

Bill No. SB 186

Barcode 492328

CHAMBER ACTION

Senate

House

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The Committee on Health Care (Pruitt) recommended the following amendment:

Senate Amendment (with title amendment)

On page 1, between lines 15 and 16,

insert:

Section 1. Paragraph (h) of subsection (3) of section 381.004, Florida Statutes, is amended to read:

381.004 HIV testing.--

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

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

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

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

b. HIV testing of inmates pursuant to s. 945.355 prior

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1 to their release from prison by reason of parole, accumulation
2 of gain-time credits, or expiration of sentence.

3 c. Testing for HIV by a medical examiner in accordance
4 with s. 406.11.

5 2. Those exceptions provided for blood, plasma,
6 organs, skin, semen, or other human tissue pursuant to s.
7 381.0041.

8 3. For the performance of an HIV-related test by
9 licensed medical personnel in bona fide medical emergencies
10 when the test results are necessary for medical diagnostic
11 purposes to provide appropriate emergency care or treatment to
12 the person being tested and the patient is unable to consent,
13 as supported by documentation in the medical record.
14 Notification of test results in accordance with paragraph (c)
15 is required.

16 4. For the performance of an HIV-related test by
17 licensed medical personnel for medical diagnosis of acute
18 illness where, in the opinion of the attending physician,
19 obtaining informed consent would be detrimental to the
20 patient, as supported by documentation in the medical record,
21 and the test results are necessary for medical diagnostic
22 purposes to provide appropriate care or treatment to the
23 person being tested. Notification of test results in
24 accordance with paragraph (c) is required if it would not be
25 detrimental to the patient. This subparagraph does not
26 authorize the routine testing of patients for HIV infection
27 without informed consent.

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

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

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1 of sexual battery where a blood sample is taken from the
 2 defendant voluntarily, pursuant to court order for any
 3 purpose, or pursuant to the provisions of s. 775.0877, s.
 4 951.27, or s. 960.003; however, the results of any HIV test
 5 performed shall be disclosed solely to the victim and the
 6 defendant, except as provided in ss. 775.0877, 951.27, and
 7 960.003.

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

9 8. For epidemiological research pursuant to s.
 10 381.0032, for research consistent with institutional review
 11 boards created by 45 C.F.R. part 46, or for the performance of
 12 an HIV-related test for the purpose of research, if the
 13 testing is performed in a manner by which the identity of the
 14 test subject is not known and may not be retrieved by the
 15 researcher.

16 9. When human tissue is collected lawfully without the
 17 consent of the donor for corneal removal as authorized by s.
 18 765.5185 or enucleation of the eyes as authorized by s.
 19 765.519.

20 10. For the performance of an HIV test upon an
 21 individual who comes into contact with medical personnel in
 22 such a way that a significant exposure has occurred during the
 23 course of employment or within the scope of practice and where
 24 a blood sample is available that was taken from that
 25 individual voluntarily by medical personnel for other
 26 purposes. The term "medical personnel" includes a licensed or
 27 certified health care professional; an employee of a health
 28 care professional or health care facility; employees of a
 29 laboratory licensed under chapter 483; personnel of a blood
 30 bank or plasma center; a medical student or other student who
 31 is receiving training as a health care professional at a

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1 health care facility; and a paramedic or emergency medical
2 technician certified by the department to perform life-support
3 procedures under s. 401.23.

4 a. Prior to performance of an HIV test on a
5 voluntarily obtained blood sample, the individual from whom
6 the blood was obtained shall be requested to consent to the
7 performance of the test and to the release of the results.
8 The individual's refusal to consent and all information
9 concerning the performance of an HIV test and any HIV test
10 result shall be documented only in the medical personnel's
11 record unless the individual gives written consent to entering
12 this information on the individual's medical record.

13 b. Reasonable attempts to locate the individual and to
14 obtain consent shall be made, and all attempts must be
15 documented. If the individual cannot be found, an HIV test may
16 be conducted on the available blood sample. If the individual
17 does not voluntarily consent to the performance of an HIV
18 test, the individual shall be informed that an HIV test will
19 be performed, and counseling shall be furnished as provided in
20 this section. However, HIV testing shall be conducted only
21 after a licensed physician documents, in the medical record of
22 the medical personnel, that there has been a significant
23 exposure and that, in the physician's medical judgment, the
24 information is medically necessary to determine the course of
25 treatment for the medical personnel.

26 c. Costs of any HIV test of a blood sample performed
27 with or without the consent of the individual, as provided in
28 this subparagraph, shall be borne by the medical personnel or
29 the employer of the medical personnel. However, costs of
30 testing or treatment not directly related to the initial HIV
31 tests or costs of subsequent testing or treatment shall not be

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1 borne by the medical personnel or the employer of the medical
2 personnel.

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

8 e. A person who receives the results of an HIV test
9 pursuant to this subparagraph shall maintain the
10 confidentiality of the information received and of the persons
11 tested. Such confidential information is exempt from s.
12 119.07(1).

13 f. If the source of the exposure will not voluntarily
14 submit to HIV testing and a blood sample is not available, the
15 medical personnel or the employer of such person acting on
16 behalf of the employee may seek a court order directing the
17 source of the exposure to submit to HIV testing. A sworn
18 statement by a physician licensed under chapter 458 or chapter
19 459 that a significant exposure has occurred and that, in the
20 physician's medical judgment, testing is medically necessary
21 to determine the course of treatment constitutes probable
22 cause for the issuance of an order by the court. The results
23 of the test shall be released to the source of the exposure
24 and to the person who experienced the exposure.

25 11. For the performance of an HIV test upon an
26 individual who comes into contact with medical personnel in
27 such a way that a significant exposure has occurred during the
28 course of employment or within the scope of practice of the
29 medical personnel while the medical personnel provides
30 emergency medical treatment to the individual; or who comes
31 into contact with nonmedical personnel in such a way that a

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1 significant exposure has occurred while the nonmedical
2 personnel provides emergency medical assistance during a
3 medical emergency. For the purposes of this subparagraph, a
4 medical emergency means an emergency medical condition outside
5 of a hospital or health care facility that provides physician
6 care. The test may be performed only during the course of
7 treatment for the medical emergency.

8 a. An individual who is capable of providing consent
9 shall be requested to consent to an HIV test prior to the
10 testing. The individual's refusal to consent, and all
11 information concerning the performance of an HIV test and its
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. HIV testing shall be conducted only after a
16 licensed physician documents, in the medical record of the
17 medical personnel or nonmedical personnel, that there has been
18 a significant exposure and that, in the physician's medical
19 judgment, the information is medically necessary to determine
20 the course of treatment for the medical personnel or
21 nonmedical personnel.

22 c. Costs of any HIV test performed with or without the
23 consent of the individual, as provided in this subparagraph,
24 shall be borne by the medical personnel or the employer of the
25 medical personnel or nonmedical personnel. However, costs of
26 testing or treatment not directly related to the initial HIV
27 tests or costs of subsequent testing or treatment shall not be
28 borne by the medical personnel or the employer of the medical
29 personnel or nonmedical personnel.

30 d. In order to utilize the provisions of this
31 subparagraph, the medical personnel or nonmedical personnel

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1 shall be tested for HIV pursuant to this section or shall
2 provide the results of an HIV test taken within 6 months prior
3 to the significant exposure if such test results are negative.

4 e. A person who receives the results of an HIV test
5 pursuant to this subparagraph shall maintain the
6 confidentiality of the information received and of the persons
7 tested. Such confidential information is exempt from s.
8 119.07(1).

9 f. If the source of the exposure will not voluntarily
10 submit to HIV testing and a blood sample was not obtained
11 during treatment for the medical emergency, the medical
12 personnel, the employer of the medical personnel acting on
13 behalf of the employee, or the nonmedical personnel may seek a
14 court order directing the source of the exposure to submit to
15 HIV testing. A sworn statement by a physician licensed under
16 chapter 458 or chapter 459 that a significant exposure has
17 occurred and that, in the physician's medical judgment,
18 testing is medically necessary to determine the course of
19 treatment constitutes probable cause for the issuance of an
20 order by the court. The results of the test shall be released
21 to the source of the exposure and to the person who
22 experienced the exposure.

23 12. For the performance of an HIV test by the medical
24 examiner or attending physician upon an individual who expired
25 or could not be resuscitated while receiving emergency medical
26 assistance or care and who was the source of a significant
27 exposure to medical or nonmedical personnel providing such
28 assistance or care.

29 a. HIV testing may be conducted only after a licensed
30 physician documents in the medical record of the medical
31 personnel or nonmedical personnel that there has been a

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1 significant exposure and that, in the physician's medical
2 judgment, the information is medically necessary to determine
3 the course of treatment for the medical personnel or
4 nonmedical personnel.

5 b. Costs of any HIV test performed under this
6 subparagraph may not be charged to the deceased or to the
7 family of the deceased person.

8 c. For the provisions of this subparagraph to be
9 applicable, the medical personnel or nonmedical personnel must
10 be tested for HIV under this section or must provide the
11 results of an HIV test taken within 6 months before the
12 significant exposure if such test results are negative.

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

15 13. For the performance of an HIV-related test
16 medically indicated by licensed medical personnel for medical
17 diagnosis of a hospitalized infant as necessary to provide
18 appropriate care and treatment of the infant when, after a
19 reasonable attempt, a parent cannot be contacted to provide
20 consent. The medical records of the infant shall reflect the
21 reason consent of the parent was not initially obtained. Test
22 results shall be provided to the parent when the parent is
23 located.

24 14. For the performance of HIV testing conducted to
25 monitor the clinical progress of a patient previously
26 diagnosed to be HIV positive.

27 15. For the performance of repeated HIV testing
28 conducted to monitor possible conversion from a significant
29 exposure.

30 16. For the performance of HIV testing of pregnant
31 women conducted in accordance with s. 384.31.

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(Redesignate subsequent sections.)

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

And the title is amended as follows:

On page 1, line 4, after the first semicolon,

insert:

amending s. 381.004, F.S.; providing an
exemption from the informed-consent
requirements for HIV testing of pregnant women
when such tests are performed as part of the
serological testing of pregnant women;