

By Representative Wilson

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 "HIV
4 test"; requiring the Department of Corrections
5 to perform an HIV test before an inmate is
6 released if the inmate's HIV status is unknown;
7 providing certain exceptions; requiring that
8 the Department of Corrections notify the county
9 health department where the inmate plans to
10 reside following release if the inmate is HIV
11 positive; requiring the department to provide
12 special transitional assistance to an inmate
13 who is HIV positive; requiring the department
14 to report to the Legislature; amending s.
15 945.10, F.S.; requiring that certain medical
16 records be released to the Department of Health
17 and the county health department where an
18 inmate who is HIV positive plans to reside;
19 reenacting s. 945.10(1)(a), F.S., relating to
20 mental health, medical, or substance abuse
21 records of an inmate; amending s. 381.004,
22 F.S.; providing that informed consent is not
23 required for an HIV test of an inmate prior to
24 the inmate's release; amending s. 944.704,
25 F.S.; providing additional duties for the
26 department with respect to transition
27 assistance for inmates who are HIV positive;
28 providing an effective date.

29
30 WHEREAS, HIV and AIDS infections are one of the state's
31 most critical challenges, with Florida having the third

1 highest number of AIDS cases in the nation and the second
2 highest number of pediatric AIDS cases, and

3 WHEREAS, the incidence of HIV and AIDS cases in the
4 state's prisons exceeds the incidence of HIV and AIDS in the
5 general population, and

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

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

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

17

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

19

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

22 945.355 HIV testing of inmates prior to release.--

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

27 (2) Pursuant to s. 381.004(3), the department shall
28 perform an HIV test on an inmate whose HIV status is unknown
29 to the department not less than 60 days prior to the inmate's
30 presumptive release date from prison by reason of parole,
31 accumulation of gain-time credits, or expiration of sentence.

1 An inmate who is known to the department to be HIV positive or
2 who has been tested within the previous year and does not
3 request retesting need not be tested under this section, but
4 is subject to subsections (4) and (5). However, an inmate who
5 is released due to an emergency is exempt from the provisions
6 of this section.

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

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

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

19 (a) Education on preventing the transmission of HIV to
20 others and on the importance of receiving followup care and
21 treatment.

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

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

28 (6) The department shall report to the Legislature by
29 March 1, 2003, regarding the implementation of this program
30 and participation therein by inmates and staff.

31

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

4 945.10 Confidential information.--

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

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

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

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

23 (b) Information specified in paragraphs (1)(c), (e),
24 and (h) 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 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 must be in writing and a statement provided demonstrating a
31 need for the records or information.

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

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

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

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

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

31

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

5 Section 3. Paragraph (h) of subsection (3) of section
6 381.004, Florida Statutes, is amended to read:

7 381.004 HIV testing.--

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

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

12 1. When testing for sexually transmissible diseases is
13 required by state or federal law, or by rule including the
14 following situations:

15 a. HIV testing pursuant to s. 796.08 of persons
16 convicted of prostitution or of procuring another to commit
17 prostitution.

18 b. HIV testing of inmates pursuant to s. 945.355 prior
19 to their release from prison by reason of parole, expiration
20 of sentence, or expiration of sentence as reduced by
21 accumulated meritorious or incentive gain-time.

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

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

27 3. For the performance of an HIV-related test by
28 licensed medical personnel in bona fide medical emergencies
29 when the test results are necessary for medical diagnostic
30 purposes to provide appropriate emergency care or treatment to
31 the person being tested and the patient is unable to consent,

1 as supported by documentation in the medical record.
2 Notification of test results in accordance with paragraph (c)
3 is required.

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

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

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

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

28 8. For epidemiological research pursuant to s.
29 381.0032, for research consistent with institutional review
30 boards created by 45 C.F.R. part 46, or for the performance of
31 an HIV-related test for the purpose of research, if the

1 testing is performed in a manner by which the identity of the
2 test subject is not known and may not be retrieved by the
3 researcher.

4 9. When human tissue is collected lawfully without the
5 consent of the donor for corneal removal as authorized by s.
6 765.5185 or enucleation of the eyes as authorized by s.
7 765.519.

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

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

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

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

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

27 e. A person who receives the results of an HIV test
28 pursuant to this subparagraph shall maintain the
29 confidentiality of the information received and of the persons
30 tested. Such confidential information is exempt from s.
31 119.07(1).

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

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

27 a. An individual who is capable of providing consent
28 shall be requested to consent to an HIV test prior to the
29 testing. The individual's refusal to consent, and all
30 information concerning the performance of an HIV test and its
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. HIV testing shall be conducted only after a
4 licensed physician documents, in the medical record of the
5 medical personnel or nonmedical personnel, that there has been
6 a significant exposure and that, in the physician's medical
7 judgment, the information is medically necessary to determine
8 the course of treatment for the medical personnel or
9 nonmedical personnel.

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

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

23 e. A person who receives the results of an HIV test
24 pursuant to this subparagraph shall maintain the
25 confidentiality of the information received and of the persons
26 tested. Such confidential information is exempt from s.
27 119.07(1).

28 f. If the source of the exposure will not voluntarily
29 submit to HIV testing and a blood sample was not obtained
30 during treatment for the medical emergency, the medical
31 personnel, the employer of the medical personnel acting on

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

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

17 | a. HIV testing may be conducted only after a licensed
18 | physician documents in the medical record of the medical
19 | personnel or nonmedical personnel that there has been a
20 | 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 | b. Costs of any HIV test performed under this
25 | subparagraph may not be charged to the deceased or to the
26 | family of the deceased person.

27 | c. For the provisions of this subparagraph to be
28 | applicable, the medical personnel or nonmedical personnel must
29 | be tested for HIV under this section or must provide the
30 | results of an HIV test taken within 6 months before the
31 | significant exposure if such test results are negative.

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

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

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

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

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

20 944.704 Staff who provide transition assistance;
21 duties.--The department shall provide a transition assistance
22 specialist at each of the major institutions whose duties
23 include, but are not limited to:

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

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

29 (3) Obtaining job placement information.

30 (4) Facilitating placement in a private transition
31 housing program, if requested by any eligible inmate. If an

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

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

20 (6) Providing a written medical discharge plan,
21 referral to a county health department, and, if appropriate, a
22 supply of prescribed medication for an inmate known to be HIV
23 positive or who has received a positive HIV test result under
24 s. 945.355.

25
26 The transition assistance specialist may not be a correctional
27 officer or correctional probation officer as defined in s.
28 943.10.

29 Section 5. This act shall take effect July 1, 2002.
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

HOUSE SUMMARY

Revises provisions relating to the testing of inmates for HIV. Defines "HIV test." Requires the Department of Corrections to perform an HIV test before an inmate is released if the inmate's HIV status is unknown. Provides certain exceptions. Requires that the Department of Corrections notify the county health department where the inmate plans to reside following release if the inmate is HIV positive. Requires the department to provide special transitional assistance to an inmate who is HIV positive. Requires a report to the Legislature. Requires that certain medical records be released to the Department of Health and the county health department where an inmate who is HIV positive plans to reside. Provides that informed consent is not required for an HIV test of an inmate prior to the inmate's release. Provides additional duties for the department with respect to transition assistance for inmates who are HIV positive.