

FLORIDA

All citations are to “Fla. Stat.” unless otherwise noted.

DEFINITIONS

- (1) “AIDS,” “ARC,” and “HIV,” for contract purposes, are defined at § 641.3007.
- (2) “AIDS,” “ARC,” and “HIV,” as they relate to medical tests for HIV and AIDS for insurance purposes, are defined at § 627.429.
- (3) “Child or adolescent at risk of emotional disturbance” is defined at § 394.492.
- (4) “High-risk behavior,” as it pertains to inmates in a correctional facility, is defined at § 945.35.
- (5) “HIV test,” “HIV test result,” “significant exposure,” and “test subject” are defined at § 381.004.
- (6) “HIV test,” as used for the HIV testing of inmates prior to release, is defined at § 945.355.
- (7) “Managed care plan,” and “publicly funded primary care provider” are defined at § 381.0407.
- (8) “Sexually transmissible diseases” (STD) may include HIV. § 384.23.

CRIMINAL LAW

- (1) Persons with HIV, who know themselves to be infected with HIV, who have been informed that they may communicate this disease through blood, plasma, skin, organ, or other human tissue donation, and who donate such material are guilty of a felony in the third degree. § 381.0041.
- (2) Any person who fails to test human material which is to be transfused or transplanted or who violates testing confidentiality requirements is guilty of a misdemeanor in the first degree. § 381.0041.
- (3) Any person who intentionally violates the confidentiality provisions of § 381.004, pertaining to HIV testing and counseling, is guilty of a misdemeanor in the second degree. § 381.004.
- (4) It is unlawful for any person who is infected with HIV, knowing of such infection and informed of the possibility of communicating the disease through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the virus and has consented to the sexual intercourse. § 384.24.
- (5) Failure to maintain confidentiality of test results that disclose HIV infection constitutes a misdemeanor in the first degree. § 384.287.
- (6) A person who has been convicted of or has pled *nolo contendere* or guilty to: assault; aggravated assault; battery; aggravated battery; child abuse; aggravated child abuse; failure to comply with the provisions pertaining to donation of blood plasma,

organs, skin or other human tissue; incest; lascivious or indecent assault or act upon a person less than sixteen years of age; prostitution; sexual battery; sexual performance by a person less than eighteen years of age; abuse of an elderly person or disabled adult; or aggravated abuse of an elderly person or disabled adult and who tests positive for HIV (see Testing & Reporting (14)), who commits a second or subsequent offense of such a crime, is also guilty of criminal transmission of HIV. No infection in another must occur for this violation. In addition to the penalty for the particular offense, the court may require the offender to serve a term of criminal quarantine community control.
§ 775.0877.

(7) A person who commits or offers to commit prostitution after testing HIV positive, or a person who procures another to commit prostitution after testing HIV positive, and knew or had been informed that he or she had tested positive for HIV, commits criminal transmission of HIV, a felony in the third degree. § 796.08.

Education (9)

Social & Medical Services (12)

Testing & Reporting (1), (3), (11), (14), (15), (16)

Miscellaneous (4), (5)

EDUCATION

(1) Each district school board may provide age-appropriate instruction in AIDS as a specific area of health education. The school shall emphasize abstinence from sexual activity as a certain way to avoid AIDS. § 1003.46. One half credit in life management skills, which includes HIV and AIDS prevention, is required for graduation from high school. § 1003.43.

(2) The State University System and each community college shall develop a comprehensive policy on instruction, information, and activities regarding HIV and AIDS. Such instruction, information, and activities shall emphasize the known modes of transmission of HIV and AIDS, signs and symptoms, associated risk factors, appropriate behavior and attitude change and means used to control the spread of HIV and AIDS. Each orientation for freshman or transfer students in the State University System shall include education on the prevention of transmission of HIV with emphasis on behavior and attitude change. Each state university shall review and update annually a student handbook that includes a statement as to the University System policy on AIDS, including the name and telephone number of the university AIDS counselor. §§ 1002.21, 1006.68, 1006 to 50. Each community college handbook shall provide information related to AIDS education or identify AIDS education information sites. § 1006.50.

(3) The Department of Health and Rehabilitation Services (Department) shall require each employee licensed or certified in health testing services, medical

telecommunications and transport, midwifery, radiologic technology, acupuncture, chiropractic, dentistry, medical practice, nursing, nursing and home administration, occupational therapy, optometry, osteopathy, pharmacy, physical therapy, podiatry, respiratory therapy, funeral directing, embalming and direct disposition, barbering, cosmetology, or massage practice, and of each center for developmental disabilities, mental health, or substance abuse, or home health agency, hospice, nursing home, or adult congregate living facility to complete an education course on HIV and AIDS as a condition of biennial relicensure or initial licensure. §§ 455.226, 455.228, 456.033 to 034, 468.1201, 470.015, 477.019. The course shall cover infection control, clinical management, prevention, treatment, and Florida AIDS law. Failure to complete the educational requirement shall be grounds for disciplinary action. §§ 381.0034 to 35, 455.227, 456.072. A physician or osteopathic physician seeking renewal of licensure can complete a continuing education on end-of-life care and palliative health care in lieu of continuing education in HIV and AIDS if that physician has completed the HIV and AIDS continuing education in the immediately preceding biennium. §§ 458.319, 459.008. The Department of Business and Professional Regulation and the Department shall be responsible for planning HIV and AIDS educational courses for the specified professions. § 381.0036.

(4) The Department shall establish a program to educate the public about AIDS. The AIDS program shall: be designed to reach all segments of Florida's population; contain special components designed to reach non-English-speaking and other minority groups within the state; educate the public about methods of transmission and prevention of AIDS; educate the public about risks of transmission of AIDS in social, employment, and educational situations; educate health care workers and health facility employees about methods of transmission and prevention in their unique workplace environment; contain special components to reach persons who engage in behaviors placing them at high risk for contracting AIDS; provide information and consultation to state and local agencies to educate law enforcement and correctional personnel and inmates; provide information and consultation to local governments to educate local government employees; make information available to private employers so that they may educate their employees; and contain special components which emphasize appropriate behavior and attitude change, as well as information about domestic violence and the risk factors associated with domestic violence and AIDS. The program designed by the Department of Health shall utilize all forms of media and shall place emphasis on the design of educational materials that can be used by businesses, schools, and health care providers. § 381.0038.

(5) The Department of Education, the Department of Health, and the Department of Business and Professional Regulation shall establish an interagency agreement to oversee the quality and cost efficiency of AIDS education programs administered in the state. The interagency agreement shall also include development, where appropriate, of

methods for coordinating educational programs for various professional groups.
§ 381.0039.

(6) Graduates of a dental college shall be entitled to take licensure examinations for the profession of dental hygienist if they have successfully completed one or more [\[1\]](#) courses on HIV and AIDS. § 466.007.

(7) Persons whose occupation is confined solely to hair braiding must register with the Department and take a two-day, sixteen-hour course, five hours of which shall be devoted to instruction on HIV, AIDS, and other communicable diseases. Persons whose occupation is confined solely to hair wrapping must register with the Department and take a one-day, six hour course. The course shall consist of education on HIV, AIDS and other communicable diseases. § 477.0132.

(8) The commission shall establish standards for instruction of law enforcement officers in the subject of HIV and AIDS. Instruction in HIV and AIDS for law enforcement officers shall include information on known modes of transmission and methods of controlling and preventing HIV and AIDS with emphasis on appropriate behavior and attitude change. § 943.1725.

(9) The Department of Corrections, in conjunction with the Department, shall establish a mandatory introductory and continuing education program on HIV and AIDS for all inmates and staff of correctional facilities. § 945.35.

(10) Each applicant for licensure, or biennial relicensure as an athletic trainer, shall complete a continuing education course on HIV and AIDS. §§ 468.707, 468.711.

(11) As a condition of granting licensure, the Board of Psychology shall require instruction in HIV and AIDS. § 491.0065.

(12) Any private or public institution in Florida desiring to conduct an approved program for the education of emergency medical technicians and paramedics shall include four hours of instruction on HIV and AIDS in the curriculum. § 401.2701.

(13) The targeted outreach program for pregnant women is established to establish provide outreach for high risk pregnant women, including providing HIV infected pregnant women with information so they can make informed decisions about the use of AZT, and to provide continued over site to HIV-exposed newborns.
§ 381.0045.

(14) The Department of Health shall develop and implement a statewide HIV and AIDS prevention campaign that is directed towards minorities who are at risk for HIV infection. The campaign shall provide information on the risk of HIV and AIDS infection and strategies to follow for prevention, early detection, and treatment.
§ 381.0046.

(15) A public school student whose parent makes a written request to the school principal shall be exempted from the teaching of reproductive health or any disease,

including HIV and AIDS. §§ 1002.20, 1003.42.

Social & Medical Services (7), (8)

Testing & Reporting (9)

EMPLOYMENT

(1) No person may require an individual to take an HIV test (see Definitions (5)) as a condition for hiring, promotion, or continued employment unless the absence of HIV is a bona fide occupational qualification. No person may fail or refuse to hire or discharge any individual, segregate or classify any individual in any way which would deprive the individual of employment opportunities or adversely affect the person's employee status or opportunities or otherwise discriminate against the individual with respect to compensation, terms, conditions, or privileges of employment on the basis of: knowledge or belief that the individual has taken an HIV test or the results or perceived results of such test, unless the absence of HIV is a bona fide occupational qualification; or the fact that the individual is a licenses health care professional who treats HIV positive persons. The employer asserting that a bonafide occupational qualification

[\[2\]](#)

exists for HIV testing has the burden of proof. § 760.50.

(2) Every employer who provides or administers health insurance shall maintain the confidentiality of information relating to the medical condition or status of persons covered by such insurance benefits. § 760.50.

(3) The Department and each appropriate board within the Division of Medical Quality Assurance shall have the authority to establish procedures to handle, counsel, and provide other services to health care professionals within their respective boards who are infected with HIV. Any person licensed by the Department and any other person employed by a health care facility who contracts a blood-borne infection shall have a rebuttable presumption that the illness was contracted in the scope of employment. § 456.032.

Education (3), (4), (5), (6), (7), (8), (9), (10), (11)

Insurance (2), (3)

Social & Medical Services (3)

Testing & Reporting (3), (4), (6), (10)

HOUSING

(1) The fact that an occupant of real property is infected with HIV or diagnosed with AIDS is not a material fact that must be disclosed in a real estate transaction. No cause of action arises against an owner of real property for failure to disclose to a transferee that an occupant of the real property was infected with HIV or diagnosed with AIDS. § 689.25.

(2) A person or entity receiving or benefiting from state financial assistance may not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental services on the basis of the fact that the individual is [\[3\]](#)

infected with HIV. § 760.50.

Education (3)

Social & Medical Services (2), (4), (12)

INSURANCE

(1) The Department of Insurance shall disapprove or shall withdraw previous approval of any form for a basic insurance policy, annuity contract, application for insurance that is to be made part of the insurance contract, renewal of certificate, group certificate under a master contract, rider, or endorsement if the form excludes coverage for HIV infection or AIDS or contains limitations in the benefits payable or in the terms or conditions for such contract for HIV infection or AIDS which are different from those which apply to any other sickness or medical condition. § 627.411.

(2) With respect to HIV exposure, infection and related illness, an insurer or health maintenance organization (HMO) may use only medical tests that are reliable predictors of risk. A test recommended by the Centers for Disease Control (CDC) or the Food and Drug Administration (FDA) is reliable for the purposes of insurance. The insurer or HMO, before relying on a single test result to deny or limit coverage or to rate the coverage, shall follow all applicable CDC or FDA protocol, including follow-up tests or a series of tests to confirm the result. Prior to testing, the insurer or HMO shall inform the test subject of the intent to test for HIV infection and shall obtain the person's written informed consent. The written informed consent shall include a fair explanation of the test including its purpose, uses, limitations, the meaning of its results, and the right to confidential treatment of test information. A designated physician or the Department of Insurance shall inform the test subject of a positive test result. The test subject, when receiving a positive result, shall also receive post-test counseling. For insurance, an HIV test (see Definitions (2)) may be given only if the test is based on the person's current medical condition or medical history, or if the test is triggered by threshold coverage amounts which apply to all persons in the risk class. In the case of an HMO, HIV testing may be given only if required of all subscribers or applicants or if the decision to require the test is based on the person's medical history. Sexual orientation may not be used in the underwriting process. Marital status, living arrangements, occupation, gender, beneficiary designation, zip code, or other territorial designation may not be used to establish the applicant's sexual orientation. An insurer or HMO may inquire whether a person has tested positive for HIV, but not whether a person has been tested in general or whether a person has received a negative HIV test result. Insurers and HMOs shall

maintain strict confidentiality with regard to HIV test results, exposure to HIV, and sickness resulting from HIV exposure. HIV test results which may reveal the test subject's identity shall not be placed in an insurance industry data bank. An insurer of a group policy or an HMO may not exclude coverage of an eligible individual because of a positive HIV test either as a condition for issuance of a policy or HMO subscription or subsequent to the issuance of the policy or subscription. No health insurance policy or HMO subscription shall contain an exclusion or limitation with respect to coverage for HIV infection, except as provided in a preexisting condition clause. An insurance policy may contain a total benefits limit that applies universally and not just to HIV coverage. Except for preexisting conditions specifically applying to a sickness or medical condition of the insured, benefits under a life insurance policy shall not be denied or limited on the basis that the insured's death was caused, directly or indirectly, by exposure to HIV. If, in the opinion of a legally qualified physician, the insured first exhibited objective manifestations of AIDS or ARC, as defined by the CDC, within the first year of coverage, and the manifestations are attributable to no other cause, the policy may contain a provision excluding coverage if: the applicant for the policy is not required to test for HIV; the provision is set forth separately in the policy, under an appropriate caption or heading, and in a conspicuous manner; the defense is asserted before the insured has had the policy for two years and the policy so states; the insurer notifies the insured of the determination in writing within ninety days of the determination, even if no claim has been submitted for AIDS or ARC; and objective manifestations first exhibited after the twelve month period are covered in the same manner as any other

[4]

illness. §§ 627.429, 641.3007.

(3) "Sickness disability" or "disability due to sickness" as used in group disability insurance policies includes any restriction of a health care practitioner's ability to perform an occupation because of an action taken by a state licensing board as a result of a positive HIV test. The provisions of this section do not require payment of disability income benefits under any policy without the insured experiencing an actual loss of income as may be required under the terms of the policy as a condition of receiving such benefits. § 627.4237.

(4) No insurer shall cancel or refuse to renew the group or individual health insurance policy of an insured because of diagnosis or treatment of HIV infection or AIDS. §§ 627.6265, 627.6646.

(5) The Department of Insurance shall disapprove any form filed by an HMO, or withdraw any previous approval thereof, in order to change its rates if the form excludes coverage for HIV or AIDS or contains limitations in the benefits payable or in the terms or conditions of the contract for HIV or AIDS which are different than those which apply to any other sickness or medical condition. § 641.31.

(6) Without prior authorization, managed care plans and the MediPass program as administered by the Agency for Health Care Administration, shall pay claims initiated by any public provider, to the extent the managed care plan for MediPass program provides coverage for the diagnosis and treatment of STDs (see Definitions (8)) and other communicable diseases such as HIV infection. § 381.0407.

Employment (1), (2)

Testing & Reporting (4)

RESEARCH

(1) The Department may conduct studies concerning AIDS in Florida. These studies may not duplicate national studies but shall be designed to provide special insight into and understanding of Florida-specific problems, given the state's climate, geography, demographics, and high rate of immigration. § 381.0032.

Testing & Reporting (2), (3)

SOCIAL & MEDICAL SERVICES

(1) The Communicable Disease Prevention and Control Program shall include programs for the prevention and control of HIV infection and AIDS. § 381.003.

(2) The Department may establish AIDS patient care networks in each region of the state where the number of infected persons would make such networks cost efficient. Each patient care network shall include representation from persons with HIV, health care providers, business interests, the Department, and local government units. Each network shall plan for the care and treatment of persons with AIDS and AIDS-related complex in a cost effective dignified manner which emphasizes outpatient and home care. The network shall make annual recommendations to the Department. § 381.0042.

(3) The Department may establish procedures to counsel and provide services to health care professionals licensed or certified to practice medical telecommunications and transport, midwifery, or radiologic technology who are infected with HIV. § 381.045.

(4) The Department may petition the circuit court to order a person to be isolated in a health care or residential facility or isolated from the general public if it is probable that the spread of a STD (see Definitions (8)) would otherwise result. The isolation shall continue until such time as the condition can be corrected or the threat to the public health eliminated or reduced so that a significant threat no longer exists. No person may be ordered to be isolated, hospitalized, or placed in a residential facility and no place may be made off limits without an order from the court of competent jurisdiction upon a showing of proof that: the health and welfare of the public are significantly endangered; the person with the STD, despite counseling, shows an intent to expose the public to the STD; and that all other means of correcting the problem have been exhausted. No order

for hospitalization or placement in a health care or residential facility designated for treatment of AIDS, AIDS-related complex, or HIV shall require placement of an individual in a facility that already contains the maximum number of persons for which the facility has received funding. § 384.28.

(5) The Department may file a petition before a circuit court requesting prehearing detention of a person when the Department shows evidence that: the person is infected with a STD; the person is engaging in behaviors that create an immediate and substantial threat to the public; the person evidences an intentional disregard for the health of the public and refuses to refrain from conduct that places others at risk; and the person will not appear at a hearing or the person will leave the jurisdiction and will continue to expose the public to the risk of STDs until the hearing date. When issuing an order for prehearing detention, the court shall direct the sheriff to immediately confine the infected person or person reasonably suspected of being infected with an STD. A person so detained shall be taken before a judicial officer for bail determination within twenty-four hours of detention. A person so detained may apply for a writ of habeas corpus attacking the detention. § 384.281.

(6) Providers of substance abuse services may not deny clients access solely on the basis of HIV status. § 397.501.

(7) The student support services team program shall refer students for care of STDs. The program shall also provide STD prevention services. § 381.0057.

(8) The Department shall develop educational materials and training programs about HIV and AIDS transmission, control, and prevention for use in facilities licensed by the Department. § 402.41.

(9) In conjunction with the Department and the Statewide Health Council, local health councils may plan local services for HIV positive persons. § 408.033.

(10) The Children's Medical Services Program in the Department of Health shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the service districts in the Department of Family Services. The child abuse, abandonment, and neglect reports that must be referred by the Department of Children and Family Services to child protection teams of the Department of Health for an assessment and other appropriate available support services include cases involving any STD in a prepubescent child. § 39.303.

(11) The Department of Corrections shall establish policies consistent with CDC guidelines and recommendations of the Correctional Medical Authority on the housing, physical contact, dining, recreation, and exercise locations for HIV positive inmates as are medically indicated and consistent with the proper operation of its facilities. § 945.35.

(12) The Reducing Racial and Ethnic Health Disparities grant program shall be administered by the Department of Health and shall coordinate with existing community-based programs such as the HIV/AIDS program and other related programs at state and

local levels to avoid duplication of effort and promote consistency. § 381.7353. A proposal for a Closing the Gap grant must address a priority area. One of the priority areas include decreasing racial and ethnic disparities in morbidity and mortality rates relating to HIV and AIDS. § 381.7355.

(13) The child and adolescent mental health treatment and support system should strive for the stabilization or improvement of the behavior or condition of the child or adolescent with respect to the way he or she interacts with the community, so that the child or adolescent can avoid behaviors that may attributable to emotional disturbance, such as STDs. § 394.494.

(14) The children’s substance abuse services system should reduce the behaviors and conditions that may be linked to substance abuse, such as STDs. § 397.92.

(15) The Agency for Health Care Administration is authorized to contract with specialty prepaid health plans and pay them on a prepaid capitated basis to provide Medicaid benefits to Medicaid-eligible recipients who have HIV or AIDS. In awarding a contract to a managed care plan, the agency shall take into account price, quality, accessibility, linkages to community-based organizations, and the comprehensiveness of the benefit package offered by the plan. The agency shall apply for federal waivers to implement this plan. § 409.91188.

(16) Local organizations and agencies providing specific subgroups of the homeless population including persons with HIV or AIDS shall be given the opportunity to participate in coalitions to plan, network, coordinate, and monitor delivery of services to the homeless. § 420.623.

(17) A local homeless assistance continuum of care is a framework for a comprehensive and seamless array of emergency, transitional, and permanent housing, and services to address the various needs of homeless persons. The components of continuum care should include a plan to address the needs of all subgroups of the homeless population, including persons living with HIV or AIDS. § 420.624.

(18) Staff who provide transition assistance to inmates have a duty to provide a thirty day supply of all HIV and AIDS related medication that the inmate is taking prior to release. § 944.704.

Criminal Law (1)

Education (2), (3), (4), (6), (11)

Employment (1)

Housing (2)

Insurance (2), (3), (4)

Testing & Reporting (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (15), (16),

(17)

Miscellaneous (1), (2)

TESTING & REPORTING

(1) The results of any HIV test (see Definitions (5)) performed on a serious or habitual juvenile offender shall become part of the offender's permanent medical file. If the child is transferred to any other designated treatment facility the file shall be transferred in an envelope marked confidential. § 985.31.

(2) Every donation of blood, plasma, organs, skin, or other human tissue for transfusion or transplantation to another shall be tested for HIV prior to transfusion or other use. HIV tests shall be performed only after obtaining written informed consent from the potential donor or the donor's legal representative. Written informed consent shall not be required in the following circumstances: on materials obtained from an out-of-state blood bank; on blood or tissue received from a health care facility or health care provider for reference testing or processing if the results of such test are reported back to the facility; or when an anatomical gift has been made by will or other written instrument and the donor is deceased or incompetent. HIV testing shall not be required in the following cases: when there is a life-threatening emergency and blood is transferred with the recipient's informed consent; for semen donations made by the spouse of the recipient for the purposes of artificial insemination or another reproductive procedure; or when there is insufficient time to obtain the results of confirmatory test results for tissue or an organ which is to be transplanted. All blood, plasma, organs, skin, or other human tissue which tests positive for HIV shall be rendered noncommunicable, destroyed, or properly labeled to identify the HIV virus. HIV positive materials may be used for research purposes or to save the life of another if the recipient provides informed consent. The person collecting the donation shall inform the donor of the presence of HIV when a donation tests positive for HIV, after confirmatory testing, and shall explain the following: the meaning of the test results; how to prevent further transmission; what health care, counseling, and social support services are available in the geographical area; the benefits of contacting persons who are possible sources of exposure and any persons the individual may have exposed to the virus; and the availability, if any, of the services of the public health authorities with respect to contacting potentially exposed persons. Preliminary HIV tests, not confirmed as positive, performed for autologous blood donations may be revealed to the attending physician for the purposes of diagnosis, treatment, and care of the donor. Any donor whose HIV test is confirmed positive shall be notified by certified mail of an abnormal result and shall be offered the chance to discuss the results in person or by telephone. If no response is received from the donor within thirty days, the actual test results and required information shall be sent to the donor by certified mail. Prior to transplant of an organ or artificial insemination, the facility or person performing the procedure must provide the patient with a warning as to the risk of contracting HIV. § 381.0041.

(3) All HIV tests performed in the state shall be conducted with prior informed consent of the test subject (see Definitions (5)). The test subject shall be informed of the

right to confidential treatment concerning the test subject's identity and test results. Written informed consent is not required as long as there is documentation of the consent in the patient's medical record. A legal guardian or other person authorized by law must give informed consent on behalf of persons who are incompetent or incapable of making an informed judgment or who have not yet reached the age of majority. The person ordering the test shall inform the test subject prior to testing about prevention of exposure to and transmission of HIV and shall schedule a return visit for the purpose of disclosing test results and conducting post-test counseling. No test shall be determined as positive or revealed to any person without confirmatory testing. Medical personnel who have been subjected to significant exposure (see Definitions (5)) may obtain release of preliminary test results. Test results shall not be revealed to the test subject without affording the subject an opportunity for face-to-face counseling about the meaning of the test results, the need for additional testing, prevention of transmission, availability of appropriate health care services in the area, and the benefits of locating any of the test subject's significant contacts by whom the test subject may have been exposed or whom the test subject may have exposed to HIV. Test results and the identity of the test subject are confidential. No person who has obtained a test result may disclose or be compelled to disclose the test results or the identity of the test subject except to: the test subject; a legally authorized representative of the test subject; any person designated in a legally effective release; an agent of a health facility who cares for the patient, handles the specimen, or has a need to know as defined by the Department of Health and Rehabilitative Services (Department); the Department; a health care provider who procures, possesses or distributes human body parts of a deceased person, or semen provided for artificial insemination prior to July 6, 1988; health facility staff committees for the purposes of service reviews; authorized researchers who may not further disclose any identifying characteristics or information; persons allowed access by court order; persons involved in the placement of a child test subject in a child-care agency; or medical personnel or other individuals subject to significant exposure. A written statement shall accompany every disclosure, prohibiting further disclosure without specific written consent of the test subject, and stating that a generalized authorization shall be insufficient. HIV test results (see Definitions (5)) contained in the records of a licensed hospital may be released provided the hospital has obtained written informed consent to the HIV test. Informed consent is not required for testing in the following situations: when state or federal law requires STD (see Definitions (8)) testing; for donation of blood, plasma, organs, skin, semen, or other human tissue; in a bona fide medical emergency; for medical diagnosis of acute illness where the physician determines based on evidence in the medical record that obtaining informed consent would be detrimental to the patient; as part of an autopsy for which consent was obtained; for HIV testing of a defendant pursuant to a request by a victim in a prosecution for any type of sexual battery where a blood sample is taken from the

defendant; when testing is mandated by court order; for research purposes; on tissue lawfully collected without consent for corneal removal; in cases of significant exposure occurring in the scope of employment; and on an infant when no parent can be contacted to consent. Telephonic post-test counseling is permitted when reporting the HIV test results of a home access HIV test approved by the FDA and analyzed by a state or

[5]

federally certified laboratory. § 381.004.

(4) The Department shall provide a network of voluntary HIV testing programs in every county in the state. The programs shall provide counseling and testing on both an anonymous and a confidential basis. The results of such tests shall not be used to determine insurance eligibility or to screen persons for employment or discharge from employment. No public health unit or other person in the state shall hold itself out to the public as an HIV or AIDS test site without first registering with the Department.

[6]

§ 381.004.

(5) A multiphasic health testing center may not perform or hold itself out to the public as performing HIV testing unless it complies with the requisite registration, fees, and counseling requirements for HIV testing centers (see Testing & Reporting (4)). Multiphasic testing centers shall report initial test results directly to the medical director who requested the test within five days after the date the specimen was collected. Complete results must be received by the medical director within thirty days after the date the specimen was collected. § 483.314.

(6) Personnel of a medical facility shall be subject to disciplinary action for any violation of the testing provisions. § 381.004.

(7) The Department shall develop a model protocol for counseling and testing persons with HIV. § 381.004.

(8) It is unlawful for any health care facility licensed by the Department to require any person to take an HIV test as a condition of admission or of obtaining or purchasing services for which the Department license was required. A licensed physician may, in good faith, decline to provide a particular treatment requested by a patient if the appropriateness of the treatment can only be determined through HIV testing.

§ 381.004. Such HIV test shall not be a condition for providing further health services. § 483.314.

(9) Each person who makes a diagnosis of or treats an STD and each laboratory that performs an STD test which yields a positive result shall report the case to the Department within two weeks. The Department shall specify the information required in the report. Reporting requirements for AIDS and AIDS-related condition shall be based on criteria set out by the CDC. The Department may require reporting of information sufficient to identify the HIV test subject in instances where the test subject has

authorized the county public health unit to do a partner notification and contact investigation. The HIV reports shall include patient names and shall be maintained in the form of individual client records rather than in the form of a roster. County public health units shall periodically submit demographic information compiled from the HIV reports to the State Health Officer. With the test subject's consent, the Department may notify school superintendents of HIV positive test results of students and school personnel. Violations of this section shall result in a fine for each individual offense. § 384.25.

(10) An officer, firefighter, ambulance driver, paramedic, or emergency medical technician, acting within the scope of employment, who is significantly exposed may request that the source person be tested for STDs. If the source person will not voluntarily submit to screening, the professional or the employer may seek a court order directing the source person to submit to STD screening. A physician must provide a sworn statement that a significant exposure has occurred and that screening is medically necessary in order to determine the treatment for the employee. Such sworn statement constitutes probable cause for the issuing of the court order. The significantly exposed employee must also undergo STD screening. Results of the screening are exempt from confidentiality requirements for the purpose of releasing the results to the source person, the significantly exposed employee, to the employer as necessary for filing a worker's compensation or other disability claim, and to the parties' physicians. Persons receiving such test results shall maintain the confidentiality of the results and the identity of the test subject. The cost of screening shall be borne by the employer. § 384.287.

(11) A practitioner regulated through the Division of Medical Quality Assurance of the Department shall not be civilly or criminally liable for disclosure of otherwise confidential information pertaining to an HIV positive patient to the patient's sexual partner or needle-sharing partner if: the HIV positive patient discloses to the practitioner the identity of a partner; the practitioner recommends that the patient notify the partner about the positive test and refrain from engaging in sexual or drug activity in a manner likely to transmit the virus and the patient refuses; the practitioner informs the patient of the intention to inform the partner; and the practitioner reasonably and in good faith informs the partner pursuant to a perceived civil duty or the ethical guidelines of the profession. The practitioner shall observe the protocol of the Department for notification of the partner. The practitioner shall not be held civilly or criminally liable for failure to disclose information pertaining to an HIV positive test result to a partner. § 456.061.

(12) It is unlawful to sell, deliver, hold, or offer for sale any HIV or AIDS self-testing kit that is not approved for distribution or sale by the FDA. § 499.005.

(13) The general provision that permits a natural or adoptive parent, legal custodian, or guardian of a minor to consent to blood testing of a minor does not apply to HIV testing. § 743.0645.

(14) A court shall order an offender to undergo HIV testing, unless the offender

has undergone testing voluntarily or pursuant to law, when the offender has been convicted of or has pled *nolo contendere* or guilty to any of the following offenses: assault; aggravated assault; battery; aggravated battery; child abuse; aggravated child abuse; sexual batter; abuse of an elderly person or disabled adult; aggravated abuse of an elderly person or disabled adult; failure to comply with the provisions pertaining to donation of blood plasma, organs, skin, or other human tissue (see Testing & Reporting (2)); incest; lascivious or indecent assault or act upon a person less than sixteen years of age; prostitution; sexual battery; sexual performance by a person less than eighteen years of age; or any offense which involves transmission of body fluids from one person to another. The results of the HIV test are not admissible in a criminal proceeding arising out of the alleged offense. The results of the HIV test must be disclosed to the offender, the public health agency of the county where the conviction occurred and of the county of residence of the offender, and, upon request, to the victim. The test results may not be disclosed to any other person except as expressly authorized by law or court order. In a case where a person convicted of an offense has not been tested but undergoes testing during incarceration, detention, or placement, the test results shall be disclosed to the victim if the initial test is conducted within the first year of the imprisonment, detention, or placement. An offender may challenge the positive results of an HIV test performed pursuant to this provision and may introduce results of a backup test performed at his or

[7]

her own expense, §§ 775.0877, 960.003.

(15) A person arrested for prostitution or procuring another to commit prostitution must undergo screening for STD, including testing for HIV. If a person is found to be infected with HIV, that person must undergo treatment and counseling prior to release from probation, community control, or incarceration. The test results shall only be made available to the Department, the offender, medical personnel, appropriate state agencies, state attorneys, and courts of appropriate jurisdiction in need of such information for purposes of enforcement. § 796.08.

(16) When there is evidence that an inmate in the custody of the Department of Corrections has engaged in behavior that places the inmate at high risk of transmitting or contracting HIV, the Department of Corrections may begin a testing program which is consistent with guidelines of the CDC and recommendations of the Correctional Medical Authority. § 945.35. The inmate's HIV test results are confidential but may be provided to sheriffs or correctional officers who are responsible for the care of the inmate and who have a need to know. However, such results may be provided to employees or officers of the sheriff or chief correctional officer who are responsible for the custody and care of the affected inmate and have a need to know such information. If an inmate is arrested for a offense involving sexual penetration, the test results shall be provided to the Department and, upon request, to the victim or the parent or guardian of the victim, if the

victim is a minor. § 951.27. The test results shall become a part of the inmate's permanent medical file. §§ 945.35, 951.27.

(17) An individual forwarding a sample of the individual's own blood to a clinical laboratory for the purposes of a home access HIV test administered with an FDA approved kit is authorized to request that a clinical laboratory examine the specimen. The results of any HIV test performed on a child who is eligible for an intensive residential treatment program for offenders less than thirteen years of age shall become part of that child's permanent file. Upon transfer of the child for any other designated treatment facility, such file shall be transferred in an envelope marked confidential. § 483.181.

(18) Every health care provider attending to a pregnant woman shall take a sample of venous blood from the woman. At the time the blood sample is taken, testing for HIV shall be offered. The health care provider shall counsel the woman to be tested for HIV, and such counseling shall include a discussion of the availability of treatment if a pregnant woman tests HIV positive. If the woman objects, steps should be taken to obtain a written objection to be put in the medical record of the woman. A health care provider 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 AIDS by the child from the mother. § 384.31.

(19) If an inmate's HIV status is unknown to the Department, the Department shall perform an HIV test on the inmate prior to the inmate's release (see Definitions (6)). The Department shall record the results of the HIV test in the inmate's medical record. The Department shall inform the Department of Health and the county health department of where the inmate plans to reside regarding an inmate who is HIV positive. Prior to release, an inmate who is known to be HIV positive shall be given education on preventing the transmission of HIV to others and a discharge plan that includes referrals to medical services in the area where the inmate resides. § 945.355.

(20) An inmate's co-payment for a visit to a health care provider can be waived if the health care is initiated by an inmate to voluntarily request an HIV test. § 945.6037.

(21) Upon release, an inmate's HIV status can be released to the victim if there was sexual contact between the victim and the inmate. § 947.1405.

Criminal Law (2), (3), (5), (6), (7)

Education (3)

Employment (1)

Insurance (2), (3)

MISCELLANEOUS

(1) The legislature finds that AIDS constitutes a serious danger to public health and welfare. The legislature intends to establish programs and requirements related to AIDS

which carefully balance medical necessity, the right to privacy, and protection of the public from harm and which establish public programs for the care and treatment of persons with AIDS and related conditions. § 381.0037.

(2) The Department of Public Health may adopt rules that include the requirements for methods of contacting a physician to determine the need for follow-up services related to STDs, standards to screening, treating, and performing contact investigations to control the spread of STDs; and requirements for maintaining the security of confidential information. § 384.33.

(3) The legislature finds that substance abuse is a major health problem and leads to such profoundly disturbing consequences as AIDS. § 397.301.

(4) The legislature finds that a substance abuse impairment crisis is destroying our youth and that substance abuse impairment contributes to AIDS. § 397.811.

(5) A court may not deny shared parental responsibility, custody, or visitation rights to a parent or grandparent solely because the parent or grandparent is or is believed to be infected with HIV. Such rights may be conditioned upon the parent or grandparent's agreement to observe measures approved by the CDC or the Department of Health and Rehabilitative Services to prevent the spread of HIV to the child. § 61.13.

[1]

· Department of Professional Regulation, Board of Dentistry v. Florida Dental Hygienist Association, 612 So. 2d 646 (Fla. Dist. Ct. App. 1993) (proposed revision of this section to allow graduates of Alabama dental hygiene schools to take Florida licensing examination did not jeopardize standard of HIV education for Florida dental hygienists but was rejected on other grounds).

[2]

· Hummer v. Unemployment Appeals Commission, 573 So. 2d 135 (Fla. Dist. Ct. App. 1991) (section protects employee denied unemployment compensation after being fired for disclosing HIV positive status); "Y" Person v. "X" Corporation, 606 So. 2d 1219 (Fla. Dist. Ct. App. 1992) (court quashed order compelling "Y" person to submit to physical and mental examination in order to determine the extent and nature of manifestation of HIV); "X" Corporation v. "Y" Person, 622 So. 2d 1098 (Fla. Dist. Ct. App. 1993) (declaratory judgment was appropriately brought to determine whether a significant risk of HIV transmission was present in a workplace, whether requiring all employees to wear gloves was a reasonable accommodation, and whether the employer could require periodic HIV testing of employees).

[3]

· Meli Investment v. O.R., 621 So. 2d 676 (Fla. Dist. Ct. App. 1993) (fact that tenant's case turned on newly enacted AIDS discrimination statute was to be considered in favor of awarding attorney's fees to tenant).

[4]

· Gonzalez v. Associates Life Insurance, 641 So. 2d 895 (Fla. Dist. Ct. App. 1994) (insurer's policy did not comply with statutory requirements because limitation on AIDS coverage was not referenced in a conspicuous manner).

[5]

· Florida v. Brewster, 601 So. 2d 1289 (Fla. Dist. Ct. App. 1992) (provision supports court's position

that defendant could not obtain HIV testing of assault victim without a compelling need or probative value to the information).

[6]

· *In re* Amendments to the Florida Rules of Juvenile Procedure, 649 So. 2d 1370 (Fla. 1995) (victim requesting court order of HIV testing of a juvenile sex offender must have counseling available).

[7]

· Fosman v. Florida, No. 95-2484, 1995 Fla. App. LEXIS 13373 (Fla. App. Dec. 27, 1995) (statute is constitutional); Florida v. Brewster, 601 So. 2d 1289 (Fla. Dist. Ct. App. 1992) (HIV testing appropriate where defendant was charged with five counts of lewd and lascivious assault of a child under the age of sixteen).