeanor.

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

25 7522. (a) Supervisory and medical personnel in correctional  
26 institutions shall notify all law enforcement employees when  
27 those employees have had direct contact with the bodily fluids of;  
28 inmates or persons charged or in custody who either have tested  
29 positive for infection with HIV, or been diagnosed as having  
30 AIDS or ~~other infectious, contagious, or communicable disease~~  
31 *hepatitis B or C*.

32 (b) Supervisory and medical personnel at correctional  
33 institutions shall provide to employees covered by this section  
34 the latest medical information regarding precautions to be taken  
35 under the circumstances, and shall furnish proper protective  
36 clothing and other necessary protective devices or equipment,  
37 and instruct staff on the applicability of this title.

38 (c) The law enforcement employee who reported an incident  
39 pursuant to Section 7510 shall be notified of the results of any

1 test administered to any person as a result of the reporting of the  
2 incident pursuant to Section 7510.

3 SEC. 15 Section 7530 of the Penal Code is amended to read:

4 7530. The following procedures shall apply to testing  
5 conducted under this title:

6 (a) The withdrawal of blood shall be performed in a medically  
7 approved manner. Only a physician, registered nurse, licensed  
8 vocational nurse, licensed medical technician, or licensed  
9 phlebotomist may withdraw blood specimens for the purposes of  
10 this title.

11 (b) The chief medical officer, as specified in Chapter 2  
12 (commencing with Section 7510), shall order that the blood  
13 specimens be transmitted to a licensed medical laboratory which  
14 has been approved by the State Department of Health Services  
15 for the conducting of HIV testing, and that tests including all  
16 readily available confirmatory tests; be conducted thereon for  
17 medically accepted indications of exposure to or infection with  
18 HIV. The State Department of Health Services shall adopt  
19 standards for the approval of medical laboratories for the  
20 conducting of HIV testing under this title. The State Department  
21 of Health Services shall adopt standards for the conducting of  
22 tests under Section 7530. Testing for ~~other infectious contagious,~~  
23 ~~or communicable diseases~~ *hepatitis B or C* may be conducted by  
24 any licensed medical laboratory approved by the chief medical  
25 officer.

26 (c) Copies of the test results shall be sent by the laboratory to  
27 the chief medical officer who made the decision under either  
28 Section 7511 or 7512 or who convened the panel under Section  
29 7515 or 7516. The laboratory shall be responsible for protecting  
30 the confidentiality of these test results. Willful or negligent  
31 breach of this responsibility shall be grounds for a violation of  
32 the contract.

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

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

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

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

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

10 (h) Any person performing testing, transmitting test results, or  
11 disclosing information in accordance with this title shall be  
12 immune from civil liability for any action undertaken in  
13 accordance with this title.

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

15 7552. (a) It is recommended that every city or county  
16 correctional, custodial, and law enforcement agency to which this  
17 title applies have a comprehensive AIDS and HIV prevention and  
18 education program in operation; by March 31, 1989.  
19 Recommended goals for the programs include all of the  
20 following:

21 (1) Education. Implementation of an educational plan which  
22 includes education and training for officers, support staff, and  
23 inmates on the prevention and transmission of HIV, with regular  
24 updates, at least every three months, with all persons held in  
25 custody for at least 12 hours in a correctional institution being  
26 provided at least with a pamphlet approved by the county health  
27 officer, ~~with~~ *and* more detailed education for persons kept  
28 beyond three days.

29 (2) Body fluid precautions. Because all bodily fluids are  
30 considered as potentially infectious, supplying all employees of  
31 correctional institutions with the necessary equipment and  
32 supplies to follow accepted universal bodily fluids precautions,  
33 including gloves and devices to administer cardiopulmonary  
34 resuscitation, when dealing with infected persons or those in  
35 high-risk groups for HIV or ~~other infectious, contagious, or~~  
36 ~~communicable diseases~~ *hepatitis B or C*.

37 (3) Separate housing for infected individuals. Making  
38 available adequate separate housing facilities for housing inmates  
39 who have tested positive for HIV infection and who continue to  
40 engage in activities which transmit HIV, with facilities

1 comparable to those of other inmates with access to recreational  
2 and educational facilities, commensurate with the facilities  
3 available in the correctional institution.

4 (4) Adequate AIDS medical services. The provision of  
5 medical services appropriate for the diagnosis and treatment of  
6 HIV infection.

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

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

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

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