

CHAMBER ACTION

1 The Criminal Justice Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the testing of inmates for HIV  
7 infection in county and municipal detention facilities;  
8 amending s. 951.27, F.S.; allowing counties and  
9 municipalities the option to participate in a program to  
10 test each inmate for HIV prior to the inmate's release if  
11 the inmate's HIV status is unknown; providing certain  
12 exceptions; requiring county and municipal detention  
13 facilities to notify the Department of Health and the  
14 county health department where the inmate plans to reside  
15 following release if the inmate is HIV positive; requiring  
16 the detention facilities to provide special transitional  
17 assistance to an inmate who is HIV positive; providing for  
18 immunity for complying entities; amending s. 381.004,  
19 F.S.; providing that informed consent is not required for  
20 an HIV test of an inmate prior to the inmate's release  
21 from a municipal or county detention facility; providing  
22 an effective date.

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

25

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

28 951.27 Blood tests of inmates.--

29 (1) Each county and each municipal detention facility  
30 shall have a written procedure developed, in consultation with  
31 the facility medical provider, establishing conditions under  
32 which an inmate will be tested for infectious disease, including  
33 human immunodeficiency virus pursuant to s. 775.0877, which  
34 procedure is consistent with guidelines of the Centers for  
35 Disease Control and Prevention and recommendations of the  
36 Correctional Medical Authority. It is not unlawful for the  
37 person receiving the test results to divulge the test results to  
38 the sheriff or chief correctional officer.

39 (2)(a) Each county or municipality has the local option,  
40 if authorized by a majority of the county's or municipality's  
41 governing body, to participate in the testing program provided  
42 in this subsection. The county or municipal detention facility  
43 that lies within the authority of any participating county or  
44 municipality shall, consistent with s. 381.004(3), perform an  
45 HIV test as defined in s. 381.004(2) on each inmate who is to be  
46 released from the facility unless the facility knows that the  
47 inmate is HIV positive or unless, within 120 days before the  
48 release date, the inmate has been tested for HIV and does not  
49 request retesting. The required test must be performed not less  
50 than 30 days before the release date of the inmate. A test is  
51 not required under this paragraph if an inmate is released due

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52 to an emergency or a court order and the detention facility  
 53 receives less than 30 days' notice of the release date or if the  
 54 inmate is transferred to the custody of the Department of  
 55 Corrections for incarceration in the state correctional system.

56 (b) If the county or municipal detention facility knows  
 57 that an inmate who is to be released from the facility is HIV  
 58 positive or has received a positive HIV test result, that  
 59 facility shall, before the inmate is released:

60 1. Notify, consistent with s. 381.004(3), the Department  
 61 of Health and the county health department where the inmate  
 62 being released plans to reside of the release date and HIV  
 63 status of the inmate.

64 2. Provide special transitional assistance to the inmate,  
 65 which must include:

66 a. Education on preventing the transmission of HIV to  
 67 others and on the importance of receiving followup medical care  
 68 and treatment.

69 b. A written, individualized discharge plan that includes  
 70 records of all laboratory and diagnostic test results,  
 71 medication and treatment information, and referrals to and  
 72 contacts with the county health department and local primary  
 73 medical care services for the treatment of HIV infection that  
 74 are available where the inmate plans to reside.

75 (3)-(2) Except as otherwise provided in this subsection,  
 76 serologic blood test results obtained pursuant to subsection (1)  
 77 or subsection (2) are confidential and exempt from the  
 78 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 79 Constitution. However, such results may be provided to employees

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80 or officers of the sheriff or chief correctional officer who are  
 81 responsible for the custody and care of the affected inmate and  
 82 have a need to know such information, and as provided in ss.  
 83 381.004(3), 775.0877, and 960.003. In addition, upon request of  
 84 the victim or the victim's legal guardian, or the parent or  
 85 legal guardian of the victim if the victim is a minor, the  
 86 results of any HIV test performed on an inmate who has been  
 87 arrested for any sexual offense involving oral, anal, or vaginal  
 88 penetration by, or union with, the sexual organ of another,  
 89 shall be disclosed to the victim or the victim's legal guardian,  
 90 or to the parent or legal guardian of the victim if the victim  
 91 is a minor. In such cases, the county or municipal detention  
 92 facility shall furnish the test results to the Department of  
 93 Health, which is responsible for disclosing the results to  
 94 public health agencies as provided in s. 775.0877 and to the  
 95 victim or the victim's legal guardian, or the parent or legal  
 96 guardian of the victim if the victim is a minor, as provided in  
 97 s. 960.003(3).

98 ~~(4)(3)~~ The results of any serologic blood test on an  
 99 inmate are a part of that inmate's permanent medical file. Upon  
 100 transfer of the inmate to any other correctional facility, such  
 101 file is also transferred, and all relevant authorized persons  
 102 must be notified of positive HIV test results, as required in s.  
 103 775.0877.

104 (5) Notwithstanding any statute providing for a waiver of  
 105 sovereign immunity, the state, its agencies, or subdivisions,  
 106 and employees of the state, its agencies, or subdivisions are

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107 | not liable to any person for negligently causing death or  
 108 | personal injury arising out of complying with this section.

109 | Section 2. Paragraph (h) of subsection (3) of section  
 110 | 381.004, Florida Statutes, is amended to read:

111 | 381.004 HIV testing.--

112 | (3) ~~HUMAN IMMUNODEFICIENCY VIRUS TESTING;~~ INFORMED  
 113 | CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

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

116 | 1. When testing for sexually transmissible diseases is  
 117 | required by state or federal law, or by rule including the  
 118 | following situations:

119 | a. HIV testing pursuant to s. 796.08 of persons convicted  
 120 | of prostitution or of procuring another to commit prostitution.

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

124 | c. Testing for HIV by a medical examiner in accordance  
 125 | with s. 406.11.

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

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

130 | 3. For the performance of an HIV-related test by licensed  
 131 | medical personnel in bona fide medical emergencies when the test  
 132 | results are necessary for medical diagnostic purposes to provide  
 133 | appropriate emergency care or treatment to the person being  
 134 | tested and the patient is unable to consent, as supported by

135 | documentation in the medical record. Notification of test  
136 | results in accordance with paragraph (c) is required.

137 |         4. For the performance of an HIV-related test by licensed  
138 | medical personnel for medical diagnosis of acute illness where,  
139 | in the opinion of the attending physician, obtaining informed  
140 | consent would be detrimental to the patient, as supported by  
141 | documentation in the medical record, and the test results are  
142 | necessary for medical diagnostic purposes to provide appropriate  
143 | care or treatment to the person being tested. Notification of  
144 | test results in accordance with paragraph (c) is required if it  
145 | would not be detrimental to the patient. This subparagraph does  
146 | not authorize the routine testing of patients for HIV infection  
147 | without informed consent.

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

150 |         6. For the performance of an HIV test upon a defendant  
151 | pursuant to the victim's request in a prosecution for any type  
152 | of sexual battery where a blood sample is taken from the  
153 | defendant voluntarily, pursuant to court order for any purpose,  
154 | or pursuant to the provisions of s. 775.0877, s. 951.27, or s.  
155 | 960.003; however, the results of any HIV test performed shall be  
156 | disclosed solely to the victim and the defendant, except as  
157 | provided in ss. 775.0877, 951.27, and 960.003.

158 |         7. When an HIV test is mandated by court order.

159 |         8. For epidemiological research pursuant to s. 381.0032,  
160 | for research consistent with institutional review boards created  
161 | by 45 C.F.R. part 46, or for the performance of an HIV-related  
162 | test for the purpose of research, if the testing is performed in

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163 a manner by which the identity of the test subject is not known  
164 and may not be retrieved by the researcher.

165 9. When human tissue is collected lawfully without the  
166 consent of the donor for corneal removal as authorized by s.  
167 765.5185 or enucleation of the eyes as authorized by s. 765.519.

168 10. For the performance of an HIV test upon an individual  
169 who comes into contact with medical personnel in such a way that  
170 a significant exposure has occurred during the course of  
171 employment or within the scope of practice and where a blood  
172 sample is available that was taken from that individual  
173 voluntarily by medical personnel for other purposes. The term  
174 "medical personnel" includes a licensed or certified health care  
175 professional; an employee of a health care professional or  
176 health care facility; employees of a laboratory licensed under  
177 chapter 483; personnel of a blood bank or plasma center; a  
178 medical student or other student who is receiving training as a  
179 health care professional at a health care facility; and a  
180 paramedic or emergency medical technician certified by the  
181 department to perform life-support procedures under s. 401.23.

182 a. Prior to performance of an HIV test on a voluntarily  
183 obtained blood sample, the individual from whom the blood was  
184 obtained shall be requested to consent to the performance of the  
185 test and to the release of the results. The individual's  
186 refusal to consent and all information concerning the  
187 performance of an HIV test and any HIV test result shall be  
188 documented only in the medical personnel's record unless the  
189 individual gives written consent to entering this information on  
190 the individual's medical record.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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191           b. Reasonable attempts to locate the individual and to  
192 obtain consent shall be made, and all attempts must be  
193 documented. If the individual cannot be found, an HIV test may  
194 be conducted on the available blood sample. If the individual  
195 does not voluntarily consent to the performance of an HIV test,  
196 the individual shall be informed that an HIV test will be  
197 performed, and counseling shall be furnished as provided in this  
198 section. However, HIV testing shall be conducted only after a  
199 licensed physician documents, in the medical record of the  
200 medical personnel, that there has been a significant exposure  
201 and that, in the physician's medical judgment, the information  
202 is medically necessary to determine the course of treatment for  
203 the medical personnel.

204           c. Costs of any HIV test of a blood sample performed with  
205 or without the consent of the individual, as provided in this  
206 subparagraph, shall be borne by the medical personnel or the  
207 employer of the medical personnel. However, costs of testing or  
208 treatment not directly related to the initial HIV tests or costs  
209 of subsequent testing or treatment shall not be borne by the  
210 medical personnel or the employer of the medical personnel.

211           d. In order to utilize the provisions of this  
212 subparagraph, the medical personnel must either be tested for  
213 HIV pursuant to this section or provide the results of an HIV  
214 test taken within 6 months prior to the significant exposure if  
215 such test results are negative.

216           e. A person who receives the results of an HIV test  
217 pursuant to this subparagraph shall maintain the confidentiality



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218 of the information received and of the persons tested. Such  
219 confidential information is exempt from s. 119.07(1).

220 f. If the source of the exposure will not voluntarily  
221 submit to HIV testing and a blood sample is not available, the  
222 medical personnel or the employer of such person acting on  
223 behalf of the employee may seek a court order directing the  
224 source of the exposure to submit to HIV testing. A sworn  
225 statement by a physician licensed under chapter 458 or chapter  
226 459 that a significant exposure has occurred and that, in the  
227 physician's medical judgment, testing is medically necessary to  
228 determine the course of treatment constitutes probable cause for  
229 the issuance of an order by the court. The results of the test  
230 shall be released to the source of the exposure and to the  
231 person who experienced the exposure.

232 11. For the performance of an HIV test upon an individual  
233 who comes into contact with medical personnel in such a way that  
234 a significant exposure has occurred during the course of  
235 employment or within the scope of practice of the medical  
236 personnel while the medical personnel provides emergency medical  
237 treatment to the individual; or who comes into contact with  
238 nonmedical personnel in such a way that a significant exposure  
239 has occurred while the nonmedical personnel provides emergency  
240 medical assistance during a medical emergency. For the purposes  
241 of this subparagraph, a medical emergency means an emergency  
242 medical condition outside of a hospital or health care facility  
243 that provides physician care. The test may be performed only  
244 during the course of treatment for the medical emergency.

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245 a. An individual who is capable of providing consent shall  
246 be requested to consent to an HIV test prior to the testing. The  
247 individual's refusal to consent, and all information concerning  
248 the performance of an HIV test and its result, shall be  
249 documented only in the medical personnel's record unless the  
250 individual gives written consent to entering this information on  
251 the individual's medical record.

252 b. HIV testing shall be conducted only after a licensed  
253 physician documents, in the medical record of the medical  
254 personnel or nonmedical personnel, that there has been a  
255 significant exposure and that, in the physician's medical  
256 judgment, the information is medically necessary to determine  
257 the course of treatment for the medical personnel or nonmedical  
258 personnel.

259 c. Costs of any HIV test performed with or without the  
260 consent of the individual, as provided in this subparagraph,  
261 shall be borne by the medical personnel or the employer of the  
262 medical personnel or nonmedical personnel. However, costs of  
263 testing or treatment not directly related to the initial HIV  
264 tests or costs of subsequent testing or treatment shall not be  
265 borne by the medical personnel or the employer of the medical  
266 personnel or nonmedical personnel.

267 d. In order to utilize the provisions of this  
268 subparagraph, the medical personnel or nonmedical personnel  
269 shall be tested for HIV pursuant to this section or shall  
270 provide the results of an HIV test taken within 6 months prior  
271 to the significant exposure if such test results are negative.

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

276 f. If the source of the exposure will not voluntarily  
 277 submit to HIV testing and a blood sample was not obtained during  
 278 treatment for the medical emergency, the medical personnel, the  
 279 employer of the medical personnel acting on behalf of the  
 280 employee, or the nonmedical personnel may seek a court order  
 281 directing the source of the exposure to submit to HIV testing.  
 282 A sworn statement by a physician licensed under chapter 458 or  
 283 chapter 459 that a significant exposure has occurred and that,  
 284 in the physician's medical judgment, testing is medically  
 285 necessary to determine the course of treatment constitutes  
 286 probable cause for the issuance of an order by the court. The  
 287 results of the test shall be released to the source of the  
 288 exposure and to the person who experienced the exposure.

289 12. For the performance of an HIV test by the medical  
 290 examiner or attending physician upon an individual who expired  
 291 or could not be resuscitated while receiving emergency medical  
 292 assistance or care and who was the source of a significant  
 293 exposure to medical or nonmedical personnel providing such  
 294 assistance or care.

295 a. HIV testing may be conducted only after a licensed  
 296 physician documents in the medical record of the medical  
 297 personnel or nonmedical personnel that there has been a  
 298 significant exposure and that, in the physician's medical  
 299 judgment, the information is medically necessary to determine

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300 the course of treatment for the medical personnel or nonmedical  
301 personnel.

302 b. Costs of any HIV test performed under this subparagraph  
303 may not be charged to the deceased or to the family of the  
304 deceased person.

305 c. For the provisions of this subparagraph to be  
306 applicable, the medical personnel or nonmedical personnel must  
307 be tested for HIV under this section or must provide the results  
308 of an HIV test taken within 6 months before the significant  
309 exposure if such test results are negative.

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

312 13. For the performance of an HIV-related test medically  
313 indicated by licensed medical personnel for medical diagnosis of  
314 a hospitalized infant as necessary to provide appropriate care  
315 and treatment of the infant when, after a reasonable attempt, a  
316 parent cannot be contacted to provide consent. The medical  
317 records of the infant shall reflect the reason consent of the  
318 parent was not initially obtained. Test results shall be  
319 provided to the parent when the parent is located.

320 14. For the performance of HIV testing conducted to  
321 monitor the clinical progress of a patient previously diagnosed  
322 to be HIV positive.

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

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