



## SB 239 (Statutes of 2017) FACT SHEET

### OFFICE OF AIDS, CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, 11/2017

SB 239 (Chapter 537, Statutes of 2017) modifies state criminal laws related to HIV that specified higher punishment than those that apply to other communicable diseases. Effective January 1, 2018, this bill repeals or amends multiple sections of the California Health and Safety Code (HSC) and the Penal Code (PC). The Office of AIDS (OA) at the California Department of Public Health has put together this fact sheet to highlight the most pertinent sections that affect our stakeholders and to outline the numerous other changes. This fact sheet is intended only for informational purposes and should not be construed as legal advice. Please consult with your local counsel for advice on implementing this law.

### **FIVE MAIN HIGHLIGHTS:**

#### **1. Elimination of Felony for Donating Blood, Tissue, or Other Specimens, Sections 1-2 of the bill**

- The bill eliminates the felony related to a person donating blood, tissue, or, under specified circumstances, semen or breast milk, if the person knows that he or she has AIDS, or that he or she has tested reactive to HIV. (Former HSC §1621.5.)
- The bill eliminates the requirement that blood banks and plasma centers notify donors of said potential felony. (Former HSC §1603.3(b).) \*Organizations accepting these types of donations may need to update their materials given to donors to reflect this change.
- HIV testing of donations is still required (HSC §1603.1(a)) and donors may be subject to the new HSC section 120290 misdemeanor penalties if they donate with either intent to transmit, or engage in willful exposure of, a communicable disease (including HIV).
- Safeguards and procedures to ensure the safety of donated blood remain unchanged by this bill.

#### **2. Elimination of Felony for Intentional Transmission of HIV and Change in Misdemeanor Law Pertaining to Willful Exposure or Intentional Transmission of Communicable Diseases (including HIV), Sections 4-7 of the bill**

- The bill eliminates the felony for intentional transmission of HIV (Former HSC §120291).

- The bill repeals the former HSC §120290 regarding misdemeanors for willful exposure of a communicable disease and replaces it with a new HSC §120290 to create two different types of misdemeanors which apply to all communicable diseases (including HIV):

“(a) (1) A defendant is guilty of intentional transmission of an infectious or communicable disease if all of the following apply:

- (A) The defendant knows that he or she or a third party is afflicted with an infectious or communicable disease.
- (B) The defendant acts with the specific intent to transmit or cause an afflicted third party to transmit that disease to another person.
- (C) The defendant or the afflicted third party engages in conduct that poses a substantial risk of transmission to that person.
- (D) The defendant or the third party transmits the infectious or communicable disease to the other person.
- (E) If exposure occurs through interaction with the defendant and not a third party, the person exposed to the disease during voluntary interaction with the defendant did not know that the defendant was afflicted with the disease. A person’s interaction with the defendant is not involuntary solely on the basis of his or her lack of knowledge that the defendant was afflicted with the disease.

(2) A defendant is guilty of willful exposure to an infectious or communicable disease if a health officer, or the health officer’s designee, acting under circumstances that make securing a quarantine or health officer order infeasible, has instructed the defendant not to engage in particularized conduct that poses a substantial risk of transmission of an infectious or communicable disease, and the defendant engages in that conduct within 96 hours of the instruction. A health officer, or the health officer’s designee, may issue a maximum of two instructions to a defendant that may result in a violation of this paragraph...”

*\*Please refer to the bill language for further limitations and definitions that apply to this section:*

[http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201720180SB239](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB239)

**(3) Elimination of Mandatory AIDS Education in Drug and Solicitation Convictions, Sections 11-12**

PC sections 1001.10 and 1001.11 are both repealed:

- PC §1001.10 required defendants convicted of solicitation and certain drug offenses to participate in an AIDS education program as a condition of probation or diversion.
- PC §1001.11 required local health departments to provide AIDS education for defendants sentenced to probation or drug diversion under PC section 1001.10 (repealed by this bill).

**4. Elimination of Mandatory HIV Testing and Education for Solicitation Convictions, Sections 16-17**

PC §1202.6 is repealed which required mandatory AIDS education and court ordered HIV testing for certain solicitation convictions. Instead, Section 17 of the bill adds a new PC §1202.6: for certain solicitation and drug use convictions, a court shall refer a defendant to a welfare-to-work (or CalWORKS) program or to drug diversion, or to both.

**5. Elimination of County Funds Deposited into AIDS Education Program Fund, Section 18**

PC §1463.23 is repealed which required \$50 of each fine from certain convictions to be deposited in a county account to be used exclusively to pay for the costs of establishing and providing an AIDS education program under the direction of the county health department and for the costs of collecting and administering funds received for this purpose.

On January 1, 2018, \$50 from each of these fines will no longer be deposited into this county account. Counties should consult with their respective local counsel and/or accounting office as to the use of the remaining funds.

**SUMMARY OF ALL CHANGES MADE UNDER SB 239:**

SB 239 made all of the following changes to the Health and Safety Code and the Penal Code (in amended sections, underline indicates added language; strikethrough indicates deletions).

**SEC. 1. Section 1603.3 of the Health and Safety Code is amended to remove this sentence:** HSC 1603.3. (b)...~~The blood bank or plasma center shall also inform the donor that it is a felony pursuant to Section 1621.5 to donate blood if the donor knows that he or she has a diagnosis of AIDS or knows that he or she has tested reactive to HIV.~~

**SEC. 2. Section 1621.5 of the Health and Safety Code is repealed: donation of blood, tissue, semen, or breast milk as a felony if person knows they are HIV positive.**

**SEC. 3. Section 1644.5 of the Health and Safety Code is amended to read:** HSC 1644.5. (c)(3)(B)(v) The physician providing insemination or assisted reproductive technology services shall recommend to the physician who will be providing ongoing care to the recipient recommended follow-up testing for HIV and HTLV according to the most relevant and up-to-date guidelines published by the American Society for Reproductive Medicine, which shall be documented in the recipient's medical record.

(e) The penalties prescribed in Section 4621.5 and 120290 do not apply to a sperm donor covered under subdivision (c) or an organ or tissue donor who donates an organ or tissue for transplantation or research purposes.

**SEC. 4. Section 120290 of the Health and Safety Code is repealed: willful exposure of a communicable disease as a misdemeanor.**

**SEC. 5. Section 120290 is added to the Health and Safety Code, to create two misdemeanors for (1) intentional transmission of an infectious or communicable disease, and 2) willful exposure to an infectious or communicable disease. (See HIGHLIGHTS Section above.)**

**SEC. 6. Section 120291 of the Health and Safety Code is repealed: HIV transmission as a felony.**

**SEC. 7. Section 120292 of the Health and Safety Code is repealed: disclosing HIV results in felony cases.**

**SEC. 8. Section 647f of the Penal Code is repealed: under the influence in public as a misdemeanor.**

**SEC. 9. Section 1001 of the Penal Code is amended to delete the reference to PC 1001.10 and 1001.11 which were repealed by this law.**

**SEC. 10. Section 1001.1 of the Penal Code is amended to delete the reference to PC 1001.10 and 1001.11 which were repealed by this law.**

**SEC. 11. Section 1001.10 of the Penal Code is repealed: AIDS prevention program in drug and prostitution cases.**

**SEC. 12. Section 1001.11 of the Penal Code is repealed: AIDS prevention program in drug and prostitution cases.**

**SEC. 13. Section 1170.21 is added to the Penal Code, to read: PC 1170.21. A conviction for a violation of Section 647f as it read on December 31, 2017, is invalid and vacated...[647f was a misdemeanor for being under the influence in public and was repealed by Section 8 of this bill.]**

**SEC. 14. Section 1170.22 is added to the Penal Code, to read: PC 1170.22. (a) A person who is serving a sentence as a result of a violation of Section 647f as it read on December 31, 2017, whether by trial or by open or negotiated plea, may petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in his or her case...**

**SEC. 15. Section 1202.1 of the Penal Code is amended to delete the reference to PC 647f which was repealed by Section 8 of this bill.**

**SEC. 16. Section 1202.6 of the Penal Code is repealed: mandatory AIDS testing and AIDS prevention education for certain convictions.**

**SEC. 17. Section 1202.6 is added to the Penal Code. For solicitation and drug use convictions, a court shall refer a defendant to a welfare-to-work (or CalWORKS) program or to drug diversion, or to both. (A “program under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code or to a drug diversion program, or to both.”)**

**SEC. 18. Section 1463.23 of the Penal Code is repealed: an AIDS Education Program Fund from moneys pursuant to fines in certain criminal cases.**