

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 protocols based on specified
 9 National Centers for Disease Control and Prevention
 10 guidelines; providing an effective date.

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

13
 14 Section 1. Paragraph (h) of subsection (3) of section
 15 381.004, Florida Statutes, is amended to read:

16 381.004 HIV testing.--

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

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

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

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

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

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

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

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

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

69 9. When human tissue is collected lawfully without the
70 consent of the donor for corneal removal as authorized by s.
71 765.5185 or enucleation of the eyes as authorized by s. 765.519.

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

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

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

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

112 information is medically necessary to determine the course of
113 treatment for the medical personnel.

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

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

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

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

140 shall be released to the source of the exposure and to the
141 person who experienced the exposure.

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

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

166 b. HIV testing shall be conducted only after appropriate
167 medical personnel under the supervision of a licensed physician

168 document ~~documents~~, in the medical record of the medical
169 personnel or nonmedical personnel, that there has been a
170 significant exposure and that, in accordance with the written
171 protocols based on the National Centers for Disease Control and
172 Prevention guidelines on HIV postexposure prophylaxis and in the
173 physician's medical judgment, the information is medically
174 necessary to determine the course of treatment for the medical
175 personnel or nonmedical personnel.

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

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

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

193 f. If the source of the exposure will not voluntarily
194 submit to HIV testing and a blood sample was not obtained during
195 treatment for the medical emergency, the medical personnel, the

196 employer of the medical personnel acting on behalf of the
197 employee, or the nonmedical personnel may seek a court order
198 directing the source of the exposure to submit to HIV testing. A
199 sworn statement by a physician licensed under chapter 458 or
200 chapter 459 that a significant exposure has occurred and that,
201 in the physician's medical judgment, testing is medically
202 necessary to determine the course of treatment constitutes
203 probable cause for the issuance of an order by the court. The
204 results of the test shall be released to the source of the
205 exposure and to the person who experienced the exposure.

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

212 a. HIV testing may be conducted only after appropriate
213 medical personnel under the supervision of a licensed physician
214 document, ~~documents~~ in the medical record of the medical
215 personnel or nonmedical personnel, that there has been a
216 significant exposure and that, in accordance with the written
217 protocols based on the National Centers for Disease Control and
218 Prevention guidelines on HIV postexposure prophylaxis and in the
219 physician's medical judgment, the information is medically
220 necessary to determine the course of treatment for the medical
221 personnel or nonmedical personnel.

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

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

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

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

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

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

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