

## UTAH

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

### DEFINITIONS

(1) AIDS and HIV are considered communicable and infectious diseases under the Communicable Disease Control Act. § 26-6-3.5.

(2) “Carrier,” “communicable disease,” “contact,” “epidemic,” “infection,” “infectious agent,” “infectious disease,” “isolation,” “quarantine,” and “sexually transmitted disease” (STD) are defined at § 26-6-2.

(3) “Convicted sexual offender,” “HIV infection,” “HIV positive individual,” “notice,” “positive,” “sexual offense,” “test,” and “testing” are defined at §§ 76-5-501, 76-10-1310.

(4) “Designated agent,” “disability,” “emergency medical services agency,” “emergency medical services provider,” and “significant exposure” are defined at § 26-6a-1.

(5) “Disease,” as it pertains to disease testing and workers’ compensation, includes HIV and AIDS. § 26-6a-1.

(6) “HIV” is defined at § 78-29-101.

(7) “Private genetic information” does not include information that is derived from a test to identify the presence of drugs or HIV infection. § 26-45-102.

(8) “Stigmatized,” as it pertains to real estate, includes infection or suspected infection with HIV or any other infectious disease. § 57-1-1.

(9) “Test,” and “testing,” as they pertain to testing of prisoners for HIV and AIDS infection, are defined at § 64-13-36.

### CRIMINAL LAW

(1) An individual who is convicted of prostitution, patronizing a prostitute, or sexual solicitation, who is HIV (see Definitions (1), (6)) positive, and who has actual knowledge and personal written notice of the positive test result (see Definitions (3)) from a law enforcement agency (see Testing & Reporting (7)) is guilty of a felony in the third degree. § 76-10-1309.

(2) Any person who breaches the confidentiality of test results due to a significant exposure by an emergency medical services

provider (see Definitions (4)) (see Testing & Reporting (12), (14)) is guilty of a Class B misdemeanor. § 26-6a-7.

Testing & Reporting (4), (5), (6), (7), (8), (9), (10), (11), (16)

#### EDUCATION

(1) The Board of Education curriculum requirements shall include instruction in the prevention of communicable diseases (see Definitions (1), (2)). The instruction shall stress the importance of abstinence from all sexual activity before marriage and fidelity after marriage as methods of prevention of communicable diseases. § 53A1-3-101.

Testing & Reporting (4)

#### EMPLOYMENT

(1) An emergency medical services provider (see Definitions (4)) who claims a disease (see Definitions (5)) as a result of significant exposure (see Definitions (4)) in the performance of duties is presumed to have contracted the disease by accident during the course of duties if: the emergency medical services provider was employed prior to July 1, 1988, and tested positive during, or within three months of termination of, employment; or, if employed after July 1, 1988, tested negative both at time of employment and three months later and tested positive at termination of employment or within three months after termination of employment. § 26-6a-10.

Testing & Reporting (12), (13), (14), (16), (17)

#### HOUSING

(1) The failure of an owner of real property to disclose that the property being offered for sale is stigmatized (see Definitions (8)) is not a material fact that must be disclosed in the transaction of real property. Neither an owner nor his agent is liable for failing to disclose that the property is stigmatized. § 57-1-37.

#### INSURANCE

#### RESEARCH

Testing & Reporting (2)

## SOCIAL &amp; MEDICAL SERVICES

(1) Consent to medical care by a hospital, public clinic, or licensed physician, which is executed by a minor who is or professes to be afflicted with a STD (see Definitions (2)), shall have the same legal effect as consent given by a person of full legal age and capacity. The consent of the minor shall not be subject to later disaffirmance, and no other person's consent is necessary to authorize hospital, clinical care, or other services. A minor's consent is valid regardless of whether the minor is ultimately determined to be infected with an STD. § 26-6-18.

(2) A health department may implement the prescription, distribution, dispensing, compounding, and administering procedure under Subsection 3 for prescription drugs, other than controlled substances, for use in clinics providing STD treatment. § 58-17a-620.

## Criminal Law (2)

Testing & Reporting (1), (3), (4), (5) (6), (7), (11), (12), (13), (14), (15), (17)

## TESTING &amp; REPORTING

(1) The Department of Health (Department) requires reporting of HIV (see Definitions (1), (6)) and AIDS (see Definitions (1)) infection due to the nature and consequences of such infections. In addition, the Department shall use methods of partner identification and notification. § 26-6-3.5.

(2) Research studies funded in whole or in part by state grants need not report cases of HIV or AIDS infection if anonymity is required in order to obtain the research grant or carry out the research. § 26-6-3.5.

(3) The Department may allow one site or agency within the state to provide anonymous testing (see Definitions (3)) for HIV. The site or agency shall maintain accurate records pertaining to the number of HIV positive individuals (see Definitions (3)), the number of HIV positive individuals who receive counseling, and the number of HIV positive individuals who provide information for partner notification or for whom partner notification is carried through. A statistical report of information pertaining to anonymous test sites shall be presented annually to the Legislative Interim Health Committee. The report shall preserve the anonymity of the individuals whose records are contained therein. § 26-6-3.5.

(4) The Department shall test (see Definitions (9)) or provide testing (see Definitions (9)) for all prisoners upon admission to a

correctional facility or within a reasonable period after admission. At the time the test results are provided, the Department shall also provide education and counseling on HIV and AIDS infection. The Department has authority to take action as medically indicated with regard to any prisoner who is HIV positive. HIV positive prisoners may not be excluded from common areas of the prison solely on the basis of their condition unless such exclusion is necessary for the protection of the general prison population or staff. § 64-13-36.

(5) The Department shall cooperate with local health departments, the Department of Corrections, the Administrative Office of the Courts, the Division of Youth Corrections, and the Crime Victims Reparations Board to conduct HIV testing of convicted sexual offenders (see Definitions (3)) and victims of sexual offenses (see Definitions (3)). §§ 26-1-30, 26A-1-114. A local health department may investigate infectious diseases and implement measures to control the causes of epidemic and communicable diseases (see Definitions (2)) and other conditions significantly affecting the public health that may include involuntary HIV testing for convicted sexual offenders and voluntary HIV testing for victims of sexual offenses. § 26A-1-114.

(6) A person who has entered a plea of guilty, no contest, guilty and mentally ill, or not guilty by reason of insanity, or who has been found guilty of a sexual offense or an attempted sexual offense, shall be required to submit to a mandatory HIV test upon the request of the victim or the parent or legal guardian of a minor victim within six months of the conviction. The court shall order the convicted sexual offender to submit to the test upon sentencing or as a condition of probation. The order to the convicted sexual offender shall not include the identity and address of the victim requesting the test. The court shall forward the order to the Department, including separate information about the victim's identity and address for notification and counseling purposes. The person tested shall be responsible for the testing cost unless the person is indigent, in which case the costs will be paid by the Department. § 76-5-502.

(7) A person who has entered a plea of guilty, no contest, or guilty and mentally ill, or who has been found guilty of prostitution, patronizing a prostitute, or sexual solicitation shall be required to submit to a mandatory HIV test (see Criminal Law (1)). The mandatory test shall be required and conducted prior to sentencing. The local law enforcement agency shall collect and retain in the offender's medical file: the HIV infection test results, a copy of the written notice (see Definitions

(3) to the offender, photographic identification, and fingerprint identification. The person tested shall be responsible for testing costs unless the person is indigent, in which case the costs will be paid by the local law enforcement agency or the Department of Corrections. § 76-10-1311. If convicted, the test subject shall be notified of the test results in person at the sentencing hearing in the presence of the judge and counsel only. Whenever possible, the offender shall be served personally with written notice in a meeting with the local law enforcement agency prior to notification in the district court. A person from the state or county health department shall also be present at the meeting. The notice shall state the date of the test, the positive test result, the name of the HIV positive individual, and that the person is guilty of a felony in the third degree. Upon conviction, and as a condition of probation, the offender shall receive treatment and counseling for HIV infection. § 76-10-1312.

(8) A victim or minor victim of a sexual offense may request to be tested for HIV. The local health department shall obtain a blood specimen from the victim and forward the specimen to the Department, which shall analyze the specimen. The testing shall consist of a base-line test of the victim at the time immediately or as soon as possible after the alleged occurrence of the sexual offense. If the base-line test result is not positive, follow-up testing shall occur at three months and six months after the alleged occurrence of the sexual offense. The Crime Victims Reparations Fund shall pay for the costs of victim HIV testing if the victim provides a substantiated claim of a sexual offense, does not test positive at the base-line phase, and complies with eligibility criteria established by the Crime Victims Reparations Act. § 76-5-503. A victim of a sexual offense who requests victim testing may be reimbursed for the cost of the HIV test only as provided in the Crime Victims Reparations Act. § 63-25a-413.

(9) Victims of sexual offenses shall be informed of their right to request voluntary HIV testing for themselves and to request mandatory HIV testing of the convicted sexual offender. The law enforcement office where the sexual offense is reported shall have the responsibility of informing victims of this right. § 77-37-3.

(10) HIV testing may be conducted on a minor taken into custody after having been adjudicated to have committed a sexual offense, upon the request of the victim or the parent or guardian of a minor victim. HIV tests, photographs, and fingerprints may not be taken of a minor younger than fourteen years of age. § 78-3a-904 (also codified in Utah R. Juv. P. Rule 27).

(11) The Department shall provide the victim who requests HIV testing of the convicted sexual offender with counseling on HIV and referral for appropriate health care and support services. If the local health department where the victim resides and the Department agree, the Department shall forward a report of the convicted sexual offender's HIV status to the local health department, and the local health department shall provide the victim with the test results, counseling regarding HIV, and referral for appropriate health care and support services. § 76-5-504.

(12) An emergency medical service provider (see Definitions (4)) who has significant exposure (see Definitions (4)) in the process of caring for a patient shall document that exposure (see Employment (1)). The hospital or health care facility that receives the patient shall request that the patient submit to testing. The patient shall be informed of the right to refuse testing. § 26-6a-2. Consent for blood testing of a patient who is the subject of a reported significant exposure to HIV or AIDS, and who is unconscious or incapable of giving consent, may be obtained from the patient's next of kin or legal guardian. No consent is necessary when a patient, who is the subject of a reported significant exposure, dies prior to admission to or discharge or release from a facility without having an opportunity to consent to blood testing. § 26-6a-3.

(13) For emergency medical services providers, blood tests to determine the presence of HIV must be conducted by the State Health Laboratory. § 26-6a-4. The State Health Laboratory shall report test results to specified officials in the Department and those officials shall report the test results to the appropriate emergency medical services agency's (see Definitions (4)) designated agent (see Definitions (4)). The designated agent shall report the test results to the appropriate emergency medical services provider. The Department or its designee shall report the test results to the patient. In making a report to a designated agent or to the emergency medical services provider, a case number shall be used instead of the patient's name. § 26-6a-5. The test results are confidential unless released by written consent of the patient or the patient's representative and may not be made public upon subpoena, search warrant, or discovery proceedings. § 26-6a-6.

(14) A blood sample for an HIV test used to determine whether an emergency medical services provider has been infected with the virus must be drawn by a physician, registered nurse, practical nurse, laboratory technician, phlebotomist, staff designated by a medical examiner's office, or other persons authorized to draw blood by statute. The emergency medical services agency that employs the emergency

medical services provider who requests the HIV testing is responsible for the cost of testing. The facility receiving the patient is responsible for the cost of drawing blood for testing patients who are the source of a significant exposure. § 26-6a-4.

(15) Unless counseling is specifically declined by the patient, pretest counseling, notification of test results, and post-test counseling shall be provided to all patients tested for HIV or AIDS because of a significant exposure of an emergency medical services provider to HIV. All pretest counseling shall be provided by the hospital, health care, or other facility that receives the patient. Notification of test results and post-test counseling shall be provided by the Department of Health or its designee. The appropriate emergency medical services agency is responsible for the costs of counseling. § 26-6a-8.

(16) Employees of a laboratory who conduct blood analysis for the presence of HIV pursuant to a request by a law enforcement agency or the Department of Corrections may be examined in a legal proceeding as to: the nature of the testing, the validity of the test results, the HIV positivity or negativity of the person tested, who has been in possession of the blood sample, and other factors relevant to the prosecution, subject to the court's ruling. This section applies only to the criminal prosecution of crimes with enhanced penalties upon conviction for prostitution, patronizing a prostitute, or sexual solicitation (see Criminal Law (1)). § 76-10-1314.

(17) An emergency medical services provider or public safety officer significantly exposed during the course of performing emergency medical services, emergency medical assistance, or first aid may petition the district court for an order requiring the person who caused the significant exposure to be tested for HIV. The emergency medical services provider or the public safety officer seeking the testing must submit to a test for HIV within ten days of the petition. The district court shall issue a testing order on the finding of significant exposure, that it was in the course of duty of the person seeking the test, and that there is no substantial reason, relating to the life and health of the individual, not to enter the order. The test results shall be transmitted to the Department and the Department shall inform the emergency medical services provider or public safety officer and the person tested of the results and advise both parties of the confidential nature of the test results. § 78-29-102.

(18) The commission shall adopt rules in accordance with all relevant provisions for HIV and drug testing of contestants under which contestants shall produce evidence based upon competent laboratory

examination that they are HIV negative as a condition of participating as a contestant in any contest. § 13-33-405.

(19) An HIV or AIDS test may be conducted on a person who is unconscious or incapable of giving informed consent without his consent or that of his next-of-kin or legal guardian and without proceeding under § 78-29-102. § 26-6a-3.

Criminal Law (1), (2)

Employment (1)

#### MISCELLANEOUS

(1) Marriages that had been rendered invalid by a subsequently repealed provision that prohibited and declared void marriage with a person with AIDS (see Definitions (1)) are declared lawful in all respects, as if the marriage had been legally contracted in the first place. § 30-1-2.3.

(2) Professional boxers must produce evidence based on competent laboratory examination that they are HIV (see Definitions (1), (6)) negative as a condition of participating as a professional contestant in any boxing match. § 58-66-605.



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All citations are to “Vt. Stat. Ann. tit.” unless otherwise noted.

**DEFINITIONS**

(1) “Comprehensive health education” includes the study of disease, such as HIV infection and other sexually transmitted diseases (STDs). 16, § 131.

(2) “Offender” includes a juvenile adjudicated a delinquent. 13, § 3256.

(3) “Organized community-based needle exchange program” is defined at 18, § 4475.

(4) “Sexual act” is defined at 13, § 3256.

(5) “Venereal disease” (VD) means syphilis, gonorrhea, and any other STD which the Department of Health finds to be significant and amenable to control. 18, § 1091.

**CRIMINAL LAW**

Social & Medical Services (1)

Testing & Reporting (3)

**EDUCATION**

(1) School districts and educational institutions shall not request or require any applicant or prospective or current student to have an HIV-related blood test, nor shall such institutions discriminate against an applicant or prospective or current student on the basis of the person having tested positive for HIV. A person aggrieved by a violation of this section or the attorney general on behalf of such a person may bring an action for injunctive relief and damages. The court may award costs and reasonable attorney’s fees to an aggrieved person who prevails in such an action. 18, § 1127.

(2) The Department of Education shall provide assistance to school districts in creating comprehensive health education (see Definitions (1)) instruction. 16, § 135. Any pupil whose parent shall present to the school principal a signed statement that the teaching of disease, its symptoms, development, and treatment conflicts with the parent’s religious convictions shall be exempt from such instruction, and no child so exempt shall be penalized by reason of that exemption. 16, § 134.

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(3) The Board of Health shall conduct an educational campaign on methods for the prevention, treatment, and care of persons suffering from VDIs (see Definitions (5)). 18, § 1097.

#### EMPLOYMENT

(1) The following behavior by an employer constitutes an unfair labor practice: to request or require an applicant, prospective employee, or employee to have an HIV-related blood test or to discriminate against an applicant, prospective employee or employee because that person is HIV positive. 3, § 961.

(2) Except where a bona fide occupational qualification requires employment of persons of a particular race, color, religion, national origin, sex, sexual orientation, ancestry, place of birth, age, or physical or mental condition, it is unlawful for an employer, employment agency, labor organization, or person seeking employees to discriminate, indicate a preference or limitation, refuse to classify or refer, or to limit or segregate membership, on the basis of a person testing positive for HIV, or to require an applicant, prospective employee, employee, prospective member, or member to have an HIV-related blood test as a condition of employment or membership, classification, placement, or referral. 21, § 495.

(3) It shall be an unfair practice for an employer to request or require an applicant, prospective employee or employee to have an HIV-related blood test as a condition of employment or to discriminate against an applicant, prospective employee or employee on the basis of that person having a positive test result from an HIV-related blood test. 3, § 1026.

#### HOUSING

#### INSURANCE

(1) Making adverse underwriting decisions because medical records or an insurance support organization's report reveal that an applicant or insured person has demonstrated concern about AIDS by seeking counseling from health care professionals constitutes an unfair method of competition or an unfair or deceptive act in the insurance business. The provisions of subdivision (C) shall not be construed to prohibit an insurer from requesting an applicant or insured to take an HIV-related test on the basis of the health history or current condition of

health of the applicant or insured in accordance with the provisions of subdivision (20) of this section. No person shall request or require that a person reveal having taken HIV-related tests in the past, nor request or require that an individual submit to an HIV-related test unless he or she has first obtained the individual's written informed consent. Before written, informed consent may be granted, the individual shall be informed, by means of a printed information statement which shall have been read aloud to the individual by any agent of the insurer at the time of application or later and then given to the individual for review and retention. The informed consent forms, information disclosure, and test results disclosure used for HIV-related testing and any testing procedure shall be filed with and approved by the commissioner in consultation with the Commissioner of the Department of Health. The test protocol shall be considered positive only if test results are two positive ELISA tests, confirmed by a Western Blot test or any equally or more reliable confirmatory test or test protocol. If the test result shall be considered as negative, a new application for coverage shall not be denied by the insurer based upon the results of either test. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing a retest which had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results. Upon the written request of an individual for a retest, an insurer shall retest, at the insurer's expense, any individual who was denied insurance, or offered insurance on any other than a standard basis, because of the positive results of an HIV-related test. An insurer, on the basis of the individual's written informed consent as specified, if necessary to make underwriting decisions regarding the particular individual's application, may disclose the results of an individual's HIV-related test results to its reinsurers, or to those contractually retained medical personnel, laboratories, insurance support organizations, and insurance affiliates (but not agents or brokers) that are involved in underwriting decisions regarding the individual's particular application. Other than the disclosures permitted, the entities listed herein, including the insurer, shall not further disclose to anyone individually-identified HIV-related test result information without a separately obtained written authorization from the individual; provided, however, that if an individual's test result is positive or indeterminate, then an insurer may report a code to the medical information bureau provided that a

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nonspecific test result code is used which does not indicate that the individual was subjected to HIV-related testing. An insurer, reinsurer, contractually retained medical personnel, laboratories, medical information bureau or other national data bank, insurance affiliate, or insurance support organizations that are obligated to not disclose any individually-identifiable records of HIV-related tests pursuant to this subdivision (20) shall have no duty to disclose this information to any person except in compliance with a court order or as provided in subdivision (B) or (H) nor shall it have any liability to any person for refusing or failing to disclose such information. Any individual who sustains damage as a result of the unauthorized negligent or knowing disclosure of that individual's individually-identifiable HIV-related test result information may bring an action for appropriate relief, and the court may award costs and reasonable attorney's fees to the individual who prevails in such an action. 8, § 4724.

## RESEARCH

### SOCIAL & MEDICAL SERVICES

(1) Whenever the Board of Health (Board) shall receive information from an authoritative source that a person is suspected of being infected with an infectious VD (see Definitions (5)) and is likely to infect or to be the source of infection of another person, the Board of Health shall cause a medical examination to be made of such person for the purpose of ascertaining whether or not such person is in fact infected with such disease in a communicable stage. The person shall submit to such examination and permit specimens of blood or bodily discharges to be taken for laboratory examinations as may be necessary to establish the presence or absence of such disease or infection, and such person may be detained until the results of such examinations are known. 18, § 1093. The person may petition a justice of the supreme court or a superior judge for an order restraining the making of such examination and no examination shall then be made except upon order of such justice or judge and such petition and order shall not be a matter of public record. Before such examination, each suspected person shall be informed of this right and be given an opportunity to avail himself thereof. 18, § 1094. A person who violates these provisions, for which no other penalty is provided, shall be fined not more than \$500.00 or imprisoned for not more than six months or both. 18, § 1096.

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(2) The Board shall provide at the expense of the state, facilities for the free laboratory examination of material from suspected cases of VD, and shall furnish hospitalization and other accredited specific treatment at cost or free to such clinical patients as the Board shall deem entitled to such aid. 18, § 1098.

(3) The pharmacy best practices and cost control program shall authorize pharmacy benefit coverage when a patient's health care provider prescribes a prescription drug not on the preferred drug list, or a prescription drug which is not the list's preferred choice. For HIV and AIDS-related medications used by individuals with HIV or AIDS, the preferred drug list and any utilization review procedures shall not be more restrictive than the drug list and the application of the list used for the state of Vermont AIDS medication assistance program. 33, § 1999.

Insurance (1), (2)

Testing & Reporting (1), (2), (4)

#### TESTING & REPORTING

(1) No state court shall issue an order requiring the disclosure of HIV-related testing or counseling information which identifies the individual test subject unless the court finds that the person seeking the information has demonstrated a compelling need for such information that cannot be accommodated by other means. Pleadings pertaining to disclosure of HIV-related testing and counseling shall substitute a pseudonym for the true name of the test subject. The subject's true name shall be communicated confidentially to the court and to those parties who have a compelling need to know the subject's true name. All documents filed with the court identifying the subject's true name shall not be disclosed to any person other than those parties who have a compelling need to know the subject's true name. All such documents shall be sealed upon conclusion of the proceedings. Proceedings shall be conducted in camera unless the test subject agrees to a public hearing or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice. Upon issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure. 12, § 1705.

(2) No health care provider or facility shall request or require any applicant for care or services or any client or patient to have an HIV-related blood test as a condition for receiving unrelated treatment or services. Such provider or facility shall not discriminate against any applicant, client, or patient on the basis of a person's having a positive test

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result from an HIV-related blood test. Health care providers or facilities shall not be precluded from recommending testing for medically appropriate diagnostic purposes or from administering to clients or patients who consent to have an HIV-related blood test. 18, § 1128.

(3) All information and reports in connection with persons suffering from VDs (see Definitions (5)) shall be regarded as absolutely confidential and for the sole use of the Board of Health in the performance of its duties (see Social & Medical Services (2)), and such records shall not be accessible to the public nor shall such records be deemed public records. The Board of Health shall not disclose the names or addresses of persons so reported or treated except to a prosecuting officer or court. 18, § 1099.

(4) The superintendent or other officer in charge of public institutions such as hospitals, dispensaries, clinics, homes, asylums, and charitable and correctional institutions shall report promptly to the Board of Health the name, sex, age, nationality, race, marital state and address of every patient under observation suffering from VDs in any form, stating the name, character, stage and duration of the infection, and, if obtainable, the date and source of contracting the same. 18, § 1101.

(5) The victim of an offense involving a sexual act (see Definitions (4)) may obtain an order from the district or family court in which the offender (see Definitions (2)) was convicted of the offense, or was adjudicated delinquent, requiring that the offender be tested for the presence of the etiologic agent for AIDS and other STDs. If requested by the victim, the state's attorney shall petition the court on behalf of the victim for an order under this section. If the court determines that the offender was convicted or adjudicated of a crime involving a sexual act with the victim, the court shall order the test to be administered by the Department of Health, and if appropriate, a requirement for follow-up testing of the offender. The results of the offender's test shall be disclosed only to the offender and the victim. If an offender who is subject to an order refuses to comply, the victim, or state's attorney on behalf of the victim, may seek a civil contempt order. After arraignment, a defendant who is charged with an offense involving a sexual act may offer to be tested for the presence of the etiologic agent for AIDS and other STDs. The defendant's offer to be tested after arraignment shall not be used as evidence at the defendant's trial. If the defendant is subsequently convicted of an offense involving a sexual act, the court may consider the offender's offer for testing as a mitigating factor. 13, § 3256.

(6) Upon request of the victim at any time after the commission of a crime involving a sexual act, the state shall provide any of the following services to the victim: counseling regarding HIV; testing, which shall remain confidential unless otherwise provided by law, for HIV and other STDs; counseling by a medically-trained professional on the accuracy of the testing, and the risk of transmitting HIV and other STDs to the victim as a result of the crime involving a sexual act; and prophylaxis treatment, crisis counseling, and support services. A victim who so requests shall receive monthly follow-up HIV testing for six months after the initial test, and the state shall provide funding for HIV or AIDS, or both, and sexual assault cross-training between sexual assault programs and HIV and AIDS service organizations. The record of the court proceedings and test results pursuant to this section shall be sealed. 13, § 3256.

(7) When a physician, health care provider, administrator of a hospital, health care facility, health maintenance organization or managed care organization, or the administrator's designee, town health officer, nurse practitioner, nurse, physician's assistant or school health official has reason to believe that a person is sick or has died of a diagnosed or suspected disease, identified by the Department of Health as a reportable disease and dangerous to the public health or if a laboratory director has evidence of such sickness or disease, he or she shall transmit within twenty-four hours a report thereof and identify the name and address of the patient and the name of the patient's physician to the Commissioner of Health or designee, except in the case of HIV which shall be reported only by a unique identifier code. All information collected shall be privileged and confidential. Public health records that relate to HIV or AIDS that contain any personally identifying information, or any information that may indirectly identify a person and was developed or acquired by state or local public health agencies shall be confidential and shall not be disclosed, except for public health purposes as provided by law or by written authorization voluntarily executed by the individual subject or the individual's guardian or conservator. 3, § 1026.

Education (1)

Employment (1), (2)

Social & Medical Services (1), (2)

MISCELLANEOUS

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**VIRGINIA**

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

**DEFINITIONS**

(1) “Blood or body fluids”, “HIV”, and “occupational exposure” are defined at § 65.2-402.1.

(2) “Communicable diseases,” as they pertain to emergency medical services patient care, include HIV among the enumerated diseases. § 32.1-116.3.

(3) “Exposure prone incident,” and “public safety agency” are defined at § 32.1-45.2.

(4) “Gametes” is defined at § 32.1-45.3.

(5) “Health care provider,” is defined at § 32.1-45.1.

(6) “HIV” means the human immunodeficiency virus or any other related virus that causes AIDS. § 18.2-67.4:1.

**CRIMINAL LAW**

(1) The donation, sale, or attempted sale of blood, body fluids (see Definitions (1)), organs, or tissues, with knowledge that the donor is infected with HIV (see Definitions (1), (6)) and that such materials may transmit the infection, is a felony. Infected blood, body fluids, organs and tissues may be donated for research purposes. § 32.1-289.2.

(2) Judgment in favor of the commonwealth includes any fee for testing for HIV. § 17.1-275.5.

(3) Any person who, knowing he is infected with HIV has sexual intercourse, cunnilingus, fellatio, anallingus or anal intercourse with the intent to transmit the infection to another person shall be guilty of a Class 6 felony. Nothing in this section shall prevent the prosecution of any other crime against persons. Any person charged with a violation of this section alleging he is infected with HIV shall be subject to the testing provisions of § 18.2-62. § 18.2-67.4:1.

Testing & Reporting (1), (9), (10)

**EDUCATION**

(1) The Board of Education’s family life education curriculum guidelines for grades kindergarten through twelve shall include age-appropriate instruction in the value of postponing sexual activity, human sexuality, and prevention and effects of sexually transmitted diseases (STDs). The instruction shall be designed to

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promote parental involvement, foster positive self concepts, and provide mechanisms for coping with peer pressure and the stress of modern living. § 22.1-207.1.

(2) Each school board shall adopt guidelines for school attendance for children infected with HIV (see Definitions (1), (6)), consistent with the model guidelines developed by the Board of Education and the Board of Health. Every school board shall ensure that all school personnel having direct contact with students receive appropriate training in the etiology, prevention, transmission modes and effects of HIV. Upon request from a school employee who believes he has been involved in a possible exposure-prone incident which may have exposed him or her to the blood or body fluids (see Definitions (1)) of a student, the division superintendent shall contact the local health director who shall investigate and determine if a potentially harmful exposure occurred and make recommendations to the employee. The division superintendent and the school employee shall not divulge any information provided by the local health director about the student. The information provided by the local health director shall be subject to confidentiality requirements. § 22.1-271.3.

(3) Virginia public colleges and universities, in cooperation with the Council of Higher Education and the Department of Health, shall develop and implement education programs for college students on the etiology, effects, and prevention of HIV infection. The Council of Higher Education shall encourage private colleges to develop similar programs. § 23-9.2:3.2.

(4) The Board of Health's AIDS services and education grants program may award grants for direct patient services including but not limited to mental, home, and community based health services and broad-based community AIDS education efforts including but not limited to education of high-risk populations, street outreach efforts, and improvement of public knowledge about AIDS. § 32.1-11.1.

(5) Every person empowered to issue a marriage license shall, at the time of issuance, distribute to the applicants information, furnished by the Department of Health, concerning AIDS and the available tests to determine the presence or absence of the disease. § 20-14.2.

Social & Medical Services (2)

## EMPLOYMENT

(1) The right to workers' compensation for symptomatic or asymptomatic HIV (see Definitions (1), (6)) or AIDS as an occupational disease shall be forever barred unless a claim is filed with the Insurance Commission within two years after a positive HIV test. § 65.2-406.

(2) Persons suffering with contagious or infectious disease shall be excluded from the public schools while in that condition. § 22.1-272.

(3) HIV causing the death of, or any health condition or impairment resulting in total or partial disability of any: firefighter, paramedic, or emergency medical technician; member of State Police Officer's Retirement System; member of county, city or town police department; sheriff or deputy sheriff; Dept. of Emergency Management hazardous materials officer; city sergeant or deputy city sergeant; Virginia Maine Police officer; game warden who is full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; Capitol Police officer; special agent of the Department of Alcoholic Beverage Control, who has documented occupation exposure to blood or body fluids shall be presumed to be occupational diseases, suffered in the line of government duty, that are covered by this title unless such presumption is overcome by a preponderance of competent evidence to the contrary. For purposes of this section, an occupational exposure occurring on or after July 1, 2002, shall be deemed "documented" if the person covered under this section gave notice, written or otherwise, of the occupational exposure to his employer, and an occupational exposure occurring prior to July 1, 2002, shall be deemed "documented" without regard to whether the person gave notice, written or otherwise, of the occupational exposure to his employer. The presumption shall only apply if persons entitled to invoke them have, if requested by the appointing authority or governing body employing them, undergone pre-employment physical examinations that (i) were conducted prior to the making of any claims under this title that rely on such presumption, (ii) were performed by physicians whose qualifications are prescribed by the appointing authority employing such persons, (iii) included such appropriate laboratory and other diagnostic studies as the appointing authorities may have prescribed, and (iv) found such persons free from HIV at the time of such examinations. The presumptions shall also not be effective until six months following such examinations, unless such person entitled to invoke such presumption can demonstrate a documented exposure during

the six-month period. Persons covered under this section who test positive for exposure to the enumerated occupational diseases, but have not yet incurred the requisite total or partial disability, shall otherwise be entitled to make a claim for medical benefits pursuant to § 65.2-603, including entitlement to an annual medical examination to measure the progress of the condition, if any, and any other medical treatment, prophylactic or otherwise. § 65.2-402.1.

Social & Medical Services (2), (5)

Testing & Reporting (2), (5), (6)

#### HOUSING

(1) No cause of action shall arise against an owner or a real estate licensee for failure to disclose that the occupant of real property is infected with HIV (see Definitions (1), (6)). § 55-524.

Education (4)

Social & Medical Services (3), (6)

#### INSURANCE

(1) The Insurance Commission may promulgate regulations as necessary or appropriate to govern insurer's practices with regard to HIV (see Definitions (1), (6)) or AIDS, including advertising, underwriting practices, policy provisions, claim practices, or other practices with regard to individual or group life insurance and annuities or individual or group accident and sickness insurance delivered or issued for delivery in Virginia. §§ 38.2-3100.1, 38.2-3401.

(2) The Insurance Commission shall promulgate regulations as may be necessary to ensure that applicants for life or accident and sickness insurance coverage are notified of test results whenever insurers require such applicants to submit to HIV testing. § 38.2-613.01.

Employment (1)

Social & Medical Services (5)

Testing & Reporting (4)

#### RESEARCH

Criminal Law (1)

Testing & Reporting (3), (4)

## SOCIAL &amp; MEDICAL SERVICES

(1) The Board of Health shall provide grants for no more than five regional AIDS resource and consultation centers and four HIV (see Definitions (1), (6)) early intervention centers. Each regional AIDS resource and consultation center shall: address the need for expanded medical care and support services for persons with HIV; educate health care professionals on AIDS-related issues; provide clinical training for health care practitioners and students; provide medical consultations for community physicians and other health care providers (see Definitions (5)); provide current technical medical materials such as manuals and protocols; and offer support services and case-management for HIV-infected persons. The regional AIDS resource and consultation centers shall cooperate with at least one of Virginia's medical schools. Each early intervention center shall provide medical care and support services to HIV positive persons. The Board of Health shall establish criteria for the awarding of grants which shall include but not be limited to: targeting of funds to high-risk populations; providing equal access to services throughout Virginia; apportioning funds according to the number of AIDS cases in the various areas of the state; developing innovative and flexible methods of treatment; and encouraging community involvement. § 32.1-11.2.

(2) The Commissioner of Health may approve the issuance of a certificate of public need for a project of expansion in an existing nursing facility, for any project for the conversion on-site of existing licensed beds to beds certified for skilled nursing services, or for the conversion of existing beds in an adult care residence to beds certified as nursing facility beds when: the total number of beds to be converted or added does not exceed the lesser of twenty beds or 10% of the beds in the facility; the facility demonstrates that the beds are specifically needed for AIDS patients and that such patients otherwise will not have reasonable access to services in existing approved facilities; and the facility commits itself to admitting such patients on a priority basis once the facility is certified and operational. § 32.1-102.3:2.

(3) The Director of Medical Assistance Services is authorized to negotiate and enter into agreements for services rendered on behalf of patients with special needs, including persons with AIDS. The Board of Health shall promulgate regulations regarding special needs patients. § 32.1-325.

(4) The Board of Medical Assistance Services shall use funds from the Ryan White Comprehensive AIDS Resources Emergency CARE Act or other funds appropriated or made available to this purpose to implement a premium assistance program for HIV-positive individuals. The program shall at minimum: pay health insurance premiums for individuals who are not eligible for Medicaid and who can document HIV infection, inability to work for medical reasons, and eligibility to continue their employer's group policy pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985; implement financial eligibility criteria; and cover family members if the HIV-positive person's policy is the sole source of health insurance. The funds used for the program shall not be used to pay deductibles or co-payments. § 32.1-330.1.

(5) The Department of Social Services may issue a license to a facility for an adult care residence if the facility: is located in a city having a population of between 200,000 and 205,000, is established to care exclusively for people living with AIDS, particularly those living with end-stage disease, is operated by a nonprofit organization providing services to HIV-infected individuals, has obtained funding from the Department of Housing and Urban Development prior to January 1, 1994, has a written agreement with one or more Virginia-licensed home health agencies for the provision of intravenous therapy to residents, has been licensed, and is in compliance with all local zoning requirements. 1994 Va. Acts 943.

(6) A patient has a right of privacy in the content of his or her medical record. Patient records are the property of the provider maintaining them, and except where permitted by state or federal law, no provider, or other person working in a health care setting, may disclose the records of a patient. § 32.1-127.1:03.

(7) The Boards of Health, Mental Health, Mental Retardation and Substance Abuse Services, Social Services, and Medical Assistance Services and the Department of Rehabilitative Services shall ascertain and eliminate any discrimination against individuals infected with human immunodeficiency virus. § 2.2-214.

(8) Beginning July 1, 2001, and ending July 1, 2005, sales tax is not charged for tangible personal property purchased for use or consumption by a nonprofit organization exempt from federal income taxation pursuant to § 501(c)(3) of the Internal Revenue Code. Direct services are provided to those persons suffering from AIDS or infected with HIV and educates the public regarding AIDS and its prevention. § 58.1-609.8.

(9) Every person who is empowered to issue a marriage license shall, at the time or issuance, distribute information concerning AIDS and the available tests to determine the presence or absence of AIDS to the applicants for the license. § 20-14.2.

Criminal Law (1)

Education (2), (4)

Insurance (1)

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

#### TESTING & REPORTING

(1) As soon as practicable following the arrest of any person charged with any crime involving sexual assault or any offenses against children will be requested to submit to HIV (see Definitions (1), (6)) testing. The person charged will be counseled as to the meaning of the test, AIDS and about the transmission and prevention of infection with HIV. If the person refuses to be tested, the court with a finding of probable cause that the accused committed the crime shall order the accused to undergo testing. Upon conviction or adjudication of a juvenile of any crime involving sexual assault or offenses against children the attorney for the commonwealth after consultation or request by any victim shall request and the court will order that the defendant submit to the testing. Confirmatory tests shall be conducted before a determining that the test result is positive. The results will be confidential except that the Department of Health shall disclose the results to any victim and offer appropriate counseling. The results shall not be admissible as evidence in any criminal proceeding and the commonwealth shall pay the cost of the test. § 18.2-62.

(2) As soon as possible after a conviction for a sexual offense or crimes against nature, a convicted person is required to submit to HIV testing. The Department of Health shall counsel the person concerning the meaning of the test, AIDS, AIDS transmission, and prevention of HIV infection. Confirmatory tests shall be performed before any result is determined to be positive. Test results shall be confidential and shall be disclosed only to the test subject and to the Department of Health. The test results shall not be admissible in any criminal proceedings related to prostitution. The state shall pay the cost of testing. § 18.2-346.1.

(3) Any physician practicing in the state shall report the identity of any patient who has tested positive for HIV to the local health department. The physician has no duty to notify any other third party. The Commissioner of Health may disclose the patient's identity and

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disease to the patient's employer if the Commissioner determines that the patient's employment responsibilities require contact with the public and such contact constitutes a threat to the public health. Physicians and laboratory directors may voluntarily report additional information at the request of the Department of Health for special surveillance or other epidemiological studies. § 32.1-36.

(4) The person in charge of any medical care facility, school or summer camp shall immediately make a report of a disease required to be reported when such information is available and the person has reason to believe that no physician has reported such disease. The report may be made by telephone or in person to the local health director. The person in charge may also voluntarily report additional information at the request of the Department of Health for special surveillance or other epidemiological studies. § 32.1-37.

(5) The results of every HIV test shall be confidential. Test information may only be released to: the test subject or a legally authorized representative; a person designated in a release by the test subject; health care providers (see Definitions (5)) for the purposes of caring for the test subject or the test subject's child if the test subject is a woman who has given birth to an HIV-infected child; the Department of Health; health care facility staff committees which monitor, evaluate, or review services; researchers; a person given access by court order; a facility which procures, possesses, distributes, or uses blood, other body fluids, tissues, or organs; the parent or legal guardian of a test subject who is a minor; the spouse of a test subject; and departments of health outside the state for the purposes of disease surveillance and investigation. A person who willfully or through gross negligence makes an unauthorized disclosure will be assessed a civil penalty by the court. The subject of an unauthorized disclosure may recover actual damages, reasonable attorney's fees and court costs. § 32.1-36.1.<sup>67</sup>

(6) A test subject shall be given an oral or written explanation of the meaning of the test. The test subject shall then give informed consent to the testing. Informed consent shall be deemed to have been obtained when an individual: seeks the services of a facility offering anonymous testing, donates or sells blood, or undergoes routine diagnostic blood testing and anonymous HIV seroprevalence studies are conducted. Every HIV test subject shall be given the opportunity to have

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67. See *R F & P Corp. v. Little*, 440 S.E.2d 908 (Va. 1994) (suggesting that violations of provisions such as this one need be proven only by a preponderance of evidence).

the test results disclosed on an individual face-to-face basis and with appropriate counseling. Appropriate counseling may include but shall not be limited to: the meaning of the test results; the need for additional testing; the etiology, prevention, and effects of AIDS; the availability of appropriate health care, mental health care, and social services; and the need to notify any person who may have been exposed to the virus and of the availability of assistance in notification. When blood collection agencies conduct the testing, an opportunity for face-to-face counseling is not required. For persons applying for accident, sickness, or life insurance, who are subject to HIV testing, the State Corporation Commission shall set forth regulations requiring insurers to: explain the meaning of the tests, obtain informed consent, and adhere to certain disclosure and counseling requirements. § 32.1-37.2.

(7) When a health care provider or employee of a health care provider is directly exposed to body fluids (see Definitions (1)) of a patient in a manner which, according to the guidelines of the Centers for Disease Control (CDC), may transmit HIV, the patient whose body fluids were involved in the exposure is deemed to have consented to HIV testing. Likewise, when a patient is directly exposed to body fluids of a health care provider in a manner which, according to CDC guidelines, may transmit HIV, the health care provider whose body fluids were involved in the exposure shall be deemed to have consented to HIV testing. Persons whose body fluids were the source of the exposure shall also be deemed to have consented to the release of the test results to the person who was exposed. The Department of Health shall provide appropriate counseling and an opportunity for face-to-face disclosure of test results to exposed individuals. Whenever a law-enforcement officer is directly exposed to body fluids of a person in a manner which may transmit HIV, the person whose body fluids were involved in the exposure shall be deemed to have consented to testing for infection with HIV. Such person shall also be deemed to have consented to the release of such test results to the officer who was exposed. In situations other than emergencies, it is the duty of the officer to inform the person of this provision prior to contact. Likewise, whenever a person is directly exposed to the body fluids of a law enforcement officer in a manner which may transmit HIV, the officer shall be deemed to give consent to HIV testing as well as releasing the results to the person. If the person whose blood is sought for testing refuses to provide a specimen, the person exposed may petition the appropriate court for an order requiring that person to provide a blood sample or submit to testing and disclose the



test results. If the order is entered, both the petitioner and the person from whom the blood is sought shall receive counseling and opportunity for face-to-face disclosure of any results. § 32.1-45.1.

(8) If, in the course of employment, an employee of a public safety agency (see Definitions (3)) is involved in a possible exposure prone incident (see Definitions (3)), the employee shall immediately notify the agency of the incident. If the agency, after reviewing the facts, finds that an exposure prone incident may have occurred, the agency shall request that the person whose body fluids were involved give informed consent to HIV testing and authorize disclosure of the test results. If the person whose body fluids were involved is deceased, the agency shall request that the custodian of the remains preserve a blood sample and that the decedent's next of kin provide informed consent to HIV testing. A person involved in a possible exposure prone incident with an employee of a public safety agency shall have the same opportunity to seek testing through the agency. If informed consent is refused, the exposed person or the agency may petition the court of the city or county of the public safety agency's principal office to determine whether an exposure prone incident occurred and to order testing and disclosure of the test results. The district health director shall be informed of the test results and shall be responsible for informing the parties and counseling them. The test results shall be confidential. No person shall be refused services by a public safety agency on the grounds that the person is known or suspected to be HIV positive. Failure to consent or to request consent, in the context of HIV testing because of an exposure prone incident with an employee of a public safety agency, shall not give rise to liability. For purposes of this section the term employee shall include: any person providing assistance to a person employed by a public safety agency who is directly affected by a possible exposure prone incident as a result of the specific crime or specific circumstances involved in the assistance, and any victim of or witness to a crime who is directly affected by a possible exposure prone incident as a result of the specific crime. § 32.1-45.2.

(9) A person using donor gametes (see Definitions (4)) to treat patients for infertility by any gamete, zygote, or embryo transfer or other intervening medical technology using sperm or ova shall, prior to using any donor gametes for such procedures, test the donor for HIV. The Board of Health shall establish a testing protocol for gamete donors. § 32.1-45.3. Before a physician commences in vitro fertilization or gamete intrafallopian tube transfer, a disclosure form shall be signed by the patient. The information disclosed to the patient prior to signature

shall include the testing protocol used to ensure that the gamete donors are free from known HIV infection. § 54.1-2971.1.

(10) The Board of Health shall make available anonymous HIV testing sites in all areas of the state. § 32.1-55.1.

(11) Every licensed health care facility which transfers or receives patients via emergency medical services ambulances or mobile intensive care units shall notify the emergency medical services agency of the name and telephone number of the person in the facility who is responsible for infection control and investigation of exposure to infectious diseases. All licensed emergency medical services agencies in the state shall likewise inform all facilities to which or from which they transport patients of the names and telephone numbers of their communicable diseases liaison officers. Every licensed emergency medical services agency shall implement universal precautions. When transferring any patient known to suffer from a communicable disease (see Definitions (2)) which, in the physician's or infection control practitioner's judgment, presents a risk to the transporting emergency medical services personnel or to subsequent patients that may be transferred in the same vehicle, the transferring facility shall inform the attendant in charge of the transferring crew of the condition of the patient and the precautions to be taken to prevent the spread of disease. The identity of the patient shall remain confidential. If any firefighter, law enforcement officer, emergency medical services technician, or paramedic has an exposure of blood or body fluid to mucous membrane, non-intact skin, or a contaminated needlestick injury, the communicable disease liaison officer shall be notified, a report completed, and the infection control practitioner at the receiving facility notified. The infection control practitioner shall conduct an investigation and recommend a course of action. The receiving facility does not have a duty to perform tests beyond those necessary for the medical management of the patient delivered by the emergency medical services agency. Any person requesting or requiring an employee of a public safety agency to arrest, transfer, or otherwise exercise custodial supervision over an individual known to the requesting person to be infected with any communicable disease shall inform the public safety agency employee of a potential risk of exposure to a communicable disease. The chief medical person at a local or state correctional facility which transfers patients known to have a communicable disease shall be responsible for notifying the emergency medical services agency providing transportation of a potential risk of exposure to a communicable disease. Any person

who, as a result of emergency medical services transportation, becomes aware of the identity or condition of a person suffering from a communicable disease shall keep such information confidential, except where disclosure is expressly authorized. No person known to suffer from any communicable disease shall be refused transportation or service for that reason by an emergency services, law enforcement, or public safety agency. § 32.1-116.3.

(12) The disclosure of HIV test results of anyone under the supervision of the Department of Corrections shall not be permitted, except as provided under the provision pertaining to confidentiality of HIV test results (see Testing & Reporting (3)). § 53.1-40.10.

(13) The exchange of medical and mental health information and records of any person committed to jail, and transferred to another correctional may be exchanged among administrative personnel of the correctional facility, members of the Parole Board, officials for the facilities, medical and mental health facilities, both public and private. The disclosure of results of a test for HIV shall not be permitted except as otherwise permitted by the law. § 53.1-133.03.

(14) As a routine component of prenatal care, every licensed practitioner who renders prenatal care shall advise every pregnant patient of the value of HIV testing and shall request that every pregnant patient consent to HIV testing. The confidentiality, informed consent, counseling, and test results disclosure requirements shall apply to any prenatal HIV testing. Practitioners shall counsel HIV-positive pregnant women about the dangers to the fetus and the advisability of receiving treatment in accordance with the CDC recommendations for HIV-positive pregnant women. A pregnant woman shall have the right to refuse consent to HIV testing and to any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record. § 54.1-2403.01.

(15) Whenever a juvenile is placed in a secure facility of a shelter care facility pursuant to § 16.1-248.1, the director of the facility or his designee shall be entitled to obtain medical records concerning the juvenile from a provider. The disclosure of results of a test for HIV shall not be permitted except as provided in § 32.1-36.1. § 16.1-248.3.

Education (5)

Employment (1)

Insurance (2)

## MISCELLANEOUS

(1) No person shall tattoo or perform body piercing on any client unless he complies with the CDC guidelines for “Universal Blood and Body Fluid Precautions” and provides the client with the disclosure that if proper sterilization and antiseptic procedures are not followed by tattoo artists and body piercers, there is a risk of transmission of bloodborne pathogens and other infections, including, but not limited to, HIV (see Definitions (1), (6)). § 18.2-371.3.

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All citations are to “V.I. Code Ann. tit.” unless otherwise noted.

## DEFINITIONS

- (1) “HIV,” and “sexual offense” are defined at 5, § 3910.

## CRIMINAL LAW

- Testing & Reporting (1), (2)

## EDUCATION

- (1) All public schools in the Virgin Islands shall instruct students in an AIDS prevention education program as part of the health curriculum for grades kindergarten through twelve. 17, § 41.

## EMPLOYMENT

- Testing & Reporting (2), (3)

## HOUSING

## INSURANCE

## RESEARCH

## SOCIAL &amp; MEDICAL SERVICES

- Testing & Reporting (1), (2), (3)

## TESTING &amp; REPORTING

- (1) In all cases in which a defendant has been convicted of a sexual offense (see Definitions (1)), the prosecutor shall advise the victim of the victim’s right to request HIV (see Definitions (1)) testing of the convicted person’s blood. 5, § 3910. To assist the victim in determining whether or not to make the request, the prosecutor shall refer the victim to the Department of Health (Department) for pretest counseling to help the victim understand the extent to which the circumstances of the offense may have created a risk of HIV transmission, to ensure that the victim understands the benefits and limits of current HIV tests, and to help the victim decide whether to request such a test. When a person has been convicted of a sexual offense, the court, at the request of the victim, shall

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issue a warrant for the purpose of testing the convicted person's blood for HIV. The Commissioner of Health shall make provisions for administering all HIV tests ordered under this provision. Before disclosing the initial reactive result to the victim or the convicted perpetrator, all blood tests must be subjected to the appropriate confirmatory tests (e.g., Western Blot antigen tests) in order to ensure the accuracy of the initial test results (e.g., ELISA screening tests). The Chief Public Health Official or a designee shall disclose the test results to the victim and to the test subject and shall also provide for appropriate counseling and case management. Upon request, the victim shall receive HIV testing and referral for appropriate health care and support services. When the victim has requested the testing by court order, the Chief Public Health Official shall deliver the tests results to the court in a sealed envelope. The judge shall then disclose the convicted person's test results to the victim. Any government official who informs an individual of HIV test results or discloses any information pursuant to this section shall be immune from civil liability. 5, § 3911. If the initial testing is conducted within the first two years of a convicted person's imprisonment, the request for disclosure is considered a standing request for any subsequent HIV test results obtained within two years after the initial HIV test is performed. The request need not be repeated for each HIV test administered. If the HIV test is performed by an instrumentality other than the Department, that instrumentality shall be responsible for forwarding the test results to the Department for disclosure to the person requesting the test results. 5, § 3912.

(2) Each physician who diagnoses and/or treats a person for HIV or AIDS and each laboratory that performs an HIV test which concludes with a result diagnostic of HIV infection or AIDS shall report such facts to the Commissioner of the Department or an authorized representative. The Commissioner shall promulgate rules and regulations to ensure the confidential reporting of such information. In addition, the Commissioner shall require a minimum time period, not to exceed two weeks, for reporting cases of HIV infection and AIDS. The Commissioner shall consider the need for information, protection for the privacy and confidentiality of the patient, and the practical ability of persons and laboratories to report in a reasonable fashion. The Commissioner shall require reporting of all physician diagnosed cases of AIDS based upon diagnostic criteria. The report shall contain information of persons and other information required by the Department. The rules and regulations promulgated by the Commissioner shall specify

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the protocol for the reporting that is required or permitted. The protocol shall include information to be given to the client during HIV pre- and post-test counseling; establishing the availability of partner notification through the Department or an authorized representative; the benefits of the aforementioned services; and the confidentiality protection available as part of such services. All tests, information and records held by the Department or its authorized representatives, hospitals, or other medical facilities relating to known or suspected cases of HIV infection and AIDS shall be strictly confidential. Release may only be made with consent of all persons to which the information applies. For statistical purposes, medical or epidemiological information is summarized so long as no person can be identified and no names revealed and to medical personnel, courts of appropriate jurisdiction, or territorial or state agencies for enforcement purpose. When disclosure is made pursuant to a subpoena, such information shall be sealed by the court from further disclosure, except as deemed necessary by the court to reach a decision, unless otherwise agreed by both parties. Except as provided, such information disclosed pursuant to a subpoena or through testimony in a civil or criminal proceeding is confidential. No employee for the Department, any hospital, or other medical facility shall be examined or diagnosed in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of a person examined or treated for HIV or AIDS infection by the Department, its authorized representatives, any hospital, other medical facility, its authorized representatives or of the existence or contents of such reports received from a private physician or private health facility, without the consent of the person examined and treated for such disease or infection, except in a civil or criminal proceeding where the question of infection is put to issue. Any person who violates the provisions of this section with respect to the confidentiality of persons tested for HIV or AIDS may be terminated from his or her position of employment and may be fined up to \$3,000 for each offense of unauthorized disclosure. No employee of the Department, a hospital, or other medical facility shall be held liable in a civil or criminal action for revelation of such information when disclosed through testimony in a civil or criminal proceeding. 19, § 32a

(3) The Department may interview any person determined to be infected with HIV as per confirmatory blood test, or anyone directly named as a contact to a known infected individual, for the express purpose of partner notification, which includes risk reduction, counseling, treatment, and/or testing, as appropriate. All information gathered

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through partner notification shall be held confidential. Anyone violating the rules of this section shall be fined up to \$3,000 for each offense and may be terminated from a position of employment. Any person who is determined to be infected who reveals, for the express purpose of partner notification, the name or names of persons who they perceived to be at risk for HIV infection, especially sexual contacts or needle-sharing partners, shall not be held liable in a civil action for such disclosure, unless the disclosure is made falsely or with reckless disregard for the truth. 19, § 32b.

(4) The physician rendering the diagnosis of HIV infection or AIDS or providing treatment for the same shall report the initial diagnosis and date (by month, day and year) pertaining to HIV diagnosis or AIDS indicator diseases, which will be determined by the Commissioner of the Department, and established by the Center for Disease Control and Prevention of the United States Public Health Service. All clinical laboratories shall report in accordance with the law all results diagnostic of HIV and AIDS. 19, § 32c.

MISCELLANEOUS



**WASHINGTON**

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

**DEFINITIONS**

(1) “AIDS counseling,” “HIV testing,” “pretest counseling,” and “post-test counseling” are defined at § 70.24.320.

(2) “Acquired immunodeficiency syndrome,” or “AIDS” is defined at § 70.24.017.

(3) “Acquired immunodeficiency syndrome insurance program” is defined at § 74.09.757.

(4) “HIV,” “HIV-related condition,” “human immunodeficiency virus,” “release of test results,” and “test for a sexually transmitted disease” are defined at § 70.24.017.

(5) “Sexually transmitted disease” (STD) includes AIDS and HIV in § 70.24.017.

(6) “Sexually transmitted disease case investigator” is defined at § 70.24.120.

(7) “Human immunodeficiency virus insurance program” is defined at § 43.70.670.

**CRIMINAL LAW**

(1) A person is guilty of assault in the first degree if he or she, with intent to inflict great bodily harm, administers, exposes, transmits to, or causes to be taken by another the HIV virus (see Definitions (4)). § 9A.36.011

(2) Assault in the second degree, which includes exposing or transmitting HIV to another, or administering to another HIV, with intent to inflict bodily harm, is a Class B felony. § 9A.36.021.<sup>68</sup>

(3) Because it is a criminal violation to deliver drug paraphernalia, a Regional Aids Service Network (See Social & Medical Services (3)) may not lawfully authorize the distribution of hypodermic needles. Some persons may be exempt in specific cases. 13 Att’y Gen. 89 (1995). § 69.50.412.

(4) Anyone who knowingly or maliciously disseminates any false information concerning the existence of a STD (see Definitions (5))

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68. State v. Stark, 832 P2d 109 (Wash. Ct. App. 1992) (section not unconstitutionally vague). See also § 70.24.140, which makes it unlawful for persons with sexually transmitted diseases, other than HIV, who have knowledge that they are infected, to engage in sexual intercourse unless the other person knowingly consents.

is guilty of a gross misdemeanor. Revealing names of infected persons shall constitute a civil offense unless it is done with a knowing or reckless disregard for the truth. §§ 70.24.022, 70.24.080, 70.24.084.

Social & Medical Services (12)

Testing & Reporting (5), (6)

Miscellaneous (3)

## EDUCATION

(1) The Office on AIDS, a clearinghouse for all technically correct educational materials related to the treatment, transmission, and prevention of AIDS (see Definitions (2)), shall be created to ensure the availability of accurate information to the work force for dealing with the AIDS epidemic. The Office on AIDS shall coordinate all publicly funded education and service activities. The University of Washington shall provide appropriate training and educational materials. The Office shall assist state agencies as well as employee and professional groups and shall make educational materials available to private employers. §§ 70.24.240, 70.24.250.

(2) The life-threatening dangers of AIDS, its spread, and its prevention shall be taught in the public schools annually and beginning no later than the fifth grade. The Office on AIDS shall provide model curricula, but local school districts may design their own, to be reviewed by the Office of AIDS for medical accuracy. At least one month before teaching AIDS prevention, parents and guardians shall be given an after-hours presentation, and a student's parent or guardian must object in writing in order to remove the student from participation. The curriculum shall teach which behaviors put one dangerously at risk of HIV (see Definitions (4)) infection, including, at minimum, the dangers of intravenous (IV) drug abuse and sexual intercourse, with or without a condom, and shall stress sexual abstinence as the only sure means of preventing sexual transmission of HIV. §§ 28A.230.070, 70.24.220.

(3) Information on HIV transmission and prevention of AIDS shall be reviewed by the Office on AIDS, in coordination with the appropriate Regional AIDS Service Network (see Social & Medical Services (3)), for medical accuracy. The information shall be made available to newly matriculated students at four year higher education institutions, at community and technical colleges, and at publicly operated vocational schools. §§ 28B.10.730, 28B.50.205, 28C.04.600.

(4) The Superintendent of Public Instruction shall adopt rules that require appropriate education and training on the prevention,  
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transmission, and treatment of AIDS. The Office on AIDS shall assist in developing training and educational material for public school employees. § 70.24.290.

(5) Information directed to the general public and to children in grades kindergarten through twelve providing education regarding STDs (see Definitions (5)) that is written, published, distributed or used by any public entity or that is paid for in whole or in part by public monies shall give emphasis to the importance of sexual abstinence, sexual fidelity and avoidance of substance abuse in controlling disease. §§ 70.24.200 to 210.

(6) The common school curriculum covers instruction in health including methods to prevent exposure to and transmission of STDs. § 28A.230.020.

Social & Medical Services (3), (9), (10), (11), (12)

Testing & Reporting (4), (5)

Miscellaneous (6)

#### EMPLOYMENT

(1) No one may be required to take an HIV test (See Definitions (1)) as a condition of hiring, promotion, or continued employment. No one may discharge or refuse to hire or otherwise discriminate with respect to compensation, terms, conditions, or privileges of employment on the basis of the results of an HIV test, unless the job can be shown to present a significant risk of transmitting HIV (see Definitions (4)) to others and there exists no means of eliminating the risk by restructuring the job. An HIV positive person must also be disabled by the infection to be eligible for benefits under affirmative action provisions. § 49.60.172.

(2) Employers are immune from civil damages in actions involving transmission of HIV to employees or the public except as a result of gross negligence. § 49.60.172.

Education (1), (4)

Social & Medical Services (9)

Testing & Reporting (2), (4)

Miscellaneous (4)

## HOUSING

## INSURANCE

(1) Insurance entities that request the results of an HIV test (see Definitions (1)) for underwriting purposes as a condition for obtaining or renewing health insurance, HMO, or other coverage shall provide written material explaining: the HIV test; behaviors that place one at risk; that the purpose is to determine eligibility for coverage; the potential risks of testing; and where to obtain pretest counseling (see Definitions (1)). The applicant's written informed consent shall be obtained. At the same time, the applicant is permitted to designate a health care provider through which positive or indeterminate test results and post-test counseling (see Definitions (1)) may be provided. The test results will only be accessible to personnel handling the application. The applicant shall be informed that post-test counseling is required if the test is positive or indeterminate. If the applicant does not designate a health care provider, positive or indeterminate results are not sent to the applicant but will be given to the local health department who will interpret results and provide post-test counseling. § 70.24.325.

(2) The Department of Social & Health Services may pay, from the acquired immunodeficiency syndrome insurance program (see Definitions (3)), for health insurance coverage with funds appropriated for this purpose on behalf of persons with AIDS (see Definitions (1)) who meet Department eligibility requirements and who are eligible for "continuation coverage" under the Federal Consolidated Omnibus Budget Reconciliation Act of 1985 or under group health insurance policies. § 74.09.757. The Department of Health may pay for health insurance coverage on behalf of persons with HIV (see Definitions (4)) who meet department eligibility requirements, and who are eligible for continuation coverage as provided by the federal consolidated omnibus budget reconciliation act 1985, group health insurance policies, or individual policies. The number of insurance policies supported by this program in the Washington state health insurance pool shall not grow beyond the July 1, 2003, level. § 43.70.670.

(3) While it is an unfair practice for any person in connection with an insurance transaction or a transaction with a health maintenance organization to cancel or fail or refuse to issue or renew insurance or a health maintenance agreement to any person based on sensory, mental, or physical disability, this shall not apply to actual or perceived HIV infection. § 49.60.174.

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## Miscellaneous (2)

## RESEARCH

## SOCIAL &amp; MEDICAL SERVICES

(1) The Center for Volunteerism and Citizen Service may participate in programs and activities including providing information about agencies or individuals working to prevent the spread of HIV (see Definitions (4)) and provide health and social services to persons with AIDS (see Definitions (1)). § 43.150.050.

(2) Health care practitioners shall ensure that AIDS counseling (see Definitions (1)) is conducted for pregnant women and persons seeking treatment for a STD (see Definitions (5)). AIDS counseling shall be provided to persons in drug treatment programs. § 70.24.095.

(3) The Department of Health shall establish a state-wide system of six Regional AIDS Service Networks. Regional AIDS Service Networks may authorize use of appropriate materials in the prevention or control of HIV infection. State and federal funds shall be allocated to the Office on AIDS (see Education (1)) to be provided to lead counties in each region, which shall prepare, through cooperative efforts of local health departments, regional organizational and service plans. Services shall include: voluntary and anonymous counseling and testing; mandatory counseling and testing as required by law; notification of sexual partners of infected persons as required by law; education for the public, health professionals, and high-risk groups; intervention strategies for high-risk groups, possibly including needle sterilization and methadone maintenance; community outreach to runaway youth; case management; and strategies to develop volunteer networks and to coordinate related agencies and relevant information regarding needs particular to a region. A service delivery system shall include case management and a continuum-of-care model, encompassing medical and mental health and social services, with the goal of maintaining AIDS patients in a home-like setting. The University of Washington health science program may establish a center for AIDS education to provide the Office on AIDS with the educational materials required. § 70.24.400.<sup>69</sup>

(4) The Department of Public Assistance shall obtain a

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69. *Spokane County Health Dist. v. Brockett*, 839 P.2d 324 (Wash. 1992) (needle exchange program does not constitute unlawful distribution of drug paraphernalia).

waiver under the Social Security Act to provide community based long term care services to persons with AIDS who qualify for medical assistance or the limited casualty program for the medically needy, to include respite services. § 74.09.755.

(5) A Long-term Care Commission is created and the previously fragmented efforts of multiple agencies, including the Office on AIDS, shall be coordinated. One purpose of the Long-term Care Commission shall be to establish a balanced range of health, social and supportive services that deliver long-term care services for chronically functionally disabled persons of all ages, including those functionally disabled by AIDS. §§ 74.39.005, 74.39.040.<sup>70</sup> State appropriations are provided from the general fund for adult day health services for persons with AIDS. The services shall be provided through a state-only program by a single agency specializing in long-term care for persons with AIDS. 1995 Wa. Ch. 1.

(6) A special limit on reimbursement for nursing staff levels shall apply to a pilot facility designed to meet the needs of persons with AIDS. § 74.46.481.

(7) A Public Health Service Improvement Plan regarding population based services provided by state and local health departments shall be implemented, including efforts to prevent specific communicable diseases such as AIDS. § 43.70.520.

(8) Personal health and protection programs and support services for AIDS are transferred from the Department of Social and Health Services to the Department of Health. § 43.70.080.

(9) The Department of Health shall recommend appropriate education and training for licensed emergency medical personnel relating to the prevention, transmission, and treatment of AIDS, and shall require such education and training for certification or license issuance or renewal. § 70.24.260. Each disciplining authority of health professionals shall adopt rules requiring appropriate education and training for licensees on the prevention, transmission and treatment of AIDS. The Office on AIDS shall work to develop the necessary educational materials. § 70.24.270. The Board of Pharmacy shall adopt rules that require appropriate education and training. § 70.24.280. Dental hygienists shall be issued a temporary license without examination upon a showing, among other things, that the applicant meets the requirements for AIDS

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70. This provision was reenacted in an expanded version in 1995, but was vetoed by the Governor. See 1995 Wa. Ch. 18.

education. § 18.29.190. If a substantial likelihood of exposure to HIV exists in the course of employment, state and local government employees, through the state personnel board and local government units, shall receive appropriate training and education on the prevention, transmission and treatment of AIDS. Law enforcement, correctional, and health care workers shall receive training and education. § 70.24.300. The Department of Health shall adopt rules requiring appropriate education and training of employees of state health care facilities. Such training and education shall be on the prevention, transmission, and treatment of AIDS. Employees subject to training and education under other sections of this chapter are not required to participate. § 70.24.310.

(10) The legislature finds that the use of psychoactive chemicals is a prime factor in the AIDS epidemic and agrees with the 1987 Resolution of the American Medical Association that chemical dependency is a disease. The legislature intends to insure that prevention and treatment services are available and provide the financial assistance necessary to enable the Department of Social and Health Services to provide a program of alcoholism and other drug addiction services. In the treatment of alcoholics and other drug addicts, the educational program shall include dissemination of information concerning the consequences of drug use, HIV, and AIDS. §§ 70.96A.011, 70.96A.050.

(11) All persons infected with a STD or reasonably believed to be infected may be interviewed by the Board of Health or by other state and local health officers. The purpose of the interviews is to investigate the source and spread of the diseases as well as to order infected persons to submit to examination, counseling, or treatment as necessary for the protection of public health and safety. Partners identified by infected persons may also be investigated. § 70.24.022.

(12) State and local health officers or their authorized representatives may examine and counsel persons reasonably believed to be infected with or exposed to a STD. Orders and restrictive measures shall be used as a last resort, when other measures have failed to obtain the subject's voluntary cooperation. The least intrusive measures shall be used first. The burden of proof shall be on the state or local public health officer to show that specific grounds exist for the orders or restrictive measures and that the orders or measures to be imposed are no more restrictive than necessary to protect the public health. When the state or local public health officer knows or has reason to believe that a person has a STD and is engaging in specific conduct determined by the Board of Health to endanger the public health, the health officer shall conduct an

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investigation. If satisfied that the allegations are true, the health officer may issue an order, according to the following order of priority: to submit to a medical examination, testing, counseling, treatment, or any combination of these, within a determined period of time not to exceed fourteen days; or to immediately cease engaging in the specified conduct which endangers the health of others, only if clear and convincing evidence shows that the person has been ordered to report for counseling and continues to demonstrate behavior which endangers the health of others. Any restriction shall be detailed, confidential, and in writing. The order shall remain effective for a period not to exceed three months. The person may contest the order within seventy-two hours and appear at a hearing, which shall be closed and confidential unless the person requests a public hearing. If the person does not comply with or contest the order within seventy-two hours, the state or local health officer may request that a warrant be issued by the superior court to insure appearance at the hearing, which shall take place within seventy-two hours of the time specified for compliance with the original order. § 70.24.024.<sup>71</sup> When the procedures enumerated above have been exhausted and the state or local public health officer knows or has reason to believe that the person has a STD and continues to engage in behaviors that present an imminent danger to the public health, the public health officer may bring an action in the superior court to detain the person in a facility designated by the Board of Health (see Social & Medical Services (13)) for a period not to exceed ninety days under each order. The period of detention shall be only as long as necessary to complete a program of counseling and education, excluding any coercive techniques or procedures, designed to encourage adoption of nondangerous behavior. While the trial is pending and underway, the health officer will use reasonable noncoercive efforts to get the person to adopt nondangerous behavior. The prosecuting attorney may petition for appropriate court orders, including but not limited to an order to take the person into custody immediately, for a period not to exceed seventy-two hours, and to place the person in a facility designated by the Board of Health. The person shall receive written confidential notice of the order, stating the grounds for issuance. The person may contest the order and appear at a hearing to review the

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71. *State v. Stark*, 832 P.2d 109 (Wash. Ct. App. 1992) (it is not a violation of confidentiality for health officer to inform prosecutor of violation to obtain judicial enforcement).



order. If the person contests the order, no invasive medical procedures shall be carried out prior to the hearing. § 70.24.034.<sup>72</sup>

(13) The Board of Health has the authority to designate facilities for the detention and treatment of persons infected with a STD. The Board may designate any facility other than a jail or a correctional facility having, or which may be provided with, the necessary detention, segregation, isolation, clinic and hospital units. § 70.24.070.

(14) The Board of Health shall adopt such rules as are necessary to implement and enforce this chapter regulating the control and treatment of STDs. § 70.24.130.

(15) The legislature intends to provide STD programs that meet emerging needs, reduce the incidence of STDs, and provide confidential services about which patients can feel secure. § 70.24.015.

(16) The Department of Corrections and local jail administrators shall develop and implement policies and procedures for the uniform distribution of communicable disease prevention guidelines to all corrections and jail staff who through their regular job responsibilities may come in close contact to offenders with communicable diseases, which includes a STD caused by bloodborne pathogens. § 70.48.480.

(17) Qualifying patients with terminal or debilitating illnesses such as HIV and AIDS, who in the judgment of physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana. Primary caregivers and physicians to such patients shall also be excepted from liability and prosecution for assisting with or authorizing the medical use of marijuana. §§ 69.51A.005, 69.51A.010.

(18) Each local health board is empowered to provide for the control and prevention of any dangerous, contagious or infectious disease. §§ 70.05.060, 70.05.070.<sup>73</sup>

(19) A person rendering emergency care or transportation may request and receive appropriate infectious disease testing free of charge from the local health department if: while rendering emergency care she

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72. *Id.* (prosecutor has discretion to use confidential information to file a criminal action rather than an authorized civil action).

73. Spokane County Health Dist. V. Brockett, 839 P.2d 324, (Wash. 1992) (needle exchange program adopted by a county health district in an effort to halt the spread of AIDS was a valid public health measure, and public health officials were not subject to criminal liability for unauthorized distribution of drug paraphernalia)

or he came into contact with bodily fluids; and she or he does not have health insurance that covers the testing. § 70.05.180.

(20) Payment for direct care of pilot nursing facilities in King County designed to meet the service needs of residents with AIDS shall be exempt from case mix methods of rate determinations set forth and shall be exempt from the direct care metropolitan statistical area peer group cost limitation set forth in this section. § 74.46.835.

Criminal Law (2)

Education (1)

Insurance (1), (2)

Testing & Reporting (4), (5), (6), (7), (8), (9), (10)

Miscellaneous (1), (6)

#### TESTING & REPORTING

(1) In every instance, a STD (see Definitions (5)) diagnosis shall be confirmed by laboratory tests. Laboratories testing for HIV (see Definitions (4)) shall report anonymous HIV test results to the Department of Health for statistical purposes. § 70.24.050.

(2) No person may undergo HIV testing (see Definitions (1)) without giving consent except: incompetent persons; in anonymous seroprevalence studies, where the Department of Labor and Industries determines it is relevant and payments under Title 51 may be conditioned on the test where participants' identities are unknown; or if otherwise authorized by law. § 70.24.330.<sup>74</sup>

(3) Consent of parent or legal guardian of a minor fourteen years of age or older who may have come in contact with a STD is not necessary in order for the minor to receive diagnosis of and treatment for the disease. The minor may give consent, and this consent is not subject to disaffirmance for lack of capacity. The parents or guardians of the minor shall not be held liable for the cost of care received pursuant to this section. § 70.24.110.

(4) A law enforcement officer, fire fighter, health care provider, health care staff, department of corrections staff person, jail staff person, or other whose employment is determined by the Board of Health to place them at substantial risk of exposure to HIV, who has experienced a substantial exposure to another person's bodily fluids in the course of their employment, may request HIV testing, which includes, by law,

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74. State v. Farmer, 805 P.2d 200 (Wash. 1991) (nonconsensual HIV testing must be based on legitimate, compelling state interest).

pretest and post-test counseling (see Definitions (1)) of the person who may have exposed them. If the state or local public health officer refuses to order counseling and testing under this section, the person who made the request may petition the superior court for a hearing to determine whether an order shall be issued. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays and holidays. The standard of review to determine if an order should be issued is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus. Upon conclusion of the hearing the court shall issue an order. The person subject to the order to receive counseling and testing will be given written notice of the order promptly, personally and confidentially. If the person refuses to comply, the state or local public health officer may petition for a hearing to be held within seventy-two hours. The standard of review is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as by the Board of Health. Upon conclusion of the hearing the court shall issue an order. The state or local health officer shall perform counseling and testing if he/she finds that the exposure was substantial and presents a possible risk as defined by the board. The counseling and testing shall be completed as soon as possible, but not later than seventy-two hours after the substantial exposure or an order from the court. §§ 70.24.340, 72.09.251.<sup>75</sup>

(5) Persons convicted of a sexual offense, prostitution or a related offense, or a drug offense, if the court determines the offense is associated with the use of hypodermic needles, shall be tested for HIV and provided with pretest and post-test counseling by the local health department. § 70.24.340. Local health departments, in association with Regional AIDS Services Networks (see Social & Medical Services (3)), shall make available voluntary testing and counseling services to all persons arrested for prostitution and drug offenses. Services shall include educational materials that outline the seriousness of AIDS and encourage voluntary participation. § 70.24.350. The Washington Criminal Rules contain a plea that reads, "If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for HIV." Wash. Crim. R. 4.2.

(6) Jail administrators, with the approval of the local public health department, may order HIV testing and pre-test and post-test

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75. In the Matter of Juveniles A, B, C, D, E, 847 P.2d 455 (Wash. 1993) (testing under this section is constitutional and applies to juvenile sex offenders).

counseling for detainees if the health officer determines that actual or threatened behavior presents a possible risk to the staff, general public, or others. The administrator shall establish a procedure to document the “possible risk” of transmission. “Possible risk” shall be defined by the Board of Health. The documentation shall be reviewed with the detainee so that the subject understands the basis for testing. §§ 70.24.360, 70.24.370.

(7) No person may disclose the identity of any person who has undergone an HIV antibody test, the results of such a test, or information relating to the diagnosis or treatment of the infection. Only the following persons may receive such information: the subject of the test or the subject’s legal representative for health care decisions; persons securing a release executed by the subject or the subject’s legal representative for test results; the state public health officer, local public health officer, or the Center for Disease Control in accordance with reporting requirements for a diagnosed case of a STD; a health facility using human body parts, tissue or blood from a deceased person or using semen for the purpose of artificial insemination or blood specimens; or a state or local health officer conducting an investigation (see Social & Medical Services (12)), and, then, only when the testing is court ordered. The STD status of a Department of Corrections offender or status of a person detained in jail, who has had a mandatory test conducted, shall be made available by Department of Corrections health care providers and local public health officers to the Department of Corrections health care administrator or infection control coordinator, or jail health care administrator of the facility in which the offender is housed. The information provided shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders and the public. The information may be submitted to transporting officers and receiving facilities. Information regarding the sexually transmitted status of an offender or detained person is confidential and may be disclosed by the aforementioned persons only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders and the public. Whenever any member of a jail or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any mandatory tests shall be immediately disclosed to the staff person. Disclosure must be accompanied by the appropriate counseling for the staff member. Disclosure shall also include notice that subsequent disclosure in violation of this chapter to harass or discriminate the offender or detainee may

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result in disciplinary action, in addition to the penalties described previously. The staff person will also be notified if the offender has any other communicable diseases. The test results of voluntary HIV testing shall not be disclosed to a staff person except as otherwise permitted. A health care provider may provide information on how to obtain the offender's test results under the law. § 70.24.105.<sup>76</sup>

(8) The Board of Health shall adopt rules establishing minimum standards for HIV testing, pre-test and post-test counseling, and AIDS counseling (see Definitions (1)). § 70.24.380. The Board shall establish reporting requirements for STDs. § 70.24.125.

(9) STD case investigators (see Definitions (6)), with the specific authority of a physician, are authorized to perform venipuncture or skin puncture on a person for the sole purpose of withdrawing blood for use in STD tests. § 70.24.120.

(10) Persons with HIV shall also be considered a focal group for education and testing for hepatitis C, including providing voluntary hepatitis C testing at facilities providing voluntary HIV testing. § 70.54.360 (expires June 30, 2007).

Employment (1)

Insurance (1)

Social & Medical Services (3), (12)

Miscellaneous (3)

#### MISCELLANEOUS

(1) Blood and other human tissue, organ, or bone donation shall not be subject to any implied warranty under the Uniform Commercial Code (UCC) or otherwise, and no civil liability shall arise except for willful or negligent conduct with regard to the transmission of HIV (see Definitions (4)). This applies only to noncompensated donations where donor records are properly maintained and does not apply to any blood transfusion occurring before June 10, 1971. § 70.54.120. Human blood and its components are excluded from products liability actions arising under this statute. § 7.72.010.<sup>77</sup>

(2) Unfair practice claims of discrimination based on actual or perceived HIV infection shall be evaluated in the same manner as a claim of discrimination based on sensory, mental, or physical handicap. This section does not apply to health insurance transactions (see

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76. See *State v. Stark*, 832 P.2d 109 (Wash. Ct. App. 1992).

77. See *Howell v. Spokane & Inland Empire Blood Bank*, 785 P.2d 815 (Wash. 1990).

Insurance (3)) or prohibit “fair discrimination” based on actual HIV infection status when bona fide statistical differences in risk or exposure have been substantiated. § 49.60.174.

(3) No person interviewed relating to STDs (see Definitions (5), Social & Medical Services (11)) who reveals the name or names of sexual contacts shall be held liable in a civil action for revealing the information unless the information is revealed with a knowing or reckless disregard for the truth. § 70.24.022. Nothing in the chapter on control or treatment of STDs limits the rights of a subject of a test for STDs to recover damages or other relief under any applicable law. Nor shall anything in that chapter be construed to impose civil or criminal liability for disclosure of a test result for a STD in accordance with reporting requirements of the Department of Health or the Centers for Disease Control. § 70.24.084.

(4) Members of the Board of Health, local boards of health, public health officers, employees of the Department of Health and local health departments are immune from civil action for damages arising from the good faith performance of their duties as prescribed by the chapter on control or treatment of STDs, unless such performance constitutes gross negligence. § 70.24.150.

(5) Marriage license applicants must file an affidavit showing that no contagious STD is present or that the condition is known to both applicants. The applicants need not state whether one or both of them are afflicted. § 26.04.210.

(6) Advertisements of a drug or device represented to have an effect on a STD shall be deemed false unless such advertisement is disseminated only: to members of health-related professions; in scientific periodicals; or for the purpose of health education by persons without commercial interest. § 69.04.720.

(7) The law prohibiting the dissemination of drug paraphernalia does not prohibit the legal distribution of injection syringe equipment through public health and community based HIV prevention programs. § 69.50.4121.

(8) Appropriations in the amount of \$ 3,347,000 of both the fiscal year 1998 and the fiscal year 1999 of the general fund, are provided solely for the AIDS prescription drug program and HIV intervention program. The department shall operate within total appropriations. 1997 WA S.B. 6108 § 219.

(9) There is a prima facie presumption that firefighters with HIV or AIDS have an infectious disease classified as an occupational disease under §§ 51.08.140, 51.32.185.

(10) Sterilization procedures in the commercial practices of electrology and tattooing are required because of the risk of the infecting the client with HIV from the use of improperly sterilized needles and instruments. § 70.54.320.

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All citations are to “W.Va. Code” unless otherwise noted.

**DEFINITIONS**

(1) “AIDS,” “ARC,” “HIV,” and “HIV-related test” are defined at § 16-3C-1.

(2) “Cooperative group” means a formal network of facilities that collaborate on research projects and have an established National Institutes of Health-approved peer review program operating within the group. “Cooperative group” includes the AIDS clinical trial group and the community programs for clinical research in AIDS. A “clinical trial” is a study that determines whether new drugs, treatments or medical procedures are safe and effective on humans. §§ 5-16-7e, 5-16B-6b, 9-2-12a, 33-25F-1.

(3) “Communicable and reportable disease prevention and control” is one of three areas of basic public health services each local board of health must offer. Services shall include disease surveillance, case investigation and follow-up, outbreak investigation, response to epidemics, and prevention and control of HIV/AIDS. With approval of the public health board, a local health officer may perform mandatory HIV tests on persons convicted of sex-related offenses and resident within the service area. §§ 16-2-2, 16-2-11, 16-2-13.

(4) “Sexually transmitted diseases” (STDs) are declared to be infectious, contagious, communicable and dangerous to the public health. If a conflict exists between a provision of this article and a provision of article 3-c of chapter 16, the provision of article 3-c prevails. § 16-4-1.

**CRIMINAL LAW**

(1) No druggist, pharmacist or other person not a licensed physician, may prescribe, recommend, sell, compound or mix any drugs, medicines or other substances to used for the cure or alleviation of a STD (see Definitions (4)), unless: a written prescription, formula, or order signed by a licensed physician is received; or the drug has received federal food and drug administration approval for over-the-counter use. All drugstores shall be open to inspection by health officers at all times. A sale by a clerk is considered a sale by the owner or proprietor and both may be prosecuted for a misdemeanor. § 16-4-24.

(2) It is a misdemeanor to publish, deliver or distribute or cause to be published, delivered or distributed in any manner whatsoever,

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any advertisement concerning a venereal disease and calling attention to a medicine, article or preparation that may be used, or to a person or persons from whom, or an office or place at which, information, treatment or advice relating to such disease may be obtained. Any person convicted of such offense shall be fined not less than \$100 nor more than \$300, or imprisoned in the county jail not to exceed six months, or both, in the discretion of the court. This section does not prevent legitimate and legal public notices, placards, etc., issued under the state or the United States public health services. § 16-4-25.

(3) Any person violating any provision article sixteen, where no other punishment is provided, shall be punished by a fine of not less than \$10 nor more than \$100, and may be imprisoned at the discretion of the judge or justice of the peace trying the case for a period not to exceed thirty days. § 16-4-26.

Testing & Reporting (1), (6), (7), (8), (13), (17), (22), (42)

## EDUCATION

(1) The Board of Education shall require the subject of health education to be taught in all of the public schools of the state. In any of the grades six through twelve, health education shall include instruction in the prevention, transmission, and spread of AIDS (see Definitions (1)) and other STDs (see Definitions (4)). The parent or guardian of a child subject to such instruction shall be provided an opportunity to examine the course curriculum requirements and materials to be used and may exempt the child from participation by giving written notice to that effect to the school principal. § 18-2-9.

(2) Under guidelines established by the Department of Education in consultation with the Department of Health, training programs on the prevention, transmission, spread, and treatment of AIDS shall be provided as in-service training for all school personnel. Parents shall be encouraged to attend these programs. § 18-5-15d.

(3) No student of any school or institution of higher learning, public or private, may be excluded from attending or from participating in school sponsored activities on the basis of a positive HIV test or a diagnosis of AIDS. Exclusion from attendance shall be determined on a case by case basis in consultation with the individual's parents, medical provider, health authorities, school administrators or medical advisors, in accordance with policies or guidelines established by such entities. Exclusion may only be based on the student posing an unacceptable risk,

as agreed to by the Department of Health, of transmission of HIV (see Definitions (1)) to others. § 16-3C-6.

Testing & Reporting (17)

## EMPLOYMENT

(1) It is the public policy of West Virginia to provide all its citizens equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity is declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness or disability. § 5-11-2. A person at any stage of infection with HIV (see Definitions (1)), including a person who has tested positive for the antibodies to such virus but who is asymptomatic, is a person with a handicap within the meaning of subsection (m) defining “disability.” Disability is a protected category under unlawful discriminatory practice. §§ 5-11-3, 5-11-9, 5-11-10, 5-11-13.

Testing & Reporting (13)

Miscellaneous (3)

## HOUSING

Employment (1)

## INSURANCE

(1) No insurer may cancel or fail to renew an accident or sickness insurance policy on the basis of an insured’s being diagnosed or treated for AIDS (see Definitions (1)). §§ 33-15-13, 33-16-9.

(2) The testing and consent provisions provided in the AIDS-Related Medical Testing and Records Confidentiality Act (§§ 16-3C-1 to 16-3C-9) (see Testing & Reporting (3), (4)) shall not apply to testing performed by an insurer. The Commissioner of Insurance shall develop standards regarding consent for use by insurers who administers HIV (see Definitions (1)) tests. § 16-3C-2.

Testing & Reporting (16)

## RESEARCH

Definitions (2)

Testing & Reporting (5)

## SOCIAL &amp; MEDICAL SERVICES

(1) The costs of additional nonforensic procedures performed by the licensed medical facility including testing for STDs (see Definitions (4)) may not be paid from the forensic medical examination fund of the prosecuting attorneys institute. § 61-8B-16.

Definitions (3)

Education (3)

Housing (1)

Testing & Reporting (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (16), (17)

## TESTING &amp; REPORTING

(1) County and municipal health officers are required to perform mandatory HIV tests (see Definitions (1)) on persons convicted of sex-related offenses. §§ 16-2-1, 16-3C-2, 16-3C-8, 16-4-5.

(2) A dentist, physician, or the Commissioner of the Bureau of Public Health may request HIV testing for any of the following reasons: when there is cause to believe that the test could be positive; when there is cause to believe the test could provide information important in the care of the patient; or when any person voluntarily consents to testing. The requesting dentist, physician, or Commissioner of the Bureau of Public Health shall provide to the person being tested a pamphlet or show a video which provides the following information: an explanation of the procedures to be followed; an explanation that the test is voluntary and may be obtained anonymously; an explanation that consent to the test may be withdrawn at any moment prior to drawing the sample for the test and that such withdrawal of consent may be given orally, but must be given in writing if the consent was given in writing; an explanation of the nature and current knowledge of HIV and AIDS (see Definitions (1)) and the relationship between the test result and those diseases; and information about behaviors known to pose risks for transmission of HIV infection. § 16-3C-2.

(3) A person has the right to an anonymous HIV test and to provide written informed consent through a coded system with no linking of individual identity to the test request or to the results. A health care provider who does not provide anonymous testing shall refer a person seeking an anonymous test to a site which does provide anonymous testing or to any local or county health department which shall provide anonymous HIV test and counseling. § 16-3C-2.

(4) When learning of a test result, the patient shall be provided with counseling or referral for counseling for coping with the emotional consequences of learning any test result. Counseling or referral may be done by brochure or in person. § 16-3C-2.

(5) No consent for testing is required in the following cases: by the donor or recipient of a human body part, donated for the purposes specified under the Uniform Anatomical Gift Act or for transplantation, or semen, donated for artificial insemination; in a bona fide medical emergency, when the subject is unable or unwilling to grant or withhold consent, and the test results are necessary for medical diagnostic purposes to provide emergency care or treatment to a medical or emergency responder, or other person who has been significantly exposed to the source patient, except that necessary treatment may not be withheld pending HIV test results, that the test is anonymous; and for testing for research purposes 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. § 16-3C-2.

(6) The court having jurisdiction of a criminal prosecution shall order HIV testing on persons convicted of prostitution, sexual abuse, sexual assault, incest or sexual molestation. This mandatory testing shall not require consent of the subject but shall include counseling. HIV tests performed on persons convicted of such crimes shall be confidentially administered, immediately upon conviction, by a designee of the local or county health department having jurisdiction. The Commissioner of the Bureau of Public Health may designate health care providers in regional jail facilities to administer HIV tests. The court shall not release such convicted person from custody unless HIV testing and counseling have been performed. The test results shall be transmitted to the court and, after sentencing, made part of the court record. If a convicted person is assigned to the Division of Corrections, a copy of the person's test results shall go to it. The results shall be closed and confidential. If the results are negative, the court may require the test subject to submit to further testing under the Direction of the Bureau of Public Health, in accordance with the guidelines of the Centers for Disease Control (CDC). § 16-3C-2.

(7) A person charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation shall be informed by the judge or magistrate upon initial court appearance of the availability of voluntary HIV testing and counseling conducted by the Bureau of Public Health. The prosecuting attorney shall inform the victim, at the earliest stage of the proceedings, of the availability of confidential, voluntary HIV testing

and counseling conducted by the Bureau of Public Health and that it is in the victim's best interest to submit to testing and counseling. At the victim's request, the test shall be confidential. The test shall be administered in accordance with the guidelines of the CDC and pretest and post-test counseling shall be provided by the designee of the Commissioner of the Bureau of Public Health or by a local or county health department having proper jurisdiction. § 16-3C-2.

(8) The cost of mandated testing and counseling and testing for victims shall be paid by the Bureau of Public Health. The court shall order a person convicted of prostitution, sexual abuse, sexual assault, incest, or sexual molestation to pay restitution to the state for the cost of HIV testing and counseling provided the convicted person and the victim, unless the convicted person is determined to be indigent. Any funds recovered by the state as a result of an award of restitution shall be paid into the State Treasury to the credit of the "HIV Testing Fund" and used solely by the Bureau of Public Health for the purposes of facilitating the performance of HIV testing and counseling. § 16-3C-2.

(9) When the Director of the Department of Health knows or has reason to believe through medical or epidemiological information that a person has HIV infection and is or may be a danger to the public health, the Commissioner of the Bureau of Public Health may issue an order to: require the person to be examined and tested for HIV; require a person with HIV to report to a qualified physician or health worker for counseling; and direct a person with HIV to cease and desist from conduct which endangers the health of others. § 16-3C-2.

(10) Any person found to be infected with HIV shall be referred by the health care provider performing the counseling or testing for appropriate medical care and support services. The local or county health departments providing counseling or testing shall not be financially responsible for medical care and support services received as a result of such referral. § 16-3C-2.

(11) The Commissioner of the Bureau of Public Health may require an HIV test for the protection of a person who was possibly exposed to HIV infected blood or other body fluids as a result of receiving or rendering emergency medical aid or who was possibly exposed as a funeral director. § 16-3C-2.

(12) Information pertaining to AIDS and to the availability of HIV testing and counseling shall be issued to all applicants for a marriage license. Informational brochures shall be furnished by the Bureau of Public Health. A notation that the applicant has received such

information shall be placed on file with the marriage license on forms provided by the Bureau. § 16-3C-2.

(13) No person may disclose or be compelled to disclose the identity of any person on whom an HIV test is performed, or the results of such a test, except to the following persons: the test subject; victims of sex related offenses; any person who secures a specific release of test results from the test subject; a funeral director or an authorized agent or employee of a health facility who handles or processes body fluids or tissues and has a need to know, provided that such funeral director, agent, or employee maintain the confidentiality of such information; medical personnel providing care to the test subject when knowledge of the test results is necessary to provide appropriate care or treatment; the Bureau of Public Health or the CDC; a health facility which procures, processes, distributes or uses human body parts, semen, blood, or blood products; health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring or review so long as the identity of the test subjects remains anonymous; and persons allowed access to records by a court order. No person to whom HIV test results have been disclosed may further reveal the results. Except when test results are revealed to the test subject, the Bureau of Public Health, or the CDC, disclosure shall be accompanied by a written statement prohibiting any further disclosure. The use of test results for to inform a spouse, partner or contact, or persons who have shared needles that they may be at risk for HIV is permitted. The name of the test subject is to remain anonymous. Contacts or identified partners may be tested anonymously at the Bureau of Public Health's test site or, at their own expense, by a health care provider of their choice. No cause of action shall arise from any contact or partner notification. There is no duty on the part of a physician or health care provider to notify the spouse or other sexual partner of, or persons who have shared needles with, an individual infected with HIV, and no cause of action shall arise for any failure to make such notification. § 16-3C-3.

(14) If the person whose consent is necessary for HIV testing or authorization for the release of test results is incapable of giving such consent or authorization because of mental incapacity or incompetency, consent or authorization shall be obtained from another person in the following order of preference: a person holding durable power of attorney for health care decisions; the person's duly appointed legal guardian; or the person's next of kin. A person's inability to consent shall not result in the prolonged delay or denial of necessary medical treatment.

[WEST VIRGINIA]

Information required to be given to the patient shall be provided to the person giving substituted consent. § 16-3C-4.

(15) Any person aggrieved by a reckless, intentional, or malicious violation of the AIDS-Related Medical Testing and Records Confidentiality Act (§§ 16-3C-1 to 16-3C-9) has a right of action in the circuit court for damages, reasonable attorney's fees, and such other relief that the court may consider appropriate. The action must be commenced within five years after the violation occurs. Civil liability shall not be imposed for disclosure of HIV test results in accordance with reporting guidelines of the Department of Health or the CDC. § 16-3C-5.

(16) A positive HIV test result or the diagnosis of AIDS may not constitute a basis on which to deny any individual access to quality health care. This subsection does not apply to insurance. § 16-3C-6.

(17) The Commissioner of the Department of Corrections shall conduct a study of penal institutions to determine whether it would be prudent and reasonable to provide or require testing, educational classes, or counseling pertaining to AIDS and HIV for each inmate. § 16-3C-7.

(18) The Bureau of Public Health shall implement and enforce the provisions of the AIDS-Related Medical Testing and Records Confidentiality Act and shall adopt rules necessary to further implement the Act. The Bureau of Public Health shall promulgate rules to assure adequate quality control for all laboratories conducting HIV tests. § 16-3C-8.

(19) All municipal and county health officers, in their investigations, shall: use every means available to ascertain the existence of all cases of STD within their jurisdictions, and when necessary, have all cases treated, if they are not already under treatment; ascertain the sources and transmission of the infection; and institute measures for the protection of other persons from infection by the infected person, or from persons reasonably suspected of being so infected, and for the protection of the public health at all times. A municipal health officer may designate any member of the city police or health department to make any investigation required by the provisions of this section. A county health officer may designate any discreet person to make any investigation required by the provisions of this section. Any person conducting an investigation has all the authority necessary for the purpose, the same as the health officer. § 16-4-2.

(20) In order to carry out the provisions of § 16-4-2, any health officer may, with the consent from the proper authorities, establish or

provide one or more places for detention and quarantine of such persons within the purview of this article. § 16-4-3.

(21) Prima facie grounds and reasons for suspecting a person is infected with a STD are being a person convicted on any charge growing out of sexual behavior; being a person reported by a physician as infected with a STD and having failed to return for treatment; being a person designated in a STD report as having sexual exposure to the infected person reported. § 16-4-4.

(22) Any person who has been tried or convicted of a sex crime shall not be released from custody until the local health officer having proper jurisdiction has been notified and has had time to make all necessary tests and examinations to ascertain whether such person is infected with a venereal disease. § 16-4-5.

(23) Every practicing physician or other person who makes a diagnosis in or treats a case of STD shall make two reports of the case for the local municipal health officer and the director of the health of the state. The report shall state the address, age, sex, color, race, marital state, occupation, date of the onset of the disease, anatomical site of the infection, date and type of treatment, and persons having a sexual exposure to the infected person reported. § 16-4-6.

(24) Any physician or other person required to make reports of a venereal disease who fails or refuses to make any such reports shall be guilty of a misdemeanor. A second conviction of a physician for failure to comply shall be sufficient ground to revoke the license of such physician. Any person suffering with a venereal disease who gives false information, such as name or address, shall be guilty of a misdemeanor. § 16-4-7.

(25) It shall be the duty of the local health officers and directors of the bureau of venereal diseases to furnish report blanks to physicians or other persons who need them. § 16-4-8.

(26) Every physician or other person who examines or treats a person having a STD shall instruct the person in preventing the spread of the disease and inform him or her of the necessity of treatment. Any person found infected shall follow the directions given and shall continue treatment until discharged by the physician or other person treating him or her. Any infected person who fails to return for further treatment without lawful excuse is guilty of a misdemeanor and shall be punished as provided in § 16-4-26. After ten days, if an infected patient has failed to return for treatment, the physician or other person responsible shall make a report to the local health officer, who shall at once make an



investigation and take any steps necessary to protect the public health. § 16-4-9.

(27) Any licensed physician may examine, diagnose, or treat any minor with his or her consent for any venereal disease without the knowledge or consent of the minor's parent or guardian. No civil or criminal liability in connection therewith except for negligence or willful injury shall be incurred by the physician. § 16-4-10.

(28) When any attending physician or other person knows or has good reasons to believe that any person having a STD is exposing others to infection, he or she must at once notify the local health officer, who must at once cause an investigation and do whatever is necessary to protect the public health. § 16-4-11.

(29) When a venereal disease report shows an infected person is not under treatment, the local health officer shall at once investigate and take such action as is necessary to protect the public health, and may arrest, detain, and quarantine such person. § 16-4-12.

(30) When any venereal disease report showing any hotel, boardinghouse, rooming house, or other house, place or thing is the source of infection of a venereal disease, the local health officer shall at once notify the owner, proprietor or person operating, running or managing said place; if the place is reputed to be a house or place of prostitution, then proprietor, manager or operator and all the inmates therein shall be apprehended and dealt with the same as others are arrested, detained, examined, quarantined, and treated, if found infected with a venereal disease. § 16-4-13.

(31) If any person is reasonably suspected of being infected with a venereal disease and is about to conduct himself or herself so as to infect others, then the local health officer shall at once issue a warrant or order for custody. § 16-4-14.

(32) The form and execution of a warrant for an infected person is the same in manner as other papers of like character and kind. § 16-4-15.

(33) Infected person detained for such reason shall not be released from custody until the diseases are past infectious stages. Upon release, the infected person shall sign an agreement to continue treatment and perform no act exposing others to the disease. §§ 16-4-16, 16-4-17.

(34) Any resident may at any time report to a health officer and voluntarily submit himself to all tests and examination as are necessary to ascertain infection with a venereal disease. If the tests show the person to be infected, he may elect to take treatment from a private

physician but must first sign the agreement required to be signed by those about to be released from quarantine or detention. § 16-4-19.

(35) It shall be unlawful for any person suffering with an infectious venereal disease to knowingly infect or otherwise perform any act which exposes another person to such disease; no physician or other person shall give any certificate showing a person to be free from venereal disease. § 16-4-20.

(36) In establishing quarantine for a venereal disease, the health officer may confine any person infected, or reasonably suspected of infection, to the house or premises in which such person lives, or he may require such person to be quarantined in any other place, hospital or institution in his jurisdiction that may have been provided. § 16-4-21.

(37) It shall be the duty of every physician or other person who proposes to treat or does treat venereal diseases herein, to file with the director of the Bureau of Venereal Diseases, a statement showing something of his preparation, experience and facilities in and for the treatment of such diseases. If the physician fails to provide such statement, he shall be guilty of a misdemeanor. § 16-4-22.

(38) All costs and expenses touching the care, custody, detention, and treatment of persons coming within these article provisions shall be a general charge against the municipalities and counties, unless special arrangements have been made to defray such expenses. § 16-4-23.

(39) The local health officer, in exercising any of the powers or authority vested in him by §§ 16-4-9 to 16-4-12, 16-4-16, 16-4-21 may cause any patient, minor or other person to be delivered into the custody of the Department of Health for detention and treatment. § 16-4-27.

(40) The Department of Health is authorized and empowered to establish and provide a suitable place or places in the state for the detention of persons found to be suffering from any of the venereal diseases defined in § 16-4-1 and to supervise, use and maintain such place or places in a manner deemed necessary or desirable in carrying out the provisions of this article. § 16-4-28.

(41) Persons shall be accepted and received into the custody of the Department of Health at such place or places provided for in § 16-4-28 persons found upon investigation and examination to be suffering from venereal diseases for the purpose of detention and necessary medical attention and treatment until found to be and pronounced cured of the venereal disease or diseases from which they are suffering. § 16-4-29.

(42) The Department of Health is vested with and given continuous jurisdiction, authority and control over all persons received at and detained in places provided for until such persons are pronounced entirely free from and cured of any venereal disease or symptoms of such disease existing. § 16-4-30.

(43) Other provisions pertaining to the furnishing of health care records to patients shall not be construed to apply to health care records that are governed by the AIDS-Related Testing and Records Confidentiality Act. § 16-29-1.

(44) The Board of Health has issued regulations pertaining to AIDS-related medical testing and confidentiality. § 64-5-2.

Education (3)

Insurance (2)

#### MISCELLANEOUS

(1) Tattoo artists who are experiencing diarrhea, vomiting, fever, rash, productive cough, jaundice, draining or open skin infections, such as boils, which could be indicative of a more serious condition, such as HIV or AIDS (see Definitions (1)), shall refrain from tattooing activities until they are no longer experiencing or exhibiting those symptoms. § 16-38-3.

(2) In dealing with licensed acupuncturists, the board may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee: refuses, withholds from, denies or discriminates against an individual with regard to the provision of professional services because the individual is HIV positive, in conformity with standards established for treatment by physicians, dentists, and other licensed health care professionals in cases of this nature. § 30-36-18.

(3) It shall be unlawful for any person having a venereal disease in an infectious state to be engaged as a barber, in any capacity in any bakery, or to be employed at any hotel, restaurant, eating house, lunch counter, or other public place, as a cook, or cook's helper, or as a waiter, or in any other capacity whatever, where he may come in contact with food about to served. § 16-4-18.

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

**DEFINITIONS**

(1) “Affected person,” “emergency medical technician,” “health care provider,” “home health agency,” “informed consent for testing or disclosure,” “informed consent for testing or disclosure form,” “relative,” and “universal precautions,” as they pertain to testing and reporting, are defined at § 252.15.

(2) “AIDS” is defined at § 49.686.

(3) “Autologous transfusion” is defined at § 252.13.

(4) “Board,” “eligible person,” and “plan administrator” are defined at § 149.10.

(5) “Case management services” is defined at § 49.45..

(6) “Correctional officer,” “fire fighter,” and “health care provider,” as they pertain to discrimination, are defined at § 252.14.

(7) “Disability insurance policy” is defined at § 632.895.

(8) “Employer” is defined at § 103.15.

(9) “First responder,” “peace officer,” “state patrol officer,” and “validated test result” are defined at § 252.01.

(10) “Group health plan,” and “residence” are defined at §§ 252.16, 215.17.

(11) “Health care professional,” and “significantly exposed” are defined at §§ 252.15, 938.296, 968.38.

(12) “Health care service,” within the children’s code, refers to family planning, pregnancy testing, obstetrical health care, or diagnosis and treatment for a sexually transmitted disease. § 48.981.

(13) “HIV” is defined at §§ 49.686, 103.15, 149.10. 252.01, 631.90, 901.05, 968.38.

(14) “HIV infection” is defined at §§ 49.686, 103.15, 631.93, 632.895.

(15) “Medical leave” is defined at § 103.10, 252.17.

(16) “Sexually transmitted disease” (STD) is defined at § 252.11.

(17) “Viatical settlement,” “viatical settlement,” “viatical settlement broker,” “viatical settlement contract,” “viatical settlement provider,” and “catastrophic or life-threatening illness or condition,” as it relates to viatical settlement contracts, are defined at § 632.68.

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## CRIMINAL LAW

(1) Whoever intentionally discloses the results of an HIV (see Definitions (13)) blood test without proper authorization and thereby causes bodily harm or psychological harm to the subject may be fined not more than \$10,000 or imprisoned not more than nine months or both. § 252.15.

(2) The maximum term of imprisonment for a serious sex crime may be increased by not more than five years if a person who knows he or she has a STD (see Definitions (16)), including HIV or AIDS (see Definitions (2)), significantly exposes (see Definitions (11)) the victim of the serious sex crime to the disease. §§ 939.622, 973.017. The district attorney may apply for an order from the circuit court to administer an HIV test to the defendant if there is probable cause to believe that the defendant significantly exposed the alleged victim. § 968.38.

Social & Medical Services (3)

Testing & Reporting (1), (7), (16), (20), (21)

## EDUCATION

(1) A critical health problems education program, which shall cover STDs (see Definitions (16)), including AIDS (see Definitions (2)), is established in the Department of Public Instruction. § 115.35.

(2) Each school board shall provide an instructional program designed to give pupils knowledge of physiology and hygiene and shall cover STDs. The program shall be offered in every high school. No pupil may be required to take instruction in these subjects if the pupil's parent files a written objection with the teacher. § 118.01.

(3) The human growth instruction program provided by a school board in grades kindergarten through twelve may include instruction in HIV (see Definitions (13)) and AIDS. Such instruction shall be appropriate to each grade level. No pupil may be required to take instruction in human growth and development, or in specific subjects in human growth and development if the pupil's parents file with the teacher or school principle a written request that the pupil be exempted. § 118.019.

(4) Funds shall be provided for a statewide public education campaign promoting public awareness of the risk of contracting AIDS and protective measures against AIDS, including: development and distribution of information and newsletters on STDs through family

planning clinics, physicians' offices, and clinics; and public presentations or other releases of information to newspapers, periodicals, radio, television, and other public information resources. The information shall be targeted at individuals whose behavior puts them at risk of contracting AIDS and shall encompass the following topics: HIV and AIDS; means of identifying whether an individual may be at risk of contracting AIDS; protective measures against AIDS; and locations for procuring additional information or for obtaining testing services. § 252.12.

(5) Any pupil record concerning HIV testing shall be subject to the statutory restrictions (see Testing & Reporting (16)) on the use of results of HIV testing. § 118.125.<sup>78</sup>

#### EMPLOYMENT

(1) No public employer (see Definitions (8)) may solicit or require an HIV (see Definitions (13)) test as a condition of employment or allow the terms, conditions, or privileges, terms, and conditions of employment to be affected by the fact that an employee obtains an HIV test, unless the state epidemiologist determines and the Secretary of Health and Family Services declares that individuals who have HIV infection may, through employment, pose a significant risk of transmitting HIV to other individuals. Any agreement by an employer and an employee or prospective employee offering employment or any pay or benefit to an employee in return for taking a test for the presence of HIV is prohibited. § 103.15.<sup>79</sup>

Insurance (1)

Testing & Reporting (13), (16)

#### HOUSING

(1) The fact that a person with AIDS (see Definitions (2)) or a person who is HIV positive (see Definitions (13)) resides in a community living arrangement with a capacity for eight or fewer persons may not be used to assert or prove that the community living arrangement poses a threat to the health, safety, or welfare of the residents of the city,

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78. See *Syring v. Tucker*, 498 N.W.2d 370 (Wis. 1993), *recons. denied*, 505 N.W.2d 142 (Wis. 1993).

79. *Id.* (general prohibition of AIDS testing in employment does not imply legislative disapproval of use of equitable power to compel defendant to submit to an AIDS test); *Racine Unified School Dist. v. Labor & Industry Rev. Comm.*, 476 N.W.2d 707 (Wis. 1991) (whether this section was enacted before or after enactment of policy excluding employees with AIDS or ARC from work is irrelevant to school board's liability).

municipality, or town where such community is located. §§ 59.69, 60.63, 62.23.

Insurance (1)

Testing & Reporting (2), (11), (16)

## INSURANCE

(1) An individual is eligible to receive a subsidy to pay for health insurance if the Department of Health (Department) determines that the individual has a residence (see Definitions (10)) in the state and a family income that does not exceed 200% of the federal poverty line. The individual must submit to the Department a certification from a physician stating that the individual has HIV (see Definitions (13)) and that, because of an illness or medical condition arising from or related to HIV infection or because of medical treatment or supervision for such illness or medical condition, the individual is on unpaid medical leave (see Definitions (15)) from employment. In addition, the individual is covered under a group health plan (see Definitions (10)) through his or her employment, and pays part or all of the premium for that coverage, including any premium for coverage of the individual's spouse and dependents. The individual must authorize the Department to contact the individual's former employer or the administrator of the group health plan under which the individual is covered to verify the individual's medical leave, group health plan coverage and the premium and other conditions of coverage. The individual must also authorize the Department to make any necessary disclosure to the individual's employer or the administrator of the group health plan under which the individual is covered regarding the individual's HIV status. The individual must not be covered by a group or individual health plan other than the group health plan under which the individual is eligible for continuation coverage or a health plan which offers a substantial reduction in covered health care services compared to the group plan offering continuing coverage. The individual must also not be eligible for Medicare or have escrowed an amount sufficient to pay the individual's required contribution to his or her premium payments. If an individual satisfies these requirements, the Department shall pay the full amount of each premium payment for continuation coverage. The Department may not refuse to pay the full amount of each premium payment because the continuation coverage that is available to the individual also covers the individual's spouse and dependents. The Department shall cease payments when the individual's continuation coverage ceases, when the individual no longer satisfies the requirements,

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or upon the expiration of twenty-nine months after the unpaid medical leave began, whichever occurs first. The obligation of the Department to make such payments is subject to the availability of funds. If an individual who satisfies the requirements has an amount in escrow that is insufficient to pay the individual's required contribution to premium payments, the amount paid by the Department shall not exceed the individual's required contribution for the duration of the payments minus the amount in escrow. § 252.17.

(2) An individual is eligible to receive a subsidy to pay for health insurance if the Department determines that the individual has a residence in the state and a family income that does not exceed 300% of the federal poverty line. The individual must submit to the Department a certification from a physician stating that the individual has HIV and that, because of an illness or medical condition arising from or related to HIV infection the individual's employment has been terminated or his or her hours have been reduced. In addition, the individual has, or is eligible for, health insurance coverage under a group health plan or an individual health policy. The individual must authorize the Department to contact the individual's former employer or health insurer to verify the individual's eligibility for group health plan coverage and the premium and other conditions of coverage, and to verify that the individual's employment has been terminated or his or her hours have been reduced. The individual must also authorize the Department to make any necessary disclosure to the individual's employer or health insurer regarding the individual's HIV status. If an individual satisfies these requirements, the Department shall pay the full amount of each premium payment for the individual's health insurance coverage under the group health plan or individual health policy on or after the date on which the individual becomes eligible for a subsidy. The Department shall pay the full amount of each premium payment regardless of whether the individual's health insurance coverage includes coverage of the individual's dependents. The Department shall cease payments when the individual's continuation coverage ceases or when the individual no longer satisfies the requirements, whichever occurs first. The obligation of the Department to make such payments is subject to the availability of funds. The Department may not make payments for Medicare premiums. For an individual who is eligible and who has a family income that exceeds 200%, but does not exceed 300% of the federal poverty line, the Department shall pay a portion of the amount of each premium payment for the individual's health insurance coverage. The Department shall pay

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the portion of the premiums regardless of whether the individual's health insurance coverage includes coverage of the individual's dependents. § 252.16.

(3) The Board (see Definitions (4)) or plan administrator (see Definitions (14)) shall certify that a person who is covered by Medicare because he or she is disabled and submits evidence that he or she is HIV positive is eligible for the mandatory health insurance risk-sharing plan. The Board or administering carrier shall certify an HIV positive person if an insurance intermediary or the administering carrier issues any of the following: a notice of rejection, cancellation, reduction, or limitation of coverage; a notice of increase in premium exceeding the old premium in effect by more than 50% that only applies to certain insureds; or a notice of premium for a policy not yet in effect from two or more insureds which exceeds by more than 50% the premium applicable to a person considered a standard risk for the same type of coverage. The Board or plan administrator may not certify a person as eligible under circumstances requiring notice, if the required notices were issued by an insurance intermediary who is not acting as an administrator. Persons for whom deductible or coinsurance amounts are paid or reimbursed for the cost of drugs for the treatment of HIV or AIDS are not ineligible for coverage under the plan by reasons of such payments or reimbursements. § 149.12.

(4) An accident or health insurance policy may not contain exclusions or limitations, including deductibles or co-payments, for coverage of the treatment of HIV infection, unless the exclusions or limitations apply generally to other illnesses or medical conditions covered by the policy. A life insurance policy may not deny or limit benefits solely because the insured's death is caused, directly or indirectly, by HIV infection or any illness or medical condition arising from or related to HIV infection. § 631.93. These provisions prohibiting limitations or exclusions on coverage for treatment of HIV, apply to managed care, limited service health organizations, and preferred provider plans. Managed care plans are also subject to the provisions pertaining to prescription plan coverage for drugs used to treat HIV and related illnesses and infections. § 609.81.

(5) Every disability insurance policy (see Definitions (7)) that is issued or renewed and that provides coverage of prescription medication shall provide coverage for each drug that: is prescribed by an insured's physician for the treatment of HIV infection or a related illness or infection; is approved by the Food and Drug Administration for the

treatment of HIV infection or a related illness or infection, including approved investigational new drugs for the treatment of HIV or a related illness or infection that is in or has completed a phase three clinical investigation; and, for investigational new drugs that is prescribed and administered according to approved treatment protocol. This provision does not apply to disability insurance policies that cover only certain specified diseases, health care plans offered by limited service health organizations, and Medicare replacement policies or Medicare supplement policies. § 632.895.

(6) An insurer may not: require or request, directly or indirectly, any individual to reveal whether the individual has obtained an HIV test or the results of the test, if one was obtained by the individual; condition the provision of insurance coverage on whether an individual has obtained an HIV test or the results of the test, if obtained by the individual; or consider in the determination of rates or coverage provided to an individual whether the individual has obtained an HIV test or the results of the test, if obtained by the individual. These prohibitions do not apply to any test used for underwriting an individual life, accident or health insurance policies that the state epidemiologist finds medically significant and sufficiently reliable for the testing of HIV and that the commissioner finds and designates as sufficiently reliable in the use of underwriting and individual life, accident or health insurance policies. Use of any HIV test to discriminate is prohibited. § 631.90.

(7) If an insurance policy holder or certificate holder who desires to enter into a viatical settlement contract (see Definitions (17)) is the person with a catastrophic or life-threatening illness or condition, including but not limited to AIDS, whose life is insured under the policy or certificate, the viatical settlement provider (see Definitions (17)) shall obtain all of the following before entering into the contract: a written statement from the person's attending physician that the person is of sound mind; a written statement signed by the person and witnessed by two disinterested adults, in which the person consents to the viatical settlement contract, acknowledges his or her catastrophic or life-threatening illness or condition, releases his or her medical records to the viatical settlement provider, represents that he or she understands the viatical settlement contract, the benefits under the life insurance policy or certificate and the relationship between the viatical settlement contract and the life insurance policy or certificate, acknowledges that he or she is entering into the viatical settlement contract freely and voluntarily,

affirms that he or she has received a recommendation from a viatical settlement provider or a viatical settlement or other entity. § 632.68.

## RESEARCH

Testing & Reporting (9), (11), (16)

## SOCIAL & MEDICAL SERVICES

(1) On request, the Department of Health shall provide free information and instructions concerning STDs (see Definitions (16)) to state residents. § 252.11.

(2) Funds shall be distributed for the provision of services to individuals with or at risk of contracting AIDS (see Definitions (2)). Such funds shall be directed to partner notification and referral, grants to local projects, information networks, HIV (see Definitions (13)) seroprevalence studies, grants for targeted populations and intervention services, and contracts for counseling and laboratory testing services. § 252.12.

(3) No health care provider, peace officer (see Definitions (9)), fire fighter (see Definitions (6)), correctional officer (see Definitions (6)), state patrol officer (see Definitions (9)), jailer, home health agency, inpatient health care facility, or person who has access to a validated test result may do any of the following to an individual who has AIDS or tests positive for HIV solely because of the HIV infection or an illness or medical condition that is caused by, arises from, or is related to HIV: refuse to treat or provide services to the individual; provide services to the individual at a standard lower than that provided to other individuals with like medical needs; isolate the individual, unless medically necessary; or subject the individual to indignity, including humiliating, degrading, or abusive treatment. A health care provider, home health agency or inpatient health care facility that tests an individual for HIV infection (see Definitions (14)) shall provide counseling about HIV and referral for appropriate health care and support services as necessary. A health care provider, home health agency or inpatient health care facility that treats an individual who has an HIV infection or AIDS shall develop and follow procedures that shall ensure continuity of care for the individual in the event that his or her condition exceeds the scope of licensure or certification of the provider, agency or facility. Civil damages are available for violations of this provision. § 252.14.

(4) Funds shall be distributed to reimburse the cost of AZT, pentamidine, and any drug approved for reimbursement for an eligible individual who has an HIV infection. § 49.686.

(5) The Department of Health and Social Services may provide a special payment method under the medical assistance program for a facility that treats persons diagnosed with HIV or AIDS. §§ 49.45, 49.46.

(6) A private, nonprofit agency that is a certified case management provider may elect to provide case management services (see Definitions (5)) to medical assistance beneficiaries who have HIV infection. The amount of allowable charges for those services under the medical assistance program that is not provided by the federal government shall be paid from state appropriations. § 49.45

Education (4)

Insurance (1), (4)

Testing & Reporting (4), (5), (6), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19)

#### TESTING & REPORTING

(1) In a delinquency proceeding or in a proceeding for a juvenile in need of protection or services, in which a juvenile is alleged to have committed a sexual assault, sexual assault of a child, repeated acts of sexual assault on the same child, sexual exploitation of a child, or incest with a child, the district attorney or corporation counsel shall apply to the court for an order to submit to HIV (see Definitions (13)) or STD (see Definitions (16)) testing and to disclose the results of that test if the victim requests the order and if the district attorney or corporation counsel has probable cause to believe that the juvenile has significantly exposed (see Definitions (11)) the victim. Probable cause is not required if the juvenile is adjudicated delinquent, is found to be in need of protection of services or is found not responsible by reason of mental disease or defect. The district attorney or corporation counsel may apply for the order at any of the following times: at or after the plea hearing and before a dispositional order is entered; at any time after the juvenile is adjudicated delinquent, or found to be in need of protection or services; at any time after the juvenile is not found responsible by reason of mental disease or defect; or if the court determines that the juvenile is not competent to proceed and has suspended proceedings on the petition, at any time after the determination that the juvenile is not competent to proceed. On receipt of an application for an order, the court shall set a time for a hearing. If the juvenile is

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found incompetent, the hearing may only be held if the court determines that the probable cause finding can be fairly made without the personal participation of the juvenile. If, after hearing, the court finds probable cause to believe that the juvenile has significantly exposed the victim or alleged victim, the court shall order the juvenile to submit to an HIV or STD test. The court shall require the health care professional (see Definitions (11)) who performs the test to refrain from making the test results part of the juvenile's permanent medical record and to disclose the results to any of the following people: the parent, guardian, or legal custodian of the juvenile; the victim or the alleged victim, if the victim or alleged victim is an adult; the parent, guardian, or legal custodian of the victim or alleged victim, if the victim or alleged victim is an adult; the health care professional that provides care for the juvenile, upon request by the parent or guardian of the juvenile; and the health care professional who cares for the victim or alleged victim. The court may order the county to pay for the cost of the tests. § 938.296. Each victim of a juvenile's act shall receive timely notice of any testing initiated under this provision and the results of such testing. § 938.346.

(2) At the time of placement of a child in a foster home, treatment foster home, group home, or child care institution or, if the information is not available on placement, as soon as possible after the date on which the agency receive that information, but not more than two working days thereafter, the agency that placed or arranged for the placement of the child shall provide the foster parent, treatment foster parent, or operator of the group home or child care institution with the HIV test results, including results in a court report or permanency plan, and the foster parent or operator of the group home or child care institution shall be notified of the confidentiality requirements for such information. At the time of placement of a juvenile in a foster home, treatment foster home, group home or child caring institution, if the information is not available at that time, as soon as possible after the date on which the court report or permanency plan has been submitted, but not later than seven days after that date, the agency responsible for preparing the child's permanency plan shall provide to the foster parent, treatment foster parent or operator of the group home or child caring institution information contained in the court report or permanency plan relating to findings or opinions of the court or agency that prepared the report or plan. § 48.371. This provision also applies to juveniles placed in secured correctional facilities. § 938.371.

(3) The Department of Commerce shall, after consultation with the Department of Health and Family Services, develop a report form to document significant exposure to blood or body fluids for use by a person who may have been significantly exposed, stating that it is a violation of law to reveal to anyone else the identity of the person who is the subject of the test result being disclosed. § 101.02.

(4) A physician or other health care officer called to attend a person infected with any form of STD shall report the disease to the local health officer and to the Department of Health (Department) in the manner directed by the Department on forms provided by the Department. § 252.11.

(5) A physician may treat, diagnose, or examine a minor for a STD without obtaining the consent of the minor's parent or guardian. The physician shall incur no civil liability solely because of lack of consent by the minor's parent or guardian. § 252.11.

(6) An officer of the Department or a local health officer shall investigate any reported or reasonably suspected case of a STD or an actual or potential contact of a reasonably suspected case of a STD for which no appropriate treatment is being administered. If, following a request by the Department or a local health officer, a person reasonably suspected of being infected with a STD refuses or neglects examination or treatment by a physician, an officer of the Department or a local health officer may proceed to have the person committed for examination, treatment, or observation. If a person infected with a STD ceases or refuses treatment before reaching a noncommunicable stage, the physician shall notify the Department, which shall take steps to have the person committed for treatment or observation. Any court may commit a person infected with a STD to any institution or may require the person to undergo examination, treatment, or observation. A health care professional acting under a court order may subject an individual to a STD test or a series of STD tests without first obtaining informed consent. No sample used for performance of such test may disclose the name of the subject. Reports, examinations, inspections, and all records concerning STDs are confidential unless necessary for the preservation of public health. If a physician reports to the Department a case of a person with a STD who ceases or refuses treatment necessary to render the person noncontagious, information regarding the presence and treatment of the disease is not privileged when the patient or physician testifies to the facts before a court. § 252.11.

(7) All records concerning STDs are confidential and not open to public inspection. Such records shall not be divulged except as necessary for the preservation of the public health or in the course of a legal proceeding concerning the commission of a sex crime by a juvenile or an adult or in a commitment proceeding. § 252.11.

(8) The State Laboratory of Hygiene shall examine specimens for the diagnosis of STDs for any physician or local health officer in the state and shall report the positive results of the examinations to the local health officer and to the Department with the name of the physician to whom the information was reported. § 252.11.

(9) Any blood bank, blood center, or plasma center in this state that purchases or receives whole blood, blood plasma, a blood product, or a blood derivative shall, prior to its distribution or use and with informed consent, subject the blood, plasma, product, or derivative to an HIV test or a series of HIV tests. If the blood product has already undergone previous testing, the blood bank, blood center, or plasma center that purchases or receives it need not test it again. The state epidemiologist shall make separate findings for an HIV test on blood products and for disclosure of test results to the subject of the test. If the blood product tests positive, it shall not be distributed or used except for research. If a medical emergency exists, and tested blood products cannot be obtained, the testing requirements shall not apply. Blood products that have been voluntarily donated for autologous transfusion (see Definitions (3)) may be used by the donor directly, but no other person may use the blood products unless they have been tested for HIV and have yielded a negative result. § 252.13. A health care provider (see Definitions (1)), blood bank, blood center, or plasma center that obtains a specimen of body fluids or tissues from a person for the purpose of HIV testing shall obtain informed consent for testing and disclosure (see Definitions (1)) from the subject, maintain a record of the consent received, and maintain a record of the test results obtained, which shall not reveal the identity of the test subject. A health care provider, blood bank, blood center, or plasma center that subjects a person to an HIV test shall, in instances where consent is required, provide the potential test subject with an informed consent form for testing or disclosure which shall contain the name of the potential test subject and a statement of explanation that the test results may be disclosed as permitted under state law. The form shall contain spaces in which to enter the following information: the signature of the potential test subject or, if the test subject has been found to be incapacitated and has issued a power of attorney, the signature of the

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potential test subject's health care agent; the name of a person to whom the potential test subject authorizes disclosure of test results; the date on which the consent to disclosure is signed; and the time period during which the consent to disclosure is effective. A person who receives an HIV test or the person's health care agent may authorize in writing a health care provider, blood bank, blood center, or plasma center to disclose the person's test results to anyone at any time subsequent to providing informed consent for disclosure, and a record of this consent shall be maintained by the health care provider, blood bank, blood center, or plasma center. § 252.15.

(10) A health care provider, home health agency (see Definitions (2)), or inpatient health care facility that tests an individual for HIV shall provide counseling about HIV and referral for appropriate health care and support services and shall develop and follow procedures that ensure continuity of care for the individual in the event that the individual's condition exceeds the scope of licensure or certification of the provider, agency, or facility. § 252.14.

(11) No health care provider, blood bank, blood center, or plasma center may subject a person to an HIV test unless the test subject first provides informed consent for testing or disclosure (see Definitions (1)). Consent to testing is not required for the following: for testing on a donation of a human body part or human tissue; in a medical emergency; for research purposes if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved; on a resident of a center for the developmentally disabled or a mental health institute when the medical director determines that the conduct of a resident poses a significant risk of transmitting HIV to another resident; for an individual who has been adjudicated incompetent or is under fourteen years of age or is unable to give consent because the individual is unable to communicate due to a medical condition and the health care provider obtains consent for the testing from the individual's parent, guardian, closest living relative, or a person with whom the individual has a meaningful social and emotional relationship if the individual to be tested is not a minor or incompetent; or under court order. § 252.15.

(12) A health care provider who procures, processes, distributes, or uses a donated human body part or donated human tissue shall, without obtaining consent to the testing, test the donation for HIV. If the validated test result (see Definitions (9), Testing & Reporting (19)) is positive, the donation may not be used. In a medical emergency, where



a tested human body part or human tissue is unavailable, the testing requirement does not apply. § 252.15.

(13) An emergency medical technician (see Definitions (1)), first responder (see Definitions (9)), fire fighter (see Definitions (6)), peace officer (see Definitions (9)), correctional officer (see Definitions (6)) or employee, state patrol officer (see Definitions (9)), jailer, or health care provider who, during the course of performing the duties of their job or providing care or services to an individual, is significantly exposed to the blood or body fluids of the individual, may subject the individual's blood to an HIV test or series of HIV tests and may receive disclosure of the test results if all of the following apply: the exposed person used universal precautions (see Definitions (1)) against significant exposure at the time of the exposure unless there was an emergency; a physician certifies on a report form developed by the Department of Development that the person has been significantly exposed; the exposed person submits to an HIV test as soon as it is feasible or within a time period established by the Department of Health after consulting Centers for Disease Control or federal public health service guidelines, whichever is earlier; the test is performed on blood that is drawn for a purpose other than HIV testing or, if such blood is unavailable, on blood that the circuit court has ordered to be tested; the individual, if capable of consenting, has been given an opportunity to consent but has not consented; and the individual has been informed that the individual's blood may be tested for the presence of HIV, that the results may be disclosed to no one without the individual's consent, except to the exposed person, who shall not disclose the identity of the individual tested except in order to have the test performed, and that a record of the test results may be kept only if it does not reveal the individual's identity. Upon receipt of the request and certification from an exposed person, the district attorney shall apply to the circuit court to order the individual to submit to a test or series of tests and to order disclosure of the test results to the exposed person. The court shall set a time for the hearing within twenty days after receipt of such request. The court shall give notice to the district attorney and the person to be tested seventy-two hours prior to the hearing and the individual may have counsel who can examine and cross-examine witnesses. If the court approves the testing, the court shall order the health care professional who performs the tests to disclose the results to the exposed person and his or her health care professional, but not to the individual tested. No sample used for laboratory test purposes may disclose the name of the test subject. The court is not required to order the individual to submit to

testing if the court finds substantial reasons relating to the life or health of the individual not to do so. § 252.15.<sup>80</sup>

(14) A health care provider who procures, processes, distributes or uses donated human sperm shall, prior to the distribution or use and with the donor's informed consent, test the proposed donor for the presence of HIV. The health care provider shall test the sperm donor initially and, if the initial test result is negative, shall perform a second test not less than 180 days after the date of procurement of the sperm. No person may use the donated sperm until the health care provider has obtained the results of the second test. If any validated HIV test is positive, the sperm donated may not be used and shall be destroyed. § 252.15.

(15) A health care provider that subjects a person to an HIV test shall provide the test subject and the test subject's guardian, if the test subject is incompetent, with a statement of explanation concerning the test that was performed, the performance date of the test, and the test results, as well as a statement of explanation that the test results may be disclosed with either a listing of the persons to whom the information may be disclosed and the circumstances under which disclosure may occur or a statement that the listing is available on request. § 252.15.

(16) An individual who is the subject of an HIV test or the individual's health care agent, if the individual is incapacitated and has executed a power of attorney, may disclose the test results to anyone. A person who is neither the individual nor the individual's health care agent may not, unless specifically authorized by the individual, disclose the individual's test results except to the following persons: to the test subject or the subject's health care agent; to a health care provider who provides health care, including emergency care, to the test subject; to an agent or employee of a health care provider who prepares or stores patient health care records, provides patient care, or handles or processes specimens of body fluids or tissue; to a blood bank, blood center, or plasma center that subjects a person to testing, for the purposes of determining the medical acceptability of blood or plasma secured from the test subject, notifying the test subject of the test results, or investigating HIV infections in blood or plasma; to a health care provider who procures, processes, distributes, or uses a human body part, for the purpose of assuring medical acceptability of the gift for the purpose intended; to the state

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80. *Syring v. Tucker*, 498 N.W.2d 370 (Wis. 1993), *recons. denied*, 505 N.W.2d 142 (Wis. 1993) (provision does not compel HIV testing of woman who bit social service worker, but testing may be ordered on equitable grounds).

epidemiologist or his designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease; to a funeral director or one who prepares the body for burial or other disposition, or to a person who performs or assists in performing an autopsy; to health care facility staff committees or accreditation or health care services review organizations or health care services review organizations who conduct monitoring and evaluating and health care services review; under a lawful order of a court of record; to a person who conducts research, for the purpose of research, if the person is affiliated with a health care provider, has obtained permission to perform the research from an institutional review board, and provides written assurance to the person disclosing the test results that the information will not be released to another person and that the final research product will not identify the test subject unless the researcher has first obtained the test subject's informed consent; to a person who renders emergency care and who is significantly exposed to an emergency victim; to a coroner, medical examiner, or appointed assistant who is significantly exposed to a person whose death is under direct investigation by such person, the possible HIV-infected status is relevant to the cause of death, and a physician determines and certifies in writing that the coroner, medical examiner or appointed assistant has been significantly exposed and certification accompanies the request for disclosure; to a sheriff or jailer with custodial authority, in order to permit the assigning of a private cell to a prisoner who is HIV positive; by the attending physician to known sexual contacts or persons with whom the subject shared intravenous drug paraphernalia, if the test subject is deceased; during the period when the test subject is adjudicated incompetent, is under fourteen years of age, or is unable to communicate, to anyone capable of providing consent to the testing; to a victim or an alleged victim or to a health care professional caring for an alleged victim or if the victim or alleged victim is a minor, to such victim's parent or guardian; to an affected person (see Definitions (1)); or to an agency that placed or arranged for the placement of a child or was directed to prepare a court report or a permanency plan regarding a child for whom placement in a foster home, treatment foster home, group home, child caring institution, or secured correctional facility is recommended and to such child's foster parent or the operator of the group home, institution, or facility in which the child is placed. § 252.15.<sup>81</sup>

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81. Hillman v. Columbia County, 474 N.W.2d 913 (Wis. Ct. App. 1991), *review granted*, [WISCONSIN]

(17) A corpse may be subjected to an HIV test and the test result may be disclosed to a person who has been significantly exposed under any of the following conditions: if a person renders emergency care to the test subject, experiences a significant exposure during the course of such care, and the test subject subsequently dies; if a funeral director, coroner, medical examiner, or appointed assistant to a coroner or medical examiner is significantly exposed to the corpse; or if a health care provider is significantly exposed to a corpse or to a patient who subsequently dies. § 252.15.

(18) No person may sell or offer to sell an HIV test or an HIV test kit unless the test or test kit is first approved by the state epidemiologist. In reviewing a test or test kit, the state epidemiologist shall weigh the benefits, if any, to the public of the test or test kit against the risks, if any, to the public health from the test or test kit. § 252.15.

(19) The state epidemiologist shall determine, based on a preponderance of available scientific evidence, the procedures necessary to obtain a validated test result. The state epidemiologist shall revise this determination if new scientific evidence warrants a revision. If a positive validated test result is obtained, the health care provider, blood bank, blood center, or plasma center that maintains a record shall report the following information to the state epidemiologist: the name and address of the health care provider, blood bank, blood center, or plasma center reporting; the name and address of the subject's health care provider; the name, address, telephone number, age or date of birth, race and ethnicity, sex, and county of residence of the test subject; the date on which the test was performed; the test result; and other medical or epidemiological information required by the state epidemiologist for exercising surveillance, control, and prevention of HIV infection. The report shall not include information with respect to the sexual orientation of the test subject or the identity of persons with whom the test subject may have had sexual contact. A report is not necessary for persons for whom a diagnosis of AIDS has been made. Intentional disclosure of blood test results may result in a fine of up to \$25,000 or imprisonment of up to nine months. Negligent disclosure is subject to a \$1,000 maximum fine. Intentionally disclosing the results of a blood test for pecuniary gain may

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482 N.W.2d 105 (Wis. 1992) (violation of inmate's right to confidentiality of HIV test results not shown); *Van Straten v. Milwaukee Journal Newspaper-Publisher*, 447 N.W.2d 105 (Wis. Ct. App. 1989), *cert. denied*, 496 U.S. 929 (1990) (violation of inmate's right to confidentiality of HIV test results not shown); *Doe v. Roe*, 444 N.W.2d 437 (Wis. Ct. App. 1989) (defendant's HIV test result is admissible because test was performed pursuant to a lawful court order).

result in a fine of up to \$100,000 or imprisonment of up to three years and six months, or both. § 252.15.

(20) HIV test results and the fact that a person has been ordered or required to submit to such a test are not admissible in a civil, criminal, or administrative proceeding as evidence of a person's character for the purpose of proving that the person acted in accordance with that character on a particular occasion unless the evidence is otherwise admissible under state rules of evidence and unless admissibility is determined by a judge upon a pretrial motion. To be admissible, the evidence must be material to a fact at issue in the case and of sufficient probative value to outweigh its inflammatory and prejudicial nature before it may be introduced at trial. § 901.05.<sup>82</sup>

(21) In an action for sexual assault, sexual assault of a child, repeated sexual assault of the same child, sexual exploitation of a child, or incest with a child, the district attorney shall apply to the circuit court to order the defendant to submit to an HIV or STD test or tests if: the district attorney has probable cause to believe that the defendant has significantly exposed the victim or alleged victim (if the defendant is convicted or found not guilty by reason of mental disease or defect, this provision is not required); and the victim or alleged victim or the parent or guardian of a minor victim or alleged victim requests the district attorney to apply for the order. The district attorney may apply for an order at any of the following times and shall do so as soon as possible to enable the court to provide timely notice: at or after the initial appearance and prior to the preliminary examination, if the defendant waives the preliminary examination, at any time after the court binds the defendant over for trial and before the verdict is rendered; at any time after the defendant is convicted or is found not guilty by reason of mental disease or defect; if the court has determined that the defendant is not incompetent to proceed and suspended the criminal proceedings, at any time after the determination that the defendant is not competent to proceed. The court shall set a time for a hearing on the matter, and the district attorney and defendant shall be given notice of the hearing at least seventy-two hours in advance. The defendant may have counsel at the hearing and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the defendant has significantly exposed the victim or alleged victim, the court shall order the defendant to submit to a test or

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82. *Doe v. Roe*, 444 N.W.2d 437 (Wis. Ct. App. 1989) (exception not applicable and HIV test results admissible).

series of tests to detect the presence of HIV or STDs. The court shall require the health care professional who performs the test to refrain from making the test results part of the defendant's permanent medical record and to disclose the results to any of the following: the defendant; the victim or alleged victim, if not a minor; the parent or guardian of the victim or alleged victim, if a minor; and the health care professional who provides care to the victim or alleged victim, upon request by the victim or alleged victim or, if a minor, the parent or guardian of the victim or alleged victim. § 968.38.<sup>83</sup>

Criminal Law (1)

Education (4), (5)

Employment (1)

Social & Medical Services (2), (3)

#### MISCELLANEOUS

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83. State v. Parr, 513 N.W.2d 647 (Wis. Ct. App.), *review denied*, 520 N.W.2d 90 (Wis. 1994) (acquittal on charge of sexual intercourse does not preclude HIV test since provision requires only probable cause).

**WYOMING**

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

**DEFINITIONS**

(1) “Health care worker,” and “significant exposure” are defined at § 35-4-133.

(2) “Sex offense,” and “convicted” are defined at § 7-1-109.

(3) “Sexually transmitted diseases” (STDs) includes AIDS, and are contagious, infectious, communicable, and dangerous to the public health. § 35-4-130.

**CRIMINAL LAW**

(1) Physical examination and treatment by a licensed physician or other qualified health care provider of a person under eighteen years of age consenting to examination or treatment for a STD (see Definitions (3)) is not an assault or an assault and battery upon that person. § 35-4-131.

(2) A health officer shall cooperate with law enforcement officials in suppressing and enforcing laws against prostitution by investigating sources of STDs. § 35-4-133.

Testing & Reporting (4), (5)

**EDUCATION****EMPLOYMENT**

Testing & Reporting (3)

**HOUSING****RESEARCH****SOCIAL & MEDICAL SERVICES**

(1) Persons under eighteen years of age may give legal consent to examination and medical treatment for STDs (see Definitions (3)). For any individual exposed to or reasonably suspected of being infected with a STD, a physician or other health care provider shall administer treatment or refer an individual to appropriate treatment (see Criminal Law (1)). § 35-4-131.

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(2) Public funds appropriated for treatment of any individual infected with a STD shall be spent in accordance with priorities established by the Department of Health. In establishing priorities, the Department of Health shall consider the treatment's cost, effectiveness, curative capacity, and public health benefit to the state. § 35-4-133.

Criminal Law (1)

Testing & Reporting (2), (5)

#### TESTING & REPORTING

(1) Information and records relating to a known or suspected case of STD (see Definitions (3)) are confidential and shall not be disclosed unless the disclosure is: for statistical purposes only, provided that the identity of the individual with the known or suspected case is protected; necessary for the administration and enforcement of Department of Health rules and regulations related to the control and treatment of STDs; made with written consent of the individual identified within the information or records; or for notification of health care professionals and health care employees when it is necessary to protect life and health. § 35-4-132.

(2) Upon receipt of a report or notice of a case or a reasonably suspected case of STD infection, a health officer may: examine the individual and report the examination results to the individual if the individual has not been tested for STD infection; isolate the individual in accordance with existing standards of medical practice; require the infected individual to seek adequate treatment; and arrange for education and counseling of the infected individual as to the medical significance of the STD. To the extent possible, the health officer shall identify any other person with whom the infected individual has had contact which may have resulted in significant exposure (see Definitions (1)) of that person to a dangerous or life threatening STD. The health officer shall make every reasonable effort to notify such identified persons. Such notification shall include the name of the STD to which the person may have been exposed, the approximate date of exposure, and advice pertaining to the nature of the disease and sources for education and counseling as to the medical significance of the disease. The identity of the infected individual shall remain confidential. § 35-4-133.

(3) Upon receipt of information documenting an actual exposure of a health care worker (see Definitions (1)) to blood or body fluids of a patient where the exposure could lead to transmission of a

[WYOMING]



communicable disease, a health care provider may order appropriate testing to be performed on a specimen from the patient. If the patient's specimen is not available for testing, a health care provider or a health officer may order the necessary testing with the patient's consent. If the patient does not consent to testing, the health care provider or health officer may apply for a court order to have the necessary testing done. § 35-4-133.

(4) Upon the consent of a person accused of a crime wherein it is alleged that there has been an exchange of bodily fluids, that person shall be examined as soon as practicable for STDs. If the accused person is unwilling or unable to give consent, the court may, upon a sufficient showing of probable cause, order the medical examination of the accused person for STDs. Any person convicted (see Definitions (2)) of a sex offense (see Definitions (2)) shall, at the request of the victim, be examined as soon as practicable by a licensed physician or other health care provider for STDs. Costs of any medical examination in relation to criminal procedure shall be funded through the Department of Health. If the court finds that the offenders is able to reimburse the Department, the offender shall reimburse the Department for the costs of any such medical examination. All results of such tests are confidential and are not admissible as evidence. They shall be disclosed only: for statistical purposes; in a civil action for the negligent or intentional infliction of or exposure to a STD; in a criminal prosecution for the criminal infliction of or exposure to a STD; or as otherwise provided by law. § 7-1-109.

(5) Any individual confined or imprisoned in any state penal institution, county or city jail, or any community correctional facility shall be examined for STDs by a health officer. In order to suppress the spread of STDs among the confined population, the health officer may isolate prisoners infected with a treatable illness within the facility and require them to report for treatment by a licensed physician. If an individual is infected with a noncurable STD, the health officer may provide minimum care and treatment to the individual. Such examination and treatment shall not interfere with the service of any sentence imposed by a court. § 35-4-134.

(6) Health care providers diagnosing or treating a STD, the administrator of the hospital, dispensary, charitable or penal institution or any other health care facility in which there is a case of STD, and the administrator or operator of a laboratory performing a positive laboratory test for STD must report the diagnosis, case or positive test results to the Department of Health and the appropriate health officer. Health care

providers and any administrator or operator of a health care facility reporting such diagnosis, case or test result shall notify any health care professional or employee reasonably expected to be at risk of exposure to a dangerous or life-threatening STD and involved in the supervision, care and treatment of an individual infected or reasonably suspected of being infected with a dangerous or life-threatening STD. Health care providers and facilities must cooperate with and assist the Department of Health and health officers in preventing the spread of STDs. § 35-4-132.

MISCELLANEOUS