

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

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3 Section 1. Section 985.1351, Florida Statutes, is
4 created to read:

5 985.1351 Blood test of a child referred to or under
6 the supervision of the department.--

7 (1) Each juvenile assessment center or juvenile
8 detention facility shall have a written procedure developed,
9 in consultation with a facility medical provider, establishing
10 conditions under which a child who is referred to or under the
11 supervision of the department will be tested for infectious
12 diseases, including human immunodeficiency virus, which
13 procedure must be consistent with guidelines of the Centers
14 for Disease Control and Prevention and recommendations of the
15 Correctional Medical Authority. It is not unlawful for the
16 person receiving the test results to divulge the test results
17 to the child's parents, guardian, or legal custodian or to the
18 juvenile probation officer assigned to the child.

19 (2)(a) The Department of Health shall designate two
20 counties having a population of 1.2 million or more and five
21 counties having a population of fewer than 1.2 million to
22 participate in the testing program provided in this
23 subsection, if participation in the testing program is
24 authorized by a majority of the county's governing body. Each
25 juvenile assessment center or juvenile detention facility that
26 lies within the authority of any participating county shall,
27 consistent with s. 381.004(3), perform an HIV test as defined
28 in s. 381.004(2) during the intake process on each child who
29 is referred to or is under the supervision of the department
30 unless the center or facility knows that the child is HIV
31 positive. The required test must be performed within 20 days

1 after the intake date of the child. A test is not required
2 under this paragraph if a child who is taken into custody is
3 released within 10 days to his or her parent, guardian, legal
4 custodian, or if the child's parent, guardian, or legal
5 custodian is not available, unwilling, or unable to provide
6 supervision for the child, to any responsible adult pursuant
7 to s. 985.115(2)(a).

8 (b) Each juvenile assessment center or juvenile
9 detention facility in a county that participates in the
10 testing program authorized in paragraph (a) must comply with
11 the requirements of this paragraph. If the assessment center
12 or detention facility knows that a child who is to be released
13 from the center or facility is HIV positive or has received a
14 positive HIV test result, that center or facility shall,
15 before the child is released:

16 1. Notify, consistent with s. 381.004(3), the
17 Department of Health and the county health department in the
18 county where the child being released plans to reside of the
19 release date and HIV status of the child.

20 2. Provide special transitional assistance to the
21 child and his or her parents, guardian, or legal custodian
22 which must include:

23 a. Education on preventing the transmission of HIV to
24 others and on the importance of receiving followup medical
25 care and treatment.

26 b. A written, individualized discharge plan that
27 includes records of all laboratory and diagnostic test
28 results, medication and treatment information, and referrals
29 to and contacts with the county health department and local
30 primary medical care services for the treatment of HIV

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1 infection which are available in the area where the child
2 plans to reside.

3 (3) Upon request of the victim or the victim's legal
4 guardian, or the parent or legal guardian of the victim if the
5 victim is a minor, the results of any HIV test performed on a
6 child who has been arrested for any sexual offense involving
7 oral, anal, or vaginal penetration by, or union with, the
8 sexual organ of another, shall be disclosed to the victim or
9 the victim's legal guardian, or to the parent or legal
10 guardian of the victim if the victim is a minor. In such
11 cases, the juvenile assessment center or juvenile detention
12 facility shall furnish the test results to the Department of
13 Health, which shall disclose the results to public health
14 agencies as provided in s. 775.0877 and to the victim or the
15 victim's legal guardian, or the parent or legal guardian of
16 the victim if the victim is a minor, as provided in s.
17 960.003(3).

18 (4) The results of any serologic blood test of a child
19 are a part of that child's permanent medical file. Upon
20 transfer of the child to any other juvenile assessment center
21 or juvenile detention facility, such file shall also be
22 transferred, and all relevant authorized persons must be
23 notified of positive HIV test results as required in s.
24 775.0877.

25 (5) Notwithstanding any law providing for a waiver of
26 sovereign immunity, the state, its agencies, or subdivisions,
27 and employees of the state, its agencies, or subdivisions, are
28 not liable to any person for negligently causing death or
29 personal injury arising out of complying with this section.

30 Section 2. Subsection (3) of section 381.004, Florida
31 Statutes, is amended to read:

1 381.004 HIV testing.--

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

4 (a) A ~~No~~ person in this state may not ~~shall~~ order a
5 test designed to identify the human immunodeficiency virus, or
6 its antigen or antibody, without first obtaining the informed
7 consent of the person upon whom the test is being performed,
8 except as specified in paragraph (h). Informed consent shall
9 be preceded by an explanation of the right to confidential
10 treatment of information identifying the subject of the test
11 and the results of the test to the extent provided by law.
12 Information shall also be provided on the fact that a positive
13 HIV test result will be reported to the county health
14 department with sufficient information to identify the test
15 subject and on the availability and location of sites at which
16 anonymous testing is performed. As required in paragraph
17 (4)(c), each county health department shall maintain a list of
18 sites at which anonymous testing is performed, including the
19 locations, phone numbers, and hours of operation of the sites.
20 Consent need not be in writing provided there is documentation
21 in the medical record that the test has been explained and the
22 consent has been obtained.

23 (b) Except as provided in paragraph (h), informed
24 consent must be obtained from a legal guardian or other person
25 authorized by law when the person:

26 1. Is not competent, is incapacitated, or is otherwise
27 unable to make an informed judgment; or

28 2. Has not reached the age of majority, except as
29 provided in s. 384.30.

30 (c) The person ordering the test or that person's
31 designee shall ensure that all reasonable efforts are made to

1 | notify the test subject of his or her test result.
2 | Notification of a person with a positive test result shall
3 | include information on the availability of appropriate medical
4 | and support services, on the importance of notifying partners
5 | who may have been exposed, and on preventing transmission of
6 | HIV. Notification of a person with a negative test result
7 | shall include, as appropriate, information on preventing the
8 | transmission of HIV. When testing occurs in a hospital
9 | emergency department, detention facility, or other facility
10 | and the test subject has been released before being notified
11 | of positive test results, informing the county health
12 | department for that department to notify the test subject
13 | fulfills this responsibility.

14 | (d) A positive preliminary test result may not be
15 | revealed to any person except in the following situations:

16 | 1. Preliminary test results may be released to
17 | licensed physicians or the medical or nonmedical personnel
18 | subject to the significant exposure for purposes of
19 | subparagraphs (h)10., 11., and 12.

20 | 2. Preliminary test results may be released to health
21 | care providers and to the person tested when decisions about
22 | medical care or treatment of, or recommendation to, the person
23 | tested and, in the case of an intrapartum or postpartum woman,
24 | when care, treatment, or recommendations regarding her
25 | newborn, cannot await the results of confirmatory testing.
26 | Positive preliminary HIV test results may not be characterized
27 | to the patient as a diagnosis of HIV infection. Justification
28 | for the use of preliminary test results must be documented in
29 | the medical record by the health care provider who ordered the
30 | test.

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

5 4. Corroborating or confirmatory testing must be
6 conducted as followup to a positive preliminary test. Results
7 shall be communicated to the patient according to statute
8 regardless of the outcome. Except as provided in this section,
9 test results are confidential and exempt from the provisions
10 of s. 119.07(1).

11 (e) Except as provided in this section, the identity
12 of any person upon whom a test has been performed and test
13 results are confidential and exempt from the provisions of s.
14 119.07(1). ~~A~~ ~~no~~ person who has obtained or has knowledge of a
15 test result pursuant to this section may not disclose or be
16 compelled to disclose the identity of any person upon whom a
17 test is performed, or the results of such a test in a manner
18 that ~~which~~ permits identification of the subject of the test,
19 except to the following persons:

20 1. The subject of the test or the subject's legally
21 authorized representative.

22 2. Any person, including third-party payors,
23 designated in a legally effective release of the test results
24 executed prior to or after the test by the subject of the test
25 or the subject's legally authorized representative. The test
26 subject may in writing authorize the disclosure of the test
27 subject's HIV test results to third party payors, who need not
28 be specifically identified, and to other persons to whom the
29 test subject subsequently issues a general release of medical
30 information. A general release without such prior written
31 authorization is not sufficient to release HIV test results.

1 3. An authorized agent or employee of a health
2 facility or health care provider if the health facility or
3 health care provider itself is authorized to obtain the test
4 results, the agent or employee participates in the
5 administration or provision of patient care or handles or
6 processes specimens of body fluids or tissues, and the agent
7 or employee has a need to know such information. The
8 department shall adopt a rule defining which persons have a
9 need to know pursuant to this subparagraph.

10 4. Health care providers consulting between themselves
11 or with health care facilities to determine diagnosis and
12 treatment. For purposes of this subparagraph, health care
13 providers shall include licensed health care professionals
14 employed by or associated with state, county, or municipal
15 detention facilities when such health care professionals are
16 acting exclusively for the purpose of providing diagnoses or
17 treatment of persons in the custody of such facilities.

18 5. The department, in accordance with rules for
19 reporting and controlling the spread of disease, as otherwise
20 provided by state law.

21 6. A health facility or health care provider which
22 procures, processes, distributes, or uses:

23 a. A human body part from a deceased person, with
24 respect to medical information regarding that person; or

25 b. Semen provided prior to July 6, 1988, for the
26 purpose of artificial insemination.

27 7. Health facility staff committees, for the purposes
28 of conducting program monitoring, program evaluation, or
29 service reviews pursuant to chapters 395 and 766.

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1 8. Authorized medical or epidemiological researchers
2 who may not further disclose any identifying characteristics
3 or information.

4 9. A person allowed access by a court order which is
5 issued in compliance with the following provisions:

6 a. ~~A No~~ court of this state may not ~~shall~~ issue such
7 order unless the court finds that the person seeking the test
8 results has demonstrated a compelling need for the test
9 results which cannot be accommodated by other means. In
10 assessing compelling need, the court shall weigh the need for
11 disclosure against the privacy interest of the test subject
12 and the public interest which may be disserved by disclosure
13 which deters blood, organ, and semen donation and future human
14 immunodeficiency virus-related testing or which may lead to
15 discrimination. This paragraph shall not apply to blood bank
16 donor records.

17 b. Pleadings pertaining to disclosure of test results
18 shall substitute a pseudonym for the true name of the subject
19 of the test. The disclosure to the parties of the subject's
20 true name shall be communicated confidentially in documents
21 not filed with the court.

22 c. Before granting any such order, the court shall
23 provide the individual whose test result is in question with
24 notice and a reasonable opportunity to participate in the
25 proceedings if he or she is not already a party.

26 d. Court proceedings as to disclosure of test results
27 shall be conducted in camera, unless the subject of the test
28 agrees to a hearing in open court or unless the court
29 determines that a public hearing is necessary to the public
30 interest and the proper administration of justice.

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1 e. Upon the issuance of an order to disclose test
2 results, the court shall impose appropriate safeguards against
3 unauthorized disclosure which shall specify the persons who
4 may have access to the information, the purposes for which the
5 information shall be used, and appropriate prohibitions on
6 future disclosure.

7 10. A person allowed access by order of a judge of
8 compensation claims of the Division of Administrative
9 Hearings. A judge of compensation claims shall not issue such
10 order unless he or she finds that the person seeking the test
11 results has demonstrated a compelling need for the test
12 results which cannot be accommodated by other means.

13 11. Those employees of the department or of
14 child-placing or child-caring agencies or of family foster
15 homes, licensed pursuant to s. 409.175, who are directly
16 involved in the placement, care, control, or custody of such
17 test subject and who have a need to know such information;
18 adoptive parents of such test subject; or any adult custodian,
19 any adult relative, or any person responsible for the child's
20 welfare, if the test subject was not tested under subparagraph
21 (b)2. and if a reasonable attempt has been made to locate and
22 inform the legal guardian of a test result. The department
23 shall adopt a rule to implement this subparagraph.

24 12. Those employees of residential facilities or of
25 community-based care programs that care for developmentally
26 disabled persons, pursuant to chapter 393, who are directly
27 involved in the care, control, or custody of such test subject
28 and who have a need to know such information.

29 13. A health care provider involved in the delivery of
30 a child can note the mother's HIV test results in the child's
31 medical record.

1 14. Medical personnel or nonmedical personnel who have
2 been subject to a significant exposure during the course of
3 medical practice or in the performance of professional duties,
4 or individuals who are the subject of the significant exposure
5 as provided in subparagraphs (h)10.-12.

6 15. The medical examiner shall disclose positive HIV
7 test results to the department in accordance with rules for
8 reporting and controlling the spread of disease.

9 (f) Except as provided in this section, the identity
10 of a person upon whom a test has been performed is
11 confidential and exempt from the provisions of s. 119.07(1).
12 No person to whom the results of a test have been disclosed
13 may disclose the test results to another person except as
14 authorized by this subsection and by ss. 951.27 and 960.003.
15 Whenever disclosure is made pursuant to this subsection, it
16 shall be accompanied by a statement in writing which includes
17 the following or substantially similar language: "This
18 information has been disclosed to you from records whose
19 confidentiality is protected by state law. State law
20 prohibits you from making any further disclosure of such
21 information without the specific written consent of the person
22 to whom such information pertains, or as otherwise permitted
23 by state law. A general authorization for the release of
24 medical or other information is NOT sufficient for this
25 purpose." An oral disclosure shall be accompanied by oral
26 notice and followed by a written notice within 10 days, except
27 that this notice shall not be required for disclosures made
28 pursuant to subparagraphs (e)3. and 4.

29 (g) Human immunodeficiency virus test results
30 contained in the medical records of a hospital licensed under
31 chapter 395 may be released in accordance with s. 395.3025

1 without being subject to the requirements of subparagraph
2 (e)2., subparagraph (e)9., or paragraph (f); provided the
3 hospital has obtained written informed consent for the HIV
4 test in accordance with provisions of this section.

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

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

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

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

16 c. Testing for HIV by a medical examiner in accordance
17 with s. 406.11.

18 d. HIV testing of pregnant women pursuant to s.
19 384.31.

20 e. HIV testing of children who are referred to or who
21 are under the supervision of the Department of Juvenile
22 Justice under s. 985.1351 during the intake process at a
23 juvenile assessment center or juvenile detention facility.

24 2. Those exceptions provided for blood, plasma,
25 organs, skin, semen, or other human tissue pursuant to s.
26 381.0041.

27 3. For the performance of an HIV-related test by
28 licensed medical personnel in bona fide medical emergencies
29 when the test results are necessary for medical diagnostic
30 purposes to provide appropriate emergency care or treatment to
31 the person being tested and the patient is unable to consent,

1 as supported by documentation in the medical record.
2 Notification of test results in accordance with paragraph (c)
3 is required.

4 4. For the performance of an HIV-related test by
5 licensed medical personnel for medical diagnosis of acute
6 illness where, in the opinion of the attending physician,
7 obtaining informed consent would be detrimental to the
8 patient, as supported by documentation in the medical record,
9 and the test results are necessary for medical diagnostic
10 purposes to provide appropriate care or treatment to the
11 person being tested. Notification of test results in
12 accordance with paragraph (c) is required if it would not be
13 detrimental to the patient. This subparagraph does not
14 authorize the routine testing of patients for HIV infection
15 without informed consent.

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

18 6. For the performance of an HIV test upon a defendant
19 pursuant to the victim's request in a prosecution for any type
20 of sexual battery where a blood sample is taken from the
21 defendant voluntarily, pursuant to court order for any
22 purpose, or pursuant to the provisions of s. 775.0877, s.
23 951.27, or s. 960.003; however, the results of any HIV test
24 performed shall be disclosed solely to the victim and the
25 defendant, except as provided in ss. 775.0877, 951.27, and
26 960.003.

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

28 8. For epidemiological research pursuant to s.
29 381.0032, for research consistent with institutional review
30 boards created by 45 C.F.R. part 46, or for the performance of
31 an HIV-related test for the purpose of research, if the

1 testing is performed in a manner by which the identity of the
2 test subject is not known and may not be retrieved by the
3 researcher.

4 9. When human tissue is collected lawfully without the
5 consent of the donor for corneal removal as authorized by s.
6 765.5185 or enucleation of the eyes as authorized by s.
7 765.519.

8 10. For the performance of an HIV test upon an
9 individual who comes into contact with medical personnel in
10 such a way that a significant exposure has occurred during the
11 course of employment or within the scope of practice and where
12 a blood sample is available that was taken from that
13 individual voluntarily by medical personnel for other
14 purposes. The term "medical personnel" includes a licensed or
15 certified health care professional; an employee of a health
16 care professional or health care facility; employees of a
17 laboratory licensed under chapter 483; personnel of a blood
18 bank or plasma center; a medical student or other student who
19 is receiving training as a health care professional at a
20 health care facility; and a paramedic or emergency medical
21 technician certified by the department to perform life-support
22 procedures under s. 401.23.

23 a. Prior to performance of an HIV test on a
24 voluntarily obtained blood sample, the individual from whom
25 the blood was obtained shall be requested to consent to the
26 performance of the test and to the release of the results.
27 The individual's refusal to consent and all information
28 concerning the performance of an HIV test and any HIV test
29 result shall be documented only in the medical personnel's
30 record unless the individual gives written consent to entering
31 this information on the individual's medical record.

1 b. Reasonable attempts to locate the individual and to
2 obtain consent shall be made, and all attempts must be
3 documented. If the individual cannot be found, an HIV test may
4 be conducted on the available blood sample. If the individual
5 does not voluntarily consent to the performance of an HIV
6 test, the individual shall be informed that an HIV test will
7 be performed, and counseling shall be furnished as provided in
8 this section. However, HIV testing shall be conducted only
9 after a licensed physician documents, in the medical record of
10 the medical personnel, that there has been a significant
11 exposure and that, in the physician's medical judgment, the
12 information is medically necessary to determine the course of
13 treatment for the medical personnel.

14 c. Costs of any HIV test of a blood sample performed
15 with or without the consent of the individual, as provided in
16 this subparagraph, shall be borne by the medical personnel or
17 the employer of the medical personnel. However, costs of
18 testing or treatment not directly related to the initial HIV
19 tests or costs of subsequent testing or treatment may not be
20 borne by the medical personnel or the employer of the medical
21 personnel.

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

27 e. A person who receives the results of an HIV test
28 pursuant to this subparagraph shall maintain the
29 confidentiality of the information received and of the persons
30 tested. Such confidential information is exempt from s.
31 119.07(1).

1 f. If the source of the exposure will not voluntarily
2 submit to HIV testing and a blood sample is not available, the
3 medical personnel or the employer of such person acting on
4 behalf of the employee may seek a court order directing the
5 source of the exposure to submit to HIV testing. A sworn
6 statement by a physician licensed under chapter 458 or chapter
7 459 that a significant exposure has occurred and that, in the
8 physician's medical judgment, testing is medically necessary
9 to determine the course of treatment constitutes probable
10 cause for the issuance of an order by the court. The results
11 of the test shall be released to the source of the exposure
12 and to the person who experienced the exposure.

13 11. For the performance of an HIV test upon an
14 individual who comes into contact with medical personnel in
15 such a way that a significant exposure has occurred during the
16 course of employment or within the scope of practice of the
17 medical personnel while the medical personnel provides
18 emergency medical treatment to the individual; or who comes
19 into contact with nonmedical personnel in such a way that a
20 significant exposure has occurred while the nonmedical
21 personnel provides emergency medical assistance during a
22 medical emergency. For the purposes of this subparagraph, a
23 medical emergency means an emergency medical condition outside
24 of a hospital or health care facility that provides physician
25 care. The test may be performed only during the course of
26 treatment for the medical emergency.

27 a. An individual who is capable of providing consent
28 shall be requested to consent to an HIV test prior to the
29 testing. The individual's refusal to consent, and all
30 information concerning the performance of an HIV test and its
31 result, shall be documented only in the medical personnel's

1 record unless the individual gives written consent to entering
2 this information on the individual's medical record.

3 b. HIV testing shall be conducted only after a
4 licensed physician documents, in the medical record of the
5 medical personnel or nonmedical personnel, that there has been
6 a significant exposure and that, in the physician's medical
7 judgment, the information is medically necessary to determine
8 the course of treatment for the medical personnel or
9 nonmedical personnel.

10 c. Costs of any HIV test performed with or without the
11 consent of the individual, as provided in this subparagraph,
12 shall be borne by the medical personnel or the employer of the
13 medical personnel or nonmedical personnel. However, costs of
14 testing or treatment not directly related to the initial HIV
15 tests or costs of subsequent testing or treatment may not be
16 borne by the medical personnel or the employer of the medical
17 personnel or nonmedical personnel.

18 d. In order to utilize the provisions of this
19 subparagraph, the medical personnel or nonmedical personnel
20 shall be tested for HIV pursuant to this section or shall
21 provide the results of an HIV test taken within 6 months prior
22 to the significant exposure if such test results are negative.

23 e. A person who receives the results of an HIV test
24 pursuant to this subparagraph shall maintain the
25 confidentiality of the information received and of the persons
26 tested. Such confidential information is exempt from s.
27 119.07(1).

28 f. If the source of the exposure will not voluntarily
29 submit to HIV testing and a blood sample was not obtained
30 during treatment for the medical emergency, the medical
31 personnel, the employer of the medical personnel acting on

1 | behalf of the employee, or the nonmedical personnel may seek a
2 | court order directing the source of the exposure to submit to
3 | HIV testing. A sworn statement by a physician licensed under
4 | chapter 458 or chapter 459 that a significant exposure has
5 | occurred and that, in the physician's medical judgment,
6 | testing is medically necessary to determine the course of
7 | treatment constitutes probable cause for the issuance of an
8 | order by the court. The results of the test shall be released
9 | to the source of the exposure and to the person who
10 | experienced the exposure.

11 | 12. For the performance of an HIV test by the medical
12 | examiner or attending physician upon an individual who expired
13 | or could not be resuscitated while receiving emergency medical
14 | assistance or care and who was the source of a significant
15 | exposure to medical or nonmedical personnel providing such
16 | assistance or care.

17 | a. HIV testing may be conducted only after a licensed
18 | physician documents in the medical record of the medical
19 | personnel or nonmedical personnel that there has been a
20 | significant exposure and that, in the physician's medical
21 | judgment, the information is medically necessary to determine
22 | the course of treatment for the medical personnel or
23 | nonmedical personnel.

24 | b. Costs of any HIV test performed under this
25 | subparagraph may not be charged to the deceased or to the
26 | family of the deceased person.

27 | c. For the provisions of this subparagraph to be
28 | applicable, the medical personnel or nonmedical personnel must
29 | be tested for HIV under this section or must provide the
30 | results of an HIV test taken within 6 months before the
31 | significant exposure if such test results are negative.

