

By Senator Garcia

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1 A bill to be entitled
2 An act relating to testing for the human
3 immunodeficiency virus; amending s. 381.004, F.S.;
4 providing definitions; providing that informed consent
5 to perform an HIV test to identify the human
6 immunodeficiency virus, or its antigen or antibody,
7 must be obtained from a legal guardian or other person
8 authorized by law for certain persons; revising the
9 situations in which test results may be released;
10 amending ss. 381.0041, 456.032, 627.429, 641.3007,
11 775.0877, and 960.003, F.S.; conforming provisions to
12 changes made by the act; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Subsection (1) of section 381.004, Florida
17 Statutes, is reordered and amended, and subsection (2) and
18 paragraph (d) of subsection (4) of that section are amended to
19 read:

20 381.004 HIV testing.—

21 (1) DEFINITIONS.—As used in this section:

22 (a) "HIV test" means a test ordered after July 6, 1988, to
23 determine the presence of the antibody or antigen to human
24 immunodeficiency virus or the presence of human immunodeficiency
25 virus infection.

26 (b) "HIV test result" means a laboratory report of a human
27 immunodeficiency virus test result entered into a medical record
28 on or after July 6, 1988, or any report or notation in a medical
29 record of a laboratory report of a human immunodeficiency virus

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30 test. As used in this section, the term "HIV test result" does
31 not include test results reported to a health care provider by a
32 patient.

33 (c) "Medical emergency" means an emergency medical
34 situation outside a hospital or health care facility that
35 provides medical care.

36 (d) "Medical personnel" means a licensed or certified
37 health care professional, an employee of a health care
38 professional or health care facility, an employee of a
39 laboratory licensed under chapter 483, an employee of a blood
40 bank or plasma center, a medical student or other student who is
41 receiving training as a health care professional at a health
42 care facility, and a paramedic or emergency medical technician
43 certified by the department to perform basic life support
44 services as defined in s. 401.23.

45 (f)~~(e)~~ "Significant exposure" means:

46 1. Exposure to blood or body fluids through needlestick,
47 instruments, or sharps;

48 2. Exposure of mucous membranes to visible blood or body
49 fluids, to which universal precautions apply according to the
50 National Centers for Disease Control and Prevention, including,
51 without limitations, the following body fluids:

- 52 a. Blood.
- 53 b. Semen.
- 54 c. Vaginal secretions.
- 55 d. Cerebro-spinal fluid (CSF).
- 56 e. Synovial fluid.
- 57 f. Pleural fluid.
- 58 g. Peritoneal fluid.

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59 h. Pericardial fluid.

60 i. Amniotic fluid.

61 j. Laboratory specimens that contain HIV (e.g., suspensions
62 of concentrated virus); or

63 3. Exposure of skin to visible blood or body fluids,
64 especially when the exposed skin is chapped, abraded, or
65 afflicted with dermatitis or the contact is prolonged or
66 involving an extensive area.

67 (e) ~~(d)~~ "Preliminary HIV test" means an antibody screening
68 test, such as the enzyme-linked immunosorbent assays (ELISAs) or
69 the Single-Use Diagnostic System (SUDS).

70 (g) ~~(e)~~ "Test subject" or "subject of the test" means the
71 person upon whom an HIV test is performed, or the person who has
72 legal authority to make health care decisions for the test
73 subject.

74 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; ~~INFORMED CONSENT;~~
75 RESULTS; COUNSELING; CONFIDENTIALITY.—

76 (a) Informed consent to an HIV test ~~No person in this state~~
77 ~~shall order a test designed to identify the human~~
78 ~~immunodeficiency virus, or its antigen or antibody, must be~~
79 ~~obtained from the legal guardian of the individual upon whom the~~
80 ~~test is performed or from a person authorized by law if the~~
81 ~~individual:~~

82 1. Is not competent, is incapacitated, or is otherwise
83 unable to make an informed judgment; or

84 2. Has not reached the age of majority, except as provided
85 in s. 384.30, without first obtaining the informed consent of
86 ~~the person upon whom the test is being performed, except as~~
87 ~~specified in paragraph (h).~~

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88
89 Informed consent must ~~shall~~ be preceded by an explanation of the
90 right to confidential treatment of information identifying the
91 subject of the test and the results of the test to the extent
92 provided by law. Information must ~~shall~~ also be provided on the
93 fact that a positive HIV test result will be reported to the
94 county health department with sufficient information to identify
95 the test subject and on the availability and location of sites
96 at which anonymous testing is performed. As required in
97 paragraph (3)(c), each county health department shall maintain a
98 list of sites at which anonymous testing is performed, including
99 the locations, phone numbers, and hours of operation of the
100 sites. Consent need not be in writing if ~~provided~~ there is
101 documentation in the medical record that the test has been
102 explained and the consent has been obtained.

103 ~~(b) Except as provided in paragraph (h), Informed consent~~
104 ~~must be obtained from a legal guardian or other person~~
105 ~~authorized by law when the person:~~

106 ~~1. Is not competent, is incapacitated, or is otherwise~~
107 ~~unable to make an informed judgment; or~~

108 ~~2. Has not reached the age of majority, except as provided~~
109 ~~in s. 384.30.~~

110 ~~(b)(e)~~ The person ordering the HIV test or that person's
111 designee shall ensure that all reasonable efforts are made to
112 notify the test subject of his or her test result. Notification
113 of a person who has ~~with~~ a positive test result must ~~shall~~
114 include information on the availability of appropriate medical
115 and support services, on the importance of notifying partners
116 who may have been exposed, and on preventing transmission of

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117 HIV. Notification of a person who has ~~with~~ a negative test
118 result must ~~shall~~ include, as appropriate, information on
119 preventing the transmission of HIV. If ~~When~~ testing occurs in a
120 hospital emergency department, detention facility, or other
121 facility and the test subject has been released before being
122 notified of positive test results, informing the county health
123 department for that department to notify the test subject
124 fulfills this responsibility.

125 (c) ~~(d)~~ A positive preliminary test result may not be
126 revealed to any person except in the following situations:

127 1. Preliminary test results may be released to licensed
128 physicians or the medical or nonmedical personnel subject to the
129 significant exposure for the following purposes: ~~of~~
130 ~~subparagraphs (h)10., 11., and 12.~~

131 a. For the performance of an HIV test upon an individual
132 who comes into contact with medical personnel in such a way that
133 a significant exposure has occurred during the course of
134 employment or within the scope of practice and where a blood
135 sample is available that was taken from that individual
136 voluntarily by medical personnel for other purposes.

137 (I) Prior to performance of an HIV test on a voluntarily
138 obtained blood sample, the individual from whom the blood was
139 obtained shall be requested to consent to the performance of the
140 test and to the release of the results. If consent cannot be
141 obtained within the time necessary to perform the HIV test and
142 begin prophylactic treatment of the exposed medical personnel,
143 all information concerning the performance of an HIV test and
144 any HIV test result shall be documented only in the medical
145 personnel's record unless the individual gives written consent

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146 to entering this information on the individual's medical record.

147 (II) Reasonable attempts to locate the individual and to
148 obtain consent shall be made, and all attempts must be
149 documented. If the individual cannot be found or is incapable of
150 providing consent, an HIV test may be conducted on the available
151 blood sample. If the individual does not voluntarily consent to
152 the performance of an HIV test, the individual shall be informed
153 that an HIV test will be performed, and counseling shall be
154 furnished as provided in this section. However, HIV testing
155 shall be conducted only after appropriate medical personnel,
156 under the supervision of a licensed physician, documents, in the
157 medical record of the medical personnel, that there has been a
158 significant exposure and that, in accordance with the written
159 protocols based on the National Centers for Disease Control and
160 Prevention guidelines on HIV postexposure prophylaxis and in the
161 physician's medical judgment, the information is medically
162 necessary to determine the course of treatment for the medical
163 personnel.

164 (III) Costs of any HIV test of a blood sample performed
165 with or without the consent of the individual, as provided in
166 this subparagraph, shall be borne by the medical personnel or
167 the employer of the medical personnel. However, costs of testing
168 or treatment not directly related to the initial HIV tests or
169 costs of subsequent testing or treatment may not be borne by the
170 medical personnel or the employer of the medical personnel.

171 (IV) In order to use the provisions of this sub-
172 paragraph, the medical personnel must either be tested for
173 HIV pursuant to this section or provide the results of an HIV
174 test taken within 6 months prior to the significant exposure if

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175 such test results are negative.

176 (V) A person who receives the results of an HIV test
177 pursuant to this subparagraph shall maintain the confidentiality
178 of the information received and of the person tested. Such
179 confidential information is exempt from s. 119.07(1).

180 (VI) If the source of the exposure will not voluntarily
181 submit to HIV testing and a blood sample is not available, the
182 medical personnel or the employer of such person acting on
183 behalf of the employee may seek a court order directing the
184 source of the exposure to submit to HIV testing. A sworn
185 statement by a physician licensed under chapter 458 or chapter
186 459 that a significant exposure has occurred and that, in the
187 physician's medical judgment, testing is medically necessary to
188 determine the course of treatment constitutes probable cause for
189 the issuance of an order by the court. The results of the test
190 shall be released to the source of the exposure and to the
191 person who experienced the exposure.

192 b. For the performance of an HIV test upon an individual
193 who comes into contact with medical personnel in such a way that
194 a significant exposure has occurred during the course of
195 employment or within the scope of practice of the medical
196 personnel while the medical personnel provides emergency medical
197 treatment to the individual; or notwithstanding s. 384.287, an
198 individual who comes into contact with nonmedical personnel in
199 such a way that a significant exposure has occurred while the
200 nonmedical personnel provides emergency medical assistance
201 during a medical emergency. For the purposes of this
202 subparagraph, a medical emergency means an emergency medical
203 condition outside of a hospital or health care facility that

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204 provides physician care. The test may be performed only during
205 the course of treatment for the medical emergency.

206 (I) An individual who is capable of providing consent shall
207 be requested to consent to an HIV test prior to the testing. If
208 consent cannot be obtained within the time necessary to perform
209 the HIV test and begin prophylactic treatment of the exposed
210 medical personnel and nonmedical personnel, all information
211 concerning the performance of an HIV test and its result shall
212 be documented only in the medical personnel's or nonmedical
213 personnel's record unless the individual gives written consent
214 to entering this information on the individual's medical record.

215 (II) HIV testing shall be conducted only after appropriate
216 medical personnel, under the supervision of a licensed
217 physician, documents, in the medical record of the medical
218 personnel or nonmedical personnel, that there has been a
219 significant exposure and that, in accordance with the written
220 protocols based on the National Centers for Disease Control and
221 Prevention guidelines on HIV postexposure prophylaxis and in the
222 physician's medical judgment, the information is medically
223 necessary to determine the course of treatment for the medical
224 personnel or nonmedical personnel.

225 (III) Costs of any HIV test performed with or without the
226 consent of the individual, as provided in this subparagraph,
227 shall be borne by the medical personnel or the employer of the
228 medical personnel or nonmedical personnel. However, costs of
229 testing or treatment not directly related to the initial HIV
230 tests or costs of subsequent testing or treatment may not be
231 borne by the medical personnel or the employer of the medical
232 personnel or nonmedical personnel.

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233 (IV) In order to use the provisions of this subparagraph,
234 the medical personnel or nonmedical personnel shall be tested
235 for HIV pursuant to this section or shall provide the results of
236 an HIV test taken within 6 months prior to the significant
237 exposure if such test results are negative.

238 (V) A person who receives the results of an HIV test
239 pursuant to this sub-subparagraph shall maintain the
240 confidentiality of the information received and of the person
241 tested. Such confidential information is exempt from s.
242 119.07(1).

243 (VI) If the source of the exposure will not voluntarily
244 submit to HIV testing and a blood sample was not obtained during
245 treatment for the medical emergency, the medical personnel, the
246 employer of the medical personnel acting on behalf of the
247 employee, or the nonmedical personnel may seek a court order
248 directing the source of the exposure to submit to HIV testing. A
249 sworn statement by a physician licensed under chapter 458 or
250 chapter 459 that a significant exposure has occurred and that,
251 in the physician's medical judgment, testing is medically
252 necessary to determine the course of treatment constitutes
253 probable cause for the issuance of an order by the court. The
254 results of the test shall be released to the source of the
255 exposure and to the person who experienced the exposure.

256 c. For the performance of an HIV test by the medical
257 examiner or attending physician upon an individual who expired
258 or could not be resuscitated while receiving emergency medical
259 assistance or care and who was the source of a significant
260 exposure to medical or nonmedical personnel providing such
261 assistance or care.

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262 (I) HIV testing may be conducted only after appropriate
263 medical personnel under the supervision of a licensed physician
264 documents in the medical record of the medical personnel or
265 nonmedical personnel that there has been a significant exposure
266 and that, in accordance with the written protocols based on the
267 National Centers for Disease Control and Prevention guidelines
268 on HIV postexposure prophylaxis and in the physician's medical
269 judgment, the information is medically necessary to determine
270 the course of treatment for the medical personnel or nonmedical
271 personnel.

272 (II) Costs of any HIV test performed under this sub-
273 subparagraph may not be charged to the deceased or to the family
274 of the deceased person.

275 (III) For this sub-subparagraph to be applicable, the
276 medical personnel or nonmedical personnel must be tested for HIV
277 under this section or must provide the results of an HIV test
278 taken within 6 months before the significant exposure if such
279 test results are negative.

280 (IV) A person who receives the results of an HIV test
281 pursuant to this sub-subparagraph shall comply with paragraph
282 (d).

283 2. Preliminary test results may be released to health care
284 providers and to the person tested when decisions about medical
285 care or treatment of, or recommendation to, the person tested
286 and, in the case of an intrapartum or postpartum woman, when
287 care, treatment, or recommendations regarding her newborn,
288 cannot await the results of confirmatory testing. Positive
289 preliminary HIV test results may not be characterized to the
290 patient as a diagnosis of HIV infection. Justification for the

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291 use of preliminary test results must be documented in the
292 medical record by the health care provider who ordered the test.

293 3. The results of rapid testing technologies shall be
294 considered preliminary and may be released in accordance with
295 the manufacturer's instructions as approved by the federal Food
296 and Drug Administration.

297 4. Corroborating or confirmatory testing must be conducted
298 as followup to a positive preliminary test. Results shall be
299 communicated to the patient according to statute regardless of
300 the outcome. Except as provided in this section, test results
301 are confidential and exempt from the provisions of s. 119.07(1).

302 (d)~~(e)~~ Except as provided in this section, the identity of
303 any person upon whom a test has been performed and test results
304 are confidential and exempt from the provisions of s. 119.07(1).
305 A ~~No~~ person who has obtained or has knowledge of a test result
306 pursuant to this section may not disclose or be compelled to
307 disclose the identity of any person upon whom a test is
308 performed, or the results of such a test in a manner which
309 permits identification of the subject of the test, except to the
310 following persons:

311 1. The subject of the test or the subject's legally
312 authorized representative.

313 2. Any person, including third-party payors, designated in
314 a legally effective release of the test results executed before
315 ~~prior to~~ or after the test by the subject of the test or the
316 subject's legally authorized representative. The test subject
317 may in writing authorize the disclosure of the test subject's
318 HIV test results to third party payors, who need not be
319 specifically identified, and to other persons to whom the test

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320 subject subsequently issues a general release of medical
321 information. A general release without such prior written
322 authorization is not sufficient to release HIV test results.

323 3. An authorized agent or employee of a health facility or
324 health care provider if the health facility or health care
325 provider itself is authorized to obtain the test results, the
326 agent or employee participates in the administration or
327 provision of patient care or handles or processes specimens of
328 body fluids or tissues, and the agent or employee has a need to
329 know such information. The department shall adopt a rule
330 defining which persons have a need to know pursuant to this
331 subparagraph.

332 4. Health care providers consulting between themselves or
333 with health care facilities to determine diagnosis and
334 treatment. For purposes of this subparagraph, health care
335 providers shall include licensed health care professionals
336 employed by or associated with state, county, or municipal
337 detention facilities when such health care professionals are
338 acting exclusively for the purpose of providing diagnoses or
339 treatment of persons in the custody of such facilities.

340 5. The department, in accordance with rules for reporting
341 and controlling the spread of disease, as otherwise provided by
342 state law.

343 6. A health facility or health care provider which
344 procures, processes, distributes, or uses:

345 a. A human body part from a deceased person, with respect
346 to medical information regarding that person; or

347 b. Semen provided before ~~prior to~~ July 6, 1988, for the
348 purpose of artificial insemination.

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349 7. Health facility staff committees, for the purposes of
350 conducting program monitoring, program evaluation, or service
351 reviews pursuant to chapters 395 and 766.

352 8. Authorized medical or epidemiological researchers who
353 may not further disclose any identifying characteristics or
354 information.

355 9. A person allowed access by a court order which is issued
356 in compliance with the following provisions:

357 a. A ~~No~~ court of this state may not ~~shall~~ issue such order
358 unless the court finds that the person seeking the test results
359 has demonstrated a compelling need for the test results which
360 cannot be accommodated by other means. In assessing compelling
361 need, the court shall weigh the need for disclosure against the
362 privacy interest of the test subject and the public interest
363 which may be disserved by disclosure which deters blood, organ,
364 and semen donation and future human immunodeficiency virus-
365 related testing or which may lead to discrimination. This
366 paragraph does ~~shall~~ not apply to blood bank donor records.

367 b. Pleadings pertaining to disclosure of test results shall
368 substitute a pseudonym for the true name of the subject of the
369 test. The disclosure to the parties of the subject's true name
370 shall be communicated confidentially in documents not filed with
371 the court.

372 c. Before granting any such order, the court shall provide
373 the individual whose test result is in question with notice and
374 a reasonable opportunity to participate in the proceedings if he
375 or she is not already a party.

376 d. Court proceedings as to disclosure of test results shall
377 be conducted in camera, unless the subject of the test agrees to

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378 a hearing in open court or unless the court determines that a
379 public hearing is necessary to the public interest and the
380 proper administration of justice.

381 e. Upon the issuance of an order to disclose test results,
382 the court shall impose appropriate safeguards against
383 unauthorized disclosure which shall specify the persons who may
384 have access to the information, the purposes for which the
385 information shall be used, and appropriate prohibitions on
386 future disclosure.

387 10. A person allowed access by order of a judge of
388 compensation claims of the Division of Administrative Hearings.
389 A judge of compensation claims may ~~shall~~ not issue such order
390 unless he or she finds that the person seeking the test results
391 has demonstrated a compelling need for the test results which
392 cannot be accommodated by other means.

393 11. Those employees of the department or of child-placing
394 or child-caring agencies or of family foster homes, licensed
395 pursuant to s. 409.175, who are directly involved in the
396 placement, care, control, or custody of such test subject and
397 who have a need to know such information; adoptive parents of
398 such test subject; or any adult custodian, any adult relative,
399 or any person responsible for the child's welfare, if the test
400 subject was not tested under subparagraph (b)2. and if a
401 reasonable attempt has been made to locate and inform the legal
402 guardian of a test result. The department shall adopt a rule to
403 implement this subparagraph.

404 12. Those employees of residential facilities or of
405 community-based care programs that care for developmentally
406 disabled persons, pursuant to chapter 393, who are directly

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407 involved in the care, control, or custody of such test subject
408 and who have a need to know such information.

409 13. A health care provider involved in the delivery of a
410 child can note the mother's HIV test results in the child's
411 medical record.

412 14. Medical personnel or nonmedical personnel who have been
413 subject to a significant exposure during the course of medical
414 practice or in the performance of professional duties, or
415 individuals who are the subject of the significant exposure as
416 provided in sub-subparagraphs (c)1.a.-c ~~subparagraphs (h)10.-12.~~

417 15. The medical examiner shall disclose positive HIV test
418 results to the department in accordance with rules for reporting
419 and controlling the spread of disease.

420 (e) ~~(f)~~ Except as provided in this section, the identity of
421 a person upon whom a test has been performed is confidential and
422 exempt from the provisions of s. 119.07(1). A ~~No~~ person to whom
423 the results of a test have been disclosed may not disclose the
424 test results to another person except as authorized by this
425 subsection and by ss. 951.27 and 960.003. Whenever disclosure is
426 made pursuant to this subsection, it must ~~shall~~ be accompanied
427 by a statement in writing which includes the following or
428 substantially similar language: "This information has been
429 disclosed to you from records whose confidentiality is protected
430 by state law. State law prohibits you from making any further
431 disclosure of such information without the specific written
432 consent of the person to whom such information pertains, or as
433 otherwise permitted by state law. A general authorization for
434 the release of medical or other information is NOT sufficient
435 for this purpose." An oral disclosure shall be accompanied by

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436 oral notice and followed by a written notice within 10 days,
437 except that this notice may ~~shall~~ not be required for
438 disclosures made pursuant to subparagraphs (d)3. ~~subparagraphs~~
439 ~~(e)3.~~ and 4.

440 (f) ~~(g)~~ Human immunodeficiency virus test results contained
441 in the medical records of a hospital licensed under chapter 395
442 may be released in accordance with s. 395.3025 without being
443 subject to the requirements of subparagraph (d)2., subparagraph
444 (d)9., or paragraph (e) ~~subparagraph (e)2., subparagraph (e)9.,~~
445 ~~or paragraph (f); provided the hospital has obtained written~~
446 ~~informed consent for the HIV test in accordance with provisions~~
447 ~~of this section.~~

448 ~~(h) Notwithstanding the provisions of paragraph (a),~~
449 ~~informed consent is not required:~~

450 ~~1. When testing for sexually transmissible diseases is~~
451 ~~required by state or federal law, or by rule including the~~
452 ~~following situations:~~

453 ~~a. HIV testing pursuant to s. 796.08 of persons convicted~~
454 ~~of prostitution or of procuring another to commit prostitution.~~

455 ~~b. HIV testing of inmates pursuant to s. 945.355 prior to~~
456 ~~their release from prison by reason of parole, accumulation of~~
457 ~~gain-time credits, or expiration of sentence.~~

458 ~~c. Testing for HIV by a medical examiner in accordance with~~
459 ~~s. 406.11.~~

460 ~~d. HIV testing of pregnant women pursuant to s. 384.31.~~

461 ~~2. Those exceptions provided for blood, plasma, organs,~~
462 ~~skin, semen, or other human tissue pursuant to s. 381.0041.~~

463 ~~3. For the performance of an HIV-related test by licensed~~
464 ~~medical personnel in bona fide medical emergencies when the test~~

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465 ~~results are necessary for medical diagnostic purposes to provide~~
466 ~~appropriate emergency care or treatment to the person being~~
467 ~~tested and the patient is unable to consent, as supported by~~
468 ~~documentation in the medical record. Notification of test~~
469 ~~results in accordance with paragraph (c) is required.~~

470 ~~4. For the performance of an HIV-related test by licensed~~
471 ~~medical personnel for medical diagnosis of acute illness where,~~
472 ~~in the opinion of the attending physician, obtaining informed~~
473 ~~consent would be detrimental to the patient, as supported by~~
474 ~~documentation in the medical record, and the test results are~~
475 ~~necessary for medical diagnostic purposes to provide appropriate~~
476 ~~care or treatment to the person being tested. Notification of~~
477 ~~test results in accordance with paragraph (c) is required if it~~
478 ~~would not be detrimental to the patient. This subparagraph does~~
479 ~~not authorize the routine testing of patients for HIV infection~~
480 ~~without informed consent.~~

481 ~~5. When HIV testing is performed as part of an autopsy for~~
482 ~~which consent was obtained pursuant to s. 872.04.~~

483 ~~6. For the performance of an HIV test upon a defendant~~
484 ~~pursuant to the victim's request in a prosecution for any type~~
485 ~~of sexual battery where a blood sample is taken from the~~
486 ~~defendant voluntarily, pursuant to court order for any purpose,~~
487 ~~or pursuant to the provisions of s. 775.0877, s. 951.27, or s.~~
488 ~~960.003; however, the results of any HIV test performed shall be~~
489 ~~disclosed solely to the victim and the defendant, except as~~
490 ~~provided in ss. 775.0877, 951.27, and 960.003.~~

491 ~~7. When an HIV test is mandated by court order.~~

492 ~~8. For epidemiological research pursuant to s. 381.0032,~~
493 ~~for research consistent with institutional review boards created~~

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494 ~~by 45 C.F.R. part 46, or for the performance of an HIV-related~~
495 ~~test for the purpose of research, if the testing is performed in~~
496 ~~a manner by which the identity of the test subject is not known~~
497 ~~and may not be retrieved by the researcher.~~

498 ~~9. When human tissue is collected lawfully without the~~
499 ~~consent of the donor for corneal removal as authorized by s.~~
500 ~~765.5185 or enucleation of the eyes as authorized by s. 765.519.~~

501 ~~10. For the performance of an HIV test upon an individual~~
502 ~~who comes into contact with medical personnel in such a way that~~
503 ~~a significant exposure has occurred during the course of~~
504 ~~employment or within the scope of practice and where a blood~~
505 ~~sample is available that was taken from that individual~~
506 ~~voluntarily by medical personnel for other purposes. The term~~
507 ~~"medical personnel" includes a licensed or certified health care~~
508 ~~professional; an employee of a health care professional or~~
509 ~~health care facility; employees of a laboratory licensed under~~
510 ~~chapter 483; personnel of a blood bank or plasma center; a~~
511 ~~medical student or other student who is receiving training as a~~
512 ~~health care professional at a health care facility; and a~~
513 ~~paramedic or emergency medical technician certified by the~~
514 ~~department to perform life-support procedures under s. 401.23.~~

515 ~~a. Prior to performance of an HIV test on a voluntarily~~
516 ~~obtained blood sample, the individual from whom the blood was~~
517 ~~obtained shall be requested to consent to the performance of the~~
518 ~~test and to the release of the results. If consent cannot be~~
519 ~~obtained within the time necessary to perform the HIV test and~~
520 ~~begin prophylactic treatment of the exposed medical personnel,~~
521 ~~all information concerning the performance of an HIV test and~~
522 ~~any HIV test result shall be documented only in the medical~~

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523 ~~personnel's record unless the individual gives written consent~~
524 ~~to entering this information on the individual's medical record.~~

525 ~~b. Reasonable attempts to locate the individual and to~~
526 ~~obtain consent shall be made, and all attempts must be~~
527 ~~documented. If the individual cannot be found or is incapable of~~
528 ~~providing consent, an HIV test may be conducted on the available~~
529 ~~blood sample. If the individual does not voluntarily consent to~~
530 ~~the performance of an HIV test, the individual shall be informed~~
531 ~~that an HIV test will be performed, and counseling shall be~~
532 ~~furnished as provided in this section. However, HIV testing~~
533 ~~shall be conducted only after appropriate medical personnel~~
534 ~~under the supervision of a licensed physician documents, in the~~
535 ~~medical record of the medical personnel, that there has been a~~
536 ~~significant exposure and that, in accordance with the written~~
537 ~~protocols based on the National Centers for Disease Control and~~
538 ~~Prevention guidelines on HIV postexposure prophylaxis and in the~~
539 ~~physician's medical judgment, the information is medically~~
540 ~~necessary to determine the course of treatment for the medical~~
541 ~~personnel.~~

542 ~~e. Costs of any HIV test of a blood sample performed with~~
543 ~~or without the consent of the individual, as provided in this~~
544 ~~subparagraph, shall be borne by the medical personnel or the~~
545 ~~employer of the medical personnel. However, costs of testing or~~
546 ~~treatment not directly related to the initial HIV tests or costs~~
547 ~~of subsequent testing or treatment may not be borne by the~~
548 ~~medical personnel or the employer of the medical personnel.~~

549 ~~d. In order to utilize the provisions of this subparagraph,~~
550 ~~the medical personnel must either be tested for HIV pursuant to~~
551 ~~this section or provide the results of an HIV test taken within~~

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552 ~~6 months prior to the significant exposure if such test results~~
553 ~~are negative.~~

554 ~~e. A person who receives the results of an HIV test~~
555 ~~pursuant to this subparagraph shall maintain the confidentiality~~
556 ~~of the information received and of the persons tested. Such~~
557 ~~confidential information is exempt from s. 119.07(1).~~

558 ~~f. If the source of the exposure will not voluntarily~~
559 ~~submit to HIV testing and a blood sample is not available, the~~
560 ~~medical personnel or the employer of such person acting on~~
561 ~~behalf of the employee may seek a court order directing the~~
562 ~~source of the exposure to submit to HIV testing. A sworn~~
563 ~~statement by a physician licensed under chapter 458 or chapter~~
564 ~~459 that a significant exposure has occurred and that, in the~~
565 ~~physician's medical judgment, testing is medically necessary to~~
566 ~~determine the course of treatment constitutes probable cause for~~
567 ~~the issuance of an order by the court. The results of the test~~
568 ~~shall be released to the source of the exposure and to the~~
569 ~~person who experienced the exposure.~~

570 ~~11. For the performance of an HIV test upon an individual~~
571 ~~who comes into contact with medical personnel in such a way that~~
572 ~~a significant exposure has occurred during the course of~~
573 ~~employment or within the scope of practice of the medical~~
574 ~~personnel while the medical personnel provides emergency medical~~
575 ~~treatment to the individual; or notwithstanding s. 384.287, an~~
576 ~~individual who comes into contact with nonmedical personnel in~~
577 ~~such a way that a significant exposure has occurred while the~~
578 ~~nonmedical personnel provides emergency medical assistance~~
579 ~~during a medical emergency. For the purposes of this~~
580 ~~subparagraph, a medical emergency means an emergency medical~~

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581 ~~condition outside of a hospital or health care facility that~~
582 ~~provides physician care. The test may be performed only during~~
583 ~~the course of treatment for the medical emergency.~~

584 ~~a. An individual who is capable of providing consent shall~~
585 ~~be requested to consent to an HIV test prior to the testing. If~~
586 ~~consent cannot be obtained within the time necessary to perform~~
587 ~~the HIV test and begin prophylactic treatment of the exposed~~
588 ~~medical personnel and nonmedical personnel, all information~~
589 ~~concerning the performance of an HIV test and its result, shall~~
590 ~~be documented only in the medical personnel's or nonmedical~~
591 ~~personnel's record unless the individual gives written consent~~
592 ~~to entering this information on the individual's medical record.~~

593 ~~b. HIV testing shall be conducted only after appropriate~~
594 ~~medical personnel under the supervision of a licensed physician~~
595 ~~documents, in the medical record of the medical personnel or~~
596 ~~nonmedical personnel, that there has been a significant exposure~~
597 ~~and that, in accordance with the written protocols based on the~~
598 ~~National Centers for Disease Control and Prevention guidelines~~
599 ~~on HIV postexposure prophylaxis and in the physician's medical~~
600 ~~judgment, the information is medically necessary to determine~~
601 ~~the course of treatment for the medical personnel or nonmedical~~
602 ~~personnel.~~

603 ~~c. Costs of any HIV test performed with or without the~~
604 ~~consent of the individual, as provided in this subparagraph,~~
605 ~~shall be borne by the medical personnel or the employer of the~~
606 ~~medical personnel or nonmedical personnel. However, costs of~~
607 ~~testing or treatment not directly related to the initial HIV~~
608 ~~tests or costs of subsequent testing or treatment may not be~~
609 ~~borne by the medical personnel or the employer of the medical~~

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610 ~~personnel or nonmedical personnel.~~

611 ~~d. In order to utilize the provisions of this subparagraph,~~
612 ~~the medical personnel or nonmedical personnel shall be tested~~
613 ~~for HIV pursuant to this section or shall provide the results of~~
614 ~~an HIV test taken within 6 months prior to the significant~~
615 ~~exposure if such test results are negative.~~

616 ~~e. A person who receives the results of an HIV test~~
617 ~~pursuant to this subparagraph shall maintain the confidentiality~~
618 ~~of the information received and of the persons tested. Such~~
619 ~~confidential information is exempt from s. 119.07(1).~~

620 ~~f. If the source of the exposure will not voluntarily~~
621 ~~submit to HIV testing and a blood sample was not obtained during~~
622 ~~treatment for the medical emergency, the medical personnel, the~~
623 ~~employer of the medical personnel acting on behalf of the~~
624 ~~employee, or the nonmedical personnel may seek a court order~~
625 ~~directing the source of the exposure to submit to HIV testing. A~~
626 ~~sworn statement by a physician licensed under chapter 458 or~~
627 ~~chapter 459 that a significant exposure has occurred and that,~~
628 ~~in the physician's medical judgment, testing is medically~~
629 ~~necessary to determine the course of treatment constitutes~~
630 ~~probable cause for the issuance of an order by the court. The~~
631 ~~results of the test shall be released to the source of the~~
632 ~~exposure and to the person who experienced the exposure.~~

633 ~~12. For the performance of an HIV test by the medical~~
634 ~~examiner or attending physician upon an individual who expired~~
635 ~~or could not be resuscitated while receiving emergency medical~~
636 ~~assistance or care and who was the source of a significant~~
637 ~~exposure to medical or nonmedical personnel providing such~~
638 ~~assistance or care.~~

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639 ~~a. HIV testing may be conducted only after appropriate~~
640 ~~medical personnel under the supervision of a licensed physician~~
641 ~~documents in the medical record of the medical personnel or~~
642 ~~nonmedical personnel that there has been a significant exposure~~
643 ~~and that, in accordance with the written protocols based on the~~
644 ~~National Centers for Disease Control and Prevention guidelines~~
645 ~~on HIV postexposure prophylaxis and in the physician's medical~~
646 ~~judgment, the information is medically necessary to determine~~
647 ~~the course of treatment for the medical personnel or nonmedical~~
648 ~~personnel.~~

649 ~~b. Costs of any HIV test performed under this subparagraph~~
650 ~~may not be charged to the deceased or to the family of the~~
651 ~~deceased person.~~

652 ~~c. For the provisions of this subparagraph to be~~
653 ~~applicable, the medical personnel or nonmedical personnel must~~
654 ~~be tested for HIV under this section or must provide the results~~
655 ~~of an HIV test taken within 6 months before the significant~~
656 ~~exposure if such test results are negative.~~

657 ~~d. A person who receives the results of an HIV test~~
658 ~~pursuant to this subparagraph shall comply with paragraph (e).~~

659 ~~13. For the performance of an HIV-related test medically~~
660 ~~indicated by licensed medical personnel for medical diagnosis of~~
661 ~~a hospitalized infant as necessary to provide appropriate care~~
662 ~~and treatment of the infant when, after a reasonable attempt, a~~
663 ~~parent cannot be contacted to provide consent. The medical~~
664 ~~records of the infant shall reflect the reason consent of the~~
665 ~~parent was not initially obtained. Test results shall be~~
666 ~~provided to the parent when the parent is located.~~

667 ~~14. For the performance of HIV testing conducted to monitor~~

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668 ~~the clinical progress of a patient previously diagnosed to be~~
669 ~~HIV positive.~~

670 ~~15. For the performance of repeated HIV testing conducted~~
671 ~~to monitor possible conversion from a significant exposure.~~

672 (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
673 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
674 REGISTRATION.—No county health department and no other person in
675 this state shall conduct or hold themselves out to the public as
676 conducting a testing program for acquired immune deficiency
677 syndrome or human immunodeficiency virus status without first
678 registering with the Department of Health, reregistering each
679 year, complying with all other applicable provisions of state
680 law, and meeting the following requirements:

681 (d) The program must meet all the informed consent criteria
682 contained in paragraph (2) (a), if applicable ~~subsection (2)~~.

683 Section 2. Subsection (1) of section 381.0041, Florida
684 Statutes, is amended to read:

685 381.0041 Donation and transfer of human tissue; testing
686 requirements.—

687 (1) Every donation of blood, plasma, organs, skin, or other
688 human tissue for transfusion or transplantation to another shall
689 be tested before ~~prior to~~ transfusion or other use for human
690 immunodeficiency virus infection and other communicable diseases
691 specified by rule of the Department of Health. ~~Tests for the~~
692 ~~human immunodeficiency virus infection shall be performed only~~
693 ~~after obtaining written, informed consent from the potential~~
694 ~~donor or the donor's legal representative. Such consent may be~~
695 ~~given by a minor pursuant to s. 743.06. Obtaining consent shall~~
696 ~~include a fair explanation of the procedures to be followed and~~

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697 ~~the meaning and use of the test results. Such explanation shall~~
 698 ~~include a description of the confidential nature of the test as~~
 699 ~~described in s. 381.004(2). If consent for testing is not given,~~
 700 ~~then the person shall not be accepted as a donor except as~~
 701 ~~otherwise provided in subsection (3).~~

702 Section 3. Subsection (2) of section 456.032, Florida
 703 Statutes, is amended to read:

704 456.032 Hepatitis B or HIV carriers.—

705 (2) Any person licensed by the department and any other
 706 person employed by a health care facility who contracts a blood-
 707 borne infection shall have a rebuttable presumption that the
 708 illness was contracted in the course and scope of his or her
 709 employment, provided that the person, as soon as practicable,
 710 reports to the person's supervisor or the facility's risk
 711 manager any significant exposure, as that term is defined in s.
 712 381.004 ~~s. 381.004(1)(c)~~, to blood or body fluids. The employer
 713 may test the blood or body fluid to determine if it is infected
 714 with the same disease contracted by the employee. The employer
 715 may rebut the presumption by the preponderance of the evidence.
 716 Except as expressly provided in this subsection, there shall be
 717 no presumption that a blood-borne infection is a job-related
 718 injury or illness.

719 Section 4. Paragraph (b) of subsection (4) of section
 720 627.429, Florida Statutes, is amended to read:

721 627.429 Medical tests for HIV infection and AIDS for
 722 insurance purposes.—

723 (4) USE OF MEDICAL TESTS FOR UNDERWRITING.—

724 (b) Before ~~Prior to~~ testing, the insurer must ~~shall~~
 725 disclose its intent to test the person for the HIV infection or

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726 for a specific sickness or medical condition derived therefrom
727 ~~and shall obtain the person's written informed consent to~~
728 ~~administer the test. The written informed consent required by~~
729 ~~this paragraph shall include a fair explanation of the test,~~
730 ~~including its purpose, potential uses, and limitations, and the~~
731 ~~meaning of its results and the right to confidential treatment~~
732 ~~of information. Use of a form approved by the office raises a~~
733 ~~conclusive presumption of informed consent.~~

734 Section 5. Paragraph (b) of subsection (4) of section
735 641.3007, Florida Statutes, is amended to read:

736 641.3007 HIV infection and AIDS for contract purposes.—

737 (4) UTILIZATION OF MEDICAL TESTS.—

738 (b) Before ~~Prior to~~ testing, the health maintenance
739 organization must disclose its intent to test the person for the
740 HIV infection or for a specific sickness or medical condition
741 derived therefrom ~~and must obtain the person's written informed~~
742 ~~consent to administer the test. Written informed consent shall~~
743 ~~include a fair explanation of the test, including its purpose,~~
744 ~~potential uses, and limitations, and the meaning of its results~~
745 ~~and the right to confidential treatment of information. Use of a~~
746 ~~form approved by the office shall raise a conclusive presumption~~
747 ~~of informed consent.~~

748 Section 6. Subsection (1) of section 775.0877, Florida
749 Statutes, is amended to read:

750 775.0877 Criminal transmission of HIV; procedures;
751 penalties.—

752 (1) In any case in which a person has been convicted of or
753 has pled nolo contendere or guilty to, regardless of whether
754 adjudication is withheld, any of the following offenses, or the

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755 attempt thereof, which offense or attempted offense involves the
756 transmission of body fluids from one person to another:

757 (a) Section 794.011, relating to sexual battery;

758 (b) Section 826.04, relating to incest;

759 (c) Section 800.04, relating to lewd or lascivious offenses
760 committed upon or in the presence of persons less than 16 years
761 of age;

762 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
763 relating to assault;

764 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),
765 relating to aggravated assault;

766 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),
767 relating to battery;

768 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),
769 relating to aggravated battery;

770 (h) Section 827.03(2)(c), relating to child abuse;

771 (i) Section 827.03(2)(a), relating to aggravated child
772 abuse;

773 (j) Section 825.102(1), relating to abuse of an elderly
774 person or disabled adult;

775 (k) Section 825.102(2), relating to aggravated abuse of an
776 elderly person or disabled adult;

777 (l) Section 827.071, relating to sexual performance by
778 person less than 18 years of age;

779 (m) Sections 796.03, 796.07, and 796.08, relating to
780 prostitution; or

781 (n) Section 381.0041(11)(b), relating to donation of blood,
782 plasma, organs, skin, or other human tissue,

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784 the court shall order the offender to undergo HIV testing, to be
785 performed under the direction of the Department of Health in
786 accordance with s. 381.004, unless the offender has undergone
787 HIV testing voluntarily or pursuant to procedures established in
788 ~~s. 381.004(2)(h)6.~~ or s. 951.27, or any other applicable law or
789 rule providing for HIV testing of criminal offenders or inmates,
790 subsequent to her or his arrest for an offense enumerated in
791 paragraphs (a)-(n) for which she or he was convicted or to which
792 she or he pled nolo contendere or guilty. The results of an HIV
793 test performed on an offender pursuant to this subsection are
794 not admissible in any criminal proceeding arising out of the
795 alleged offense.

796 Section 7. Subsection (5) of section 960.003, Florida
797 Statutes, is amended to read:

798 960.003 Hepatitis and HIV testing for persons charged with
799 or alleged by petition for delinquency to have committed certain
800 offenses; disclosure of results to victims.-

801 (5) EXCEPTIONS.—Subsections (2) and (4) do not apply if:

802 (a) The person charged with or convicted of or alleged by
803 petition for delinquency to have committed or been adjudicated
804 delinquent for an offense described in subsection (2) has
805 undergone hepatitis and HIV testing voluntarily or pursuant to
806 procedures established in ~~s. 381.004(3)(h)6.~~ or s. 951.27, or
807 any other applicable law or rule providing for hepatitis and HIV
808 testing of criminal defendants, inmates, or juvenile offenders,
809 subsequent to his or her arrest, conviction, or delinquency
810 adjudication for the offense for which he or she was charged or
811 alleged by petition for delinquency to have committed; and

812 (b) The results of such hepatitis and HIV testing have been

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813 furnished to the victim or the victim's legal guardian, or the
814 parent or legal guardian of the victim if the victim is a minor.

815 Section 8. This act shall take effect July 1, 2013.