

AMENDED IN SENATE MARCH 2, 2010

AMENDED IN SENATE JUNE 22, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1487**

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**Introduced by Assembly Member Hill**

February 27, 2009

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~~An act to amend Sections 4011.2 and 4025 of the Penal Code, relating to inmate medical costs.~~ *An act to amend Section 1644.5 of the Health and Safety Code, relating to tissue donation, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1487, as amended, Hill. ~~Inmate medical expenses.~~ *Tissue donation. Existing law prohibits the transfer of any tissues, as defined, into the body of another person by means of transplantation, unless the donor of the tissues has been screened and found nonreactive for evidence of infection with human immunodeficiency virus (HIV), agents of viral hepatitis (HBV and HCV), human T lymphotropic virus-1 (HTLV-1), and syphilis, except as provided.*

*Existing law requires that all donors of sperm be screened and found nonreactive under the above provisions, except as provided. Under existing law, a sperm donor who has tested reactive for HIV or HTLV-1 may be used for insemination or advanced reproductive technology for a recipient who has tested negative only after processing to minimize the infectiousness of the sperm. The State Department of Public Health is required to adopt regulations by January 1, 2010, regulating facilities that perform this processing.*

*Existing law further requires the physician providing insemination or advanced reproductive technologies to, among other things, inform the recipient that the processing may not eliminate the risk of infection, that the sperm may be tested to ensure that it is free from HIV or HTLV-1, and about the potential adverse effects of testing on the sperm.*

*This bill would also require the physician to inform the recipient that she must provide documentation to the physician providing insemination or advanced reproductive technology services prior to treatment that she has established an ongoing physician relationship with another physician to provide for her medical care during and after completion of fertility services and about the medical guidelines for testing after use of sperm from an HIV or HTLV reactive donor.*

*Under existing law, the physician performing insemination or advanced reproductive technology is required to provide prophylactic treatments, followup testing, and monitoring, as specified, to the recipient to minimize the risk of infection.*

*This bill would remove those requirements but would require the physician to recommend followup testing of the recipient for HIV and HTLV, as specified.*

*Existing law allows the use of sperm from a donor who has tested reactive for HIV or HTLV-1 if the recipient has also previously been documented with HIV or HTLV-1 and where mutual consent has been obtained.*

*This bill would remove this provision. The bill would also make all of the provisions above applicable to donors who have tested reactive for any of the human T lymphotropic viruses.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~Under existing law, a sheriff, chief or director of corrections, or a chief of police is authorized to charge a fee in the amount of \$3 for each inmate-initiated medical visit of an inmate confined in a county or city jail who has money in his or her personal account. Existing law authorizes the medical provider to waive the fee, requires the medical provider to waive the fee in any life-threatening or emergency situation, as defined, exempts followup medical visits from the fee, and requires all moneys received pursuant to this provision to be transferred to the county or city general fund.~~

~~Existing law requires that the above fee be charged to the inmate's account at his or her respective facility and prohibits a denial of medical care to an inmate because of a lack of funds in that account.~~

~~This bill would increase the above fee to \$6. The bill would require that any amount collected for an inmate-initiated medical visit in excess of \$3 be placed into the county inmate welfare fund.~~

~~Existing law provides that the sheriff of each county may maintain an inmate welfare fund to be kept in the treasury of the county into which profit from a store operated in connection with the county jail, 10% of all gross sales of inmate hobbycraft, and any rebates or commissions received from a telephone company, as specified, is required to be deposited. Existing law authorizes the sheriff to expend money from the fund to pay for the benefit, education, and welfare of the inmates, as well as maintenance costs, as specified, if those funds are not needed for the welfare of the inmates.~~

~~The bill would require that the money deposited in the inmate welfare fund pursuant to this bill be expended by the sheriff only for the benefit and education of the inmates, as specified.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. State-mandated local program: no.

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

1     *SECTION 1. Section 1644.5 of the Health and Safety Code is*  
2     *amended to read:*

3     1644.5. (a) No tissues shall be transferred into the body of  
4     another person by means of transplantation, unless the donor of  
5     the tissues has been screened and found nonreactive by laboratory  
6     tests for evidence of infection with HIV, agents of viral hepatitis  
7     (HBV and HCV), human T lymphotropic ~~virus-1 (HTLV-1)~~,  
8     *virus HTLV*, and syphilis, except as provided in subdivision (c).  
9     The department may adopt regulations requiring additional  
10    screening tests of donors of tissues when, in the opinion of the  
11    department, the action is necessary for the protection of the public,  
12    donors, or recipients.

13    (b) Notwithstanding subdivision (a), infectious disease screening  
14    of blood and blood products shall be carried out solely in  
15    accordance with Article 2 (commencing with Section ~~1601~~) *1602.5*  
16    of Chapter 4.

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

19    (1) A recipient of sperm, from a sperm donor known to the  
20    recipient, may waive a second or other repeat testing of that donor

1 if the recipient is informed of the requirements for testing donors  
2 under this section and signs a written waiver.

3 (2) A recipient of sperm may consent to therapeutic insemination  
4 of sperm or use of sperm in other advanced reproductive  
5 technologies even if the sperm donor is found reactive for hepatitis  
6 B, hepatitis C, syphilis, HIV or ~~HTLV-1~~ *HTLV* if the sperm donor  
7 is the spouse of, partner of, or designated donor for that recipient.  
8 The physician providing insemination or advanced reproductive  
9 technology services shall advise the donor and recipient of the  
10 potential medical risks associated with receiving sperm from a  
11 reactive donor. The donor and the recipient shall sign a document  
12 affirming that each comprehends the *potential* medical  
13 ~~repercussions~~ *risks* of using sperm from a reactive donor for the  
14 proposed procedure and that each consents to it. Copies of the  
15 document shall be placed in the medical records of the donor and  
16 the recipient.

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

23 (B) (i) Sperm whose donor has tested reactive for HIV or  
24 ~~HTLV-1~~ *HTLV* may be used for the purposes of insemination or  
25 advanced reproductive technology for a recipient testing negative  
26 for HIV or ~~HTLV-1~~ *HTLV* only after the donor’s sperm has been  
27 effectively processed to minimize the infectiousness of the sperm  
28 for that specific donation and where informed and mutual consent  
29 has occurred.

30 (ii) ~~The~~ *Not later than January 1, 2010, the* department shall  
31 adopt regulations ~~by January 1, 2010,~~ regulating facilities that  
32 perform sperm processing, pursuant to this subparagraph, that  
33 prescribe standards for the handling and storage of sperm samples  
34 of carriers of HIV, ~~HTLV-1~~ *HTLV*, or any other virus as deemed  
35 appropriate by the department. *The department may propose to*  
36 *adopt, as initial regulations, guidelines made by the American*  
37 *Society for Reproductive Medicine. Notice of the department’s*  
38 *proposed adoption of the regulations shall be posted on the*  
39 *department’s Internet Web site for at least 45 days. Public comment*  
40 *shall be accepted by the department for at least 30 days after*

1 *posting of the notice. If a member of the public requests a public*  
2 *hearing during the 30-day comment period, the hearing shall be*  
3 *held prior to the adoption of the regulations. Comments received*  
4 *shall be considered prior to the adoption of the final initial*  
5 *regulations. The department may modify any guidance published*  
6 *by the American Society for Reproductive Medicine based on the*  
7 *comments received. Adoption of initial regulations by the*  
8 *department pursuant to this subdivision shall not be subject to the*  
9 *rulemaking requirements of Chapter 3.5 (commencing with Section*  
10 *11340) of Part 1 of Division 3 of Title 2 of the Government Code*  
11 *and written responses to public comments shall not be required.*  
12 *Updates to the regulations shall be adopted pursuant to the same*  
13 *process. Until the department adopts these regulations, facilities*  
14 *that perform sperm processing pursuant to this section shall follow*  
15 *facility and sperm processing guidelines for the reduction of viral*  
16 *transmission developed by the American Society of Reproductive*  
17 *Medicine. for Reproductive Medicine. Nothing in this section shall*  
18 *prevent the department from monitoring and inspecting facilities*  
19 *that process sperm to ensure adherence to the regulations, or,*  
20 *until regulations are adopted, to the guidelines set forth by the*  
21 *American Society for Reproductive Medicine.*

22 (iii) Prior to insemination or other advanced reproductive  
23 technology services, the physician *providing the services* shall  
24 inform the recipient of sperm from a donor who has tested reactive  
25 for HIV or HTLV-1 ~~that sperm processing may not eliminate all~~  
26 ~~risks of HIV or HTLV-1 transmission, and that the sperm may be~~  
27 ~~tested to determine whether or not it is free of HIV or HTLV-1.~~  
28 ~~The physician shall also inform the recipient of potential adverse~~  
29 ~~effects the testing may have on the processed sperm. HTLV of all~~  
30 ~~of the following:~~

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

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

35 (III) *That the recipient must provide documentation to the*  
36 *physician providing insemination or advanced reproductive*  
37 *technology services prior to treatment that she has established an*  
38 *ongoing relationship with another physician to provide for her*  
39 *medical care during and after completion of fertility services.*

1 (IV) *The medical guidelines of the American Society for*  
2 *Reproductive Medicine regarding followup testing for HIV and*  
3 *HTLV after use of sperm from an HIV or HTLV reactive donor*  
4 *and that recommendations regarding followup testing will be*  
5 *documented in the recipient's medical record.*

6 (iv) ~~The physician providing insemination or advanced~~  
7 ~~reproductive technology services shall provide, as appropriate,~~  
8 ~~prophylactic treatments, including, but not limited to, antiretroviral~~  
9 ~~treatments, to the recipient to reduce the risk of acquiring infection~~  
10 ~~during, and subsequent to, insemination or advanced reproductive~~  
11 ~~technology. The physician providing advanced reproductive~~  
12 ~~technology services shall also verify, and document in the~~  
13 ~~recipient's medical record, that the donor of sperm who tests~~  
14 ~~reactive for HIV or HTLV-1~~ *HTLV is under the care of a physician*  
15 *managing the HIV or HTLV-1 to minimize the risk of transmission*  
16 *during the course of insemination or advanced reproductive*  
17 *technology services. The physician shall perform appropriate*  
18 *followup testing of the recipient for HIV or HTLV-1 following*  
19 *the insemination or other advanced reproductive technology, and*  
20 *recommend ongoing monitoring by a physician during treatment*  
21 *and pregnancy. The physician shall also recommend in the sperm*  
22 *recipient's medical record that the recipient be monitored during*  
23 *treatment and pregnancy HTLV.*

24 (v) *The physician providing insemination or advanced*  
25 *reproductive technology services shall recommend to the physician*  
26 *who will be providing ongoing care to the recipient recommended*  
27 *followup testing for HIV and HTLV according to the medical*  
28 *guidelines of the American Society for Reproductive Medicine,*  
29 *which shall be documented in the recipient's medical record.*

30 ~~(v)~~

31 (vi) ~~In the event that the recipient tests reactive for HIV or~~  
32 ~~HTLV-1 following insemination or other advanced reproductive~~  
33 ~~technology, the physician shall inform the recipient of appropriate~~  
34 ~~treatments during and after pregnancy, and of treatments or~~  
35 ~~procedures that may reduce the risk of transmission to the offspring~~  
36 ~~becomes HIV or HTLV positive, the physician assuming ongoing~~  
37 ~~care of the recipient shall treat or provide information regarding~~  
38 ~~referral to a physician who can provide ongoing treatment of the~~  
39 ~~HIV or HTLV.~~

1 ~~(vi) Sperm whose donor has tested reactive for HIV or HTLV-1~~  
2 ~~may be used for the purposes of insemination or advanced~~  
3 ~~reproductive technology if the recipient already has been previously~~  
4 ~~documented with HIV or HTLV-1 infection, and where informed~~  
5 ~~and mutual consent has occurred.~~

6 (4) The penalties of Section 1621.5 shall not apply to a sperm  
7 donor covered under this subdivision.

8 (d) Subdivision (a) shall not apply to the transplantation of tissue  
9 from a donor who has not been tested or, with the exception of  
10 HIV and ~~HTLV-1~~ *HTLV*, has been found reactive for the infectious  
11 diseases listed in subdivision (a) or for which the department has,  
12 by regulation, required additional screening tests, if both of the  
13 following conditions are satisfied:

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

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

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

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

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

30 (e) Human breast milk from donors who test reactive for agents  
31 of viral hepatitis (HBV and HCV), ~~human T-lymphotrophic virus-1~~  
32 ~~(HTLV-1)~~ *HTLV*, HIV, or syphilis shall not be used for deposit  
33 into a milk bank for human ingestion in California.

34 *SEC. 2. This act is an urgency statute necessary for the*  
35 *immediate preservation of the public peace, health, or safety within*  
36 *the meaning of Article IV of the Constitution and shall go into*  
37 *immediate effect. The facts constituting the necessity are:*

38 *To help prevent the spread of HIV, at the earliest possible time,*  
39 *it is necessary that this legislation take immediate effect.*

1 SECTION 1. ~~Section 4011.2 of the Penal Code is amended to~~  
2 ~~read:~~

3 ~~4011.2. (a) Notwithstanding Section 4011.1, a sheriff, chief~~  
4 ~~or director of corrections, or chief of police is authorized to charge~~  
5 ~~a fee in the amount of six dollars (\$6) for each inmate-initiated~~  
6 ~~medical visit of an inmate confined in a county or city jail.~~

7 ~~(b) The fee shall be charged to the inmate's personal account~~  
8 ~~at the facility. If the inmate has no money in his or her personal~~  
9 ~~account, there shall be no charge for the medical visit.~~

10 ~~(c) An inmate shall not be denied medical care because of a~~  
11 ~~lack of funds in his or her personal account at the facility.~~

12 ~~(d) The medical provider may waive the fee for any~~  
13 ~~inmate-initiated treatment and shall waive the fee in any~~  
14 ~~life-threatening or emergency situation, defined as those health~~  
15 ~~services required for alleviation of severe pain or for immediate~~  
16 ~~diagnosis and treatment of unforeseen medical conditions that if~~  
17 ~~not immediately diagnosed and treated could lead to disability or~~  
18 ~~death.~~

19 ~~(e) Followup medical visits at the direction of the medical staff~~  
20 ~~shall not be charged to the inmate.~~

21 ~~(f) Moneys received by a sheriff, chief or director of corrections,~~  
22 ~~or chief of police pursuant to this section shall be distributed as~~  
23 ~~follows:~~

24 ~~(1) The first three dollars (\$3) collected for an inmate-initiated~~  
25 ~~medical visit shall be transferred to the county or city general fund.~~

26 ~~(2) Any amount over three dollars (\$3) collected for an~~  
27 ~~inmate-initiated medical visit shall be placed into the inmate~~  
28 ~~welfare fund created pursuant to Section 4025.~~

29 SEC. 2. ~~Section 4025 of the Penal Code is amended to read:~~

30 ~~4025. (a) The sheriff of each county may establish, maintain~~  
31 ~~and operate a store in connection with the county jail and for this~~  
32 ~~purpose may purchase confectionery, tobacco and tobacco users'~~  
33 ~~supplies, postage and writing materials, and toilet articles and~~  
34 ~~supplies and sell these goods, articles, and supplies for cash to~~  
35 ~~inmates in the jail.~~

36 ~~(b) The sale prices of the articles offered for sale at the store~~  
37 ~~shall be fixed by the sheriff. Any profit shall be deposited in an~~  
38 ~~inmate welfare fund to be kept in the treasury of the county.~~

39 ~~(c) There shall also be deposited in the inmate welfare fund 10~~  
40 ~~percent of all gross sales of inmate hobbycraft.~~



1 ~~(d) There shall be deposited in the inmate welfare fund any~~  
2 ~~money, refund, rebate, or commission received from a telephone~~  
3 ~~company or pay telephone provider when the money, refund,~~  
4 ~~rebate, or commission is attributable to the use of pay telephones~~  
5 ~~which are primarily used by inmates while incarcerated.~~

6 ~~(e) The money and property deposited in the inmate welfare~~  
7 ~~fund shall be expended by the sheriff primarily for the benefit,~~  
8 ~~education, and welfare of the inmates confined within the jail. Any~~  
9 ~~funds that are not needed for the welfare of the inmates may be~~  
10 ~~expended for the maintenance of county jail facilities. Maintenance~~  
11 ~~of county jail facilities may include, but is not limited to, the salary~~  
12 ~~and benefits of personnel used in the programs to benefit the~~  
13 ~~inmates, including, but not limited to, education, drug and alcohol~~  
14 ~~treatment, welfare, library, accounting, and other programs deemed~~  
15 ~~appropriate by the sheriff. Inmate welfare funds shall not be used~~  
16 ~~to pay required county expenses of confining inmates in a local~~  
17 ~~detention system, such as meals, clothing, housing, or medical~~  
18 ~~services or expenses, except that inmate welfare funds may be~~  
19 ~~used to augment those required county expenses as determined by~~  
20 ~~the sheriff to be in the best interests of inmates. An itemized report~~  
21 ~~of these expenditures shall be submitted annually to the board of~~  
22 ~~supervisors.~~

23 ~~(f) Notwithstanding any other provision in this section, the~~  
24 ~~money deposited into the inmate welfare fund pursuant to Section~~  
25 ~~4011.2 shall be expended by the sheriff only for the benefit and~~  
26 ~~education of the inmates confined within the jail. These services~~  
27 ~~and programs may include education, drug and alcohol treatment,~~  
28 ~~library, and other service oriented or educational programs deemed~~  
29 ~~appropriate by the sheriff, including reentry assistance services~~  
30 ~~pursuant to Section 4025.5.~~

31 ~~(g) The operation of a store within any other county adult~~  
32 ~~detention facility which is not under the jurisdiction of the sheriff~~  
33 ~~shall be governed by the provisions of this section, except that the~~  
34 ~~board of supervisors shall designate the proper county official to~~  
35 ~~exercise the duties otherwise allocated in this section to the sheriff.~~

36 ~~(h) The operation of a store within any city adult detention~~  
37 ~~facility shall be governed by the provisions of this section, except~~  
38 ~~that city officials shall assume the respective duties otherwise~~  
39 ~~outlined in this section for county officials.~~

1 (i) ~~The treasurer may, pursuant to Article 1 (commencing with~~  
2 ~~Section 53600), or Article 2 (commencing with Section 53630) of~~  
3 ~~Chapter 4 of Part 1 of Division 2 of Title 5 of the Government~~  
4 ~~Code, deposit, invest, or reinvest any part of the inmate welfare~~  
5 ~~fund, in excess of that which the treasurer deems necessary for~~  
6 ~~immediate use. The interest or increment accruing on these funds~~  
7 ~~shall be deposited in the inmate welfare fund.~~  
8 (j) ~~The sheriff may expend money from the inmate welfare fund~~  
9 ~~to provide indigent inmates, prior to release from the county jail~~  
10 ~~or any other adult detention facility under the jurisdiction of the~~  
11 ~~sheriff, with essential clothing and transportation expenses within~~  
12 ~~the county or, at the discretion of the sheriff, transportation to the~~  
13 ~~inmate's county of residence, if the county is within the state or~~  
14 ~~within 500 miles from the county of incarceration. This subdivision~~  
15 ~~does not authorize expenditure of money from the inmate welfare~~  
16 ~~fund for the transfer of any inmate to the custody of any other law~~  
17 ~~enforcement official or jurisdiction.~~

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