

By Senators Dawson and Miller

30-331-02

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 providing an appropriation; providing an
30 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,

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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) 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 pursuant to s. 945.355.

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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.

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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.

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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. The sum of \$793,244 is appropriated from
19 the General Revenue Fund to the Department of Corrections for
20 the 2002-2003 fiscal year for the purpose of implementing the
21 provisions of this act.

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

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25 SENATE SUMMARY

26 Requires that the Department of Corrections test an
27 inmate for HIV within 60 days before the inmate is
28 released. Requires that an inmate who has received a
29 positive HIV test be provided with educational services,
30 a discharge plan, and medications prior to release.
31 Requires the Department of Corrections to notify the
Department of Health and the county health department
where the inmate will reside when an inmate who has
received a positive HIV test result is released. Requires
that the Department of Corrections report to the
Legislature concerning implementation of the inmate
testing program. (See bill for details.)