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HEALTH AND SAFETY CODE - HSC

DIVISION 105. COMMUNICABLE DISEASE PREVENTION AND CONTROL [120100 - 122476] (*Division 105 added by Stats. 1995, Ch. 415, Sec. 7.)*

PART 1. ADMINISTRATION OF COMMUNICABLE DISEASE PREVENTION AND CONTROL [120100 - 120305] (*Part 1 added by Stats. 1995, Ch. 415, Sec. 7.)*

CHAPTER 4. Violations [120275 - 120305] (*Chapter 4 added by Stats. 1995, Ch. 415, Sec. 7.)*

120275. 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.

(*Added by Stats. 1995, Ch. 415, Sec. 7. Effective January 1, 1996.*)

120280. Inasmuch as the orders provided for by Section 121365 are for the protection of the public health, any person who, after service upon him or her of an order of a local health officer as provided in Section 121365 violates or fails to comply with the order, is guilty of a misdemeanor. Upon conviction thereof, in addition to any and all other penalties that may be imposed by law upon the conviction, the person may be ordered by the court confined until the order of the local health officer shall have been fully complied with or terminated by the local health officer, but not exceeding one year from the date of passing judgment upon the conviction, further, the court, upon suitable assurances that the order of the local health officer will be complied with, may place any person convicted of a violation of the order of the local health officer upon probation for a period not to exceed two years, upon condition that the order of the local health officer be fully complied with, further, upon any subsequent violation of the order of the local health officer, the probation shall be terminated and confinement as provided for in this section shall be ordered by the court. Confinement may be accomplished by placement in any appropriate facility, penal institution, or dwelling approved for the specific case by the local health officer.

(*Added by Stats. 1995, Ch. 415, Sec. 7. Effective January 1, 1996.*)

120285. Upon any subsequent conviction under the provisions of Section 120280, the court may order the person confined for a period not exceeding one year for the subsequent conviction, or other penalty as provided by that section.

(*Added by Stats. 1995, Ch. 415, Sec. 7. Effective January 1, 1996.*)

120290. (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.

(Repealed and added by Stats. 2017, Ch. 537, Sec. 5. (SB 239) Effective January 1, 2018.)

120295. Any person who violates Section 120130 or any section in Chapter 3 (commencing with Section 120175, but excluding Section 120195), is guilty of a misdemeanor, punishable by a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), or by imprisonment for a term of not more than 90 days, or by both. He or she is guilty of a separate offense for each day that the violation continued.

(Amended by Stats. 1996, Ch. 1023, Sec. 350.6. Effective September 29, 1996.)

120300. The district attorney of the county where a violation of Sections 121365 and 120280 may be committed, shall prosecute all those violations and, upon the request of a health officer, shall prosecute, as provided in Section 120280, violations of any order of a health officer made and served as provided in Section 121365 or Section 120105.

(Added by Stats. 1995, Ch. 415, Sec. 7. Effective January 1, 1996.)

120305. Every person who possesses any intoxicating liquor in or on any public hospital or sanatorium providing for the treatment of tuberculosis or within the boundaries of the grounds belonging thereto is guilty of a misdemeanor. This section shall not prohibit (a) the possession of any intoxicating liquor used for medicinal purposes when issued pursuant to a written order of a physician licensed to practice medicine under the laws of the State of California, (b) the possession of any intoxicating liquor by personnel for his or her own use who resides at the hospital or sanatorium or on the grounds thereof, (c) the possession of any intoxicating liquor used by a minister of the gospel or priest or rabbi in a religious sacrament or ceremony or (d) the service of wine to a patient as part of the hospital's regular menu or bill of fare if the patient is located in a portion of the premises wholly separate and isolated from patients receiving treatment for tuberculosis.

(Added by Stats. 1995, Ch. 415, Sec. 7. Effective January 1, 1996.)