

By the Committee on Criminal Justice and Senators Dawson and Miller

307-1556-01

1                                   A bill to be entitled  
2           An act relating to the testing of inmates for  
3           HIV; creating s. 944.355, F.S.; defining the  
4           term "HIV test"; requiring the Department of  
5           Corrections to perform an HIV test before an  
6           inmate is released if the inmate's HIV status  
7           is unknown; providing certain exceptions;  
8           requiring that the Department of Corrections  
9           notify the county health department where the  
10          inmate plans to reside following release if the  
11          inmate is HIV positive; requiring the  
12          department to provide special transitional  
13          assistance to an inmate who is HIV positive;  
14          requiring the department to report to the  
15          Legislature; amending s. 945.10, F.S.;  
16          requiring certain medical records be released  
17          to the Department of Health and the county  
18          health department where an inmate who is HIV  
19          positive plans to reside; reenacting s.  
20          945.10(1)(a), F.S., relating to mental health,  
21          medical, or substance abuse records of an  
22          inmate; amending s. 381.004, F.S.; providing  
23          that informed consent is not required for an  
24          HIV test of an inmate prior to the inmate's  
25          release; amending s. 944.704, F.S.; providing  
26          additional duties for the department with  
27          respect to transition assistance for inmates  
28          who are HIV positive; providing an effective  
29          date.  
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1           WHEREAS, HIV and AIDS infections are one of the state's  
2 most critical challenges, with Florida having the third  
3 highest number of AIDS cases in the nation and the second  
4 highest number of pediatric AIDS cases, and

5           WHEREAS, the prevalence of HIV and AIDS cases in the  
6 state's prisons exceed the prevalence of HIV and AIDS in the  
7 general population, and

8           WHEREAS, between 1989 and 1997, death due to AIDS  
9 accounted for over half of inmate deaths in the state's  
10 prisons, and

11           WHEREAS, recent advances in treatment for HIV and AIDS  
12 can potentially reduce the number of opportunistic infections  
13 and associated medical costs and delay the onset of death due  
14 to the disease, and

15           WHEREAS, referral to appropriate medical and social  
16 services upon the release of an inmate can play a crucial role  
17 in the treatment, care, and secondary prevention efforts, NOW  
18 THEREFORE,

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

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

24           945.355 HIV testing of inmates prior to release.--

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

29           (2) Pursuant to s. 381.004(3), the department shall  
30 perform an HIV test on an inmate, whose HIV status is unknown  
31 to the department, not less than 60 days prior to the inmate's

1 presumptive release date from prison by reason of parole,  
2 accumulation of gain-time credits, or expiration of sentence.  
3 An inmate who is known to the department to be HIV positive or  
4 who has been tested within the previous year and does not  
5 request retesting need not be tested under this section, but  
6 is subject to subsections (4) and (5). However, an inmate who  
7 is released due to an emergency is exempt from the provisions  
8 of this section.

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

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

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

21 (a) Education on preventing the transmission of HIV to  
22 others and on the importance of receiving follow-up care and  
23 treatment.

24 (b) A written, individualized discharge plan that  
25 includes referrals and contacts to the county health  
26 department and local HIV primary care services in the area  
27 where the inmate plans to reside.

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

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

4           Section 2. Paragraph (a) of subsection (1) of section  
5 945.10, Florida Statutes, is reenacted, and subsection (2) of  
6 that section is amended to read:

7           945.10 Confidential information.--

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

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

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

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

26           (b) Information specified in paragraphs (1)(c), (e),  
27 and (h) to the Office of the Governor, the Legislature, the  
28 Parole Commission, the Department of Children and Family  
29 Services, a private correctional facility or program that  
30 operates under contract, the Department of Legal Affairs, a  
31 state attorney, the court, or a law enforcement agency. A

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

4 (c) Information specified in paragraph (1)(b) to an  
5 attorney representing an inmate under sentence of death,  
6 except those portions of the records containing a victim's  
7 statement or address, or the statement or address of a  
8 relative of the victim. A request for records of information  
9 pursuant to this paragraph must be in writing and a statement  
10 provided demonstrating a need for the records or information.

11 (d) Information specified in paragraph (1)(b) to a  
12 public defender representing a defendant, except those  
13 portions of the records containing a victim's statement or  
14 address, or the statement or address of a relative of the  
15 victim. A request for records or information pursuant to this  
16 paragraph need not be in writing.

17 (e) Information specified in paragraph (1)(b) to state  
18 or local governmental agencies. A request for records or  
19 information pursuant to this paragraph must be in writing and  
20 a statement provided demonstrating a need for the records or  
21 information.

22 (f) Information specified in paragraph (1)(b) to a  
23 person conducting legitimate research. A request for records  
24 and information pursuant to this paragraph must be in writing,  
25 the person requesting the records or information must sign a  
26 confidentiality agreement, and the department must approve the  
27 request in writing.

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

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4 Records and information released under this subsection remain  
5 confidential and exempt from the provisions of s. 119.07(1)  
6 and s. 24(a), Art. I of the State Constitution when held by  
7 the receiving person or entity.

8 Section 3. Paragraph (h) of subsection (3) of section  
9 381.004, Florida Statutes, is amended to read:

10 381.004 HIV testing.--

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

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

15 1. When testing for sexually transmissible diseases is  
16 required by state or federal law, or by rule including the  
17 following situations:

18 a. HIV testing pursuant to s. 796.08 of persons  
19 convicted of prostitution or of procuring another to commit  
20 prostitution.

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

24 ~~c.b.~~ Testing for HIV by a medical examiner in  
25 accordance with s. 406.11.

26 2. Those exceptions provided for blood, plasma,  
27 organs, skin, semen, or other human tissue pursuant to s.  
28 381.0041.

29 3. For the performance of an HIV-related test by  
30 licensed medical personnel in bona fide medical emergencies  
31 when the test results are necessary for medical diagnostic

1 purposes to provide appropriate emergency care or treatment to  
2 the person being tested and the patient is unable to consent,  
3 as supported by documentation in the medical record.

4 Notification of test results in accordance with paragraph (c)  
5 is required.

6           4. For the performance of an HIV-related test by  
7 licensed medical personnel for medical diagnosis of acute  
8 illness where, in the opinion of the attending physician,  
9 obtaining informed consent would be detrimental to the  
10 patient, as supported by documentation in the medical record,  
11 and the test results are necessary for medical diagnostic  
12 purposes to provide appropriate care or treatment to the  
13 person being tested. Notification of test results in  
14 accordance with paragraph (c) is required if it would not be  
15 detrimental to the patient. This subparagraph does not  
16 authorize the routine testing of patients for HIV infection  
17 without informed consent.

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

20           6. For the performance of an HIV test upon a defendant  
21 pursuant to the victim's request in a prosecution for any type  
22 of sexual battery where a blood sample is taken from the  
23 defendant voluntarily, pursuant to court order for any  
24 purpose, or pursuant to the provisions of s. 775.0877, s.  
25 951.27, or s. 960.003; however, the results of any HIV test  
26 performed shall be disclosed solely to the victim and the  
27 defendant, except as provided in ss. 775.0877, 951.27, and  
28 960.003.

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

30           8. For epidemiological research pursuant to s.  
31 381.0032, for research consistent with institutional review

1 boards created by 45 C.F.R. part 46, or for the performance of  
2 an HIV-related test for the purpose of research, if the  
3 testing is performed in a manner by which the identity of the  
4 test subject is not known and may not be retrieved by the  
5 researcher.

6           9. When human tissue is collected lawfully without the  
7 consent of the donor for corneal removal as authorized by s.  
8 732.9185 or enucleation of the eyes as authorized by s.  
9 732.919.

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

25           a. Prior to performance of an HIV test on a  
26 voluntarily obtained blood sample, the individual from whom  
27 the blood was obtained shall be requested to consent to the  
28 performance of the test and to the release of the results.  
29 The individual's refusal to consent and all information  
30 concerning the performance of an HIV test and any HIV test  
31 result shall be documented only in the medical personnel's



1 record unless the individual gives written consent to entering  
2 this information on the individual's medical record.

3       b. Reasonable attempts to locate the individual and to  
4 obtain consent shall be made and all attempts must be  
5 documented. If the individual cannot be found, an HIV test may  
6 be conducted on the available blood sample. If the individual  
7 does not voluntarily consent to the performance of an HIV  
8 test, the individual shall be informed that an HIV test will  
9 be performed, and counseling shall be furnished as provided in  
10 this section. However, HIV testing shall be conducted only  
11 after a licensed physician documents, in the medical record of  
12 the medical personnel, that there has been a significant  
13 exposure and that, in the physician's medical judgment, the  
14 information is medically necessary to determine the course of  
15 treatment for the medical personnel.

16       c. Costs of any HIV test of a blood sample performed  
17 with or without the consent of the individual, as provided in  
18 this subparagraph, shall be borne by the medical personnel or  
19 the employer of the medical personnel. However, costs of  
20 testing or treatment not directly related to the initial HIV  
21 tests or costs of subsequent testing or treatment shall not be  
22 borne by the medical personnel or the employer of the medical  
23 personnel.

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

29       e. A person who receives the results of an HIV test  
30 pursuant to this subparagraph shall maintain the  
31 confidentiality of the information received and of the persons

1 tested. Such confidential information is exempt from s.  
2 119.07(1).

3 f. If the source of the exposure will not voluntarily  
4 submit to HIV testing and a blood sample is not available, the  
5 medical personnel or the employer of such person acting on  
6 behalf of the employee may seek a court order directing the  
7 source of the exposure to submit to HIV testing. A sworn  
8 statement by a physician licensed under chapter 458 or chapter  
9 459 that a significant exposure has occurred and that, in the  
10 physician's medical judgment, testing is medically necessary  
11 to determine the course of treatment constitutes probable  
12 cause for the issuance of an order by the court. The results  
13 of the test shall be released to the source of the exposure  
14 and to the person who experienced the exposure.

15 11. For the performance of an HIV test upon an  
16 individual who comes into contact with medical personnel in  
17 such a way that a significant exposure has occurred during the  
18 course of employment or within the scope of practice of the  
19 medical personnel while the medical personnel provides  
20 emergency medical treatment to the individual; or who comes  
21 into contact with nonmedical personnel in such a way that a  
22 significant exposure has occurred while the nonmedical  
23 personnel provides emergency medical assistance during a  
24 medical emergency. For the purposes of this subparagraph, a  
25 medical emergency means an emergency medical condition outside  
26 of a hospital or health care facility that provides physician  
27 care. The test may be performed only during the course of  
28 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         f. If the source of the exposure will not voluntarily  
31 submit to HIV testing and a blood sample was not obtained

1 during treatment for the medical emergency, the medical  
2 personnel, the employer of the medical personnel acting on  
3 behalf of the employee, or the nonmedical personnel may seek a  
4 court order directing the source of the exposure to submit to  
5 HIV testing. A sworn statement by a physician licensed under  
6 chapter 458 or chapter 459 that a significant exposure has  
7 occurred and that, in the physician's medical judgment,  
8 testing is medically necessary to determine the course of  
9 treatment constitutes probable cause for the issuance of an  
10 order by the court. The results of the test shall be released  
11 to the source of the exposure and to the person who  
12 experienced the exposure.

13           12. For the performance of an HIV test by the medical  
14 examiner or attending physician upon an individual who expired  
15 or could not be resuscitated while receiving emergency medical  
16 assistance or care and who was the source of a significant  
17 exposure to medical or nonmedical personnel providing such  
18 assistance or care.

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

26           b. Costs of any HIV test performed under this  
27 subparagraph may not be charged to the deceased or to the  
28 family of the deceased person.

29           c. For the provisions of this subparagraph to be  
30 applicable, the medical personnel or nonmedical personnel must  
31 be tested for HIV under this section or must provide the

1 results of an HIV test taken within 6 months before the  
2 significant exposure if such test results are negative.

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

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

14 14. For the performance of HIV testing conducted to  
15 monitor the clinical progress of a patient previously  
16 diagnosed to be HIV positive.

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

20 Section 4. Section 944.704, Florida Statutes, is  
21 amended to read:

22 944.704 Staff who provide transition assistance;  
23 duties.--The department shall provide a transition assistance  
24 officer at major institutions whose duties include, but are  
25 not limited to:

26 (1) Coordinating delivery of transition assistance  
27 program services at the institution.

28 (2) Assisting in the development of each inmate's  
29 postrelease plan.

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1           (3) Obtaining job placement information for  
2 transmittal to the Department of Labor and Employment  
3 Security.

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

6           (5) Providing a written medical discharge plan,  
7 referral to a county health department, and, if appropriate, a  
8 supply of prescribed medication for an inmate known to be HIV  
9 positive or who has received an HIV positive test result under  
10 s. 945.355.

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

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 954

- The CS directs the Department of Corrections to test every inmate for the HIV virus not less than 60 days prior to release, where as the original bill did not express such a time frame, and the CS would exempt from such testing those inmates known to be HIV positive or those who have been tested within the past year and does not request another test, whereas the original bill only exempted those tested within the previous 60 days.
- The CS adds the following:
  - . Requires that the Department of Corrections notify the Department of Health and the local health department in the county where that inmate plans to reside for every inmate about to be released who is determined to be HIV positive.
  - . Mandates the Department of Corrections to report to the Legislature by March 1, 2002, on the implementation of this program.
  - . Gives the Department of Corrections the authority to provide HIV status information to the Department of Health.
  - . Adds inmates about to be released from prison to the list of situations for which informed consent to test for HIV is not required.
  - . Provides for transitional assistance for those who have tested positive for HIV described in the original bill and carried over into the CS to the list of transitional assistance items the Department of Corrections staff who provide transitional assistance provide to inmates being released.