

Committee Substitute for
Committee Substitute for Senate Bill No. 186

An act relating to sexually transmissible disease testing and reporting; amending s. 381.004, F.S.; prohibiting the disclosure of a positive preliminary HIV test result to any person except as specifically authorized; providing that certain HIV test results are preliminary and may be released in accordance with federal requirements; providing that a pregnant woman's informed consent is not required; amending s. 384.25, F.S.; requiring the reporting of a result indicative of HIV or AIDS; requiring the Department of Health to adopt rules specifying certain information, including the maximum time period for reporting a sexually transmissible disease; requiring the use of a system developed by the Centers for Disease Control or its equivalent for the confidential reporting of HIV infection or AIDS; requiring the department to adopt rules governing the reporting of HIV-exposed infants or newborns; deleting a provision requiring the reporting of diagnosed AIDS cases based upon certain criteria; deleting a provision requiring that physicians and laboratories report certain cases of HIV infection; deleting a requirement that the department submit an annual report to the Legislature; amending s. 384.31, F.S.; requiring that certain health care professionals who attend a pregnant woman test for sexually transmissible diseases and HIV; requiring that a pregnant woman be informed of tests for sexually transmissible diseases and her right to refuse; requiring that a written statement of objection to testing for sexually transmissible diseases be placed in the pregnant woman's medical records; deleting a requirement that a health care provider counsel a pregnant woman concerning HIV testing; deleting a provision that provides immunity from liability to a health care provider who counsels a pregnant woman who objects to HIV testing; providing an effective date.

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

Section 1. Paragraphs (d) and (h) of subsection (3) of section 381.004, Florida Statutes, are amended to read:

381.004 HIV testing.—

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

(d) A positive preliminary ~~No test result shall be determined as positive, and no positive test result may not shall be revealed to any person, without corroborating or confirmatory tests being conducted~~ except in the following situations:

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

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

~~3. The results of rapid testing technologies shall be considered preliminary and may be released in accordance with the manufacturer's instructions as approved by the federal Food and Drug Administration. This subparagraph does not authorize the release of preliminary test results for the purpose of routine identification of HIV-infected individuals or when HIV testing is incidental to the preliminary diagnosis or care of a patient.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Prior to performance of an HIV test on a voluntarily obtained blood sample, the individual from whom the blood was obtained shall be requested to consent to the performance of the test and to the release of the results. The individual's refusal to consent and all information concerning the performance of an HIV test and any HIV test result shall be documented only in the medical personnel's record unless the individual gives written consent to entering this information on the individual's medical record.

b. Reasonable attempts to locate the individual and to obtain consent shall be made, and all attempts must be documented. If the individual cannot be found, an HIV test may be conducted on the available blood

sample. If the individual does not voluntarily consent to the performance of an HIV test, the individual shall be informed that an HIV test will be performed, and counseling shall be furnished as provided in this section. However, HIV testing shall be conducted only after a licensed physician documents, in the medical record of the medical personnel, that there has been a significant exposure and that, in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel.

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

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

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

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

11. For the performance of an HIV test upon an individual who comes into contact with medical personnel in such a way that a significant exposure has occurred during the course of employment or within the scope of practice of the medical personnel while the medical personnel provides emergency medical treatment to the individual; or who comes into contact with nonmedical personnel in such a way that a significant exposure has occurred while the nonmedical personnel provides emergency medical assistance during a medical emergency. For the purposes of this subparagraph, a medical emergency means an emergency medical condition outside of a hospital or health care facility that provides physician care. The test may be performed only during the course of treatment for the medical emergency.

a. An individual who is capable of providing consent shall be requested to consent to an HIV test prior to the testing. The individual's refusal to consent, and all information concerning the performance of an HIV test and

its result, shall be documented only in the medical personnel's record unless the individual gives written consent to entering this information on the individual's medical record.

b. HIV testing shall be conducted only after a licensed physician documents, in the medical record of the medical personnel or nonmedical personnel, that there has been a significant exposure and that, in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel or nonmedical personnel.

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

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

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

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

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

a. HIV testing may be conducted only after a licensed physician documents in the medical record of the medical personnel or nonmedical personnel that there has been a significant exposure and that, in the physician's medical judgment, the information is medically necessary to determine the course of treatment for the medical personnel or nonmedical personnel.

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

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

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

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

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

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

Section 2. Section 384.25, Florida Statutes, is amended to read:

384.25 Reporting required.—

(1) Each person who makes a diagnosis of or treats a person with a sexually transmissible disease and each laboratory that performs a test ~~that for a sexually transmissible disease which~~ concludes with a positive result for a sexually transmissible disease or a result indicative of human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS) shall report such facts as may be required by the department by rule, within a time period as specified by rule of the department, but in no case to exceed 2 weeks.

(2) The department shall adopt rules specifying the information required ~~in~~ and ~~the maximum a minimum~~ time period for reporting a sexually transmissible disease. In adopting such rules, the department shall consider the need for information, protections for the privacy and confidentiality of the patient, and the practical ability of persons and laboratories to report in a reasonable fashion.

(3) To ensure the confidentiality of persons infected with the human immunodeficiency virus (HIV), reporting of HIV infection and ~~acquired immune deficiency syndrome (AIDS)~~ must be conducted using a system the HIV/AIDS Reporting System (HARS) developed by the Centers for Disease Control and Prevention of the United States Public Health Service or an equivalent system.

(a) The department shall adopt rules requiring each physician and laboratory to report any newborn or infant up to 18 months of age who has been

exposed to HIV. Such rules may include the method and time period for reporting, which may not exceed 2 weeks, information to be included in the report, enforcement requirements, and follow-up activities by the department.

~~(3) The department shall require reporting of physician diagnosed cases of AIDS based upon diagnostic criteria from the Centers for Disease Control and Prevention.~~

~~(b)(4) The department may require physician and laboratory reporting of HIV infection. However, only reports of HIV infection identified on or after the effective date of the rule developed by the department pursuant to this subsection shall be accepted. The reporting may not affect or relate to anonymous HIV testing programs conducted pursuant to s. 381.004(4) or to university-based medical research protocols as determined by the department.~~

~~(c)(5) After notification of the test subject under subsection (4), the department may, with the consent of the test subject, notify school superintendents of students and school personnel whose HIV tests are positive.~~

~~(6) The department shall by February 1 of each year submit to the Legislature an annual report relating to all information obtained pursuant to this section.~~

~~(4)(7) Each person who violates the provisions of this section or the rules adopted hereunder may be fined by the department up to \$500 for each offense. The department shall report each violation of this section to the regulatory agency responsible for licensing each health care professional and each laboratory to which these provisions apply.~~

Section 3. Section 384.31, Florida Statutes, is amended to read:

384.31 Serological Testing of pregnant women; duty of the attendant.—

~~(1) Every person, including every physician licensed under chapter 458 or chapter 459 or midwife licensed under part I of chapter 464 or chapter 467, attending a pregnant woman for conditions relating to pregnancy during the period of gestation and delivery shall take or cause the woman to be tested for sexually transmissible diseases, including HIV, as taken a sample of venous blood at a time or times specified by the department rule. Testing Each sample of blood shall be performed tested by a laboratory approved for such purposes under part I of chapter 483 for sexually transmissible diseases as required by rule of the department. The woman shall be informed of the tests that will be conducted and of her right to refuse testing. If a woman objects to testing, a written statement of objection, signed by the woman, shall be placed in the woman's medical record and no testing shall occur.~~

~~(2) At the time the venous blood sample is taken, testing for human immunodeficiency virus (HIV) infection shall be offered to each pregnant woman. The prevailing professional standard of care in this state requires each health care provider and midwife who attends a pregnant woman to counsel the woman to be tested for human immunodeficiency virus (HIV).~~

~~Counseling shall include a discussion of the availability of treatment if the pregnant woman tests HIV positive. If a pregnant woman objects to HIV testing, reasonable steps shall be taken to obtain a written statement of such objection, signed by the patient, which shall be placed in the patient's medical record. Every person, including every physician licensed under chapter 458 or chapter 459 or midwife licensed under part I of chapter 464 or chapter 467, who attends a pregnant woman who has been offered and objects to HIV testing shall be immune from liability arising out of or related to the contracting of HIV infection or acquired immune deficiency syndrome (AIDS) by the child from the mother.~~

Section 4. This act shall take effect upon becoming a law.

Approved by the Governor June 10, 2005.

Filed in Office Secretary of State June 10, 2005.