

By the Committee on Health Care Services and  
Representatives Frankel and Brooks

1                                   A bill to be entitled  
2           An act relating to sexually transmitted  
3           diseases; amending s. 381.0035, F.S.; expanding  
4           AIDS instruction required in the educational  
5           course for health care facilities' employees  
6           and clients; amending s. 381.0038, F.S.;  
7           providing that the State Health Officer may  
8           authorize a needle exchange project in one  
9           county, if it is determined that the project  
10          will be an effective component of an HIV  
11          prevention program in the community; providing  
12          project criteria; requiring a report; providing  
13          an exemption from statutes relating to use or  
14          possession of drug paraphernalia; amending s.  
15          381.004, F.S.; providing a definition;  
16          expanding information to be provided prior to  
17          obtaining informed consent for an HIV test;  
18          providing for informed consent of the legal  
19          guardian of an incapacitated person; revising  
20          provisions relating to notification of test  
21          results; authorizing hospital emergency  
22          departments and detention facilities to enlist  
23          county health departments in notifying  
24          individuals with positive test results;  
25          authorizing release of preliminary HIV test  
26          results under certain conditions; deleting  
27          provisions relating to posttest counseling;  
28          providing additional persons to whom the  
29          identity of a test subject may be disclosed;  
30          providing additional exceptions to informed  
31          consent requirements; establishing probable

1           cause for a court order for testing certain  
2           persons; requiring annual registration of  
3           testing programs; deleting obsolete  
4           terminology; authorizing inspections and  
5           investigations by officers or employees of the  
6           Department of Health; directing the department  
7           to deny, suspend, or revoke registration of an  
8           HIV testing site for certain violations;  
9           providing a penalty and increasing an existing  
10          penalty; providing requirements with respect to  
11          the department's protocol for HIV testing and  
12          counseling; amending s. 384.25, F.S.; deleting  
13          provisions relating to protocols and to certain  
14          notifications, to remove duplications and  
15          conform to the act; amending s. 384.34, F.S.;  
16          providing penalties, and increasing existing  
17          penalties, relating to sexually transmissible  
18          diseases; amending s. 455.604, F.S.; expanding  
19          AIDS instruction for funeral directors and  
20          embalmers, and adding requirements on protocols  
21          for HIV testing of pregnant women; amending ss.  
22          775.0877 and 960.003, F.S., to conform  
23          references and cross references; providing an  
24          effective date.

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

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

1           381.0035 Educational course on human immunodeficiency  
2 virus and acquired immune deficiency syndrome; employees and  
3 clients of certain health care facilities.--

4           (1) The Department of Health shall require all  
5 employees and clients of facilities licensed under chapters  
6 393, 394, and 397 and employees of facilities licensed under  
7 chapter 395 and parts II, III, IV, and VI of chapter 400 to  
8 complete, biennially, a continuing educational course on the  
9 modes of transmission, infection control procedures, clinical  
10 management, and prevention of human immunodeficiency virus and  
11 acquired immune deficiency syndrome with an emphasis on  
12 appropriate behavior and attitude change. Such instruction  
13 shall include information on current Florida law and its  
14 impact on testing, confidentiality of test results, and  
15 treatment of patients, and any protocols and procedures  
16 applicable to human immunodeficiency virus counseling and  
17 testing, reporting, and partner notification issues pursuant  
18 to ss. 381.004 and 384.25 and the offering of HIV testing to  
19 pregnant women.

20           Section 2. Subsection (4) is added to section  
21 381.0038, Florida Statutes, to read:

22           381.0038 Education.--The Department of Health shall  
23 establish a program to educate the public about the threat of  
24 acquired immune deficiency syndrome.

25           (4) The State Health Officer may authorize a needle  
26 exchange project in one county, if the State Health Officer  
27 determines that the project is likely to be an effective  
28 component of a human immunodeficiency virus prevention program  
29 in the community. The project shall be authorized for a  
30 limited period of 3 years and shall not be conducted using  
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1 state funding. The department is authorized to evaluate the  
2 effectiveness of the project using existing resources.

3 (a) The project shall meet the following criteria:

4 1. The project area must have a program for preventing  
5 human immunodeficiency virus transmission operating in the  
6 community.

7 2. The project must provide referral to existing  
8 substance abuse treatment and other appropriate health and  
9 social services.

10 3. The project must provide education to participants  
11 on the transmission of human immunodeficiency virus and  
12 hepatitis B and C, and prevention measures.

13 4. The project must provide skin testing for  
14 tuberculosis and referral of persons whose tests results are  
15 positive for appropriate followup.

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

18 (b) A report evaluating the effectiveness of the  
19 project shall be submitted to the Governor, the President of  
20 the Senate, and the Speaker of the House of Representatives by  
21 February 1, 2001.

22 (c) Exchange or possession of needles and syringes in  
23 compliance with the procedures of the project shall not  
24 constitute a violation of s. 893.147.

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

27 381.004 Testing for human immunodeficiency virus.--

28 (1) LEGISLATIVE INTENT.--The Legislature finds that  
29 the use of tests designed to reveal a condition indicative of  
30 human immunodeficiency virus infection can be a valuable tool  
31 in protecting the public health. The Legislature finds that

1 despite existing laws, regulations, and professional standards  
2 which require or promote the informed, voluntary, and  
3 confidential use of tests designed to reveal human  
4 immunodeficiency virus infection, many members of the public  
5 are deterred from seeking such testing because they  
6 misunderstand the nature of the test or fear that test results  
7 will be disclosed without their consent. The Legislature  
8 finds that the public health will be served by facilitating  
9 informed, voluntary, and confidential use of tests designed to  
10 detect human immunodeficiency virus infection.

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

12 (a) "HIV test" means a test ordered after July 6,  
13 1988, to determine the presence of the antibody or antigen to  
14 human immunodeficiency virus or the presence of human  
15 immunodeficiency virus infection.

16 (b) "HIV test result" means a laboratory report of a  
17 human immunodeficiency virus test result entered into a  
18 medical record on or after July 6, 1988, or any report or  
19 notation in a medical record of a laboratory report of a human  
20 immunodeficiency virus test. As used in this section, the  
21 term "HIV test result" does not include test results reported  
22 to a health care provider by a patient.

23 (c) "Preliminary HIV tests" means antibody screening  
24 tests, such as the enzyme-linked immunosorbent assays (ELISAs)  
25 and Single-Use Diagnostic System (SUDS).

26 (d)~~(e)~~ "Significant exposure" means:

- 27 1. Exposure to blood or body fluids through  
28 needlestick, instruments, or sharps;
- 29 2. Exposure of mucous membranes to visible blood or  
30 body fluids, to which universal precautions apply according to  
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1 the National Centers for Disease Control and Prevention,  
2 including, without limitations, the following body fluids:  
3       a. Blood.  
4       b. Semen.  
5       c. Vaginal secretions.  
6       d. Cerebro-spinal fluid (CSF).  
7       e. Synovial fluid.  
8       f. Pleural fluid.  
9       g. Peritoneal fluid.  
10       h. Pericardial fluid.  
11       i. Amniotic fluid.  
12       j. Laboratory specimens that contain HIV (e.g.,  
13 suspensions of concentrated virus); or  
14       3. Exposure of skin to visible blood or body fluids,  
15 especially when the exposed skin is chapped, abraded, or  
16 afflicted with dermatitis or the contact is prolonged or  
17 involving an extensive area.  
18       (e)~~(d)~~ "Test subject" or "subject of the test" means  
19 the person upon whom an HIV test is performed, or the person  
20 who has legal authority to make health care decisions for the  
21 test subject.  
22       (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED  
23 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--  
24       (a) No person in this state shall order ~~perform~~ a test  
25 designed to identify the human immunodeficiency virus, or its  
26 antigen or antibody, without first obtaining the informed  
27 consent of the person upon whom the test is being performed,  
28 except as specified in paragraph(h)~~(i)~~. Informed consent  
29 shall be preceded by:  
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- 1           1. An explanation of the right to confidential  
2 treatment of information identifying the subject of the test  
3 and the results of the test to the extent provided by law.  
4           2. The information that a positive HIV test result  
5 will be reported to the county health department with  
6 sufficient information to identify the test subject.  
7           3. Information regarding the availability and location  
8 of anonymous testing sites and the fact that each county  
9 health department maintains a list of anonymous testing sites,  
10 including the locations, phone numbers, and hours of operation  
11 of the sites.

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13 Consent need not be in writing provided there is documentation  
14 in the medical record that the test has been explained and the  
15 consent has been obtained.

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

- 19           1. Is not competent, is incapacitated, or is otherwise  
20 unable to make an informed judgment; or  
21           2. Has not reached the age of majority, except as  
22 provided in s. 384.30.

23           (c) The person ordering the test or his or her  
24 designee shall ensure that all reasonable efforts are made to  
25 notify test subjects of their test results. Notification of  
26 persons with positive test results shall include information  
27 on the availability of appropriate medical and support  
28 services, the importance of notifying partners who may have  
29 been exposed, and information on preventing transmission of  
30 human immunodeficiency virus. Notification of persons with  
31 negative test results shall include, as appropriate,

1 information on preventing transmission of human  
2 immunodeficiency virus. When testing occurs in a hospital  
3 emergency department, detention facility, or other facility  
4 where the test subject has been released prior to notification  
5 of positive test results, informing the county health  
6 department for notification of the test subject shall fulfill  
7 this responsibility.~~No person shall order a test without~~  
8 ~~making available to the person tested, prior to the test,~~  
9 ~~information regarding measures for the prevention of, exposure~~  
10 ~~to, and transmission of human immunodeficiency virus. At the~~  
11 ~~time an HIV test is ordered, the person ordering the test~~  
12 ~~shall schedule a return visit with the test subject for the~~  
13 ~~purpose of disclosing the test results and conducting posttest~~  
14 ~~counseling as described in paragraph (e).~~

15 (d) No test result shall be determined as positive,  
16 and no positive test result shall be revealed to any person,  
17 without corroborating or confirmatory tests being conducted,  
18 except in the following situations: ~~However,~~

19 1. Preliminary test results may be released to  
20 licensed physicians or the medical or nonmedical personnel  
21 subject to the significant exposure for purposes of  
22 subparagraphs (h) 10., 11., and 12(i) 10. and 11.

23 2. Preliminary test results may be released to health  
24 care providers and to the person tested when decisions about  
25 medical care or treatment of the person tested cannot await  
26 the results of confirmatory testing. The positive preliminary  
27 HIV test results shall not be characterized to the patient as  
28 a diagnosis of HIV infection. Justification for the use of  
29 preliminary test results must be documented in the medical  
30 record by the provider who ordered the test. This  
31 subparagraph does not authorize the release of preliminary



1 test results for the purpose of routine identification of  
2 HIV-infected individuals 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 followup to a  
5 positive preliminary test, and results shall be communicated  
6 to the patient according to this section regardless of the  
7 outcome. Except as provided in this section, test results are  
8 confidential and exempt from the provisions of s. 119.07(1).

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

- 13 ~~1. The meaning of the test results;~~
- 14 ~~2. The possible need for additional testing;~~
- 15 ~~3. Measures for the prevention of the transmission of~~  
16 ~~the human immunodeficiency virus infection;~~
- 17 ~~4. The availability in the geographic area of any~~  
18 ~~appropriate health care services, including mental health~~  
19 ~~care, and appropriate social and support services;~~
- 20 ~~5. The benefits of locating and counseling any~~  
21 ~~individual by whom the infected individual may have been~~  
22 ~~exposed to the human immunodeficiency virus infection and any~~  
23 ~~individual whom the infected individual may have exposed to~~  
24 ~~such human immunodeficiency virus infection; and~~
- 25 ~~6. The availability, if any, of the services of public~~  
26 ~~health authorities with respect to locating and counseling any~~  
27 ~~individual described in subparagraph 5.~~

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29 ~~Telephonic posttest counseling shall be permitted when~~  
30 ~~reporting the HIV test results of a home access HIV test that~~  
31 ~~is approved by the United States Food and Drug Administration~~

1 ~~and analyzed by a laboratory certified under the federal~~  
2 ~~Clinical Laboratory Improvement Amendments of 1988 or licensed~~  
3 ~~under part I of chapter 483.~~

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

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

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

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

1 department shall adopt a rule defining which persons have a  
2 need to know pursuant to this subparagraph.

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

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

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

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

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

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

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

28 a. No court of this state shall issue such order  
29 unless the court finds that the person seeking the test  
30 results has demonstrated a compelling need for the test  
31 results which cannot be accommodated by other means. In

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

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

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

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

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

28           10. A person allowed access by order of a judge of  
29 compensation claims of the Division of Workers' Compensation  
30 of the Department of Labor and Employment Security. A judge  
31 of compensation claims shall not issue such order unless he or

1 she finds that the person seeking the test results has  
2 demonstrated a compelling need for the test results which  
3 cannot be accommodated by other means.

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

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

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

24       14.12. Medical personnel or nonmedical personnel who  
25 have been subject to a significant exposure during the course  
26 of medical practice or in the performance of professional  
27 duties, or individuals who are the subject of the significant  
28 exposure as provided in subparagraphs (h)10., 11., and 12  
29 ~~(i)10. and 11.~~

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1 The medical examiner shall disclose positive HIV test results  
2 to 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)~~; provided  
29 the hospital has obtained written informed consent for the HIV  
30 test in accordance with provisions of this section.  
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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 available that was taken from that  
31 individual voluntarily by medical personnel for other



1 purposes. "Medical personnel" includes a licensed or  
2 certified health care professional; an employee of a health  
3 care professional, health care facility, or blood bank; and a  
4 paramedic or emergency medical technician as defined in s.  
5 401.23.

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

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

30 c. Costs of any HIV test of a blood sample performed  
31 with or without the consent of the source individual, as

1 provided in this subparagraph, shall be borne by the medical  
2 personnel or the employer of the medical personnel. However,  
3 costs of testing or treatment not directly related to the  
4 initial HIV tests or costs of subsequent testing or treatment  
5 shall not be borne by the medical personnel or the employer of  
6 the medical personnel.

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

12 e. A person who receives the results of an HIV test  
13 pursuant to this subparagraph shall maintain the  
14 confidentiality of the information received and of the persons  
15 tested. Such confidential information is exempt from s.  
16 119.07(1).

17 f. If the source of the exposure will not voluntarily  
18 submit to HIV testing and a blood sample is not available, the  
19 medical personnel or the employer of such person acting on  
20 behalf of the employee may seek a court order directing the  
21 source of the exposure to submit to HIV testing. A sworn  
22 statement by a physician licensed under chapter 458 or chapter  
23 459 that a significant exposure has occurred and that, in the  
24 physician's medical judgment, testing is medically necessary  
25 to determine the course of treatment, constitutes probable  
26 cause for the issuance of an order by the court. The results  
27 of the test shall be released to the source of the significant  
28 exposure and to the person who experienced the significant  
29 exposure.

30 11. For the performance of an HIV test upon a source  
31 ~~an~~ individual who comes into contact with medical personnel in

1 such a way that a significant exposure has occurred during the  
2 course of employment or within the scope of practice of the  
3 medical personnel while the medical personnel provides  
4 emergency medical treatment to the source individual; or who  
5 comes into contact with nonmedical personnel in such a way  
6 that a significant exposure has occurred while the nonmedical  
7 personnel provides emergency medical assistance during a  
8 medical emergency. For the purposes of this subparagraph, a  
9 medical emergency means an emergency medical condition outside  
10 of a hospital or health care facility that provides physician  
11 care. The test may be performed only during the course of  
12 treatment for the medical emergency.

13 a. A source ~~An~~ individual who is capable of providing  
14 consent shall be requested to consent to an HIV test prior to  
15 the testing. The source individual's refusal to consent, and  
16 all information concerning the performance of an HIV test and  
17 its result, shall be documented only in the medical  
18 personnel's record unless the source individual gives written  
19 consent to entering this information on the source  
20 individual's medical record.

21 b. HIV testing shall be conducted only after a  
22 licensed physician documents, in the medical record of the  
23 medical personnel or nonmedical personnel, that there has been  
24 a significant exposure and that, in the physician's medical  
25 judgment, the information is medically necessary to determine  
26 the course of treatment for the medical personnel or  
27 nonmedical personnel.

28 c. Costs of any HIV test performed with or without the  
29 consent of the source individual, as provided in this  
30 subparagraph, shall be borne by the medical personnel or the  
31 employer of the medical personnel or nonmedical personnel.

1 However, costs of testing or treatment not directly related to  
2 the initial HIV tests or costs of subsequent testing or  
3 treatment shall not be borne by the medical personnel or the  
4 employer of the medical personnel or nonmedical personnel.

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

10 e. A person who receives the results of an HIV test  
11 pursuant to this subparagraph shall maintain the  
12 confidentiality of the information received and of the persons  
13 tested. Such confidential information is exempt from s.  
14 119.07(1).

15 f. If the source of the exposure will not voluntarily  
16 submit to HIV testing and a blood sample was not obtained  
17 during treatment for the medical emergency, the medical  
18 personnel, the employer of such person acting on behalf of the  
19 employee, or the nonmedical personnel may seek a court order  
20 directing the source of the exposure to submit to HIV testing.  
21 A sworn statement by a physician licensed under chapter 458 or  
22 chapter 459 that a significant exposure has occurred and that,  
23 in the physician's medical judgment, testing is medically  
24 necessary to determine the course of treatment, constitutes  
25 probable cause for the issuance of an order by the court. The  
26 results of the test shall be released to the source of the  
27 significant exposure and to the person who experienced the  
28 significant exposure.

29 12. For the performance of an HIV test by the medical  
30 examiner upon a deceased individual who is the source of a  
31 significant exposure to medical personnel or nonmedical

1 personnel who provided emergency medical assistance and the  
2 individual expired or could not be resuscitated during  
3 treatment for the medical emergency.

4 13.12. For the performance of an HIV-related test  
5 medically indicated by licensed medical personnel for medical  
6 diagnosis of a hospitalized infant as necessary to provide  
7 appropriate care and treatment of the infant when, after a  
8 reasonable attempt, a parent cannot be contacted to provide  
9 consent. The medical records of the infant shall reflect the  
10 reason consent of the parent was not initially obtained. Test  
11 results ~~and posttest counseling~~ shall be provided to the  
12 parent when the parent is located.

13 14. For the performance of HIV testing conducted to  
14 monitor a previously diagnosed, HIV-positive patient's  
15 clinical progress.

16 15. For the performance of repeated HIV testing  
17 conducted to monitor possible conversion from a significant  
18 exposure.

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

21 (a) The Department of Health shall establish a network  
22 of voluntary human immunodeficiency virus testing programs in  
23 every county in the state. These programs shall be conducted  
24 in each county health department established under the  
25 provisions of part I of chapter 154. Additional programs may  
26 be contracted to other private providers to the extent that  
27 finances permit and local circumstances dictate.

28 (b) Each county health department shall have the  
29 ability to provide counseling and testing for human  
30 immunodeficiency virus to each patient who receives services  
31 and shall offer such testing on a voluntary basis to each

1 patient who presents himself or herself for services in a  
2 public health program designated by the State Health Officer  
3 by rule.

4 (c) Each county health department shall provide a  
5 program of counseling and testing for human immunodeficiency  
6 virus infection, on both an anonymous and confidential basis.  
7 Counseling provided to a patient tested on both an anonymous  
8 and confidential basis shall include informing the patient of  
9 the availability of partner-notification services, the  
10 benefits of such services, and the confidentiality protections  
11 available as part of such services. The Department of Health  
12 or its designated agent shall continue to provide for  
13 anonymous testing through an alternative testing site program  
14 with sites throughout all areas of the state. Each county  
15 health department shall maintain a list of anonymous testing  
16 sites. The list shall include the locations, phone numbers,  
17 and hours of operation of the sites and shall be disseminated  
18 to all persons and programs offering human immunodeficiency  
19 virus testing within the service area of the county health  
20 department, including physicians licensed under chapter 458 or  
21 chapter 459. Except as provided in this section, the identity  
22 of a person upon whom a test has been performed and test  
23 results are confidential and exempt from the provisions of s.  
24 119.07(1).

25 (d) The result of a serologic test conducted under the  
26 auspices of the Department of Health shall not be used to  
27 determine if a person may be insured for disability, health,  
28 or life insurance or to screen or determine suitability for,  
29 or to discharge a person from, employment. Any person who  
30 violates the provisions of this subsection is guilty of a  
31

1 misdemeanor of the first degree, punishable as provided in s.  
2 775.082 or s. 775.083.

3 (5) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;  
4 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM  
5 REGISTRATION.--No county health department and no other person  
6 in this state shall conduct or hold themselves out to the  
7 public as conducting a testing program for acquired immune  
8 deficiency syndrome, ~~acquired immune deficiency syndrome~~  
9 ~~related complex~~, or human immunodeficiency virus status  
10 without first registering with the Department of Health,  
11 reregistering each year, complying with all other applicable  
12 provisions of state law, and meeting the following  
13 requirements:

14 (a) The program must be directed by a person with a  
15 minimum number of contact hours of experience in the  
16 counseling of persons with acquired immune deficiency  
17 syndrome, ~~acquired immune deficiency syndrome related complex~~,  
18 or human immunodeficiency virus infection, as established by  
19 the Department of Health by rule.

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

23 (c) The program shall have all laboratory procedures  
24 performed in a laboratory licensed under the provisions of  
25 chapter 483.

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

28 (e) The program must provide the opportunity for  
29 pretest counseling on the meaning of a test for human  
30 immunodeficiency virus, including medical indications for the  
31 test; the possibility of false positive or false negative

1 results; the potential need for confirmatory testing; the  
2 potential social, medical, and economic consequences of a  
3 positive test result; and the need to eliminate high-risk  
4 behavior.

5 (f) The program must provide supplemental  
6 corroborative testing on all positive test results before the  
7 results of any positive test are provided to the patient.  
8 Except as provided in this section, the identity of any person  
9 upon whom a test has been performed and test results are  
10 confidential and exempt from the provisions of s. 119.07(1).

11 (g) The program must provide the opportunity for  
12 face-to-face posttest counseling on the meaning of the test  
13 results; the possible need for additional testing; the social,  
14 medical, and economic consequences of a positive test result;  
15 and the need to eliminate behavior which might spread the  
16 disease to others.

17 (h) Each person providing posttest counseling to a  
18 patient with a positive test result shall receive specialized  
19 training, to be specified by rule of the department, about the  
20 special needs of persons with positive results, including  
21 recognition of possible suicidal behavior, and shall refer the  
22 patient for further health and social services as appropriate.

23 (i) When services are provided for a charge during  
24 pretest counseling, testing, supplemental testing, and  
25 posttest counseling, the program must provide a complete list  
26 of all such charges to the patient and the Department of  
27 Health.

28 (j) Nothing in this subsection shall be construed to  
29 require a facility licensed under chapter 483 or a person  
30 licensed under the provisions of chapter 457, chapter 458,  
31 chapter 459, chapter 460, chapter 461, chapter 466, or chapter



1 467 to register with the Department of Health if he or she  
2 does not advertise or hold himself or herself out to the  
3 public as conducting testing programs for human  
4 immunodeficiency virus infection or specializing in such  
5 testing.

6 (k) The department and any duly authorized officer or  
7 employee of the department shall have the right to make  
8 inspections and investigations as are necessary to respond to  
9 complaints or to determine compliance with the provisions of  
10 this section.

11 (l) The department shall deny, suspend, or revoke the  
12 registration of any person or agency that violates the  
13 provisions of this section or any rules adopted under this  
14 section when such violation constitutes an emergency affecting  
15 the immediate health, safety, and welfare of a person  
16 receiving service.

17 (6) PENALTIES.--

18 (a) Any violation of this section by a facility or  
19 licensed health care provider shall be a ground for  
20 disciplinary action contained in the facility's or  
21 professional's respective licensing chapter.

22 (b) Any person who violates the confidentiality  
23 provisions of this section and s. 951.27 commits a felony of  
24 the third ~~misdemeanor of the first~~ degree, punishable as  
25 provided in ~~ss.s-775.082, or s-775.083, 775.084, and~~  
26 775.0877(7).

27 (c) Any person who obtains information that identifies  
28 an individual who has a sexually transmissible disease  
29 including human immunodeficiency virus or acquired  
30 immunodeficiency syndrome, who knew or should have known the  
31 nature of the information and maliciously, or for monetary

1 gain, disseminates this information or otherwise makes this  
2 information known to any other person, except by providing it  
3 either to a physician or nurse employed by the department or  
4 to a law enforcement agency, commits a felony of the third  
5 degree, punishable as provided in ss. 775.082, 775.083,  
6 775.084, and 775.0877(7).

7 (7) EXEMPTIONS.--Except as provided in paragraph  
8 (4)(d) and ss. 627.429 and 641.3007, insurers and others  
9 participating in activities related to the insurance  
10 application and underwriting process shall be exempt from this  
11 section.

12 (8) MODEL PROTOCOL FOR COUNSELING AND TESTING FOR  
13 HUMAN IMMUNODEFICIENCY VIRUS.--The Department of Health shall  
14 develop, by rule, a model protocol consistent with the  
15 provisions of this section for counseling and testing persons  
16 for the human immunodeficiency virus. The protocol shall  
17 include criteria for evaluating a patient's risk for human  
18 immunodeficiency virus infection and for offering human  
19 immunodeficiency virus testing, on a voluntary basis, as a  
20 routine part of primary health care or admission to a health  
21 care facility. The department shall ensure that the protocols  
22 developed pursuant to this subsection are made available to  
23 health care providers.

24 (9) FEES.--

25 (a) Each person or private organization registered as  
26 an AIDS or HIV testing site shall pay the department a fee  
27 which shall be set by rule of the department.

28 (b) Fees established pursuant to paragraph (a) shall  
29 be an amount sufficient to meet all costs incurred by the  
30 department in carrying out its registration, data collection,  
31 complaint monitoring, and administrative responsibilities

1 under this section, for all private AIDS or HIV testing sites,  
2 but shall not exceed \$100.

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

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

7 (11) TESTING AS A CONDITION OF TREATMENT OR  
8 ADMISSION.--

9 (a) It is unlawful for any facility the operation of  
10 which, or for any person engaged in an occupation the practice  
11 of which, requires a license by the Agency for Health Care  
12 Administration, the Department of Health, or the Department of  
13 Business and Professional Regulation, to require any person to  
14 take or submit to a human immunodeficiency virus-related test  
15 as a condition of admission to any such facility or as a  
16 condition of purchasing or obtaining any service or product  
17 for which the license is required. This subsection shall not  
18 be construed to prohibit any physician in good faith from  
19 declining to provide a particular treatment requested by a  
20 patient if the appropriateness of that treatment can only be  
21 determined through a human immunodeficiency virus-related  
22 test.

23 (b) The Agency for Health Care Administration, the  
24 Department of Health, and the Department of Business and  
25 Professional Regulation shall adopt rules implementing this  
26 subsection.

27 (c) Any violation of this subsection or the rules  
28 implementing it shall be punishable as provided in subsection  
29 (6).

30 Section 4. Section 384.25, Florida Statutes, is  
31 amended to read:

1           384.25 Reporting required.--

2           (1) Each person who makes a diagnosis of or treats a  
3 person with a sexually transmissible disease and each  
4 laboratory that performs a test for a sexually transmissible  
5 disease which concludes with a positive result shall report  
6 such facts as may be required by the department by rule,  
7 within a time period as specified by rule of the department,  
8 but in no case to exceed 2 weeks.

9           (2) The department shall adopt rules specifying the  
10 information required in and a minimum time period for  
11 reporting a sexually transmissible disease. In adopting such  
12 rules, the department shall consider the need for information,  
13 protections for the privacy and confidentiality of the  
14 patient, and the practical ability of persons and laboratories  
15 to report in a reasonable fashion. To ensure the  
16 confidentiality of persons infected with the human  
17 immunodeficiency virus (HIV), reporting of HIV infection and  
18 acquired immune deficiency syndrome (AIDS) must be conducted  
19 using the HIV/AIDS Reporting System (HARS) developed by the  
20 Centers for Disease Control and Prevention of the United  
21 States Public Health Service.

22           (3) The department shall require reporting of  
23 physician diagnosed cases of AIDS based upon diagnostic  
24 criteria from the Centers for Disease Control and Prevention.

25           (4) The department may require physician and  
26 laboratory reporting of HIV infection. However, only reports  
27 of HIV infection identified on or after the effective date of  
28 the rule developed by the department pursuant to this  
29 subsection shall be accepted. The reporting may not affect or  
30 relate to anonymous HIV testing programs conducted pursuant to  
31

1 s. 381.004(4) or to university-based medical research  
2 protocols as determined by the department.

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

7 (6) The department shall by February 1 of each year  
8 submit to the Legislature an annual report relating to all  
9 information obtained pursuant to this section.

10 ~~(7) The rules adopted by the department pursuant to~~  
11 ~~this section shall specify the protocols for the reporting~~  
12 ~~required or permitted by subsection (3) or subsection (4).~~  
13 ~~The protocol developed for implementation of subsection (4)~~  
14 ~~shall include, but need not be limited to, information to be~~  
15 ~~given to a test subject during pretest counseling, including:~~

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

20 ~~(b) The partner notification services available~~  
21 ~~through the county health departments, the benefits of such~~  
22 ~~services, and the confidentiality protections available as~~  
23 ~~part of such services.~~

24 (7)~~(8)~~ Each person who violates the provisions of this  
25 section or the rules adopted hereunder may be fined by the  
26 department up to \$500 for each offense. The department shall  
27 report each violation of this section to the regulatory agency  
28 responsible for licensing each health care professional and  
29 each laboratory to which these provisions apply.

30 Section 5. Section 384.34, Florida Statutes, is  
31 amended to read:

1           384.34 Penalties.--  
2           (1) Any person who violates the provisions of s.  
3 384.24(1) commits a misdemeanor of the first degree,  
4 punishable as provided in s. 775.082 or s. 775.083.  
5           (2) Any person who violates the provisions of s.  
6 384.26 or s. 384.29 commits a felony of the third ~~misdemeanor~~  
7 ~~of the first~~ degree, punishable as provided in ss. s.775.082,  
8 or s.775.083, 775.084, and 775.0877(7).  
9           (3) Any person who maliciously disseminates any false  
10 information or report concerning the existence of any sexually  
11 transmissible disease commits a felony of the third ~~is guilty~~  
12 ~~of a misdemeanor of the second~~ degree, punishable as provided  
13 in ss. s.775.082, or s.775.083, 775.084, and 775.0877(7).  
14           (4) Any person who violates the provisions of the  
15 department's rules pertaining to sexually transmissible  
16 diseases may be punished by a fine not to exceed \$500 for each  
17 violation. Any penalties enforced under this subsection shall  
18 be in addition to other penalties provided by this act.  
19           (5) Any person who violates the provisions of s.  
20 384.24(2) commits a felony of the third degree, punishable as  
21 provided in ss. 775.082, 775.083, 775.084, and 775.0877(7).  
22 Any person who commits multiple violations of the provisions  
23 of s. 384.24(2) commits a felony of the first degree,  
24 punishable as provided in ss. 775.082, 775.083, 775.084, and  
25 775.0877(7).  
26           (6) Any person who obtains information that identifies  
27 an individual who has a sexually transmissible disease, who  
28 knew or should have known the nature of the information and  
29 maliciously, or for monetary gain, disseminates this  
30 information or otherwise makes this information known to any  
31 other person, except by providing it either to a physician or

1 nurse employed by the Department of Health or to a law  
2 enforcement agency, commits a felony of the third degree,  
3 punishable as provided in ss. 775.082, 775.083, 775.084, and  
4 775.0877(7).

5 Section 6. Subsection (1) of section 455.604, Florida  
6 Statutes, is amended to read:

7 455.604 Requirement for instruction for certain  
8 licensees on human immunodeficiency virus and acquired immune  
9 deficiency syndrome.--

10 (1) The appropriate board shall require each person  
11 licensed or certified under chapter 457; chapter 458; chapter  
12 459; chapter 460; chapter 461; chapter 463; chapter 464;  
13 chapter 465; chapter 466; part II, part III, or part V of  
14 chapter 468; chapter 470; or chapter 486 to complete a  
15 continuing educational course, approved by the board, on human  
16 immunodeficiency virus and acquired immune deficiency syndrome  
17 as part of biennial relicensure or recertification. The course  
18 shall consist of education on the modes of transmission,  
19 infection control procedures, clinical management, and  
20 prevention of human immunodeficiency virus and acquired immune  
21 deficiency syndrome. Such course shall include information on  
22 current Florida law on acquired immune deficiency syndrome,  
23 ~~and~~ its impact on testing, confidentiality of test results,  
24 and treatment of patients, and any protocols and procedures  
25 applicable to human immunodeficiency virus counseling and  
26 testing, reporting, and partner notification issues pursuant  
27 to ss. 381.004 and 384.25 and the offering of HIV testing to  
28 pregnant women.

29 Section 7. Subsections (1) and (2) of section  
30 775.0877, Florida Statutes, are amended to read:

31

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 381.0041(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 8. 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 9. This act shall take effect upon becoming a  
13 law.

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