

Assembly Bill No. 2870

Passed the Assembly August 22, 2006

Chief Clerk of the Assembly

Passed the Senate August 16, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 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.

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

SECTION 1. Section 7500 of the Penal Code is amended to read:

7500. The Legislature finds and declares all of the following:

(a) The public peace, health, and safety is endangered by the spread of the human immunodeficiency virus (HIV), acquired immunodeficiency syndrome (AIDS), and hepatitis B and C within state and local correctional institutions.

(b) The spread of AIDS and hepatitis B and C within prison and jail populations presents a grave danger to inmates within those populations, law enforcement personnel, and other persons in contact with a prisoner infected with the HIV virus as well as hepatitis B and C, both during and after the prisoner's confinement. Law enforcement personnel and prisoners are particularly vulnerable to this danger, due to the high number of assaults, violent acts, and transmissions of bodily fluids that occur within correctional institutions.

(c) HIV, as well as hepatitis B and C, have the potential of spreading more rapidly within the closed society of correctional institutions than outside these institutions. These major public health problems are compounded by the further potential of the rapid spread of communicable disease outside correctional institutions through contacts of an infected prisoner who is not treated and monitored upon his or her release, or by law enforcement employees who are unknowingly infected.

(d) New diseases of epidemic proportions such as AIDS may suddenly and tragically infect large numbers of people. This title primarily addresses a current problem of this nature, the spread of HIV, as well as hepatitis B and C, among those in correctional institutions and among the people of California.

(e) HIV, AIDS, and hepatitis B and C pose a major threat to the public health and safety of those governmental employees and others whose responsibilities bring them into direct contact with persons afflicted with those illnesses, and the protection of the health and safety of these personnel is of equal importance to the people of the State of California as the protection of the health of those afflicted with the diseases who are held in custodial situations.

(f) Testing described in this title of individuals housed within state and local correctional facilities for evidence of infection by HIV and hepatitis B and C would help to provide a level of information necessary for effective disease control within these institutions and would help to preserve the health of public

employees, inmates, and persons in custody, as well as that of the public at large. This testing is not intended to be, and shall not be construed as, a prototypical method of disease control for the public at large.

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

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

(a) Establish a procedure through which custodial and law enforcement personnel are required to report certain situations and may request and be granted a confidential test for HIV or for hepatitis B or C of an inmate convicted of a crime, or a person arrested or taken into custody, if the custodial or law enforcement officer has reason to believe that he or she has come into contact with the blood or semen of an inmate or in any other manner has come into contact with the inmate in a way that could result in HIV infection, or the transmission of hepatitis B or C, based on the latest determinations and conclusions by the federal Centers for Disease Control and Prevention and the State Department of Health Services on means for the transmission of AIDS or hepatitis B and C, and if appropriate medical authorities, as provided in this title, reasonably believe there is good medical reason for the test.

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

(c) Require that probation and parole officers be notified when an inmate being released from incarceration is infected with AIDS or hepatitis B or C, and permit these officers to notify certain persons who will come into contact with the parolee or probationer, if authorized by law.

(d) Authorize prison medical staff authorities to require tests of a jail or prison inmate under certain circumstances, if they reasonably believe, based upon the existence of supporting evidence, that the inmate may be suffering from HIV infection or AIDS or hepatitis B or C and is a danger to other inmates or staff.

(e) Require supervisory and medical personnel of correctional institutions to which this title applies to notify staff if they are coming into close and direct contact with persons in custody who have tested positive or who have AIDS or hepatitis B or C, and provide appropriate counseling and safety equipment.

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

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

(a) "Correctional institution" means any state prison, county jail, city jail, Division of Juvenile Justice facility, county- or city-operated juvenile facility, including juvenile halls, camps, or schools, or any other state or local correctional institution, including a court facility.

(b) "Counseling" means counseling by a licensed physician and surgeon, registered nurse, or other health professional who meets guidelines which shall be established by the State Department of Health Services for purposes of providing counseling on AIDS and hepatitis B and C to inmates, persons in custody, and other persons pursuant to this title.

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

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

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

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

(g) "Inmate" means any of the following:

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

(2) Any person in a Division of Juvenile Justice facility, or county- or city-operated juvenile facility, who has committed an

act, or been charged with committing an act specified in Section 602 of the Welfare and Institutions Code.

(h) “Bodily fluids” means blood, semen, or any other bodily fluid identified by either the federal Centers for Disease Control and Prevention or State Department of Health Services in appropriate regulations as capable of transmitting HIV or hepatitis B or C.

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

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

7510. (a) A law enforcement employee who believes that he or she came into contact with bodily fluids of either an inmate of a correctional institution, a person not in a correctional institution who has been arrested or taken into custody whether or not the person has been charged with a crime, including a person detained for or charged with an offense for which he or she may be made a ward of the court under Section 602 of the Welfare and Institutions Code, a person charged with any crime, whether or not the person is in custody, or a person on probation or parole due to conviction of a crime, shall report the incident through the completion of a form provided by the State Department of Health Services. The form shall be directed to the chief medical officer, as defined in subdivision (c), who serves the applicable law enforcement employee. Utilizing this form the law enforcement employee may request a test for HIV or hepatitis B or C of the person who is the subject of the report. The forms may be combined with regular incident reports or other forms used by the correctional institution or law enforcement agency, however the processing of a form by the chief medical officer containing a request for HIV or hepatitis B or C testing of the subject person shall not be delayed by the processing of other reports or forms.

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

investigation of the incident, as requested by the chief medical officer.

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

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

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

(3) In the case of a report filed by an employee of the Division of Juvenile Justice, the chief medical officer of the facility.

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

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

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

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

7511. (a) The chief medical officer shall, regardless of whether a report filed pursuant to Section 7510 contains a request for HIV or hepatitis B or C testing, decide whether or not to require HIV or hepatitis B or C testing of the inmate or other person who is the subject of the report filed pursuant to Section 7510, within 24 hours of receipt of the report. If the chief medical officer decides to require HIV or hepatitis B or C testing, he or she shall specify in his or her decision the circumstances, if any, under which followup testing will also be required.

(b) The chief medical officer shall order an HIV or hepatitis B or C test only if he or she finds that, considering all of the facts and circumstances, there is a significant risk that HIV or hepatitis B or C was transmitted. In making this decision, the chief medical officer shall take the following factors into consideration:

(1) Whether an exchange of bodily fluids occurred which could have resulted in a significant risk of AIDS or hepatitis B or C infection, based on the latest written guidelines and standards established by the federal Centers for Disease Control and Prevention and the State Department of Health Services.

(2) Whether the person exhibits medical conditions or clinical findings consistent with HIV or hepatitis B or C infection.

(3) Whether the health of the institution staff or inmates may have been endangered as to HIV or hepatitis B or C infection resulting from the reported incident.

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

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

7512. (a) An inmate of a correctional institution may request testing for HIV or hepatitis B or C of another inmate of that institution if he or she has reason to believe that he or she has come into contact with the bodily fluids of that inmate, in situations, which may include, but are not limited to, rape or sexual contact with a potentially infected inmate, tattoo- or drug-needle sharing, an incident involving injury in which bodily fluids are exchanged, or confinement with a cellmate under circumstances involving possible mingling of bodily fluids. A request may be filed under this section only within two calendar days of the date when the incident causing the request occurred,

except that the chief medical officer may waive this filing period requirement when he or she finds that good cause exists.

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

When a request is filed on behalf of a minor, the facility shall notify the parent or guardian of the minor of the request and seek permission from the parent or guardian for the test request to proceed. If the parent or guardian refuses to grant permission for the test, the Director of the Division of Juvenile Facilities may request the juvenile court in the county in which the facility is located, to rule on whether the test request procedure set forth in this title shall continue. The juvenile court shall make a ruling within five days of the case being brought before the court.

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

(c) Upon receipt of a request for testing as provided in this section, a law enforcement employee shall submit the request to the chief medical officer, the identity of which shall be determined as if the request had been made by an employee of the facility. The chief medical officer shall follow the procedures set forth in Section 7511 with respect to investigating the request and reaching a decision as to mandatory testing of the inmate who is the subject of the request. The inmate submitting the request shall provide names or testimony of witnesses within the limits of his or her ability to do so. The chief medical officer

shall make his or her decision based on the criteria set forth in Section 7511. A copy of the chief medical officer's decision shall be provided to the person submitting the request for HIV or hepatitis B or C testing, to the subject of the request, and to the superintendent of the correctional institution. In the case of a minor, a copy of the decision shall be provided to the parents or guardian of the minor, unless the parent or guardian of the minor cannot be located.

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

7512.5. In the absence of the filing of a report pursuant to Section 7510 or a request pursuant to Section 7512, the chief medical officer may order a test of an inmate if he or she concludes there are clinical symptoms of HIV infection, AIDS, or hepatitis B or C, as recognized by the federal Centers for Disease Control and Prevention or the State Department of Health Services.

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

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

7513. An inmate who is the subject of an HIV or hepatitis B or C test report filed pursuant to Section 7510 or an HIV or hepatitis B or C test report filed pursuant to Section 7512 shall receive, in conjunction with the decision of the chief medical officer to order a test, a copy of this title, a written description of the right to appeal the chief medical officer's decision which includes the applicable timelines, and notification of his or her right to receive pretest and posttest HIV counseling by staff that have been certified as HIV test counselors or to receive hepatitis B or C test results and counseling from a licensed medical professional.

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

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

at the time when tests are ordered, and at the time when test results are provided to the employee, inmate, or test subject.

(b) The chief medical officer may provide additional counseling to any of these individuals, upon his or her request, or whenever the chief medical officer deems advisable, and may arrange for the counseling to be provided in other jurisdictions. The chief medical officer shall encourage the subject of the report or request, the law enforcement employee who filed the report, the person who filed the request pursuant to Section 7512, or in the case of a minor, the minor on whose behalf the request was filed, to undergo voluntary HIV or hepatitis B or C testing if the chief medical officer deems it medically advisable. All testing required by this title or any voluntary testing resulting from the provisions of this title, shall be at the expense of the appropriate correctional institution.

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

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

(b) Depending upon which entity has jurisdiction over the person requesting or appealing a test, the Department of Corrections and Rehabilitation, the Division of Juvenile Justice, the county, the city, or the county and city shall convene the appeal panel and shall ensure that the appeal is heard within seven calendar days.

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

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

(2) A physician and surgeon who has knowledge in the diagnosis, treatment, and transmission of HIV or hepatitis B and C, selected by the Department of Corrections and Rehabilitation, the Division of Juvenile Justice, the county, the city, or the county and city. The physician and surgeon appointed pursuant

to this paragraph shall preside at the hearing and serve as chairperson.

(3) A physician and surgeon not on the staff of, or under contract with, a state, county, city, or county and city correctional institution or with an employer of a law enforcement employee as defined in subdivision (b) of Section 7502, and who has knowledge of the diagnosis, treatment, and transmission of HIV or hepatitis B and C. The physician and surgeon appointed pursuant to this paragraph shall be selected by the State Department of Health Services from a list of persons to be compiled by that department. The State Department of Health Services shall adopt standards for selecting persons for the list required by this paragraph, as well as for their reimbursement, and shall, to the extent possible, utilize its normal process for selecting consultants in compiling this list.

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

(d) The Department of Corrections and Rehabilitation, the county, the city, or the county and city shall notify the Office of AIDS in the State Department of Health Services when a panel must be convened under subdivision (a) wherein HIV testing has been requested or the State Department of Health Services when a test for hepatitis B or C has been requested. Within two calendar days of the notification, a physician and surgeon appointed under paragraph (3) of subdivision (c) shall reach agreement with the Department of Corrections, the county, the city, or the county and city on a date for the hearing that complies with subdivision (b).

(e) If the Office of AIDS in the State Department of Health Services or, in the case of a hepatitis B or C test, the State Department of Health Services, fails to comply with subdivision (d) or the physician and surgeon appointed under paragraph (3) of subdivision (c) fails to attend the scheduled hearing, the Department of Corrections and Rehabilitation, the county, the city, or the county and city shall appoint a physician and surgeon who has knowledge of the diagnosis, treatment, and transmission

of HIV and hepatitis B and C to serve on the appeals panel to replace the physician and surgeon required under paragraph (3) of subdivision (c). The Department of Corrections and Rehabilitation, the county, the city, or the county and city shall have standards for selecting persons under this subdivision and for their reimbursement.

The Department of Corrections and Rehabilitation, the Division of Juvenile Justice, the county, the city, or the county and city shall, whenever feasible, create, and utilize ongoing panels to hear appeals under this section. The membership of the panel shall meet the requirements of paragraphs (1), (2), and (3) of subdivision (c).

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

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

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

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

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

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

(h) When a hearing is sought pursuant to this section, or filed by a law enforcement employee pursuant to a request made under Section 7510, the decision shall be rendered within two days of the hearing. A unanimous vote of the panel shall be necessary in order to require that the subject of the hearing undergo HIV or hepatitis B or C testing.

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

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

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

7518. (a) The Department of Corrections and Rehabilitation and local health officers shall adopt guidelines for the making of decisions pursuant to this chapter in consultation with the Office of AIDS in the State Department of Health Services for HIV testing and with the State Department of Health Services for hepatitis B and C testing. The guidelines shall be based on the latest written guidelines of HIV or hepatitis B and C transmission and infection established by the federal Centers for Disease Control and Prevention and the State Department of Health Services.

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

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

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

7520. Upon the release of an inmate from a correctional institution, a medical representative of the institution shall notify the inmate's parole or probation officer, where it is the case, that the inmate has tested positive for infection with HIV, or has been diagnosed as having AIDS or hepatitis B and C. The representative of the correctional institution shall obtain the latest available medical information concerning any precautions which

should be taken under the circumstances, and shall convey that information to the parole or probation officer.

When a parole or probation officer learns from responsible medical authorities that a parolee or probationer under his or her jurisdiction has AIDS or has tested positive for HIV infection, or hepatitis B or C, the parole or probation officer shall be responsible for ensuring that the parolee or probationer contacts the county health department in order to be, or through his or her own physician and surgeon is, made aware of counseling and treatment for AIDS or hepatitis B or C, as appropriate commensurate with that available to the general population of that county.

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

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

(b) If a parole or probation officer has received information from appropriate medical authorities that one of his or her parolees or probationers is HIV infected or has AIDS or hepatitis B or C, and the parolee or probationer has a record of assault on a peace officer, and the officer seeks the aid of local law enforcement officers to apprehend or take into custody the parolee or probationer, he or she shall inform the officers assisting him or her in apprehending or taking into custody the parolee or probationer, of the person's condition, to aid them in protecting themselves from contracting AIDS or hepatitis B or C.

(c) Local law enforcement officers receiving information pursuant to this subdivision shall maintain confidentiality of information received pursuant to subdivision (b). Willful use or disclosure of this information is a misdemeanor. Parole or probation officers who willfully or negligently disclose

information about AIDS or hepatitis B or C infection, other than as prescribed under this title or any other provision of law, shall also be guilty of a misdemeanor.

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

7522. (a) Supervisory and medical personnel in correctional institutions shall notify all law enforcement employees when those employees have had direct contact with the bodily fluids of inmates or persons charged or in custody who either have tested positive for infection with HIV, or been diagnosed as having AIDS or hepatitis B or C.

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

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

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

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

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

(b) The chief medical officer, as specified in Chapter 2 (commencing with Section 7510), shall order that the blood specimens be transmitted to a licensed medical laboratory which has been approved by the State Department of Health Services for the conducting of HIV testing, and that tests including all readily available confirmatory tests be conducted thereon for medically accepted indications of exposure to or infection with HIV. The State Department of Health Services shall adopt standards for the approval of medical laboratories for the conducting of HIV testing under this title. The State Department of Health Services shall adopt standards for the conducting of tests under Section 7530. Testing for hepatitis B or C may be

conducted by any licensed medical laboratory approved by the chief medical officer.

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

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

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

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

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

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

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

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

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

(1) Education. Implementation of an educational plan which includes education and training for officers, support staff, and inmates on the prevention and transmission of HIV, with regular updates, at least every three months, with all persons held in

custody for at least 12 hours in a correctional institution being provided at least with a pamphlet approved by the county health officer, and more detailed education for persons kept beyond three days.

(2) Body fluid precautions. Because all bodily fluids are considered as potentially infectious, supplying all employees of correctional institutions with the necessary equipment and supplies to follow accepted universal bodily fluids precautions, including gloves and devices to administer cardiopulmonary resuscitation, when dealing with infected persons or those in high-risk groups for HIV or hepatitis B or C.

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

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

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

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

(c) The Corrections Standards Authority and the State Department of Health Services shall assist in developing the programs.

SEC. 17. If the Commission on State Mandates determines that this act contains 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.

Approved _____, 2006

Governor