

By Representative Frankel

1 A bill to be entitled
2 An act relating to acquired immunodeficiency
3 syndrome (AIDS); amending s. 381.0035, F.S.;
4 expanding AIDS instruction required in the
5 educational course for health care facilities'
6 employees and clients; amending s. 381.0038,
7 F.S.; authorizing the State Health Officer to
8 establish sterile needle exchange projects;
9 providing project criteria; requiring a report;
10 providing an exemption from statutes relating
11 to use or possession of drug paraphernalia;
12 amending s. 381.004, F.S.; providing a
13 definition; expanding information to be
14 provided prior to obtaining informed consent
15 for an HIV test; providing for informed consent
16 of the legal guardian of an incapacitated
17 person; revising provisions relating to
18 notification of test results; authorizing
19 release of preliminary HIV test results under
20 certain conditions; deleting provisions
21 relating to posttest counseling; providing
22 additional persons to whom the identity of a
23 test subject may be disclosed; providing
24 additional exceptions to informed consent
25 requirements; requiring annual registration of
26 testing programs; providing for fees; deleting
27 obsolete terminology; authorizing inspections
28 and investigations by officers or employees of
29 the Department of Health; directing the
30 department to institute court proceedings under
31 certain circumstances; providing requirements

1 with respect to the department's protocol for
2 HIV testing and counseling; amending s. 384.25,
3 F.S.; deleting provisions relating to protocols
4 and to certain notifications, to remove
5 duplications and conform to the act; amending
6 s. 455.2226, F.S.; expanding AIDS instruction
7 required in the educational course for funeral
8 directors and embalmers; amending ss. 775.0877
9 and 960.003, F.S., to conform to the act;
10 providing an effective date.

11

12 Be It Enacted by the Legislature of the State of Florida:

13

14 Section 1. Subsection (1) of section 381.0035, Florida
15 Statutes, is amended to read:

16 381.0035 Educational course on human immunodeficiency
17 virus and acquired immune deficiency syndrome; employees and
18 clients of certain health care facilities.--

19 (1) The Department of Health shall require all
20 employees and clients of facilities licensed under chapters
21 393, 394, and 397 and employees of facilities licensed under
22 chapter 395 and parts II, III, IV, and VI of chapter 400 to
23 complete, biennially, a continuing educational course on the
24 modes of transmission, infection control procedures, clinical
25 management, and prevention of human immunodeficiency virus and
26 acquired immune deficiency syndrome with an emphasis on
27 appropriate behavior and attitude change. Such instruction
28 shall include information on current Florida law and its
29 impact on testing, confidentiality of test results, and
30 treatment of patients, and any protocols and procedures
31 applicable to human immunodeficiency counseling and testing,

1 reporting, and partner notification issues pursuant to ss.
2 381.004 and 384.25.

3 Section 2. Subsection (4) is added to section 381.038,
4 Florida Statutes, to read:

5 381.0038 Education.--The Department of Health shall
6 establish a program to educate the public about the threat of
7 acquired immune deficiency syndrome.

8 (4) The State Health Officer is authorized to
9 establish and administer harm reduction sterile needle and
10 syringe exchange projects designed to combat HIV/AIDS
11 transmission among injecting drug users.

12 (a) The projects shall meet the following criteria:

13 1. The project area must have a program for preventing
14 HIV transmission operating in the community.

15 2. The State Health Officer must determine that an
16 exchange project is likely to be an effective component of the
17 program.

18 3. The project must provide referral to substance
19 abuse treatment and to other appropriate health and social
20 services.

21 4. The project must provide education to participants
22 on the transmission of human immunodeficiency virus and
23 hepatitis B and C, and prevention measures.

24 5. The project must comply with established standards
25 for the disposal of hazardous medical waste.

26 (b) A report evaluating the effectiveness of the
27 projects shall be submitted to the Legislature by March 1,
28 1999.

29 (c) Exchange or possession of needles and syringes in
30 compliance with the procedures of the project shall not
31 constitute a violation of s. 893.147, which prohibits the use,

1 possession, manufacture, delivery, or advertisement of drug
2 paraphernalia.

3 Section 3. Section 381.004, Florida Statutes, is
4 amended to read:

5 381.004 Testing for human immunodeficiency virus.--

6 (1) LEGISLATIVE INTENT.--The Legislature finds that
7 the use of tests designed to reveal a condition indicative of
8 human immunodeficiency virus infection can be a valuable tool
9 in protecting the public health. The Legislature finds that
10 despite existing laws, regulations, and professional standards
11 which require or promote the informed, voluntary, and
12 confidential use of tests designed to reveal human
13 immunodeficiency virus infection, many members of the public
14 are deterred from seeking such testing because they
15 misunderstand the nature of the test or fear that test results
16 will be disclosed without their consent. The Legislature
17 finds that the public health will be served by facilitating
18 informed, voluntary, and confidential use of tests designed to
19 detect human immunodeficiency virus infection.

20 (2) DEFINITIONS.--As used in this section:

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

25 (b) "HIV test result" means a laboratory report of a
26 human immunodeficiency virus test result entered into a
27 medical record on or after July 6, 1988, or any report or
28 notation in a medical record of a laboratory report of a human
29 immunodeficiency virus test. As used in this section, the
30 term "HIV test result" does not include test results reported
31 to a health care provider by a patient.

1 (c) "Preliminary HIV test" means an antibody screening
2 test, such as the enzyme-linked immunosorbent assays (ELISAs)
3 or the Single-Use Diagnostic System (SUDS).

4 (d)~~(c)~~ "Significant exposure" means:

5 1. Exposure to blood or body fluids through
6 needlestick, instruments, or sharps;
7 2. Exposure of mucous membranes to visible blood or
8 body fluids, to which universal precautions apply according to
9 the National Centers for Disease Control and Prevention,
10 including, without limitations, the following body fluids:

- 11 a. Blood.
12 b. Semen.
13 c. Vaginal secretions.
14 d. Cerebro-spinal fluid (CSF).
15 e. Synovial fluid.
16 f. Pleural fluid.
17 g. Peritoneal fluid.
18 h. Pericardial fluid.
19 i. Amniotic fluid.
20 j. Laboratory specimens that contain HIV (e.g.,

21 suspensions of concentrated virus); or

22 3. Exposure of skin to visible blood or body fluids,
23 especially when the exposed skin is chapped, abraded, or
24 afflicted with dermatitis or the contact is prolonged or
25 involving an extensive area.

26 (e)~~(d)~~ "Test subject" or "subject of the test" means
27 the person upon whom an HIV test is performed, or the person
28 who has legal authority to make health care decisions for the
29 test subject.

30 (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
31 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

1 (a) No person in this state shall order ~~perform~~ a test
2 designed to identify the human immunodeficiency virus, or its
3 antigen or antibody, without first obtaining the informed
4 consent of the person upon whom the test is being performed,
5 except as specified in paragraph (h)(i). Informed consent
6 shall be preceded by:

7 1. An explanation of the right to confidential
8 treatment of information identifying the subject of the test
9 and the results of the test to the extent provided by law.

10 2. The information that a positive HIV test result
11 will be reported to the county health department with
12 sufficient information to identify the test subject.

13 3. Information regarding the availability and location
14 of anonymous testing sites and the fact that each county
15 health department must maintain a list of anonymous testing
16 sites, including the locations, phone numbers, and hours of
17 operation of the sites.

18
19 Consent need not be in writing provided there is documentation
20 in the medical record that the test has been explained and the
21 consent has been obtained.

22 (b) Except as provided in paragraph (h)(i), informed
23 consent must be obtained from a legal guardian or other person
24 authorized by law when the person:

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

27 2. Has not reached the age of majority, except as
28 provided in s. 384.30.

29 (c) The person ordering the test shall ensure that all
30 reasonable efforts are made to notify the test subject of a
31 positive test result. Notification shall be conducted with due

1 regard for the information that is needed by the test subject
2 to obtain appropriate medical services and information on
3 preventing transmission of the human immunodeficiency virus.
4 ~~(c) No person shall order a test without making~~
5 ~~available to the person tested, prior to the test, information~~
6 ~~regarding measures for the prevention of, exposure to, and~~
7 ~~transmission of human immunodeficiency virus. At the time an~~
8 ~~HIV test is ordered, the person ordering the test shall~~
9 ~~schedule a return visit with the test subject for the purpose~~
10 ~~of disclosing the test results and conducting posttest~~
11 ~~counseling as described in paragraph (e).~~
12 (d) No test result shall be determined as positive,
13 and no positive test result shall be revealed to any person,
14 without corroborating or confirmatory tests being conducted,
15 except in the following situations:-
16 1. However, Preliminary HIV test results may be
17 released to licensed physicians or the medical or nonmedical
18 personnel subject to the significant exposure for purposes of
19 subparagraphs (h)(i) 10. and 11. Except as provided in this
20 section, test results are confidential and exempt from the
21 provisions of s. 119.07(1).
22 2. Preliminary HIV test results may be released to
23 health care providers and to the person tested when decisions
24 about care or treatment of the person tested cannot await the
25 results of confirmatory testing. The positive preliminary HIV
26 test results shall not be characterized to the patient as a
27 diagnosis of human immunodeficiency virus infection.
28 Justification for the use of preliminary HIV test results must
29 be documented in the medical record by the provider who
30 ordered the test. This subparagraph does not authorize the
31 release of preliminary HIV test results for the purpose of

1 routine identification of individuals infected with the human
2 immunodeficiency virus, or when HIV testing is incidental to
3 the primary diagnosis or care of a patient. Corroborating or
4 confirmatory testing must still be conducted as a followup to
5 a positive preliminary HIV test. Results shall be communicated
6 to the patient as required by law, regardless of the HIV test
7 outcome. The department shall adopt a rule defining the
8 situations in which preliminary HIV test results may be
9 released.

10 ~~(e) Except as otherwise provided, no test result shall~~
11 ~~be revealed to the person upon whom the test was performed~~
12 ~~without affording that person the immediate opportunity for~~
13 ~~individual, face-to-face counseling about:~~

14 ~~1. The meaning of the test results;~~

15 ~~2. The possible need for additional testing;~~

16 ~~3. Measures for the prevention of the transmission of~~
17 ~~the human immunodeficiency virus infection;~~

18 ~~4. The availability in the geographic area of any~~
19 ~~appropriate health care services, including mental health~~
20 ~~care, and appropriate social and support services;~~

21 ~~5. The benefits of locating and counseling any~~
22 ~~individual by whom the infected individual may have been~~
23 ~~exposed to the human immunodeficiency virus infection and any~~
24 ~~individual whom the infected individual may have exposed to~~
25 ~~such human immunodeficiency virus infection; and~~

26 ~~6. The availability, if any, of the services of public~~
27 ~~health authorities with respect to locating and counseling any~~
28 ~~individual described in subparagraph 5.~~

29

30 ~~Telephonic posttest counseling shall be permitted when~~

31 ~~reporting the HIV test results of a home access HIV test that~~

1 ~~is approved by the United States Food and Drug Administration~~
2 ~~and analyzed by a laboratory certified under the federal~~
3 ~~Clinical Laboratory Improvement Amendments of 1988 or licensed~~
4 ~~under part I of chapter 483.~~

5 (e)~~(f)~~ Except as provided in this section, the
6 identity of any person upon whom a test has been performed and
7 test results are confidential and exempt from the provisions
8 of s. 119.07(1). No person who has obtained or has knowledge
9 of a test result pursuant to this section may disclose or be
10 compelled to disclose the identity of any person upon whom a
11 test is performed, or the results of such a test in a manner
12 which permits identification of the subject of the test,
13 except to the following persons:

14 1. The subject of the test or the subject's legally
15 authorized representative.

16 2. Any person, including third-party payors,
17 designated in a legally effective release of the test results
18 executed prior to or after the test by the subject of the test
19 or the subject's legally authorized representative. The test
20 subject may in writing authorize the disclosure of the test
21 subject's HIV test results to third party payors, who need not
22 be specifically identified, and to other persons to whom the
23 test subject subsequently issues a general release of medical
24 information. A general release without such prior written
25 authorization is not sufficient to release HIV test results.

26 3. An authorized agent or employee of a health
27 facility or health care provider if the health facility or
28 health care provider itself is authorized to obtain the test
29 results, the agent or employee participates in the
30 administration or provision of patient care or handles or
31 processes specimens of body fluids or tissues, and the agent

1 or employee has a need to know such information. The
2 department shall adopt a rule defining which persons have a
3 need to know pursuant to this subparagraph.

4 4. Health care providers consulting between themselves
5 or with health care facilities to determine diagnosis and
6 treatment. For purposes of this subparagraph, health care
7 providers shall include licensed health care professionals
8 employed by or associated with state, county, or municipal
9 detention facilities when such health care professionals are
10 acting exclusively for the purpose of providing diagnoses or
11 treatment of persons in the custody of such facilities.

12 5. The department, in accordance with rules for
13 reporting and controlling the spread of disease, as otherwise
14 provided by state law.

15 6. A health facility or health care provider which
16 procures, processes, distributes, or uses:

17 a. A human body part from a deceased person, with
18 respect to medical information regarding that person; or
19 b. Semen provided prior to July 6, 1988, for the
20 purpose of artificial insemination.

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

24 8. Authorized medical or epidemiological researchers
25 who may not further disclose any identifying characteristics
26 or information.

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

29 a. No court of this state shall issue such order
30 unless the court finds that the person seeking the test
31 results has demonstrated a compelling need for the test

1 results which cannot be accommodated by other means. In
2 assessing compelling need, the court shall weigh the need for
3 disclosure against the privacy interest of the test subject
4 and the public interest which may be disserved by disclosure
5 which deters blood, organ, and semen donation and future human
6 immunodeficiency virus-related testing or which may lead to
7 discrimination. This paragraph shall not apply to blood bank
8 donor records.

9 b. Pleadings pertaining to disclosure of test results
10 shall substitute a pseudonym for the true name of the subject
11 of the test. The disclosure to the parties of the subject's
12 true name shall be communicated confidentially in documents
13 not filed with the court.

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

18 d. Court proceedings as to disclosure of test results
19 shall be conducted in camera, unless the subject of the test
20 agrees to a hearing in open court or unless the court
21 determines that a public hearing is necessary to the public
22 interest and the proper administration of justice.

23 e. Upon the issuance of an order to disclose test
24 results, the court shall impose appropriate safeguards against
25 unauthorized disclosure which shall specify the persons who
26 may have access to the information, the purposes for which the
27 information shall be used, and appropriate prohibitions on
28 future disclosure.

29 10. A person allowed access by order of a judge of
30 compensation claims of the Division of Workers' Compensation
31 of the Department of Labor and Employment Security. A judge

1 of compensation claims shall not issue such order unless he or
2 she finds that the person seeking the test results has
3 demonstrated a compelling need for the test results which
4 cannot be accommodated by other means.

5 11. Those employees of the department or of
6 child-placing or child-caring agencies or of family foster
7 homes, licensed pursuant to s. 409.175, who are directly
8 involved in the placement, care, control, or custody of such
9 test subject and who have a need to know such information;
10 adoptive parents of such test subject; or any adult custodian,
11 any adult relative, or any person responsible for the child's
12 welfare, if the test subject was not tested under subparagraph
13 (b)2. and if a reasonable attempt has been made to locate and
14 inform the legal guardian of a test result. The department
15 shall adopt a rule to implement this subparagraph.

16 12. Those employees of residential facilities or of
17 community-based care programs which care for developmentally
18 disabled persons, pursuant to chapter 393, who are directly
19 involved in the care, control, or custody of such test subject
20 and who have a need to know such information. The department
21 shall adopt rules to implement this subparagraph.

22 13. A health care provider involved in the delivery of
23 a child may note the mother's HIV test results in the child's
24 medical record.

25 ~~14.12.~~ Medical or nonmedical personnel who have been
26 subject to a significant exposure during the course of medical
27 practice or in the performance of professional duties, or
28 individuals who are the subject of the significant exposure as
29 provided in subparagraphs (h)(i)10. and 11.

30
31

1 The medical examiner may disclose positive HIV test results to
2 the department in accordance with rules for reporting and
3 controlling the spread of disease.

4 (f)~~(g)~~ Except as provided in this section, the
5 identity of a person upon whom a test has been performed is
6 confidential and exempt from the provisions of s. 119.07(1).
7 No person to whom the results of a test have been disclosed
8 may disclose the test results to another person except as
9 authorized by this subsection and by ss. 951.27 and 960.003.
10 Whenever disclosure is made pursuant to this subsection, it
11 shall be accompanied by a statement in writing which includes
12 the following or substantially similar language: "This
13 information has been disclosed to you from records whose
14 confidentiality is protected by state law. State law
15 prohibits you from making any further disclosure of such
16 information without the specific written consent of the person
17 to whom such information pertains, or as otherwise permitted
18 by state law. A general authorization for the release of
19 medical or other information is NOT sufficient for this
20 purpose." An oral disclosure shall be accompanied by oral
21 notice and followed by a written notice within 10 days, except
22 that this notice shall not be required for disclosures made
23 pursuant to subparagraphs (e)~~(f)~~3. and 4.

24 (g)~~(h)~~ Human immunodeficiency virus test results
25 contained in the medical records of a hospital licensed under
26 chapter 395 may be released in accordance with s. 395.3025
27 without being subject to the requirements of subparagraph
28 (e)~~(f)~~2., subparagraph (e)~~(f)~~9., or paragraph (f)~~(g)~~;
29 provided the hospital has obtained written informed consent
30 for the HIV test in accordance with provisions of this
31 section.

1 (h)~~(i)~~ Notwithstanding the provisions of paragraph
2 (a), informed consent is not required:
3 1. When testing for sexually transmissible diseases is
4 required by state or federal law, or by rule including the
5 following situations:
6 a. HIV testing pursuant to s. 796.08 of persons
7 convicted of prostitution or of procuring another to commit
8 prostitution.
9 b. Testing for HIV by a medical examiner in accordance
10 with s. 406.11.
11 2. Those exceptions provided for blood, plasma,
12 organs, skin, semen, or other human tissue pursuant to s.
13 381.0041.
14 3. For the performance of an HIV-related test by
15 licensed medical personnel in bona fide medical emergencies
16 when the test results are necessary for medical diagnostic
17 purposes to provide appropriate emergency care or treatment to
18 the person being tested and the patient is unable to consent,
19 as supported by documentation in the medical record.
20 Notification of test results in accordance with paragraph (c)
21 ~~Posttest counseling~~ is required.
22 4. For the performance of an HIV-related test by
23 licensed medical personnel for medical diagnosis of acute
24 illness where, in the opinion of the attending physician,
25 obtaining informed consent would be detrimental to the
26 patient, as supported by documentation in the medical record,
27 and the test results are necessary for medical diagnostic
28 purposes to provide appropriate care or treatment to the
29 person being tested. Notification of test results in
30 accordance with paragraph (c)~~Posttest counseling~~ is required
31 if it would not be detrimental to the patient. This

1 subparagraph does not authorize the routine testing of
2 patients for HIV infection without informed consent.

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

5 6. For the performance of an HIV test upon a defendant
6 pursuant to the victim's request in a prosecution for any type
7 of sexual battery where a blood sample is taken from the
8 defendant voluntarily, pursuant to court order for any
9 purpose, or pursuant to the provisions of s. 775.0877, s.
10 951.27, or s. 960.003; however, the results of any HIV test
11 performed shall be disclosed solely to the victim and the
12 defendant, except as provided in ss. 775.0877, 951.27, and
13 960.003.

14 7. When an HIV test is mandated by court order.

15 8. For epidemiological research pursuant to s.
16 381.0032, for research consistent with institutional review
17 boards created by 45 C.F.R. part 46, or for the performance of
18 an HIV-related test for the purpose of research, if the
19 testing is performed in a manner by which the identity of the
20 test subject is not known and may not be retrieved by the
21 researcher.

22 9. When human tissue is collected lawfully without the
23 consent of the donor for corneal removal as authorized by s.
24 732.9185 or enucleation of the eyes as authorized by s.
25 732.919.

26 10. For the performance of an HIV test upon an
27 individual who comes into contact with medical personnel in
28 such a way that a significant exposure has occurred during the
29 course of employment or within the scope of practice and where
30 a blood sample is taken from that individual voluntarily by
31 medical personnel for other purposes. "Medical personnel"

1 includes a licensed or certified health care professional; an
2 employee of a health care professional, health care facility,
3 or blood bank; and a paramedic or emergency medical technician
4 as defined in s. 401.23.

5 a. Prior to performance of an HIV test on a
6 voluntarily obtained blood sample, the individual from whom
7 the blood was obtained shall be requested to consent to the
8 performance of the test and to the release of the results.
9 The individual's refusal to consent and all information
10 concerning the performance of an HIV test and any HIV test
11 result shall be documented only in the medical personnel's
12 record unless the individual gives written consent to entering
13 this information on the individual's medical record.

14 b. Reasonable attempts to locate the individual and to
15 obtain consent shall be made and all attempts must be
16 documented. If the individual cannot be found, an HIV test may
17 be conducted on the available blood sample. If the individual
18 does not voluntarily consent to the performance of an HIV
19 test, the individual shall be informed that an HIV test will
20 be performed, and counseling shall be furnished as provided in
21 this section. However, HIV testing shall be conducted only
22 after a licensed physician documents, in the medical record of
23 the medical personnel, that there has been a significant
24 exposure and that, in the physician's medical judgment, the
25 information is medically necessary to determine the course of
26 treatment for the medical personnel.

27 c. Costs of any HIV test of a blood sample performed
28 with or without the consent of the individual, as provided in
29 this subparagraph, shall be borne by the medical personnel or
30 the employer of the medical personnel. However, costs of
31 testing or treatment not directly related to the initial HIV

1 tests or costs of subsequent testing or treatment shall not be
2 borne by the medical personnel or the employer of the medical
3 personnel.

4 d. In order to utilize the provisions of this
5 subparagraph, the medical personnel must either be tested for
6 HIV pursuant to this section or provide the results of an HIV
7 test taken within 6 months prior to the significant exposure
8 if such test results are negative.

9 e. A person who receives the results of an HIV test
10 pursuant to this subparagraph shall maintain the
11 confidentiality of the information received and of the persons
12 tested. Such confidential information is exempt from s.
13 119.07(1).

14 11. For the performance of an HIV test upon an
15 individual who comes into contact with medical personnel in
16 such a way that a significant exposure has occurred during the
17 course of employment or within the scope of practice of the
18 medical personnel while the medical personnel provides
19 emergency medical treatment to the individual; or who comes
20 into contact with nonmedical personnel in such a way that a
21 significant exposure has occurred while the nonmedical
22 personnel provides emergency medical assistance during a
23 medical emergency. For the purposes of this subparagraph, a
24 medical emergency means an emergency medical condition outside
25 of a hospital or health care facility that provides physician
26 care. The test may be performed only during the course of
27 treatment for the medical emergency or if the source of the
28 exposure expires during treatment for the medical emergency.

29 a. An individual who is capable of providing consent
30 shall be requested to consent to an HIV test prior to the
31 testing. The individual's refusal to consent, and all

1 information concerning the performance of an HIV test and its
2 result, shall be documented only in the medical personnel's
3 record unless the individual gives written consent to entering
4 this information on the individual's medical record.

5 b. HIV testing shall be conducted only after a
6 licensed physician documents, in the medical record of the
7 medical personnel or nonmedical personnel, that there has been
8 a significant exposure and that, in the physician's medical
9 judgment, the information is medically necessary to determine
10 the course of treatment for the medical personnel or
11 nonmedical personnel.

12 c. Costs of any HIV test performed with or without the
13 consent of the individual, as provided in this subparagraph,
14 shall be borne by the medical personnel or the employer of the
15 medical personnel or nonmedical personnel. However, costs of
16 testing or treatment not directly related to the initial HIV
17 tests or costs of subsequent testing or treatment shall not be
18 borne by the medical personnel or the employer of the medical
19 personnel or nonmedical personnel.

20 d. In order to utilize the provisions of this
21 subparagraph, the medical personnel or nonmedical personnel
22 shall be tested for HIV pursuant to this section or shall
23 provide the results of an HIV test taken within 6 months prior
24 to the significant exposure if such test results are negative.

25 e. A person who receives the results of an HIV test
26 pursuant to this subparagraph shall maintain the
27 confidentiality of the information received and of the persons
28 tested. Such confidential information is exempt from s.
29 119.07(1).

30 12. For the performance of an HIV-related test
31 medically indicated by licensed medical personnel for medical

1 diagnosis of a hospitalized infant as necessary to provide
2 appropriate care and treatment of the infant when, after a
3 reasonable attempt, a parent cannot be contacted to provide
4 consent. The medical records of the infant shall reflect the
5 reason consent of the parent was not initially obtained. Test
6 results ~~and posttest counseling~~ shall be provided to the
7 parent when the parent is located.

8 13. For the performance of HIV testing conducted to
9 monitor a previously diagnosed HIV-positive patient's clinical
10 progress.

11 (4) COUNTY HEALTH DEPARTMENT NETWORK OF VOLUNTARY
12 HUMAN IMMUNODEFICIENCY VIRUS TESTING PROGRAMS.--

13 (a) The Department of Health shall establish a network
14 of voluntary human immunodeficiency virus testing programs in
15 every county in the state. These programs shall be conducted
16 in each county health department established under the
17 provisions of part I of chapter 154. Additional programs may
18 be contracted to other private providers to the extent that
19 finances permit and local circumstances dictate.

20 (b) Each county health department shall have the
21 ability to provide counseling and testing for human
22 immunodeficiency virus to each patient who receives services
23 and shall offer such testing on a voluntary basis to each
24 patient who presents himself or herself for services in a
25 public health program designated by the State Health Officer
26 by rule.

27 (c) Each county health department shall provide a
28 program of counseling and testing for human immunodeficiency
29 virus infection, on both an anonymous and confidential basis.
30 Counseling provided to a patient tested on both an anonymous
31 and confidential basis shall include informing the patient of

1 the availability of partner-notification services, the
2 benefits of such services, and the confidentiality protections
3 available as part of such services. The Department of Health
4 or its designated agent shall continue to provide for
5 anonymous testing through an alternative testing site program
6 with sites throughout all areas of the state. Each county
7 health department shall maintain a list of anonymous testing
8 sites. The list shall include the locations, phone numbers,
9 and hours of operation of the sites and shall be disseminated
10 to all persons and programs offering human immunodeficiency
11 virus testing within the service area of the county health
12 department, including physicians licensed under chapter 458 or
13 chapter 459. Except as provided in this section, the identity
14 of a person upon whom a test has been performed and test
15 results are confidential and exempt from the provisions of s.
16 119.07(1).

17 (d) The result of a serologic test conducted under the
18 auspices of the Department of Health shall not be used to
19 determine if a person may be insured for disability, health,
20 or life insurance or to screen or determine suitability for,
21 or to discharge a person from, employment. Any person who
22 violates the provisions of this subsection is guilty of a
23 misdemeanor of the first degree, punishable as provided in s.
24 775.082 or s. 775.083.

25 (5) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;
26 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM
27 REGISTRATION.--No county health department and no other person
28 in this state shall conduct or hold themselves out to the
29 public as conducting a testing program for acquired immune
30 deficiency syndrome, ~~acquired immune deficiency syndrome~~
31 ~~related complex~~, or human immunodeficiency virus status

1 without first registering with the Department of Health,
2 reregistering each year, complying with all other applicable
3 provisions of state law, and meeting the following
4 requirements:

5 (a) The program must be directed by a person with a
6 minimum number of contact hours of experience in the
7 counseling of persons with acquired immune deficiency
8 ~~syndrome, acquired immune deficiency syndrome related complex,~~
9 or human immunodeficiency virus infection, as established by
10 the Department of Health by rule.

11 (b) The program must have all medical care supervised
12 by a physician licensed under the provisions of chapter 458 or
13 chapter 459.

14 (c) The program shall have all laboratory procedures
15 performed in a laboratory licensed under the provisions of
16 chapter 483.

17 (d) The program must meet all the informed consent
18 criteria contained in subsection (3).

19 (e) The program must provide the opportunity for
20 pretest counseling on the meaning of a test for human
21 immunodeficiency virus, including medical indications for the
22 test; the possibility of false positive or false negative
23 results; the potential need for confirmatory testing; the
24 potential social, medical, and economic consequences of a
25 positive test result; and the need to eliminate high-risk
26 behavior.

27 (f) The program must provide supplemental
28 corroborative testing on all positive test results before the
29 results of any positive test are provided to the patient.
30 Except as provided in this section, the identity of any person
31

1 upon whom a test has been performed and test results are
2 confidential and exempt from the provisions of s. 119.07(1).

3 (g) The program must provide the opportunity for
4 face-to-face posttest counseling on the meaning of the test
5 results; the possible need for additional testing; the social,
6 medical, and economic consequences of a positive test result;
7 and the need to eliminate behavior which might spread the
8 disease to others.

9 (h) Each person providing posttest counseling to a
10 patient with a positive test result shall receive specialized
11 training, to be specified by rule of the department, about the
12 special needs of persons with positive results, including
13 recognition of possible suicidal behavior, and shall refer the
14 patient for further health and social services as appropriate.

15 (i) When services are provided for a charge during
16 pretest counseling, testing, supplemental testing, and
17 posttest counseling, the program must provide a complete list
18 of all such charges to the patient and the Department of
19 Health.

20 (j) Nothing in this subsection shall be construed to
21 require a facility licensed under chapter 483 or a person
22 licensed under the provisions of chapter 457, chapter 458,
23 chapter 459, chapter 460, chapter 461, chapter 466, or chapter
24 467 to register with the Department of Health if he or she
25 does not advertise or hold himself or herself out to the
26 public as conducting testing programs for human
27 immunodeficiency virus infection or specializing in such
28 testing.

29 (k) The Department of Health and any duly authorized
30 agent or employee of the department shall have the right to
31 make inspections and investigations as are necessary to

1 respond to complaints or to determine compliance with the
2 provisions of this section.

3 (1) The Department of Health shall institute
4 proceedings in a court of competent jurisdiction when
5 violations of this section or any rule adopted under this
6 section constitute an emergency affecting the immediate
7 health, safety, or welfare of a person receiving services
8 pursuant to this section.

9 (6) PENALTIES.--

10 (a) Any violation of this section by a facility or
11 licensed health care provider shall be a ground for
12 disciplinary action contained in the facility's or
13 professional's respective licensing chapter.

14 (b) Any person who violates the confidentiality
15 provisions of this section and s. 951.27 commits a misdemeanor
16 of the first degree, punishable as provided in s. 775.082 or
17 s. 775.083.

18 (7) EXEMPTIONS.--Except as provided in paragraph
19 (4)(d) and ss. 627.429 and 641.3007, insurers and others
20 participating in activities related to the insurance
21 application and underwriting process shall be exempt from this
22 section.

23 (8) MODEL PROTOCOL FOR COUNSELING AND TESTING FOR
24 HUMAN IMMUNODEFICIENCY VIRUS.--The Department of Health shall
25 develop a model protocol consistent with the provisions of
26 this section for counseling and testing persons for the human
27 immunodeficiency virus. The protocol shall include criteria
28 for evaluating a patient's risk for human immunodeficiency
29 virus infection and for offering HIV testing, on a voluntary
30 basis, as a routine part of primary health care or admission
31 to a health care facility. The department shall ensure that

1 the protocols developed pursuant to this section are made
2 available to health care providers.

3 (9) FEES.--

4 (a) Each person or private organization registering
5 ~~registered~~ as an AIDS or HIV testing site shall pay the
6 department an original registration fee and a reregistration a
7 fee which shall be set by rule of the department.

8 (b) Fees established pursuant to paragraph (a) shall
9 be an amount sufficient to meet all costs incurred by the
10 department in carrying out its registration, data collection,
11 complaint monitoring, and administrative responsibilities
12 under this section, for all private AIDS or HIV testing sites,
13 but shall not exceed \$100.

14 (c) No other fees shall be charged by other
15 governmental agencies for these purposes.

16 (10) RULES.--The Department of Health may adopt such
17 rules as are necessary to implement this section.

18 (11) TESTING AS A CONDITION OF TREATMENT OR
19 ADMISSION.--

20 (a) It is unlawful for any facility the operation of
21 which, or for any person engaged in an occupation the practice
22 of which, requires a license by the Agency for Health Care
23 Administration, the Department of Health, or the Department of
24 Business and Professional Regulation, to require any person to
25 take or submit to a human immunodeficiency virus-related test
26 as a condition of admission to any such facility or as a
27 condition of purchasing or obtaining any service or product
28 for which the license is required. This subsection shall not
29 be construed to prohibit any physician in good faith from
30 declining to provide a particular treatment requested by a
31 patient if the appropriateness of that treatment can only be

1 determined through a human immunodeficiency virus-related
2 test.

3 (b) The Agency for Health Care Administration, the
4 Department of Health, and the Department of Business and
5 Professional Regulation shall adopt rules implementing this
6 subsection.

7 (c) Any violation of this subsection or the rules
8 implementing it shall be punishable as provided in subsection
9 (6).

10 Section 4. Subsections (5) through (8) of section
11 384.25, Florida Statutes, are amended to read:

12 384.25 Reporting required.--

13 ~~(5) After notification of the test subject under~~
14 ~~subsection (4), the department may, with the consent of the~~
15 ~~test subject, notify school superintendents of students and~~
16 ~~school personnel whose HIV tests are positive.~~

17 (5)(6) The department shall by February 1 of each year
18 submit to the Legislature an annual report relating to all
19 information obtained pursuant to this section.

20 ~~(7) The rules adopted by the department pursuant to~~
21 ~~this section shall specify the protocols for the reporting~~
22 ~~required or permitted by subsection (3) or subsection (4).~~
23 ~~The protocol developed for implementation of subsection (4)~~
24 ~~shall include, but need not be limited to, information to be~~
25 ~~given to a test subject during pretest counseling, including:~~

26 ~~(a) The fact that a positive HIV test result may be~~
27 ~~reported to the county health department with sufficient~~
28 ~~information to identify the test subject and the availability~~
29 ~~and location of anonymous testing sites; and~~

30 ~~(b) The partner notification services available~~
31 ~~through the county health departments, the benefits of such~~

1 ~~services, and the confidentiality protections available as~~
2 ~~part of such services.~~

3 (6)(8) Each person who violates the provisions of this
4 section or the rules adopted hereunder may be fined by the
5 department up to \$500 for each offense. The department shall
6 report each violation of this section to the regulatory agency
7 responsible for licensing each health care professional and
8 each laboratory to which these provisions apply.

9 Section 5. Subsection (1) of section 455.2226, Florida
10 Statutes, is amended to read:

11 455.2226 Funeral directors and embalmers; instruction
12 on human immunodeficiency virus and acquired immune deficiency
13 syndrome.--

14 (1) The Board of Funeral Directors and Embalmers shall
15 require each person licensed or certified under chapter 470 to
16 complete a continuing educational course, approved by the
17 board, on human immunodeficiency virus and acquired immune
18 deficiency syndrome as part of biennial relicensure or
19 recertification. The course shall consist of education on the
20 modes of transmission, infection control procedures, clinical
21 management, and prevention of human immunodeficiency virus and
22 acquired immune deficiency syndrome. Such course shall include
23 information on current Florida law on acquired immune
24 deficiency syndrome, and its impact on testing,
25 confidentiality of test results, and treatment of patients,
26 and any protocols and procedures applicable to human
27 immunodeficiency counseling and testing, reporting, and
28 partner notification issued pursuant to ss. 381.004 and
29 384.25.

30 Section 6. Subsections (1) and (2) of section
31 775.0877, Florida Statutes, are amended to read:

1 775.0877 Criminal transmission of HIV; procedures;
2 penalties.--
3 (1) In any case in which a person has been convicted
4 of or has pled nolo contendere or guilty to, regardless of
5 whether adjudication is withheld, any of the following
6 offenses, or the attempt thereof, which offense or attempted
7 offense involves the transmission of body fluids from one
8 person to another:
9 (a) Section 794.011, relating to sexual battery,
10 (b) Section 826.04, relating to incest,
11 (c) Section 800.04(1), (2), and (3), relating to lewd,
12 lascivious, or indecent assault or act upon any person less
13 than 16 years of age,
14 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),
15 relating to assault,
16 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),
17 relating to aggravated assault,
18 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),
19 relating to battery,
20 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),
21 relating to aggravated battery,
22 (h) Section 827.03(1), relating to child abuse,
23 (i) Section 827.03(2), relating to aggravated child
24 abuse,
25 (j) Section 825.102(1), relating to abuse of an
26 elderly person or disabled adult,
27 (k) Section 825.102(2), relating to aggravated abuse
28 of an elderly person or disabled adult,
29 (l) Section 827.071, relating to sexual performance by
30 person less than 18 years of age,
31

1 (m) Sections 796.03, 796.07, and 796.08, relating to
2 prostitution, or
3 (n) Section 381.004(11)(b), relating to donation of
4 blood, plasma, organs, skin, or other human tissue,
5
6 the court shall order the offender to undergo HIV testing, to
7 be performed under the direction of the Department of Health
8 ~~and Rehabilitative Services~~ in accordance with s. 381.004,
9 unless the offender has undergone HIV testing voluntarily or
10 pursuant to procedures established in s. 381.004(3)(h)6.
11 ~~381.004(3)(i)6.~~ or s. 951.27, or any other applicable law or
12 rule providing for HIV testing of criminal offenders or
13 inmates, subsequent to her or his arrest for an offense
14 enumerated in paragraphs (a)-(n) for which she or he was
15 convicted or to which she or he pled nolo contendere or
16 guilty. The results of an HIV test performed on an offender
17 pursuant to this subsection are not admissible in any criminal
18 proceeding arising out of the alleged offense.
19 (2) The results of the HIV test must be disclosed
20 under the direction of the Department of Health ~~and~~
21 ~~Rehabilitative Services~~, to the offender who has been
22 convicted of or pled nolo contendere or guilty to an offense
23 specified in subsection (1), the public health agency of the
24 county in which the conviction occurred and, if different, the
25 county of residence of the offender, and, upon request
26 pursuant to s. 960.003, to the victim or the victim's legal
27 guardian, or the parent or legal guardian of the victim if the
28 victim is a minor.
29 Section 7. Subsections (2) through (6) of section
30 960.003, Florida Statutes, are amended to read:
31

1 960.003 Human immunodeficiency virus testing for
2 persons charged with or alleged by petition for delinquency to
3 have committed certain offenses; disclosure of results to
4 victims.--

5 (2) TESTING OF PERSON CHARGED WITH OR ALLEGED BY
6 PETITION FOR DELINQUENCY TO HAVE COMMITTED CERTAIN
7 OFFENSES.--In any case in which a person has been charged by
8 information or indictment with or alleged by petition for
9 delinquency to have committed any offense enumerated in s.
10 775.0877(1)(a)-(n), which involves the transmission of body
11 fluids from one person to another, upon request of the victim
12 or the victim's legal guardian, or of the parent or legal
13 guardian of the victim if the victim is a minor, the court
14 shall order such person to undergo HIV testing. The testing
15 shall be performed under the direction of the Department of
16 Health ~~and Rehabilitative Services~~ in accordance with s.
17 381.004. The results of an HIV test performed on a defendant
18 or juvenile offender pursuant to this subsection shall not be
19 admissible in any criminal or juvenile proceeding arising out
20 of the alleged offense.

21 (3) DISCLOSURE OF RESULTS.--

22 (a) The results of the test shall be disclosed, under
23 the direction of the Department of Health ~~and Rehabilitative~~
24 ~~Services~~, to the person charged with or alleged by petition
25 for delinquency to have committed or to the person convicted
26 of or adjudicated delinquent for any offense enumerated in s.
27 775.0877(1)(a)-(n), which involves the transmission of body
28 fluids from one person to another, and, upon request, to the
29 victim or the victim's legal guardian, or the parent or legal
30 guardian of the victim if the victim is a minor, and to public
31 health agencies pursuant to s. 775.0877. If the alleged

1 offender is a juvenile, the test results shall also be
2 disclosed to the parent or guardian. Otherwise, HIV test
3 results obtained pursuant to this section are confidential and
4 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
5 I of the State Constitution and shall not be disclosed to any
6 other person except as expressly authorized by law or court
7 order.

8 (b) At the time that the results are disclosed to the
9 victim or the victim's legal guardian, or to the parent or
10 legal guardian of a victim if the victim is a minor, the same
11 immediate opportunity for face-to-face counseling which must
12 be made available under s. 381.004(5)(g)~~381.004(3)(e)~~ to
13 those who undergo HIV testing shall also be afforded to the
14 victim or the victim's legal guardian, or to the parent or
15 legal guardian of the victim if the victim is a minor.

16 (4) POSTCONVICTION TESTING.--If, for any reason, the
17 testing requested under subsection (2) has not been
18 undertaken, then upon request of the victim or the victim's
19 legal guardian, or the parent or legal guardian of the victim
20 if the victim is a minor, the court shall order the offender
21 to undergo HIV testing following conviction or delinquency
22 adjudication. The testing shall be performed under the
23 direction of the Department of Health ~~and Rehabilitative~~
24 ~~Services~~, and the results shall be disclosed in accordance
25 with the provisions of subsection (3).

26 (5) EXCEPTIONS.--The provisions of subsections (2) and
27 (4) do not apply if:

28 (a) The person charged with or convicted of or alleged
29 by petition for delinquency to have committed or been
30 adjudicated delinquent for an offense described in subsection
31 (2) has undergone HIV testing voluntarily or pursuant to

1 procedures established in s. 381.004(3)(h)6~~.381.004(3)(i)6~~.
2 or s. 951.27, or any other applicable law or rule providing
3 for HIV testing of criminal defendants, inmates, or juvenile
4 offenders, subsequent to his or her arrest, conviction, or
5 delinquency adjudication for the offense for which he or she
6 was charged or alleged by petition for delinquency to have
7 committed; and

8 (b) The results of such HIV testing have been
9 furnished to the victim or the victim's legal guardian, or the
10 parent or legal guardian of the victim if the victim is a
11 minor.

12 (6) TESTING DURING INCARCERATION, DETENTION, OR
13 PLACEMENT; DISCLOSURE.--In any case in which a person
14 convicted of or adjudicated delinquent for an offense
15 described in subsection (2) has not been tested under
16 subsection (2), but undergoes HIV testing during his or her
17 incarceration, detention, or placement, the results of the
18 initial HIV testing shall be disclosed in accordance with the
19 provisions of subsection (3). Except as otherwise requested by
20 the victim or the victim's legal guardian, or the parent or
21 guardian of the victim if the victim is a minor, if the
22 initial test is conducted within the first year of the
23 imprisonment, detention, or placement, the request for
24 disclosure shall be considered a standing request for any
25 subsequent HIV test results obtained within 1 year after the
26 initial HIV test performed, and need not be repeated for each
27 test administration. Where the inmate or juvenile offender has
28 previously been tested pursuant to subsection (2) the request
29 for disclosure under this subsection shall be considered a
30 standing request for subsequent HIV results conducted within 1
31 year of the test performed pursuant to subsection (2). If the

1 HIV testing is performed by an agency other than the
2 Department of Health ~~and Rehabilitative Services~~, that agency
3 shall be responsible for forwarding the test results to the
4 Department of Health ~~and Rehabilitative Services~~ for
5 disclosure in accordance with the provisions of subsection
6 (3). This subsection shall not be limited to results of HIV
7 tests administered subsequent to June 27, 1990, but shall also
8 apply to the results of all HIV tests performed on inmates
9 convicted of or juvenile offenders adjudicated delinquent for
10 sex offenses as described in subsection (2) during their
11 incarceration, detention, or placement prior to June 27, 1990.

12 Section 8. This act shall take effect upon becoming a
13 law.

14 *****

15 HOUSE SUMMARY

16
17 Revises various provisions of law relating to acquired
18 immune deficiency syndrome (AIDS). Expands AIDS
19 instruction required for health facilities' employees and
20 clients and funeral directors and embalmers. Authorizes
21 the State Health Officer to establish a sterile needle
22 and syringe exchange program for drug users, and provides
23 criteria and requirements. Requires evaluation and report
24 to the Legislature by March 1, 1999. Revises requirements
25 relating to informed consent to testing, notification and
26 disclosure of test results, posttest counseling, and
27 disclosure of the identity of the test subject.
28 Authorizes disclosure of preliminary test results under
29 certain circumstances. Provides for inspections and
30 investigations of testing programs by the Department of
31 Health. Authorizes the department to institute court
proceedings against a testing program for violations
constituting an emergency. See bill for details.