

1 A bill to be entitled
 2 An act relating to sexually transmissible disease testing
 3 and reporting; amending s. 381.004, F.S.; revising
 4 criteria for releasing preliminary HIV test results;
 5 providing that informed consent is not required to test
 6 pregnant women for HIV; amending s. 384.25, F.S.;
 7 requiring certain positive test results to be reported to
 8 the Department of Health within a specified period of
 9 time; revising provisions relating to method of reporting
 10 of test results, time period during which the reports must
 11 be made, content of reports, enforcement requirements, and
 12 followup activities and requiring the department to adopt
 13 rules therefor; deleting requirement that the department
 14 submit certain reports; amending s. 384.31, F.S.;
 15 requiring informed consent of a pregnant woman before
 16 performing a test for sexually transmitted diseases;
 17 requiring documentation if a pregnant woman declines to be
 18 tested; deleting provision limiting liability of the
 19 practitioner attending a patient who declined to be
 20 tested; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Paragraphs (d) and (h) of subsection (3) of
 25 section 381.004, Florida Statutes, are amended to read:

26 381.004 HIV testing.--

27 (3) HUMAN IMMUNODEFICIENCY VIRUS TESTING; INFORMED
 28 CONSENT; RESULTS; COUNSELING; CONFIDENTIALITY.--

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

29 (d) No positive preliminary test result shall be
 30 ~~determined as positive, and no positive test result shall be~~
 31 ~~revealed to any person, without corroborating or confirmatory~~
 32 ~~tests being conducted~~ except in the following situations:

33 1. Preliminary test results may be released to licensed
 34 physicians or the medical or nonmedical personnel subject to the
 35 significant exposure for purposes of subparagraphs (h)10., 11.,
 36 and 12.

37 2. Preliminary test results may be released to health care
 38 providers and to the person tested when decisions about medical
 39 care or treatment of, or recommendation to, the person tested
 40 and, in the case of an intrapartum or postpartum woman, when
 41 care, treatment, or recommendations regarding her newborn,
 42 cannot await the results of confirmatory testing. Positive
 43 preliminary HIV test results shall not be characterized to the
 44 patient as a diagnosis of HIV infection. Justification for the
 45 use of preliminary test results must be documented in the
 46 medical record by the health care provider who ordered the test.
 47 ~~This subparagraph does not authorize the release of preliminary~~
 48 ~~test results for the purpose of routine identification of HIV-~~
 49 ~~infected individuals or when HIV testing is incidental to the~~
 50 ~~preliminary diagnosis or care of a patient.~~

51 3. The results of rapid testing technologies shall be
 52 considered preliminary and may be released in accordance with
 53 the manufacturer's instructions as approved by the federal Food
 54 and Drug Administration.

55 4. Corroborating or confirmatory testing must be conducted
 56 as followup to a positive preliminary test. Results shall be

57 | communicated to the patient according to statute regardless of
 58 | the outcome. Except as provided in this section, test results
 59 | are confidential and exempt from the provisions of s. 119.07(1).

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

62 | 1. When testing for sexually transmissible diseases is
 63 | required by state or federal law, or by rule including the
 64 | following situations:

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

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

70 | c. Testing for HIV by a medical examiner in accordance
 71 | with s. 406.11.

72 | d. HIV testing of pregnant women pursuant to s. 384.31.

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

75 | 3. For the performance of an HIV-related test by licensed
 76 | medical personnel in bona fide medical emergencies when the test
 77 | results are necessary for medical diagnostic purposes to provide
 78 | appropriate emergency care or treatment to the person being
 79 | tested and the patient is unable to consent, as supported by
 80 | documentation in the medical record. Notification of test
 81 | results in accordance with paragraph (c) is required.

82 | 4. For the performance of an HIV-related test by licensed
 83 | medical personnel for medical diagnosis of acute illness where,
 84 | in the opinion of the attending physician, obtaining informed

85 consent would be detrimental to the patient, as supported by
86 documentation in the medical record, and the test results are
87 necessary for medical diagnostic purposes to provide appropriate
88 care or treatment to the person being tested. Notification of
89 test results in accordance with paragraph (c) is required if it
90 would not be detrimental to the patient. This subparagraph does
91 not authorize the routine testing of patients for HIV infection
92 without informed consent.

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

95 6. For the performance of an HIV test upon a defendant
96 pursuant to the victim's request in a prosecution for any type
97 of sexual battery where a blood sample is taken from the
98 defendant voluntarily, pursuant to court order for any purpose,
99 or pursuant to the provisions of s. 775.0877, s. 951.27, or s.
100 960.003; however, the results of any HIV test performed shall be
101 disclosed solely to the victim and the defendant, except as
102 provided in ss. 775.0877, 951.27, and 960.003.

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

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

110 9. When human tissue is collected lawfully without the
111 consent of the donor for corneal removal as authorized by s.
112 765.5185 or enucleation of the eyes as authorized by s. 765.519.

113 10. For the performance of an HIV test upon an individual
114 who comes into contact with medical personnel in such a way that
115 a significant exposure has occurred during the course of
116 employment or within the scope of practice and where a blood
117 sample is available that was taken from that individual
118 voluntarily by medical personnel for other purposes. The term
119 "medical personnel" includes a licensed or certified health care
120 professional; an employee of a health care professional or
121 health care facility; employees of a laboratory licensed under
122 chapter 483; personnel of a blood bank or plasma center; a
123 medical student or other student who is receiving training as a
124 health care professional at a health care facility; and a
125 paramedic or emergency medical technician certified by the
126 department to perform life-support procedures under s. 401.23.

127 a. Prior to performance of an HIV test on a voluntarily
128 obtained blood sample, the individual from whom the blood was
129 obtained shall be requested to consent to the performance of the
130 test and to the release of the results. The individual's refusal
131 to consent and all information concerning the performance of an
132 HIV test and any HIV test result shall be documented only in the
133 medical personnel's record unless the individual gives written
134 consent to entering this information on the individual's medical
135 record.

136 b. Reasonable attempts to locate the individual and to
137 obtain consent shall be made, and all attempts must be
138 documented. If the individual cannot be found, an HIV test may
139 be conducted on the available blood sample. If the individual
140 does not voluntarily consent to the performance of an HIV test,

141 the individual shall be informed that an HIV test will be
142 performed, and counseling shall be furnished as provided in this
143 section. However, HIV testing shall be conducted only after a
144 licensed physician documents, in the medical record of the
145 medical personnel, that there has been a significant exposure
146 and that, in the physician's medical judgment, the information
147 is medically necessary to determine the course of treatment for
148 the medical personnel.

149 c. Costs of any HIV test of a blood sample performed with
150 or without the consent of the individual, as provided in this
151 subparagraph, shall be borne by the medical personnel or the
152 employer of the medical personnel. However, costs of testing or
153 treatment not directly related to the initial HIV tests or costs
154 of subsequent testing or treatment shall not be borne by the
155 medical personnel or the employer of the medical personnel.

156 d. In order to utilize the provisions of this
157 subparagraph, the medical personnel must either be tested for
158 HIV pursuant to this section or provide the results of an HIV
159 test taken within 6 months prior to the significant exposure if
160 such test results are negative.

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

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

169 source of the exposure to submit to HIV testing. A sworn
170 statement by a physician licensed under chapter 458 or chapter
171 459 that a significant exposure has occurred and that, in the
172 physician's medical judgment, testing is medically necessary to
173 determine the course of treatment constitutes probable cause for
174 the issuance of an order by the court. The results of the test
175 shall be released to the source of the exposure and to the
176 person who experienced the exposure.

177 11. For the performance of an HIV test upon an individual
178 who comes into contact with medical personnel in such a way that
179 a significant exposure has occurred during the course of
180 employment or within the scope of practice of the medical
181 personnel while the medical personnel provides emergency medical
182 treatment to the individual; or who comes into contact with
183 nonmedical personnel in such a way that a significant exposure
184 has occurred while the nonmedical personnel provides emergency
185 medical assistance during a medical emergency. For the purposes
186 of this subparagraph, a medical emergency means an emergency
187 medical condition outside of a hospital or health care facility
188 that provides physician care. The test may be performed only
189 during the course of treatment for the medical emergency.

190 a. An individual who is capable of providing consent shall
191 be requested to consent to an HIV test prior to the testing. The
192 individual's refusal to consent, and all information concerning
193 the performance of an HIV test and its result, shall be
194 documented only in the medical personnel's record unless the
195 individual gives written consent to entering this information on
196 the individual's medical record.

197 b. HIV testing shall be conducted only after a licensed
198 physician documents, in the medical record of the medical
199 personnel or nonmedical personnel, that there has been a
200 significant exposure and that, in the physician's medical
201 judgment, the information is medically necessary to determine
202 the course of treatment for the medical personnel or nonmedical
203 personnel.

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

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

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

221 f. If the source of the exposure will not voluntarily
222 submit to HIV testing and a blood sample was not obtained during
223 treatment for the medical emergency, the medical personnel, the
224 employer of the medical personnel acting on behalf of the

225 employee, or the nonmedical personnel may seek a court order
226 directing the source of the exposure to submit to HIV testing. A
227 sworn statement by a physician licensed under chapter 458 or
228 chapter 459 that a significant exposure has occurred and that,
229 in the physician's medical judgment, testing is medically
230 necessary to determine the course of treatment constitutes
231 probable cause for the issuance of an order by the court. The
232 results of the test shall be released to the source of the
233 exposure and to the person who experienced the exposure.

234 12. For the performance of an HIV test by the medical
235 examiner or attending physician upon an individual who expired
236 or could not be resuscitated while receiving emergency medical
237 assistance or care and who was the source of a significant
238 exposure to medical or nonmedical personnel providing such
239 assistance or care.

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

247 b. Costs of any HIV test performed under this subparagraph
248 may not be charged to the deceased or to the family of the
249 deceased person.

250 c. For the provisions of this subparagraph to be
251 applicable, the medical personnel or nonmedical personnel must
252 be tested for HIV under this section or must provide the results

253 of an HIV test taken within 6 months before the significant
 254 exposure if such test results are negative.

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

257 13. For the performance of an HIV-related test medically
 258 indicated by licensed medical personnel for medical diagnosis of
 259 a hospitalized infant as necessary to provide appropriate care
 260 and treatment of the infant when, after a reasonable attempt, a
 261 parent cannot be contacted to provide consent. The medical
 262 records of the infant shall reflect the reason consent of the
 263 parent was not initially obtained. Test results shall be
 264 provided to the parent when the parent is located.

265 14. For the performance of HIV testing conducted to
 266 monitor the clinical progress of a patient previously diagnosed
 267 to be HIV positive.

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

270 Section 2. Section 384.25, Florida Statutes, is amended to
 271 read:

272 384.25 Reporting required.--

273 (1) Each person who makes a diagnosis of or treats a
 274 person with a sexually transmissible disease and each laboratory
 275 that performs a test ~~for a sexually transmissible disease~~ which
 276 either concludes with a positive result for a sexually
 277 transmissible disease or a result indicative of human
 278 immunodeficiency virus (HIV) or acquired immune deficiency
 279 syndrome (AIDS) shall report such facts as may be required by

280 the department by rule, within a time period as specified by
281 rule of the department, but in no case to exceed 2 weeks.

282 (2) The department shall adopt rules specifying the
283 information required ~~in~~ and the maximum ~~a minimum~~ time period
284 for reporting a sexually transmissible disease. In adopting such
285 rules, the department shall consider the need for information,
286 protections for the privacy and confidentiality of the patient,
287 and the practical ability of persons and laboratories to report
288 in a reasonable fashion.

289 (3) To ensure the confidentiality of persons infected with
290 the human immunodeficiency virus (HIV), reporting of HIV
291 infection and AIDS ~~acquired immune deficiency syndrome (AIDS)~~
292 must be conducted using a system ~~the HIV/AIDS Reporting System~~
293 ~~(HARS)~~ developed by the Centers for Disease Control and
294 Prevention of the United States Public Health Service or an
295 equivalent system.

296 (a) The department shall adopt rules requiring each
297 physician and laboratory to report any newborn or infant up to
298 18 months of age who has been exposed to HIV. Such rules may
299 include the method and time period for reporting which may not
300 exceed 2 weeks, information to be included in the report,
301 enforcement requirements, and followup activities by the
302 department.

303 ~~(3) The department shall require reporting of physician~~
304 ~~diagnosed cases of AIDS based upon diagnostic criteria from the~~
305 ~~Centers for Disease Control and Prevention.~~

306 (b)(4) ~~The department may require physician and laboratory~~
307 ~~reporting of HIV infection. However, only reports of HIV~~

308 ~~infection identified on or after the effective date of the rule~~
 309 ~~developed by the department pursuant to this subsection shall be~~
 310 ~~accepted.~~ The reporting may not affect or relate to anonymous
 311 HIV testing programs conducted pursuant to s. 381.004(4) ~~or to~~
 312 ~~university-based medical research protocols as determined by the~~
 313 ~~department.~~

314 (c)(5) After notification of the test subject ~~under~~
 315 ~~subsection (4)~~, the department may, with the consent of the test
 316 subject, notify school superintendents of students and school
 317 personnel whose HIV tests are positive.

318 ~~(6) The department shall by February 1 of each year submit~~
 319 ~~to the Legislature an annual report relating to all information~~
 320 ~~obtained pursuant to this section.~~

321 (4)(7) Each person who violates the provisions of this
 322 section or the rules adopted hereunder may be fined by the
 323 department up to \$500 for each offense. The department shall
 324 report each violation of this section to the regulatory agency
 325 responsible for licensing each health care professional and each
 326 laboratory to which these provisions apply.

327 Section 3. Section 384.31, Florida Statutes, is amended to
 328 read:

329 384.31 ~~Serological~~ Testing of pregnant women; duty of the
 330 attendant.--

331 ~~(1)~~ Every person, including every physician licensed under
 332 chapter 458 or chapter 459 or midwife licensed under part I of
 333 chapter 464 or chapter 467, attending a pregnant woman for
 334 conditions relating to pregnancy during the period of gestation
 335 and delivery shall ~~take or~~ cause the woman to be tested for

336 sexually transmissible diseases, including HIV, as taken a
337 sample of venous blood at a time or times specified by the
338 department rule. Testing Each sample of blood shall be conducted
339 tested by a laboratory approved for such purposes under part I
340 of chapter 483 for sexually transmissible diseases as required
341 by rule of the department. The woman shall be informed of the
342 tests that will be conducted and of her right to refuse testing.
343 If the pregnant woman objects to testing, a written statement of
344 objection, signed by the woman, shall be placed in the patient's
345 medical record and no testing shall occur.

346 ~~(2) At the time the venous blood sample is taken, testing~~
347 ~~for human immunodeficiency virus (HIV) infection shall be~~
348 ~~offered to each pregnant woman. The prevailing professional~~
349 ~~standard of care in this state requires each health care~~
350 ~~provider and midwife who attends a pregnant woman to counsel the~~
351 ~~woman to be tested for human immunodeficiency virus (HIV).~~
352 ~~Counseling shall include a discussion of the availability of~~
353 ~~treatment if the pregnant woman tests HIV positive. If a~~
354 ~~pregnant woman objects to HIV testing, reasonable steps shall be~~
355 ~~taken to obtain a written statement of such objection, signed by~~
356 ~~the patient, which shall be placed in the patient's medical~~
357 ~~record. Every person, including every physician licensed under~~
358 ~~chapter 458 or chapter 459 or midwife licensed under part I of~~
359 ~~chapter 464 or chapter 467, who attends a pregnant woman who has~~
360 ~~been offered and objects to HIV testing shall be immune from~~
361 ~~liability arising out of or related to the contracting of HIV~~
362 ~~infection or acquired immune deficiency syndrome (AIDS) by the~~
363 ~~child from the mother.~~

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Section 4. This act shall take effect July 1, 2005.