

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on State Administration offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof:

Section 1. Section 945.355, Florida Statutes, is
created to read:

945.355 HIV testing of inmates prior to release.--

(1) As used in this section, the term "HIV test" means
a test ordered to determine the presence of the antibody or
antigen to human immunodeficiency virus or the presence of
human immunodeficiency virus infection.

(2) Pursuant to s. 381.004(3), the department shall
perform an HIV test on an inmate whose HIV status is unknown
to the department not less than 60 days prior to the inmate's
presumptive release date from prison by reason of parole,
accumulation of gain-time credits, or expiration of sentence.
An inmate who is known to the department to be HIV positive or
who has been tested within the previous year and does not
request retesting need not be tested under this section, but

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1 is subject to subsections (4) and (5). However, an inmate who
2 is released due to an emergency is exempt from the provisions
3 of this section.

4 (3) The department shall record the results of the HIV
5 test in the inmate's medical record.

6 (4) Pursuant to ss. 381.004(3) and 945.10, the
7 department shall notify the Department of Health and the
8 county health department where the inmate plans to reside
9 regarding an inmate who is known to be HIV positive or has
10 received an HIV positive test result under this section prior
11 to the release of that inmate.

12 (5) Prior to the release of an inmate who is known to
13 be HIV positive or who has received a positive HIV test result
14 under this section, the department shall provide special
15 transitional assistance to the inmate, which must include:

16 (a) Education on preventing the transmission of HIV to
17 others and on the importance of receiving followup care and
18 treatment.

19 (b) A written, individualized discharge plan that
20 includes referrals and contacts to the county health
21 department and local HIV primary care services in the area
22 where the inmate plans to reside.

23 (c) If appropriate, a 30-day supply of all medicines
24 the inmate is taking at the time of release.

25 (6) The department shall report to the Legislature by
26 March 1, 2002, as to the implementation of this program and
27 the participation by inmates and staff.

28 Section 2. Paragraph (a) of subsection (1) of section
29 945.10, Florida Statutes, is reenacted, and subsection (2) of
30 said section is amended, to read:

31 945.10 Confidential information.--

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1 (1) Except as otherwise provided by law or in this
2 section, the following records and information of the
3 Department of Corrections are confidential and exempt from the
4 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
5 Constitution:

6 (a) Mental health, medical, or substance abuse records
7 of an inmate or an offender.

8 (2) The records and information specified in
9 paragraphs (1)(a)-(h)~~(1)(b)-(h)~~ may be released as follows
10 unless expressly prohibited by federal law:

11 (a) Information specified in paragraphs (1)(b), (d),
12 and (f) to the Office of the Governor, the Legislature, the
13 Parole Commission, the Department of Children and Family
14 Services, a private correctional facility or program that
15 operates under a contract, the Department of Legal Affairs, a
16 state attorney, the court, or a law enforcement agency. A
17 request for records or information pursuant to this paragraph
18 need not be in writing.

19 (b) Information specified in paragraphs (1)(c), (e),
20 and (h) to the Office of the Governor, the Legislature, the
21 Parole Commission, the Department of Children and Family
22 Services, a private correctional facility or program that
23 operates under contract, the Department of Legal Affairs, a
24 state attorney, the court, or a law enforcement agency. A
25 request for records or information pursuant to this paragraph
26 must be in writing and a statement provided demonstrating a
27 need for the records or information.

28 (c) Information specified in paragraph (1)(b) to an
29 attorney representing an inmate under sentence of death,
30 except those portions of the records containing a victim's
31 statement or address, or the statement or address of a

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1 relative of the victim. A request for records of information
2 pursuant to this paragraph must be in writing and a statement
3 provided demonstrating a need for the records or information.

4 (d) Information specified in paragraph (1)(b) to a
5 public defender representing a defendant, except those
6 portions of the records containing a victim's statement or
7 address, or the statement or address of a relative of the
8 victim. A request for records or information pursuant to this
9 paragraph need not be in writing.

10 (e) Information specified in paragraph (1)(b) to state
11 or local governmental agencies. A request for records or
12 information pursuant to this paragraph must be in writing and
13 a statement provided demonstrating a need for the records or
14 information.

15 (f) Information specified in paragraph (1)(b) to a
16 person conducting legitimate research. A request for records
17 and information pursuant to this paragraph must be in writing,
18 the person requesting the records or information must sign a
19 confidentiality agreement, and the department must approve the
20 request in writing.

21 (g) Information specified in paragraph (1)(a) to the
22 Department of Health and the county health department where an
23 inmate plans to reside if he or she has tested positive for
24 the presence of the antibody or antigen to human
25 immunodeficiency virus infection pursuant to s. 945.355.

26
27 Records and information released under this subsection remain
28 confidential and exempt from the provisions of s. 119.07(1)
29 and s. 24(a), Art. I of the State Constitution when held by
30 the receiving person or entity.

31 Section 3. Paragraph (h) of subsection (3) of section

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1 381.004, Florida Statutes, is amended to read:

2 381.004 HIV testing.--

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

5 (h) Notwithstanding the provisions of paragraph (a),
6 informed consent is not required:

7 1. When testing for sexually transmissible diseases is
8 required by state or federal law, or by rule including the
9 following situations:

10 a. HIV testing pursuant to s. 796.08 of persons
11 convicted of prostitution or of procuring another to commit
12 prostitution.

13 b. HIV testing of inmates pursuant to s. 945.355 prior
14 to their release from prison by reason of parole, accumulation
15 of gain-time credits, or expiration of sentence.

16 ~~c.~~ Testing for HIV by a medical examiner in
17 accordance with s. 406.11.

18 2. Those exceptions provided for blood, plasma,
19 organs, skin, semen, or other human tissue pursuant to s.
20 381.0041.

21 3. For the performance of an HIV-related test by
22 licensed medical personnel in bona fide medical emergencies
23 when the test results are necessary for medical diagnostic
24 purposes to provide appropriate emergency care or treatment to
25 the person being tested and the patient is unable to consent,
26 as supported by documentation in the medical record.

27 Notification of test results in accordance with paragraph (c)
28 is required.

29 4. For the performance of an HIV-related test by
30 licensed medical personnel for medical diagnosis of acute
31 illness where, in the opinion of the attending physician,

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1 obtaining informed consent would be detrimental to the
2 patient, as supported by documentation in the medical record,
3 and the test results are necessary for medical diagnostic
4 purposes to provide appropriate care or treatment to the
5 person being tested. Notification of test results in
6 accordance with paragraph (c) is required if it would not be
7 detrimental to the patient. This subparagraph does not
8 authorize the routine testing of patients for HIV infection
9 without informed consent.

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

12 6. For the performance of an HIV test upon a defendant
13 pursuant to the victim's request in a prosecution for any type
14 of sexual battery where a blood sample is taken from the
15 defendant voluntarily, pursuant to court order for any
16 purpose, or pursuant to the provisions of s. 775.0877, s.
17 951.27, or s. 960.003; however, the results of any HIV test
18 performed shall be disclosed solely to the victim and the
19 defendant, except as provided in ss. 775.0877, 951.27, and
20 960.003.

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

22 8. For epidemiological research pursuant to s.
23 381.0032, for research consistent with institutional review
24 boards created by 45 C.F.R. part 46, or for the performance of
25 an HIV-related test for the purpose of research, if the
26 testing is performed in a manner by which the identity of the
27 test subject is not known and may not be retrieved by the
28 researcher.

29 9. When human tissue is collected lawfully without the
30 consent of the donor for corneal removal as authorized by s.
31 732.9185 or enucleation of the eyes as authorized by s.

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1 732.919.

2 10. For the performance of an HIV test upon an
3 individual who comes into contact with medical personnel in
4 such a way that a significant exposure has occurred during the
5 course of employment or within the scope of practice and where
6 a blood sample is available that was taken from that
7 individual voluntarily by medical personnel for other
8 purposes. The term "medical personnel" includes a licensed or
9 certified health care professional; an employee of a health
10 care professional or health care facility; employees of a
11 laboratory licensed under chapter 483; personnel of a blood
12 bank or plasma center; a medical student or other student who
13 is receiving training as a health care professional at a
14 health care facility; and a paramedic or emergency medical
15 technician certified by the department to perform life-support
16 procedures under s. 401.23.

17 a. Prior to performance of an HIV test on a
18 voluntarily obtained blood sample, the individual from whom
19 the blood was obtained shall be requested to consent to the
20 performance of the test and to the release of the results.
21 The individual's refusal to consent and all information
22 concerning the performance of an HIV test and any HIV test
23 result shall be documented only in the medical personnel's
24 record unless the individual gives written consent to entering
25 this information on the individual's medical record.

26 b. Reasonable attempts to locate the individual and to
27 obtain consent shall be made and all attempts must be
28 documented. If the individual cannot be found, an HIV test may
29 be conducted on the available blood sample. If the individual
30 does not voluntarily consent to the performance of an HIV
31 test, the individual shall be informed that an HIV test will

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1 be performed, and counseling shall be furnished as provided in
2 this section. However, HIV testing shall be conducted only
3 after a licensed physician documents, in the medical record of
4 the medical personnel, that there has been a significant
5 exposure and that, in the physician's medical judgment, the
6 information is medically necessary to determine the course of
7 treatment for the medical personnel.

8 c. Costs of any HIV test of a blood sample performed
9 with or without the consent of the individual, as provided in
10 this subparagraph, shall be borne by the medical personnel or
11 the employer of the medical personnel. However, costs of
12 testing or treatment not directly related to the initial HIV
13 tests or costs of subsequent testing or treatment shall not be
14 borne by the medical personnel or the employer of the medical
15 personnel.

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

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

26 f. If the source of the exposure will not voluntarily
27 submit to HIV testing and a blood sample is not available, the
28 medical personnel or the employer of such person acting on
29 behalf of the employee may seek a court order directing the
30 source of the exposure to submit to HIV testing. A sworn
31 statement by a physician licensed under chapter 458 or chapter

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1 459 that a significant exposure has occurred and that, in the
2 physician's medical judgment, testing is medically necessary
3 to determine the course of treatment constitutes probable
4 cause for the issuance of an order by the court. The results
5 of the test shall be released to the source of the exposure
6 and to the person who experienced the exposure.

7 11. For the performance of an HIV test upon an
8 individual who comes into contact with medical personnel in
9 such a way that a significant exposure has occurred during the
10 course of employment or within the scope of practice of the
11 medical personnel while the medical personnel provides
12 emergency medical treatment to the individual; or who comes
13 into contact with nonmedical personnel in such a way that a
14 significant exposure has occurred while the nonmedical
15 personnel provides emergency medical assistance during a
16 medical emergency. For the purposes of this subparagraph, a
17 medical emergency means an emergency medical condition outside
18 of a hospital or health care facility that provides physician
19 care. The test may be performed only during the course of
20 treatment for the medical emergency.

21 a. An individual who is capable of providing consent
22 shall be requested to consent to an HIV test prior to the
23 testing. The individual's refusal to consent, and all
24 information concerning the performance of an HIV test and its
25 result, shall be documented only in the medical personnel's
26 record unless the individual gives written consent to entering
27 this information on the individual's medical record.

28 b. HIV testing shall be conducted only after a
29 licensed physician documents, in the medical record of the
30 medical personnel or nonmedical personnel, that there has been
31 a significant exposure and that, in the physician's medical

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1 judgment, the information is medically necessary to determine
2 the course of treatment for the medical personnel or
3 nonmedical personnel.

4 c. Costs of any HIV test performed with or without the
5 consent of the individual, as provided in this subparagraph,
6 shall be borne by the medical personnel or the employer of the
7 medical personnel or nonmedical personnel. However, costs of
8 testing or treatment not directly related to the initial HIV
9 tests or costs of subsequent testing or treatment shall not be
10 borne by the medical personnel or the employer of the medical
11 personnel or nonmedical personnel.

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

17 e. A person who receives the results of an HIV test
18 pursuant to this subparagraph shall maintain the
19 confidentiality of the information received and of the persons
20 tested. Such confidential information is exempt from s.
21 119.07(1).

22 f. If the source of the exposure will not voluntarily
23 submit to HIV testing and a blood sample was not obtained
24 during treatment for the medical emergency, the medical
25 personnel, the employer of the medical personnel acting on
26 behalf of the employee, or the nonmedical personnel may seek a
27 court order directing the source of the exposure to submit to
28 HIV testing. A sworn statement by a physician licensed under
29 chapter 458 or chapter 459 that a significant exposure has
30 occurred and that, in the physician's medical judgment,
31 testing is medically necessary to determine the course of

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1 treatment constitutes probable cause for the issuance of an
2 order by the court. The results of the test shall be released
3 to the source of the exposure and to the person who
4 experienced the exposure.

5 12. For the performance of an HIV test by the medical
6 examiner or attending physician upon an individual who expired
7 or could not be resuscitated while receiving emergency medical
8 assistance or care and who was the source of a significant
9 exposure to medical or nonmedical personnel providing such
10 assistance or care.

11 a. HIV testing may be conducted only after a licensed
12 physician documents in the medical record of the medical
13 personnel or nonmedical personnel that there has been a
14 significant exposure and that, in the physician's medical
15 judgment, the information is medically necessary to determine
16 the course of treatment for the medical personnel or
17 nonmedical personnel.

18 b. Costs of any HIV test performed under this
19 subparagraph may not be charged to the deceased or to the
20 family of the deceased person.

21 c. For the provisions of this subparagraph to be
22 applicable, the medical personnel or nonmedical personnel must
23 be tested for HIV under this section or must provide the
24 results of an HIV test taken within 6 months before the
25 significant exposure if such test results are negative.

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

28 13. For the performance of an HIV-related test
29 medically indicated by licensed medical personnel for medical
30 diagnosis of a hospitalized infant as necessary to provide
31 appropriate care and treatment of the infant when, after a

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1 reasonable attempt, a parent cannot be contacted to provide
2 consent. The medical records of the infant shall reflect the
3 reason consent of the parent was not initially obtained. Test
4 results shall be provided to the parent when the parent is
5 located.

6 14. For the performance of HIV testing conducted to
7 monitor the clinical progress of a patient previously
8 diagnosed to be HIV positive.

9 15. For the performance of repeated HIV testing
10 conducted to monitor possible conversion from a significant
11 exposure.

12 Section 4. Section 944.704, Florida Statutes, is
13 amended to read:

14 944.704 Staff who provide transition assistance;
15 duties.--The department shall provide a transition assistance
16 officer at major institutions whose duties include, but are
17 not limited to:

18 (1) Coordinating delivery of transition assistance
19 program services at the institution.

20 (2) Assisting in the development of each inmate's
21 postrelease plan.

22 (3) Obtaining job placement information for
23 transmittal to the Department of Labor and Employment
24 Security.

25 (4) Providing a photo identification card to all
26 inmates prior to their release.

27 (5) Providing a written medical discharge plan,
28 referral to a county health department, and, if appropriate, a
29 supply of prescribed medication for an inmate known to be HIV
30 positive or who has received an HIV positive test result under
31 s. 945.355.

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1 Section 5. This act shall take effect July 1, 2001.

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4 ===== T I T L E A M E N D M E N T =====

5 And the title is amended as follows:

6 remove from the title of the bill: the entire title

7

8 and insert in lieu thereof:

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A bill to be entitled

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An act relating to the testing of inmates for

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HIV; creating s. 945.355, F.S.; defining the

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term "HIV test"; requiring the Department of

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Corrections to perform an HIV test before an

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inmate is released if the inmate's HIV status

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is unknown; providing certain exceptions;

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requiring that the Department of Corrections

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notify the county health department where the

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inmate plans to reside following release if the

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inmate is HIV positive; requiring the

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department to provide special transitional

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assistance to an inmate who is HIV positive;

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requiring the department to report to the

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Legislature; amending s. 945.10, F.S.;

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requiring certain medical records be released

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to the Department of Health and the county

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health department where an inmate who is HIV

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positive plans to reside; reenacting s.

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945.10(1)(a), F.S., relating to mental health,

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medical, or substance abuse records of an

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inmate; amending s. 381.004, F.S.; providing

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that informed consent is not required for an

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1 HIV test of an inmate prior to the inmate's
2 release; amending s. 944.704, F.S.; providing
3 additional duties for the department with
4 respect to transition assistance for inmates
5 who are HIV positive; providing an effective
6 date.

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8 WHEREAS, HIV and AIDS infections are one of the state's
9 most critical challenges, with Florida having the third
10 highest number of AIDS cases in the nation and the second
11 highest number of pediatric AIDS cases, and

12 WHEREAS, the prevalence of HIV and AIDS cases in the
13 state's prisons exceeds the prevalence of HIV and AIDS in the
14 general population, and

15 WHEREAS, between 1989 and 1997, death due to AIDS
16 accounted for over half of inmate deaths in the state's
17 prisons, and

18 WHEREAS, recent advances in treatment for HIV and AIDS
19 can potentially reduce the number of opportunistic infections
20 and associated medical costs and delay the onset of death due
21 to the disease, and

22 WHEREAS, referral to appropriate medical and social
23 services upon the release of an inmate can play a crucial role
24 in the treatment, care, and secondary prevention efforts, NOW,
25 THEREFORE,

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