

1                                   A bill to be entitled  
2           An act relating to the testing of inmates for  
3           HIV; creating s. 945.355, 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 Department of Health and the county  
10          health department where the inmate plans to  
11          reside following release if the inmate is HIV  
12          positive; requiring the department to provide  
13          special transitional assistance to an inmate  
14          who is HIV positive; requiring the department  
15          to report to the Legislature; amending s.  
16          945.10, F.S.; requiring that certain medical  
17          records be released to the Department of Health  
18          and the county health department where an  
19          inmate who is HIV positive plans to reside;  
20          reenacting s. 945.10(1)(a), F.S., relating to  
21          mental health, medical, or substance abuse  
22          records of an inmate; amending s. 381.004,  
23          F.S.; providing that informed consent is not  
24          required for an HIV test of an inmate prior to  
25          the inmate's release; amending s. 944.704,  
26          F.S.; providing additional duties for the  
27          department with respect to transition  
28          assistance for inmates who are HIV positive;  
29          limiting liability; providing an appropriation;  
30          providing an effective 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 exceeds 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,

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
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) If an inmate's HIV status is unknown to the  
30 department, the department shall, pursuant to s. 381.004(3),  
31 perform an HIV test on the inmate not less than 60 days prior

1 to the inmate's presumptive release date from prison by reason  
2 of parole, accumulation of gain-time credits, or expiration of  
3 sentence. An inmate who is known to the department to be HIV  
4 positive or who has been tested within the previous year and  
5 does not request retesting need not be tested under this  
6 section, but is subject to subsections (4) and (5). However,  
7 an inmate who is released due to an emergency is exempt from  
8 the provisions 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 to and contacts with the county health  
26 department and local HIV primary care services in the area  
27 where the inmate plans to reside.

28 (c) A 30-day supply of all HIV/AIDS-related  
29 medications that the inmate is taking prior to release under  
30 the protocols of the Department of Corrections and the

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1 treatment guidelines of the United States Department of Health  
2 and Human Services.

3 Section 2. By March 1, 2003, the Department of  
4 Corrections shall submit a report to the Legislature  
5 concerning the department's implementation of section 945.355,  
6 Florida Statutes. At a minimum, the report must include the  
7 total number of inmates tested under the program, the number  
8 of inmates who tested positive for HIV, the number of inmates  
9 who received special transitional assistance, and the number  
10 of inmates who received medication in accordance with  
11 protocols of the Department of Corrections and the treatment  
12 guidelines of the United States Department of Health and Human  
13 Services.

14 Section 3. Paragraph (a) of subsection (1) of section  
15 945.10, Florida Statutes, is reenacted, and subsection (2) of  
16 that section is amended to read:

17 945.10 Confidential information.--

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

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

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

28 (a) Information specified in paragraphs (1)(b), (d),  
29 and (f) to the Office of the Governor, the Legislature, the  
30 Parole Commission, the Department of Children and Family  
31 Services, a private correctional facility or program that

1 operates under a contract, the Department of Legal Affairs, a  
2 state attorney, the court, or a law enforcement agency. A  
3 request for records or information pursuant to this paragraph  
4 need not be in writing.

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

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

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

27 (e) Information specified in paragraph (1)(b) to state  
28 or local governmental agencies. A request for records or  
29 information pursuant to this paragraph must be in writing and  
30 a statement provided demonstrating a need for the records or  
31 information.

1 (f) Information specified in paragraph (1)(b) to a  
2 person conducting legitimate research. A request for records  
3 and information pursuant to this paragraph must be in writing,  
4 the person requesting the records or information must sign a  
5 confidentiality agreement, and the department must approve the  
6 request in writing.

7 (g) Information specified in paragraph (1)(a) to the  
8 Department of Health and the county health department where an  
9 inmate plans to reside if he or she has tested positive for  
10 the presence of the antibody or antigen to human  
11 immunodeficiency virus infection.

12  
13 Records and information released under this subsection remain  
14 confidential and exempt from the provisions of s. 119.07(1)  
15 and s. 24(a), Art. I of the State Constitution when held by  
16 the receiving person or entity.

17 Section 4. Paragraph (h) of subsection (3) of section  
18 381.004, Florida Statutes, is amended to read:

19 381.004 HIV testing.--

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

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

24 1. When testing for sexually transmissible diseases is  
25 required by state or federal law, or by rule including the  
26 following situations:

27 a. HIV testing pursuant to s. 796.08 of persons  
28 convicted of prostitution or of procuring another to commit  
29 prostitution.

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

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

6           2. Those exceptions provided for blood, plasma,  
7 organs, skin, semen, or other human tissue pursuant to s.  
8 381.0041.

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

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

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

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

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

11           8. For epidemiological research pursuant to s.  
12 381.0032, for research consistent with institutional review  
13 boards created by 45 C.F.R. part 46, or for the performance of  
14 an HIV-related test for the purpose of research, if the  
15 testing is performed in a manner by which the identity of the  
16 test subject is not known and may not be retrieved by the  
17 researcher.

18           9. When human tissue is collected lawfully without the  
19 consent of the donor for corneal removal as authorized by s.  
20 765.5185 or enucleation of the eyes as authorized by s.  
21 765.519.

22           10. For the performance of an HIV test upon an  
23 individual who comes into contact with medical personnel in  
24 such a way that a significant exposure has occurred during the  
25 course of employment or within the scope of practice and where  
26 a blood sample is available that was taken from that  
27 individual voluntarily by medical personnel for other  
28 purposes. The term "medical personnel" includes a licensed or  
29 certified health care professional; an employee of a health  
30 care professional or health care facility; employees of a  
31 laboratory licensed under chapter 483; personnel of a blood



1 bank or plasma center; a medical student or other student who  
2 is receiving training as a health care professional at a  
3 health care facility; and a paramedic or emergency medical  
4 technician certified by the department to perform life-support  
5 procedures under s. 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 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 individual gives written consent to entering  
14 this information on the individual's medical record.

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

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

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

5 d. In order to utilize the provisions of this  
6 subparagraph, the medical personnel must either be tested for  
7 HIV pursuant to this section or provide the results of an HIV  
8 test taken within 6 months prior to the significant exposure  
9 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 is not available, the  
17 medical personnel or the employer of such person acting on  
18 behalf of the employee may seek a court order directing the  
19 source of the exposure to submit to HIV testing. A sworn  
20 statement by a physician licensed under chapter 458 or chapter  
21 459 that a significant exposure has occurred and that, in the  
22 physician's medical judgment, testing is medically necessary  
23 to determine the course of treatment constitutes probable  
24 cause for the issuance of an order by the court. The results  
25 of the test shall be released to the source of the exposure  
26 and to the person who experienced the exposure.

27 11. For the performance of an HIV test upon an  
28 individual who comes into contact with medical personnel in  
29 such a way that a significant exposure has occurred during the  
30 course of employment or within the scope of practice of the  
31 medical personnel while the medical personnel provides

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

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

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

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

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

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

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

25           12. For the performance of an HIV test by the medical  
26 examiner or attending physician upon an individual who expired  
27 or could not be resuscitated while receiving emergency medical  
28 assistance or care and who was the source of a significant  
29 exposure to medical or nonmedical personnel providing such  
30 assistance or care.

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1           a. HIV testing may be conducted only after a licensed  
2 physician documents in the medical record of the medical  
3 personnel or nonmedical personnel that there has been a  
4 significant exposure and that, in the physician's medical  
5 judgment, the information is medically necessary to determine  
6 the course of treatment for the medical personnel or  
7 nonmedical personnel.

8           b. Costs of any HIV test performed under this  
9 subparagraph may not be charged to the deceased or to the  
10 family of the deceased person.

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

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

18           13. For the performance of an HIV-related test  
19 medically indicated by licensed medical personnel for medical  
20 diagnosis of a hospitalized infant as necessary to provide  
21 appropriate care and treatment of the infant when, after a  
22 reasonable attempt, a parent cannot be contacted to provide  
23 consent. The medical records of the infant shall reflect the  
24 reason consent of the parent was not initially obtained. Test  
25 results shall be provided to the parent when the parent is  
26 located.

27           14. For the performance of HIV testing conducted to  
28 monitor the clinical progress of a patient previously  
29 diagnosed to be HIV positive.

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1           15. For the performance of repeated HIV testing  
2 conducted to monitor possible conversion from a significant  
3 exposure.

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

6           944.704 Staff who provide transition assistance;  
7 duties.--The department shall provide a transition assistance  
8 specialist at each of the major institutions whose duties  
9 include, but are not limited to:

10           (1) Coordinating delivery of transition assistance  
11 program services at the institution and at the community  
12 correctional centers authorized pursuant to s. 945.091(1)(b).

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

15           (3) Obtaining job placement information.

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

18           (5) For an inmate who is known to be HIV positive,  
19 providing a 30-day supply of all HIV/AIDS-related medication  
20 that the inmate is taking prior to release, if required under  
21 protocols of the Department of Corrections and treatment  
22 guidelines of the United States Department of Health and Human  
23 Services.

24           ~~(6)(4)~~ Facilitating placement in a private transition  
25 housing program, if requested by any eligible inmate. If an  
26 inmate who is nearing his or her date of release requests  
27 placement in a contracted substance abuse transition housing  
28 program, the transition assistance specialist shall inform the  
29 inmate of program availability and assess the inmate's need  
30 and suitability for transition housing assistance. If an  
31 inmate is approved for placement, the specialist shall assist

1 the inmate and coordinate the release of the inmate with the  
2 selected program. If an inmate requests and is approved for  
3 placement in a contracted faith-based substance abuse  
4 transition housing program, the specialist must consult with  
5 the chaplain prior to such placement. In selecting inmates who  
6 are nearing their date of release for placement in a  
7 faith-based program, the department shall ensure that an  
8 inmate's faith orientation, or lack thereof, will not be  
9 considered in determining admission to the program and that  
10 the program does not attempt to convert an inmate toward a  
11 particular faith or religious preference.

12 ~~(7)(5)~~ Providing a photo identification card to all  
13 inmates prior to their release.

14

15 The transition assistance specialist may not be a correctional  
16 officer or correctional probation officer as defined in s.  
17 943.10.

18 Section 6. Notwithstanding any provision of the  
19 Florida Statutes providing for a waiver of sovereign immunity,  
20 neither the state, its agencies, subdivisions nor employees of  
21 the state, its agencies, or subdivisions shall be liable to  
22 any person for negligently causing death or personal injury  
23 arising out of complying with section 944.355, Florida  
24 Statutes.

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

29 Section 8. This act shall take effect July 1, 2002.

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