

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 The Committee on Crime Prevention, Corrections & Safety
12 offered the following:

14 **Amendment (with title amendment)**

15 Remove everything after the enacting clause

17 and insert:

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

20 945.355 HIV testing of inmates prior to release.--

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

25 (2) If an inmate's HIV status is unknown to the
26 department, the department shall, pursuant to s. 381.004(3),
27 perform an HIV test on the inmate not less than 60 days prior
28 to the inmate's presumptive release date from prison by reason
29 of parole, accumulation of gain-time credits, or expiration of
30 sentence. An inmate who is known to the department to be HIV
31 positive or who has been tested within the previous year and

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1 does not request retesting need not be tested under this
2 section, but is subject to subsections (4) and (5). However,
3 an inmate who is released due to an emergency is exempt from
4 the provisions of this section.

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

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

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

17 (a) Education on preventing the transmission of HIV to
18 others and on the importance of receiving follow-up care and
19 treatment.

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

24 (c) A 30-day supply of all HIV/AIDS-related
25 medications that the inmate is taking prior to release under
26 the protocols of the Department of Corrections and the
27 treatment guidelines of the United States Department of Health
28 and Human Services.

29 Section 2. By March 1, 2003, the Department of
30 Corrections shall submit a report to the Legislature
31 concerning the department's implementation of section 945.355,

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1 Florida Statutes. At a minimum, the report must include the
2 total number of inmates tested under the program, the number
3 of inmates who tested positive for HIV, the number of inmates
4 who received special transitional assistance, and the number
5 of inmates who received medication in accordance with
6 protocols of the Department of Corrections and the treatment
7 guidelines of the United States Department of Health and Human
8 Services.

9 Section 3. Paragraph (a) of subsection (1) of section
10 945.10, Florida Statutes, is reenacted, and subsection (2) of
11 that section is amended to read:

12 945.10 Confidential information.--

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

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

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

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

31 (b) Information specified in paragraphs (1)(c), (e),

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1 and (h) to the Office of the Governor, the Legislature, the
2 Parole Commission, the Department of Children and Family
3 Services, a private correctional facility or program that
4 operates under contract, the Department of Legal Affairs, a
5 state attorney, the court, or a law enforcement agency. A
6 request for records or information pursuant to this paragraph
7 must be in writing and a statement provided demonstrating a
8 need for the records or information.

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

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

22 (e) Information specified in paragraph (1)(b) to state
23 or local governmental agencies. A request for records or
24 information pursuant to this paragraph must be in writing and
25 a statement provided demonstrating a need for the records or
26 information.

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

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1 request in writing.

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

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

12 Section 4. Paragraph (h) of subsection (3) of section
13 381.004, Florida Statutes, is amended to read:

14 381.004 HIV testing.--

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

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

19 1. When testing for sexually transmissible diseases is
20 required by state or federal law, or by rule including the
21 following situations:

22 a. HIV testing pursuant to s. 796.08 of persons
23 convicted of prostitution or of procuring another to commit
24 prostitution.

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

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

30 2. Those exceptions provided for blood, plasma,
31 organs, skin, semen, or other human tissue pursuant to s.

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1 381.0041.

2 3. For the performance of an HIV-related test by
3 licensed medical personnel in bona fide medical emergencies
4 when the test results are necessary for medical diagnostic
5 purposes to provide appropriate emergency care or treatment to
6 the person being tested and the patient is unable to consent,
7 as supported by documentation in the medical record.
8 Notification of test results in accordance with paragraph (c)
9 is required.

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

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

24 6. For the performance of an HIV test upon a defendant
25 pursuant to the victim's request in a prosecution for any type
26 of sexual battery where a blood sample is taken from the
27 defendant voluntarily, pursuant to court order for any
28 purpose, or pursuant to the provisions of s. 775.0877, s.
29 951.27, or s. 960.003; however, the results of any HIV test
30 performed shall be disclosed solely to the victim and the
31 defendant, except as provided in ss. 775.0877, 951.27, and

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1 960.003.

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

3 8. For epidemiological research pursuant to s.
4 381.0032, for research consistent with institutional review
5 boards created by 45 C.F.R. part 46, or for the performance of
6 an HIV-related test for the purpose of research, if the
7 testing is performed in a manner by which the identity of the
8 test subject is not known and may not be retrieved by the
9 researcher.

10 9. When human tissue is collected lawfully without the
11 consent of the donor for corneal removal as authorized by s.
12 765.5185 or enucleation of the eyes as authorized by s.
13 765.519.

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

29 a. Prior to performance of an HIV test on a
30 voluntarily obtained blood sample, the individual from whom
31 the blood was obtained shall be requested to consent to the

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1 performance of the test and to the release of the results.
2 The individual's refusal to consent and all information
3 concerning the performance of an HIV test and any HIV test
4 result shall be documented only in the medical personnel's
5 record unless the individual gives written consent to entering
6 this information on the individual's medical record.

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

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

28 d. In order to utilize the provisions of this
29 subparagraph, the medical personnel must either be tested for
30 HIV pursuant to this section or provide the results of an HIV
31 test taken within 6 months prior to the significant exposure

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1 if such test results are negative.

2 e. A person who receives the results of an HIV test
3 pursuant to this subparagraph shall maintain the
4 confidentiality of the information received and of the persons
5 tested. Such confidential information is exempt from s.
6 119.07(1).

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

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

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1 treatment for the medical emergency.

2 a. An individual who is capable of providing consent
3 shall be requested to consent to an HIV test prior to the
4 testing. The individual's refusal to consent, and all
5 information concerning the performance of an HIV test and its
6 result, shall be documented only in the medical personnel's
7 record unless the individual gives written consent to entering
8 this information on the individual's medical record.

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

16 c. Costs of any HIV test performed with or without the
17 consent of the individual, as provided in this subparagraph,
18 shall be borne by the medical personnel or the employer of the
19 medical personnel or nonmedical 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 or nonmedical personnel.

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

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

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

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

30 b. Costs of any HIV test performed under this
31 subparagraph may not be charged to the deceased or to the

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1 family of the deceased person.

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

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

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

18 14. For the performance of HIV testing conducted to
19 monitor the clinical progress of a patient previously
20 diagnosed to be HIV positive.

21 15. For the performance of repeated HIV testing
22 conducted to monitor possible conversion from a significant
23 exposure.

24 Section 5. Section 944.704, Florida Statutes, is
25 amended to read:

26 944.704 Staff who provide transition assistance;
27 duties.--The department shall provide a transition assistance
28 specialist at each of the major institutions whose duties
29 include, but are not limited to:

30 (1) Coordinating delivery of transition assistance
31 program services at the institution and at the community

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1 correctional centers authorized pursuant to s. 945.091(1)(b).

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

4 (3) Obtaining job placement information.

5 (4) Providing a written medical-discharge plan and
6 referral to a county health department.

7 (5) For an inmate who is known to be HIV positive,
8 providing a 30-day supply of all HIV/AIDS-related medication
9 that the inmate is taking prior to release, if required under
10 protocols of the Department of Corrections and treatment
11 guidelines of the United States Department of Health and Human
12 Services.

13 (6)(4) Facilitating placement in a private transition
14 housing program, if requested by any eligible inmate. If an
15 inmate who is nearing his or her date of release requests
16 placement in a contracted substance abuse transition housing
17 program, the transition assistance specialist shall inform the
18 inmate of program availability and assess the inmate's need
19 and suitability for transition housing assistance. If an
20 inmate is approved for placement, the specialist shall assist
21 the inmate and coordinate the release of the inmate with the
22 selected program. If an inmate requests and is approved for
23 placement in a contracted faith-based substance abuse
24 transition housing program, the specialist must consult with
25 the chaplain prior to such placement. In selecting inmates who
26 are nearing their date of release for placement in a
27 faith-based program, the department shall ensure that an
28 inmate's faith orientation, or lack thereof, will not be
29 considered in determining admission to the program and that
30 the program does not attempt to convert an inmate toward a
31 particular faith or religious preference.

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1 ~~(7)(5)~~ Providing a photo identification card to all
2 inmates prior to their release.

3
4 The transition assistance specialist may not be a correctional
5 officer or correctional probation officer as defined in s.
6 943.10.

7 Section 6. The sum of \$793,244 is appropriated from
8 the General Revenue Fund to the Department of Corrections for
9 the 2002-2003 fiscal year for the purpose of implementing the
10 provisions of this act.

11 Section 7. This act shall take effect July 1, 2002.

12
13
14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16 On page ,
17 remove:

18
19 and insert:

20 An act relating to the testing of inmates for
21 HIV; creating s. 945.355, F.S.; defining the
22 term "HIV test"; requiring the Department of
23 Corrections to perform an HIV test before an
24 inmate is released if the inmate's HIV status
25 is unknown; providing certain exceptions;
26 requiring that the Department of Corrections
27 notify the Department of Health and the county
28 health department where the inmate plans to
29 reside following release if the inmate is HIV
30 positive; requiring the department to provide
31 special transitional assistance to an inmate

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1 who is HIV positive; requiring the department
2 to report to the Legislature; amending s.
3 945.10, F.S.; requiring that certain medical
4 records be released to the Department of Health
5 and the county health department where an
6 inmate who is HIV positive plans to reside;
7 reenacting s. 945.10(1)(a), F.S., relating to
8 mental health, medical, or substance abuse
9 records of an inmate; amending s. 381.004,
10 F.S.; providing that informed consent is not
11 required for an HIV test of an inmate prior to
12 the inmate's release; amending s. 944.704,
13 F.S.; providing additional duties for the
14 department with respect to transition
15 assistance for inmates who are HIV positive;
16 providing an appropriation; providing an
17 effective date.

18
19 WHEREAS, HIV and AIDS infections are one of the state's
20 most critical challenges, with Florida having the third
21 highest number of AIDS cases in the nation and the second
22 highest number of pediatric AIDS cases, and

23 WHEREAS, the prevalence of HIV and AIDS cases in the
24 state's prisons exceeds the prevalence of HIV and AIDS in the
25 general population, and

26 WHEREAS, between 1989 and 1997, death due to AIDS
27 accounted for over half of inmate deaths in the state's
28 prisons, and

29 WHEREAS, recent advances in treatment for HIV and AIDS
30 can potentially reduce the number of opportunistic infections
31 and associated medical costs and delay the onset of death due

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1 to the disease, and

2 WHEREAS, referral to appropriate medical and social
3 services upon the release of an inmate can play a crucial role
4 in the treatment, care, and secondary prevention efforts, NOW
5 THEREFORE,

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