

1                   A bill to be entitled  
 2           An act relating to testing for the human  
 3           immunodeficiency virus; amending s. 381.004, F.S.;  
 4           providing definitions; providing that informed consent  
 5           to perform an HIV test to identify the human  
 6           immunodeficiency virus, or its antigen or antibody,  
 7           must be obtained from a legal guardian or other person  
 8           authorized by law for certain persons; revising the  
 9           situations in which test results may be released;  
 10          amending ss. 381.0041, 456.032, 627.429, 641.3007,  
 11          775.0877, and 960.003, F.S.; conforming provisions to  
 12          changes made by the act; providing an effective date.

13  
 14   Be It Enacted by the Legislature of the State of Florida:

15  
 16           Section 1. Subsection (1) of section 381.004, Florida  
 17   Statutes, is reordered and amended, and subsection (2) and  
 18   paragraph (d) of subsection (4) of that section are amended to  
 19   read:

20           381.004   HIV testing.—

21           (1)   DEFINITIONS.—As used in this section:

22           (a)   "HIV test" means a test ordered after July 6, 1988, to  
 23   determine the presence of the antibody or antigen to human  
 24   immunodeficiency virus or the presence of human immunodeficiency  
 25   virus infection.

26           (b)   "HIV test result" means a laboratory report of a human  
 27   immunodeficiency virus test result entered into a medical record  
 28   on or after July 6, 1988, or any report or notation in a medical

29 record of a laboratory report of a human immunodeficiency virus  
 30 test. As used in this section, the term "HIV test result" does  
 31 not include test results reported to a health care provider by a  
 32 patient.

33 (c) "Medical emergency" means an emergency medical  
 34 situation outside a hospital or health care facility that  
 35 provides medical care.

36 (d) "Medical personnel" means a licensed or certified  
 37 health care professional, an employee of a health care  
 38 professional or health care facility, an employee of a  
 39 laboratory licensed under chapter 483, an employee of a blood  
 40 bank or plasma center, a medical student or other student who is  
 41 receiving training as a health care professional at a health  
 42 care facility, and a paramedic or emergency medical technician  
 43 certified by the department to perform basic life support  
 44 services as defined in s. 401.23.

45 (f)~~(e)~~ "Significant exposure" means:

46 1. Exposure to blood or body fluids through needlestick,  
 47 instruments, or sharps;

48 2. Exposure of mucous membranes to visible blood or body  
 49 fluids, to which universal precautions apply according to the  
 50 National Centers for Disease Control and Prevention, including,  
 51 without limitations, the following body fluids:

- 52 a. Blood.
- 53 b. Semen.
- 54 c. Vaginal secretions.
- 55 d. Cerebro-spinal fluid (CSF).
- 56 e. Synovial fluid.

- 57 f. Pleural fluid.
- 58 g. Peritoneal fluid.
- 59 h. Pericardial fluid.
- 60 i. Amniotic fluid.
- 61 j. Laboratory specimens that contain HIV (e.g.,
- 62 suspensions of concentrated virus); or
- 63 3. Exposure of skin to visible blood or body fluids,
- 64 especially when the exposed skin is chapped, abraded, or
- 65 afflicted with dermatitis or the contact is prolonged or
- 66 involving an extensive area.
- 67 (e) ~~(d)~~ "Preliminary HIV test" means an antibody screening
- 68 test, such as the enzyme-linked immunosorbent assays (ELISAs) or
- 69 the Single-Use Diagnostic System (SUDS).
- 70 (g) ~~(e)~~ "Test subject" or "subject of the test" means the
- 71 person upon whom an HIV test is performed, or the person who has
- 72 legal authority to make health care decisions for the test
- 73 subject.
- 74 (2) HUMAN IMMUNODEFICIENCY VIRUS TESTING; ~~INFORMED~~
- 75 ~~CONSENT~~; RESULTS; COUNSELING; CONFIDENTIALITY.—
- 76 (a) Informed consent to an HIV test ~~No person in this~~
- 77 ~~state shall order a test designed to identify the human~~
- 78 immunodeficiency virus, or its antigen or antibody, must be
- 79 obtained from the legal guardian of the individual upon whom the
- 80 test is performed or from a person authorized by law if the
- 81 individual:
- 82 1. Is not competent, is incapacitated, or is otherwise
- 83 unable to make an informed judgment; or
- 84 2. Has not reached the age of majority, except as provided

85 ~~in s. 384.30, without first obtaining the informed consent of~~  
 86 ~~the person upon whom the test is being performed, except as~~  
 87 ~~specified in paragraph (h).~~

88  
 89 Informed consent must ~~shall~~ be preceded by an explanation of the  
 90 right to confidential treatment of information identifying the  
 91 subject of the test and the results of the test to the extent  
 92 provided by law. Information must ~~shall~~ also be provided on the  
 93 fact that a positive HIV test result will be reported to the  
 94 county health department with sufficient information to identify  
 95 the test subject and on the availability and location of sites  
 96 at which anonymous testing is performed. As required in  
 97 paragraph (3)(c), each county health department shall maintain a  
 98 list of sites at which anonymous testing is performed, including  
 99 the locations, phone numbers, and hours of operation of the  
 100 sites. Consent need not be in writing if ~~provided~~ there is  
 101 documentation in the medical record that the test has been  
 102 explained and the consent has been obtained.

103 ~~(b) Except as provided in paragraph (h), Informed consent~~  
 104 ~~must be obtained from a legal guardian or other person~~  
 105 ~~authorized by law when the person:~~

106 ~~1. Is not competent, is incapacitated, or is otherwise~~  
 107 ~~unable to make an informed judgment; or~~

108 ~~2. Has not reached the age of majority, except as provided~~  
 109 ~~in s. 384.30.~~

110 ~~(b)(e)~~ The person ordering the HIV test or that person's  
 111 designee shall ensure that all reasonable efforts are made to  
 112 notify the test subject of his or her test result. Notification

113 of a person who has ~~with~~ a positive test result must ~~shall~~  
 114 include information on the availability of appropriate medical  
 115 and support services, on the importance of notifying partners  
 116 who may have been exposed, and on preventing transmission of  
 117 HIV. Notification of a person who has ~~with~~ a negative test  
 118 result must ~~shall~~ include, as appropriate, information on  
 119 preventing the transmission of HIV. If ~~When~~ testing occurs in a  
 120 hospital emergency department, detention facility, or other  
 121 facility and the test subject has been released before being  
 122 notified of positive test results, informing the county health  
 123 department for that department to notify the test subject  
 124 fulfills this responsibility.

125 ~~(c)-(d)~~ A positive preliminary test result may not be  
 126 revealed to any person except in the following situations:

127 1. Preliminary test results may be released to licensed  
 128 physicians or the medical or nonmedical personnel subject to the  
 129 significant exposure for the following purposes: ~~of~~  
 130 ~~subparagraphs (h)10., 11., and 12.~~

131 a. For the performance of an HIV test upon an individual  
 132 who comes into contact with medical personnel in such a way that  
 133 a significant exposure has occurred during the course of  
 134 employment or within the scope of practice and where a blood  
 135 sample is available that was taken from that individual  
 136 voluntarily by medical personnel for other purposes.

137 (I) Prior to performance of an HIV test on a voluntarily  
 138 obtained blood sample, the individual from whom the blood was  
 139 obtained shall be requested to consent to the performance of the  
 140 test and to the release of the results. If consent cannot be

HB 1255

2013

141 obtained within the time necessary to perform the HIV test and  
142 begin prophylactic treatment of the exposed medical personnel,  
143 all information concerning the performance of an HIV test and  
144 any HIV test result shall be documented only in the medical  
145 personnel's record unless the individual gives written consent  
146 to entering this information on the individual's medical record.

147 (II) Reasonable attempts to locate the individual and to  
148 obtain consent shall be made, and all attempts must be  
149 documented. If the individual cannot be found or is incapable of  
150 providing consent, an HIV test may be conducted on the available  
151 blood sample. If the individual does not voluntarily consent to  
152 the performance of an HIV test, the individual shall be informed  
153 that an HIV test will be performed, and counseling shall be  
154 furnished as provided in this section. However, HIV testing  
155 shall be conducted only after appropriate medical personnel,  
156 under the supervision of a licensed physician, documents, in the  
157 medical record of the medical personnel, that there has been a  
158 significant exposure and that, in accordance with the written  
159 protocols based on the National Centers for Disease Control and  
160 Prevention guidelines on HIV postexposure prophylaxis and in the  
161 physician's medical judgment, the information is medically  
162 necessary to determine the course of treatment for the medical  
163 personnel.

164 (III) Costs of any HIV test of a blood sample performed  
165 with or without the consent of the individual, as provided in  
166 this subparagraph, shall be borne by the medical personnel or  
167 the employer of the medical personnel. However, costs of testing  
168 or treatment not directly related to the initial HIV tests or

HB 1255

2013

169 costs of subsequent testing or treatment may not be borne by the  
170 medical personnel or the employer of the medical personnel.

171 (IV) In order to use the provisions of this sub-  
172 subparagraph, the medical personnel must either be tested for  
173 HIV pursuant to this section or provide the results of an HIV  
174 test taken within 6 months prior to the significant exposure if  
175 such test results are negative.

176 (V) A person who receives the results of an HIV test  
177 pursuant to this subparagraph shall maintain the confidentiality  
178 of the information received and of the person tested. Such  
179 confidential information is exempt from s. 119.07(1).

180 (VI) If the source of the exposure will not voluntarily  
181 submit to HIV testing and a blood sample is not available, the  
182 medical personnel or the employer of such person acting on  
183 behalf of the employee may seek a court order directing the  
184 source of the exposure to submit to HIV testing. A sworn  
185 statement by a physician licensed under chapter 458 or chapter  
186 459 that a significant exposure has occurred and that, in the  
187 physician's medical judgment, testing is medically necessary to  
188 determine the course of treatment constitutes probable cause for  
189 the issuance of an order by the court. The results of the test  
190 shall be released to the source of the exposure and to the  
191 person who experienced the exposure.

192 b. For the performance of an HIV test upon an individual  
193 who comes into contact with medical personnel in such a way that  
194 a significant exposure has occurred during the course of  
195 employment or within the scope of practice of the medical  
196 personnel while the medical personnel provides emergency medical

HB 1255

2013

197 treatment to the individual; or notwithstanding s. 384.287, an  
198 individual who comes into contact with nonmedical personnel in  
199 such a way that a significant exposure has occurred while the  
200 nonmedical personnel provides emergency medical assistance  
201 during a medical emergency. For the purposes of this  
202 subparagraph, a medical emergency means an emergency medical  
203 condition outside of a hospital or health care facility that  
204 provides physician care. The test may be performed only during  
205 the course of treatment for the medical emergency.

206 (I) An individual who is capable of providing consent  
207 shall be requested to consent to an HIV test prior to the  
208 testing. If consent cannot be obtained within the time necessary  
209 to perform the HIV test and begin prophylactic treatment of the  
210 exposed medical personnel and nonmedical personnel, all  
211 information concerning the performance of an HIV test and its  
212 result shall be documented only in the medical personnel's or  
213 nonmedical personnel's record unless the individual gives  
214 written consent to entering this information on the individual's  
215 medical record.

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



HB 1255

2013

225 personnel or nonmedical personnel.

226 (III) Costs of any HIV test performed with or without the  
227 consent of the individual, as provided in this subparagraph,  
228 shall be borne by the medical personnel or the employer of the  
229 medical personnel or nonmedical personnel. However, costs of  
230 testing or treatment not directly related to the initial HIV  
231 tests or costs of subsequent testing or treatment may not be  
232 borne by the medical personnel or the employer of the medical  
233 personnel or nonmedical personnel.

234 (IV) In order to use the provisions of this subparagraph,  
235 the medical personnel or nonmedical personnel shall be tested  
236 for HIV pursuant to this section or shall provide the results of  
237 an HIV test taken within 6 months prior to the significant  
238 exposure if such test results are negative.

239 (V) A person who receives the results of an HIV test  
240 pursuant to this sub-subparagraph shall maintain the  
241 confidentiality of the information received and of the person  
242 tested. Such confidential information is exempt from s.  
243 119.07(1).

244 (VI) If the source of the exposure will not voluntarily  
245 submit to HIV testing and a blood sample was not obtained during  
246 treatment for the medical emergency, the medical personnel, the  
247 employer of the medical personnel acting on behalf of the  
248 employee, or the nonmedical personnel may seek a court order  
249 directing the source of the exposure to submit to HIV testing. A  
250 sworn statement by a physician licensed under chapter 458 or  
251 chapter 459 that a significant exposure has occurred and that,  
252 in the physician's medical judgment, testing is medically

253 necessary to determine the course of treatment constitutes  
254 probable cause for the issuance of an order by the court. The  
255 results of the test shall be released to the source of the  
256 exposure and to the person who experienced the exposure.

257 c. For the performance of an HIV test by the medical  
258 examiner or attending physician upon an individual who expired  
259 or could not be resuscitated while receiving emergency medical  
260 assistance or care and who was the source of a significant  
261 exposure to medical or nonmedical personnel providing such  
262 assistance or care.

263 (I) HIV testing may be conducted only after appropriate  
264 medical personnel under the supervision of a licensed physician  
265 documents in the medical record of the medical personnel or  
266 nonmedical personnel that there has been a significant exposure  
267 and that, in accordance with the written protocols based on the  
268 National Centers for Disease Control and Prevention guidelines  
269 on HIV postexposure prophylaxis and in the physician's medical  
270 judgment, the information is medically necessary to determine  
271 the course of treatment for the medical personnel or nonmedical  
272 personnel.

273 (II) Costs of any HIV test performed under this sub-  
274 subparagraph may not be charged to the deceased or to the family  
275 of the deceased person.

276 (III) For this sub-subparagraph to be applicable, the  
277 medical personnel or nonmedical personnel must be tested for HIV  
278 under this section or must provide the results of an HIV test  
279 taken within 6 months before the significant exposure if such  
280 test results are negative.

281 (IV) A person who receives the results of an HIV test  
282 pursuant to this sub-subparagraph shall comply with paragraph  
283 (d).

284 2. Preliminary test results may be released to health care  
285 providers and to the person tested when decisions about medical  
286 care or treatment of, or recommendation to, the person tested  
287 and, in the case of an intrapartum or postpartum woman, when  
288 care, treatment, or recommendations regarding her newborn,  
289 cannot await the results of confirmatory testing. Positive  
290 preliminary HIV test results may not be characterized to the  
291 patient as a diagnosis of HIV infection. Justification for the  
292 use of preliminary test results must be documented in the  
293 medical record by the health care provider who ordered the test.

294 3. The results of rapid testing technologies shall be  
295 considered preliminary and may be released in accordance with  
296 the manufacturer's instructions as approved by the federal Food  
297 and Drug Administration.

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

303 (d)-(e) Except as provided in this section, the identity of  
304 any person upon whom a test has been performed and test results  
305 are confidential and exempt from the provisions of s. 119.07(1).

306 A ~~No~~ person who has obtained or has knowledge of a test result  
307 pursuant to this section may not disclose or be compelled to  
308 disclose the identity of any person upon whom a test is

HB 1255

2013

309 performed, or the results of such a test in a manner which  
310 permits identification of the subject of the test, except to the  
311 following persons:

312 1. The subject of the test or the subject's legally  
313 authorized representative.

314 2. Any person, including third-party payors, designated in  
315 a legally effective release of the test results executed before  
316 ~~prior to~~ or after the test by the subject of the test or the  
317 subject's legally authorized representative. The test subject  
318 may in writing authorize the disclosure of the test subject's  
319 HIV test results to third party payors, who need not be  
320 specifically identified, and to other persons to whom the test  
321 subject subsequently issues a general release of medical  
322 information. A general release without such prior written  
323 authorization is not sufficient to release HIV test results.

324 3. An authorized agent or employee of a health facility or  
325 health care provider if the health facility or health care  
326 provider itself is authorized to obtain the test results, the  
327 agent or employee participates in the administration or  
328 provision of patient care or handles or processes specimens of  
329 body fluids or tissues, and the agent or employee has a need to  
330 know such information. The department shall adopt a rule  
331 defining which persons have a need to know pursuant to this  
332 subparagraph.

333 4. Health care providers consulting between themselves or  
334 with health care facilities to determine diagnosis and  
335 treatment. For purposes of this subparagraph, health care  
336 providers shall include licensed health care professionals

HB 1255

2013

337 employed by or associated with state, county, or municipal  
338 detention facilities when such health care professionals are  
339 acting exclusively for the purpose of providing diagnoses or  
340 treatment of persons in the custody of such facilities.

341 5. The department, in accordance with rules for reporting  
342 and controlling the spread of disease, as otherwise provided by  
343 state law.

344 6. A health facility or health care provider which  
345 procures, processes, distributes, or uses:

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

348 b. Semen provided before ~~prior to~~ July 6, 1988, for the  
349 purpose of artificial insemination.

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

353 8. Authorized medical or epidemiological researchers who  
354 may not further disclose any identifying characteristics or  
355 information.

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

358 a. A ~~No~~ court of this state may not ~~shall~~ issue such order  
359 unless the court finds that the person seeking the test results  
360 has demonstrated a compelling need for the test results which  
361 cannot be accommodated by other means. In assessing compelling  
362 need, the court shall weigh the need for disclosure against the  
363 privacy interest of the test subject and the public interest  
364 which may be disserved by disclosure which deters blood, organ,

HB 1255

2013

365 and semen donation and future human immunodeficiency virus-  
366 related testing or which may lead to discrimination. This  
367 paragraph does ~~shall~~ not apply to blood bank donor records.

368 b. Pleadings pertaining to disclosure of test results  
369 shall substitute a pseudonym for the true name of the subject of  
370 the test. The disclosure to the parties of the subject's true  
371 name shall be communicated confidentially in documents not filed  
372 with the court.

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

377 d. Court proceedings as to disclosure of test results  
378 shall be conducted in camera, unless the subject of the test  
379 agrees to a hearing in open court or unless the court determines  
380 that a public hearing is necessary to the public interest and  
381 the proper administration of justice.

382 e. Upon the issuance of an order to disclose test results,  
383 the court shall impose appropriate safeguards against  
384 unauthorized disclosure which shall specify the persons who may  
385 have access to the information, the purposes for which the  
386 information shall be used, and appropriate prohibitions on  
387 future disclosure.

388 10. A person allowed access by order of a judge of  
389 compensation claims of the Division of Administrative Hearings.  
390 A judge of compensation claims may ~~shall~~ not issue such order  
391 unless he or she finds that the person seeking the test results  
392 has demonstrated a compelling need for the test results which

393 cannot be accommodated by other means.

394 11. Those employees of the department or of child-placing  
 395 or child-caring agencies or of family foster homes, licensed  
 396 pursuant to s. 409.175, who are directly involved in the  
 397 placement, care, control, or custody of such test subject and  
 398 who have a need to know such information; adoptive parents of  
 399 such test subject; or any adult custodian, any adult relative,  
 400 or any person responsible for the child's welfare, if the test  
 401 subject was not tested under subparagraph (b)2. and if a  
 402 reasonable attempt has been made to locate and inform the legal  
 403 guardian of a test result. The department shall adopt a rule to  
 404 implement this subparagraph.

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

410 13. A health care provider involved in the delivery of a  
 411 child can note the mother's HIV test results in the child's  
 412 medical record.

413 14. Medical personnel or nonmedical personnel who have  
 414 been subject to a significant exposure during the course of  
 415 medical practice or in the performance of professional duties,  
 416 or individuals who are the subject of the significant exposure  
 417 as provided in sub-subparagraphs (c)1.a.-c ~~subparagraphs (h)10.-~~  
 418 ~~12.~~

419 15. The medical examiner shall disclose positive HIV test  
 420 results to the department in accordance with rules for reporting

HB 1255

2013

421 and controlling the spread of disease.

422 (e)~~(f)~~ Except as provided in this section, the identity of  
423 a person upon whom a test has been performed is confidential and  
424 exempt from the provisions of s. 119.07(1). A ~~No~~ person to whom  
425 the results of a test have been disclosed may not disclose the  
426 test results to another person except as authorized by this  
427 subsection and by ss. 951.27 and 960.003. Whenever disclosure is  
428 made pursuant to this subsection, it must ~~shall~~ be accompanied  
429 by a statement in writing which includes the following or  
430 substantially similar language: "This information has been  
431 disclosed to you from records whose confidentiality is protected  
432 by state law. State law prohibits you from making any further  
433 disclosure of such information without the specific written  
434 consent of the person to whom such information pertains, or as  
435 otherwise permitted by state law. A general authorization for  
436 the release of medical or other information is NOT sufficient  
437 for this purpose." An oral disclosure shall be accompanied by  
438 oral notice and followed by a written notice within 10 days,  
439 except that this notice may ~~shall~~ not be required for  
440 disclosures made pursuant to subparagraphs (d)3. ~~subparagraphs~~  
441 ~~(e)3.~~ and 4.

442 (f)~~(g)~~ Human immunodeficiency virus test results contained  
443 in the medical records of a hospital licensed under chapter 395  
444 may be released in accordance with s. 395.3025 without being  
445 subject to the requirements of subparagraph (d)2., subparagraph  
446 (d)9., or paragraph (e) ~~subparagraph (e)2., subparagraph (e)9.,~~  
447 ~~or paragraph (f); provided the hospital has obtained written~~  
448 ~~informed consent for the HIV test in accordance with provisions~~



449 ~~of this section.~~

450 ~~(h) Notwithstanding the provisions of paragraph (a),~~  
451 ~~informed consent is not required.~~

452 ~~1. When testing for sexually transmissible diseases is~~  
453 ~~required by state or federal law, or by rule including the~~  
454 ~~following situations:~~

455 ~~a. HIV testing pursuant to s. 796.08 of persons convicted~~  
456 ~~of prostitution or of procuring another to commit prostitution.~~

457 ~~b. HIV testing of inmates pursuant to s. 945.355 prior to~~  
458 ~~their release from prison by reason of parole, accumulation of~~  
459 ~~gain-time credits, or expiration of sentence.~~

460 ~~e. Testing for HIV by a medical examiner in accordance~~  
461 ~~with s. 406.11.~~

462 ~~d. HIV testing of pregnant women pursuant to s. 384.31.~~

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

465 ~~3. For the performance of an HIV-related test by licensed~~  
466 ~~medical personnel in bona fide medical emergencies when the test~~  
467 ~~results are necessary for medical diagnostic purposes to provide~~  
468 ~~appropriate emergency care or treatment to the person being~~  
469 ~~tested and the patient is unable to consent, as supported by~~  
470 ~~documentation in the medical record. Notification of test~~  
471 ~~results in accordance with paragraph (c) is required.~~

472 ~~4. For the performance of an HIV-related test by licensed~~  
473 ~~medical personnel for medical diagnosis of acute illness where,~~  
474 ~~in the opinion of the attending physician, obtaining informed~~  
475 ~~consent would be detrimental to the patient, as supported by~~  
476 ~~documentation in the medical record, and the test results are~~

477 ~~necessary for medical diagnostic purposes to provide appropriate~~  
478 ~~care or treatment to the person being tested. Notification of~~  
479 ~~test results in accordance with paragraph (c) is required if it~~  
480 ~~would not be detrimental to the patient. This subparagraph does~~  
481 ~~not authorize the routine testing of patients for HIV infection~~  
482 ~~without informed consent.~~

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

485 ~~6. For the performance of an HIV test upon a defendant~~  
486 ~~pursuant to the victim's request in a prosecution for any type~~  
487 ~~of sexual battery where a blood sample is taken from the~~  
488 ~~defendant voluntarily, pursuant to court order for any purpose,~~  
489 ~~or pursuant to the provisions of s. 775.0877, s. 951.27, or s.~~  
490 ~~960.003; however, the results of any HIV test performed shall be~~  
491 ~~disclosed solely to the victim and the defendant, except as~~  
492 ~~provided in ss. 775.0877, 951.27, and 960.003.~~

493 ~~7. When an HIV test is mandated by court order.~~

494 ~~8. For epidemiological research pursuant to s. 381.0032,~~  
495 ~~for research consistent with institutional review boards created~~  
496 ~~by 45 C.F.R. part 46, or for the performance of an HIV-related~~  
497 ~~test for the purpose of research, if the testing is performed in~~  
498 ~~a manner by which the identity of the test subject is not known~~  
499 ~~and may not be retrieved by the researcher.~~

500 ~~9. When human tissue is collected lawfully without the~~  
501 ~~consent of the donor for corneal removal as authorized by s.~~  
502 ~~765.5185 or enucleation of the eyes as authorized by s. 765.519.~~

503 ~~10. For the performance of an HIV test upon an individual~~  
504 ~~who comes into contact with medical personnel in such a way that~~

505 | ~~a significant exposure has occurred during the course of~~  
506 | ~~employment or within the scope of practice and where a blood~~  
507 | ~~sample is available that was taken from that individual~~  
508 | ~~voluntarily by medical personnel for other purposes. The term~~  
509 | ~~"medical personnel" includes a licensed or certified health care~~  
510 | ~~professional; an employee of a health care professional or~~  
511 | ~~health care facility; employees of a laboratory licensed under~~  
512 | ~~chapter 483; personnel of a blood bank or plasma center; a~~  
513 | ~~medical student or other student who is receiving training as a~~  
514 | ~~health care professional at a health care facility; and a~~  
515 | ~~paramedic or emergency medical technician certified by the~~  
516 | ~~department to perform life-support procedures under s. 401.23.~~

517 | ~~a. Prior to performance of an HIV test on a voluntarily~~  
518 | ~~obtained blood sample, the individual from whom the blood was~~  
519 | ~~obtained shall be requested to consent to the performance of the~~  
520 | ~~test and to the release of the results. If consent cannot be~~  
521 | ~~obtained within the time necessary to perform the HIV test and~~  
522 | ~~begin prophylactic treatment of the exposed medical personnel,~~  
523 | ~~all information concerning the performance of an HIV test and~~  
524 | ~~any HIV test result shall be documented only in the medical~~  
525 | ~~personnel's record unless the individual gives written consent~~  
526 | ~~to entering this information on the individual's medical record.~~

527 | ~~b. Reasonable attempts to locate the individual and to~~  
528 | ~~obtain consent shall be made, and all attempts must be~~  
529 | ~~documented. If the individual cannot be found or is incapable of~~  
530 | ~~providing consent, an HIV test may be conducted on the available~~  
531 | ~~blood sample. If the individual does not voluntarily consent to~~  
532 | ~~the performance of an HIV test, the individual shall be informed~~

533 ~~that an HIV test will be performed, and counseling shall be~~  
534 ~~furnished as provided in this section. However, HIV testing~~  
535 ~~shall be conducted only after appropriate medical personnel~~  
536 ~~under the supervision of a licensed physician documents, in the~~  
537 ~~medical record of the medical personnel, that there has been a~~  
538 ~~significant exposure and that, in accordance with the written~~  
539 ~~protocols based on the National Centers for Disease Control and~~  
540 ~~Prevention guidelines on HIV postexposure prophylaxis and in the~~  
541 ~~physician's medical judgment, the information is medically~~  
542 ~~necessary to determine the course of treatment for the medical~~  
543 ~~personnel.~~

544 ~~e. Costs of any HIV test of a blood sample performed with~~  
545 ~~or without the consent of the individual, as provided in this~~  
546 ~~subparagraph, shall be borne by the medical personnel or the~~  
547 ~~employer of the medical personnel. However, costs of testing or~~  
548 ~~treatment not directly related to the initial HIV tests or costs~~  
549 ~~of subsequent testing or treatment may not be borne by the~~  
550 ~~medical personnel or the employer of the medical personnel.~~

551 ~~d. In order to utilize the provisions of this~~  
552 ~~subparagraph, the medical personnel must either be tested for~~  
553 ~~HIV pursuant to this section or provide the results of an HIV~~  
554 ~~test taken within 6 months prior to the significant exposure if~~  
555 ~~such test results are negative.~~

556 ~~e. A person who receives the results of an HIV test~~  
557 ~~pursuant to this subparagraph shall maintain the confidentiality~~  
558 ~~of the information received and of the persons tested. Such~~  
559 ~~confidential information is exempt from s. 119.07(1).~~

560 ~~f. If the source of the exposure will not voluntarily~~

HB 1255

2013

561 ~~submit to HIV testing and a blood sample is not available, the~~  
562 ~~medical personnel or the employer of such person acting on~~  
563 ~~behalf of the employee may seek a court order directing the~~  
564 ~~source of the exposure to submit to HIV testing. A sworn~~  
565 ~~statement by a physician licensed under chapter 458 or chapter~~  
566 ~~459 that a significant exposure has occurred and that, in the~~  
567 ~~physician's medical judgment, testing is medically necessary to~~  
568 ~~determine the course of treatment constitutes probable cause for~~  
569 ~~the issuance of an order by the court. The results of the test~~  
570 ~~shall be released to the source of the exposure and to the~~  
571 ~~person who experienced the exposure.~~

572 ~~11. For the performance of an HIV test upon an individual~~  
573 ~~who comes into contact with medical personnel in such a way that~~  
574 ~~a significant exposure has occurred during the course of~~  
575 ~~employment or within the scope of practice of the medical~~  
576 ~~personnel while the medical personnel provides emergency medical~~  
577 ~~treatment to the individual; or notwithstanding s. 384.287, an~~  
578 ~~individual who comes into contact with nonmedical personnel in~~  
579 ~~such a way that a significant exposure has occurred while the~~  
580 ~~nonmedical personnel provides emergency medical assistance~~  
581 ~~during a medical emergency. For the purposes of this~~  
582 ~~subparagraph, a medical emergency means an emergency medical~~  
583 ~~condition outside of a hospital or health care facility that~~  
584 ~~provides physician care. The test may be performed only during~~  
585 ~~the course of treatment for the medical emergency.~~

586 ~~a. An individual who is capable of providing consent shall~~  
587 ~~be requested to consent to an HIV test prior to the testing. If~~  
588 ~~consent cannot be obtained within the time necessary to perform~~

589 | ~~the HIV test and begin prophylactic treatment of the exposed~~  
590 | ~~medical personnel and nonmedical personnel, all information~~  
591 | ~~concerning the performance of an HIV test and its result, shall~~  
592 | ~~be documented only in the medical personnel's or nonmedical~~  
593 | ~~personnel's record unless the individual gives written consent~~  
594 | ~~to entering this information on the individual's medical record.~~

595 |       ~~b. HIV testing shall be conducted only after appropriate~~  
596 | ~~medical personnel under the supervision of a licensed physician~~  
597 | ~~documents, in the medical record of the medical personnel or~~  
598 | ~~nonmedical personnel, that there has been a significant exposure~~  
599 | ~~and that, in accordance with the written protocols based on the~~  
600 | ~~National Centers for Disease Control and Prevention guidelines~~  
601 | ~~on HIV postexposure prophylaxis and in the physician's medical~~  
602 | ~~judgment, the information is medically necessary to determine~~  
603 | ~~the course of treatment for the medical personnel or nonmedical~~  
604 | ~~personnel.~~

605 |       ~~e. Costs of any HIV test performed with or without the~~  
606 | ~~consent of the individual, as provided in this subparagraph,~~  
607 | ~~shall be borne by the medical personnel or the employer of the~~  
608 | ~~medical personnel or nonmedical personnel. However, costs of~~  
609 | ~~testing or treatment not directly related to the initial HIV~~  
610 | ~~tests or costs of subsequent testing or treatment may not be~~  
611 | ~~borne by the medical personnel or the employer of the medical~~  
612 | ~~personnel or nonmedical personnel.~~

613 |       ~~d. In order to utilize the provisions of this~~  
614 | ~~subparagraph, the medical personnel or nonmedical personnel~~  
615 | ~~shall be tested for HIV pursuant to this section or shall~~  
616 | ~~provide the results of an HIV test taken within 6 months prior~~

HB 1255

2013

617 ~~to the significant exposure if such test results are negative.~~

618 ~~e. A person who receives the results of an HIV test~~  
619 ~~pursuant to this subparagraph shall maintain the confidentiality~~  
620 ~~of the information received and of the persons tested. Such~~  
621 ~~confidential information is exempt from s. 119.07(1).~~

622 ~~f. If the source of the exposure will not voluntarily~~  
623 ~~submit to HIV testing and a blood sample was not obtained during~~  
624 ~~treatment for the medical emergency, the medical personnel, the~~  
625 ~~employer of the medical personnel acting on behalf of the~~  
626 ~~employee, or the nonmedical personnel may seek a court order~~  
627 ~~directing the source of the exposure to submit to HIV testing. A~~  
628 ~~sworn statement by a physician licensed under chapter 458 or~~  
629 ~~chapter 459 that a significant exposure has occurred and that,~~  
630 ~~in the physician's medical judgment, testing is medically~~  
631 ~~necessary to determine the course of treatment constitutes~~  
632 ~~probable cause for the issuance of an order by the court. The~~  
633 ~~results of the test shall be released to the source of the~~  
634 ~~exposure and to the person who experienced the exposure.~~

635 ~~12. For the performance of an HIV test by the medical~~  
636 ~~examiner or attending physician upon an individual who expired~~  
637 ~~or could not be resuscitated while receiving emergency medical~~  
638 ~~assistance or care and who was the source of a significant~~  
639 ~~exposure to medical or nonmedical personnel providing such~~  
640 ~~assistance or care.~~

641 ~~a. HIV testing may be conducted only after appropriate~~  
642 ~~medical personnel under the supervision of a licensed physician~~  
643 ~~documents in the medical record of the medical personnel or~~  
644 ~~nonmedical personnel that there has been a significant exposure~~

645 ~~and that, in accordance with the written protocols based on the~~  
646 ~~National Centers for Disease Control and Prevention guidelines~~  
647 ~~on HIV postexposure prophylaxis and in the physician's medical~~  
648 ~~judgment, the information is medically necessary to determine~~  
649 ~~the course of treatment for the medical personnel or nonmedical~~  
650 ~~personnel.~~

651 ~~b. Costs of any HIV test performed under this subparagraph~~  
652 ~~may not be charged to the deceased or to the family of the~~  
653 ~~deceased person.~~

654 ~~e. For the provisions of this subparagraph to be~~  
655 ~~applicable, the medical personnel or nonmedical personnel must~~  
656 ~~be tested for HIV under this section or must provide the results~~  
657 ~~of an HIV test taken within 6 months before the significant~~  
658 ~~exposure if such test results are negative.~~

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

661 ~~13. For the performance of an HIV-related test medically~~  
662 ~~indicated by licensed medical personnel for medical diagnosis of~~  
663 ~~a hospitalized infant as necessary to provide appropriate care~~  
664 ~~and treatment of the infant when, after a reasonable attempt, a~~  
665 ~~parent cannot be contacted to provide consent. The medical~~  
666 ~~records of the infant shall reflect the reason consent of the~~  
667 ~~parent was not initially obtained. Test results shall be~~  
668 ~~provided to the parent when the parent is located.~~

669 ~~14. For the performance of HIV testing conducted to~~  
670 ~~monitor the clinical progress of a patient previously diagnosed~~  
671 ~~to be HIV positive.~~

672 ~~15. For the performance of repeated HIV testing conducted~~



673 ~~to monitor possible conversion from a significant exposure.~~

674 (4) HUMAN IMMUNODEFICIENCY VIRUS TESTING REQUIREMENTS;  
 675 REGISTRATION WITH THE DEPARTMENT OF HEALTH; EXEMPTIONS FROM  
 676 REGISTRATION.—No county health department and no other person in  
 677 this state shall conduct or hold themselves out to the public as  
 678 conducting a testing program for acquired immune deficiency  
 679 syndrome or human immunodeficiency virus status without first  
 680 registering with the Department of Health, reregistering each  
 681 year, complying with all other applicable provisions of state  
 682 law, and meeting the following requirements:

683 (d) The program must meet all the informed consent  
 684 criteria contained in paragraph (2) (a), if applicable ~~subsection~~  
 685 ~~(2)~~.

686 Section 2. Subsection (1) of section 381.0041, Florida  
 687 Statutes, is amended to read:

688 381.0041 Donation and transfer of human tissue; testing  
 689 requirements.—

690 (1) Every donation of blood, plasma, organs, skin, or  
 691 other human tissue for transfusion or transplantation to another  
 692 shall be tested before ~~prior to~~ transfusion or other use for  
 693 human immunodeficiency virus infection and other communicable  
 694 diseases specified by rule of the Department of Health. ~~Tests~~  
 695 ~~for the human immunodeficiency virus infection shall be~~  
 696 ~~performed only after obtaining written, informed consent from~~  
 697 ~~the potential donor or the donor's legal representative. Such~~  
 698 ~~consent may be given by a minor pursuant to s. 743.06. Obtaining~~  
 699 ~~consent shall include a fair explanation of the procedures to be~~  
 700 ~~followed and the meaning and use of the test results. Such~~

HB 1255

2013

701 ~~explanation shall include a description of the confidential~~  
702 ~~nature of the test as described in s. 381.004(2). If consent for~~  
703 ~~testing is not given, then the person shall not be accepted as a~~  
704 ~~donor except as otherwise provided in subsection (3).~~

705 Section 3. Subsection (2) of section 456.032, Florida  
706 Statutes, is amended to read:

707 456.032 Hepatitis B or HIV carriers.—

708 (2) Any person licensed by the department and any other  
709 person employed by a health care facility who contracts a blood-  
710 borne infection shall have a rebuttable presumption that the  
711 illness was contracted in the course and scope of his or her  
712 employment, provided that the person, as soon as practicable,  
713 reports to the person's supervisor or the facility's risk  
714 manager any significant exposure, as that term is defined in s.  
715 381.004 ~~s. 381.004(1)(e)~~, to blood or body fluids. The employer  
716 may test the blood or body fluid to determine if it is infected  
717 with the same disease contracted by the employee. The employer  
718 may rebut the presumption by the preponderance of the evidence.  
719 Except as expressly provided in this subsection, there shall be  
720 no presumption that a blood-borne infection is a job-related  
721 injury or illness.

722 Section 4. Paragraph (b) of subsection (4) of section  
723 627.429, Florida Statutes, is amended to read:

724 627.429 Medical tests for HIV infection and AIDS for  
725 insurance purposes.—

726 (4) USE OF MEDICAL TESTS FOR UNDERWRITING.—

727 (b) Before ~~Prior to~~ testing, the insurer must ~~shall~~  
728 disclose its intent to test the person for the HIV infection or

HB 1255

2013

729 for a specific sickness or medical condition derived therefrom  
730 and shall obtain the person's written informed consent to  
731 administer the test. The written informed consent required by  
732 this paragraph shall include a fair explanation of the test,  
733 including its purpose, potential uses, and limitations, and the  
734 meaning of its results and the right to confidential treatment  
735 of information. Use of a form approved by the office raises a  
736 conclusive presumption of informed consent.

737 Section 5. Paragraph (b) of subsection (4) of section  
738 641.3007, Florida Statutes, is amended to read:

739 641.3007 HIV infection and AIDS for contract purposes.—

740 (4) UTILIZATION OF MEDICAL TESTS.—

741 (b) Before ~~Prior to~~ testing, the health maintenance  
742 organization must disclose its intent to test the person for the  
743 HIV infection or for a specific sickness or medical condition  
744 derived therefrom and must obtain the person's written informed  
745 consent to administer the test. Written informed consent shall  
746 include a fair explanation of the test, including its purpose,  
747 potential uses, and limitations, and the meaning of its results  
748 and the right to confidential treatment of information. Use of a  
749 form approved by the office shall raise a conclusive presumption  
750 of informed consent.

751 Section 6. Subsection (1) of section 775.0877, Florida  
752 Statutes, is amended to read:

753 775.0877 Criminal transmission of HIV; procedures;  
754 penalties.—

755 (1) In any case in which a person has been convicted of or  
756 has pled nolo contendere or guilty to, regardless of whether

757 adjudication is withheld, any of the following offenses, or the  
758 attempt thereof, which offense or attempted offense involves the  
759 transmission of body fluids from one person to another:

760 (a) Section 794.011, relating to sexual battery;

761 (b) Section 826.04, relating to incest;

762 (c) Section 800.04, relating to lewd or lascivious  
763 offenses committed upon or in the presence of persons less than  
764 16 years of age;

765 (d) Sections 784.011, 784.07(2)(a), and 784.08(2)(d),  
766 relating to assault;

767 (e) Sections 784.021, 784.07(2)(c), and 784.08(2)(b),  
768 relating to aggravated assault;

769 (f) Sections 784.03, 784.07(2)(b), and 784.08(2)(c),  
770 relating to battery;

771 (g) Sections 784.045, 784.07(2)(d), and 784.08(2)(a),  
772 relating to aggravated battery;

773 (h) Section 827.03(2)(c), relating to child abuse;

774 (i) Section 827.03(2)(a), relating to aggravated child  
775 abuse;

776 (j) Section 825.102(1), relating to abuse of an elderly  
777 person or disabled adult;

778 (k) Section 825.102(2), relating to aggravated abuse of an  
779 elderly person or disabled adult;

780 (l) Section 827.071, relating to sexual performance by  
781 person less than 18 years of age;

782 (m) Sections 796.03, 796.07, and 796.08, relating to  
783 prostitution; or

784 (n) Section 381.0041(11)(b), relating to donation of

785 | blood, plasma, organs, skin, or other human tissue,  
 786 |  
 787 | the court shall order the offender to undergo HIV testing, to be  
 788 | performed under the direction of the Department of Health in  
 789 | accordance with s. 381.004, unless the offender has undergone  
 790 | HIV testing voluntarily or pursuant to procedures established in  
 791 | ~~s. 381.004(2)(h)6.~~ or s. 951.27, or any other applicable law or  
 792 | rule providing for HIV testing of criminal offenders or inmates,  
 793 | subsequent to her or his arrest for an offense enumerated in  
 794 | paragraphs (a)-(n) for which she or he was convicted or to which  
 795 | she or he pled nolo contendere or guilty. The results of an HIV  
 796 | test performed on an offender pursuant to this subsection are  
 797 | not admissible in any criminal proceeding arising out of the  
 798 | alleged offense.

799 | Section 7. Subsection (5) of section 960.003, Florida  
 800 | Statutes, is amended to read:

801 | 960.003 Hepatitis and HIV testing for persons charged with  
 802 | or alleged by petition for delinquency to have committed certain  
 803 | offenses; disclosure of results to victims.—

804 | (5) EXCEPTIONS.—Subsections (2) and (4) do not apply if:

805 | (a) The person charged with or convicted of or alleged by  
 806 | petition for delinquency to have committed or been adjudicated  
 807 | delinquent for an offense described in subsection (2) has  
 808 | undergone hepatitis and HIV testing voluntarily or pursuant to  
 809 | procedures established in ~~s. 381.004(3)(h)6.~~ or s. 951.27, or  
 810 | any other applicable law or rule providing for hepatitis and HIV  
 811 | testing of criminal defendants, inmates, or juvenile offenders,  
 812 | subsequent to his or her arrest, conviction, or delinquency

HB 1255

2013

813 adjudication for the offense for which he or she was charged or  
814 alleged by petition for delinquency to have committed; and

815 (b) The results of such hepatitis and HIV testing have  
816 been furnished to the victim or the victim's legal guardian, or  
817 the parent or legal guardian of the victim if the victim is a  
818 minor.

819 Section 8. This act shall take effect July 1, 2013