

1 775.0877, which procedure is consistent with guidelines of the
2 Centers for Disease Control and Prevention and recommendations
3 of the Correctional Medical Authority. It is not unlawful for
4 the person receiving the test results to divulge the test
5 results to the sheriff or chief correctional officer.

6 (2)(a) The county or municipal detention facility
7 shall, consistent with s. 381.004(3), perform an HIV test as
8 defined in s. 381.004(2) on each inmate who is to be released
9 from the facility unless the facility knows that the inmate is
10 HIV positive or unless, within 120 days before the release
11 date, the inmate has been tested for HIV and does not request
12 retesting. The required test must be performed not less than
13 30 days before the release date of the inmate. A test is not
14 required under this paragraph if an inmate is released due to
15 an emergency or a court order and the detention facility
16 receives less than 30 days' notice of the release date or if
17 the inmate is transferred to the custody of the Department of
18 Corrections for incarceration in the state correctional
19 system.

20 (b) If the county or municipal detention facility
21 knows that an inmate who is to be released from the facility
22 is HIV positive or has received a positive HIV test result,
23 that facility shall, before the inmate is released:

24 1. Notify, consistent with s. 381.004(3), the
25 Department of Health and the county health department where
26 the inmate being released plans to reside of the release date
27 and HIV status of the inmate.

28 2. Provide special transitional assistance to the
29 inmate, which must include:

1 a. Education on preventing the transmission of HIV to
2 others and on the importance of receiving followup medical
3 care and treatment; and

4 b. A written, individualized discharge plan that
5 includes referrals to and contacts with the county health
6 department and local primary medical care services for the
7 treatment of HIV infection which are available where the
8 inmate plans to reside.

9 ~~(3)(2)~~ Except as otherwise provided in this
10 subsection, serologic blood test results obtained pursuant to
11 subsection (1) or subsection (2) are confidential and exempt
12 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
13 the State Constitution. However, such results may be provided
14 to employees or officers of the sheriff or chief correctional
15 officer who are responsible for the custody and care of the
16 affected inmate and have a need to know such information, and
17 as provided in ss. 381.004(3), 775.0877, and 960.003. In
18 addition, upon request of the victim or the victim's legal
19 guardian, or the parent or legal guardian of the victim if the
20 victim is a minor, the results of any HIV test performed on an
21 inmate who has been arrested for any sexual offense involving
22 oral, anal, or vaginal penetration by, or union with, the
23 sexual organ of another, shall be disclosed to the victim or
24 the victim's legal guardian, or to the parent or legal
25 guardian of the victim if the victim is a minor. In such
26 cases, the county or municipal detention facility shall
27 furnish the test results to the Department of Health, which is
28 responsible for disclosing the results to public health
29 agencies as provided in s. 775.0877 and to the victim or the
30 victim's legal guardian, or the parent or legal guardian of
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1 | the victim if the victim is a minor, as provided in s.
2 | 960.003(3).

3 | ~~(4)(3)~~ The results of any serologic blood test on an
4 | inmate are a part of that inmate's permanent medical file.
5 | Upon transfer of the inmate to any other correctional
6 | facility, such file is also transferred, and all relevant
7 | authorized persons must be notified of positive HIV test
8 | results, as required in s. 775.0877.

9 | (5) Notwithstanding any provision of the Florida
10 | Statutes providing for a waiver of sovereign immunity, the
11 | state, its agencies or subdivisions, or employees of the
12 | state, its agencies, or subdivisions are not liable to any
13 | person for negligently causing death or personal injury
14 | arising out of complying with this section.

15 | Section 2. Paragraph (h) of subsection (3) of section
16 | 381.004, Florida Statutes, is amended to read:

17 | 381.004 HIV testing.--

18 | (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
19 | CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

20 | (h) Notwithstanding the provisions of paragraph (a),
21 | informed consent is not required:

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

25 | a. HIV testing pursuant to s. 796.08 of persons
26 | convicted of prostitution or of procuring another to commit
27 | prostitution.

28 | b. HIV testing of inmates pursuant to s. 945.355 prior
29 | to their release from prison by reason of parole, accumulation
30 | of gain-time credits, or expiration of sentence.

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1 c. Testing for HIV by a medical examiner in accordance
2 with s. 406.11.

3 d. HIV testing of inmates pursuant to s. 951.27 prior
4 to their release from a county or municipal detention
5 facility.

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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