

AMENDED IN ASSEMBLY FEBRUARY 28, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 66

Introduced by Assembly Member Dymally

December 4, 2006

~~An act to add Sections 7506 and 7507 to the Penal Code, relating to~~
An act to amend Sections 7520 and 7521 of, and to add Sections 7507 and 7507.5 to, the Penal Code, relating to inmate human immunodeficiency virus testing and disclosure.

LEGISLATIVE COUNSEL'S DIGEST

AB 66, as amended, Dymally. Inmate HIV testing.

Existing law sets forth certain circumstances under which testing an inmate for human immunodeficiency virus (HIV) may be required, including upon request by certain peace officers or other inmates in specified circumstances.

This bill would, in addition, require HIV testing for all inmates entering a correctional facility for incarceration for a period of at least one year, for persons entering a state prison or a state hospital housing patients committed pursuant to existing provisions of law, as specified, *unless the person declines the testing*. The bill would require testing between 30 and 60 days after entry into, and ~~between 30 and~~ *at least* 60 days prior to the expected discharge from, the facility.

This bill would also require that if the inmate test results for the HIV virus are positive, the chief medical officer shall notify the inmate's parole officer as specified. *The bill would also authorize the chief medical officer to notify the spouse or domestic partner of the inmate that he or she may have been exposed to HIV, after notifying the inmate of the intent to do so.*

This bill would provide that a person’s HIV status shall not be used to deny eligibility for and access to programs that are otherwise available to an inmate, as specified.

This bill would further require the Secretary of Corrections and Rehabilitation and Director of the State Department of Mental Health to report annually to the Director of the State Department of Health Care Services and the Legislature on the prevalence of positive HIV tests, as specified.

The bill would require the chief medical officer to develop an HIV care and treatment plan for every incoming inmate who tests positive for HIV or is otherwise known to be HIV positive or to have an AIDS diagnosis.

Under existing law, upon release of an inmate from a correctional institution, a medical representative of the institution is required to notify the inmate’s parole or probation officer if the inmate has tested positive for HIV or has been diagnosed as having AIDS.

This bill would require the institution, in coordination with the inmate’s parole or probation officer, to develop a plan to refer the inmate to necessary HIV care and treatment services in the county to which the inmate is being released.

Under existing law, when a parole or probation officer learns that a parolee or probationer has HIV or has been diagnosed with AIDS, but the parolee or probationer has not informed his or her spouse of that information, the officer may ensure that the information is relayed to the spouse, as specified.

This bill would include domestic partners in that notification, and would require the officer to notify the parolee or probationer that the officer will be notifying the spouse or domestic partner about that information.

The bill would provide that its requirements are contingent upon an appropriation by the Legislature.

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

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

- 1 ~~SECTION 1. Section 7506 is added to the Penal Code, to read:~~
- 2 ~~7506.—~~
- 3 SECTION 1. The Legislature finds and declares the following:

1 (a) The prevalence of human immunodeficiency virus (HIV)
2 infection in state prison facilities has been found by blind blood
3 testing surveys to fall within the range of 2.5 percent to 4 percent
4 of the inmate population, a percentage significantly higher than
5 that found in the general population.

6 (b) HIV testing in correctional facilities, youth authority
7 facilities, and state mental hospitals housing patients committed
8 pursuant to provisions of the Penal Code is currently not universal,
9 and several thousand incarcerated persons may not know that they
10 ~~are infected with the agent believed to be the cause of acquired~~
11 ~~immune deficiency syndrome.~~ *are infected with HIV.*

12 (c) There is a substantial risk of HIV transmission within state
13 and local detention facilities, partly due to unprotected sexual
14 activity that is prohibited, but nevertheless known to occur and
15 cannot be completely prevented.

16 (d) The consistent use of condoms is one of the most effective
17 methods for prevention of HIV transmission, but in state prisons
18 and almost all county correctional facilities, condoms are not
19 available.

20 (e) One of the reasons cited by wardens and sheriffs for not
21 permitting condom availability is that it might be construed as
22 aiding and abetting a felony pertaining to sexual activity while in
23 prison or a local detention facility.

24 (f) The vast majority of persons incarcerated in state institutions
25 and local detention facilities are eventually released to the
26 community, and if infected with HIV, may transmit this virus to
27 unsuspecting spouses, partners, or others.

28 SEC. 2. Section 7507 is added to the Penal Code, to read:

29 7507. (a) The officer in charge of every state prison and the
30 medical director of each state hospital housing patients committed
31 pursuant to provisions of this code shall ~~ensure that testing for~~
32 ~~HIV infection is performed by methods specified in this title on~~
33 *provide HIV testing for every person expected to be incarcerated*
34 *within the respective facility for a period of not less than one year,*
35 *unless the person declines testing. The medical director shall use*
36 *the most recent testing technology available to health care*
37 *providers in the community.*

38 (b) Testing pursuant to this section shall be performed between
39 30 and 60 days after entry into the facility and ~~between 30 and~~ *at*
40 *least 60 days prior to the expected date of discharge from the*

1 facility. The results of the testing shall be made available to the
2 chief medical officer within ~~30~~ 14 days of the test. If the results
3 of the *discharge* test are positive for HIV infection, the chief
4 medical officer shall inform the inmate's parole officer within 30
5 days of receiving the results.

6 (c) *If the results of the entry test are positive for HIV infection,*
7 *the chief medical officer, or his or her designee, may notify the*
8 *spouse or domestic partner of the inmate that he or she may have*
9 *been exposed to HIV. However, prior to that notification, the chief*
10 *medical officer or designee shall notify the inmate of his or her*
11 *intent to so notify the spouse or domestic partner and shall provide*
12 *counseling to the inmate in an attempt to obtain the inmate's*
13 *voluntary consent to give that notification.*

14 (d) Nothing in this section shall be construed to limit the
15 provision for required HIV testing as set forth in Chapter 2
16 (commencing with Section 7510) of this title.

17 ~~(d)~~

18 (e) *A person's HIV status shall not be used to deny eligibility*
19 *for and access to programs that are otherwise available to an*
20 *inmate, including, but not limited to, programs that offer worktime*
21 *credits pursuant to Section 2933 and opportunities for spousal*
22 *and family visitation.*

23 (f) The Secretary of the Department of Corrections and
24 Rehabilitation and the Director of the State Department of Mental
25 Health shall report annually to the State Department of Health
26 Care Services and to the Legislature on the prevalence of positive
27 HIV tests within their respective institutions provided that no
28 individually identifying information on persons tested shall be
29 included in those reports, and that individual HIV tests shall be
30 subject to the confidentiality provisions of this title.

31 ~~(e)~~

32 (g) The duties imposed by this section are contingent upon an
33 appropriation by the Legislature of sufficient funds to implement
34 this section.

35 SEC. 3. *Section 7507.5 is added to the Penal Code, to read:*

36 7507.5. *The chief medical officer, or his or her designee, shall*
37 *develop HIV care and treatment plan for every incoming inmate*
38 *who tests positive for HIV pursuant to Section 7507, or is otherwise*
39 *known to be HIV positive or have an AIDS diagnosis.*

40 SEC. 4. *Section 7520 of the Penal Code is amended to read:*

1 7520. (a) Upon the release of an inmate from a correctional
2 institution, a medical representative of the institution shall notify
3 the inmate's parole or probation officer, ~~where it is the case as~~
4 *applicable*, that the inmate has tested positive for infection with
5 HIV, or has been diagnosed as having AIDS or hepatitis B and C.
6 The representative of the correctional institution shall obtain the
7 latest available medical information concerning any precautions
8 which should be taken under the circumstances, and shall convey
9 that information to the parole or probation officer.

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

19 (b) *Not less than 30 days prior to the release of an inmate with*
20 *HIV or AIDS, the institution, in coordination with the inmate's*
21 *parole or probation officer, shall develop a plan to refer the inmate*
22 *to necessary HIV care and treatment services in the county to*
23 *which the inmate is being released. The parole or probation officer*
24 *shall be responsible for ensuring that the parolee or probationer*
25 *initiates the contacts necessary to fulfill his or her prescribed HIV*
26 *care and treatment referral plan.*

27 SEC. 5. Section 7521 of the Penal Code is amended to read:

28 7521. (a) When a parole or probation officer learns from
29 responsible medical authorities that a parolee or probationer in his
30 or her custody has any of the conditions listed in Section 7520,
31 but that the parolee or probationer has not properly informed his
32 or her spouse *or domestic partner*, the officer may ensure that this
33 information is relayed to the spouse *or domestic partner* only
34 through either the chief medical officer of the institution from
35 which the person was released or the physician and surgeon treating
36 the spouse *or domestic partner* or the parolee or probationer. *Prior*
37 *to making that notification, the chief medical officer or the*
38 *physician and surgeon shall notify the parolee or probationer of*
39 *his or her intent to so notify the spouse or domestic partner. The*
40 *chief medical officer or physician and surgeon shall provide*

1 *counseling to the parolee or probationer in an attempt to obtain*
2 *his or her voluntary consent for that notification.* The parole or
3 probation officer shall seek to ensure that proper counseling
4 accompanies release of this information to the spouse *or domestic*
5 *partner*, through the person providing the information to the
6 inmate's spouse *or domestic partner*.

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

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