

1 A bill to be entitled
 2 An act relating to human immunodeficiency virus testing;
 3 amending s. 381.004, F.S.; providing conditions under
 4 which an HIV test on a blood sample of an individual who
 5 has not given consent may be performed; requiring
 6 documentation by certain medical personnel under
 7 supervision of a licensed physician prior to testing in
 8 accordance with written protocol; providing an effective
 9 date.

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

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13 Section 1. Paragraph (h) of subsection (3) of section
 14 381.004, Florida Statutes, is amended to read:

15 381.004 HIV testing.--

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

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

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

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

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

- 28 c. Testing for HIV by a medical examiner in accordance
29 with s. 406.11.
- 30 d. HIV testing of pregnant women pursuant to s. 384.31.
- 31 2. Those exceptions provided for blood, plasma, organs,
32 skin, semen, or other human tissue pursuant to s. 381.0041.
- 33 3. For the performance of an HIV-related test by licensed
34 medical personnel in bona fide medical emergencies when the test
35 results are necessary for medical diagnostic purposes to provide
36 appropriate emergency care or treatment to the person being
37 tested and the patient is unable to consent, as supported by
38 documentation in the medical record. Notification of test
39 results in accordance with paragraph (c) is required.
- 40 4. For the performance of an HIV-related test by licensed
41 medical personnel for medical diagnosis of acute illness where,
42 in the opinion of the attending physician, obtaining informed
43 consent would be detrimental to the patient, as supported by
44 documentation in the medical record, and the test results are
45 necessary for medical diagnostic purposes to provide appropriate
46 care or treatment to the person being tested. Notification of
47 test results in accordance with paragraph (c) is required if it
48 would not be detrimental to the patient. This subparagraph does
49 not authorize the routine testing of patients for HIV infection
50 without informed consent.
- 51 5. When HIV testing is performed as part of an autopsy for
52 which consent was obtained pursuant to s. 872.04.
- 53 6. For the performance of an HIV test upon a defendant
54 pursuant to the victim's request in a prosecution for any type
55 of sexual battery where a blood sample is taken from the

56 defendant voluntarily, pursuant to court order for any purpose,
57 or pursuant to the provisions of s. 775.0877, s. 951.27, or s.
58 960.003; however, the results of any HIV test performed shall be
59 disclosed solely to the victim and the defendant, except as
60 provided in ss. 775.0877, 951.27, and 960.003.

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

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

68 9. When human tissue is collected lawfully without the
69 consent of the donor for corneal removal as authorized by s.
70 765.5185 or enucleation of the eyes as authorized by s. 765.519.

71 10. For the performance of an HIV test upon an individual
72 who comes into contact with medical personnel in such a way that
73 a significant exposure has occurred during the course of
74 employment or within the scope of practice and where a blood
75 sample is available that was taken from that individual
76 voluntarily by medical personnel for other purposes. The term
77 "medical personnel" includes a licensed or certified health care
78 professional; an employee of a health care professional or
79 health care facility; employees of a laboratory licensed under
80 chapter 483; personnel of a blood bank or plasma center; a
81 medical student or other student who is receiving training as a
82 health care professional at a health care facility; and a

83 paramedic or emergency medical technician certified by the
84 department to perform life-support procedures under s. 401.23.

85 a. Prior to performance of an HIV test on a voluntarily
86 obtained blood sample, the individual from whom the blood was
87 obtained shall be requested to consent to the performance of the
88 test and to the release of the results. If consent cannot be
89 obtained within the time period necessary to perform the HIV
90 test and begin prophylactic treatment of the exposed medical
91 personnel, ~~The individual's refusal to consent and all~~
92 information concerning the performance of an HIV test and any
93 HIV test result shall be documented only in the medical
94 personnel's record unless the individual gives written consent
95 to entering this information on the individual's medical record.

96 b. Reasonable attempts to locate the individual and to
97 obtain consent shall be made, and all attempts must be
98 documented. If the individual cannot be found or is unavailable,
99 an HIV test may be conducted on the available blood sample. If
100 the individual does not voluntarily consent to the performance
101 of an HIV test, the individual shall be informed that an HIV
102 test will be performed, and counseling shall be furnished as
103 provided in this section. However, HIV testing shall be
104 conducted only after appropriate medical personnel under the
105 supervision of a licensed physician document ~~documents,~~ in the
106 medical record of the medical personnel, that there has been a
107 significant exposure and that, in accordance with the written
108 protocol based on the physician's medical judgment, the
109 information is medically necessary to determine the course of
110 treatment for the medical personnel.

111 c. Costs of any HIV test of a blood sample performed with
112 or without the consent of the individual, as provided in this
113 subparagraph, shall be borne by the medical personnel or the
114 employer of the medical personnel. However, costs of testing or
115 treatment not directly related to the initial HIV tests or costs
116 of subsequent testing or treatment may not be borne by the
117 medical personnel or the employer of the medical personnel.

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

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

127 f. If the source of the exposure will not voluntarily
128 submit to HIV testing and a blood sample is not available, the
129 medical personnel or the employer of such person acting on
130 behalf of the employee may seek a court order directing the
131 source of the exposure to submit to HIV testing. A sworn
132 statement by a physician licensed under chapter 458 or chapter
133 459 that a significant exposure has occurred and that, in the
134 physician's medical judgment, testing is medically necessary to
135 determine the course of treatment constitutes probable cause for
136 the issuance of an order by the court. The results of the test
137 shall be released to the source of the exposure and to the
138 person who experienced the exposure.

139 11. For the performance of an HIV test upon an individual
 140 who comes into contact with medical personnel in such a way that
 141 a significant exposure has occurred during the course of
 142 employment or within the scope of practice of the medical
 143 personnel while the medical personnel provides emergency medical
 144 treatment to the individual; or, notwithstanding s. 384.287, an
 145 individual who comes into contact with nonmedical personnel in
 146 such a way that a significant exposure has occurred while the
 147 nonmedical personnel provides emergency medical assistance
 148 during a medical emergency. For the purposes of this
 149 subparagraph, a medical emergency means an emergency medical
 150 condition outside of a hospital or health care facility that
 151 provides physician care. The test may be performed only during
 152 the course of treatment for the medical emergency.

153 a. An individual who is capable of providing consent shall
 154 be requested to consent to an HIV test prior to the testing. If
 155 consent cannot be obtained within the time period necessary to
 156 perform the HIV test and begin prophylactic treatment of the
 157 exposed medical personnel ~~The individual's refusal to consent,~~
 158 ~~and~~ all information concerning the performance of an HIV test
 159 and its result~~7~~, shall be documented only in the medical
 160 personnel's record unless the individual gives written consent
 161 to entering this information on the individual's medical record.

162 b. HIV testing shall be conducted only after appropriate
 163 medical personnel under the supervision of a licensed physician
 164 document ~~documents~~, in the medical record of the medical
 165 personnel or nonmedical personnel, that there has been a
 166 significant exposure and that, in accordance with the written

167 protocol based on the physician's medical judgment, the
168 information is medically necessary to determine the course of
169 treatment for the medical personnel or nonmedical personnel.

170 c. Costs of any HIV test performed with or without the
171 consent of the individual, as provided in this subparagraph,
172 shall be borne by the medical personnel or the employer of the
173 medical personnel or nonmedical personnel. However, costs of
174 testing or treatment not directly related to the initial HIV
175 tests or costs of subsequent testing or treatment may not be
176 borne by the medical personnel or the employer of the medical
177 personnel or nonmedical personnel.

178 d. In order to utilize the provisions of this
179 subparagraph, the medical personnel or nonmedical personnel
180 shall be tested for HIV pursuant to this section or shall
181 provide the results of an HIV test taken within 6 months prior
182 to the significant exposure if such test results are negative.

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

187 f. If the source of the exposure will not voluntarily
188 submit to HIV testing and a blood sample was not obtained during
189 treatment for the medical emergency, the medical personnel, the
190 employer of the medical personnel acting on behalf of the
191 employee, or the nonmedical personnel may seek a court order
192 directing the source of the exposure to submit to HIV testing. A
193 sworn statement by a physician licensed under chapter 458 or
194 chapter 459 that a significant exposure has occurred and that,

195 in the physician's medical judgment, testing is medically
196 necessary to determine the course of treatment constitutes
197 probable cause for the issuance of an order by the court. The
198 results of the test shall be released to the source of the
199 exposure and to the person who experienced the exposure.

200 12. For the performance of an HIV test by the medical
201 examiner or attending physician upon an individual who expired
202 or could not be resuscitated while receiving emergency medical
203 assistance or care and who was the source of a significant
204 exposure to medical or nonmedical personnel providing such
205 assistance or care.

206 a. HIV testing may be conducted only after appropriate
207 medical personnel under the supervision of a licensed physician
208 document, ~~documents~~ in the medical record of the medical
209 personnel or nonmedical personnel, that there has been a
210 significant exposure and that, in accordance with the written
211 protocol based on the physician's medical judgment, the
212 information is medically necessary to determine the course of
213 treatment for the medical personnel or nonmedical personnel.

214 b. Costs of any HIV test performed under this subparagraph
215 may not be charged to the deceased or to the family of the
216 deceased person.

217 c. For the provisions of this subparagraph to be
218 applicable, the medical personnel or nonmedical personnel must
219 be tested for HIV under this section or must provide the results
220 of an HIV test taken within 6 months before the significant
221 exposure if such test results are negative.

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

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

232 14. For the performance of HIV testing conducted to
233 monitor the clinical progress of a patient previously diagnosed
234 to be HIV positive.

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

237 Section 2. This act shall take effect July 1, 2008.