

By Senator Wilson

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1                   A bill to be entitled  
2           An act relating to the testing of children for  
3           infectious diseases in certain juvenile detention  
4           facilities or juvenile assessment centers; creating s.  
5           985.1351, F.S.; requiring each juvenile assessment  
6           center or juvenile detention facility to have a  
7           written procedure regarding the testing of juveniles  
8           for infectious diseases; requiring the Department of  
9           Juvenile Justice to designate certain counties, if  
10          approved by the county's governing body, to  
11          participate in a program to test each juvenile for HIV  
12          who is referred to or who is under the supervision of  
13          the department; requiring certain juvenile assessment  
14          centers or juvenile detention facilities to comply  
15          with certain requirements regarding the release of  
16          juveniles who are HIV positive; requiring the  
17          disclosure of certain juveniles' HIV tests under  
18          certain circumstances; providing that any serologic  
19          blood test results of a juvenile is part of the  
20          juvenile's permanent medical file; providing sovereign  
21          immunity to certain state agencies or employees for  
22          negligently causing death or personal injury arising  
23          out of compliance with the act; amending s. 381.004,  
24          F.S.; providing that informed consent is not required  
25          for an HIV test of a juvenile which is performed  
26          during the intake process at a juvenile assessment  
27          center or juvenile detention facility; providing an  
28          effective date.  
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30 Be It Enacted by the Legislature of the State of Florida:

31  
32 Section 1. Section 985.1351, Florida Statutes, is created  
33 to read:

34 985.1351 Blood test of a child referred to or under the  
35 supervision of the department.-

36 (1) Each juvenile assessment center or juvenile detention  
37 facility shall have a written procedure, developed in  
38 consultation with a facility medical provider, establishing  
39 conditions under which a child who is referred to or under the  
40 supervision of the department will be tested for infectious  
41 diseases, including human immunodeficiency virus, which  
42 procedure must be consistent with guidelines of the Centers for  
43 Disease Control and Prevention and recommendations of the  
44 Correctional Medical Authority. It is not unlawful for the  
45 person receiving the test results to divulge the test results to  
46 the child's parents, guardian, or legal custodian or to the  
47 juvenile probation officer assigned to the child.

48 (2) (a) The Department of Health shall designate two  
49 counties having a population of 1.2 million or more and five  
50 counties having a population of fewer than 1.2 million to  
51 participate in the testing program provided in this subsection,  
52 if participation in the testing program is authorized by a  
53 majority of the county's governing body. Each juvenile  
54 assessment center or juvenile detention facility that lies  
55 within the authority of any participating county shall,  
56 consistent with s. 381.004(3), perform an HIV test as defined in  
57 s. 381.004(2) during the intake process on each child who is  
58 referred to or is under the supervision of the department unless

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59 the center or facility knows that the child is HIV positive. The  
60 required test must be performed within 20 days after the intake  
61 date of the child. A test is not required under this paragraph  
62 if a child who is taken into custody is released within 10 days  
63 to his or her parent, guardian, legal custodian, or, if the  
64 child's parent, guardian, or legal custodian is not available,  
65 unwilling, or unable to provide supervision for the child, to  
66 any responsible adult pursuant to s. 985.115(2) (a).

67 (b) Each juvenile assessment center or juvenile detention  
68 facility in a county that participates in the testing program  
69 authorized in paragraph (a) must comply with the requirements of  
70 this paragraph. If the assessment center or detention facility  
71 knows that a child who is to be released from the center or  
72 facility is HIV positive or has received a positive HIV test  
73 result, that center or facility shall, before the child is  
74 released:

75 1. Notify, consistent with s. 381.004(3), the Department of  
76 Health and the county health department in the county where the  
77 child being released plans to reside of the release date and HIV  
78 status of the child.

79 2. Provide special transitional assistance to the child and  
80 his or her parents, guardian, or legal custodian, which must  
81 include:

82 a. Education on preventing the transmission of HIV to  
83 others and on the importance of receiving followup medical care  
84 and treatment.

85 b. A written, individualized discharge plan that includes  
86 records of all laboratory and diagnostic test results,  
87 medication and treatment information, and referrals to and

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88 contacts with the county health department and local primary  
89 medical care services for the treatment of HIV infection which  
90 are available in the area where the child plans to reside.

91 (3) Upon request of the victim or the victim's legal  
92 guardian, or the parent or legal guardian of the victim if the  
93 victim is a minor, the results of any HIV test performed on a  
94 child who has been arrested for any sexual offense involving  
95 oral, anal, or vaginal penetration by, or union with, the sexual  
96 organ of another, shall be disclosed to the victim or the  
97 victim's legal guardian, or to the parent or legal guardian of  
98 the victim if the victim is a minor. In such cases, the juvenile  
99 assessment center or juvenile detention facility shall furnish  
100 the test results to the Department of Health, which shall  
101 disclose the results to public health agencies as provided in s.  
102 775.0877 and to the victim or the victim's legal guardian, or  
103 the parent or legal guardian of the victim if the victim is a  
104 minor, as provided in s. 960.003(3).

105 (4) The results of any serologic blood test of a child are  
106 a part of that child's permanent medical file. Upon the transfer  
107 of the child to any other juvenile assessment center or juvenile  
108 detention facility, such file shall also be transferred and all  
109 relevant authorized persons must be notified of positive HIV  
110 test results as required in s. 775.0877.

111 (5) Notwithstanding any law providing for a waiver of  
112 sovereign immunity, the state, its agencies, or subdivisions,  
113 and employees of the state, its agencies, or subdivisions, are  
114 not liable to any person for negligently causing death or  
115 personal injury arising out of compliance with this section.

116 Section 2. Subsection (3) of section 381.004, Florida

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117 Statutes, is amended to read:

118 381.004 HIV testing.—

119 (3) ~~HUMAN IMMUNODEFICIENCY VIRUS TESTING;~~ INFORMED CONSENT;  
120 RESULTS; COUNSELING; CONFIDENTIALITY.—

121 (a) A ~~No~~ person in this state may not ~~shall~~ order a test  
122 designed to identify the human immunodeficiency virus, or its  
123 antigen or antibody, without first obtaining the informed  
124 consent of the person upon whom the test is being performed,  
125 except as specified in paragraph (h). Informed consent shall be  
126 preceded by an explanation of the right to confidential  
127 treatment of information identifying the subject of the test and  
128 the results of the test to the extent provided by law.  
129 Information shall also be provided on the fact that a positive  
130 HIV test result will be reported to the county health department  
131 with sufficient information to identify the test subject and on  
132 the availability and location of sites at which anonymous  
133 testing is performed. As required in paragraph (4) (c), each  
134 county health department shall maintain a list of sites at which  
135 anonymous testing is performed, including the locations, phone  
136 numbers, and hours of operation of the sites. Consent need not  
137 be in writing provided there is documentation in the medical  
138 record that the test has been explained and the consent has been  
139 obtained.

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

- 143 1. Is not competent, is incapacitated, or is otherwise  
144 unable to make an informed judgment; or  
145 2. Has not reached the age of majority, except as provided

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146 in s. 384.30.

147 (c) The person ordering the test or that person's designee  
148 shall ensure that all reasonable efforts are made to notify the  
149 test subject of his or her test result. Notification of a person  
150 with a positive test result shall include information on the  
151 availability of appropriate medical and support services, on the  
152 importance of notifying partners who may have been exposed, and  
153 on preventing transmission of HIV. Notification of a person with  
154 a negative test result shall include, as appropriate,  
155 information on preventing the transmission of HIV. When testing  
156 occurs in a hospital emergency department, detention facility,  
157 or other facility and the test subject has been released before  
158 being notified of positive test results, informing the county  
159 health department for that department to notify the test subject  
160 fulfills this responsibility.

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

163 1. Preliminary test results may be released to licensed  
164 physicians or the medical or nonmedical personnel subject to the  
165 significant exposure for purposes of subparagraphs (h)10., 11.,  
166 and 12.

167 2. Preliminary test results may be released to health care  
168 providers and to the person tested when decisions about medical  
169 care or treatment of, or recommendation to, the person tested  
170 and, in the case of an intrapartum or postpartum woman, when  
171 care, treatment, or recommendations regarding her newborn,  
172 cannot await the results of confirmatory testing. Positive  
173 preliminary HIV test results may not be characterized to the  
174 patient as a diagnosis of HIV infection. Justification for the

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175 use of preliminary test results must be documented in the  
176 medical record by the health care provider who ordered the test.

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

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

186 (e) Except as provided in this section, the identity of any  
187 person upon whom a test has been performed and test results are  
188 confidential and exempt from the provisions of s. 119.07(1). A  
189 ~~No~~ person who has obtained or has knowledge of a test result  
190 pursuant to this section may not disclose or be compelled to  
191 disclose the identity of any person upon whom a test is  
192 performed, or the results of such a test in a manner that ~~which~~  
193 permits identification of the subject of the test, except to the  
194 following persons:

195 1. The subject of the test or the subject's legally  
196 authorized representative.

197 2. Any person, including third-party payors, designated in  
198 a legally effective release of the test results executed prior  
199 to or after the test by the subject of the test or the subject's  
200 legally authorized representative. The test subject may in  
201 writing authorize the disclosure of the test subject's HIV test  
202 results to third party payors, who need not be specifically  
203 identified, and to other persons to whom the test subject

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204 subsequently issues a general release of medical information. A  
205 general release without such prior written authorization is not  
206 sufficient to release HIV test results.

207 3. An authorized agent or employee of a health facility or  
208 health care provider if the health facility or health care  
209 provider itself is authorized to obtain the test results, the  
210 agent or employee participates in the administration or  
211 provision of patient care or handles or processes specimens of  
212 body fluids or tissues, and the agent or employee has a need to  
213 know such information. The department shall adopt a rule  
214 defining which persons have a need to know pursuant to this  
215 subparagraph.

216 4. Health care providers consulting between themselves or  
217 with health care facilities to determine diagnosis and  
218 treatment. For purposes of this subparagraph, health care  
219 providers shall include licensed health care professionals  
220 employed by or associated with state, county, or municipal  
221 detention facilities when such health care professionals are  
222 acting exclusively for the purpose of providing diagnoses or  
223 treatment of persons in the custody of such facilities.

224 5. The department, in accordance with rules for reporting  
225 and controlling the spread of disease, as otherwise provided by  
226 state law.

227 6. A health facility or health care provider which  
228 procures, processes, distributes, or uses:

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

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



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

236           8. Authorized medical or epidemiological researchers who  
237 may not further disclose any identifying characteristics or  
238 information.

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

241           a. A ~~No~~ court of this state may not ~~shall~~ issue such order  
242 unless the court finds that the person seeking the test results  
243 has demonstrated a compelling need for the test results which  
244 cannot be accommodated by other means. In assessing compelling  
245 need, the court shall weigh the need for disclosure against the  
246 privacy interest of the test subject and the public interest  
247 which may be disserved by disclosure which deters blood, organ,  
248 and semen donation and future human immunodeficiency virus-  
249 related testing or which may lead to discrimination. This  
250 paragraph shall not apply to blood bank donor records.

251           b. Pleadings pertaining to disclosure of test results shall  
252 substitute a pseudonym for the true name of the subject of the  
253 test. The disclosure to the parties of the subject's true name  
254 shall be communicated confidentially in documents not filed with  
255 the court.

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

260           d. Court proceedings as to disclosure of test results shall  
261 be conducted in camera, unless the subject of the test agrees to

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262 a hearing in open court or unless the court determines that a  
263 public hearing is necessary to the public interest and the  
264 proper administration of justice.

265 e. Upon the issuance of an order to disclose test results,  
266 the court shall impose appropriate safeguards against  
267 unauthorized disclosure which shall specify the persons who may  
268 have access to the information, the purposes for which the  
269 information shall be used, and appropriate prohibitions on  
270 future disclosure.

271 10. A person allowed access by order of a judge of  
272 compensation claims of the Division of Administrative Hearings.  
273 A judge of compensation claims shall not issue such order unless  
274 he or she finds that the person seeking the test results has  
275 demonstrated a compelling need for the test results which cannot  
276 be accommodated by other means.

277 11. Those employees of the department or of child-placing  
278 or child-caring agencies or of family foster homes, licensed  
279 pursuant to s. 409.175, who are directly involved in the  
280 placement, care, control, or custody of such test subject and  
281 who have a need to know such information; adoptive parents of  
282 such test subject; or any adult custodian, any adult relative,  
283 or any person responsible for the child's welfare, if the test  
284 subject was not tested under subparagraph (b)2. and if a  
285 reasonable attempt has been made to locate and inform the legal  
286 guardian of a test result. The department shall adopt a rule to  
287 implement this subparagraph.

288 12. Those employees of residential facilities or of  
289 community-based care programs that care for developmentally  
290 disabled persons, pursuant to chapter 393, who are directly

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291 involved in the care, control, or custody of such test subject  
292 and who have a need to know such information.

293 13. A health care provider involved in the delivery of a  
294 child can note the mother's HIV test results in the child's  
295 medical record.

296 14. Medical personnel or nonmedical personnel who have been  
297 subject to a significant exposure during the course of medical  
298 practice or in the performance of professional duties, or  
299 individuals who are the subject of the significant exposure as  
300 provided in subparagraphs (h)10.-12.

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

304 (f) Except as provided in this section, the identity of a  
305 person upon whom a test has been performed is confidential and  
306 exempt from the provisions of s. 119.07(1). No person to whom  
307 the results of a test have been disclosed may disclose the test  
308 results to another person except as authorized by this  
309 subsection and by ss. 951.27 and 960.003. Whenever disclosure is  
310 made pursuant to this subsection, it shall be accompanied by a  
311 statement in writing which includes the following or  
312 substantially similar language: "This information has been  
313 disclosed to you from records whose confidentiality is protected  
314 by state law. State law prohibits you from making any further  
315 disclosure of such information without the specific written  
316 consent of the person to whom such information pertains, or as  
317 otherwise permitted by state law. A general authorization for  
318 the release of medical or other information is NOT sufficient  
319 for this purpose." An oral disclosure shall be accompanied by

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320 oral notice and followed by a written notice within 10 days,  
321 except that this notice shall not be required for disclosures  
322 made pursuant to subparagraphs (e)3. and 4.

323 (g) Human immunodeficiency virus test results contained in  
324 the medical records of a hospital licensed under chapter 395 may  
325 be released in accordance with s. 395.3025 without being subject  
326 to the requirements of subparagraph (e)2., subparagraph (e)9.,  
327 or paragraph (f); provided the hospital has obtained written  
328 informed consent for the HIV test in accordance with provisions  
329 of this section.

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

332 1. When testing for sexually transmissible diseases is  
333 required by state or federal law, or by rule including the  
334 following situations:

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

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

340 c. Testing for HIV by a medical examiner in accordance with  
341 s. 406.11.

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

343 e. HIV testing of children who are referred to or who are  
344 under the supervision of the Department of Juvenile Justice  
345 under s. 985.1351 during the intake process at a juvenile  
346 assessment center or juvenile detention facility.

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

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349           3. For the performance of an HIV-related test by licensed  
350 medical personnel in bona fide medical emergencies when the test  
351 results are necessary for medical diagnostic purposes to provide  
352 appropriate emergency care or treatment to the person being  
353 tested and the patient is unable to consent, as supported by  
354 documentation in the medical record. Notification of test  
355 results in accordance with paragraph (c) is required.

356           4. For the performance of an HIV-related test by licensed  
357 medical personnel for medical diagnosis of acute illness where,  
358 in the opinion of the attending physician, obtaining informed  
359 consent would be detrimental to the patient, as supported by  
360 documentation in the medical record, and the test results are  
361 necessary for medical diagnostic purposes to provide appropriate  
362 care or treatment to the person being tested. Notification of  
363 test results in accordance with paragraph (c) is required if it  
364 would not be detrimental to the patient. This subparagraph does  
365 not authorize the routine testing of patients for HIV infection  
366 without informed consent.

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

369           6. For the performance of an HIV test upon a defendant  
370 pursuant to the victim's request in a prosecution for any type  
371 of sexual battery where a blood sample is taken from the  
372 defendant voluntarily, pursuant to court order for any purpose,  
373 or pursuant to the provisions of s. 775.0877, s. 951.27, or s.  
374 960.003; however, the results of any HIV test performed shall be  
375 disclosed solely to the victim and the defendant, except as  
376 provided in ss. 775.0877, 951.27, and 960.003.

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

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

384           9. When human tissue is collected lawfully without the  
385 consent of the donor for corneal removal as authorized by s.  
386 765.5185 or enucleation of the eyes as authorized by s. 765.519.

387           10. For the performance of an HIV test upon an individual  
388 who comes into contact with medical personnel in such a way that  
389 a significant exposure has occurred during the course of  
390 employment or within the scope of practice and where a blood  
391 sample is available that was taken from that individual  
392 voluntarily by medical personnel for other purposes. The term  
393 "medical personnel" includes a licensed or certified health care  
394 professional; an employee of a health care professional or  
395 health care facility; employees of a laboratory licensed under  
396 chapter 483; personnel of a blood bank or plasma center; a  
397 medical student or other student who is receiving training as a  
398 health care professional at a health care facility; and a  
399 paramedic or emergency medical technician certified by the  
400 department to perform life-support procedures under s. 401.23.

401           a. Prior to performance of an HIV test on a voluntarily  
402 obtained blood sample, the individual from whom the blood was  
403 obtained shall be requested to consent to the performance of the  
404 test and to the release of the results. If consent cannot be  
405 obtained within the time necessary to perform the HIV test and  
406 begin prophylactic treatment of the exposed medical personnel,

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407 all information concerning the performance of an HIV test and  
408 any HIV test result shall be documented only in the medical  
409 personnel's record unless the individual gives written consent  
410 to entering this information on the individual's medical record.

411 b. Reasonable attempts to locate the individual and to  
412 obtain consent shall be made, and all attempts must be  
413 documented. If the individual cannot be found or is incapable of  
414 providing consent, an HIV test may be conducted on the available  
415 blood sample. If the individual does not voluntarily consent to  
416 the performance of an HIV test, the individual shall be informed  
417 that an HIV test will be performed, and counseling shall be  
418 furnished as provided in this section. However, HIV testing  
419 shall be conducted only after appropriate medical personnel  
420 under the supervision of a licensed physician documents, in the  
421 medical record of the medical personnel, that there has been a  
422 significant exposure and that, in accordance with the written  
423 protocols based on the National Centers for Disease Control and  
424 Prevention guidelines on HIV postexposure prophylaxis and in the  
425 physician's medical judgment, the information is medically  
426 necessary to determine the course of treatment for the medical  
427 personnel.

428 c. Costs of any HIV test of a blood sample performed with  
429 or without the consent of the individual, as provided in this  
430 subparagraph, shall be borne by the medical personnel or the  
431 employer of the medical personnel. However, costs of testing or  
432 treatment not directly related to the initial HIV tests or costs  
433 of subsequent testing or treatment may not be borne by the  
434 medical personnel or the employer of the medical personnel.

435 d. In order to utilize the provisions of this subparagraph,

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436 the medical personnel must either be tested for HIV pursuant to  
437 this section or provide the results of an HIV test taken within  
438 6 months prior to the significant exposure if such test results  
439 are negative.

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

444 f. If the source of the exposure will not voluntarily  
445 submit to HIV testing and a blood sample is not available, the  
446 medical personnel or the employer of such person acting on  
447 behalf of the employee may seek a court order directing the  
448 source of the exposure to submit to HIV testing. A sworn  
449 statement by a physician licensed under chapter 458 or chapter  
450 459 that a significant exposure has occurred and that, in the  
451 physician's medical judgment, testing is medically necessary to  
452 determine the course of treatment constitutes probable cause for  
453 the issuance of an order by the court. The results of the test  
454 shall be released to the source of the exposure and to the  
455 person who experienced the exposure.

456 11. For the performance of an HIV test upon an individual  
457 who comes into contact with medical personnel in such a way that  
458 a significant exposure has occurred during the course of  
459 employment or within the scope of practice of the medical  
460 personnel while the medical personnel provides emergency medical  
461 treatment to the individual; or notwithstanding s. 384.287, an  
462 individual who comes into contact with nonmedical personnel in  
463 such a way that a significant exposure has occurred while the  
464 nonmedical personnel provides emergency medical assistance



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465 during a medical emergency. For the purposes of this  
466 subparagraph, a medical emergency means an emergency medical  
467 condition outside of a hospital or health care facility that  
468 provides physician care. The test may be performed only during  
469 the course of treatment for the medical emergency.

470 a. An individual who is capable of providing consent shall  
471 be requested to consent to an HIV test prior to the testing. If  
472 consent cannot be obtained within the time necessary to perform  
473 the HIV test and begin prophylactic treatment of the exposed  
474 medical personnel and nonmedical personnel, all information  
475 concerning the performance of an HIV test and its result, shall  
476 be documented only in the medical personnel's or nonmedical  
477 personnel's record unless the individual gives written consent  
478 to entering this information on the individual's medical record.

479 b. HIV testing shall be conducted only after appropriate  
480 medical personnel under the supervision of a licensed physician  
481 documents, in the medical record of the medical personnel or  
482 nonmedical personnel, that there has been a significant exposure  
483 and that, in accordance with the written protocols based on the  
484 National Centers for Disease Control and Prevention guidelines  
485 on HIV postexposure prophylaxis and in the physician's medical  
486 judgment, the information is medically necessary to determine  
487 the course of treatment for the medical personnel or nonmedical  
488 personnel.

489 c. Costs of any HIV test performed with or without the  
490 consent of the individual, as provided in this subparagraph,  
491 shall be borne by the medical personnel or the employer of the  
492 medical personnel or nonmedical personnel. However, costs of  
493 testing or treatment not directly related to the initial HIV

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494 tests or costs of subsequent testing or treatment may not be  
495 borne by the medical personnel or the employer of the medical  
496 personnel or nonmedical personnel.

497 d. In order to utilize the provisions of this subparagraph,  
498 the medical personnel or nonmedical personnel shall be tested  
499 for HIV pursuant to this section or shall provide the results of  
500 an HIV test taken within 6 months prior to the significant  
501 exposure if such test results are negative.

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

506 f. If the source of the exposure will not voluntarily  
507 submit to HIV testing and a blood sample was not obtained during  
508 treatment for the medical emergency, the medical personnel, the  
509 employer of the medical personnel acting on behalf of the  
510 employee, or the nonmedical personnel may seek a court order  
511 directing the source of the exposure to submit to HIV testing. A  
512 sworn statement by a physician licensed under chapter 458 or  
513 chapter 459 that a significant exposure has occurred and that,  
514 in the physician's medical judgment, testing is medically  
515 necessary to determine the course of treatment constitutes  
516 probable cause for the issuance of an order by the court. The  
517 results of the test shall be released to the source of the  
518 exposure and to the person who experienced the exposure.

519 12. For the performance of an HIV test by the medical  
520 examiner or attending physician upon an individual who expired  
521 or could not be resuscitated while receiving emergency medical  
522 assistance or care and who was the source of a significant

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523 exposure to medical or nonmedical personnel providing such  
524 assistance or care.

525       a. HIV testing may be conducted only after appropriate  
526 medical personnel under the supervision of a licensed physician  
527 documents in the medical record of the medical personnel or  
528 nonmedical personnel that there has been a significant exposure  
529 and that, in accordance with the written protocols based on the  
530 National Centers for Disease Control and Prevention guidelines  
531 on HIV postexposure prophylaxis and in the physician's medical  
532 judgment, the information is medically necessary to determine  
533 the course of treatment for the medical personnel or nonmedical  
534 personnel.

535       b. Costs of any HIV test performed under this subparagraph  
536 may not be charged to the deceased or to the family of the  
537 deceased person.

538       c. For the provisions of this subparagraph to be  
539 applicable, the medical personnel or nonmedical personnel must  
540 be tested for HIV under this section or must provide the results  
541 of an HIV test taken within 6 months before the significant  
542 exposure if such test results are negative.

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

545       13. For the performance of an HIV-related test medically  
546 indicated by licensed medical personnel for medical diagnosis of  
547 a hospitalized infant as necessary to provide appropriate care  
548 and treatment of the infant when, after a reasonable attempt, a  
549 parent cannot be contacted to provide consent. The medical  
550 records of the infant shall reflect the reason consent of the  
551 parent was not initially obtained. Test results shall be

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552 provided to the parent when the parent is located.

553 14. For the performance of HIV testing conducted to monitor  
554 the clinical progress of a patient previously diagnosed to be  
555 HIV positive.

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

558 Section 3. This act shall take effect July 1, 2009.