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A bill to be entitled
 An act relating to the testing of inmates for HIV
 infection in county and municipal detention facilities;
 amending s. 951.27, F.S.; requiring county and municipal
 detention facilities to perform an HIV test before an
 inmate is released if the inmate's HIV status is unknown;
 providing certain exceptions; requiring county and
 municipal detention facilities to notify the Department of
 Health and the county health department where the inmate
 plans to reside following release if the inmate is HIV
 positive; requiring the detention facilities to provide
 special transitional assistance to an inmate who is HIV
 positive; providing for immunity for complying entities;
 amending s. 381.004, F.S.; providing that informed consent
 is not required for an HIV test of an inmate prior to the
 inmate's release from a municipal or county detention
 facility; providing an effective date.

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

Section 1. Section 951.27, Florida Statutes, is amended to
 read:

951.27 Blood tests of inmates.--

(1) Each county and each municipal detention facility
 shall have a written procedure developed, in consultation with
 the facility medical provider, establishing conditions under
 which an inmate will be tested for infectious disease, including
 human immunodeficiency virus pursuant to s. 775.0877, which

29 procedure is consistent with guidelines of the Centers for
30 Disease Control and Prevention and recommendations of the
31 Correctional Medical Authority. It is not unlawful for the
32 person receiving the test results to divulge the test results to
33 the sheriff or chief correctional officer.

34 (2)(a) The county or municipal detention facility shall,
35 consistent with s. 381.004(3), perform an HIV test as defined in
36 s. 381.004(2) on each inmate who is to be released from the
37 facility unless the facility knows that the inmate is HIV
38 positive or unless, within 120 days before the release date, the
39 inmate has been tested for HIV and does not request retesting.
40 The required test must be performed not less than 30 days before
41 the release date of the inmate. A test is not required under
42 this paragraph if an inmate is released due to an emergency or a
43 court order and the detention facility receives less than 30
44 days' notice of the release date or if the inmate is transferred
45 to the custody of the Department of Corrections for
46 incarceration in the state correctional system.

47 (b) If the county or municipal detention facility knows
48 that an inmate who is to be released from the facility is HIV
49 positive or has received a positive HIV test result, that
50 facility shall, before the inmate is released:

51 1. Notify, consistent with s. 381.004(3), the Department
52 of Health and the county health department where the inmate
53 being released plans to reside of the release date and HIV
54 status of the inmate.

55 2. Provide special transitional assistance to the inmate,
56 which must include:

57 a. Education on preventing the transmission of HIV to
 58 others and on the importance of receiving followup medical care
 59 and treatment.

60 b. A written, individualized discharge plan that includes
 61 referrals to and contacts with the county health department and
 62 local primary medical care services for the treatment of HIV
 63 infection that are available where the inmate plans to reside.

64 (3)(2) Except as otherwise provided in this subsection,
 65 serologic blood test results obtained pursuant to subsection (1)
 66 or subsection (2) are confidential and exempt from the
 67 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
 68 Constitution. However, such results may be provided to employees
 69 or officers of the sheriff or chief correctional officer who are
 70 responsible for the custody and care of the affected inmate and
 71 have a need to know such information, and as provided in ss.
 72 381.004(3), 775.0877, and 960.003. In addition, upon request of
 73 the victim or the victim's legal guardian, or the parent or
 74 legal guardian of the victim if the victim is a minor, the
 75 results of any HIV test performed on an inmate who has been
 76 arrested for any sexual offense involving oral, anal, or vaginal
 77 penetration by, or union with, the sexual organ of another,
 78 shall be disclosed to the victim or the victim's legal guardian,
 79 or to the parent or legal guardian of the victim if the victim
 80 is a minor. In such cases, the county or municipal detention
 81 facility shall furnish the test results to the Department of
 82 Health, which is responsible for disclosing the results to
 83 public health agencies as provided in s. 775.0877 and to the
 84 victim or the victim's legal guardian, or the parent or legal

85 guardian of the victim if the victim is a minor, as provided in
 86 s. 960.003(3).

87 ~~(4)(3)~~ The results of any serologic blood test on an
 88 inmate are a part of that inmate's permanent medical file. Upon
 89 transfer of the inmate to any other correctional facility, such
 90 file is also transferred, and all relevant authorized persons
 91 must be notified of positive HIV test results, as required in s.
 92 775.0877.

93 (5) Notwithstanding any statute providing for a waiver of
 94 sovereign immunity, the state, its agencies, or subdivisions,
 95 and employees of the state, its agencies, or subdivisions are
 96 not liable to any person for negligently causing death or
 97 personal injury arising out of complying with this section.

98 Section 2. Paragraph (h) of subsection (3) of section
 99 381.004, Florida Statutes, is amended to read:

100 381.004 HIV testing.--

101 (3) ~~HUMAN IMMUNODEFICIENCY VIRUS TESTING;~~ INFORMED
 102 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

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

105 1. When testing for sexually transmissible diseases is
 106 required by state or federal law, or by rule including the
 107 following situations:

108 a. HIV testing pursuant to s. 796.08 of persons convicted
 109 of prostitution or of procuring another to commit prostitution.

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

113 c. Testing for HIV by a medical examiner in accordance
114 with s. 406.11.

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

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

119 3. For the performance of an HIV-related test by licensed
120 medical personnel in bona fide medical emergencies when the test
121 results are necessary for medical diagnostic purposes to provide
122 appropriate emergency care or treatment to the person being
123 tested and the patient is unable to consent, as supported by
124 documentation in the medical record. Notification of test
125 results in accordance with paragraph (c) is required.

126 4. For the performance of an HIV-related test by licensed
127 medical personnel for medical diagnosis of acute illness where,
128 in the opinion of the attending physician, obtaining informed
129 consent would be detrimental to the patient, as supported by
130 documentation in the medical record, and the test results are
131 necessary for medical diagnostic purposes to provide appropriate
132 care or treatment to the person being tested. Notification of
133 test results in accordance with paragraph (c) is required if it
134 would not be detrimental to the patient. This subparagraph does
135 not authorize the routine testing of patients for HIV infection
136 without informed consent.

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

139 6. For the performance of an HIV test upon a defendant
140 pursuant to the victim's request in a prosecution for any type

141 of sexual battery where a blood sample is taken from the
142 defendant voluntarily, pursuant to court order for any purpose,
143 or pursuant to the provisions of s. 775.0877, s. 951.27, or s.
144 960.003; however, the results of any HIV test performed shall be
145 disclosed solely to the victim and the defendant, except as
146 provided in ss. 775.0877, 951.27, and 960.003.

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

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

154 9. When human tissue is collected lawfully without the
155 consent of the donor for corneal removal as authorized by s.
156 765.5185 or enucleation of the eyes as authorized by s. 765.519.

157 10. For the performance of an HIV test upon an individual
158 who comes into contact with medical personnel in such a way that
159 a significant exposure has occurred during the course of
160 employment or within the scope of practice and where a blood
161 sample is available that was taken from that individual
162 voluntarily by medical personnel for other purposes. The term
163 "medical personnel" includes a licensed or certified health care
164 professional; an employee of a health care professional or
165 health care facility; employees of a laboratory licensed under
166 chapter 483; personnel of a blood bank or plasma center; a
167 medical student or other student who is receiving training as a
168 health care professional at a health care facility; and a

169 paramedic or emergency medical technician certified by the
170 department to perform life-support procedures under s. 401.23.

171 a. Prior to performance of an HIV test on a voluntarily
172 obtained blood sample, the individual from whom the blood was
173 obtained shall be requested to consent to the performance of the
174 test and to the release of the results. The individual's
175 refusal to consent and all information concerning the
176 performance of an HIV test and any HIV test result shall be
177 documented only in the medical personnel's record unless the
178 individual gives written consent to entering this information on
179 the individual's medical record.

180 b. Reasonable attempts to locate the individual and to
181 obtain consent shall be made, and all attempts must be
182 documented. If the individual cannot be found, an HIV test may
183 be conducted on the available blood sample. If the individual
184 does not voluntarily consent to the performance of an HIV test,
185 the individual shall be informed that an HIV test will be
186 performed, and counseling shall be furnished as provided in this
187 section. However, HIV testing shall be conducted only after a
188 licensed physician documents, in the medical record of the
189 medical personnel, that there has been a significant exposure
190 and that, in the physician's medical judgment, the information
191 is medically necessary to determine the course of treatment for
192 the medical personnel.

193 c. Costs of any HIV test of a blood sample performed with
194 or without the consent of the individual, as provided in this
195 subparagraph, shall be borne by the medical personnel or the
196 employer of the medical personnel. However, costs of testing or

197 treatment not directly related to the initial HIV tests or costs
198 of subsequent testing or treatment shall not be borne by the
199 medical personnel or the employer of the medical personnel.

200 d. In order to utilize the provisions of this
201 subparagraph, the medical personnel must either be tested for
202 HIV pursuant to this section or provide the results of an HIV
203 test taken within 6 months prior to the significant exposure if
204 such test results are negative.

205 e. A person who receives the results of an HIV test
206 pursuant to this subparagraph shall maintain the confidentiality
207 of the information received and of the persons tested. Such
208 confidential information is exempt from s. 119.07(1).

209 f. If the source of the exposure will not voluntarily
210 submit to HIV testing and a blood sample is not available, the
211 medical personnel or the employer of such person acting on
212 behalf of the employee may seek a court order directing the
213 source of the exposure to submit to HIV testing. A sworn
214 statement by a physician licensed under chapter 458 or chapter
215 459 that a significant exposure has occurred and that, in the
216 physician's medical judgment, testing is medically necessary to
217 determine the course of treatment constitutes probable cause for
218 the issuance of an order by the court. The results of the test
219 shall be released to the source of the exposure and to the
220 person who experienced the exposure.

221 11. For the performance of an HIV test upon an individual
222 who comes into contact with medical personnel in such a way that
223 a significant exposure has occurred during the course of
224 employment or within the scope of practice of the medical

225 personnel while the medical personnel provides emergency medical
226 treatment to the individual; or who comes into contact with
227 nonmedical personnel in such a way that a significant exposure
228 has occurred while the nonmedical personnel provides emergency
229 medical assistance during a medical emergency. For the purposes
230 of this subparagraph, a medical emergency means an emergency
231 medical condition outside of a hospital or health care facility
232 that provides physician care. The test may be performed only
233 during the course of treatment for the medical emergency.

234 a. An individual who is capable of providing consent shall
235 be requested to consent to an HIV test prior to the testing. The
236 individual's refusal to consent, and all information concerning
237 the performance of an HIV test and its result, shall be
238 documented only in the medical personnel's record unless the
239 individual gives written consent to entering this information on
240 the individual's medical record.

241 b. HIV testing shall be conducted only after a licensed
242 physician documents, in the medical record of the medical
243 personnel or nonmedical personnel, that there has been a
244 significant exposure and that, in the physician's medical
245 judgment, the information is medically necessary to determine
246 the course of treatment for the medical personnel or nonmedical
247 personnel.

248 c. Costs of any HIV test performed with or without the
249 consent of the individual, as provided in this subparagraph,
250 shall be borne by the medical personnel or the employer of the
251 medical personnel or nonmedical personnel. However, costs of
252 testing or treatment not directly related to the initial HIV

253 tests or costs of subsequent testing or treatment shall not be
 254 borne by the medical personnel or the employer of the medical
 255 personnel or nonmedical personnel.

256 d. In order to utilize the provisions of this
 257 subparagraph, the medical personnel or nonmedical personnel
 258 shall be tested for HIV pursuant to this section or shall
 259 provide the results of an HIV test taken within 6 months prior
 260 to the significant exposure if such test results are negative.

261 e. A person who receives the results of an HIV test
 262 pursuant to this subparagraph shall maintain the confidentiality
 263 of the information received and of the persons tested. Such
 264 confidential information is exempt from s. 119.07(1).

265 f. If the source of the exposure will not voluntarily
 266 submit to HIV testing and a blood sample was not obtained during
 267 treatment for the medical emergency, the medical personnel, the
 268 employer of the medical personnel acting on behalf of the
 269 employee, or the nonmedical personnel may seek a court order
 270 directing the source of the exposure to submit to HIV testing.
 271 A sworn statement by a physician licensed under chapter 458 or
 272 chapter 459 that a significant exposure has occurred and that,
 273 in the physician's medical judgment, testing is medically
 274 necessary to determine the course of treatment constitutes
 275 probable cause for the issuance of an order by the court. The
 276 results of the test shall be released to the source of the
 277 exposure and to the person who experienced the exposure.

278 12. For the performance of an HIV test by the medical
 279 examiner or attending physician upon an individual who expired
 280 or could not be resuscitated while receiving emergency medical

281 assistance or care and who was the source of a significant
 282 exposure to medical or nonmedical personnel providing such
 283 assistance or care.

284 a. HIV testing may be conducted only after a licensed
 285 physician documents in the medical record of the medical
 286 personnel or nonmedical personnel that there has been a
 287 significant exposure and that, in the physician's medical
 288 judgment, the information is medically necessary to determine
 289 the course of treatment for the medical personnel or nonmedical
 290 personnel.

291 b. Costs of any HIV test performed under this subparagraph
 292 may not be charged to the deceased or to the family of the
 293 deceased person.

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

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

301 13. For the performance of an HIV-related test medically
 302 indicated by licensed medical personnel for medical diagnosis of
 303 a hospitalized infant as necessary to provide appropriate care
 304 and treatment of the infant when, after a reasonable attempt, a
 305 parent cannot be contacted to provide consent. The medical
 306 records of the infant shall reflect the reason consent of the
 307 parent was not initially obtained. Test results shall be
 308 provided to the parent when the parent is located.

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309 | 14. For the performance of HIV testing conducted to
310 | monitor the clinical progress of a patient previously diagnosed
311 | to be HIV positive.

312 | 15. For the performance of repeated HIV testing conducted
313 | to monitor possible conversion from a significant exposure.

314 | Section 3. This act shall take effect July 1, 2005.