

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) Richardson offered the following:

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3 **Amendment (with title amendment)**

4 Between line(s) 363 and 364, insert:

5 Section 4. Section 951.27, Florida Statutes, is amended to
6 read:

7 951.27 Blood tests of inmates.--

8 (1) Each county and each municipal detention facility
9 shall have a written procedure developed, in consultation with
10 the facility medical provider, establishing conditions under
11 which an inmate will be tested for infectious disease, including
12 human immunodeficiency virus pursuant to s. 775.0877, which
13 procedure is consistent with guidelines of the Centers for
14 Disease Control and Prevention and recommendations of the
15 Correctional Medical Authority. It is not unlawful for the

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16 person receiving the test results to divulge the test results to
17 the sheriff or chief correctional officer.

18 (2)(a) Each county or municipality has the local option,
19 if authorized by a majority of the county's or municipality's
20 governing body, to participate in the testing program provided
21 in this subsection. The county or municipal detention facility
22 that lies within the authority of any participating county or
23 municipality shall, consistent with s. 381.004(3), perform an
24 HIV test as defined in s. 381.004(2) on each inmate who is to be
25 released from the facility unless the facility knows that the
26 inmate is HIV positive or unless, within 120 days before the
27 release date, the inmate has been tested for HIV and does not
28 request retesting. The required test must be performed not less
29 than 30 days before the release date of the inmate. A test is
30 not required under this paragraph if an inmate is released due
31 to an emergency or a court order and the detention facility
32 receives less than 30 days' notice of the release date or if the
33 inmate is transferred to the custody of the Department of
34 Corrections for incarceration in the state correctional system.

35 (b) If the county or municipal detention facility knows
36 that an inmate who is to be released from the facility is HIV
37 positive or has received a positive HIV test result, that
38 facility shall, before the inmate is released:

39 1. Notify, consistent with s. 381.004(3), the Department
40 of Health and the county health department where the inmate
41 being released plans to reside of the release date and HIV
42 status of the inmate.

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43 2. Provide special transitional assistance to the inmate,
44 which must include:

45 a. Education on preventing the transmission of HIV to
46 others and on the importance of receiving followup medical care
47 and treatment.

48 b. A written, individualized discharge plan that includes
49 records of all laboratory and diagnostic test results,
50 medication and treatment information, and referrals to and
51 contacts with the county health department and local primary
52 medical care services for the treatment of HIV infection that
53 are available where the inmate plans to reside.

54 (3)(2) Except as otherwise provided in this subsection,
55 serologic blood test results obtained pursuant to subsection (1)
56 or subsection (2) are confidential and exempt from the
57 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
58 Constitution. However, such results may be provided to employees
59 or officers of the sheriff or chief correctional officer who are
60 responsible for the custody and care of the affected inmate and
61 have a need to know such information, and as provided in ss.
62 381.004(3), 775.0877, and 960.003. In addition, upon request of
63 the victim or the victim's legal guardian, or the parent or
64 legal guardian of the victim if the victim is a minor, the
65 results of any HIV test performed on an inmate who has been
66 arrested for any sexual offense involving oral, anal, or vaginal
67 penetration by, or union with, the sexual organ of another,
68 shall be disclosed to the victim or the victim's legal guardian,
69 or to the parent or legal guardian of the victim if the victim

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70 is a minor. In such cases, the county or municipal detention
71 facility shall furnish the test results to the Department of
72 Health, which is responsible for disclosing the results to
73 public health agencies as provided in s. 775.0877 and to the
74 victim or the victim's legal guardian, or the parent or legal
75 guardian of the victim if the victim is a minor, as provided in
76 s. 960.003(3).

77 ~~(4)(3)~~ The results of any serologic blood test on an
78 inmate are a part of that inmate's permanent medical file. Upon
79 transfer of the inmate to any other correctional facility, such
80 file is also transferred, and all relevant authorized persons
81 must be notified of positive HIV test results, as required in s.
82 775.0877.

83 (5) Notwithstanding any statute providing for a waiver of
84 sovereign immunity, the state, its agencies, or subdivisions,
85 and employees of the state, its agencies, or subdivisions are
86 not liable to any person for negligently causing death or
87 personal injury arising out of complying with this section.

88 Section 5. Paragraph (h) of subsection (3) of section
89 381.004, Florida Statutes, is amended to read:

90 381.004 HIV testing.--

91 (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
92 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

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

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95 1. When testing for sexually transmissible diseases is
96 required by state or federal law, or by rule including the
97 following situations:

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

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

103 c. Testing for HIV by a medical examiner in accordance
104 with s. 406.11.

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

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

109 3. For the performance of an HIV-related test by licensed
110 medical personnel in bona fide medical emergencies when the test
111 results are necessary for medical diagnostic purposes to provide
112 appropriate emergency care or treatment to the person being
113 tested and the patient is unable to consent, as supported by
114 documentation in the medical record. Notification of test
115 results in accordance with paragraph (c) is required.

116 4. For the performance of an HIV-related test by licensed
117 medical personnel for medical diagnosis of acute illness where,
118 in the opinion of the attending physician, obtaining informed
119 consent would be detrimental to the patient, as supported by
120 documentation in the medical record, and the test results are
121 necessary for medical diagnostic purposes to provide appropriate

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122 care or treatment to the person being tested. Notification of
123 test results in accordance with paragraph (c) is required if it
124 would not be detrimental to the patient. This subparagraph does
125 not authorize the routine testing of patients for HIV infection
126 without informed consent.

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

129 6. For the performance of an HIV test upon a defendant
130 pursuant to the victim's request in a prosecution for any type
131 of sexual battery where a blood sample is taken from the
132 defendant voluntarily, pursuant to court order for any purpose,
133 or pursuant to the provisions of s. 775.0877, s. 951.27, or s.
134 960.003; however, the results of any HIV test performed shall be
135 disclosed solely to the victim and the defendant, except as
136 provided in ss. 775.0877, 951.27, and 960.003.

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

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

144 9. When human tissue is collected lawfully without the
145 consent of the donor for corneal removal as authorized by s.
146 765.5185 or enucleation of the eyes as authorized by s. 765.519.

147 10. For the performance of an HIV test upon an individual
148 who comes into contact with medical personnel in such a way that

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149 a significant exposure has occurred during the course of
150 employment or within the scope of practice and where a blood
151 sample is available that was taken from that individual
152 voluntarily by medical personnel for other purposes. The term
153 "medical personnel" includes a licensed or certified health care
154 professional; an employee of a health care professional or
155 health care facility; employees of a laboratory licensed under
156 chapter 483; personnel of a blood bank or plasma center; a
157 medical student or other student who is receiving training as a
158 health care professional at a health care facility; and a
159 paramedic or emergency medical technician certified by the
160 department to perform life-support procedures under s. 401.23.

161 a. Prior to performance of an HIV test on a voluntarily
162 obtained blood sample, the individual from whom the blood was
163 obtained shall be requested to consent to the performance of the
164 test and to the release of the results. The individual's
165 refusal to consent and all information concerning the
166 performance of an HIV test and any HIV test result shall be
167 documented only in the medical personnel's record unless the
168 individual gives written consent to entering this information on
169 the individual's medical record.

170 b. Reasonable attempts to locate the individual and to
171 obtain consent shall be made, and all attempts must be
172 documented. If the individual cannot be found, an HIV test may
173 be conducted on the available blood sample. If the individual
174 does not voluntarily consent to the performance of an HIV test,
175 the individual shall be informed that an HIV test will be

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176 performed, and counseling shall be furnished as provided in this
177 section. However, HIV testing shall be conducted only after a
178 licensed physician documents, in the medical record of the
179 medical personnel, that there has been a significant exposure
180 and that, in the physician's medical judgment, the information
181 is medically necessary to determine the course of treatment for
182 the medical personnel.

183 c. Costs of any HIV test of a blood sample performed with
184 or without the consent of the individual, as provided in this
185 subparagraph, shall be borne by the medical personnel or the
186 employer of the medical personnel. However, costs of testing or
187 treatment not directly related to the initial HIV tests or costs
188 of subsequent testing or treatment shall not be borne by the
189 medical personnel or the employer of the medical personnel.

190 d. In order to utilize the provisions of this
191 subparagraph, the medical personnel must either be tested for
192 HIV pursuant to this section or provide the results of an HIV
193 test taken within 6 months prior to the significant exposure if
194 such test results are negative.

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

199 f. If the source of the exposure will not voluntarily
200 submit to HIV testing and a blood sample is not available, the
201 medical personnel or the employer of such person acting on
202 behalf of the employee may seek a court order directing the

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203 source of the exposure to submit to HIV testing. A sworn
204 statement by a physician licensed under chapter 458 or chapter
205 459 that a significant exposure has occurred and that, in the
206 physician's medical judgment, testing is medically necessary to
207 determine the course of treatment constitutes probable cause for
208 the issuance of an order by the court. The results of the test
209 shall be released to the source of the exposure and to the
210 person who experienced the exposure.

211 11. For the performance of an HIV test upon an individual
212 who comes into contact with medical personnel in such a way that
213 a significant exposure has occurred during the course of
214 employment or within the scope of practice of the medical
215 personnel while the medical personnel provides emergency medical
216 treatment to the individual; or who comes into contact with
217 nonmedical personnel in such a way that a significant exposure
218 has occurred while the nonmedical personnel provides emergency
219 medical assistance during a medical emergency. For the purposes
220 of this subparagraph, a medical emergency means an emergency
221 medical condition outside of a hospital or health care facility
222 that provides physician care. The test may be performed only
223 during the course of treatment for the medical emergency.

224 a. An individual who is capable of providing consent shall
225 be requested to consent to an HIV test prior to the testing. The
226 individual's refusal to consent, and all information concerning
227 the performance of an HIV test and its result, shall be
228 documented only in the medical personnel's record unless the

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229 individual gives written consent to entering this information on
230 the individual's medical record.

231 b. HIV testing shall be conducted only after a licensed
232 physician documents, in the medical record of the medical
233 personnel or nonmedical personnel, that there has been a
234 significant exposure and that, in the physician's medical
235 judgment, the information is medically necessary to determine
236 the course of treatment for the medical personnel or nonmedical
237 personnel.

238 c. Costs of any HIV test performed with or without the
239 consent of the individual, as provided in this subparagraph,
240 shall be borne by the medical personnel or the employer of the
241 medical personnel or nonmedical personnel. However, costs of
242 testing or treatment not directly related to the initial HIV
243 tests or costs of subsequent testing or treatment shall not be
244 borne by the medical personnel or the employer of the medical
245 personnel or nonmedical personnel.

246 d. In order to utilize the provisions of this
247 subparagraph, the medical personnel or nonmedical personnel
248 shall be tested for HIV pursuant to this section or shall
249 provide the results of an HIV test taken within 6 months prior
250 to the significant exposure if such test results are negative.

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

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255 f. If the source of the exposure will not voluntarily
256 submit to HIV testing and a blood sample was not obtained during
257 treatment for the medical emergency, the medical personnel, the
258 employer of the medical personnel acting on behalf of the
259 employee, or the nonmedical personnel may seek a court order
260 directing the source of the exposure to submit to HIV testing.
261 A sworn statement by a physician licensed under chapter 458 or
262 chapter 459 that a significant exposure has occurred and that,
263 in the physician's medical judgment, testing is medically
264 necessary to determine the course of treatment constitutes
265 probable cause for the issuance of an order by the court. The
266 results of the test shall be released to the source of the
267 exposure and to the person who experienced the exposure.

268 12. For the performance of an HIV test by the medical
269 examiner or attending physician upon an individual who expired
270 or could not be resuscitated while receiving emergency medical
271 assistance or care and who was the source of a significant
272 exposure to medical or nonmedical personnel providing such
273 assistance or care.

274 a. HIV testing may be conducted only after a licensed
275 physician documents in the medical record of the medical
276 personnel or nonmedical personnel that there has been a
277 significant exposure and that, in the physician's medical
278 judgment, the information is medically necessary to determine
279 the course of treatment for the medical personnel or nonmedical
280 personnel.

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281 b. Costs of any HIV test performed under this subparagraph
282 may not be charged to the deceased or to the family of the
283 deceased person.

284 c. For the provisions of this subparagraph to be
285 applicable, the medical personnel or nonmedical personnel must
286 be tested for HIV under this section or must provide the results
287 of an HIV test taken within 6 months before the significant
288 exposure if such test results are negative.

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

291 13. For the performance of an HIV-related test medically
292 indicated by licensed medical personnel for medical diagnosis of
293 a hospitalized infant as necessary to provide appropriate care
294 and treatment of the infant when, after a reasonable attempt, a
295 parent cannot be contacted to provide consent. The medical
296 records of the infant shall reflect the reason consent of the
297 parent was not initially obtained. Test results shall be
298 provided to the parent when the parent is located.

299 14. For the performance of HIV testing conducted to
300 monitor the clinical progress of a patient previously diagnosed
301 to be HIV positive.

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

304
305 ===== T I T L E A M E N D M E N T =====

306 Remove line(s) 20 and insert:

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307 | tested; amending s. 951.27, F.S.; allowing counties and
308 | municipalities the option to participate in a program to
309 | test each inmate for HIV prior to the inmate's release if
310 | the inmate's HIV status is unknown; providing certain
311 | exceptions; requiring county and municipal detention
312 | facilities to notify the Department of Health and the
313 | county health department where the inmate plans to reside
314 | following release if the inmate is HIV positive; requiring
315 | the detention facilities to provide special transitional
316 | assistance to an inmate who is HIV positive; providing for
317 | immunity for complying entities; amending s. 381.004,
318 | F.S.; providing that informed consent is not required for
319 | an HIV test of an inmate prior to the inmate's release
320 | from a municipal or county detention facility; providing
321 | an effective date.

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