

GEORGIA

All citations are to “Ga. Code Ann.” unless otherwise noted.

DEFINITIONS

(1) “AIDS,” “AIDS confidential information,” “AIDS transmitting crime,” “body fluids,” “confirmed positive HIV test,” “determined to be infected with HIV,” “health care facility,” “health care provider,” “HIV,” “HIV-infected person,” “HIV test,” “institutional care facility,” “knowledge of being infected with HIV,” “person at risk of being infected with HIV,” “public safety agency,” and “public safety employee” are defined at § 31-22-9.1.

(2) “Genetic testing,” for insurance purposes, does not include tests for the presence of HIV. § 33-54-2.

(3) “Infectious or communicable disease” includes AIDS. § 42-1-7.

(4) “Significant exposure” is defined at § 17-10-15.

CRIMINAL LAW

(1) A person who, after obtaining knowledge of being infected with HIV (see Definitions (1)) and without disclosing such information: knowingly engages in sexual intercourse or performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another person; knowingly allows another person to use a hypodermic needle, syringe, or both, which has been previously used by the HIV-infected person (see Definitions (1)); offers or consents to perform an act of sexual intercourse with another person for money; solicits another person to perform or submit to an act of sodomy for money; or donates blood, blood products, other body fluids (see Definitions (1)), or any body organ or part, is guilty of a felony and, upon conviction, [\[12\]](#)

shall be punished by imprisonment for not more than ten years. § 16-5-60.

(2) Any person with HIV who assaults a police officer or correctional officer with intent to infect such an officer shall be sentenced to at least five years in prison if convicted. § 31-21-3.

(3) Any person who knowingly refuses or omits to prepare written notification that a deceased person has been diagnosed with an infectious or communicable disease (see Definitions (3), Testing & Reporting (4)) is guilty of a misdemeanor. § 31-21-3.

(4) Any person who makes an unauthorized disclosure of confidential information relating to the infectious or communicable disease status of an inmate or patient who is transported by a law enforcement agency (see Testing & Reporting (8)) is guilty of a misdemeanor. § 42-1-7.

(5) Any person who violates the provisions relating to the HIV testing of body parts by health care facilities (see Definitions (1), Testing & Reporting (11)) is guilty of a

misdemeanor. § 44-5-151.

(6) Any person who violates the provisions regarding AIDS confidential information (see Definitions (1), Testing & Reporting (3)) shall be guilty of a misdemeanor. § 24-9-[\[13\]](#)

47.

Social & Medical Services (1)

Testing & Reporting (1), (2), (5), (8), (9), (10), (13)

Miscellaneous (7), (8), (10), (11)

EDUCATION

(1) Each local board of education shall prescribe a course of study in sex education and AIDS (see Definitions (1)) prevention instruction for such grades in the public school system as shall be determined by the Board of Education. Each local board of education shall supplement and develop the specific content areas to be covered in the minimum course of study provided by the Board of Education including the specific curriculum standards as each local board of education may deem appropriate. The Board of Education shall prescribe a minimum course of study in sex education and AIDS prevention instruction which may be included as a part of a course of study in comprehensive health education. Any parent or legal guardian of a child to whom the course of study in sex education is to be taught shall have the right to elect, in writing, to remove such child from the course of study. § 20-2-143.

EMPLOYMENT

Testing & Reporting (5), (9)

Miscellaneous (7), (10)

HOUSING

Testing & Reporting (9)

INSURANCE

Definitions (4)

Testing & Reporting (6)

Miscellaneous (10)

RESEARCH

Testing & Reporting (5), (11)

SOCIAL & MEDICAL SERVICES

(1) When a medical examiner files a report regarding the death of any child with the director of the Division of Forensic Services of the Georgia Bureau of Investigation, that medical examiner shall, at the same time, also transmit a copy of the report to the child abuse protocol committee of the county in which the child resided at the time of death. If the death meets the criteria for review, a child fatality review subcommittee shall make a report concerning the circumstances of the death, whether any agency services had been delivered to the family or the child prior to the death of the child, and whether court intervention had ever been sought. If the child's death was the result of a sexually transmitted disease (STD), the subcommittee shall transmit a copy of its completed report to the district attorney of the county in which the child resided. § 19-15-3.

(2) The Department of Human Resources (Department) shall prepare a brochure describing HIV, AIDS (see Definitions (1)), and the dangers, populations at risk, risk behaviors, and prevention measures relating to HIV and AIDS. The Department shall also prepare a listing of sites at which confidential and anonymous HIV tests (see Definitions (1)) are provided without charge. Each person who makes application for a marriage license shall receive the AIDS brochure and listing of HIV test sites at the time of the application from the office of the probate judge. No marriage license shall be issued unless both the proposed husband and the proposed wife sign a form acknowledging that both have received the brochure and listing. § 19-3-35.1.

Testing & Reporting (1), (2), (3), (4), (5), (6), (7), (11), (12)

Miscellaneous (1), (3), (4), (6), (8), (9)

TESTING & REPORTING

(1) As part of any order of disposition regarding a child suspected to have committed a delinquent act constituting an AIDS transmitting crime (see Definitions (1)), the court may order the child to submit to an HIV test (see Definitions (1)) within forty-five days following the adjudication of delinquency. The court shall mail a copy of such order to the Department of Juvenile Justice within three days following its issue. The Department of Juvenile Justice, within thirty days following receipt of the copy of the order, shall arrange for the child to be tested for HIV (see Definitions (1)). Any juvenile sentenced to the custody and control of the Department of Corrections or the Department of Juvenile Justice shall be tested for HIV in accordance with the policies and procedures of the respective department. If a child is required to submit to an HIV test and is thereby determined to be infected with HIV (see Definitions (1)), the test result and the name of the child shall be deemed to be AIDS confidential information (see Definitions (1)) and shall be reported to: the Department of Juvenile Justice or the Department of Corrections, and the Department of Human Resources (Department), which may disclose the name of the child in order to provide counseling to victims of that child's crime; the court which ordered the HIV test; and those persons in charge of

the facility to which the child has been confined by court order. A child who is infected with HIV may be confined in that facility separately from any other children in that facility who are not infected with HIV. § 15-11-35.1.

(2) A victim or the parent or legal guardian of a minor or incompetent victim of a sexual offense or other crime which involves significant exposure (see Definitions (4)) may request that the person arrested for the sexual offense submit to an HIV test and consent to the release of the test results to the victim. If the person arrested declines to submit to an HIV test, the judge of the superior court in which the criminal charge is pending may order the test to be performed upon a showing of probable cause that the arrested person committed the offense and that significant exposure occurred. The cost of the test shall be paid by either the victim or the arrested person, at the court's discretion. Upon a verdict or plea of guilty or a plea of *nolo contendere* to any AIDS transmitting crime (see Definitions (1), Criminal Law (1)), the court shall require the defendant to submit to an HIV test within forty-five days following the date of such verdict or plea. A copy of the verdict or plea shall be mailed to the Department. Following receipt of a court order for an HIV test or guilty verdict or plea of guilty or *nolo contendere*, the Department shall arrange for the offender to be tested for HIV. Any person who fails or refuses to submit to such testing shall be subject to such measures as deemed necessary by the court, and submission to the HIV test may be made a condition of suspending or probating any part of that person's sentence. If a person required by this section to be tested is determined to be infected with HIV, the test result and name of the person shall be reported to: the court which ordered the test, which shall include the report in that person's criminal record; the officer in charge of the penal institution or other facility in which the person has been confined for purposes of enabling that officer to confine the person separately from those not infected with HIV; and the Department, which shall disclose the name of the person who is tested as necessary to provide counseling to each victim of the person's AIDS transmitting crime. § 17-10-15.

(3) The Department shall establish by regulation a date on and after which reporting of confirmed positive HIV tests (see Definitions (1)) to the Department is required. On and after such date, each health care provider, health care facility (see Definitions (1)), or anyone else who orders an HIV test for another person shall report to the Department the name and address of any person determined to be infected with HIV. No such report shall be made regarding any confirmed positive test result provided at any anonymous HIV test site operated by or on behalf of the Department. § 24-9-47.

(4) The Department is directed and empowered, when in its judgment it is necessary to protect the public health, to make examinations of persons infected or suspected of being infected with HIV and to test them, with their consent, for HIV. If the person infected or suspected of being infected with HIV refuses to consent to testing, the Department may petition the court for an order authorizing the testing of such person.

The Department may file a civil complaint with the superior court of the county in which the person who refuses testing resides. If the court finds clear and convincing evidence that the person is reasonably likely to be infected with HIV and there is a compelling need to protect the public health, the court may order the person to submit to an HIV test. §§ 31-17A-2, 31-17A-3.

(5) When a person who has been diagnosed as having an infectious or communicable disease (see Definitions (3)) dies in a health care facility, the attending physician shall prepare a written notification describing such disease to accompany the body when it is picked up for disposition. When a person dies outside of a health care facility and without an attending physician, any family member or person making arrangements for the disposition of the body who knows that the decedent has been diagnosed with an infectious or communicable disease shall prepare a written notification describing the disease to accompany the body when it is picked up for disposition. Any person who picks up a dead body for disposition and who has been notified that the person had been diagnosed as having an infectious or communicable disease shall present such notification accompanying the dead body to any embalmer, funeral director, or other person taking possession of the body. Information contained in any notification regarding the deceased person's infectious or communicable disease shall be confidential and may only be disclosed for the following reasons: disclosure is required by law; disclosure is made by a physician pursuant to any law authorizing a physician to disclose otherwise privileged information; the disclosure is for research purposes and does not reveal the identity of the deceased; the disclosure involves information regarding sexual assault or sexual exploitation of a deceased child and is required by law to be reported; the disclosure involves information regarding a deceased minor and is made to the parent or guardian of the minor; or the disclosure is made to the person who picks up the dead body or is made in the ordinary course of business to any employee or agent of any person or entity authorized to receive or report that information. Information that is privileged and confidential under this section may not be disclosed pursuant to discovery proceedings, subpoena, or court order. § 31-21-3.

(6) Each health care provider (see Definitions (1)), health care facility, or any other person or legal entity which orders an HIV test for any person shall report each confirmed positive HIV test to the Department, along with the age, sex, race, and county of residence of the person having the confirmed positive HIV test. The report shall not include any other identifying characteristics regarding the HIV-infected person unless otherwise authorized or required by law. Unless exempt from this requirement, each health care provider who orders an HIV test for any person shall do so only after counseling the person to be tested. Unless exempted under this section, the person to be tested shall have the opportunity to refuse the test. The provisions of this section shall not apply: if the person is required by law to submit to an HIV test; if the test subject is a minor or incompetent and the parent or guardian consents to the testing; if the person is

unconscious, temporarily incompetent, or comatose, and the next of kin consents to the testing; in an emergency or life-threatening situation; or if the physician ordering the test believes that the test subject is in such a medical or emotional state that disclosure of the test would be injurious to the person's health. The provisions of this section shall only be required prior to drawing body fluids required for the HIV test and shall not be required for each test performed upon that fluid sample. The health care provider ordering an HIV test shall provide medically appropriate counseling to the person tested with regard to the test results. Such medically appropriate counseling shall only be required when the last confirmatory test has been completed. The provisions of this section shall not apply to situations in which an HIV test is ordered or required in connection with insurance coverage, provided that the person to be tested has agreed to have the test administered under such procedures as may be established by the Commissioner of Insurance in consultation with the Department. § 31-22-9.2.

(7) When exposure of a health care provider to any body fluids of a patient occurs in such a manner as to create a risk that such provider might contract HIV if the patient were infected with HIV, a health care provider shall be authorized to order an HIV test on the patient and obtain the results of the test, if the patient does not refuse after being notified that the test is to be ordered, has been provided with counseling, and has been given an opportunity to refuse the test. If the patient refuses the test, the health care provider shall be authorized to order the test when at least one other health care provider who is otherwise authorized to order an HIV test concurs in writing to the testing, and the patient is informed of the test results and is provided counseling with regard to the results. If the patient refuses the testing and the test results are negative, the occurrence of the test may not be made a part of the patient's medical records without the patient's consent. § 31-22-9.2.

(8) Any state or county correctional institution or municipal or county detention facility shall notify any state or local law enforcement agency required to transport an inmate or patient if such inmate or patient has been diagnosed as having an infectious or communicable disease. Notification shall be limited to the fact that such inmate or patient has an infectious or communicable disease and whether the disease is airborne or transmissible by blood or other body fluids. The specific disease shall not be disclosed. Information released pursuant to this section is confidential. § 42-1-7.

(9) Where any person is committed to serve time in any penal institution, that person shall submit to an HIV test within thirty days after the person is committed unless the person is in custody because of having committed an AIDS transmitting crime and has, therefore, already submitted to an AIDS test. Upon failure of an inmate to cooperate in HIV test procedures, the superior court may issue an order authorizing the use of such measures as are reasonably necessary to require submission to an HIV test. Any inmate who is infected with HIV should be housed at existing institutions separately from any other person not infected with HIV if that person is reasonably believed to be sexually

active, or predatory, or if other conditions or circumstances indicate that separate confinement would be in the best interest of the Department of Corrections and the inmate population. Neither the Department of Corrections nor any of its officials, employees, or agents shall be civilly or criminally liable for failing or refusing to house HIV-infected inmates away from those who are not infected with HIV. § 42-5-52.1.

(10) The State Board of Pardons and Paroles (Board) is authorized to obtain HIV test results regarding any person who applies or is eligible for clemency, a pardon, a parole, or other relief from a sentence, from any penal institution. The Board may also require such person to submit to an HIV test and to consider the results of the test in determining whether to grant clemency, a pardon, parole, or other relief. However, test results may not be the sole basis for determining whether to grant or deny such relief. The Board is further authorized to impose conditions upon any person who tests positive for HIV, and to whom relief from a sentence is granted, which may include measures designed to prevent the spread of HIV by that person. § 42-9-42.1.

(11) Each health care facility, health care provider, blood bank, tissue bank, sperm bank, or other similar legal entity which procures, processes, distributes, or uses any human body part shall test such part or the donor of such part for HIV prior to using the body part in the body of another person. Any such body part determined to be infected with HIV shall not be used in the body of another person but shall be disposed of safely and promptly or made available for medical research. When any body part or the donor thereof has been determined to be infected with HIV, the person or legal entity which ordered the HIV test shall: if the donor is alive and can be located, provide personal and confidential notification of such determination to the donor; or if the donor is deceased, provide confidential notification of such determination to any known physician of the donor, who shall determine if there is anyone who may have been at risk of being infected by the donor who should be notified. In a medical emergency, if HIV tested blood is not available, testing of blood shall not be required. § 44-5-151.

(12) When a coroner or a medical examiner conducts an investigation into the death of an individual, the coroner or medical examiner shall be authorized to issue subpoenas to compel the production of any books, records, or papers relevant to the cause of death including, without limitation, AIDS confidential information (see Definitions (1)). Any books, records, or papers received by the coroner or medical examiner pursuant to the subpoena must be regarded as confidential information. § 45-16-27.

(13) If a person pleads guilty of, is found guilty of, or does not contest a charge against him of pandering, he must as a condition of probation and a suspended sentence, submit to testing for a STD. If the defendant is a state resident, testing must occur within forty-five days of the verdict or plea. If the defendant is not a state resident, the testing must occur immediately after the verdict or plea. The testing is limited to the eight most common STDs and shall be paid for by the defendant. § 16-6-13.1.

Criminal Law (3), (4), (5)

Social & Medical Services (1), (2)

Miscellaneous (2), (3), (5)

MISCELLANEOUS

(1) AIDS confidential information (see Definitions (1)) as disclosed or discovered within the patient-physician relationship shall be confidential and shall not be further disclosed except as otherwise provided by law. § 24-9-40.1.

(2) No person or legal entity which receives AIDS confidential information, which was responsible for recording, reporting, or maintaining AIDS confidential information, or which receives AIDS confidential information that the person or legal entity knows was disclosed in violation of this provision shall intentionally or knowingly disclose that information to another person or legal entity or be compelled by subpoena, court order, or other judicial process to disclose that information. AIDS confidential information may be disclosed to the person identified by that information or, if that person is a minor or incompetent, to that person's parent or legal guardian. AIDS confidential information may be disclosed to any person or legal entity designated to receive that information when the designation is made in writing by the person identified by that information or the person's parent or legal guardian. AIDS confidential information may be disclosed to any agency or department of the federal government, this state, or any political subdivision of this state if authorized or required by law. The results of an HIV test (see Definitions (1)) may be disclosed to the person, or that person's designated representative, who ordered such tests for another person. § 24-9-47.

(3) When a physician's patient has been determined to be infected with HIV (see Definitions (1)), and the physician reasonably believes that the spouse, sexual partner, or any child of the patient, spouse, or sexual partner is at risk of being infected with HIV by that patient, the physician may disclose to that spouse, sexual partner, or child that the patient is infected with HIV, after first attempting to notify the patient that such disclosure will be made. An administrator of a hospital or a physician who has a patient with HIV may disclose the name and address of the patient, the name and address of other persons who are believed by the physician to be at risk of being infected, and the fact that the patient is infected with HIV to the Department of Human Resources (Department). The Department may disclose that a person has been reported to be infected with HIV to the board of health of the county in which that person resides or is located if such disclosure is reasonably necessary to protect the health and safety of that person or others who may have come into contact with the body fluids (see Definitions (1)) of the infected person. The Department or the county board of health to which the information is disclosed may do the following: contact any person named in such disclosure for the purpose of providing counseling to that person and requesting the

names of any others who may be at risk of being infected with HIV by that infected person; contact any other person reasonably believed to be at risk of being infected with HIV by the person named in the disclosure, and counseling such person to be tested for HIV; and contact and provide counseling to the spouse of any HIV-infected person whose name is disclosed if both people are reasonably likely to have engaged in sexual intercourse or any other act likely to result in the transmission of HIV within the preceding seven years. Any health care provider authorized to order an HIV test or who receives AIDS confidential information regarding a patient may disclose such information to another health care provider or facility or designated employee of such which has provided or will provide any health care service to the patient and has personnel or patients who may be at risk of being infected by that patient or has a legitimate need for that information in order to provide health care service to that patient. A health care provider or any other person or legal entity authorized but not required to disclose AIDS confidential information shall have no duty and shall not be liable to the patient or any other person or legal entity for failure to make such disclosure. When any person or legal entity is authorized or required to disclose AIDS confidential information to a person at risk of being infected, and that person at risk is a minor or incompetent person, such disclosure may be made to a parent or legal guardian, or to both the minor or incompetent person and the parent or legal guardian. § 24-9-47.

(4) When a person in an institutional care facility is at risk of being infected with HIV, and as a result of that risk a disclosure of AIDS confidential information is authorized or required, such disclosure may be made to the person at risk or to that institutional care facility's chief administrative or executive officer, who may make such disclosure to the person at risk. § 24-9-47.

(5) A public safety agent (see Definitions (1)) or district attorney may obtain the results of an HIV test to which the test subject has submitted (see Testing & Reporting (1), (2), (9), (10)), notwithstanding that the results may be contained in a sealed record. Any person or legal entity required by a court order to disclose AIDS confidential information shall disclose such information as required by the order. § 24-9-47.

(6) AIDS confidential information may be disclosed as medical information if the person identified by the information has consented in writing to that disclosure or has been notified of the request for disclosure at least ten days prior to the time the disclosure is to be made, and does not object to the disclosure. AIDS confidential information may also be disclosed as medical information if, in an in camera hearing, a superior court finds a compelling need for the information which cannot be accommodated by other means. A court that orders such disclosure shall impose appropriate safeguards against any unauthorized disclosure. § 24-9-47.

(7) A superior court may order a person or legal entity to disclose AIDS confidential information in its custody or control to any of the following: a prosecutor in connection with a prosecution for commission of certain reckless conduct; any party in a civil cause

of action; or a public safety agent or the Department if that agency or department has an employee who has come into contact with the body fluids of a person infected with AIDS in the course of employment. A petition seeking disclosure of AIDS confidential information shall substitute a pseudonym for the true name of the person concerning whom the information is sought. Court proceedings as to disclosure of AIDS confidential information shall be conducted in camera unless the person concerning whom the information is sought agrees to a hearing in open court. AIDS confidential information may be disclosed when that disclosure is otherwise authorized by any law or code section. § 24-9-47.

(8) A health care provider, health care facility (see Definitions (1)), or other person or legal entity who unintentionally discloses AIDS confidential information shall not be civilly or criminally liable, unless such disclosure was due to gross negligence or wanton or willful misconduct. § 24-9-47.

(9) Neither the Department nor any county board of health shall disclose AIDS confidential information contained in its records unless such disclosure is authorized or required by law. Such information shall not be a public record and shall not be subject to disclosure through subpoena, court order, or other judicial process. § 24-9-47.

(10) The protection against disclosure afforded to AIDS confidential information shall be waived to the extent that the person identified by the information, the person's heirs, successors, assigns, or a beneficiary: files a claim or claims other entitlements under any insurance policy or benefit plan or is involved in any civil proceeding regarding such claim; places such person's care and treatment, the nature and extent of the person's injuries, the extent of damages, the person's medical condition, or the reasons for the person's death at issue in any civil or criminal proceeding; or is involved in a dispute regarding coverage under any insurance policy or benefit plan. AIDS confidential information may be collected, used, and disclosed by an insurer in accordance with the provisions of the code relating to use of information by insurers. § 24-9-47.

(11) A party to whom AIDS confidential information is disclosed in connection with any civil or criminal action may subpoena any person to authenticate such information, establish a chain of custody relating to the information, or otherwise testify regarding that information. § 24-9-47.

(12) AIDS confidential information may be disclosed as a part of any proceeding regarding a person who is mentally ill, mentally retarded, alcoholic, or drug dependent, or as part of any proceeding regarding the guardianship of a person or that person's estate. Any document filed or transmitted which contains AIDS confidential information shall have a cover page which contains the type of proceeding, the court in which the proceeding is or will be pending, and the words, "CONFIDENTIAL INFORMATION." AIDS confidential information shall only be disclosed after disclosure to and with written consent of the person identified by that information or that person's parent or

guardian. If consent is not obtained, the court receiving the information shall either obtain such written consent, or: return the petition or document to the person who filed or transmitted it, with directions against further filing or transmitting of such information; delete or expunge all references to such AIDS confidential information from the particular petition or other document; or, if the court determines there is a compelling need for such information, petition a superior court for permission to obtain or disclose the information. The confidentiality of any AIDS confidential information disclosed under this section shall be maintained by the court having jurisdiction over the proceeding for which the information has been obtained. § 24-9-47.

(13) HIV and the degenerative disease associated with it are declared to be contagious, infectious, communicable (see Definitions (3)), and extremely dangerous to the public health. § 31-17A-1.

[12]

· Scroggins v. State, 401 S.E.2d 13, 19 (Ga. Ct. App. 1990) (lack of scientific evidence that HIV is transmissible through human saliva was not relevant to verdict of aggravated assault with intent to murder for HIV-infected defendant who bit a police officer).

[13]

· Multimedia WMAZ, Inc. v. Kubach, 443 S.E.2d 491, 495 (Ga. Ct. App. 1994) (identities of those suffering from AIDS are generally not a matter of public interest, and privacy interests of those individuals in protecting AIDS confidential information are not outweighed by first amendment interests in free expression regarding matters of public concern).