

By Senator Wilson

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1                   A bill to be entitled  
2           An act relating to the testing of inmates for HIV  
3           infection in certain county detention facilities;  
4           amending s. 951.27, F.S.; requiring the Department of  
5           Health to designate certain counties, if approved by  
6           the county's governing body, to participate in a  
7           program to test each inmate for HIV before the inmate  
8           is released if the inmate's HIV status is unknown;  
9           providing certain exceptions; requiring that certain  
10          county detention facilities notify the Department of  
11          Health and the county health department in the county  
12          where the inmate plans to reside following release if  
13          the inmate is HIV positive; requiring certain  
14          detention facilities to provide special transitional  
15          assistance to an inmate who is HIV positive; providing  
16          immunity from liability for complying entities;  
17          amending s. 381.004, F.S.; providing that informed  
18          consent is not required for an HIV test of an inmate  
19          before the inmate's release from a municipal or county  
20          detention facility; providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24           Section 1. Section 951.27, Florida Statutes, is amended to  
25           read:

26           951.27 Blood tests of inmates.—

27           (1) Each county and each municipal detention facility shall  
28           have a written procedure developed, in consultation with the  
29           facility medical provider, establishing conditions under which

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30 an inmate will be tested for infectious disease, including human  
31 immunodeficiency virus pursuant to s. 775.0877, which procedure  
32 is consistent with guidelines of the Centers for Disease Control  
33 and Prevention and recommendations of the Correctional Medical  
34 Authority. It is not unlawful for the person receiving the test  
35 results to divulge the test results to the sheriff or chief  
36 correctional officer.

37 (2) (a) The Department of Health shall designate two  
38 counties having a population of 1.2 million or more and five  
39 counties having a population of fewer than 1.2 million to  
40 participate in the testing program provided in this subsection,  
41 if participation in the testing program is authorized by a  
42 majority of the county's governing body. Each county detention  
43 facility that lies within the authority of any participating  
44 county shall, consistent with s. 381.004(3), perform an HIV test  
45 as defined in s. 381.004(2) on each sentenced inmate who is to  
46 be released from the facility unless the facility knows that the  
47 inmate is HIV positive or unless, within 120 days before the  
48 release date, the inmate has been tested for HIV and does not  
49 request retesting. The required test must be performed not less  
50 than 30 days before the release date of the inmate. A test is  
51 not required under this paragraph if an inmate is released due  
52 to an emergency or a court order and the detention facility  
53 receives less than 30 days' notice of the release date or if the  
54 inmate is transferred to the custody of the Department of  
55 Corrections for incarceration in the state correctional system.

56 (b) Each county detention facility in a county that  
57 participates in the testing program authorized in paragraph (a)  
58 must comply with the requirements of this paragraph. If the

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59 county detention facility knows that an inmate who is to be  
60 released from the facility is HIV positive or has received a  
61 positive HIV test result, that facility shall, before the inmate  
62 is released:

63 1. Notify, consistent with s. 381.004(3), the Department of  
64 Health and the county health department in the county where the  
65 inmate being released plans to reside of the release date and  
66 HIV status of the inmate.

67 2. Provide special transitional assistance to the inmate  
68 which must include:

69 a. Education on preventing the transmission of HIV to  
70 others and on the importance of receiving followup medical care  
71 and treatment.

72 b. A written, individualized discharge plan that includes  
73 records of all laboratory and diagnostic test results,  
74 medication and treatment information, and referrals to and  
75 contacts with the county health department and local primary  
76 medical care services for the treatment of HIV infection which  
77 are available in the area where the inmate plans to reside.

78 (3)-(2) Except as otherwise provided in this subsection,  
79 serologic blood test results obtained pursuant to subsection (1)  
80 or subsection (2) are confidential and exempt from the  
81 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
82 Constitution. However, such results may be provided to employees  
83 or officers of the sheriff or chief correctional officer who are  
84 responsible for the custody and care of the affected inmate and  
85 have a need to know such information, and as provided in ss.  
86 381.004(3), 775.0877, and 960.003. In addition, upon request of  
87 the victim or the victim's legal guardian, or the parent or

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88 legal guardian of the victim if the victim is a minor, the  
89 results of any HIV test performed on an inmate who has been  
90 arrested for any sexual offense involving oral, anal, or vaginal  
91 penetration by, or union with, the sexual organ of another,  
92 shall be disclosed to the victim or the victim's legal guardian,  
93 or to the parent or legal guardian of the victim if the victim  
94 is a minor. In such cases, the county or municipal detention  
95 facility shall furnish the test results to the Department of  
96 Health, which is responsible for disclosing the results to  
97 public health agencies as provided in s. 775.0877 and to the  
98 victim or the victim's legal guardian, or the parent or legal  
99 guardian of the victim if the victim is a minor, as provided in  
100 s. 960.003(3).

101 (4)~~(3)~~ The results of any serologic blood test on an inmate  
102 are a part of that inmate's permanent medical file. Upon  
103 transfer of the inmate to any other correctional facility, such  
104 file is also transferred, and all relevant authorized persons  
105 must be notified of positive HIV test results, as required in s.  
106 775.0877.

107 (5) Notwithstanding any statute providing for a waiver of  
108 sovereign immunity, the state, its agencies, or subdivisions,  
109 and employees of the state, its agencies, or subdivisions, are  
110 not liable to any person for negligently causing death or  
111 personal injury arising out of complying with this section.

112 Section 2. Subsection (3) of section 381.004, Florida  
113 Statutes, is amended to read:

114 381.004 HIV testing.—

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

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

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

138 1. Is not competent, is incapacitated, or is otherwise  
139 unable to make an informed judgment; or

140 2. Has not reached the age of majority, except as provided  
141 in s. 384.30.

142 (c) The person ordering the test or that person's designee  
143 shall ensure that all reasonable efforts are made to notify the  
144 test subject of his or her test result. Notification of a person  
145 with a positive test result shall include information on the

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146 availability of appropriate medical and support services, on the  
147 importance of notifying partners who may have been exposed, and  
148 on preventing transmission of HIV. Notification of a person with  
149 a negative test result shall include, as appropriate,  
150 information on preventing the transmission of HIV. When testing  
151 occurs in a hospital emergency department, detention facility,  
152 or other facility and the test subject has been released before  
153 being notified of positive test results, informing the county  
154 health department for that department to notify the test subject  
155 fulfills this responsibility.

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

158 1. Preliminary test results may be released to licensed  
159 physicians or the medical or nonmedical personnel subject to the  
160 significant exposure for purposes of subparagraphs (h)10., 11.,  
161 and 12.

162 2. Preliminary test results may be released to health care  
163 providers and to the person tested when decisions about medical  
164 care or treatment of, or recommendation to, the person tested  
165 and, in the case of an intrapartum or postpartum woman, when  
166 care, treatment, or recommendations regarding her newborn,  
167 cannot await the results of confirmatory testing. Positive  
168 preliminary HIV test results may not be characterized to the  
169 patient as a diagnosis of HIV infection. Justification for the  
170 use of preliminary test results must be documented in the  
171 medical record by the health care provider who ordered the test.

172 3. The results of rapid testing technologies shall be  
173 considered preliminary and may be released in accordance with  
174 the manufacturer's instructions as approved by the federal Food

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175 and Drug Administration.

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

181 (e) Except as provided in this section, the identity of any  
182 person upon whom a test has been performed and test results are  
183 confidential and exempt from the provisions of s. 119.07(1). No  
184 person who has obtained or has knowledge of a test result  
185 pursuant to this section may disclose or be compelled to  
186 disclose the identity of any person upon whom a test is  
187 performed, or the results of such a test in a manner which  
188 permits identification of the subject of the test, except to the  
189 following persons:

190 1. The subject of the test or the subject's legally  
191 authorized representative.

192 2. Any person, including third-party payors, designated in  
193 a legally effective release of the test results executed prior  
194 to or after the test by the subject of the test or the subject's  
195 legally authorized representative. The test subject may in  
196 writing authorize the disclosure of the test subject's HIV test  
197 results to third party payors, who need not be specifically  
198 identified, and to other persons to whom the test subject  
199 subsequently issues a general release of medical information. A  
200 general release without such prior written authorization is not  
201 sufficient to release HIV test results.

202 3. An authorized agent or employee of a health facility or  
203 health care provider if the health facility or health care

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204 provider itself is authorized to obtain the test results, the  
205 agent or employee participates in the administration or  
206 provision of patient care or handles or processes specimens of  
207 body fluids or tissues, and the agent or employee has a need to  
208 know such information. The department shall adopt a rule  
209 defining which persons have a need to know pursuant to this  
210 subparagraph.

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

219 5. The department, in accordance with rules for reporting  
220 and controlling the spread of disease, as otherwise provided by  
221 state law.

222 6. A health facility or health care provider which  
223 procures, processes, distributes, or uses:

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

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

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

231 8. Authorized medical or epidemiological researchers who  
232 may not further disclose any identifying characteristics or



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233 information.

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

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

246 b. Pleadings pertaining to disclosure of test results shall  
247 substitute a pseudonym for the true name of the subject of the  
248 test. The disclosure to the parties of the subject's true name  
249 shall be communicated confidentially in documents not filed with  
250 the court.

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

255 d. Court proceedings as to disclosure of test results shall  
256 be conducted in camera, unless the subject of the test agrees to  
257 a hearing in open court or unless the court determines that a  
258 public hearing is necessary to the public interest and the  
259 proper administration of justice.

260 e. Upon the issuance of an order to disclose test results,  
261 the court shall impose appropriate safeguards against

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262 unauthorized disclosure which shall specify the persons who may  
263 have access to the information, the purposes for which the  
264 information shall be used, and appropriate prohibitions on  
265 future disclosure.

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

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

283 12. Those employees of residential facilities or of  
284 community-based care programs that care for developmentally  
285 disabled persons, pursuant to chapter 393, who are directly  
286 involved in the care, control, or custody of such test subject  
287 and who have a need to know such information.

288 13. A health care provider involved in the delivery of a  
289 child can note the mother's HIV test results in the child's  
290 medical record.

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291 14. Medical personnel or nonmedical personnel who have been  
292 subject to a significant exposure during the course of medical  
293 practice or in the performance of professional duties, or  
294 individuals who are the subject of the significant exposure as  
295 provided in subparagraphs (h)10.-12.

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

299 (f) Except as provided in this section, the identity of a  
300 person upon whom a test has been performed is confidential and  
301 exempt from the provisions of s. 119.07(1). No person to whom  
302 the results of a test have been disclosed may disclose the test  
303 results to another person except as authorized by this  
304 subsection and by ss. 951.27 and 960.003. Whenever disclosure is  
305 made pursuant to this subsection, it shall be accompanied by a  
306 statement in writing which includes the following or  
307 substantially similar language: "This information has been  
308 disclosed to you from records whose confidentiality is protected  
309 by state law. State law prohibits you from making any further  
310 disclosure of such information without the specific written  
311 consent of the person to whom such information pertains, or as  
312 otherwise permitted by state law. A general authorization for  
313 the release of medical or other information is NOT sufficient  
314 for this purpose." An oral disclosure shall be accompanied by  
315 oral notice and followed by a written notice within 10 days,  
316 except that this notice shall not be required for disclosures  
317 made pursuant to subparagraphs (e)3. and 4.

318 (g) Human immunodeficiency virus test results contained in  
319 the medical records of a hospital licensed under chapter 395 may

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320 be released in accordance with s. 395.3025 without being subject  
321 to the requirements of subparagraph (e)2., subparagraph (e)9.,  
322 or paragraph (f); provided the hospital has obtained written  
323 informed consent for the HIV test in accordance with provisions  
324 of this section.

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

327 1. When testing for sexually transmissible diseases is  
328 required by state or federal law, or by rule including the  
329 following situations:

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

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

335 c. Testing for HIV by a medical examiner in accordance with  
336 s. 406.11.

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

338 e. HIV testing of inmates pursuant to s. 951.27 before  
339 their release from a county or municipal detention facility.

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

342 3. For the performance of an HIV-related test by licensed  
343 medical personnel in bona fide medical emergencies when the test  
344 results are necessary for medical diagnostic purposes to provide  
345 appropriate emergency care or treatment to the person being  
346 tested and the patient is unable to consent, as supported by  
347 documentation in the medical record. Notification of test  
348 results in accordance with paragraph (c) is required.

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

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

362 6. For the performance of an HIV test upon a defendant  
363 pursuant to the victim's request in a prosecution for any type  
364 of sexual battery where a blood sample is taken from the  
365 defendant voluntarily, pursuant to court order for any purpose,  
366 or pursuant to the provisions of s. 775.0877, s. 951.27, or s.  
367 960.003; however, the results of any HIV test performed shall be  
368 disclosed solely to the victim and the defendant, except as  
369 provided in ss. 775.0877, 951.27, and 960.003.

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

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

377 9. When human tissue is collected lawfully without the

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378 consent of the donor for corneal removal as authorized by s.  
379 765.5185 or enucleation of the eyes as authorized by s. 765.519.

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

394 a. Prior to performance of an HIV test on a voluntarily  
395 obtained blood sample, the individual from whom the blood was  
396 obtained shall be requested to consent to the performance of the  
397 test and to the release of the results. If consent cannot be  
398 obtained within the time necessary to perform the HIV test and  
399 begin prophylactic treatment of the exposed medical personnel,  
400 all information concerning the performance of an HIV test and  
401 any HIV test result shall be documented only in the medical  
402 personnel's record unless the individual gives written consent  
403 to entering this information on the individual's medical record.

404 b. Reasonable attempts to locate the individual and to  
405 obtain consent shall be made, and all attempts must be  
406 documented. If the individual cannot be found or is incapable of

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407 providing consent, an HIV test may be conducted on the available  
408 blood sample. If the individual does not voluntarily consent to  
409 the performance of an HIV test, the individual shall be informed  
410 that an HIV test will be performed, and counseling shall be  
411 furnished as provided in this section. However, HIV testing  
412 shall be conducted only after appropriate medical personnel  
413 under the supervision of a licensed physician documents, in the  
414 medical record of the medical personnel, that there has been a  
415 significant exposure and that, in accordance with the written  
416 protocols based on the National Centers for Disease Control and  
417 Prevention guidelines on HIV postexposure prophylaxis and in the  
418 physician's medical judgment, the information is medically  
419 necessary to determine the course of treatment for the medical  
420 personnel.

421 c. Costs of any HIV test of a blood sample performed with  
422 or without the consent of the individual, as provided in this  
423 subparagraph, shall be borne by the medical personnel or the  
424 employer of the medical personnel. However, costs of testing or  
425 treatment not directly related to the initial HIV tests or costs  
426 of subsequent testing or treatment may not be borne by the  
427 medical personnel or the employer of the medical personnel.

428 d. In order to utilize the provisions of this subparagraph,  
429 the medical personnel must either be tested for HIV pursuant to  
430 this section or provide the results of an HIV test taken within  
431 6 months prior to the significant exposure if such test results  
432 are negative.

433 e. A person who receives the results of an HIV test  
434 pursuant to this subparagraph shall maintain the confidentiality  
435 of the information received and of the persons tested. Such

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436 confidential information is exempt from s. 119.07(1).

437 f. If the source of the exposure will not voluntarily  
438 submit to HIV testing and a blood sample is not available, the  
439 medical personnel or the employer of such person acting on  
440 behalf of the employee may seek a court order directing the  
441 source of the exposure to submit to HIV testing. A sworn  
442 statement by a physician licensed under chapter 458 or chapter  
443 459 that a significant exposure has occurred and that, in the  
444 physician's medical judgment, testing is medically necessary to  
445 determine the course of treatment constitutes probable cause for  
446 the issuance of an order by the court. The results of the test  
447 shall be released to the source of the exposure and to the  
448 person who experienced the exposure.

449 11. For the performance of an HIV test upon an individual  
450 who comes into contact with medical personnel in such a way that  
451 a significant exposure has occurred during the course of  
452 employment or within the scope of practice of the medical  
453 personnel while the medical personnel provides emergency medical  
454 treatment to the individual; or notwithstanding s. 384.287, an  
455 individual who comes into contact with nonmedical personnel in  
456 such a way that a significant exposure has occurred while the  
457 nonmedical personnel provides emergency medical assistance  
458 during a medical emergency. For the purposes of this  
459 subparagraph, a medical emergency means an emergency medical  
460 condition outside of a hospital or health care facility that  
461 provides physician care. The test may be performed only during  
462 the course of treatment for the medical emergency.

463 a. An individual who is capable of providing consent shall  
464 be requested to consent to an HIV test prior to the testing. If



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465 consent cannot be obtained within the time necessary to perform  
466 the HIV test and begin prophylactic treatment of the exposed  
467 medical personnel and nonmedical personnel, all information  
468 concerning the performance of an HIV test and its result, shall  
469 be documented only in the medical personnel's or nonmedical  
470 personnel's record unless the individual gives written consent  
471 to entering this information on the individual's medical record.

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

482       c. Costs of any HIV test performed with or without the  
483 consent of the individual, as provided in this subparagraph,  
484 shall be borne by the medical personnel or the employer of the  
485 medical personnel or nonmedical personnel. However, costs of  
486 testing or treatment not directly related to the initial HIV  
487 tests or costs of subsequent testing or treatment may not be  
488 borne by the medical personnel or the employer of the medical  
489 personnel or nonmedical personnel.

490       d. In order to utilize the provisions of this subparagraph,  
491 the medical personnel or nonmedical personnel shall be tested  
492 for HIV pursuant to this section or shall provide the results of  
493 an HIV test taken within 6 months prior to the significant

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494 exposure if such test results are negative.

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

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

512 12. For the performance of an HIV test by the medical  
513 examiner or attending physician upon an individual who expired  
514 or could not be resuscitated while receiving emergency medical  
515 assistance or care and who was the source of a significant  
516 exposure to medical or nonmedical personnel providing such  
517 assistance or care.

518 a. HIV testing may be conducted only after appropriate  
519 medical personnel under the supervision of a licensed physician  
520 documents in the medical record of the medical personnel or  
521 nonmedical personnel that there has been a significant exposure  
522 and that, in accordance with the written protocols based on the

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523 National Centers for Disease Control and Prevention guidelines  
524 on HIV postexposure prophylaxis and in the physician's medical  
525 judgment, the information is medically necessary to determine  
526 the course of treatment for the medical personnel or nonmedical  
527 personnel.

528       b. Costs of any HIV test performed under this subparagraph  
529 may not be charged to the deceased or to the family of the  
530 deceased person.

531       c. For the provisions of this subparagraph to be  
532 applicable, the medical personnel or nonmedical personnel must  
533 be tested for HIV under this section or must provide the results  
534 of an HIV test taken within 6 months before the significant  
535 exposure if such test results are negative.

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

538       13. For the performance of an HIV-related test medically  
539 indicated by licensed medical personnel for medical diagnosis of  
540 a hospitalized infant as necessary to provide appropriate care  
541 and treatment of the infant when, after a reasonable attempt, a  
542 parent cannot be contacted to provide consent. The medical  
543 records of the infant shall reflect the reason consent of the  
544 parent was not initially obtained. Test results shall be  
545 provided to the parent when the parent is located.

546       14. For the performance of HIV testing conducted to monitor  
547 the clinical progress of a patient previously diagnosed to be  
548 HIV positive.

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

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