

1 A bill to be entitled
 2 An act relating to HIV testing of inmates; amending s.
 3 945.355, F.S.; requiring testing of an inmate promptly
 4 upon the inmate's acceptance into the state correctional
 5 system; amending s. 381.004, F.S.; conforming a provision;
 6 providing an effective date.

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

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 10 Section 1. Subsection (2) of section 945.355, Florida
 11 Statutes, is amended to read:

12 945.355 HIV testing of inmates ~~prior to release.--~~

13 (2) If an inmate's HIV status is unknown to the
 14 department, the department shall, pursuant to s. 381.004(3),
 15 perform an HIV test on the inmate:

16 (a) Promptly upon the inmate's acceptance into the state
 17 correctional system.

18 (b) Not less than 60 days prior to the inmate's
 19 presumptive release date from prison by reason of parole,
 20 accumulation of gain-time credits, or expiration of sentence. An
 21 inmate who is known to the department to be HIV positive or who
 22 has been tested within the previous year and does not request
 23 retesting need not be tested under this paragraph ~~section~~ but is
 24 subject to subsections (4) and (5). However, an inmate who is
 25 released due to an emergency is exempt from the provisions of
 26 this paragraph and subsections (4) and (5) ~~section~~.

27 Section 2. Paragraph (h) of subsection (3) of section
 28 381.004, Florida Statutes, is amended to read:

29 | 381.004 HIV testing.--

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

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

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

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

39 | b. HIV testing of inmates pursuant to s. 945.355 upon
 40 | their acceptance into the state correctional system or prior to
 41 | their release from prison by reason of parole, accumulation of
 42 | gain-time credits, or expiration of sentence.

43 | c. Testing for HIV by a medical examiner in accordance
 44 | with s. 406.11.

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

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

48 | 3. For the performance of an HIV-related test by licensed
 49 | medical personnel in bona fide medical emergencies when the test
 50 | results are necessary for medical diagnostic purposes to provide
 51 | appropriate emergency care or treatment to the person being
 52 | tested and the patient is unable to consent, as supported by
 53 | documentation in the medical record. Notification of test
 54 | results in accordance with paragraph (c) is required.

55 | 4. For the performance of an HIV-related test by licensed
 56 | medical personnel for medical diagnosis of acute illness where,

57 in the opinion of the attending physician, obtaining informed
58 consent would be detrimental to the patient, as supported by
59 documentation in the medical record, and the test results are
60 necessary for medical diagnostic purposes to provide appropriate
61 care or treatment to the person being tested. Notification of
62 test results in accordance with paragraph (c) is required if it
63 would not be detrimental to the patient. This subparagraph does
64 not authorize the routine testing of patients for HIV infection
65 without informed consent.

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

68 6. For the performance of an HIV test upon a defendant
69 pursuant to the victim's request in a prosecution for any type
70 of sexual battery where a blood sample is taken from the
71 defendant voluntarily, pursuant to court order for any purpose,
72 or pursuant to the provisions of s. 775.0877, s. 951.27, or s.
73 960.003; however, the results of any HIV test performed shall be
74 disclosed solely to the victim and the defendant, except as
75 provided in ss. 775.0877, 951.27, and 960.003.

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

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

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83 9. When human tissue is collected lawfully without the
84 consent of the donor for corneal removal as authorized by s.
85 765.5185 or enucleation of the eyes as authorized by s. 765.519.

86 10. For the performance of an HIV test upon an individual
87 who comes into contact with medical personnel in such a way that
88 a significant exposure has occurred during the course of
89 employment or within the scope of practice and where a blood
90 sample is available that was taken from that individual
91 voluntarily by medical personnel for other purposes. The term
92 "medical personnel" includes a licensed or certified health care
93 professional; an employee of a health care professional or
94 health care facility; employees of a laboratory licensed under
95 chapter 483; personnel of a blood bank or plasma center; a
96 medical student or other student who is receiving training as a
97 health care professional at a health care facility; and a
98 paramedic or emergency medical technician certified by the
99 department to perform life-support procedures under s. 401.23.

100 a. Prior to performance of an HIV test on a voluntarily
101 obtained blood sample, the individual from whom the blood was
102 obtained shall be requested to consent to the performance of the
103 test and to the release of the results. The individual's refusal
104 to consent and all information concerning the performance of an
105 HIV test and any HIV test result shall be documented only in the
106 medical personnel's record unless the individual gives written
107 consent to entering this information on the individual's medical
108 record.

109 b. Reasonable attempts to locate the individual and to
110 obtain consent shall be made, and all attempts must be

111 | documented. If the individual cannot be found, an HIV test may
112 | be conducted on the available blood sample. If the individual
113 | does not voluntarily consent to the performance of an HIV test,
114 | the individual shall be informed that an HIV test will be
115 | performed, and counseling shall be furnished as provided in this
116 | section. However, HIV testing shall be conducted only after a
117 | licensed physician documents, in the medical record of the
118 | medical personnel, that there has been a significant exposure
119 | and that, in the physician's medical judgment, the information
120 | is medically necessary to determine the course of treatment for
121 | the medical personnel.

122 | c. Costs of any HIV test of a blood sample performed with
123 | or without the consent of the individual, as provided in this
124 | subparagraph, shall be borne by the medical personnel or the
125 | employer of the medical personnel. However, costs of testing or
126 | treatment not directly related to the initial HIV tests or costs
127 | of subsequent testing or treatment may not be borne by the
128 | medical personnel or the employer of the medical personnel.

129 | d. In order to utilize the provisions of this
130 | subparagraph, the medical personnel must either be tested for
131 | HIV pursuant to this section or provide the results of an HIV
132 | test taken within 6 months prior to the significant exposure if
133 | such test results are negative.

134 | e. A person who receives the results of an HIV test
135 | pursuant to this subparagraph shall maintain the confidentiality
136 | of the information received and of the persons tested. Such
137 | confidential information is exempt from s. 119.07(1).

138 f. If the source of the exposure will not voluntarily
139 submit to HIV testing and a blood sample is not available, the
140 medical personnel or the employer of such person acting on
141 behalf of the employee may seek a court order directing the
142 source of the exposure to submit to HIV testing. A sworn
143 statement by a physician licensed under chapter 458 or chapter
144 459 that a significant exposure has occurred and that, in the
145 physician's medical judgment, testing is medically necessary to
146 determine the course of treatment constitutes probable cause for
147 the issuance of an order by the court. The results of the test
148 shall be released to the source of the exposure and to the
149 person who experienced the exposure.

150 11. For the performance of an HIV test upon an individual
151 who comes into contact with medical personnel in such a way that
152 a significant exposure has occurred during the course of
153 employment or within the scope of practice of the medical
154 personnel while the medical personnel provides emergency medical
155 treatment to the individual; or who comes into contact with
156 nonmedical personnel in such a way that a significant exposure
157 has occurred while the nonmedical personnel provides emergency
158 medical assistance during a medical emergency. For the purposes
159 of this subparagraph, a medical emergency means an emergency
160 medical condition outside of a hospital or health care facility
161 that provides physician care. The test may be performed only
162 during the course of treatment for the medical emergency.

163 a. An individual who is capable of providing consent shall
164 be requested to consent to an HIV test prior to the testing. The
165 individual's refusal to consent, and all information concerning

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166 the performance of an HIV test and its 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. HIV testing shall be conducted only after a licensed
171 physician documents, in the medical record of the medical
172 personnel or nonmedical personnel, that there has been a
173 significant exposure and that, in the physician's medical
174 judgment, the information is medically necessary to determine
175 the course of treatment for the medical personnel or nonmedical
176 personnel.

177 c. Costs of any HIV test performed with or without the
178 consent of the individual, as provided in this subparagraph,
179 shall be borne by the medical personnel or the employer of the
180 medical personnel or nonmedical personnel. However, costs of
181 testing or treatment not directly related to the initial HIV
182 tests or costs of subsequent testing or treatment may not be
183 borne by the medical personnel or the employer of the medical
184 personnel or nonmedical personnel.

185 d. In order to utilize the provisions of this
186 subparagraph, the medical personnel or nonmedical personnel
187 shall be tested for HIV pursuant to this section or shall
188 provide the results of an HIV test taken within 6 months prior
189 to the significant exposure if such test results are negative.

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

194 f. If the source of the exposure will not voluntarily
195 submit to HIV testing and a blood sample was not obtained during
196 treatment for the medical emergency, the medical personnel, the
197 employer of the medical personnel acting on behalf of the
198 employee, or the nonmedical personnel may seek a court order
199 directing the source of the exposure to submit to HIV testing. A
200 sworn statement by a physician licensed under chapter 458 or
201 chapter 459 that a significant exposure has occurred and that,
202 in the physician's medical judgment, testing is medically
203 necessary to determine the course of treatment constitutes
204 probable cause for the issuance of an order by the court. The
205 results of the test shall be released to the source of the
206 exposure and to the person who experienced the exposure.

207 12. For the performance of an HIV test by the medical
208 examiner or attending physician upon an individual who expired
209 or could not be resuscitated while receiving emergency medical
210 assistance or care and who was the source of a significant
211 exposure to medical or nonmedical personnel providing such
212 assistance or care.

213 a. HIV testing may be conducted only after a licensed
214 physician documents in the medical record of the medical
215 personnel or nonmedical personnel that there has been a
216 significant exposure and that, in the physician's medical
217 judgment, the information is medically necessary to determine
218 the course of treatment for the medical personnel or nonmedical
219 personnel.

220 b. Costs of any HIV test performed under this subparagraph
 221 may not be charged to the deceased or to the family of the
 222 deceased person.

223 c. For the provisions of this subparagraph to be
 224 applicable, the medical personnel or nonmedical personnel must
 225 be tested for HIV under this section or must provide the results
 226 of an HIV test taken within 6 months before the significant
 227 exposure if such test results are negative.

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

230 13. For the performance of an HIV-related test medically
 231 indicated by licensed medical personnel for medical diagnosis of
 232 a hospitalized infant as necessary to provide appropriate care
 233 and treatment of the infant when, after a reasonable attempt, a
 234 parent cannot be contacted to provide consent. The medical
 235 records of the infant shall reflect the reason consent of the
 236 parent was not initially obtained. Test results shall be
 237 provided to the parent when the parent is located.

238 14. For the performance of HIV testing conducted to
 239 monitor the clinical progress of a patient previously diagnosed
 240 to be HIV positive.

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

243 Section 3. This act shall take effect July 1, 2007.