

Introduced by Senator Wiener

(Principal coauthor: Assembly Member Gloria)
(Coauthors: Assembly Members Chiu and Eggman)

February 6, 2017

An act to amend Sections 1603.3 and 1644.5 of, to repeal Sections 1621.5, 120291, and 120292 of, and to repeal and add Section 120290 of, the Health and Safety Code, and to amend Sections 1001, 1001.1, and 1202.1 of, to add Sections 1170.21 and 1170.22 to, to repeal Sections 647f, 1001.10, 1001.11, and 1463.23 of, and to repeal and add Section 1202.6 of, the Penal Code, relating to infectious and communicable diseases.

LEGISLATIVE COUNSEL'S DIGEST

SB 239, as introduced, Wiener. Infectious and communicable diseases: HIV and AIDS: criminal penalties.

(1) Existing law makes it a felony punishable by imprisonment for 3, 5, or 8 years in the state prison to expose another person to the human immunodeficiency virus (HIV) by engaging in unprotected sexual activity when the infected person knows at the time of the unprotected sex that he or she is infected with HIV, has not disclosed his or her HIV-positive status, and acts with the specific intent to infect the other person with HIV. Existing law makes it a felony punishable by imprisonment for 2, 4, or 6 years for any person to donate blood, body organs or other tissue, or, under specified circumstances, semen or breast milk, if the person knows that he or she has acquired immunodeficiency syndrome (AIDS), or that he or she has tested reactive to HIV. Existing law provides that a person who is afflicted with a contagious, infectious, or communicable disease who willfully exposes himself or herself to another person, or any person who willfully

exposes another person afflicted with the disease to someone else, is guilty of a misdemeanor.

This bill would repeal those provisions. The bill would instead make the intentional transmission of an infectious or communicable disease, as defined, a misdemeanor, if certain circumstances apply, including that the defendant knows he or she is afflicted with the disease, that the defendant acts with the specific intent to transmit the disease to another person, that the defendant engages in conduct that poses a substantial risk of transmission, as defined, and that the defendant transmits the disease to the other person. The bill would impose various requirements upon the court in order to prevent the public disclosure of the identifying characteristics, as defined, of the complainant and the defendant. By creating a new crime, the bill would impose a state-mandated local program.

(2) Under existing law, if a defendant has been previously convicted of prostitution or of another specified sexual offense, and in connection with the conviction a blood test was administered, as specified, with positive test results for AIDS, of which the defendant was informed, the previous conviction and positive blood test results are to be charged in any subsequent accusatory pleading charging a violation of prostitution. Existing law makes defendant guilty of a felony if the previous conviction and informed test results are found to be true by the trier of fact or are admitted by the defendant.

This bill would delete that provision. The bill would also vacate any conviction, dismiss any charge, and legally deem that an arrest under the deleted provision never occurred. The bill would require any court or agency having custody or control of records pertaining to the arrest, charge, or conviction of a person for a violation of the deleted provision to destroy, as specified, those records by June 30, 2018. By imposing this duty on local agencies, the bill would impose a state-mandated local program. The bill would also authorize a person serving a sentence as a result of a violation of the deleted provision to petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case. The bill would require a court to vacate the conviction and resentence the person to any remaining counts while giving credit for any time already served.

(3) Existing law requires the court to order a defendant convicted for a violation of soliciting or engaging in prostitution for the first time to complete instruction in the causes and consequences of acquired immunodeficiency syndrome (AIDS) and to submit to testing for AIDS.

Existing law requires such a defendant, as a condition of either probation or participating in a drug diversion program, to participate in an AIDS education program, as specified.

This bill would repeal those provisions.

(4) The bill would also make other conforming changes.

(5) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 1603.3 of the Health and Safety Code is
- 2 amended to read:
- 3 1603.3. (a) ~~Prior to a~~ *Before* donation of blood or blood
- 4 components, ~~each~~ *a* donor shall be notified in writing of, and shall
- 5 have signed a written statement confirming the notification of, all
- 6 of the following:
- 7 (1) That the blood or blood components shall be tested for
- 8 evidence of antibodies to HIV.
- 9 (2) That the donor shall be notified of the test results in
- 10 accordance with the requirements described in subdivision (c).
- 11 (3) That the donor blood or blood component that is found to
- 12 have the antibodies shall not be used for transfusion.
- 13 (4) That blood or blood components shall not be donated for
- 14 transfusion purposes by a person if the person may have reason to
- 15 believe that he or she has been exposed to HIV or AIDS.
- 16 (5) That the donor is required to complete a health screening
- 17 questionnaire to assist in the determination as to whether he or she
- 18 may have been exposed to HIV or AIDS.
- 19 (b) A blood bank or plasma center shall incorporate voluntary
- 20 means of self-deferral for donors. The means of self-deferral may
- 21 include, but are not limited to, a form with checkoff boxes

1 specifying that the blood or blood components are for research or
2 test purposes only and a telephone callback system for donors to
3 use in order to inform the blood bank or plasma center that blood
4 or blood components donated should not be used for transfusion.
5 The blood bank or plasma center shall inform the donor, in a
6 manner that is understandable to the donor, that the self-deferral
7 process is available and should be used if the donor has reason to
8 believe that he or she is infected with HIV. ~~The blood bank or
9 plasma center shall also inform the donor that it is a felony pursuant
10 to Section 1621.5 to donate blood if the donor knows that he or
11 she has a diagnosis of AIDS or knows that he or she has tested
12 reactive to HIV.~~

13 (c) Blood or blood components from any donor initially found
14 to have serologic evidence of antibodies to HIV shall be retested
15 for confirmation. Only if a further test confirms the conclusion of
16 the earlier test shall the donor be notified of a reactive result by
17 the blood bank or plasma center.

18 The department shall develop permissive guidelines for blood
19 banks and plasma centers on the method to be used to notify a
20 donor of a test result.

21 (d) Each blood bank or plasma center operating in California
22 shall prominently display at each of its collection sites a notice
23 that provides the addresses and telephone numbers of sites, within
24 the proximate area of the blood bank or plasma center, where
25 anonymous HIV antibody testing provided pursuant to Chapter 3
26 (commencing with Section 120885) of Part 4 of Division 105 may
27 be administered without charge.

28 (e) The department may promulgate any additional regulations
29 it deems necessary to enhance the safety of donated blood and
30 blood components. The department may also promulgate
31 regulations it deems necessary to safeguard the consistency and
32 accuracy of HIV test results by requiring any confirmatory testing
33 the department deems appropriate for the particular types of HIV
34 tests that have yielded "reactive," "positive," "indeterminate," or
35 other similarly labeled results.

36 (f) Notwithstanding any other provision of law, no civil liability
37 or criminal sanction shall *not* be imposed for disclosure of test
38 results to a local health officer ~~when~~ *if* the disclosure is necessary
39 to locate and notify a blood or blood components donor of a
40 reactive result if reasonable efforts by the blood bank or plasma

1 center to locate the donor have failed. Upon completion of the
2 local health officer's efforts to locate and notify a blood or blood
3 components donor of a reactive result, all records obtained from
4 the blood bank or plasma center pursuant to this subdivision, or
5 maintained pursuant to this subdivision, including, but not limited
6 to, any individual identifying information or test results, shall be
7 expunged by the local health officer.

8 SEC. 2. Section 1621.5 of the Health and Safety Code is
9 repealed.

10 ~~1621.5. (a) It is a felony punishable by imprisonment pursuant~~
11 ~~to subdivision (h) of Section 1170 of the Penal Code for two, four,~~
12 ~~or six years, for any person to donate blood or tissue, semen to~~
13 ~~any medical center or semen bank that receives semen for purposes~~
14 ~~of artificial insemination, or breast milk to any medical center or~~
15 ~~breast milk bank that receives breast milk for purposes of~~
16 ~~distribution, whether he or she is a paid or a volunteer donor, who~~
17 ~~knows that he or she has acquired immunodeficiency syndrome~~
18 ~~(AIDS), as diagnosed by a physician and surgeon, or who knows~~
19 ~~that he or she has tested reactive to HIV. This section shall not~~
20 ~~apply to any person who is mentally incompetent or who self-defers~~
21 ~~his or her blood at a blood bank or plasma center pursuant to~~
22 ~~subdivision (b) of Section 1603.3 or who donates his or her blood~~
23 ~~for purposes of an autologous donation.~~

24 ~~(b) In a criminal investigation for a violation of this section,~~
25 ~~no person shall disclose the results of a blood test to detect the~~
26 ~~etiologic agent of AIDS or antibodies to that agent to any officer,~~
27 ~~employee, or agent of a state or local agency or department unless~~
28 ~~the test results are disclosed as otherwise required by law pursuant~~
29 ~~to any one of the following:~~

30 ~~(1) A search warrant issued pursuant to Section 1524 of the~~
31 ~~Penal Code.~~

32 ~~(2) A judicial subpoena or subpoena duces tecum issued and~~
33 ~~served in compliance with Chapter 2 (commencing with Section~~
34 ~~1985) of Title 3 of Part 4 of the Code of Civil Procedure.~~

35 ~~(3) An order of a court.~~

36 ~~(e) For purposes of this section, "blood" means "human whole~~
37 ~~blood" and "human whole blood derivatives," as defined for~~
38 ~~purposes of this chapter and includes "blood components," as~~
39 ~~defined in subdivision (k) of Section 1603.1.~~

1 ~~(d) For purposes of this section, “tissue” shall have the same~~
2 ~~meaning as defined in paragraph (1) of subdivision (c) of Section~~
3 ~~1635.~~

4 SEC. 3. Section 1644.5 of the Health and Safety Code is
5 amended to read:

6 1644.5. (a) Except as provided in subdivision (c) or (d), ~~no~~
7 tissues shall *not* be transferred into the body of another person by
8 means of transplantation, unless the donor of the tissues has been
9 screened and found nonreactive by laboratory tests for evidence
10 of infection with human immunodeficiency virus (HIV), agents
11 of viral hepatitis (HBV and HCV), and syphilis. For tissues that
12 are rich in viable leukocytes, the tissue shall be tested for evidence
13 of infection with human T lymphotropic virus (HTLV) and found
14 nonreactive. The department may adopt regulations requiring
15 additional screening tests of donors of tissues when, in the opinion
16 of the department, the action is necessary for the protection of the
17 public, donors, or recipients.

18 (b) Notwithstanding subdivision (a), infectious disease screening
19 of blood and blood products shall be carried out solely in
20 accordance with Article 2 (commencing with Section 1602.5) of
21 Chapter 4.

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

24 (1) A recipient of sperm, from a sperm donor known to the
25 recipient, may waive a second or other repeat testing of that donor
26 if the recipient is informed of the requirements for testing donors
27 under this section and signs a written waiver.

28 (2) A recipient of sperm may consent to therapeutic insemination
29 of sperm or use of sperm in other assisted reproductive technologies
30 even if the sperm donor is found reactive for hepatitis B, hepatitis
31 C, syphilis, HIV, or HTLV if the sperm donor is the spouse of,
32 partner of, or designated donor for that recipient. The physician
33 providing insemination or assisted reproductive technology services
34 shall advise the donor and recipient of the potential medical risks
35 associated with receiving sperm from a reactive donor. The donor
36 and the recipient shall sign a document affirming that each *person*
37 comprehends the potential medical risks of using sperm from a
38 reactive donor for the proposed procedure and that each consents
39 to it. Copies of the document shall be placed in the medical records
40 of the donor and the recipient.

1 (3) (A) Sperm whose donor has tested reactive for syphilis may
2 be used for the purposes of insemination or assisted reproductive
3 technology only after the donor has been treated for syphilis. Sperm
4 whose donor has tested reactive for hepatitis B may be used for
5 the purposes of insemination or assisted reproductive technology
6 only after the recipient has been vaccinated against hepatitis B.

7 (B) (i) Sperm whose donor has tested reactive for HIV or HTLV
8 may be used for the purposes of insemination or assisted
9 reproductive technology for a recipient testing negative for HIV
10 or HTLV only after the donor's sperm has been effectively
11 processed to minimize the ~~infectiousness~~ of *likelihood of*
12 *transmission through* the sperm for that specific donation and
13 ~~where~~ *if* informed and mutual consent has occurred.

14 (ii) The department shall adopt regulations regulating facilities
15 that perform sperm processing, pursuant to this subparagraph, that
16 prescribe standards for the handling and storage of sperm samples
17 of carriers of HIV, HTLV, or any other virus as deemed appropriate
18 by the department. The department may propose to adopt, as initial
19 regulations, the recommendations made within the "Guidelines
20 for Reducing Risk of Viral Transmission During Fertility
21 Treatment" as published by the American Society for Reproductive
22 Medicine. Notice of the department's proposed adoption of the
23 regulations shall be posted on the department's Internet Web site
24 for at least 45 days. Public comment shall be accepted by the
25 department for at least 30 days after the conclusion of the 45-day
26 posting period. If a member of the public requests a public hearing
27 during the 30-day comment period, the hearing shall be held prior
28 to the adoption of the regulations. If no member of the public
29 requests a public hearing, the regulations shall be deemed adopted
30 at the conclusion of the 30-day comment period. Comments
31 received shall be considered prior to the adoption of the final initial
32 regulations. The department may modify any guidance published
33 by the American Society for Reproductive Medicine. Adoption of
34 initial regulations by the department pursuant to this subdivision
35 shall not be subject to the rulemaking requirements of Chapter 3.5
36 (commencing with Section 11340) of Part 1 of Division 3 of Title
37 2 of the Government Code and written responses to public
38 comments shall not be required. Updates to the regulations shall
39 be adopted pursuant to the same process. Until the department
40 adopts these regulations, facilities that perform sperm processing

1 pursuant to this section shall follow facility and sperm processing
2 guidelines for the reduction of viral transmission developed by the
3 American Society for Reproductive Medicine. ~~Nothing in this~~
4 ~~section shall~~ *This section does not* prevent the department from
5 monitoring and inspecting facilities that process sperm to ensure
6 adherence to the regulations, or, until regulations are adopted, to
7 the guidelines set forth by the American Society for Reproductive
8 Medicine.

9 (iii) ~~Prior to~~ *Before* insemination or other assisted reproductive
10 technology ~~services, services are performed,~~ the physician
11 providing the services shall inform the recipient of sperm from a
12 spouse, partner, or designated donor who has tested reactive for
13 HIV or HTLV of all of the following:

14 (I) That sperm processing may not eliminate all of the risks of
15 HIV or HTLV transmission.

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

18 (III) That the recipient ~~must~~ *shall* provide documentation to the
19 physician providing insemination or assisted reproductive
20 technology services prior to treatment that she has established an
21 ongoing relationship with another physician to provide for her
22 medical care during and after completion of fertility services.

23 (IV) The recommendations made within the “Guidelines for
24 Reducing the Risk of Viral Transmission During Fertility
25 Treatment” published by the American Society for Reproductive
26 Medicine regarding followup testing for HIV and HTLV after use
27 of sperm from an HIV or HTLV reactive donor and have the
28 recommendations regarding followup testing be documented in
29 the recipient’s medical record.

30 (iv) The physician providing insemination or assisted
31 reproductive technology services shall also verify, and document
32 in the recipient’s medical record, that the donor of sperm who tests
33 reactive for HIV or HTLV is under the care of a physician
34 managing the HIV or HTLV.

35 (v) The physician providing insemination or assisted
36 reproductive technology services shall recommend to the physician
37 who will be providing ongoing care to the recipient recommended
38 followup testing for HIV and HTLV according to the “Guidelines
39 for Reducing the Risk of Viral Transmission During Fertility
40 Treatment” published by the American Society for Reproductive

1 Medicine, which shall be documented in the recipient’s medical
2 record.

3 (vi) If the recipient becomes HIV or HTLV positive, the
4 physician assuming ongoing care of the recipient shall treat or
5 provide information regarding referral to a physician who can
6 provide ongoing treatment of the HIV or HTLV.

7 (4) A recipient of sperm donated by a sexually intimate partner
8 of the recipient for reproductive use may waive a second or repeat
9 testing of that donor if the recipient is informed of the donor testing
10 requirements of this section and signs a written waiver. For
11 purposes of this paragraph, “sexually intimate partner of the
12 recipient” includes a known or designated donor to whose sperm
13 the recipient has previously been exposed in a nonmedical setting
14 in an attempt to conceive.

15 (d) Subdivision (a) ~~shall~~ *does* not apply to the transplantation
16 of tissue from a donor who has not been tested or, with the
17 exception of HTLV, has been found reactive for the infectious
18 diseases listed in subdivision (a) or for which the department has,
19 by regulation, required additional screening tests, if all of the
20 following conditions are satisfied:

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

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

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

28 (C) The symptoms from the infectious disease for which the
29 donor has tested positive will most likely not appear during the
30 intended recipient’s likely lifespan after transplantation with the
31 tissue or may be treated prophylactically if they do appear.

32 (2) The physician and surgeon performing the transplantation
33 has ensured that an organ from an individual who has been found
34 reactive for HIV may be transplanted only into an individual who
35 satisfies both of the following:

36 (A) The individual has been found reactive for HIV before
37 receiving the organ.

38 (B) The individual is either participating in clinical research
39 approved by an institutional review board under the criteria,
40 standards, and regulations described in subsections (a) and (b) of

1 Section 274f-5 of Title 42 of the United States Code, or, if the
 2 United States Secretary of Health and Human Services determines
 3 under subsection (c) of Section 274f-5 of Title 42 of the United
 4 States Code that participation in this clinical research is no longer
 5 warranted as a requirement for transplants, the individual is
 6 receiving the transplant under the standards and regulations under
 7 subsection (c) of Section 274f-5 of Title 42 of the United States
 8 Code.

9 (3) Consent for the use of the tissue has been obtained from the
 10 recipient, if possible, or if not possible, from a member of the
 11 recipient’s family, or the recipient’s legal guardian. For purposes
 12 of this section, “family” ~~shall mean~~ *means* spouse, adult son or
 13 daughter, either parent, adult brother or sister, or grandparent.

14 (e) The penalties prescribed in ~~Sections 1621.5 and Section~~
 15 120290 do not apply to a sperm donor covered under subdivision
 16 (c) or an organ *or tissue* donor who donates an organ *or tissue* for
 17 transplantation or research purposes.

18 (f) Human breast milk from donors who test reactive for agents
 19 of viral hepatitis (HBV and HCV), HTLV, HIV, or syphilis shall
 20 not be used for deposit into a milk bank for human ingestion in
 21 California.

22 SEC. 4. Section 120290 of the Health and Safety Code is
 23 repealed.

24 ~~120290. (a) Except as provided in Section 120291 or in the~~
 25 ~~case of the removal of an afflicted person in a manner the least~~
 26 ~~dangerous to the public health, any person afflicted with any~~
 27 ~~contagious, infectious, or communicable disease who willfully~~
 28 ~~exposes himself or herself to another person, and any person who~~
 29 ~~willfully exposes another person afflicted with the disease to~~
 30 ~~someone else, is guilty of a misdemeanor.~~

31 ~~(b) This section shall not apply to a person who donates an organ~~
 32 ~~for transplantation or research purposes.~~

33 SEC. 5. Section 120290 is added to the Health and Safety Code,
 34 to read:

35 120290. (a) The intentional transmission of an infectious or
 36 communicable disease is a misdemeanor. A defendant is guilty of
 37 intentional transmission of an infectious or communicable disease
 38 if all of the following apply:

39 (1) The defendant knows that he or she is afflicted with an
 40 infectious or communicable disease.

1 (2) The defendant acts with the specific intent to transmit that
2 disease to another person.

3 (3) The defendant engages in conduct that poses a substantial
4 risk of transmission to that person.

5 (4) The defendant transmits that infectious or communicable
6 disease to the other person.

7 (b) The defendant does not act with the intent required pursuant
8 to paragraph (2) of subdivision (a) if the defendant takes, or
9 attempts to take, practical means to prevent transmission.

10 (c) Failure to take practical means to prevent transmission alone
11 is insufficient to prove the intent required pursuant to paragraph
12 (2) of subdivision (a).

13 (d) Becoming pregnant while infected with an infectious or
14 communicable disease, continuing a pregnancy while infected with
15 an infectious or communicable disease, or declining treatment for
16 an infectious or communicable disease during pregnancy does not
17 constitute a crime for purposes of this section.

18 (e) For purposes of this section, the following definitions shall
19 apply:

20 (1) “Conduct that poses a substantial risk of transmission” means
21 an act that has a reasonable probability of disease transmission as
22 proven by competent medical or epidemiological evidence.
23 Conduct posing a low or negligible risk of transmission as proven
24 by competent medical or epidemiological evidence does not meet
25 the definition of conduct posing a substantial risk of transmission.

26 (2) “Infectious or communicable disease” means a disease that
27 spreads from human to human and that is determined to have
28 significant, long-term consequences on the physical health or life
29 activities of the person infected.

30 (3) “Practical means to prevent transmission” means a method,
31 device, behavior, or activity demonstrated scientifically to
32 measurably limit or reduce the risk of transmission of an infectious
33 or communicable disease, including, but not limited to, the use of
34 a condom, barrier protection or prophylactic device, or good faith
35 compliance with a medical treatment regimen prescribed by a
36 physician for the infectious or communicable disease.

37 (f) This section does not preclude a defendant from asserting
38 any common law defense, including the complainant’s consent to
39 the defendant’s conduct.

1 (g) It is an affirmative defense to a charge under this section if
2 both of the following apply:

3 (1) The complainant knew that the defendant was infected with
4 the infectious or communicable disease before the exposure.

5 (2) The complainant willingly engaged in conduct that poses a
6 substantial risk of transmission of the infectious or communicable
7 disease.

8 (h) (1) When alleging a violation of subdivision (a), the
9 prosecuting attorney or the grand jury shall substitute a pseudonym
10 for the true name of a complainant. The actual name and other
11 identifying characteristics of a complainant shall be revealed to
12 the court only in camera, unless the complainant requests
13 otherwise, and the court shall seal the information from further
14 disclosure, except by counsel as part of discovery.

15 (2) Unless the complainant requests otherwise, all court
16 decisions, orders, petitions, and other documents, including motions
17 and papers filed by the parties, shall be worded so as to protect the
18 name or other identifying characteristics of the complainant from
19 public disclosure.

20 (3) Unless the complainant requests otherwise, a court in which
21 a violation of this section is filed shall, at the first opportunity,
22 issue an order that prohibits counsel, their agents, law enforcement
23 personnel, and court staff from making a public disclosure of the
24 name or any other identifying characteristic of the complainant.

25 (4) Unless the defendant requests otherwise, a court in which a
26 violation of this section is filed, at the earliest opportunity, shall
27 issue an order that counsel and their agents, law enforcement
28 personnel, and court staff, before a finding of guilt, not publicly
29 disclose the names or other identifying characteristics of the
30 defendant, except by counsel as part of discovery or to a limited
31 number of relevant individuals in its investigation of the specific
32 charges under this section.

33 (5) For purposes of this subdivision, "identifying characteristics"
34 includes, but is not limited to, the name or any part of the name,
35 address or any part of the address, city or unincorporated area of
36 residence, age, marital status, relationship of the defendant and
37 complainant, place of employment, or race or ethnic background.

38 (i) (1) A court, upon a finding of reasonable suspicion that an
39 individual has violated this section, shall order the production of
40 the individual's medical records or the attendance of a person with

1 relevant knowledge thereof, so long as the return of the medical
2 records or attendance of the person pursuant to the subpoena is
3 submitted initially to the court for an in camera inspection. Only
4 upon a finding by the court that the medical records or proffered
5 testimony are relevant to the pleading offense, the information
6 produced pursuant to the court’s order shall be disclosed to the
7 prosecuting entity and admissible if otherwise permitted by law.

8 (2) The medical records, medications, prescriptions, or medical
9 devices of the defendant are not admissible as evidence or
10 considered probative as to the specific intent required under this
11 section in the absence of the defendant’s stated intent required
12 under this section within the medical record to do specific harm
13 to the complainant.

14 (3) Surveillance reports and records maintained by state and
15 local health officials shall not be subpoenaed or released for the
16 purpose of establishing the specific intent required pursuant to
17 subdivision (a).

18 (4) A court shall take judicial notice of any fact establishing an
19 element of the offense upon the defendant’s motion or stipulation.

20 (5) Paragraph (2) does not limit the defendant’s right to submit
21 medical evidence to show the absence of the stated intent required
22 pursuant to subdivision (a).

23 (j) Before sentencing, a defendant shall be assessed for
24 placement in one or more community-based programs that provide
25 counseling, supervision, education, and reasonable redress to the
26 victim or victims.

27 (k) This section does not apply to a person who donates an organ
28 or tissue for transplantation or research purposes.

29 SEC. 6. Section 120291 of the Health and Safety Code is
30 repealed.

31 ~~120291. (a) Any person who exposes another to the human~~
32 ~~immunodeficiency virus (HIV) by engaging in unprotected sexual~~
33 ~~activity when the infected person knows at the time of the~~
34 ~~unprotected sex that he or she is infected with HIV, has not~~
35 ~~disclosed his or her HIV-positive status, and acts with the specific~~
36 ~~intent to infect the other person with HIV, is guilty of a felony~~
37 ~~punishable by imprisonment in the state prison for three, five, or~~
38 ~~eight years. Evidence that the person had knowledge of his or her~~
39 ~~HIV-positive status, without additional evidence, shall not be~~
40 ~~sufficient to prove specific intent.~~

1 (b) ~~As used in this section, the following definitions shall apply:~~

2 (1) ~~“Sexual activity” means insertive vaginal or anal intercourse~~
3 ~~on the part of an infected male, receptive consensual vaginal~~
4 ~~intercourse on the part of an infected woman with a male partner,~~
5 ~~or receptive consensual anal intercourse on the part of an infected~~
6 ~~man or woman with a male partner.~~

7 (2) ~~“Unprotected sexual activity” means sexual activity without~~
8 ~~the use of a condom.~~

9 (e) (1) ~~When alleging a violation of subdivision (a), the~~
10 ~~prosecuting attorney or grand jury shall substitute a pseudonym~~
11 ~~for the true name of the victim involved. The actual name and~~
12 ~~other identifying characteristics of the victim shall be revealed to~~
13 ~~the court only in camera, and the court shall seal that information~~
14 ~~from further revelation, except to defense counsel as part of~~
15 ~~discovery.~~

16 (2) ~~All court decisions, orders, petitions, and other documents,~~
17 ~~including motions and papers filed by the parties, shall be worded~~
18 ~~so as to protect the name or other identifying characteristics of the~~
19 ~~victim from public revelation.~~

20 (3) ~~Unless the victim requests otherwise, a court in which a~~
21 ~~violation of this section is filed shall, at the first opportunity, issue~~
22 ~~an order that the parties, their counsel and other agents, court staff,~~
23 ~~and all other persons subject to the jurisdiction of the court shall~~
24 ~~make no public revelation of the name or any other identifying~~
25 ~~characteristics of the victim.~~

26 (4) ~~As used in this subdivision, “identifying characteristics”~~
27 ~~includes, but is not limited to, name or any part thereof, address~~
28 ~~or any part thereof, city or unincorporated area of residence, age,~~
29 ~~marital status, relationship to defendant, and race or ethnic~~
30 ~~background.~~

31 SEC. 7. Section 120292 of the Health and Safety Code is
32 repealed.

33 ~~120292. (a) Notwithstanding Chapter 7 (commencing with~~
34 ~~Section 120975) and Chapter 8 (commencing with Section 121025)~~
35 ~~of Part 4, identifying information and other records of the~~
36 ~~diagnosis, prognosis, testing, or treatment of any person relating~~
37 ~~to the human immunodeficiency virus (HIV) shall be disclosed in~~
38 ~~a criminal investigation for a violation of Section 120291 if~~
39 ~~authorized by an order of a court of competent jurisdiction granted~~

1 after application showing good cause therefor. Any order of the
2 court shall be issued in accordance with the following conditions:

3 (1) An order shall not be based on the sexual orientation of the
4 defendant.

5 (2) In deciding whether to issue an order, the court shall weigh
6 the public interest and the need for disclosure against any potential
7 harm to the defendant, including, but not limited to, damage to the
8 physician-patient relationship and to treatment services. Upon the
9 issuance of an order of this nature, the court, in determining the
10 extent to which any disclosure of all or any part of any record is
11 necessary, shall impose safeguards determined appropriate by the
12 court against unauthorized disclosure. However, the court shall
13 not order disclosure under this paragraph for any purpose other
14 than a proceeding under this section. Any order for disclosure
15 under this subdivision shall limit disclosure to those who need the
16 information for the proceeding, and shall direct those to whom
17 disclosure is made to make no further disclosure without
18 permission of the court. The court shall grant permission for further
19 disclosure when necessary for a proceeding under this section.
20 Any disclosure in violation of an order issued under this section
21 shall be remedied or punished as provided in Section 120980.

22 (b) Nothing in this section is intended to compel the testing to
23 determine the HIV status of any victim of an alleged crime or
24 crimes.

25 (e) Nothing in this section is intended to restrict or eliminate
26 the anonymous AIDS testing programs provided for in Sections
27 120885 to 120895, inclusive. Identifying characteristics of persons
28 who submit to that testing shall not be ordered disclosed pursuant
29 to this section, nor shall an order be issued authorizing the search
30 of the records of a testing program of that nature.

31 SEC. 8. Section 647f of the Penal Code is repealed.

32 647f. In any accusatory pleading charging a violation of
33 subdivision (b) of Section 647, if the defendant has been previously
34 convicted one or more times of a violation of that subdivision or
35 of any other offense listed in subdivision (d) of Section 1202.1,
36 and in connection with one or more of those convictions a blood
37 test was administered pursuant to Section 1202.1 or 1202.6 with
38 positive test results, of which the defendant was informed, the
39 previous conviction and positive blood test results, of which the
40 defendant was informed, shall be charged in the accusatory

1 pleading. If the previous conviction and informed test results are
2 found to be true by the trier of fact or are admitted by the defendant,
3 the defendant is guilty of a felony.

4 SEC. 9. Section 1001 of the Penal Code is amended to read:

5 1001. It is the intent of the Legislature that neither this chapter,
6 Chapter 2.5 (commencing with Section 1000) of this title, ~~nor~~ or
7 any other provision of law *not* be construed to preempt other
8 current or future pretrial or precomplaint diversion programs. It is
9 also the intent of the Legislature that current or future posttrial
10 diversion programs not be preempted, except as provided in Section
11 13201 or 13352.5 of the Vehicle Code. Sections 1001.2 to ~~1001.11~~,
12 ~~1001.9~~, inclusive, of this chapter shall apply only to pretrial
13 diversion programs as defined in Section 1001.1.

14 SEC. 10. Section 1001.1 of the Penal Code is amended to read:

15 1001.1. As used in Sections 1001.2 to ~~1001.11~~, ~~1001.9~~,
16 inclusive, of this chapter, pretrial diversion refers to the procedure
17 of postponing prosecution of an offense filed as a misdemeanor
18 either temporarily or permanently at any point in the judicial
19 process from the point at which the accused is charged until
20 adjudication.

21 SEC. 11. Section 1001.10 of the Penal Code is repealed.

22 ~~1001.10. (a) The judge shall require any person described in~~
23 ~~subdivision (b), as a condition of either placing the person on~~
24 ~~probation or of permitting the person to participate in a drug~~
25 ~~diversion program to agree to participate in an AIDS education~~
26 ~~program. Testing for AIDS antibodies shall be offered but no~~
27 ~~person described in subdivision (b) shall be required to be tested.~~

28 ~~(b) This section shall apply to any person who has either been~~
29 ~~placed on probation or granted diversion for, any of the following:~~

30 ~~(1) A violation of subdivision (a) of Section 11350 of the Health~~
31 ~~and Safety Code, subdivision (a) of Section 11377 of the Health~~
32 ~~and Safety Code, Section 11550 of the Health and Safety Code,~~
33 ~~Section 4143 or 4149 of the Business and Professions Code, or of~~
34 ~~subdivision (f) of Section 647 if the offense involves intravenous~~
35 ~~use of a controlled substance.~~

36 ~~(2) A violation of subdivision (a) or (b) of Section 647.~~

37 SEC. 12. Section 1001.11 of the Penal Code is repealed.

38 ~~1001.11. (a) The health department in each county shall select~~
39 ~~an agency, or agencies, in the county that shall provide AIDS~~
40 ~~prevention education to those persons sentenced to probation or a~~

1 drug diversion program in accordance with Section 1001.10. The
2 health department shall endeavor to select an agency, or agencies,
3 that currently provide AIDS prevention education programs to
4 substance abusers or prostitutes. If no agency is currently providing
5 this education, the county agency responsible for substance abuse
6 shall develop an AIDS prevention education program either within
7 the agency or under contract with a community-based, nonprofit
8 organization in the county. The health department shall forward
9 to the courts a list of agencies selected for purposes of referral in
10 accordance with Section 1001.10. Reimbursement for the costs of
11 implementing this section shall be made out of moneys deposited
12 with the county treasurer in accordance with Section 1463.23.

13 (b) ~~An AIDS prevention education program providing services~~
14 ~~pursuant to subdivision (a) shall, at a minimum, include details~~
15 ~~about the transmission of human immunodeficiency virus (HIV),~~
16 ~~the etiologic agent for AIDS, symptoms of AIDS or AIDS-related~~
17 ~~conditions, prevention through avoidance or cleaning of needles,~~
18 ~~sexual practices which constitute high risk, low risk, and no risk~~
19 ~~(including abstinence), and resources for assistance if the person~~
20 ~~decides to take a test for the etiologic agent for AIDS and receives~~
21 ~~a positive test result. The program shall also include other relevant~~
22 ~~medical and prevention information as it becomes available.~~

23 (e) ~~A person sentenced to a drug diversion program pursuant~~
24 ~~to Section 1001.10 shall not be required to participate in an AIDS~~
25 ~~prevention education program, provided that the drug diversion~~
26 ~~program includes an AIDS prevention education component that~~
27 ~~meets the requirements of subdivision (b).~~

28 SEC. 13. Section 1170.21 is added to the Penal Code, to read:

29 1170.21. (a) A conviction for a violation of Section 647f as it
30 read on December 31, 2017, is invalid and vacated. All charges
31 alleging violation of Section 647f are dismissed and all arrests for
32 violation of Section 647f are deemed to have never occurred. An
33 individual who was arrested, charged, or convicted for a violation
34 of Section 647f may indicate in response to any question
35 concerning his or her prior arrest, charge, or conviction under
36 Section 647f that he or she was not arrested, charged, or convicted
37 for a violation of Section 647f. Notwithstanding any other law,
38 information pertaining to an individual's arrest, charge, or
39 conviction for violation of Section 647f shall not, without the
40 individual's consent, be used in any way adverse to his or her

1 interests, including, but not limited to, denial of any employment,
2 benefit, license, or certificate.

3 (b) Any court or agency having custody or control of records
4 pertaining to the arrest, charge, or conviction of a person for a
5 violation of Section 647f as it read on December 31, 2017, shall
6 destroy those records by June 30, 2018. The court or agency shall
7 purge those records from any local or statewide criminal database
8 and shall destroy the records in accordance with subdivision (c).
9 As used in this section, "records pertaining to the arrest, charge,
10 or conviction" includes blood test results, records of arrests, and
11 records relating to other offenses charged in the accusatory
12 pleading, as well as whether the defendant was acquitted or the
13 charges were dismissed.

14 (c) The court or agency shall destroy records pertaining to the
15 arrest, charge, or conviction of a person for a violation of Section
16 647f as it read on December 31, 2017, by permanently obliterating
17 all entries or notations upon the record, and the record shall be
18 prepared again so that it appears that the arrest, charge, or
19 conviction never occurred. However, the court or agency shall
20 physically destroy the document constituting the record if the only
21 entry upon the record pertains to the arrest, charge, or conviction,
22 and the record can be destroyed without necessarily destroying
23 other records.

24 (d) The court shall send an order to the Federal Bureau of
25 Investigation directing it to seal and destroy its records relating to
26 the defendant's arrest, charge, and conviction for a violation of
27 Section 647f as it read on December 31, 2017, within six months
28 of receiving the order.

29 (e) Notwithstanding subdivision (b) or (c), written transcriptions
30 of oral testimony in court proceedings and published judicial
31 appellate reports are not subject to this section. Additionally, a
32 record shall not be destroyed if the defendant or a codefendant has
33 filed a civil action against the peace officer or law enforcement
34 agency that instituted the prosecution and if the agency that is the
35 custody of those records has received a certified copy of the
36 complaint in the civil action, until the civil action has finally been
37 resolved. Immediately following the final resolution of the civil
38 action, a record subject to subdivision (b) shall be destroyed
39 pursuant to subdivision (c) if more than six months have elapsed
40 from the date of the conviction or arrest without conviction.

1 SEC. 14. Section 1170.22 is added to the Penal Code, to read:

2 1170.22. (a) A person who is serving a sentence as a result of
3 a violation of Section 647f as it read on December 31, 2017,
4 whether by trial or by open or negotiated plea, may petition for a
5 recall or dismissal of sentence before the trial court that entered
6 the judgment of conviction in his or her case.

7 (b) If the court’s records show that the petitioner was convicted
8 for a violation of Section 647f as it read on December 31, 2017,
9 the court shall vacate the conviction and resentence the person for
10 any remaining counts.

11 (c) A person who is serving a sentence and resentenced pursuant
12 to subdivision (b) shall be given credit for any time already served
13 and shall be subject to whatever supervision time they would have
14 otherwise been subject to after release, whichever is shorter, unless
15 the court, in its discretion, as part of its resentencing order, releases
16 the person from supervision.

17 (d) Under no circumstances may resentencing under this section
18 result in the imposition of a term longer than the original sentence,
19 or the reinstatement of charges dismissed pursuant to a negotiated
20 plea agreement.

21 (e) Upon completion of sentence for a conviction under Section
22 647f as it read on December 31, 2017, the provisions of Section
23 1170.21 shall apply.

24 (f) Nothing in this and related sections is intended to diminish
25 or abrogate the finality of judgments in any case not falling within
26 the purview of this section.

27 (g) A resentencing hearing ordered under this section shall
28 constitute a “post-conviction release proceeding” under paragraph
29 (7) of subdivision (b) of Article I of the California Constitution.

30 (h) The provisions of this section apply to juvenile delinquency
31 adjudications and dispositions under Section 602 of the Welfare
32 and Institutions Code if the juvenile would not have been guilty
33 of an offense or would not have been guilty of an offense governed
34 by this section.

35 (i) The Judicial Council shall promulgate and make available
36 all necessary forms to enable the filing of petitions and applications
37 provided in this section.

38 SEC. 15. Section 1202.1 of the Penal Code is amended to read:

39 1202.1. (a) Notwithstanding Sections 120975 and 120990 of
40 the Health and Safety Code, the court shall order every person

1 who is convicted of, or adjudged by the court to be a person
2 described by Section 601 or 602 of the Welfare and Institutions
3 Code as provided in Section 725 of the Welfare and Institutions
4 Code by reason of a violation of, a sexual offense listed in
5 subdivision (e), whether or not a sentence or fine is imposed or
6 probation is granted, to submit to a blood or oral mucosal
7 transudate saliva test for evidence of antibodies to the probable
8 causative agent of acquired immune deficiency syndrome (AIDS)
9 within 180 days of the date of conviction. Each person tested under
10 this section shall be informed of the results of the blood or oral
11 mucosal transudate saliva test.

12 (b) Notwithstanding Section 120980 of the Health and Safety
13 Code, the results of the blood or oral mucosal transudate saliva
14 test to detect antibodies to the probable causative agent of AIDS
15 shall be transmitted by the clerk of the court to the Department of
16 Justice and the local health officer.

17 (c) Notwithstanding Section 120980 of the Health and Safety
18 Code, the Department of Justice shall provide the results of a test
19 or tests as to persons under investigation or being prosecuted under
20 ~~Section 647f or~~ 12022.85, if the results are on file with the
21 department, to the defense attorney upon request and the results
22 also shall be available to the prosecuting attorney upon request for
23 the purpose of either preparing counts for a ~~subsequent offense~~
24 ~~under Section 647f or~~ sentence enhancement under Section
25 12022.85 or complying with subdivision (d).

26 (d) (1) In every case in which a person is convicted of a sexual
27 offense listed in subdivision (e) or adjudged by the court to be a
28 person described by Section 601 or 602 of the Welfare and
29 Institutions Code as provided in Section 725 of the Welfare and
30 Institutions Code by reason of the commission of a sexual offense
31 listed in subdivision (e), the prosecutor or the prosecutor's
32 victim-witness assistance bureau shall advise the victim of his or
33 her right to receive the results of the blood or oral mucosal
34 transudate saliva test performed pursuant to subdivision (a). The
35 prosecutor or the prosecutor's victim-witness assistance bureau
36 shall refer the victim to the local health officer for counseling to
37 assist him or her in understanding the extent to which the particular
38 circumstances of the crime may or may not have placed the victim
39 at risk of transmission of the human immunodeficiency virus (HIV)
40 from the accused, to ensure that the victim understands the

1 limitations and benefits of current tests for HIV, and to assist the
2 victim in determining whether he or she should make the request.

3 (2) Notwithstanding any other law, upon the victim’s request,
4 the local health officer shall be responsible for disclosing test
5 results to the victim who requested the test and the person who
6 was tested. However, as specified in subdivision (g), positive test
7 results shall not be disclosed to the victim or the person who was
8 tested without offering or providing professional counseling
9 appropriate to the circumstances as follows:

10 (A) To help the victim understand the extent to which the
11 particular circumstances of the crime may or may not have put the
12 victim at risk of transmission of HIV from the perpetrator.

13 (B) To ensure that the victim understands both the benefits and
14 limitations of the current tests for HIV.

15 (C) To obtain referrals to appropriate health care and support
16 services.

17 (e) For purposes of this section, “sexual offense” includes any
18 of the following:

19 (1) Rape in violation of Section 261 or 264.1.

20 (2) Unlawful intercourse with a person under 18 years of age
21 in violation of Section 261.5 or 266c.

22 (3) Rape of a spouse in violation of Section 262 or 264.1.

23 (4) Sodomy in violation of Section 266c or 286.

24 (5) Oral copulation in violation of Section 266c or 288a.

25 (6) (A) Any of the following offenses if the court finds that
26 there is probable cause to believe that blood, semen, or any other
27 bodily fluid capable of transmitting HIV has been transferred from
28 the defendant to the victim:

29 (i) Sexual penetration in violation of Section 264.1, 266c, or
30 289.

31 (ii) Aggravated sexual assault of a child in violation of Section
32 269.

33 (iii) Lewd or lascivious conduct with a child in violation of
34 Section 288.

35 (iv) Continuous sexual abuse of a child in violation of Section
36 288.5.

37 (v) The attempt to commit any offense described in clauses (i)
38 to (iv), inclusive.

39 (B) For purposes of this paragraph, the court shall note its
40 finding on the court docket and minute order if one is prepared.

1 (f) Any blood or oral mucosal transudate saliva tested pursuant
2 to subdivision (a) shall be subjected to appropriate confirmatory
3 tests to ensure accuracy of the first test results, and under no
4 circumstances shall test results be transmitted to the victim or the
5 person who is tested unless any initially reactive test result has
6 been confirmed by appropriate confirmatory tests for positive
7 reactors.

8 (g) The local health officer shall be responsible for disclosing
9 test results to the victim who requested the test and the person who
10 was tested. However, positive test results shall not be disclosed to
11 the victim or the person who was tested without offering or
12 providing professional counseling appropriate to the circumstances.

13 (h) The local health officer and the victim shall comply with all
14 laws and policies relating to medical confidentiality, subject to the
15 disclosure authorized by subdivisions (g) and (i).

16 (i) Any victim who receives information from the local health
17 officer pursuant to subdivision (g) may disclose the information
18 as he or she deems necessary to protect his or her health and safety
19 or the health and safety of his or her family or sexual partner.

20 (j) Any person who transmits test results or discloses information
21 pursuant to this section shall be immune from civil liability for
22 any action taken in compliance with this section.

23 SEC. 16. Section 1202.6 of the Penal Code is repealed.

24 ~~1202.6. (a) Notwithstanding Sections 120975, 120980, and~~
25 ~~120990 of the Health and Safety Code, upon the first conviction~~
26 ~~of any person for a violation of subdivision (b) of Section 647, the~~
27 ~~court shall, before sentencing or as a condition of probation, order~~
28 ~~the defendant to complete instruction in the causes and~~
29 ~~consequences of acquired immune deficiency syndrome (AIDS)~~
30 ~~pursuant to subdivision (d) and shall order the defendant to submit~~
31 ~~to testing for AIDS in accordance with subdivision (c). In addition,~~
32 ~~the court shall refer a defendant, where appropriate, to a program~~
33 ~~under Article 3.2 (commencing with Section 11320) of Chapter 2~~
34 ~~of Part 3 of Division 9 of the Welfare and Institutions Code or to~~
35 ~~any drug diversion program, or both.~~

36 ~~(b) Upon a second or subsequent conviction of a violation of~~
37 ~~subdivision (b) of Section 647, the court shall, before sentencing,~~
38 ~~order the defendant to submit to testing for AIDS in accordance~~
39 ~~with subdivision (c).~~

1 (e) ~~At the sentencing hearing of a defendant ordered to submit~~
2 ~~to testing for AIDS pursuant to subdivision (a) or (b), the court~~
3 ~~shall furnish the defendant with a copy of the report submitted~~
4 ~~pursuant to subdivision (c) and shall direct the clerk to note the~~
5 ~~receipt of the report by the defendant in the records of the case.~~

6 ~~If the results of the test described in the report are positive, the~~
7 ~~court shall make certain that the defendant understands the nature~~
8 ~~and meaning of the contents of the report and shall further advise~~
9 ~~the defendant of the penalty established in Section 647f for a~~
10 ~~subsequent violation of subdivision (b) of Section 647.~~

11 (d) ~~The county health officer in each county shall select an~~
12 ~~agency, or agencies, in the county that shall provide AIDS~~
13 ~~prevention education. The county health officer shall endeavor to~~
14 ~~select an agency, or agencies, that currently provide AIDS~~
15 ~~prevention education programs to substance abusers or prostitutes.~~
16 ~~If no agency is currently providing this education, the county~~
17 ~~agency responsible for substance abuse shall develop an AIDS~~
18 ~~prevention education program either within the agency or under~~
19 ~~contract with a community-based, nonprofit organization in the~~
20 ~~county. The county health officer shall forward to the courts a list~~
21 ~~of agencies selected for purposes of referral.~~

22 ~~An AIDS prevention education program providing services, at~~
23 ~~a minimum, shall include details about the transmission of human~~
24 ~~immunodeficiency virus (HIV), the etiologic agent for AIDS,~~
25 ~~symptoms of AIDS or AIDS-related conditions, prevention through~~
26 ~~avoidance or cleaning of needles, sexual practices that constitute~~
27 ~~high risk, low risk, and no risk (including abstinence), and~~
28 ~~resources for assistance if the person decides to take a test for the~~
29 ~~etiologic agent for AIDS and receives a positive test result. The~~
30 ~~program also shall include other relevant medical and prevention~~
31 ~~information as it becomes available.~~

32 (e) ~~The court shall order testing of every defendant as ordered~~
33 ~~pursuant to subdivision (a) or (b) for evidence of antibodies to the~~
34 ~~probable causative agent of acquired immune deficiency syndrome.~~
35 ~~Notwithstanding Section 120980 of the Health and Safety Code,~~
36 ~~written copies of the report on the test shall be furnished to both~~
37 ~~of the following:~~

38 (1) ~~The court in which the defendant is to be sentenced.~~

39 (2) ~~The State Department of Health Services.~~

1 ~~(f) Except as provided in subdivisions (e) and (g), the reports~~
2 ~~required by subdivision (e) shall be confidential.~~

3 ~~(g) The State Department of Health Services shall maintain the~~
4 ~~confidentiality of the reports received pursuant to subdivision (e);~~
5 ~~except that the department shall furnish copies of any report to a~~
6 ~~district attorney upon request.~~

7 SEC. 17. Section 1202.6 is added to the Penal Code, to read:

8 1202.6. Notwithstanding Sections 120975, 120980, and 120990
9 of the Health and Safety Code, upon the first conviction of a person
10 for a violation of subdivision (b) of Section 647, the court shall
11 refer the defendant, where appropriate, to a program under Article
12 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of
13 Division 9 of the Welfare and Institutions Code or to a drug
14 diversion program, or to both.

15 SEC. 18. Section 1463.23 of the Penal Code is repealed.

16 ~~1463.23. Notwithstanding Section 1463, out of the moneys~~
17 ~~deposited with the county treasurer pursuant to Section 1463, fifty~~
18 ~~dollars (\$50) of each fine imposed pursuant to Section 4338 of the~~
19 ~~Business and Professions Code; subdivision (e) of Section 11350;~~
20 ~~subdivision (e) of Section 11377, or subdivision (d) of Section~~
21 ~~11550 of the Health and Safety Code; or subdivision (b) of Section~~
22 ~~264, subdivision (m) of Section 286, subdivision (m) of Section~~
23 ~~288a, or Section 647.1 of this code, shall be deposited in a special~~
24 ~~account in the county treasury which shall be used exclusively to~~
25 ~~pay for the reasonable costs of establishing and providing for the~~
26 ~~county, or any city within the county, an AIDS (acquired immune~~
27 ~~deficiency syndrome) education program under the direction of~~
28 ~~the county health department, in accordance with Chapter 2.71~~
29 ~~(commencing with Section 1001.10) of Title 6, and for the costs~~
30 ~~of collecting and administering funds received for purposes of this~~
31 ~~section.~~

32 SEC. 19. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution for certain
34 costs that may be incurred by a local agency or school district
35 because, in that regard, this act creates a new crime or infraction,
36 eliminates a crime or infraction, or changes the penalty for a crime
37 or infraction, within the meaning of Section 17556 of the
38 Government Code, or changes the definition of a crime within the
39 meaning of Section 6 of Article XIII B of the California
40 Constitution.

1 However, if the Commission on State Mandates determines that
2 this act contains other costs mandated by the state, reimbursement
3 to local agencies and school districts for those costs shall be made
4 pursuant to Part 7 (commencing with Section 17500) of Division
5 4 of Title 2 of the Government Code.

O