

By Senator Saunders

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1 A bill to be entitled

2 An act relating to human immunodeficiency virus testing;  
3 amending s. 381.004, F.S.; requiring that when consent  
4 cannot be obtained within the time necessary to conduct an  
5 HIV test on an individual and begin prophylactic treatment  
6 of exposed medical personnel, the results of the HIV test  
7 shall be documented only in the medical file of the  
8 medical personnel and not in the medical file of the  
9 patient unless he or she gives consent; authorizing  
10 appropriate medical personnel under the supervision of a  
11 licensed physician to make the decision to test under  
12 these conditions; requiring those personnel to document  
13 the significant exposure requiring the HIV testing without  
14 valid consent in accordance with written protocol based on  
15 the medical judgment of a licensed physician; providing an  
16 effective date.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Paragraph (h) of subsection (3) of section  
21 381.004, Florida Statutes, is amended to read:

22 381.004 HIV testing.--

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

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

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

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

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

35 c. Testing for HIV by a medical examiner in accordance with  
36 s. 406.11.

37 d. HIV testing of pregnant women pursuant to s. 384.31.

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

40 3. For the performance of an HIV-related test by licensed  
41 medical personnel in bona fide medical emergencies when the test  
42 results are necessary for medical diagnostic purposes to provide  
43 appropriate emergency care or treatment to the person being  
44 tested and the patient is unable to consent, as supported by  
45 documentation in the medical record. Notification of test results  
46 in accordance with paragraph (c) is required.

47 4. For the performance of an HIV-related test by licensed  
48 medical personnel for medical diagnosis of acute illness where,  
49 in the opinion of the attending physician, obtaining informed  
50 consent would be detrimental to the patient, as supported by  
51 documentation in the medical record, and the test results are  
52 necessary for medical diagnostic purposes to provide appropriate  
53 care or treatment to the person being tested. Notification of  
54 test results in accordance with paragraph (c) is required if it  
55 would not be detrimental to the patient. This subparagraph does  
56 not authorize the routine testing of patients for HIV infection  
57 without informed consent.

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

60           6. For the performance of an HIV test upon a defendant  
61 pursuant to the victim's request in a prosecution for any type of  
62 sexual battery where a blood sample is taken from the defendant  
63 voluntarily, pursuant to court order for any purpose, or pursuant  
64 to the provisions of s. 775.0877, s. 951.27, or s. 960.003;  
65 however, the results of any HIV test performed shall be disclosed  
66 solely to the victim and the defendant, except as provided in ss.  
67 775.0877, 951.27, and 960.003.

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

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

75           9. When human tissue is collected lawfully without the  
76 consent of the donor for corneal removal as authorized by s.  
77 765.5185 or enucleation of the eyes as authorized by s. 765.519.

78           10. For the performance of an HIV test upon an individual  
79 who comes into contact with medical personnel in such a way that  
80 a significant exposure has occurred during the course of  
81 employment or within the scope of practice and where a blood  
82 sample is available that was taken from that individual  
83 voluntarily by medical personnel for other purposes. The term  
84 "medical personnel" includes a licensed or certified health care  
85 professional; an employee of a health care professional or health  
86 care facility; employees of a laboratory licensed under chapter

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87 483; personnel of a blood bank or plasma center; a medical  
88 student or other student who is receiving training as a health  
89 care professional at a health care facility; and a paramedic or  
90 emergency medical technician certified by the department to  
91 perform life-support procedures under s. 401.23.

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

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

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116 necessary to determine the course of treatment for the medical  
117 personnel.

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

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

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

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

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144 released to the source of the exposure and to the person who  
145 experienced the exposure.

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

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

169 b. HIV testing shall be conducted only after appropriate  
170 medical personnel under the supervision of a licensed physician  
171 documents, in the medical record of the medical personnel or  
172 nonmedical personnel, that there has been a significant exposure

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173 and that, in accordance with the written protocol based on the  
174 physician's medical judgment, the information is medically  
175 necessary to determine the course of treatment for the medical  
176 personnel or nonmedical 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 subparagraph,  
186 the medical personnel or nonmedical personnel shall be tested for  
187 HIV pursuant to this section or shall provide the results of an  
188 HIV test taken within 6 months prior to the significant exposure  
189 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, in

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202 | the physician's medical judgment, testing is medically necessary  
203 | to determine the course of treatment constitutes probable cause  
204 | for the issuance of an order by the court. The results of the  
205 | test shall be released to the source of the exposure and to the  
206 | 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 or  
209 | 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 appropriate  
214 | medical personnel under the supervision of a licensed physician  
215 | documents in the medical record of the medical personnel or  
216 | nonmedical personnel that there has been a significant exposure  
217 | and that, in accordance with the written protocol based on the  
218 | physician's medical judgment, the information is medically  
219 | necessary to determine the course of treatment for the medical  
220 | personnel or nonmedical personnel.

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

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

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

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

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

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

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