

California

Analysis¹

People living with HIV (PLHIV) and other communicable conditions may be prosecuted for specific intent to transmit disease.

Under California’s intentional transmission of an infectious or communicable disease statute, imprisonment for not more than six months may occur if a person with an infectious or communicable disease (1) knowing that they have an infectious or communicable disease, (2) acts with “specific intent” to transmit the disease, (3) engages in conduct that “poses a substantial risk of transmission,” (4) “transmits the infectious or communicable disease” to that person, and (5) does so without the knowledge of the person exposed that the defendant had the disease.²

A person who does all of the above but who does not transmit disease is guilty of a misdemeanor punishable for not more than 90 days, regardless of whether the disease involved is HIV or another communicable or infectious disease covered under the law.³

A person can’t be prosecuted for acting with the “specific intent” (a conscious desire to transmit the disease), if they take, or attempt to take, practical means to prevent transmission.^{4, 5} This includes “any method, device, behavior, or activity demonstrated scientifically to measurably limit or reduce the risk of transmission of an infectious or communicable disease, including, but not limited to, the use of a condom, barrier protection or prophylactic device, or good faith compliance with a medical treatment regimen for the infectious or communicable disease prescribed by a health officer or physician.”⁶

But the new law also makes it clear that a person who doesn’t take any of these steps to avoid transmission is not presumed to be guilty of specific intent to transmit disease required for conviction under the revised law.⁷ In other words, the failure to do something to prevent transmission isn’t enough

¹ Effective January 1, 2018, several of California’s HIV criminal exposure laws were repealed and/or amended. Before the repeal, it was a felony, punishable by imprisonment for three, five or eight years, for a PLHIV with knowledge of their HIV status to engage in condomless anal or vaginal sex without disclosing their HIV status and with specific intent to transmit HIV. CAL. HEALTH & SAFETY CODE § 120291 (2017), repealed by Chapter 537, SB 239. Also repealed under the same bill were heightened penalties for PLHIV engaging in sex work or soliciting sex, CAL. PENAL CODE § 647f (2017), and the statute providing for disclosure of a PLHIV’s status in a criminal investigation, CAL. HEALTH & SAFETY CODE § 120292 (2017). Finally, CAL. HEALTH & SAFETY CODE § 1621.5 (2017), making it illegal for PLHIV to donate blood, semen, organs or tissue, punishable by two, four or six years imprisonment was also repealed under SB 239.

² CAL. HEALTH & SAFETY CODE § 120290(a)(1) (2018). This statute also encompasses circumstances where an individual causes a third party with an infectious or communicable disease to transmit disease to another person via conduct that poses a substantial risk of transmission.

³ CAL. HEALTH & SAFETY CODE § 120290(g)(2) (2018).

⁴ CAL. HEALTH & SAFETY CODE § 120290(b) (2018).

⁵ CAL. HEALTH & SAFETY CODE § 120290(e)(3) (2018).

⁶ CAL. HEALTH & SAFETY CODE § 120290(e)(3)(2018).

⁷ CAL. HEALTH & SAFETY CODE § 120290(c) (2018).

for a prosecutor to prove actual specific intent to transmit. Becoming pregnant, continuing a pregnancy, or declining treatment while pregnant and living with an infectious disease also are not crimes under the law.⁸

Conduct that poses a substantial risk of transmission means “an activity that has a reasonable probability of disease transmission as proven by competent medical or epidemiological evidence.”⁹ Conduct that poses a low or negligible risk of transmission does not meet the definition of substantial risk of transmission.¹⁰

The definition of infectious or communicable disease is broad, including any disease that “spreads from person to person, directly or indirectly, that has significant public health implications.”¹¹ The definition can be interpreted to encompass diseases such as influenza, tuberculosis, measles, or other casually transmitted conditions.

In addition to any defenses that are specifically raised under the statute (for example, the defendant did not know that they were living with the disease), a defendant is allowed to present any “common law” arguments in their defense. “Common law” means arguments that have been developed under other cases to defeat prosecutions, but are not identified in the statute itself.¹²

A person with an infectious or communicable disease who disregards a health officer’s instructions by engaging in certain conduct may be charged with a misdemeanor.

Under a separate section of the same statute, a person with an infectious or communicable disease is guilty of “willful exposure” if (1) a health officer or their designee, (2) acting under circumstances that make securing a quarantine or health officer order infeasible (3) instructs a person not to engage in “particularized” conduct that poses a substantial risk of transmission of the disease, and (4) the person engages in that conduct within 96 hours of receiving the instruction.¹³ Violation of this provision is a misdemeanor, punishable by up to 6 months’ imprisonment.¹⁴

This section of the statute is written much more broadly than the first section of the statute.¹⁵ Conviction of a defendant is easier because neither “specific intent” to transmit the disease, nor transmission of the disease, are elements required to be proven for conviction. It also does not define the circumstances under which securing a quarantine or health officer order is “infeasible.” Additionally, prosecution may occur under this section even if the person exposed to the disease was aware of the defendant’s condition.

⁸ CAL. HEALTH & SAFETY CODE § 120290(d) (2018).

⁹ CAL. HEALTH & SAFETY CODE § 120290(e)(1) (2018).

¹⁰ *Id.*

¹¹ CAL. HEALTH & SAFETY CODE § 120290(e)(2) (2018).

¹² CAL. HEALTH & SAFETY CODE § 120290(f) (2018).

¹³ CAL. HEALTH & SAFETY CODE § 120290(a)(2) (2018).

¹⁴ CAL. HEALTH & SAFETY CODE § 120290(g)(1) (2018).

¹⁵ California had a “willful exposure” statute in place prior to the changes made by SB 239. The revision narrowed the scope of this section of the law in several ways. Before 2018, it was a misdemeanor, punishable by up to 6 months’ imprisonment, for a person with a “contagious, infectious, or communicable disease” to “willfully expose” themselves to someone else. CAL. HEALTH & SAFETY CODE § 120290 (2017). SB 239 added the requirements for a health officer instruction and conduct that poses a “substantial risk” of transmission.

More fundamentally, however, the conduct prohibited by a health officer could include a larger range of activities, such as an instruction that a person with tuberculosis not to go out in public until that person has completed medical treatment that makes them non-infectious.

A defendant charged under section (a) of California’s intentional transmission of an infectious or communicable disease statute, and the complaining witnesses in the case, are entitled to privacy protections.

Under section (a) of the statute the defendant and the complaining witness(es) (the person(s) subject to the defendant’s actions and who complained to the police or other authority) are afforded certain privacy protections that differ slightly. The name and identifying characteristics of the complaining witness must be worded in all documents submitted to the court in a way that protects their privacy. For example, the name of the complaining witness would be replaced in all documents filed in court with a pseudonym, a “made-up name,” such as John Doe.¹⁶ This requirement is applied unless the complaining witness tells the court that they do not want that protection. Additionally, as early as possible after a case is initiated in a court, the court will order the lawyers, law enforcement personnel, and court staff to refrain from discussing or releasing in public the name or any identifying characteristics of the complaining witness, unless the complaining witness does not want those protections.¹⁷

Similarly, at any time before a verdict, unless the defendant requests otherwise, a court will issue an order that lawyers, law enforcement personnel, and court staff are not to publicly disclose the name or other identifying characteristics of the defendant,” except in very limited circumstances, by counsel, or during the investigation of the matter.¹⁸ If the defendant is found guilty, then those protections no longer apply.

PLHIV may receive increased sentences or aggravated assault charges for sex crimes.

PLHIV who know their HIV status and are convicted of rape, unlawful intercourse with a person under 18 years of age, rape of a spouse, sodomy or oral copulation with a person less than 18 years of age or against another person’s will, are subject to three additional years in prison for each offense.¹⁹ Neither the intent to transmit HIV, nor HIV transmission, is required for the sentence enhancement. The enhancement is also applied regardless of the actual transmission risk posed by the conduct at issue, meaning factors such as use of antiretroviral medication or condom use are not considered. Prosecuting attorneys may use test results obtained from mandatory testing pursuant to previous sex offenses to establish a defendant’s HIV status and their knowledge of that status.²⁰

This statute has withstood constitutional challenge. In 1998, a PLHIV received a sentence enhancement of nine additional years in prison for having unprotected sex with a minor while knowing

¹⁶ CAL. HEALTH & SAFETY CODE § 120290(h)(2) (2018).

¹⁷ CAL. HEALTH & SAFETY CODE § 120290(h)(3) (2018).

¹⁸ CAL. HEALTH & SAFETY CODE § 120290(h)(4) (2018).

¹⁹ CAL. PENAL CODE § 12022.85 (2017).

²⁰ CAL. PENAL CODE § 12022.85(c) (2017). Testing may be mandated for any of the enumerated offenses for which the sentence enhancement applies, and for various other sexual offenses if the court finds there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV have been transferred from the defendant to the victim. CAL. PENAL CODE § 1202.1(e)(6)(A) (2018).

his HIV status.²¹ Examining the defendant's challenge to the sentencing enhancement statute, the California Court of Appeal declined to label the application of the statute as "cruel and unusual punishment" in violation of the Eighth Amendment to the U.S. Constitution because it punished the defendant's conduct, not the HIV status itself.²²

Mandatory HIV testing is imposed upon conviction for certain sex offenses.

Persons convicted of certain enumerated sex offenses can be required to undergo mandatory HIV testing.²³ The offenses include rape, aiding and abetting rape, unlawful intercourse with a person under 18, sexual intercourse by fraud or fear, rape of a spouse, aiding and abetting the rape of a spouse, and sodomy or oral copulation with a person less than 18 years of age, against another person's will, or by fraud or fear.²⁴ If a court finds that there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV was transferred from the defendant to the victim, it may also order testing for several additional kinds of sex offenses or their attempt.²⁵ The court shall note its finding of probable cause on the court docket and/or the "minute order" (a written order that records a verbal ruling by a judge in a court hearing), if applicable.²⁶

The test shall be performed within 180 days of conviction and the person tested shall be informed of the results.²⁷ The test results are also transmitted by the court to the California Department of Justice and the local health officer.²⁸ If the test results are on file with the California Department of Justice, they are provided to defense counsel upon request, and to the prosecuting attorney under specified circumstances, including for sentencing enhancement of certain sex offenses.²⁹

Additionally, if the person is convicted of one of the sex offenses listed above, or has been placed on probation or made a ward of the court as a result of committing one of these offenses, the prosecutor or victim-witness assistance bureau shall advise the victim of their right to receive the test results, and refer them to the local health department for counseling.³⁰ Upon request, the local health officer is responsible for disclosing the test results to the victim with appropriate counseling.³¹

²¹ *Guevara v. Superior Court*, 73 Cal. Rptr. 2d 421 (Cal. Ct. App. 1998).

²² *Id.* at 424-25; (distinguishing *Robinson v. California*, 370 U.S. 660 (1962), where a "narcotics addiction" statute was invalidated, because unlike *Robinson*, the statute at issue in *Guevara* "does not criminalize the *status* of being HIV positive because it applies only where a knowingly HIV positive individual commits specified criminal *conduct*." (emphasis not added)).

²³ CAL. PENAL CODE § 1202.1(a) (2018). Persons under the age of 18 years can also be required to submit to an HIV test if: (1) they are within the jurisdiction of the juvenile court as the result of repeated disobedience to their parents or guardians, or violation of a curfew based solely on age, or school truancy, or who are found to have violated a city or county ordinance, state or federal law, other than a curfew based solely on age, and (2) have committed a sexual offense, which causes that person to be placed on probation or made a ward of the court. CAL. WEL. & INST. CODE §§ 601, 602 (2017).

²⁴ CAL. PENAL CODE § 1202.1(e) (2018).

²⁵ CAL. PENAL CODE § 1202.1(e)(6)(A) (2018). Aiding or abetting rape; inducing consent by fraud or fear to sexual intercourse, sexual penetration, oral copulation, or sodomy; penetration by foreign object; aggravated sexual assault of a child; lewd or lascivious conduct with a child; continuous sexual abuse of a child; or attempting to commit any of the aforementioned offenses. CAL. PENAL CODE §§ 264.1, 266c, 289, 269, 288, 288.5 (2017).

²⁶ CAL. PENAL CODE § 1202.1(e)(6)(B) (2018).

²⁷ CAL. PENAL CODE § 1202.1(a) (2018).

²⁸ CAL. PENAL CODE § 1202.1(b) (2018).

²⁹ *Id.*; CAL. PENAL CODE § 12022.85(c) (2018).

³⁰ CAL. PENAL CODE § 1202.1(d)(1) (2018).

³¹ CAL. PENAL CODE § 1202.1(d)(2) (2018).

Convictions for solicitation or engaging in prostitution while positive under CAL. PENAL CODE § 647f are invalid and vacated.

Prior to 2018, if a PLHIV who had previously been convicted of a prostitution³² or sex offense³³ and at that time tested positive for HIV, was found guilty of either soliciting or engaging in prostitution, they were guilty of a felony and could be imprisoned for up to three years.^{34, 35} Convictions for a violation of this section are now invalid and vacated.³⁶ All charges alleging a violation of this section are dismissed and all arrests are treated as though they never happened.³⁷ Any information pertaining to a person's arrest, charge, or conviction for violating Section 647f may not be used in any way adverse to their interests, including denial of any employment, benefit, license or certificate.³⁸

Dismissal or recall of a sentence as a result of a conviction for soliciting or engaging in prostitution while positive

A person who engaged in sex work and is currently serving a sentence for violating CAL. PENAL CODE § 647f may request the court that imposed the sentence to dismiss it.³⁹ The court shall vacate the conviction and resentence on the remaining counts.⁴⁰ Credit shall be given for time served and the defendant shall be subject to whatever supervision time they would have otherwise been subject to after release, whatever is shorter, unless the court decides to release the defendant from supervision.⁴¹ Resentencing under this section may not result in the imposition of a term longer than the original sentence, or reinstatement of charges dismissed pursuant to a plea agreement.⁴²

³² See CAL. PENAL CODE § 647(b) (2018).

³³ Sex offenses are defined under CAL. PENAL CODE § 1202.1(d), (e) (2018), and include rape, unlawful intercourse with a person under 18 years of age, rape of a spouse, sodomy or oral copulation with a person under 18 years of age or against another person's will, or sexual penetration, aggravated sexual assault, assault of a child, lewd or lascivious conduct with a child, continuous sexual abuse of a child, or attempt of these offenses.

³⁴ CAL. PENAL CODE § 647f (2017).

³⁵ As the Williams Institute found in a 2015 report, California's enforcement of HIV criminal laws disproportionately affected sex workers, Latinx, and Black people. A startling 95% of all HIV-specific criminal incidents between 1988 and 2014 concerned people engaged in or suspected of engaging in sex work. Women made up 43% of those who came into contact with the criminal legal system, but less than 13% of California's HIV-positive population. White men were significantly more likely to be released and not charged than any other group, with a more pronounced contrast within sex work crimes. With the repeal of section 647f, California's HIV laws may be imposed in a fairer and less disproportionate fashion. See Amira Hasenbush, Ayako Miyashita & Bianca Wilson, *HIV Criminalization in California: Penal Implications for People Living with HIV/AIDS* (updated 2016), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/HIV-Criminalization-California-Updated-June-2016.pdf>

³⁶ CAL. PENAL CODE § 1170.21 (2018).

³⁷ *Id.*

³⁸ *Id.*

³⁹ CAL. PENAL CODE § 1170.22(a) (2018).

⁴⁰ CAL. PENAL CODE § 1170.22(b) (2018).

⁴¹ CAL. PENAL CODE § 1170.22(c) (2018).

⁴² CAL. PENAL CODE § 1170.22(d) (2018).

PLHIV have also been convicted under general criminal laws.⁴³

Before California's HIV criminal exposure laws were revised, effective January 1, 2018, defendants were occasionally convicted for HIV-related exposure crimes under general criminal laws, such as for making "criminal threats." For example, in *Beauford v. People*, the California Court of Appeal confirmed a conviction for, among other charges, making criminal threats.⁴⁴ While resisting arrest, the defendant spit at the officers and made comments including, "I'll make your life miserable because I'm infected with HIV."⁴⁵ A criminal threat under California law is a threat intended to, and that causes, fear in the person threatened.⁴⁶ The State must prove that (1) the defendant threatened to kill or inflict great bodily injury on another person, (2) intended the threat to be understood as such, (3) communicated the serious intention that the threat would be carried out, (4) the threat caused the person to be in fear and (5) such fear was reasonable.⁴⁷ The court held that the language and actions of the defendant could reasonably be found to be criminal threats by a jury.⁴⁸ In all likelihood prosecution for HIV-related exposure crimes under general criminal laws will continue to be rare, but does not seem to be precluded under the revised statutes.

People with venereal disease may be punished with a misdemeanor for exposing or transmitting disease to others and can be subject to mandatory treatment.

Different and separate provisions under California's Health and Safety Code also provide for imprisonment and/or a fine for exposing someone else to a venereal disease (a narrower class of diseases than under the intentional transmission of an infectious or communicable disease statute), including syphilis, gonorrhea, chancroid, lymphogranuloma venereum, granuloma inguinale, and chlamydia.⁴⁹ An individual who exposes or transmits one of these diseases to another person may be punished with a misdemeanor.⁵⁰ The statute does not define the term "expose" and there is no indication that an exposed person's knowledge of the defendant's condition would matter for the purposes of prosecution. If a person has a venereal disease, is aware that the condition is currently infectious, and has sexual intercourse, that person may also be punished with a misdemeanor.⁵¹ Violation of these provisions may result in up to six months of imprisonment and a \$1,000 fine.⁵²

Persons with venereal disease who are in the infectious or potentially infectious stage and lapse from treatment for more than ten days are deemed to be in violation of control measures⁵³ and may be found

⁴³ In a 1987 case, the defendant successfully sued the San Diego Police Department for taking and testing his blood for HIV without consent or a warrant after he bit the officers. *Barlow v. Superior Court (People)*, 236 Cal.Rptr. 134 (Cal. Ct. App. 1987). He was originally charged with two counts of battery against a police officer and one count of obstructing a police officer. *Barlow v. Ground*, 943 F.2d 1132, 1134 (9th Cir. 1991). After his HIV status was discovered, "the municipal court granted an order authorizing the [blood] tests to support charges the defendant bit the officers with intent to kill them and to inflict great bodily injury on them." *Barlow*, 236 Cal.Rptr. at 135. A jury later acquitted him of all criminal charges. *Barlow*, 943 F.2d, at 1134.

⁴⁴ No. B196860, 2008 WL 5091389, at *1 (Cal. Ct. App. Dec. 4, 2008).

⁴⁵ *Id.*

⁴⁶ CAL. PENAL CODE § 422 (2017).

⁴⁷ *Id.*

⁴⁸ *Beauford*, 2008 WL 5091389, at *3-4.

⁴⁹ CAL. HEALTH & SAFETY CODE § 120500 (2017); CAL. CODE REGS. tit. 17, § 2636(a) (2016).

⁵⁰ CAL. HEALTH & SAFETY CODE § 120600 (2017).

⁵¹ *Id.*

⁵² CAL. PENAL CODE § 19 (2017).

⁵³ CAL. CODE REGS. tit. 17, § 2636(j) (2017).

guilty of a misdemeanor, punishable by six months' imprisonment and a fine of up to \$1,000.⁵⁴ For the purposes of prosecuting such violations, physicians and health officers may be required to testify against a defendant.⁵⁵

People with venereal disease may be subject to quarantine and isolation.

In addition to the Health & Safety Code provisions that allow for imprisonment for certain types of exposure to venereal disease, other provisions of the same code authorize quarantine or isolation. Under certain circumstances,⁵⁶ people with venereal disease may be subject to examination to determine the "condition of the disease."⁵⁷ Additionally, persons with such conditions are required to remain under adequate and proper treatment until the treatment is completed.⁵⁸ Local health officers may make all reasonable efforts to induce compliance, including mandating inspection and quarantine.⁵⁹ Although not considered a venereal disease, persons with viral hepatitis may also be subject to isolation during acute symptoms.⁶⁰ It is unclear what procedural protections, including appeals procedures, may be in place for persons subject to public health control measures, particularly isolation, based on venereal disease status. As of publication, the authors are unaware of any case law that provides clarification.

Important note: *While we have made an effort to ensure that this information is current, the law is always changing and we cannot guarantee the accuracy of the information provided. This information may or may not be applicable to your specific situation and, as such, it should not be used as a substitute for legal advice.*

Note: *Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.*

⁵⁴ CAL. HEALTH & SAFETY CODE §§ 120275, 120600 (2017); CAL. PENAL CODE § 19 (2017).

⁵⁵ CAL. HEALTH & SAFETY CODE § 120595 (2017).

⁵⁶ "The department shall investigate conditions affecting the prevention and control of venereal diseases and approved procedures for prevention and control, and shall disseminate educational information relative thereto." CAL. HEALTH & SAFETY CODE § 120515 (2017).

⁵⁷ CAL. HEALTH & SAFETY CODE § 120560 (2017).

⁵⁸ CAL. CODE REGS. tit. 17, § 2636(i) (2017).

⁵⁹ CAL. HEALTH & SAFETY CODE §§ 120565, 120585 (2017); CAL. CODE REGS. tit. 17, § 2636(h), (l), (m) ("A case of gonococcus infection . . . shall be regarded as subject to isolation until the local health officer is . . . satisfied that the disease is no longer communicable. . . . A case of syphilis shall be regarded as subject to isolation until, under treatment, all syphilitic lesions of the skin or mucous membrane are completely healed . . .") (2016). Sex workers with any STI may also be subject to isolation. CAL. CODE REGS. tit. 17, § 2636(i) (2017).

⁶⁰ CAL. CODE REGS. tit. 17, § 2581 (2017).

Annotated California Codes

Note: Provisions imposing punitive restrictions or listing criminal sentences are denoted with ** and are generally listed first. Thereafter, provisions within a particular title are listed numerically.

HEALTH & SAFETY CODE

CAL. HEALTH & SAFETY CODE § 120290 (2018)**

Intentional transmission of an infectious or communicable disease

(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.

(b) The defendant does not act with the intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) if the defendant takes, or attempts to take, practical means to prevent transmission.

(c) Failure to take practical means to prevent transmission alone is insufficient to prove the intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

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

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

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

(2) “Infectious or communicable disease” means a disease that spreads from person to person, directly or indirectly, that has significant public health implications.

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

(f) This section does not preclude a defendant from asserting any common law defense.

(g) (1) A violation of paragraph (1) of subdivision (a) or paragraph (2) of subdivision (a) is a misdemeanor, punishable by imprisonment in a county jail for not more than six months.

(2) A person who attempts to intentionally transmit an infectious or communicable disease by engaging in the conduct described in subparagraphs (A), (B), (C), and (E) of paragraph (1) of subdivision (a) is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than 90 days.

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

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

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

(4) Unless the defendant requests otherwise, a court in which a violation of this section is filed, at the earliest opportunity, shall issue an order that counsel and their agents, law enforcement personnel, and court staff, before a finding of guilt, not publicly disclose the name or other identifying characteristics of the defendant, except by counsel as part of discovery or to a limited number of relevant individuals in its investigation of the specific charges under this section. In any public disclosure, a pseudonym shall be substituted for the true name of the defendant.

(5) For purposes of this subdivision, “identifying characteristics” includes, but is not limited to, the name or any part of the name, address or any part of the address, city or unincorporated area of residence, age, marital status, relationship of the defendant and complaining witness, place of employment, or race or ethnic background.

(i) (1) A court, upon a finding of probable cause that an individual has violated this section, shall order the production of the individual’s medical records or the attendance of a person with relevant knowledge thereof, so long as the return of the medical records or attendance of the person pursuant to the subpoena is submitted initially to the court for an in-camera inspection. Only upon a finding by the court that the medical records or proffered testimony are relevant to the pleading offense, the information produced pursuant to the court’s order shall be disclosed to the prosecuting entity and admissible if otherwise permitted by law.

(2) A defendant’s medical records, medications, prescriptions, or medical devices shall not be used as the sole basis of establishing the specific intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

(3) Surveillance reports and records maintained by state and local health officials shall not be subpoenaed or released for the purpose of establishing the specific intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

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

(5) A defendant is not prohibited from submitting medical evidence to show the absence of the stated intent required pursuant to subparagraph (B) of paragraph (1) of subdivision (a).

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

(k) (1) This section does not apply to a person who donates an organ or tissue for transplantation or research purposes.

(2) This section does not apply to a person, whether a paid or volunteer donor, who donates breast milk to a medical center or breast milk bank that receives breast milk for purposes of distribution.

PENAL CODE

CAL. PENAL CODE § 12022.85 (2017) **

Sentence enhancement for specified violations; Prosecutor’s use of test results

(a) Any person who violates one or more of the offenses listed in subdivision (b) with knowledge that he or she has acquired immune deficiency syndrome (AIDS) or with the knowledge that he or she carries antibodies of the human immunodeficiency virus at the time of the commission of those offenses shall receive a three-year enhancement for each violation in addition to the sentence provided under those sections.

(b) Subdivision (a) applies to the following crimes:

- (1) Rape in violation of Section 261.
- (2) Unlawful intercourse with a person under 18 years of age in violation of Section 261.5.
- (3) Rape of a spouse in violation of Section 262.
- (4) Sodomy in violation of Section 286.
- (5) Oral copulation in violation of Section 288a.

(c) For purposes of proving the knowledge requirement of this section, the prosecuting attorney may use test results received under subdivision (c) of Section 1202.1 or subdivision (g) of Section 1202.6.

HEALTH & SAFETY CODE

CAL. HEALTH & SAFETY CODE § 120275 (2017) **

Noncompliance with department rules

Any person who, after notice, violates, or who, upon the demand of any health officer, refuses or neglects to conform to, any rule, order, or regulation prescribed by the department respecting a quarantine or disinfection of persons animals, things, or places, is guilty of a misdemeanor.

CAL. HEALTH & SAFETY CODE § 120500 (2017)

“Venereal diseases”

As used in the Communicable Disease Prevention and Control Act (Section 27) "venereal diseases" means syphilis, gonorrhea, chancroid, lymphopathia venereum, granuloma inguinale, and chlamydia.

CAL. HEALTH & SAFETY CODE § 120560 (2017)

Submission by diseased person to examination

Every diseased person shall from time to time submit to approved examinations to determine the condition of the disease.

CAL. HEALTH & SAFETY CODE § 120565 (2017)

Investigation of a diseased person's failure to continue control measures

If any person subject to proper venereal disease control measures discontinues any control procedure required by this chapter, the agency administering the procedure prior to the discontinuance shall make reasonable efforts to determine whether the person is continuing to comply with the procedure elsewhere.

CAL. HEALTH & SAFETY CODE § 120585 (2017)

Inspection and quarantine by local health officer

Local health officers may inspect and quarantine any place or person when the procedure is necessary to enforce the regulations of the board or the department.

CAL. HEALTH & SAFETY CODE § 120595 (2017)

Proceedings on violation of chapter

In any prosecution for a violation of any provision of this chapter, or any rule or regulation of the board made pursuant to this chapter, or in any quarantine proceeding authorized by this chapter, or in any habeas corpus or other proceeding in which the legality of the quarantine is questioned, any physician, health officer, spouse, or other person shall be competent and may be required to testify against any person against whom the prosecution or other proceeding was instituted, and the privileges provided by Sections 970, 971, 980, 994, and 1014 of the Evidence Code are not applicable to or in any such prosecution or proceeding.

CAL. HEALTH & SAFETY CODE § 120600 (2017) **

Violations of chapter as misdemeanor

Any person who refuses to give any information to make any report, to comply with any proper control measure or examination, or to perform any other duty or act required by this chapter, or who violates any provision of this chapter or any rule or regulation of the state board issued pursuant to this chapter, or who exposes any person to or infects any person with any venereal disease; or any person infected with a venereal disease in an infectious state who knows of the condition and who marries or has sexual intercourse, is guilty of a misdemeanor.

PENAL CODE

CAL. PENAL CODE § 1170.21 (2018) **

Dismissal of charges under former Cal. Penal Code § 647f

A conviction for a violation of Section 647f as it read on December 31, 2017, is invalid and vacated. All charges alleging violation of Section 647f are dismissed and all arrests for violation of Section 647f are deemed to have never occurred. An individual who was arrested, charged, or convicted for a violation of Section 647f may indicate in response to any question concerning his or her prior arrest, charge, or conviction under Section 647f that he or she was not arrested, charged, or convicted for a violation of Section 647f. Notwithstanding any other law, information pertaining to an individual's arrest, charge, or conviction for violation of Section 647f shall not, without the individual's consent, be used in any way adverse to his or her interests, including, but not limited to, denial of any employment, benefit, license, or certificate.

CAL. PENAL CODE § 1170.22 (2018)**

Convictions under former Cal. Penal Code § 647f are vacated and defendants resentenced

(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.

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

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

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

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

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

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

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

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

CAL. PENAL CODE § 1202.1 (2018)**

Requirement of HIV test upon conviction of sex offense

(a) Notwithstanding Sections 120975 and 120990 of the Health and Safety Code, the court shall order every person who is convicted of, or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of a violation of, a sexual offense listed in subdivision (e), whether or not a sentence or fine is imposed or probation is granted, to submit to a blood or oral mucosal transudate saliva test for evidence of antibodies to the probable causative agent of acquired immunodeficiency syndrome (AIDS) within 180 days of the date of conviction. Each person tested under this section shall be informed of the results of the blood or oral mucosal transudate saliva test.

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

(c) Notwithstanding Section 120980 of the Health and Safety Code, the Department of Justice shall provide the results of a test or tests as to persons under investigation or being prosecuted under Section 12022.85, if the results are on file with the department, to the defense attorney upon request and the results also shall be available to the prosecuting attorney upon request for the purpose of either preparing counts for a sentence enhancement under Section 12022.85 or complying with subdivision (d).

(d) (1) In every case in which a person is convicted of a sexual offense listed in subdivision (e) or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of the commission of a sexual offense listed in subdivision (e), the prosecutor or the prosecutor's victim-witness assistance bureau shall advise the victim of his or her right to receive the results of the blood or oral mucosal transudate saliva test performed pursuant to subdivision (a). The prosecutor or the prosecutor's victim-witness assistance bureau shall refer the victim to the local health officer for counseling to assist him or her in understanding the extent to which the particular circumstances of the crime may or may not have placed the victim at risk of transmission of the human immunodeficiency virus (HIV) from the accused, to ensure that the victim understands the limitations and benefits of current tests for HIV, and to assist the victim in determining whether he or she should make the request.

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

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

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

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

(e) For purposes of this section, "sexual offense" includes any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

California Code of Regulations

TITLE 17. PUBLIC HEALTH

CAL. CODE REGS. TIT. 17, § 2581 (2017)

Hepatitis, Serum (Homologous Serum Jaundice)

The patient shall be isolated in accordance with Section 2518 during the acute symptoms. There are no restrictions on contacts.

CAL. CODE REGS. TIT. 17, § 2636 (2017)

Venereal Diseases

(a) Sections 2636 to 2636(m) inclusive pertain to the venereal diseases and, unless otherwise specified, shall include syphilis, gonococcus infection, granuloma inguinale, lymphogranuloma venereum, and chancroid. (See Chapter 765, Statutes 1947; also Section 21100, Health and Safety Code.)

(h) Investigation. All city, county and other local health officers are hereby directed to use every available means to ascertain the existence of, and immediately to investigate, all reported or suspected cases of venereal disease in the infectious stages within their several territorial jurisdictions, and to ascertain the sources of such infections. The attending physician, in every case of venereal disease coming to him for treatment, shall endeavor to discover the source of infection, as well as any sexual or other intimate contacts which the patient was in the communicable stage of the disease. The physician shall make an effort, through the cooperation of the patient, to bring these cases in for examination and,

if necessary, treatment. If, within 10 days of identification, any such source of infection or any such contact has not given satisfactory evidence of being under the care of a physician, such person shall be reported to the health officer, the physician's name being kept confidential in any investigation by the health department. In cases in which prostitutes are named as sources of infection, all obtainable information as to name, description, residence, etc., shall be given to the health officer at once.

In carrying out such investigations, all health officers are hereby invested with full powers of inspection, examination and isolation of all persons known to be infected with a venereal disease in an infectious stage, or suspected of being infected with a venereal disease in an infectious stage and are hereby directed:

- (1) To make such examinations as are deemed necessary of persons reasonably suspected of having a venereal disease in an infectious stage.
- (2) When the individual to be examined is a woman, to provide the services of a woman physician if such physician is available, when so requested by the individual to be examined.
- (3) To isolate such person, whenever deemed necessary for the protection of the public health. In establishing isolation the health officer shall proceed as provided in Sections 2636(i), 2636(j), 2636(l) and 2636(m).

(i) Isolation. Any person who presents himself (or herself) to any physician or person for treatment or diagnosis of any venereal disease except late syphilis shall be considered to be in modified isolation. The requirements of this isolation shall be considered fulfilled if the patient remains under adequate and proper treatment until the completion of the course of treatment, except in instances in which, because of occupation, suspicion of prostitution, or other reason, the health officer deems more strict isolation necessary to safeguard other persons.

(j) Violation of Isolation to be Reported. Whenever any person while in the infectious or potentially infectious stage of a venereal disease, lapses from treatment for a period of more than 10 days after the time appointed for such treatment, the said diseased person shall be deemed to have violated the requirements of isolation, and the physician or person in attendance upon such case shall report the same at once to the local health department, giving the person's name, address, and report number, together with such other information as requested on the card provided for this purpose, except that this shall not be required in instances in which a report has been received that the patient is under treatment elsewhere.

(l) Gonorrhoea. A case of gonococcus infection of the genitourinary tract shall be regarded as subject to isolation until the local health officer is reasonably satisfied that the disease is no longer communicable.

(m) Syphilis. A case of syphilis shall be regarded as subject to isolation until, under treatment, all syphilitic lesions of the skin or mucous membrane are completely healed and a competent clinical examination fails to show the presence of any area from which infection may be spread. Any patient who refuses or otherwise fails to receive a full course of a currently accepted method of treatment, or who discontinues treatment prematurely, may be subjected to strict isolation if the health officer deems it necessary.