

## ALABAMA

All citations are to “Ala. Code” unless otherwise noted.

### DEFINITIONS

(1) “Health care facility,” “health care worker,” “human immunodeficiency virus,” and “infected health care worker” are defined at § 22-11A-60.

(2) “HIV,” “AIDS,” and “HIV infection” pertaining to reporting “notifiable diseases” are defined at § 22-11A-50.

(3) “Invasive procedure” and “invasive dental procedures” are defined at § 22-11A-60.

(4) Sexually transmitted diseases, which are designated by the State Board of Health, are declared to be contagious, infectious, and communicable diseases and dangerous to the public health. § 22-11A-13.

### CRIMINAL LAW

(1) Any physician or laboratory worker who diagnoses or treats a case of sexually transmitted disease (STD) (see Definitions (4)) shall make a confidential report to the state or local health officer. Any person who violates this shall be guilty of a misdemeanor and may be fined. § 22-11A-14.

(2) Any person afflicted with a STD who shall knowingly transmit, or assume the risk of transmitting, or do any act which will likely transmit such a disease to another person shall be guilty of a Class C misdemeanor. § 22-11A-21.

(3) All information, reports, and medical records concerning persons infected STDs shall be confidential and shall not be subject to public inspection or admission into evidence in any court. Anyone who violates this shall be guilty of a Class C misdemeanor. § 22-11A-22.

Education (1)

Testing & Reporting (1), (5)

### EDUCATION

(1) Sex education in the public schools shall be age-appropriate and shall emphasize that sexual abstinence is the only

completely effective protection against pregnancy, sexually transmitted diseases (STDs), and AIDS [HIV]. Also included shall be information on the reliability of various forms of contraception as protection against STDs and HIV. Sex education shall emphasize that homosexuality is not an acceptable lifestyle and that homosexual conduct is a criminal offense. § 16-40A-2.

Testing & Reporting (1)

#### EMPLOYMENT

(1) A fire fighter, who contracts AIDS while employed by a city and who can demonstrate that he or she was exposed to AIDS while in the line and scope of employment, is entitled to service related disability. If the fire fighter dies, the death is compensable to the same extent as a death of a fire fighter killed in the line of duty. § 11-43-144. A policeman for the City of Mobile, who contracts AIDS while employed by the city and who can demonstrate that he or she was exposed to AIDS while in the line and scope of employment, is entitled to service related disability. 1995 Ala. Acts 571.

Testing & Reporting (1), (4)

#### HOUSING

#### INSURANCE

(1) Insurance coverage for certain drugs which treat life-threatening illnesses, including AIDS, shall not exclude coverage for "off-label" use. (Off-label use refers to the use of a drug that is FDA approved for one indication, but is prescribed for another indication not specifically FDA approved.) § 27-1-10.1.

Testing & Reporting (4)

#### RESEARCH

#### SOCIAL & MEDICAL SERVICES

(1) The AIDS Task Force of Alabama, Inc. (ATFA) shall limit the disbursement of public funds to ten enumerated service

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organizations. § 22-11A-90. ATFA shall govern the distribution of funds according to client caseload or HIV incidence served by those organizations. § 22-11A-91. ATFA and the listed organizations shall be tax exempt. § 22-11A-93.

Criminal Law (1)

Insurance (1)

Testing & Reporting (1), (3), (4), (5)

#### TESTING & REPORTING

(1) Health care and testing facilities shall maintain confidentiality regarding test results respecting HIV infection or a specific medical condition derived from such infection (see Definitions (1), (2)). § 22-11A-54. Exceptions applying to HIV and other infectious and contagious diseases include: notification of attending medical transport and funeral personnel, notification of third parties at foreseeable risk, and notification of the appropriate superintendent of education when a student or employee has a contagious disease that endangers the health and welfare of others. The State Health Officer, in response to a grand jury or criminal court subpoena concerning a charge of murder, attempted murder, or felony assault, shall disclose information necessary to establish that an individual is HIV positive and has been so notified and counseled regarding avoiding infecting others as a result of intentional or reckless exposure of another to HIV where the exposed person is later shown to be HIV-infected. The obligation of confidentiality is extended to those notified under the exceptions of this section. § 22-11A-38.

(2) The State Board of Health regulates AIDS [HIV] testing. § 22-11A-40.

(3) Before HIV testing may be performed, the health care provider must obtain written, voluntary informed consent. § 22-11A-51. A minor, 12 years of age or older, who may have come into contact with any sexually transmitted disease (STD) may give consent to medical care related to the diagnosis or treatment of such disease. § 22-11A-19. Informed consent is implied and, therefore, written consent is unnecessary when a treating physician determines the patient is at high risk for HIV infection, that medical care would be modified depending on HIV status, or that knowledge of HIV status is necessary to protect health care providers from HIV infection. § 22-11A-52. A positive HIV test

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result shall be reported to the individual by the ordering physician or a designee of the physician, by a physician designated by the applicant, or by the department of public health, and shall include face-to-face post-test counseling on the meaning of the test result, possible need for additional testing, the need to eliminate behavior which may spread the disease, information about health care, mental health care, and social and support services, and explanation of the benefits of locating, testing, and counseling potentially exposed persons and of the services available to do so. § 22-11A-53.

(4) No health care worker having knowledge that he or she is infected with HIV shall perform or assist in the performance of an invasive procedure without notifying the State Health Officer (as provided in § 22-11A-61) and agreeing to cooperate with any authorized investigation and any necessary practice modifications (see Definitions (1), (3)). § 22-11A-62. A health care worker infected with HIV who performs invasive procedures shall notify the State Health Officer of the infection. A physician caring for an infected health care worker shall also notify the State Health Officer of the infection. § 22-11A-61. The State Health Officer shall then investigate to determine whether the health care worker's practice actually includes invasive procedures. If so, an expert review panel shall determine what restrictions of practice shall apply. The performance of invasive procedures alone shall not present sufficient cause to limit the practice of the infected health care worker. Anonymity shall be maintained to extent possible. § 22-11A-63. The infected health care worker and the employing facility shall make available to the State Board of Health and to the expert review panel investigating the practices of the health care worker any and all patient medical records requested by those groups that are no more than three years old. § 22-11A-67. Violation of this section, or of an order under this section, shall be grounds for suspension, revocation, or restriction of the professional license. § 22-11A-66. No duty to report is imposed by this provision on an insurer of an infected health care worker. § 22-11A-73.

(5) Persons incarcerated for thirty days or more in county or state facilities shall be tested for STDs upon entering the facility, and any inmate confined for more than ninety days shall be tested again thirty days before release. HIV test results of sexual offenders shall be reported to the State Health Officer. Treatment for treatable STDs shall be provided to inmates who are unable to pay. The local health officer shall

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be apprised of the discharge of an infectious inmate. The victim of a sexual offense (§§ 13A-6-60, et seq.) may request the HIV test results of a convicted defendant, and the State Health Department shall provide to the victim AIDS counseling, AIDS [HIV] testing, and referral to health care and support services. § 22-11A-17.<sup>22</sup>

Miscellaneous (1)

Criminal (1), (3)

#### MISCELLANEOUS

(1) The Legislature of Alabama strongly supports continuation of the ban against homosexuals serving in the U.S. military, for reasons which include adverse impact on federal funding of V.A. hospitals because of a likely increase in servicemen contracting HIV. 1993 Ala. Acts 400.

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22. State Dept. of Pub. Health v. Wells, 562 So. 2d 1315 (Ala. Civ. App. 1989), *cert. denied*, No. 89-180, 1990 Ala. LEXIS 376 (Apr. 27, 1990) (sheriff not entitled to results of voluntary AIDS test on county jail inmate under this statute).

**ALASKA**

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

## DEFINITIONS

(1) “AIDS,” “HIV,” and “counseling” are defined at § 18.15.310.

## CRIMINAL LAW

Testing & Reporting (1)

## EDUCATION

## EMPLOYMENT

## HOUSING

## INSURANCE

## RESEARCH

## SOCIAL &amp; MEDICAL SERVICES

(1) The Department of Health and Social Services provides services for developmentally delayed or disabled children under the age of three. AIDS is a listed disability. §§ 47.20.070 to 290.

Testing & Reporting (1)

## TESTING &amp; REPORTING

(1) A court may order blood testing for a defendant charged with a violation that includes sexual penetration, based on probable cause that the crime has been committed and that the sexual penetration has occurred. An alleged victim, the parent or guardian of an alleged victim who is a minor, or the prosecuting attorney, on behalf of the alleged victim, may petition the court for testing. The following parties shall receive copies of the test results: the defendant; each of the requesting

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victims; and, if the defendant is incarcerated, the officer in charge and the chief medical officer of the corrections facility. § 18.15.300. Results are to be transmitted with a disclaimer that such tests cannot be absolutely accurate. Confidentiality is imposed, but there is an exception for civil actions against the defendant. The results are not admissible evidence in a criminal proceeding. Persons performing testing, transmitting test results, or disclosing information are immune from civil liability for violations of these provisions unless the action is grossly negligent or intentional. If the results indicate exposure or infection, free counseling and testing shall be provided to the victim. § 18.15.310.

MISCELLANEOUS

[ALASKA]

**ARIZONA**

All citations are to “Ariz. Rev. Stat. Ann.” unless otherwise noted.

**DEFINITIONS**

(1) “Acquired immune deficiency syndrome,” “capacity to consent,” “child,” “communicable disease,” “confidential communicable disease related information,” “contact,” “health care provider,” “health facility,” “health service,” “HIV infection,” “HIV-related illness,” “protected person,” and “release of confidential communicable disease related information” are defined at § 36-661.

(2) “Confidential HIV-related information,” “HIV,” “HIV-related test,” and “protected person” are defined at § 36-661 and § 20-448.01.

(3) “Sexual offense” is defined at § 8-241.

(4) “Significant exposure,” as it pertains to workers’ compensation, is defined at § 23-1043.02.

(5) “Significant exposure,” as it pertains to sexual offenses, is defined at § 13-1415.

**CRIMINAL LAW**

(1) A person who performs, or permits or procures the performance of an HIV-related test (see Definitions (2)) in violation of informed consent procedures (see Testing & Reporting (1)) or who improperly discloses, compels another person to disclose, or procures the disclosure of confidential communicable disease related information (see Definitions (1)) is guilty of a class 3 misdemeanor. § 36-666. The Department of Health Services may also impose a civil penalty for such violations. § 36-667. There is immunity from criminal or civil liability for disclosures permitted by statute (see Testing & Reporting (4)) if done in good faith and without malice. There is also immunity from criminal and civil liability for failure to disclose, even though permitted by the statute (see Testing & Reporting (3)), if done in good faith and without malice. § 36-666.

Housing (1)

Testing & Reporting (5), (6), (7), (8)

[ARIZONA]



## EDUCATION

(1) Each school district shall provide instruction in grades kindergarten through twelve on AIDS and HIV. Each district is free to develop its own course of study for each grade. At a minimum, instruction shall be age appropriate and medically accurate and shall promote sexual abstinence and discourage drug abuse. The instruction shall aim to dispel myths regarding transmission of HIV and shall neither promote homosexuality, portray homosexuality as a positive alternative lifestyle, nor suggest that some methods of homosexual sex are safe. At the request of each school district, the Department of Health Services shall review instruction materials to determine their medical accuracy. The Department of Education shall provide a suggested course of study, training for teachers, and a list of available films and other teaching aids. Pupils whose parents request to withdraw them from instruction on AIDS and HIV may be excused. § 15-716.

(2) The Department of Health Services shall establish contracts to educate and mobilize local communities in developing culturally diverse programs and strategies that are designed to reduce the incidence of teenage sexual activity and sexually transmitted diseases among teenagers in Arizona. 1995 Ariz. Sess. Laws 190.

Housing (1)

Testing & Reporting (9)

## EMPLOYMENT

(1) An employee who satisfies the following conditions presents a prima facie workers' compensation claim for a condition, infection, disease, or disability involving or related to HIV or AIDS if the medical evidence shows that the employee sustained a significant exposure (see Definitions (4)): the employee's regular course of employment involves handling or exposure to blood or body fluids, other than tears, saliva, or perspiration; the employee reports the details of the exposure in writing to the employer within ten days after a possible significant exposure; the employee has blood drawn within ten days after the possible significant exposure, the blood is tested for HIV within thirty days after the exposure and the test results are negative; and the employee tests positive for HIV within eighteen months after the date of the possible significant exposure. On presentation or showing of a prima

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facie claim under this section, the employer may produce specific, relevant, and probative evidence to dispute the underlying facts, to contest whether the exposure was significant, or to establish an alternative significant exposure involving the presence of HIV. § 23-1043.02.

Testing & Reporting (3), (4)

## HOUSING

(1) No criminal, civil, or administrative action may be brought against a transferor of real property or a real estate sales person acting on behalf of a transferor for failing to disclose that the property being transferred is or has been owned or occupied by a person exposed to HIV or diagnosed with AIDS. Failure to disclose such information shall not be grounds for termination or rescission of any transaction in which real property has been or will be transferred. § 32-2156.

## INSURANCE

(1) No person who obtains confidential HIV-related information (see Definitions (2)) in the course of processing insurance information or insurance applications pursuant to a release of confidential HIV-related information may disclose or be compelled to disclose that information except to: the protected person or a person legally authorized to consent for the protected person; a person to whom disclosure is authorized by a written release; a government agency specifically authorized by law to receive the information; a person to whom disclosure is ordered by a court or administrative body; the industrial commission or parties to an industrial commission claim (workers' compensation), pursuant to § 23-908 and § 23-1043.02. Test results may be shared with the underwriting departments of the insurer and reinsurers. § 20-448.01.

## RESEARCH

Testing & Reporting (1), (4)

## SOCIAL & MEDICAL SERVICES

Criminal Law (1)

[ARIZONA]

Education (1), (2)

Employment (1)

Testing & Reporting (1), (2), (3), (4), (8), (9)

#### TESTING & REPORTING

(1) Except as specifically authorized or required by state or federal law, no person may order the performance of an HIV-related test (see Definitions (1)) within a licensed hospital without first receiving the specific written informed consent of the subject of the test who has capacity to consent or, if the subject lacks capacity to consent, of a person legally authorized to give consent for that person. If the test is to be administered by a licensed health care provider (see Definitions (1)) outside of a licensed hospital, specific oral or written informed consent shall be obtained by the subject or a person legally authorized to give consent for the subject. Oral consent shall be documented in the medical record of the subject of the test. If the test is performed on an anonymous basis, the consent shall be oral, and no record shall be made containing the subject's name. In order to obtain specific oral or written informed consent, the licensed health care provider shall provide the patient with an explanation of the following: the purpose, meaning, and results of the test, and the benefits of early diagnosis and medical intervention; the nature of AIDS and HIV-related illness and information about behavior known to pose risks for transmission of HIV; confidentiality protections afforded HIV-related information (see Definitions (1)); that an HIV-related test is voluntary and can be performed anonymously at a public health agency; that a positive test result must be reported to a public health agency as required by law; that consent for the test may be withdrawn at any time before drawing the sample for the test; and that withdrawal of consent may be given orally if the consent was given orally or shall be in writing if the consent was given in writing. Informed consent is not required: by a health care provider or health facility in relation to the procuring, processing, distributing, or use of a human body or body part for use in medical research or therapy or for transplantation to other persons; for the purpose of research if the testing is performed in a manner by which the identity of the test subject will be protected and may not be retrieved by the researcher; on a deceased person, if the test is conducted to determine the cause of death or for epidemiologic or public

health purposes; in the course of providing necessary emergency medical treatment to a patient who lacks capacity to consent to HIV-related testing and for whom no person legally authorized to consent for that person can be identified at that time; or on a patient who lacks capacity to consent for whom no person legally authorized to consent for that person can be identified, and for whom the HIV-related testing is necessary for the diagnosis and treatment of the person's medical condition. § 36-663.

(2) All federally registered blood banks, blood centers, and plasma centers in the state shall notify blood donors of any test results with significant evidence indicating the presence of syphilis, HIV, or hepatitis B. § 32-1483.

(3) A doctor of medicine may report the name of a patient's spouse or sex partner or a person with whom the patient has shared hypodermic needles or syringes to the Department of Health Services if the doctor knows that the patient is HIV positive and that the patient has not or will not notify these people and refer them to testing. A doctor who knows or has reason to believe that a significant exposure (see Definitions (4)) has occurred between a patient who is HIV positive and a health care or public safety employee may inform the employee of the exposure. Before informing the employee, the doctor shall consult with the patient and ask the patient to release this information voluntarily. If the patient does not release the information, the doctor may do so in a manner that does not identify the patient. § 32-1457.

(4) No person who obtains confidential communicable disease related information (see Definitions (1)) may disclose or be compelled to disclose that information except to: the protected person (see Definitions (1)) or a person legally authorized to consent to health care for the protected person; an agent or employee of a health facility or health care provider if the agent or employee is authorized to access medical records, the health facility or health care provider itself is authorized to obtain communicable disease information, and the agent or employee provides health care to the protected person or maintains or processes medical records for billing or reimbursement; a health care provider or facility if knowledge of the communicable disease related information is necessary to provide appropriate care or treatment to the protected person or the protected person's child; a health care facility or health care provider, in relation to the procurement, processing,

distributing, or use of a human body or body part for use in medical education, research, or therapy, or for transplantation to another person; another facility designated by the health facility engaged in the review of the quality, utilization, or necessity of medical care, or an accreditation or oversight review organization responsible for the review of professional practices at a health facility; a federal, state, county, or local health officer if disclosure is mandated by federal or state law; a government agency specifically authorized by law to receive the information; a person, health care provider, or health care facility to which disclosure is ordered by a court or administrative body; the Department of Economic Security in conjunction with the placement of a child or children for adoption; or insurance entities pursuant to § 20-448.01. Pursuant to a written release, a health officer may disclose confidential communicable disease information if the disclosure is specifically authorized by federal or state law, made to a contact of the protected person, or for research purposes. Disclosure made pursuant to this section shall be made without identifying the protected person, and shall be accompanied by a written statement which warns that the information is from confidential records which are protected by state law that prohibits further disclosure of the information without specific written consent of the person to whom it pertains. A person making a disclosure pursuant to a release of confidential communicable disease related information shall keep a record of all disclosures. On request, a protected person shall have access to the record. Information that identifies the protected person may be released to the National Center for Health Statistics of the United States Public Health Service for the purpose of conducting a search of the national death index. This provision does not prohibit the listing of communicable disease related information, including AIDS and HIV-related illness or HIV infection in a certificate of death, autopsy report, or other related document relating to cause of death. If a person in possession of confidential HIV-related information reasonably believes that an identifiable third party is at risk of HIV infection, that person may report that risk to the Department of Health Services. The Department shall contact the person through a Health Department employee capable of providing counseling. § 36-664.

(5) A court or administrative body may issue an order for the disclosure of confidential communicable disease related information only upon application showing: a compelling need for disclosure of the

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information for the adjudication of a criminal, civil, or administrative proceeding; a clear and imminent danger to a person whose life or health may unknowingly be at significant risk as a result of contact with the person to whom the information pertains; if the application is filed by a state, county, or local health officer, a clear and imminent danger to the public health; or that the applicant is lawfully entitled to the disclosure. The person to whom the information pertains shall be notified of the application, and may file a written response to the application or appear in person for the purpose of providing evidence on the criteria for the issuance of a disclosure order. If a public health officer shows that a clear and imminent danger to a person whose life may be at risk exists, notice of such an application is not required. The information disclosed under this section shall be limited to the information which is necessary to fulfill the purpose for which the order is granted and to those persons whose need for the information is the basis for the order. § 36-665.

(6) The State Department of Corrections may require that a prisoner be tested for HIV if the Department has reasonable grounds to believe that the person is infected with HIV and is a health threat to others. § 36-669.

(7) A victim or the parent or guardian of a minor victim of a sexual offense (see Definitions (3)) or other crime involving a significant exposure (see Definitions (5)) may request that the arrested person submit to an HIV test and consent to release of the test result to the victim. If the person is convicted, the prosecuting attorney shall, upon the victim's request, petition the court for an order requiring that the person be tested for HIV by the State Department of Corrections or the Department of Health Services. Based on the evidence, the court shall determine if a significant exposure occurred. If the court makes such a finding, or, if the act committed against the victim is a sexual offense, it shall order that an HIV test be performed. The Department of Health Services shall notify the victim and person tested of the results of the HIV test and shall counsel them regarding the health implications of the results. Test results shall be released only to the victim of the crime, the person tested, and the Department of Health Services. § 13-1415.

(8) On the request of a victim of a delinquent act that may have involved significant exposure or that if committed by an adult would be a sexual offense, the prosecuting attorney shall petition the court to

require that the delinquent child be tested for HIV. If the victim is a child (see Definitions (1)), the prosecuting attorney shall file this petition at the request of the victim's parent or guardian. If it is, in fact, determined that the act either involved significant exposure, or would have been a sexual offense if committed by an adult, the court shall order that the Department of Youth Treatment and Rehabilitation or the Department of Health Services test the child for HIV. The test results shall be released only to the victim, the delinquent child, the delinquent child's parent or guardian, and the minor victim's parent or guardian, and they shall receive counseling regarding the meaning and health implications of the results. § 8-241.

(9) After consultation with the State Superintendent of Public Instruction, the Director of the Department of Health Services shall prescribe criteria the Department shall use in deciding whether or not to notify a local school district that a pupil has tested positive for HIV. The Director shall prescribe the procedure by which the Department shall notify a school district if the Department determines that notification is warranted in a particular situation. Prior to notification, the Department must be satisfied that the school district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results, and that proper educational counseling has been or will be provided to staff and pupils. § 36-136.

Criminal (1)

Employment (1)

Insurance (1)

MISCELLANEOUS

**ARKANSAS**

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

**DEFINITIONS**

- (1) “Disease intervention specialist” is defined at § 17-101-103.
- (2) “Health care provider,” “health care facility,” “HIV,” and “HIV test” are defined at § 20-15-905.
- (3) “Sexual intercourse” is defined at § 5-14-101.

**CRIMINAL LAW**

(1) It is a Class A felony for a person who knows that he or she has tested positive for HIV to expose another to HIV through the subcutaneous, intramuscular, or intravenous transfer of blood or by engaging in sexual intercourse (see Definitions (3)), cunnilingus, fellatio, anal intercourse, or any other intrusion into the genital or anal openings of another. Emission of semen is not required. § 5-14-123.

(2) A person found to have HIV infection must, prior to receiving health care services, advise such physician or dentist of the HIV infection. Failure to so advise is a Class A misdemeanor. § 20-15-903.

Testing & Reporting (2), (6), (7), (8)

**EDUCATION**

(1) Public school and Public Health Department sex education and AIDS prevention programs shall emphasize premarital abstinence as the only means to avoid pregnancy and the sexual contraction of AIDS and other sexually transmitted diseases. § 6-18-703.

(2) The Department of Education, the University of Arkansas for Medical Sciences, and the Department of Health shall jointly provide counseling and conduct public seminars to educate the public regarding AIDS. § 20-15-902.

**EMPLOYMENT****HOUSING**

[ARKANSAS]



## INSURANCE

## RESEARCH

## SOCIAL &amp; MEDICAL SERVICES

(1) Disease intervention refers to activities used to prevent transmission of sexually transmitted disease (STD). The State Board of Disease Intervention Specialists is created (see Definitions (1)). § 17-98-201. The Board shall administer an examination to such professionals in the field of HIV/STD. § 17-98-302. Passing of such examination shall result in receipt of a certificate of registration. § 17-98-301. Certificates of registration shall be issued without examination where the applicant is registered as a disease intervention specialist in another state indicating comparable qualification. § 17-98-303.

(2) The Health Resources Commission (under Public Health and Welfare, Medical Assistance Authority) shall have authority to study the full range of health resources issues including, among many others, the higher-than-average incidence of AIDS in Arkansas as compared to other states. § 20-77-204.

Criminal Law (2)

Education (2)

Testing & Reporting (2), (3), (4), (5), (6)

## TESTING &amp; REPORTING

(1) The Department of Health shall administer voluntary HIV testing without charge, maintaining secrecy as to the identity of persons participating. § 20-15-901.

(2) A physician whose patient is determined to be HIV positive shall immediately report this information to the Department of Health. The information and reports shall be regarded as confidential by all whose duty it is to administer such reports. However, the state may subpoena such information as necessary to enforce the criminal provision relating to exposure of another to HIV (see Criminal Law (1)) and HIV testing of sex offenders (see Testing & Reporting (6)), provided the information so obtained is disclosed only to the court. § 20-15-904.

(3) Informed consent of a patient to HIV testing is not required where a health care provider or employee of a health care facility (see Definitions (2)) has experienced direct skin or mucus membrane contact with blood or bodily fluids in a manner that might transmit HIV, as determined by a physician in the physician's medical judgment. Such test results are provided to the agency ordering the test, the health care worker who may have been exposed and the health care worker's physician, and to the patient and the patient's physician. Appropriate counseling shall be provided. Informed consent, information, and counseling are not required for an HIV test when the physician judges the test is medically indicated to provide appropriate diagnosis and treatment provided the patient has otherwise consented to medical treatment. Positive test results must be provided to the patient. Health care providers (see Definitions (2)) or facilities may not deny care based upon the results of an HIV test (see Definitions (2)). § 20-15-905.

(4) Reports about all persons with AIDS or who test HIV positive shall be made to the Department of Health by physicians, hospital infection control practitioners, directors of laboratories, directors of state agencies aware of an HIV diagnosis, medical directors of in-home health agencies or nursing homes, and others required by the rules and regulations of the Department of Health. § 20-15-906.

(5) Anyone that collects blood products for medical distribution shall: inform the donor that the donor's blood shall be tested for HIV and inform the donor of the test results, report a positive test result to the Department of Health for contact tracing and partner notification and to donor referral registries, and use no blood products donation until the donor is found not to be HIV positive. Donors who test positive shall be encouraged to seek medical consultation from their physician or local public health facility. § 20-27-302.

(6) A person arrested and charged with a sexual offense may be required by the court, upon a finding of reasonable cause to believe that the person committed the offense, to be tested for HIV. The HIV test shall be confidentially administered by a physician, the Department of Health, or a local health department. If the victim of the sex offense consents to receiving the test results of the offender, the testing agency shall report the test results directly to the victim and refer the victim to appropriate counseling. Upon the request of a victim, the testing of a

convicted sex offender is mandatory and shall be conducted by the Department of Health. The test result shall be released to the defendant and the victim but shall be otherwise confidential and not subject to disclosure as public information under the Freedom of Information Act. Any victim of a sexual offense shall be provided, upon request, appropriate counseling, HIV testing, and referral to appropriate health care and support services. § 16-82-101.

(7) A person arrested and charged with committing an assault or battery upon a law enforcement officer, fire fighter, or emergency medical technician (see §§ 5-13-101 et seq.) may be required by the court, upon a finding of reasonable cause to believe that the person committed the offense, to be tested for HIV. The test shall be confidentially administered by a physician, the Department of Health, or a local health department. If a victim consents to receiving such information, the testing agency shall report the test results directly to the victim and refer the victim to appropriate counseling. § 16-82-102.

(8) The Department of Correction is authorized to establish a program for intensive treatment of deviant sexual behavior of inmates and to screen for sexually transmitted diseases. § 12-29-406.

Criminal Law (2)

MISCELLANEOUS

**CALIFORNIA**

## DEFINITIONS

(1) “AIDS” is defined at Health & Safety Code §§ 120775, 121125, 121205, 121305, and 1603.1, Penal Code § 7502, and Welf. & Inst. Code § 14503.5.

(2) “AIDS-related drug” is defined at Health & Safety Code § 111600.

(3) “AIDS vaccine” is defined at Health & Safety Code §§ 121270 and 121305.

(4) “Attending physician of the source patient,” “available blood,” “certifying physician,” “exposed individual,” “health care provider,” “first responder,” “other potentially infectious materials,” “significant exposure,” and “source patient” are defined at Health & Safety Code § 199.66.

(5) “Blood,” as it pertains to felonious blood donation, is defined at Health & Safety Code § 1621.5.

(6) “Blood components” and “plasma center” are defined at Health & Safety Code § 1603.1.

(7) “Board,” “damages for personal injuries,” and “Fund” are defined at Health & Safety Code § 121270.

(8) “California manufacturer” and “grant” are defined at Health & Safety Code § 121205.

(9) “Care and supervision,” “chronic, life-threatening illness,” and “residential care facility” are defined at Health & Safety Code § 1568.01.

(10) “Certificate,” “disability income insurance,” “ELISA,” “HIV antibody test,” “life or disability income insurer,” “policy,” “positive ELISA test,” “reactive Western Blot Assay,” and “Western Blot Assay” are defined at Ins. Code § 799.01.

(11) “Committee,” “grant award,” “research subject,” and “researcher” are defined at Health & Safety Code § 121305.

(12) “Cooperative agreement” includes agreements to which the California AIDS Program is a party. Health & Safety Code § 38072.

(13) “Correctional institution,” “counseling,” “law enforcement employee,” “inmate,” and “bodily fluids,” as they pertain to HIV testing of prisoners, are defined at Penal Code § 7502.

(14) “Disclosed” and “confidential research record” are defined at Health & Safety Code § 121125.

(15) “Disclosure” is defined at Health & Safety Code § 121280.

(16) “Eligible child” is defined at Welf. & Inst. Code § 16525.2.

(17) “Health care worker,” as it pertains to occupational illness, is defined at Lab. Code § 3208.05.

(18) “HIV” and “HIV test” are defined at Health & Safety Code § 120775, Penal Code § 7502, and Welf. & Inst. Code § 14503.5.

(19) “HIV” and “HIV positive,” as they pertain to Services for Children who are HIV positive, are defined at Welf. & Inst. Code §§ 16525.3-4.

(20) “Medical director” is defined at Health & Safety Code § 1250.4.

(21) “Medically fragile” is defined at Health & Safety Code § 1760.2.

(22) “Point of sale,” as it relates to sellers of alkyl nitrates, is defined at Health and Safety Code § 120870.

(23) “Public entity” is defined at Health & Safety Code § 1603.4.

(24) “Reportable incident” and “source person,” as they pertain to HIV testing of prisoners, are defined at Penal Code § 7554.

(25) “Sexual offense” is defined at Penal Code § 1202.1.

(26) “Specialized in-home health care” is defined at Welf. & Inst. Code § 16525.5.

(27) “Unlinked testing” is defined at Health and Safety Code § 120990.

#### CRIMINAL LAW

(1) Any person who willfully or negligently discloses HIV test results to a third party in a manner which identifies or provides

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identifying characteristics of the test subject, except pursuant to written authorization or an express provision for exemption, that results in economic, bodily, or psychological harm to the test subject is guilty of a misdemeanor, punishable by imprisonment or a fine or both. Health & Safety Code § 120980.<sup>23</sup>

(2) Any health care provider (see Definitions (4)), first responder (see Definitions (4)), or exposed individual (see Definitions (4)) who willfully performs an HIV test on a source patient (see Definitions (4)) without adhering to source patient testing procedures that results in economic, bodily, or psychological harm to the source patient is guilty of a misdemeanor, punishable by imprisonment or a fine or both. Health & Safety Code § 199.68.

(3) It is a felony punishable by imprisonment for any person diagnosed with AIDS (see Definitions (1)), whether a paid volunteer or donor, to knowingly donate blood (see Definitions (5)), semen, breast milk, body organs, or other tissue to any medical center or semen or breast milk bank. Persons who are incompetent, who self-defer blood at a blood bank, or who donate blood for autologous transfusion shall not be charged with the felony. In a criminal investigation for such felony, no person shall disclose test results to any officer, employee, or agent of a state or local agency or department unless the test results are disclosed (see Definitions (14)) as otherwise provided by law or pursuant to a search warrant, a subpoena, or a court order. Health & Safety Code § 1621.5.

(4) Any person who commits rape, unlawful intercourse with a female under age eighteen, spousal rape, sodomy, or oral copulation with knowledge that he or she has AIDS or carries antibodies to HIV at the time of commission of the offense shall receive a three year enhancement for each such violation in addition to the sentence provided for the specific offense. Penal Code § 12022.85.

(5) Any person who negligently or willfully violates the provisions requiring prior written informed consent of research subjects in a research study relating to AIDS, is guilty of an infraction punishable by a fine of \$25. Any person who maliciously discloses the content of

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23. *Urbaniak v. Newton*, 277 Cal. Rptr. 354 (Ct. App. 1991) (physician did not violate statute by reporting to patient's insurance company that patient was HIV positive as a result of patient's own admission, because statute applies only to disclosure of HIV blood test results).

any confidential research record to a third party which results in economic, bodily, or psychological harm to the research subject shall be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one year or a fine not to exceed \$10,000 or both. Health & Safety Code § 121110.

(6) Any person who willfully discloses personal identifying data of a defendant charged with a criminal complaint who is tested due to the nature of the crime (see Testing & Reporting (12)) to a person not authorized by statute or court order to receive it, except with the written consent of the tested individual, is guilty of a misdemeanor. Health & Safety Code § 121070.

(7) Any person who files a false report of sexual assault in order to obtain test result information shall be guilty of a misdemeanor. Penal Code § 1524.1.

(8) Any person who commits an offense involving intravenous use or possession of a controlled substance, illicit possession of a hypodermic needle, sale of a hypodermic needle by an unauthorized individual, lewd or dissolute conduct in a public place, or soliciting or engaging in prostitution shall be required to agree to participate in an AIDS education program as a condition of placing the offender on probation or of permitting the offender to participate in a drug diversion program (see Education (6)). Penal Code § 1001.10.<sup>24</sup>

(9) Accusatory pleadings for prostitution shall contain notice of both previous conviction and positive result on HIV blood test administered pursuant to state statute (see Testing & Reporting (23), (24)). If the previous conviction and blood test results are found true by the trier of fact, the defendant is guilty of a felony. Penal Code § 647f.

(10) Any person who willfully or negligently discloses the results of an HIV antibody test given as a result of an application for insurance to a third party in a manner which identifies the test subject, except pursuant to a written authorization, which results in economic, bodily, or psychological harm to the test subject is guilty of a

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24. *People v. Patillo*, 6 Cal. Rptr. 2d 456 (Ct. App. 1992) (it is within court's discretion to condition probation for crime of selling cocaine on participation in AIDS education program as provided in this section); *People v. Henson*, 282 Cal. Rptr. 222 (Ct. App. 1991) (it is within court's discretion to condition probation for crimes of possession for sale of methamphetamine and possession of marijuana on participation in AIDS education program as provided in this section).

misdemeanor punishable by imprisonment in the county jail for up to one year and by a fine not to exceed \$10,000. Ins. Code § 799.10.

(11) A judge may assess an additional fine for sale or possession of a hypodermic needle without a prescription, with proceeds to be used for AIDS education on either the city or county level. Health & Safety Code § 11350.

(12) In addition to punishment for rape, unlawful sexual intercourse with a minor, spousal rape, lewd conduct, prostitution, or intravenous drug use, a judge may assess an additional fine with the proceeds to be used for AIDS education on either the city or county level. Penal Code §§ 264, 647.1.

Education (6), (7)

Research (1), (2), (3)

Social & Medical Services (19), (20), (21)

Testing & Reporting (3), (8), (10), (11), (12), (13), (15), (17), (22), (23), (24), (25), (26), (27), (28), (29)

Miscellaneous (3)

## EDUCATION

(1) School districts shall ensure that all pupils in grades seven to twelve receive AIDS prevention instruction at least once in junior high or middle school and once in high school. The required AIDS instruction shall accurately reflect the latest information and recommendations from the United States Surgeon General, Centers for Disease Control (CDC), and the National Academy of Sciences, and shall include the following: information on the nature of AIDS and its effects on the human body; information on how HIV is and is not transmitted, including information on activities that present the highest risk of HIV infection; discussion of methods to reduce the risk of HIV infection, emphasizing abstinence as the most effective means of AIDS prevention, and also including failure and success rates of condoms and other contraceptives in preventing sexually transmitted HIV infection; discussion of public health issues associated with AIDS; information on local resources for HIV testing and medical care; development of refusal skills to assist pupils in overcoming peer pressure and using effective decision making skills to avoid high-risk activities; and discussion of societal views on AIDS, including



stereotypes and myths regarding persons with AIDS. The governing board of each school district, county board of education, and each county superintendent of schools, as applicable, shall provide the parent or guardian of each pupil with written notice explaining the purpose of the AIDS prevention instruction. The notice shall specify that any parent or guardian may request that a pupil not receive the instruction in AIDS prevention. No pupil shall attend the AIDS prevention instruction if a written request that the pupil not attend has been received by the school. If authorized by the school district governing board, a school district may require parental consent prior to providing instruction on AIDS prevention to any minor pupil. Educ. Code § 51201.5.

(2) The Legislature intends that the Department of Health Services include AIDS early intervention education as a component of information and education grants. Health & Safety Code § 144.

(3) The Legislature intends to fund specified pilot AIDS education programs, implement and evaluate preventative education programs, and promote education of health care practitioners. Health & Safety Code § 120800.

(4) Counties shall be reimbursed for funds used to develop preventative education programs for individuals who test positive for HIV. The State Department of Health Services shall issue contracts to evaluate the effectiveness of AIDS information and education programs and contracts for development and implementation of pilot programs for professional education and training of hospital, home health agency, and attendant care workers. In addition, the State Department of Health Services shall promote information and education programs for the general public to correct misinformation about AIDS and establish centralized translation services to facilitate the development of multilanguage, culturally relevant educational materials on HIV infection. Health & Safety Code § 120805.

(5) The State Department of Education shall provide information to school districts on AIDS and AIDS-related conditions including methods which school employees may use to prevent exposure to AIDS. Health & Safety Code § 120875 to 80.

(6) Each county health department shall select an agency or agencies in the county to provide AIDS prevention education to those persons on probation or participating in a mandatory drug diversion

program. Such AIDS prevention program shall at a minimum include details about the following subjects: the transmission of HIV; symptoms of AIDS and AIDS-related conditions; prevention through avoidance or cleaning of needles; sexual practices which constitute high risk, low risk, and no risk including abstinence; and resources for persons who test positive for HIV. A person participating in a mandatory drug diversion program shall not be required to participate in an AIDS prevention education program provided that the drug diversion program includes an AIDS prevention education component. Penal Code § 1001.11.

(7) Fifty dollars out of each fine imposed for advertising by a nonresident pharmacist, unlawful possession of a controlled substance, a crime involving intravenous use of a controlled substance, rape, sodomy, or oral copulation shall be used exclusively to pay for establishing and providing for AIDS education programs. Penal Code § 1463.23.

Criminal Law (8), (11), (12)

Social & Medical Services (1), (2), (3), (5), (6), (9), (11), (13), (15), (16), (18), (20), (21), (24)

Testing & Reporting (8), (9), (24), (30)

Miscellaneous (1), (3)

## EMPLOYMENT

(1) An injury compensable under workers' compensation includes a reaction to or a side effect arising from health care provided by an employer to a health care worker (see Definitions (17)) where the health care is intended to prevent the development or manifestation of any blood borne disease recognized as occupationally incurred by California Division of Occupational Safety and Health, the Centers for Disease Control, or other governmental entities. Such preventative health care must be provided prior to an exposure or as a consequence of a documented exposure to blood or bodily fluid containing HIV. Such benefits shall not be provided if the worker claims a work-related exposure and tests positive for HIV within forty-eight hours of that exposure. Lab. Code § 3208.05.

Criminal Law (3)

Education (5)

Insurance (1), (2)

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Research (6)  
Social & Medical Services (8)  
Testing & Reporting (7), (9), (11), (13), (26), (29)  
Miscellaneous (2), (3)

## HOUSING

(1) The Legislature intends to regulate disclosure pertaining to AIDS in situations affecting the transfer of real property. Civ. Code § 1710.2.

(2) The State Department of Health Services may approve up to thirty-five pilot projects to provide housing and food for homeless persons who have AIDS or HIV. Health & Safety Code § 199.715.<sup>25</sup>

(3) The State Department of Health Services may provide supplemental funding to residential AIDS shelters and licensed residential care facilities for persons with a chronic life-threatening illness. Health & Safety Code § 120815.

(4) Services provided by licensed congregate living health facilities to individuals diagnosed with AIDS are covered under the Medi-Cal benefits program. Welf. & Inst. Code § 14132aa.

Social & Medical Services (12), (16), (19), (20), (25)  
Testing & Reporting (26), (30)  
Miscellaneous (3)

## INSURANCE

(1) No health care service plan, disability insurer, nonprofit hospital service plan, self-insured employee welfare benefit plan, or life insurer may withhold any settlement or coverage of an individual solely because of the individual's participation in an HIV/AIDS vaccine clinical trial. The sponsor of any such trial shall submit a confidential certificate to the State Department of Health Services, which the Department shall endorse and return it to the vaccine recipient. Release of a confidential certificate shall be by written authorization of the vaccine recipient or

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25. In August 1995, California renumbered much of the Health & Safety Code. *See* 1995 Cal. Stat. ch. 415. Certain sections were repealed in the process. It is unclear from the LEXIS material whether or not the Legislature intended to repeal this section.

another person designated in the written certificate. Health & Safety Code § 121280.

(2) No insurer shall consider sexual orientation in its underwriting criteria or utilize marital status, living arrangements, occupation, gender, beneficiary designation, zip codes or other territorial classification for the purpose of establishing sexual orientation or determining whether to require HIV testing where that testing is otherwise permitted by law. Ins. Code § 10140.

(3) The Commissioner of Insurance shall not approve any health care service plan contract unless the application contains a prominently displayed notice that shall read: "California law prohibits an HIV test from being required or used by health care service plans [or health insurance companies] as a condition for obtaining coverage." Health & Safety Code § 1389.1. Ins. Code § 10291.5.

(4) Delaying the payment or provision of hospital, medical, or surgical benefits for services provided with respect to AIDS or AIDS-related complex for more than 60 days after the insurer has received a claim for those benefits, where the purpose of the delay is an investigation to determine whether the condition preexisted the coverage, shall be considered an unfair method of competition and an unfair and deceptive act or practice in the insurance business. Ins. Code § 790.03.

(5) A life or disability income insurer may decline a life or disability income insurance application on the basis of a positive ELISA test (see Definitions (10)) followed by a reactive Western Blot Assay (see Definitions (10)) performed by or at the direction of an insurer on the same specimen of the applicant's blood. This authorization applies only to policies, certificates, and applications for coverage received after 1989 and the issuance or granting of which is otherwise contingent on medical review for other diseases or medical conditions in order to be effective. Ins. Code § 799.02. An insurer that requests an applicant to take an HIV test shall obtain the applicant's written informed consent for the test. Prior to the applicant's execution of consent the insurer shall provide the applicant material describing HIV, its symptoms, causes, spread, tests used to detect its presence, and where a person who tests negative or positive can go to obtain counseling. The insurer shall notify the applicant of a positive test result by notifying the applicant's designated physician. The Commissioner of Insurance shall develop standardized

language for the informed consent disclosure form. Ins. Code § 799.03. A life or disability income insurer may not require an applicant to undergo an HIV antibody test (see Definitions (10)) unless the cost is borne by the insurer. Ins. Code § 799.04.

(6) No life or disability income insurer shall consider the marital status or known or suspected homosexuality or bisexuality of an applicant in determining whether to require an HIV antibody test of that applicant. Ins. Code § 799.05.

(7) No application for life or disability income insurance shall contain a question pertaining to prior testing for HIV antibodies unless the question is limited in scope to prior testing for the purpose of obtaining insurance. Ins. Code § 799.06.

(8) If an applicant has had a positive ELISA test result or a reactive Western Blot Assay or both, a life or disability income insurer shall not report a code to an insurance support organization or another insurer unless a nonspecific blood test result code is used which does not indicate that the individual was subject to HIV-related testing. Ins. Code § 799.07.

(9) No policy or certificate shall limit benefits otherwise payable if loss is caused or contributed to by AIDS or AIDS-related complex unless the insurer could have declined the application or enrollment request of the insured (see Insurance (5)). Ins. Code § 799.08.

(10) No life insurance or disability income insurer shall require an HIV antibody test if the results of the test would be used exclusively for the purpose of determining eligibility for hospital, medical, or surgical insurance coverage under a nonprofit hospital service plan or health care service plan. Ins. Code § 799.09.

Criminal Law (10)

Research (6)

Testing & Reporting (33)

Miscellaneous (3)

## RESEARCH

(1) Research records in a personally identifying form, developed or acquired by any person in the course of conducting AIDS research, shall be confidential. Confidential research records (see

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Definitions (14)) shall not be disclosed (see Definitions (14)), discoverable, or compelled to be produced by any person unless a court finds there is good cause or a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with a criminal charge against a research subject (see Definitions (11)) and there is no other practicable way of obtaining the information. Health & Safety Code §§ 121075, 121100.

(2) Confidential research records may be disclosed with the prior written consent of the research subject but only to the extent, under the circumstances, and to the persons authorized in the written consent. Any authorized disclosure (see Definitions (15)) shall contain a statement describing the limits on disclosure and explaining that violation of the confidentiality of the record may subject a person to civil or criminal liability (see Criminal Law (5)). Health & Safety Code § 121080. The contents of confidential research records may be disclosed without prior written consent to medical personnel as necessary in a bona fide medical emergency and to the State Department of Health Services as necessary to conduct special investigations. Health & Safety Code § 121090.<sup>26</sup> Within thirty days of a request, the content of any confidential research record shall be disclosed to the research subject, the legal representative of the research subject if the research subject is a minor, or the personal representative of a deceased research subject to whom the record pertains. Health & Safety Code § 121095.

(3) Confidential research records shall be protected in the course of conducting financial audits or program evaluations. Authorized disclosure of confidential research records shall be made on a case-by-case basis, to the extent it is necessary for audit personnel to know the identity of individual research subjects. Information disclosed for audit or evaluation purposes should be used only for audit and evaluation purposes and may not be redisclosed or used in any other way. No civil liability or criminal sanctions shall be imposed for disclosure of confidential research records in accordance with any reporting requirements for a diagnosed case of AIDS. Health and Safety Code § 121085.

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26. *Urbaniak v. Newton*, 277 Cal. Rptr. 354 (Ct. App. 1991) (alerting health care workers of patient's HIV status was important safety concern as evidenced by this provision).

(4) Prior to participation in a research study relating to AIDS, the informed consent of each research subject shall be obtained, and each research subject shall be provided with a written explanation of the rights and responsibilities of researchers and research subjects. Health & Safety Code § 121105.

(5) Any person who willfully or maliciously discloses the content of any confidential research record to a third party shall be assessed a civil penalty of \$1,000 to \$5,000 plus actual damages and court costs, to be paid to the research subject. Health & Safety Code § 121110.

(6) In the event that the participation of an individual in a research study is disclosed, the information shall not be used to determine employability or insurability of the research subject. Health & Safety Code § 121110.

(7) Disclosure of information in order to further research efforts, including publication, dissemination, or sharing of data, statistics, or case studies is permissible so long as no confidential research records are disclosed. Health & Safety Code § 121120.

(8) In making determinations on requests for approval of AIDS-related drugs (see Definitions (2)) or for requests for exemptions from approval requirements, the Department of Health Services shall employ persons to conduct reviews for approval or exemption. The AIDS Vaccine (see Definitions (3)) Research and Development Advisory Committee (see Definitions (11)) shall review and advise the Department. No person may contract with the Department for review of a request if that person has a financial interest or a conflict of interest involving the drug being evaluated. Health & Safety Code §§ 111600 to 05.

Criminal Law (5)

Social & Medical Services (2), (6)

Testing & Reporting (5), (15), (16), (17)

Miscellaneous (3), (4), (5), (6), (9)

#### SOCIAL & MEDICAL SERVICES

(1) Licensing boards shall consider including training regarding the characteristics and methods of assessment and treatment of AIDS in any continuing education or training requirements for the

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following licensees: chiropractors; medical laboratory technicians; dentists; dental hygienists; dental assistants; physicians and surgeons; podiatrists; registered nurses; therapists; acupuncturists; marriage, family, and child counselors; educational psychologists; and clinical social workers. Bus. & Prof. Code § 32.

(2) The AIDS Advisory Committee shall advise and assist the State in addressing the public health issues associated with AIDS and shall work with the State Department of Health Services in statewide efforts to promote primary prevention, public education, and the advancement of knowledge regarding AIDS. Health & Safety Code § 121160.

(3) The State Department of Health Services shall develop and implement a pilot project to provide model early intervention centers for HIV positive women. The Office of AIDS shall select areas of the state in which to implement this pilot project based on observed HIV and AIDS trends among women. Women's HIV early intervention services shall include but not be limited to medical monitoring, laboratory tests, colposcopy, mammography, HIV-related obstetrical and gynecological services, psychosocial support, HIV transmission risk assessment, risk reduction counseling (see Definitions (13)) and support, health education, nutritional counseling, assistance with clinical drug trials, alcohol and substance abuse treatment, and child care. Health & Safety Code § 199.717.

(4) The knowing failure of a licensee to follow infection control guidelines of a licensing board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, or from patient to licensee shall be considered unprofessional conduct for which the licensee may be subject to disciplinary action including denial, suspension, revocation, or imposition of probationary conditions on the professional license. Bus. & Prof. Code §§ 1680, 2221, 2660, 2761, 2878, 3527, 3750, 4521, 4955.

(5) The Office of AIDS in the State Department of Health Services shall be the lead agency within the state responsible for coordinating programs, services, and activities relating to HIV, AIDS, and AIDS-related conditions. Health & Safety Code § 100119. The Office of AIDS may do the following: perform strategic planning for implementation of goals and objectives for women's health; coordinate



pilot projects funded by the state that are related to women's health; conduct departmental policy analysis on specific issues related to women's health; identify unnecessary duplication of services and future service needs; communicate and disseminate information and perform a liaison function within the Department and to providers of health, social, educational, and support services to women; perform internal staff training and training of health care professionals to ensure more appropriate care; serve as a clearinghouse for information regarding women's health data, strategies, and programs that address women's health issues; encourage innovative response by public and private entities that are attempting to address women's health issues; and provide technical assistance to counties, other public entities, and private entities seeking to obtain funds for initiatives in women's health. Health & Safety Code § 138.

(6) The State Director of Health Services shall award contracts to early intervention projects to provide long-term services to persons infected with HIV. The purposes of early intervention projects shall be: to provide appropriate medical treatment to prevent or delay the progression of disease that results from HIV infection; to coordinate services available to HIV-infected persons; and to provide information and education, including behavior change support, to HIV-infected persons to prevent the spread of HIV infection to others. Projects shall accommodate the special needs of clients by taking into account the circumstances that placed them at risk for becoming infected with HIV. Early intervention projects awarded contracts shall provide all of the following services: health assessment of infected persons; health education and behavior change support related to reducing the risk of spreading HIV and to maximize the healthy and productive lives of HIV-infected persons; psychosocial counseling services; information and referral for social services; information on available research for the treatment of HIV infection; covered outpatient preventative or therapeutic health care services related to HIV infection; and case management. Health & Safety Code § 120900.

(7) The Director of the State Department of Health Services shall establish and may administer a program to provide drug treatments to persons infected with HIV. Health & Safety Code §§ 120950, 120960, 120965.

(8) The Legislature intends to provide an exposure notification and information mechanism to permit individual health care providers, first responders (see Definitions (4)), and employees of health care facilities who have experienced a significant exposure (see Definitions (4)) to the blood or other potentially infectious materials (see Definitions (4)) of a patient to learn of the HIV infection status of the patient. Health & Safety Code § 199.65.

(9) The State Department of Health Services shall: issue contracts for the development and implementation of pilot programs to reduce the spread of AIDS through residential detoxification and treatment services for intravenous drug users with AIDS; monitor state and federal AIDS-related policy and budget developments; develop and maintain an information clearinghouse to inform health professionals or community organizations providing services to people with AIDS of the status of current or new clinical drug trials; review, edit, and input summaries from scientific journals into the Computerized AIDS Information Network (CAIN) and do outreach about CAIN availability to health professionals; develop and conduct a needs assessment of the availability of supportive services to people with AIDS; prepare a report to the Legislature on the feasibility of coordinating various levels of health care which would serve persons with HIV infection; and include in HIV surveillance and reporting a breakdown of the major Asian-Pacific Islander subgroup populations affected by HIV, newly identified clinical manifestations of HIV, and available resources for health care practitioners to seek diagnostic and treatment information. Health & Safety Code § 120805.

(10) Pilot projects to demonstrate the cost effectiveness of home health, attendant, or hospice care shall be initiated through a block grant program. Contractors receiving direct service block grants shall: encourage broad-based community involvement and support for AIDS programs; ensure that proposed services are not duplicated in the community and are based on the needs of people with AIDS, at risk communities, their families, and others affected by AIDS; and develop a comprehensive system of services provided either directly or through referrals. Health & Safety Code § 120830.

(11) The Department of Mental Health shall establish an AIDS mental health project including but not limited to the following activities:

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statewide needs assessment of AIDS-related mental health issues; education and training for mental health professionals throughout the state; and media campaigns on the use of support groups, the relationship of stress and the immune system, and dealing with grief. Health & Safety Code § 120840.

(12) Local agency operated AIDS-related substance abuse programs shall initiate pilot programs to reduce the spread of AIDS. Such programs shall include: residential detoxification programs for intravenous drug users; outpatient detoxification programs; AIDS and substance abuse information, consultation, and resource referral; and outreach, health promotion, health assessment, consultation, and referral for homeless youth substance abusers. Health & Safety Code § 120845.

(13) The State Department of Health Services shall, in coordination with the State Department of Alcohol and Drug Programs, develop a plan which addresses the need for a program of AIDS primary prevention, health, education, testing, and counseling specifically designed for women and children which shall be integrated into other family, children, genetic health, sexually transmitted disease, and community care programs. The AIDS-related services which shall be addressed in the plan shall include but not be limited to providing education appropriate to the cultural background of the clientele and making available confidential HIV antibody testing (see Definitions (10)) and counseling either on site or by referral. Health & Safety Code § 120860.

(14) The State Department of Health Services shall develop written guidelines and regulations to minimize the risk of blood-borne infectious disease transmission from health care worker to patient, from patient to patient, and from patient to health care worker. Health & Safety Code § 1250.11.

(15) Each skilled nursing or intermediate care facility shall consider including training regarding the characteristics, methods of assessment, and treatment of AIDS. Health & Safety Code § 1337.1.

(16) The Director of Health Services shall ensure that within six months after obtaining licensure, an administrator of an adult residential facility and a program director of a social rehabilitation facility shall receive three hours of training on the needs of residents who may be infected with HIV or tuberculosis. Administrators and program directors

shall attend updated training sessions every two years to ensure that information received on HIV remains current. Health & Safety Code § 1562.5. The Department of Social Services shall ensure that personnel responsible for licensing applications for residential care facilities (see Definitions (9)) for persons with chronic life-threatening illnesses (see Definitions (9)) receive periodic training regarding the most recent developments in the HIV epidemic and the care and supervision (see Definitions (9)) of people with HIV. Health & Safety Code § 1568.041.

(17) Among the long-term goals of the Legislature as part of the drug and alcohol master plan is that all general acute care hospitals and AIDS medical services providers provide information on drug and alcohol abuse to their patients. In addition, every alcohol and drug abuse program shall provide AIDS information to all program participants. Every county advisory board on drug programs shall have representatives from the treatment and recovery community including a representative with expertise in AIDS treatment services. Health & Safety Code § 11998.1.

(18) The requirement that there be no unlawful use of drugs or alcohol in any public or private drug- or alcohol-related program which receives state funds does not apply to any program funded by the state that provides education and prevention outreach to intravenous drug users with AIDS or AIDS-related conditions or persons at risk of HIV infection through intravenous drug use. Health & Safety Code § 11999.2.

(19) The sheriff of each county shall provide inmates who have been sentenced for drug-related offenses with information about behavior that places a person at risk for contracting HIV and about prevention of transmission of AIDS. The sheriff of each county or the chief probation officer and the Director of Corrections shall provide inmates who have been sentenced for drug-related offenses who are within one month of release or who have been placed on probation or parole with information about behavior that places a person at risk for contracting HIV, prevention of transmission of AIDS, and agencies and facilities that provide testing, counseling, medical, and support services for AIDS victims. Penal Code § 4018.1. The Director of Corrections shall provide all inmates at each penal institution with information about behavior that places a person at high risk for contracting HIV and about prevention of transmission of AIDS. Penal Code § 5008.1.

(20) It is recommended that every city or county correctional, custodial, and law enforcement agency which tests prisoners for HIV also have a comprehensive AIDS prevention and education program. Goals of such a program include education, body fluid precautions, separate housing for infected individuals, and adequate AIDS medical services. Penal Code § 7552.

(21) The Director of the Youth Authority shall provide all wards at each penal institution, including camps, with information about behavior that places a person at high risk for contracting HIV and about the prevention of transmission of AIDS. The director shall provide all wards who are within one month of release or being placed on parole with information about agencies and facilities that provide testing, counseling, medical, and support services for AIDS victims. Welf. & Inst. Code § 1123.

(22) Any drug which is approved by the federal Food and Drug Administration (FDA) for use in the treatment of AIDS shall be deemed approved for addition to the Medi-Cal list of contract drugs only for the purpose of treating AIDS. In addition, any drug that meets the following criteria shall be a Medi-Cal benefit subject to utilization controls: any vaccine to protect against HIV infection; any drug or biologic used to treat opportunistic infections associated with AIDS that is either FDA approved or recognized for that use by the American Medical Association Drug Evaluations, the United States Pharmacopoeia Information, or at least two articles from peer reviewed medical journals; any antiviral agent, immune modulator, or other agent administered to people with HIV to counteract the effect of the infection; or any drug or biologic used to treat the chemotherapy-induced suppression of the human immune system resulting from treatment of AIDS. Welf. & Inst. Code §§ 14105.43, 14105.435.

(23) Medically necessary inpatient and outpatient services associated with the administration of any drug that has been classified by the Department of Social Services or the FDA as having Investigational New Drug (IND) status shall be covered under the Medi-Cal benefits program when the drug is being administered to otherwise eligible persons for the treatment of AIDS, AIDS-related complex, or HIV. Welf. & Inst. Code § 14137.6.

(24) The Legislature intends that family planning clients, including those clients seeking diagnosis and treatment for sexually transmitted disease, learn how to prevent the transmission of HIV. Any family planning clinic that contracts with the Office of Family Planning to provide family planning services shall provide brochures or other written materials which describe ways of becoming infected with HIV and methods of preventing transmission of HIV infection. Family planning clinics shall also provide clients with information about referrals to anonymous and confidential testing and counseling sites, educational programs, and other support services. Welf. & Inst. Code § 14503.5.

(25) The Department of Social Services shall implement a demonstration project for specialized in-home health care (see Definitions (26)) services for children who are exposed to alcohol or drugs or who are HIV positive (see Definitions 19)). Welf. & Inst. Code §§ 16525.10, 16525.25, 16525.40. Each participating county shall recruit foster families whose homes shall be licensed as foster family homes and who shall be trained to care for children who are alcohol or drug exposed or who are HIV positive. Welf. & Inst. Code § 16525.11. Counties may provide the same training to relatives who are caretakers of eligible children (see Definitions (16)) if the county's allocations permit. Welf. & Inst. Code § 16525.13.

(26) The State Department of Health Services, in consultation with the State Department of Alcohol and Drug Programs, shall review and report on existing programs administered by the two Departments that provide services to persons with AIDS or persons at risk for becoming infected with HIV to identify whether or not there are unmet needs in targeting these programs to substance abusers, racial and ethnic minority groups, and women. The Departments shall consider the provision of care to such groups in programs outside of a general acute care hospital setting. Health & Safety Code § 120865.

Criminal Law (2), (3)

Education (1), (2), (3), (4), (6), (7)

Employment (1)

Housing (2), (3), (4)

Insurance (1), (2), (3), (4), (10)

Research (2), (8)

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Testing & Reporting (1), (2), (4), (5), (6), (7), (8), (9), (10), (11), (13), (14), (15), (16), (17), (18), (19), (20), (22), (23), (25), (26), (27), (30), (31)

Miscellaneous (3), (4), (5), (6), (7), (8), (9), (11)

#### TESTING & REPORTING

(1) The Legislature intends to implement recommendations pertaining to infectious disease screening of blood and other body parts and fluids and notifying donors of the results of those screening tests. Health & Safety Code § 121150.

(2) A minor who is twelve years of age or older and who may have come in contact with an infectious, contagious, or communicable disease may consent to medical care related to the diagnosis or treatment of the disease, if the disease or condition is one that is required by law or regulation to be reported to the local health officer or is a sexually transmitted disease related to a reportable disease or condition. The minor's parent or guardian is not liable for payment for medical care provided to a minor under such conditions. Family Code § 6926.

(3) No person shall be compelled in any state, county, city, or other local, civil, criminal, administrative, legislative, or other proceedings to identify or to provide characteristics which would identify an individual who is the subject of an HIV blood test. Health & Safety Code § 120975.<sup>27</sup>

(4) For purposes of diagnosis, care, or treatment of a patient, the results of an HIV test which identifies the test subject may be recorded by the physician who ordered the test in the test subject's medical record or otherwise disclosed (see Definitions (14)) to the test subject's health care providers (see Definitions (4)) without written authorization from the test subject. "Health care provider" does not include a health care service plan. No further disclosure shall be made unless otherwise permitted by law. Health & Safety Code § 120985.

(5) Except in the case of a person treating a patient, no person shall perform an HIV blood test without the written consent of the test

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27. *Irwin Memorial Blood Bank v. Superior Court*, 279 Cal. Rptr. 911 (Ct. App. 1991) (deposition order not enforced because it contravened Health & Safety Code § 199.20 (now § 120975) by requiring suspected HIV positive blood donors to come forward and be identified by donor number).

subject or conservator (see Testing & Reporting (6)). The person administering the test shall obtain a written statement confirming that consent from the test subject was given. In the case of a physician or surgeon, the consent required shall be informed consent. The consent requirement does not apply in the following situations: to a test performed at an alternative site; to certain blood or blood products (see Testing & Reporting (16)); to testing by a medical examiner or other physician on blood from a cadaver when an autopsy is performed or body parts are donated pursuant to the Uniform Anatomical Gift Act; or to testing performed as part of medical research conducted with institutional review board approval or by the Department of Health Services in accordance with protocol for unlinked testing (see Definitions (27)). Health & Safety Code § 120990.

(6) When an HIV test subject is not competent to give consent for a blood test, written consent may be obtained from the subject's parent, guardian, conservator, or other person lawfully authorized to make health care decisions for the test subject. A minor under twelve years of age shall be deemed not competent to give consent. Health & Safety Code § 121020.

(7) The results of an HIV blood test may be disclosed to any of the following persons without written authorization: to the subject of the test or the subject's legal representative or conservator; to a test subject's health care provider, not including a health care services plan; to an agent or employee of the test subject's health care provider who provides direct patient treatment; or to a health care provider who procures, processes, distributes, or uses a human body part pursuant to the Uniform Anatomical Gift Act. Health & Safety Code § 121010.

(8) No physician or surgeon who has the confirmed positive HIV test results of a patient shall be held criminally or civilly liable for disclosing to a person reasonably believed to be a spouse, sexual partner, or person with whom the patient has shared a hypodermic needle, or to the county health officer, that the patient has tested positive for HIV, except that no physician or surgeon shall disclose any identifying information about the individual believed to be infected. No physician shall disclose a positive HIV test result to a third party unless the physician has first discussed the test result with the patient and has offered the patient appropriate educational and psychological counseling,



including information on the risks of transmitting HIV to others and methods of avoiding those risks, and has attempted to obtain the patient's voluntary consent for notification of contacts. The physician shall notify the patient of the physician's intent to notify the patient's contacts prior to any notification. The physician shall refer the contact for appropriate care, counseling, and follow-up. Disclosure is permissive on the part of the physician. The county health officer may alert any persons reasonably believed to be a spouse, sexual partner, or needle-sharing partner of an individual who has tested positive for HIV without disclosing the identity of the individual believed to be infected and without disclosing the identity of the physician making the report. The county shall also refer the person contacted for appropriate care and follow-up. Upon completion of the county health officer's effort to contact any person, all records regarding the person contacted shall be expunged by the county health officer. Health & Safety Code § 121015.

(9) The blood or other tissue or material of a source patient (see Definitions (4)) may be tested, and an exposed individual (see Definitions (4)) may be informed of the HIV status of the patient if the exposed individual and the health care facility, if any, have substantially complied with the applicable guidelines of the Division of Occupational Safety and Health and the State Department of Health Services and if the following procedures are followed: request by exposed person for an evaluation of an exposure by a physician to determine if it is a significant exposure (see Definitions (4)); written certification by a physician of the significance of the exposure within 72 hours of request by the exposed person and certification provided to the attending physician; counseling (see Definitions (13)) of the exposed person regarding testing and likelihood of transmission; consent to disclosure of positive HIV status of the source patient to the exposed individual, if applicable; source patient's informed consent to HIV testing obtained, if possible; pretest counseling, referral to post-test counseling, and follow-up provided to the source patient, whether or not the patient consents to testing; testing of available blood (see Definitions (4)) or other tissue or material if the patient refuses to consent to testing; test results provided to source patient if patient requests in writing to be informed or fails to sign form documenting refusal to be notified of test results; encoding of source patient's identity on the HIV test result record; and exposed individual informed of confidentiality protections on the identity of the source

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patient and that test results shall be kept confidential. The costs of the HIV testing and counseling of the exposed person shall be borne by the employer of the exposed person. The employer shall provide postexposure evaluation and follow-up for the exposed individual as required by the California Division of Occupational Safety and Health as well as the testing and counseling of source patients. If the exposed person is a volunteer or a student, then the health care provider or first responder (see Definitions (4)) may pay for the cost of testing and counseling as if the exposed individual were an employee. Health & Safety Code § 199.67.

(10) No health care provider shall be subject to civil or criminal liability or professional disciplinary action for performing an HIV test on the available blood of a source patient or for disclosing the HIV status of a source patient to the source patient, an attending physician of the source patient, the certifying physician (see Definitions (4)), the exposed individual, or an attending physician of the exposed individual if the health care provider has acted in good faith in complying with the provisions pertaining to source patient testing. Health & Safety Code § 199.68.

(11) The purpose of AIDS public safety and testing provisions is to require that information vital to the health and safety of the public, victims of certain crimes, certain defendants and minors, and custodial personnel, peace officers, firefighters, and emergency medical personnel put at risk in the course of their duties, be obtained and disclosed so that precautions can be taken to preserve their health and so that such persons can be relieved of groundless fear of infection. Health & Safety Code § 121050.

(12) Any defendant charged in any criminal complaint with unlawful sexual intercourse with a minor, spousal rape, compelling an illicit relationship, inducing consent to a sexual act by fraud or fear, sodomy, lewd or lascivious acts involving children, or oral copulation shall be subject to court ordered HIV testing. If an alleged victim listed in the petition or complaint makes a written request for testing, the prosecuting attorney or the alleged victim may petition the court for an order to test the defendant for HIV. The court shall promptly conduct a hearing upon any such petition. If the court finds that probable cause exists to believe that a transfer of blood, saliva, semen, or other body fluid

took place between the defendant and the alleged victim the court shall order that the defendant provide two specimens of blood for testing. Copies of the test results shall be sent to the defendant, each requesting victim, and if applicable, to the officer in charge and the chief medical officer of the place in which the defendant is incarcerated or detained. Health & Safety Code § 121055.<sup>28</sup>

(13) Any person charged in a criminal complaint filed with a magistrate, court, or juvenile court in which it is alleged that the defendant or minor interfered with the official duties of a peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or other bodily fluids (see Definitions (13)) on, upon, or through the skin or membranes of such peace officer, firefighter, or emergency medical personnel shall be subject to court ordered HIV testing following the same procedures as those outlined in § 121055 pertaining to court ordered testing of defendants alleged to have committed sex crimes. Health & Safety Code § 121060.<sup>29</sup>

(14) Withdrawal of blood for the purposes of AIDS testing shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, licensed medical technician, or licensed phlebotomist may withdraw blood specimens for the purposes of AIDS testing. The court shall order that the blood specimens be transmitted to a licensed medical laboratory and that tests be conducted for medically accepted indications of exposure to the AIDS virus and AIDS-related conditions. Copies of test results which indicate exposure to or infection by AIDS or AIDS-related conditions shall be transmitted to the State Department of Health Services. The test results shall be sent to designated recipients with a disclaimer that AIDS tests cannot be performed with absolute accuracy and that persons receiving the results should continue to monitor their health and consult a physician. If the test subject is a minor, copies of the test results shall also be sent to the minor's parent or guardian. The court shall order all persons receiving

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28. *People v. Guardado*, 47 Cal. Rptr. 2d 81 (Ct. App. 1995) (written request by victim for AIDS testing of defendant is a statutory requirement under this provision even when victim is a minor).

29. *Johnetta v. Municipal Court*, 267 Cal. Rptr. 666 (Ct. App. 1990) (given medical utility in administering an HIV blood test on petitioner who allegedly bit a peace officer, this provision does not violate Fourth Amendment of U.S. Constitution); *Barlow v. Superior Court*, 236 Cal. Rptr. 134 (Ct. App. 1987) (Health & Safety Code §§ 199.20-60 (now §§ 120775-121335) prohibited HIV blood testing of petitioner who bit police officers).

test results to maintain the confidentiality of personal identifying information except for disclosure which may be necessary to obtain medical or psychological care. The specimens and test results shall not be admissible evidence in any criminal or juvenile proceeding. Any person performing testing or transmitting or disclosing information in accordance with the provisions of the testing disclosure act shall be immune from civil liability. Health & Safety Code § 121065.

(15) Any medical personnel employed by or under contract with the State of California or an agency or political subdivision of the State providing service at any prison, Youth Authority institution, or juvenile detention, medical, or other facility who receives information that an inmate or minor at such facility has been exposed to or infected by the AIDS virus or has an AIDS-related condition shall communicate such information to the officer in charge of the facility. The following information shall be subject to disclosure: laboratory tests which indicate exposure to AIDS; any statement by the inmate that such inmate has AIDS or has been exposed to the AIDS virus; and the results of any medical examination indicating exposure to the AIDS virus, not including information communicated pursuant to a research study in which an express written waiver of disclosure has been obtained. The officer in charge of the facility shall notify all employees, contract personnel, and volunteers who may have direct contact with the inmate or the inmate's bodily fluids of the information pertaining to the inmate so that actions may be taken to provide appropriate care for the inmate and to provide for the safety of such personnel and other inmates. All persons to whom information is disclosed shall maintain the confidentiality of personal identifying data except as authorized by statute or as necessary to obtain medical or psychological care. Health & Safety Code § 121070.

(16) No blood or blood components (see Definitions (6)) shall be used in vivo for humans unless the blood or blood components have tested negative for HIV or the blood or blood components are used for research or vaccination programs pursuant to informed consent. Exceptions to the testing requirement include: frozen red blood cells of a rare type collected prior to the effective date of the testing provision for which no specimen is available; inventories of blood or blood components collected up to sixty days after the effective date of the testing provision; blood or blood products released for transfusion in emergency circumstances; and blood used for autologous purposes. A

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physician shall report all transfusion-associated AIDS cases to the county health officer. As soon as is practicable following hospitalization, a hospital shall report the name, date of birth, address, social security number, name of the hospital, and date of hospitalization of an AIDS carrier to the Department of Social Services and the county health officer. The county health officer shall investigate all transfusion-associated AIDS cases and shall, if possible, trace the sources of human whole blood which was transfused. The Department shall compile two times each month a list of carrier donors, possible carrier donors, and persons who test positive for HIV and shall distribute the lists to blood banks and plasma centers. Information reported to a blood bank shall be used solely to determine whether blood previously transfused may have been donated by a person infected with HIV. The blood bank shall not disclose information which would identify a donor and shall destroy information communicated to it immediately after reviewing its records. Health & Safety Code § 1603.1.

(17) Prior to a donation of blood or blood components, each donor shall be notified in writing and shall have signed a written statement confirming the notification of all of the following information: that the blood or blood components shall be tested for HIV; that donors found to have serologic evidence of HIV shall be placed on a confidential statewide Blood Donor Deferral Register without a listing of the reason for being included in the register; that the donor shall be notified of the test results; that the donor blood found to have HIV antibodies shall not be used for transfusion; that blood or blood components shall not be donated for transfusion by persons who have reason to believe that they have been exposed to HIV; and that the donor is required to complete a health screening questionnaire to assist in determining whether the person has been exposed to AIDS. A blood bank or plasma center shall incorporate voluntary means of self-deferral for donors, including but not limited to a form with checkoff boxes specifying that the blood donated is for research or test purposes only and a callback telephone system for donors to use in order to inform the blood bank that blood donated should not be used for transfusion. The blood bank shall also inform the donor that it is a felony to donate blood if the donor knows he or she has tested reactive to the etiologic agent of AIDS or to the antibodies to that agent or has a diagnosis of AIDS. Blood or blood products that test positive initially shall be retested. Only if a further test confirms the conclusion of

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the earlier test shall the donor be notified of the result by the blood bank. Each blood bank or plasma center shall prominently display at each collection site a notice which provides the addresses and phone numbers of sites where antibody testing is available. No civil liability or criminal sanction shall be imposed for disclosure of test results to a public health officer when disclosure is necessary to locate and notify a blood donor of a reactive result if reasonable efforts by the blood bank or plasma center have failed. Once an effort to locate a donor by a public health officer has been completed, the officer shall expunge all records obtained from the blood bank or plasma center. Health & Safety Code § 1603.3.

(18) No public entity (see Definitions (23)), blood bank, or plasma center shall be liable for an unintentional disclosure of HIV test results or information in the Donor Deferral Register. Health & Safety Code § 1603.4.

(19) Each county designated by the Director of Health Services shall make the HIV antibody test (see Definitions (10)) available without charge and on a confidential basis through the use of a coded system with no linking of individual identity with the test request or results. The county may administer the test either directly or by contract with a physician and surgeon or with any licensed clinic or health facility. Neither the county nor anyone else administering the test shall ask for the name, social security number, or any other information which could identify the test subject. Each test site shall make available confidential information and referral services. The State Department of Health Services shall establish a reimbursement process for such information, testing, and referral services. Health & Safety Code § 120895.

(20) No tissue shall be transferred into the body of another person by means of transplantation unless the donor has been screened and found nonreactive for HIV and human T lymphotropic virus-1 (HTLV-1). All donors of sperm shall be screened and found nonreactive for HIV. Transplantation without testing of the donor for HIV may occur if the surgeon or physician performing the transplantation has determined any one or more of the following to be true: the intended recipient will most likely die during the period of time necessary to conduct the tests; the intended recipient is already diagnosed with HIV; or the symptoms from HIV will most likely not appear during the intended recipient's likely lifespan after transplantation. In addition, consent for the use of the

non-tested tissue must be obtained if possible, or substitute consent must be obtained from the recipient's family or legal guardian. Health & Safety Code § 1644.5.

(21) Nothing in the provisions requiring prompt reporting of cases of active tuberculosis shall authorize the disclosure of HIV test results. Health & Safety Code § 121362.

(22) An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift. All donors shall be screened for HIV. A person acting in good faith and in accordance with the anatomical gifts provisions shall not be liable in a civil or criminal proceeding for any injury, damages, or costs which may result from making use of the anatomical gift. Health & Safety § 7155.5.

(23) The court shall order every person convicted of a sexual offense (see Definitions (25)) to submit to an HIV test. The offender, the Department of Justice, and the local health officer shall be notified of the test results. The Department of Justice shall provide the test results to the defense and prosecuting attorneys, on request, for the purpose of preparing counts for a subsequent offense or for sentence enhancement (see Criminal Law (4), (9)). The victim shall be advised of his or her right to receive the test results and shall be referred to counseling to better understand the meaning of the test results. The local health officer shall be responsible for disclosing the test results to the victim and the test subject. Positive test results shall not be communicated to the victim or the offender without offering counseling. The victim may disclose the test results as necessary to protect his or her health or the health and safety of family or a sexual partner. Penal Code § 1202.1.<sup>30</sup>

(24) Upon the first conviction of any person for soliciting or engaging in prostitution, the court shall, before sentencing or as a condition of probation, order the defendant to complete instruction in the

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30. *People v. McVickers*, 840 P.2d 955 (Cal. 1992) (neither drawing of blood for the HIV test nor the disclosure of test result to defendant and law enforcement officers constitutes ex post facto punishment on defendant, even though statutory provision was passed after offense); *People v. Frausto*, 42 Cal. Rptr. 2d 540 (Ct. App. 1995) (conviction for rape while acting in concert can be the basis for an AIDS test pursuant to this section when the defendant has personally participated in the rape); *People v. Jillie*, 11 Cal. Rptr. 2d 107 (Ct. App. 1992) (this section does not apply to noncompleted offenses of attempted sodomy and attempted forcible oral copulation since they are not listed in statute); *People v. Guardado*, 47 Cal. Rptr. 2d 81 (Ct. App. 1995) (involuntary AIDS and HIV testing under this section is strictly limited by statute and does not include testing of persons convicted of lewd and lascivious conduct).

causes and consequences of AIDS and to submit to AIDS testing. Upon a second or subsequent conviction, the court shall order the defendant to submit to AIDS testing. At the sentencing hearing, the court shall furnish the defendant with a report containing the test results. If the results are positive, the court shall make certain that the defendant understands the nature and meaning of the report and advise the defendant of the penalty for a subsequent violation, if applicable. Written copies of the report shall be furnished to the court and the State Department of Health Services. The reports shall be confidential except that the Department shall furnish copies of the report to a district attorney on request. Penal Code § 1202.6.<sup>31</sup>

(25) A court may issue a search warrant for the purpose of testing the accused's blood for HIV when a defendant has been charged with or is alleged to have committed any of the following: assault, rape, unlawful sexual intercourse with a minor, spousal rape, lewd or lascivious acts involving children, sodomy, oral copulation, continuous sexual abuse of a child, or penetration by a foreign object. Intent to commit a sex offense is also grounds for the court to order a search warrant. The search warrant shall be issued at the request of the victim or alleged victim. A court may issue such search warrant only when there is probable cause to believe the accused committed the offense and that blood, semen, or body fluid has been transferred from the accused to the victim. Prior to the issuance of a search warrant, the court shall conduct a hearing where applicable. In all cases where a person has been charged by complaint, information, or indictment with a crime or is subject to a petition in juvenile court alleging the commission of a crime, the prosecutor shall advise the victim of the right to request a probable cause hearing. To assist the victim in deciding whether to make the request, the prosecutor shall refer the victim to the local health officer for pre-request counseling on the risk of HIV transmission and the benefits and limitations of current HIV tests. Neither the failure of a prosecutor to refer or advise the victim nor the failure or refusal of the victim to seek or obtain counseling shall be considered by the court in ruling on the victim's request. The local health officer shall make provisions for all tests ordered by a court and shall have responsibility for communicating

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31. *Love v. Superior Court*, 276 Cal. Rptr. 660 (Ct. App. 1990) (HIV testing and education provisions of this section advance a legitimate government interest and do not violate Fourth Amendment or Due Process provisions of U.S. Constitution).



test results to the victim. Only negative or confirmed positive test results shall be communicated to the victim. Counseling shall be provided when a confirmed positive test result is disclosed to the victim. The local health officer and victim shall comply with all laws relating to confidentiality. A victim may disclose test results as necessary to protect the victim's health or the health of the victim's family or sexual partner. The blood test results shall not be used in any criminal proceeding as evidence of either guilt or innocence. Penal Code § 1524.1.

(26) The Legislature finds that HIV testing of individuals housed within state and local correctional institutions (see Definitions (13)) would help to provide information necessary for effective disease control and would help preserve the health of public employees, inmates, and persons in custody, as well as the public at large. Penal Code § 7500. There is established a procedure for requesting and granting of confidential HIV tests of inmates if a custodial or law enforcement employee (see Definitions (13)) or another inmate has reason to believe such employee or inmate has come into contact with the blood, bodily fluids, or semen of an inmate or has come in contact with an inmate in a manner which could result in HIV infection and if medical authorities believe there is good medical reason for the test. Counseling shall be provided to an employee or inmate who requests such testing. A decision by a chief medical officer to test for HIV may be appealed within three calendar days of the decision. Probation and parole officers must be notified if an inmate who will be released from incarceration is infected with AIDS. Such officers are permitted to notify others, such as the inmate's spouse, who may come in contact with the parolee or probationer. Prison medical staff are authorized to report and require tests of an inmate if the staff reasonably believes that the inmate may be suffering from AIDS and is a danger to other inmates or staff. Such decision to test may be appealed. In addition, supervisory personnel are required to notify staff who come into close or direct contact with persons in custody who are HIV positive and are required to provide appropriate counseling and safety equipment. Any records pertaining to the testing of inmates shall be confidential. Penal Code §§ 7501, 7510, 7511, 7512, 7512.5, 7513, 7514, 7515, 7516, 7516.5, 7516.8, 7517, 7518, 7520, 7521, 7522, 7555. Failure to submit to required initial or follow up testing by an individual charged with a crime but who is either not held in custody

or has been released shall constitute grounds for revocation of the individual's release or probation. Penal Code § 7519.

(27) The withdrawal of blood for the HIV testing of prisoners shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, licensed medical technician, or licensed phlebotomist may withdraw blood specimens. The blood specimens shall be transmitted to a licensed medical laboratory for testing. Copies of the test results shall be sent by the laboratory to the chief medical officer who shall be responsible for protecting the confidentiality of the test results. The chief medical officer shall send the test results to designated recipients with a disclaimer stating that the tests cannot determine exposure to HIV with absolute accuracy. Copies of the test results shall be sent to the parent's of a test subject who is a minor. All persons other than the test subject who receive HIV test results shall maintain the confidentiality of personal identifying data pertaining to the test subject, except as necessary to obtain medical or psychological care or advice. The specimens and test results shall not be admissible as evidence in any criminal or disciplinary proceedings. Penal Code § 7530.

(28) As necessary for HIV detection and prevention, the State Department of Health Services with the approval of the county health officer may conduct periodic anonymous unlinked serological surveys of all or portions of the inmate population or persons under custody within a city or county. Penal Code § 7553.

(29) The correctional, custodial, or law enforcement agency in which a reportable incident (see Definitions (24)) of occupational exposure to HIV occurs shall report the following information: the assignment of the law enforcement employee; the type of incident and type of injury sustained; the treatment rendered; citations to any criminal laws allegedly violated; and the identity of the employing agency. The identities of the law enforcement employee and the source person (see Definitions (24)) shall not be disclosed. Penal Code § 7554.

(30) A person under the jurisdiction and control of the Department of Youth Authority must submit to an HIV test upon a determination by the chief medical officer of the facility that clinical symptoms of AIDS or AIDS-related complex are present in the person. In the event that the test subject refuses to submit to the test, the Department may seek a court order to require the person to submit to

testing. The chief medical officer shall ensure that the test subject receives pretest and post-test counseling. The chief medical officer shall encourage the test subject to undergo voluntary testing. The withdrawal of blood shall be performed in a medically approved manner and testing shall be performed by a licensed laboratory. The test subject shall be notified face-to-face of the test results. The Department shall provide appropriate medical services for the diagnosis and treatment of those infected with HIV. The Department may operate separate housing facilities for those infected with HIV and who continue to engage in activities which transmit HIV. Such facilities shall be comparable to those of other wards and inmates not infected with HIV with equal access to recreational and educational facilities. The chief medical officer of a facility may disclose test results to the superintendent or administrator of the facility, inform the test subject's known sexual partners or needle contacts of the positive results provided that the test subject's identity is kept confidential, and include the test results in the subject's confidential medical record, which is to be maintained separate from other case files and records. Welf. & Inst. Code § 1768.9.

(31) The Department of Social Services shall report to the appropriate committees of the Legislature and to the Governor each year on a statewide and county-by-county basis the most recent data on the number of babies born with HIV infection. Welf. & Inst. Code § 14148.91.

(32) Any person who negligently discloses HIV test results to a third party in a manner which identifies or provides identifying characteristics of the test subject, except pursuant to written authorization or an express provision for exemption, shall be assessed a civil penalty not to exceed \$1,000 plus court costs. Any person who willfully discloses HIV test results to a third party in a manner which identifies or provides identifying characteristics of the test subject, except pursuant to written authorization or an express provision for exemption, shall be assessed a civil penalty in an amount not less than \$1000 and not more than \$5,000 plus court costs. Health & Safety Code § 120980.

(33) The provisions for disclosure of HIV test results under the Health and Safety Code do not apply to disclosure of test results for insurance underwriting purposes. Any person who negligently discloses test results of an HIV antibody test to any third party in a manner which

identifies the test subject, except pursuant to a written authorization, shall be assessed a civil penalty not to exceed \$1,000 plus court costs to be paid to the test subject. Any person who willfully discloses results of an HIV antibody test to any third party in a manner which identifies the test subject except pursuant to a written authorization shall be assessed a civil penalty of between \$1,000 and \$5,000 plus court costs payable to the test subject. Any person who violates the testing disclosure provisions in any way may be liable to the test subject for all actual damages for economic, bodily, or psychological harm which is proximately caused by such an act. Each violation is a separate and actionable offense. Ins. Code § 799.10.

Criminal Law (1), (2), (3), (5), (6), (7), (9), (10)

Education (1), (4), (6)

Employment (1)

Insurance (2), (3), (5), (6), (7), (8), (10)

Research (3)

Social & Medical Services (3), (9), (13), (19), (20), (21), (24)

Miscellaneous (1), (3), (9)

#### MISCELLANEOUS

(1) The State Department of Health Services shall prepare and publish a brochure for distribution to marriage license applicants which shall contain information concerning AIDS and the availability of HIV testing. Family Code § 358.

(2) A city, county, or district attorney pursuant to a local ordinance enacted for the purpose of prosecuting HIV/AIDS discrimination claims, acting on behalf of a person claiming to be aggrieved due to HIV/AIDS discrimination, may bring a civil action against any person, employer, labor organization, or employment agency. Govt. Code § 12965.

(3) Public health records pertaining to AIDS that contain personally identifying information and that are developed and acquired by state or local public health agencies shall be confidential and shall not be disclosed except as otherwise provided by law or pursuant to a written authorization by the subject of the record or a guardian or conservator. State or local public health agencies may disclose personally identifying

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information in public health records to other local, state, or federal public health agencies or to corroborating medical researchers (see Definitions (11)) when the confidential information is necessary to carry out an investigation or to control the disease. The disclosure shall only contain the information necessary for the purpose of that disclosure and such information shall not be further disclosed. No confidential health record shall be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding. Any person who willfully or maliciously discloses the content of a confidential public health record shall be subject to a civil penalty of \$1,000 to \$5,000 plus court costs, payable to the subject of the record. In the event that a record is disclosed, the information shall not be used to determine employability or insurability of any person. The provisions of Chapters 1.11 and 1.12 pertaining to the disclosure of test results and research records shall supersede those pertaining to health records. Health & Safety Code §§ 121025 to 30.<sup>32</sup>

(4) The Legislature finds that the best hope of stemming the spread of the AIDS virus among the general population is the development of an AIDS vaccine and declares that it is in the public interest to provide appropriate incentives toward the timely development and production of an effective and safe AIDS vaccine. The Legislature also declares that fair compensation for innocent victims injured by an AIDS vaccine is in the public interest. The AIDS Clinical Trials Testing Fund will be available to not more than three California manufacturers (see Definitions (8)) of an AIDS vaccine approved by the FDA or the State Department of Health. The AIDS Vaccine Research and Development Advisory Committee (see Definitions (11)) shall review California manufacturers' requests for funds. Manufacturers may apply for such funds while FDA approval is pending. An AIDS Vaccine Research and Development Grant (see Definitions (8)) Program should also be established to encourage AIDS vaccine research by the private sector. It is appropriate to mandate that such grants be reimbursed to the state from the sale of such vaccines. Health & Safety Code §§ 121200, 121250, 121260.

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32. *Willits v. Superior Court*, 24 Cal. Rptr. 2d 348 (Ct. App. 1993) (nurse significantly exposed while treating AIDS patient not entitled to discovery of patient's medical chart under Health & Safety Code § 199 et seq. (now §§ 120775 to 121335)).

(5) The State Department of Health Services shall issue a request for proposals for research and development projects for an AIDS vaccine. The AIDS Vaccine Research and Development Advisory Committee shall review the proposals based on the following criteria: the potential to develop an AIDS vaccine; the demonstrated need of the grant recipient for the funding; and the financial, managerial, and technical commitment of the grant recipient. Health & Safety Code § 121215. Recipients of grants shall use the monies to develop an AIDS vaccine until the FDA approves the clinical testing of an AIDS vaccine on humans. If an AIDS vaccine which has received FDA approval for clinical testing is developed by a grant recipient, then any funds not yet expended or encumbered shall, after approval by the State Department of Health Services, be expended on the clinical trials. Grant recipients who do not receive FDA approval for clinical trials may continue developing an AIDS vaccine or the Committee may determine that the grant recipient does not have a good chance of developing a vaccine which will receive FDA approval and may require that any funds not yet expended or encumbered be returned to the State Department of Health Services for deposit in the AIDS Vaccine Research and Development Grant Fund. Any remaining funds in the Grant Fund shall be expended for further support of clinical trials of a vaccine developed by a grant recipient or for further research and development of a vaccine by a grant recipient. The State Department of Health Services may approve grants to applicants even after FDA approval of clinical testing has been given. Health & Safety Code § 121220.

(6) Contingent on the availability of monies, the AIDS Vaccine Victims Compensation Fund shall pay damages for personal injuries (see Definitions (7)) caused by an AIDS vaccine (see Definitions (3)) sold or delivered in California and administered or dispensed in California to the injured person, except that no payment shall be made for any of the following: damages for personal injuries caused by the vaccine attributable to the comparative negligence of the person making the claim; in any instance where the manufacturer has been found to be liable for the injuries in a court of law; or due to a vaccine administered during a clinical trial. Health & Safety Code § 121270.

(7) The AIDS Vaccine Injury Compensation Policy Review Task Force shall consist of fourteen members who shall make recommendations pertaining to victims compensation procedures. The

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AIDS Vaccine Victims Compensation Fund shall be created wholly from a surcharge on the sale of an AIDS vaccine approved by the State Department of Health Services or the FDA. The surcharge shall not exceed \$10 per unit of vaccine. Health & Safety Code § 121270.

(8) The AIDS Vaccine Guaranteed Purchase Fund is established to guarantee the purchase from companies anywhere in the United States of at least 500,000 units of AIDS vaccine at a cost of no more than \$20 per dosage. The vaccines shall be purchased within three years of FDA or State Department of Health Services approval. In determining which vaccine shall be purchased, the State Department of Health Services shall take into consideration the following criteria: the length of time each AIDS vaccine has been in the marketplace; each vaccine's history of efficacy; each vaccine's history of side effects; and the relative cost of each competing manufacturer's AIDS vaccine. Health & Safety Code § 121275.

(9) The Legislature wishes to encourage FDA-approved clinical trials of an AIDS vaccine to protect against HIV transmission from mother to child and that may also provide a therapeutic effect in the HIV-infected mother. Grants shall be made to encourage manufacturers to conduct such trials. Health & Safety Code § 121300. A manufacturer, research institution, or researcher shall, prior to administration of a maternal transmission AIDS vaccine, obtain the woman's informed consent, a copy of which shall be kept in the test subject's medical record. Significant new findings developed during the course of the research which may relate to the subject's willingness to participate shall be provided to the subject. Health & Safety Code § 121310. A manufacturer, research institution, or researcher shall not be strictly liable for personal injury or wrongful death resulting from the administration of any maternal transmission AIDS vaccine to a research subject (see Definitions (11)) participating in clinical trials. Immunity shall not apply to manufacturers who intentionally provided false information to the FDA in connection with an application for clinical trials. Health & Safety Code § 121315. No person shall be denied the opportunity to be a research subject because of an inability to pay for medical treatment. Health & Safety Code § 121320. An AIDS Clinical Trial Grant Award (see Definitions (11)) for the Prevention of Maternal Transmission of HIV Infection shall be established in order to provide grants to no more than three manufacturers of an AIDS vaccine approved for clinical trials

by the FDA. The funds are to be used for FDA clinical trials. The State Department of Health Services shall issue a request for proposals for research and development projects for a maternal transmission AIDS vaccine. The AIDS Vaccine Research and Development Advisory Committee shall review the proposals based on the following criteria: the potential to develop an AIDS vaccine; the commitment of the grant recipient to provide, either directly or through health insurance coverage, for any injury caused to the participant by the AIDS vaccine in the clinical trial; and the financial, managerial, and technical commitment of the grant recipient. Health & Safety Code § 121325. If a manufacturer that is awarded a grant sells, delivers, or distributes an FDA-approved AIDS vaccine for use by the general population developed in whole or in part using the grant award, the State of California shall be reimbursed for the grant at the rate of \$1 per dose until the total amount of the grant is repaid. A royalty on the sale of the vaccine shall also be paid to the State. The amount of the royalty shall be negotiated at the time of the grant award. Health & Safety Code §§ 121225, 121330.

(10) Every person who sells alkyl nitrates (poppers) shall post a sign at the point of sale (see Definitions (22)) warning that they may be harmful to the health of the user and that studies suggest that their use is associated with the development of the AIDS condition Kaposi's Sarcoma. Health and Safety Code § 120870.

(11) It is unlawful for any person to advertise any drug or device represented to have any effect on AIDS or AIDS-related complex. Health & Safety Code § 110403.

(12) Every building or place used as a bathhouse which as a primary activity encourages or permits conduct that can transmit AIDS including, but not limited to, anal intercourse, oral copulation, or vaginal intercourse, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance. Penal Code § 11225.



## COLORADO

All citations are to “Colo. Rev. Stat.” unless otherwise noted.

### DEFINITIONS

- (1) “AIDS” and “HIV” are defined at §§ 10-3-1104.5 and 26-4-642.
- (2) “Comprehensive and uniform client assessment process” and “long-term care” are defined at § 26-4-507.
- (3) “HIV infection” and “HIV-related test” relating to insurance are defined at § 10-3-1104.5.
- (4) “Long-term-care eligible person” is defined at § 26-4-642.

### CRIMINAL LAW

- (1) In the context of the business of insurance, the disclosure of HIV-related test (see Definitions (3)) results other than as permitted by the statute (see Testing & Reporting (1)) is a misdemeanor. § 10-3-1104.5.
- (2) Any person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person who is not such person’s spouse, in exchange for money or any other thing of value, and with knowledge of being infected with HIV, commits prostitution with knowledge of being infected with AIDS and is guilty of a class 5 felony. § 18-7-201.7.
- (3) Any person with knowledge of being infected with HIV who patronizes a prostitute is guilty of a class 6 felony. § 18-7-205.7.
- (4) Failure by an attending physician or other health care provider required to make a report of HIV infection (see Testing & Reporting (6)) or any laboratory or person required to make a report of HIV infection (see Testing & Reporting (7)) is a class 2 petty offense. Any physician or other health care provider, any officer or employee of the State Department of Public Health and Environment or a local department of health, or any person, firm, or corporation that releases or makes public confidential health reports containing information about a

person's HIV infection is guilty of a misdemeanor. § 25-4-1409.<sup>33</sup>

Social & Medical Services (2)

Testing & Reporting (2), (3), (4), (6), (10)

Miscellaneous (2)

## EDUCATION

(1) A comprehensive health education program, a planned, sequential health program of learning experiences in preschool, kindergarten, and grades one through twelve that shall include the topic of communicable diseases, including AIDS and HIV-related illnesses, shall be developed and implemented. § 22-25-103, 22-25-104.

(2) The State Department of Public Health and Environment shall develop and implement programs under which state and local health departments may perform the following tasks: prepare and disseminate to health care providers circulars of information and presentations describing different aspects of HIV infection; provide consultation to agencies and organizations regarding appropriate policies for testing, diagnosis, treatment, counseling, and other aspects of HIV infection; conduct health information programs to inform the general public of the medical and psychosocial aspects of HIV infection, including updated information on how infection is transmitted and can be prevented; prepare and update an educational program on HIV infection in the workplace for use by employers; develop and implement HIV education risk-reduction programs for specific populations at higher risk for infection; and develop and update a medically correct AIDS prevention curriculum for use at the discretion of secondary and middle schools. School districts are urged to provide every secondary school student with education on HIV infection and AIDS and its prevention, with parental consent. § 25-4-1405.

Testing & Reporting (5)

## EMPLOYMENT

Criminal Law (4)

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33. *Belle Bonfils Memorial Blood Center v. District Court*, 763 P.2d 1003, 1008-09 (Colo. 1988) (identity of an infected blood donor should not be disclosed, but limited discovery should be permitted).

- Education (2)
- Social & Medical Services (2), (8)
- Testing & Reporting (9)

## HOUSING

(1) The fact or suspicion that an occupant of real property is or was at any time infected with HIV or AIDS, which could psychologically impact or stigmatize such property, is not a material fact subject to a disclosure requirement in a real estate transaction. § 38-35.5-101.

## INSURANCE

(1) Making adverse underwriting decisions because an applicant or an insured has demonstrated concerns related to AIDS by seeking counseling from health care professionals is an unfair method of competition or a deceptive act or practice in the business of insurance. § 10-3-1104.<sup>34</sup>

(2) The General Assembly declares that a balance must be maintained between the need for information by those in the insurance business and the public's need for fairness in practices for testing for HIV, including the need to minimize intrusion into an individual's privacy and the need to limit disclosure of the results of such testing. § 10-3-1104.5.

(3) Any policy of life or endowment insurance or annuity contract or contract supplemental thereto may contain benefits providing for the acceleration of life or endowment or annuity benefits in advance of the time they would otherwise be payable for an insured who is diagnosed with a terminal case of AIDS, for health care expenses or for long-term care (see Definitions (2)) which is certified or ordered by a physician. § 10-7-113.

- Criminal Law (1)
- Social & Medical Services (7)
- Testing & Reporting (1), (9)

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34. See *Evans v. Romer*, 854 P.2d 1270, 1284 (Colo. 1993), *cert. denied*, 114 S. Ct. 419 (1993).

## RESEARCH

## Testing &amp; Reporting (8)

## SOCIAL &amp; MEDICAL SERVICES

(1) It is the duty of every physician who, during the course of an examination, discovers the existence of HIV infection or treats a patient for HIV infection to inform the patient of the interpretation of laboratory results and counsel the patient on measures for preventing the infection of others, prevention and treatment of opportunistic infections, treatment to prevent progression of HIV infection, and the necessity of regular medical evaluation. Any local health department, state institution or facility, medical practitioner, or public or private hospital or clinic may examine and provide treatment for HIV infection for any minor without parental consent. Consultation, examination, and treatment for such minor shall be absolutely confidential and shall not be divulged by the facility or physician to anyone but the minor, except for purposes of required reporting (see Testing & Reporting (6) & (7)). If the minor is less than sixteen years old and not emancipated, the minor's parents or legal guardian may be informed by the physician or facility of the consultation, examination, and treatment. The physician or other health care provider shall counsel the minor on the importance of informing the minor's parents of the consultation. § 25-4-1405.

(2) When a public safety worker, emergency medical service provider, or staff member of a detention facility has been exposed to blood or other bodily fluid that may reasonably be infected with HIV, state and local health departments may assist in evaluation and treatment of any involved person by: accessing information on the incident and any person involved to determine whether a potential exposure to HIV occurred; examining and testing such involved persons to determine HIV infection when the fact of an exposure has been established by the state or local health department; communicating relevant information and laboratory test results on the involved persons to such person's attending physician or directly to the involved persons if the confidentiality of such information and test results is acknowledged by the recipients and adequately protected; and providing counseling to the involved persons on the potential health risks and treatment resulting from exposure. The employer of an exposed person shall ensure that relevant information and

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laboratory test results on the involved person are kept confidential and protected from unauthorized disclosure. § 25-4-1405.

(3) Colorado has selected, as an optional service under the medical assistance program, to provide home and community-based services for persons living with AIDS. § 26-4-302.

(4) The Department of Human Services has established a uniform and comprehensive client assessment process (see Definitions (2)) for all individuals in need of long-term care (see Definitions (2)) in order to determine the appropriate services and levels of care necessary to meet clients' needs, to analyze alternative forms of care and the payment sources for such care, and to assist in the selection of long-term care programs and services that meet clients' needs most cost-efficiently. Participation in the process shall be mandatory for clients of publicly funded long-term care programs, including home and community-based services for persons living with AIDS. Private paying clients of long-term care programs may participate in the process for a fee. § 26-4-507.

(5) A single entry point agency is an agency in a local community through which any person eighteen years of age or older who is in need of long-term care can access long-term care services. The agency may serve private paying clients on a fee-for-service basis and shall serve clients of publicly funded long-term care programs including home and community-based services for persons living with AIDS. § 26-4-522.

(6) The Department of Human Services shall, on or before October 1 of each year, provide the General Assembly with a report on the availability and quality of services for persons living with AIDS provided in the state and the costs associated therewith. Such report may include recommendations for appropriate state and federal legislation, rules and regulations, and other actions which would enhance the availability of such services in the state. § 26-4-610.

(7) A home and community-based services program for persons with HIV/AIDS shall be implemented by the Department of Human Services. Such program shall include: personal care and homemaker services; adult day care services; private duty nursing services; electronic monitoring services; and nonmedical transportation services. Such services shall be provided to persons with HIV/AIDS whose gross income does not exceed 300% of the current federal

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supplemental security income (SSI) benefit level, whose resources do not exceed the limit established for individuals receiving a mandatory minimum state supplementation of SSI benefits, and for whom a licensed physician certifies that such program provides an appropriate alternative to institutionalized care. Any person who accepts and receives these services shall pay an amount, which shall be the lesser of the person's gross income, minus federally allowed maintenance and medical deductions, or the projected cost of services to be rendered to the person under the case plan. A long-term care eligible person (see Definitions (4)) receiving home and community-based services shall remain eligible for such services. The provision of such services shall be subject to the availability of federal matching Medicaid funds, for payment of administrative costs and costs for the provision of such services. If the Department of Human Services or the case management agency makes a determination that the cost for the provision of home and community-based services necessary to allow an HIV/AIDS client to avoid institutionalization exceeds or would exceed either the average individual Medicaid payment for like services for hospital or nursing facility care, such client shall not be considered eligible for home and community-based services. The location for the provision of home and community-based services shall be agreed upon by the HIV/AIDS client and the case management agency. §§ 26-4-644, 26-4-645.

(8) A member of an eligible person's family, other than the person's spouse, may be employed to provide personal care services to such person. The maximum reimbursement for the services provided by a member of the person's family for each client shall not exceed \$5000 per family per year. § 26-4-645.5.

(9) Having AIDS or HIV, being presumed to have AIDS or HIV, or seeking HIV testing should not serve as the basis for discriminatory actions or the prevention of access to services. § 25-4-1401.

Criminal Law (4)

Education (2)

Insurance (1), (3)

Testing & Reporting (1), (5), (6), (7), (8), (9), (10), (11)

Miscellaneous (1), (2)

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## TESTING &amp; REPORTING

(1) No person shall request or require that an applicant for insurance submit to an HIV-related test unless that person: obtains the applicant's prior written informed consent; explains the use of the HIV test result to the applicant and discloses the test result to the applicant and to other entities to whom test results may be disclosed; provides the applicant with factual information on AIDS and information on how to obtain relevant counseling; and follows a confirmatory test protocol. A person may disclose an individual applicant's HIV-related test results to reinsurers or to those contractually retained medical personnel, laboratories, and insurance affiliates which are involved in underwriting decisions regarding the individual's application if disclosure is necessary to make underwriting decisions regarding such application. Other than disclosure as explained above, no person shall disclose HIV-related test results which identify the individual applicant with the test results to anyone without first obtaining separate written informed consent from the applicant, except that if the test result is positive or indeterminate, such person may report the test result finding to the medical information bureau, but only if a nonspecific blood test result code is used to protect the confidentiality of the applicant. A person shall notify an insurance applicant in writing of an adverse underwriting decision based upon the results of an HIV test but shall not disclose the specific results of such test to the applicant. The person shall also inform the applicant that the results of the blood test will be sent to a physician designated by the applicant, and that such physician should be contacted for information regarding the HIV test. § 10-3-1104.5.

(2) Any adult or juvenile who is bound over for trial for any sexual offense involving sexual penetration, subsequent to a preliminary hearing or after having waived the right to a preliminary hearing, or any person who is indicted for or is convicted of any such offense, shall be ordered by the court to submit to an HIV blood test. The results of such test shall be reported to the court, who shall then disclose the results to any victim of the sexual offense who requests such disclosure. Review and disclosure of blood test results by the courts shall be closed and confidential. If any person who is bound over for trial or who is indicted for or convicted of a sexual offense voluntarily submits to an HIV test, the fact of such person's voluntary submission shall be admissible in

mitigation of sentence if the person is convicted of the charged offense. § 18-3-415.

(3) Any person who is convicted of prostitution shall be ordered by the court to submit to an HIV test. The court shall order that such person pay the cost of the test as a part of the costs of the action. The district attorney shall keep the results of such test confidential unless the person is charged with prostitution with knowledge of being infected with HIV (see Criminal Law (2)) and the results of such test indicate the presence of HIV infection. § 18-7-201.5.

(4) Any person who is convicted of patronizing a prostitute shall be ordered by the court to submit to an HIV test. The court shall order that such person pay the costs of the testing as a part of the costs of the action. The district attorney shall keep the results of the test confidential unless the person is charged with patronizing a prostitute with knowledge of being infected with HIV (see Criminal Law (3)) and the results of the test indicate the presence of HIV infection. § 18-7-205.5.

(5) The General Assembly declares that HIV is an infectious and communicable disease that endangers the population of Colorado. Reporting of HIV infection to public health officials is essential to enable a better understanding of the disease, the scope of exposure, the impact on the community, and the means of control. Efforts to control the disease should include public education, counseling, and voluntary testing. § 25-4-1401.

(6) Every attending physician or other person treating a case of HIV infection in a hospital, clinic, sanitarium, penal institution, or other private or public institution shall make a report to the Department of Public Health and Environment on every individual known to be diagnosed with AIDS, HIV-related illness, or HIV infection, including death from HIV infection. The reports shall contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or other person making the report. Good faith reporting or disclosure pursuant to this section shall not constitute libel or slander or a violation of the right of privacy or privileged communication. Any person who in good faith complies completely with this section shall be immune from civil and criminal liability for any action taken in compliance with the provisions of this section or with any other



regulations promulgated by the State Department of Public Health and Environment relating to such reporting requirements. § 25-4-1402.<sup>35</sup>

(7) All laboratories or persons performing laboratory tests for HIV shall report to the Department of Public Health and Environment or appropriate local department of health, the name, date of birth, sex, and address of any individual whose specimen tests positive for HIV. Such report shall include test results and the name and address of the attending physician and any other person or agency referring such positive specimen for testing. § 25-4-1403.

(8) Researchers conducting a medical research study of HIV treatment or vaccine effectiveness or conducting basic biomedical research into the cellular mechanisms causing HIV infection pursuant to approved research protocol shall be exempt from reporting requirements (see Testing & Reporting (6) & (7)). The research exemption does not exempt medical researchers from the requirement of providing post-test counseling to infected enrolled research subjects and referral of such subjects to the Department of Health and Environment or local department of health for partner notification services. § 25-4-1402.5.

(9) The public health reports required to be submitted to the State Department of Public Health and Environment and records resulting from compliance with such reporting requirements which are held by the Department of Health and Environment, any local department of health, or any health care provider or facility, third-party payor, physician, clinic, laboratory, blood bank, or other agency shall be strictly confidential information. Such information shall not be released, shared with any agency or institution, or made public except under the following circumstances: release may be made of such information for statistical purposes in a manner such that no individual person can be identified and release may be made to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party. No officer or employee of the Department of Public Health and Environment or local department of health shall be examined in any judicial, executive, legislative, or other proceeding as to the existence or content of any individual's report retained by such department. Information regarding

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35. *Borquez v. Ozer*, No. 93CA1805, 1995 Colo. App. LEXIS 302, at \*11 (Ct. App. Nov. 9, 1995) (plaintiff had a privacy interest in dissemination of information relating to his exposure to HIV and his sexual orientation).

AIDS and HIV infection records held by a facility that provides ongoing health care is considered medical information, not public health reports, and is protected from unauthorized disclosure. § 25-4-1404.<sup>36</sup>

(10) No physician, health worker, hospital, clinic, sanitarium, laboratory, or other private or public institution shall test any specimen of any patient for HIV infection without the knowledge and consent of the patient, except under the following circumstances: where a health care provider or a custodial employee of the Department of Corrections or the Department of Human Services is exposed to blood or other bodily fluids that may be infected with HIV; when a patient's medical condition is such that knowledge and consent cannot be obtained; when testing is done as part of seroprevalence surveys, if all personal identifiers are removed from the specimens prior to the laboratory testing; when the patient to be tested is sentenced to and in the custody of the Department of Corrections or is committed to the Colorado Mental Health Institute and confined to the forensic ward or the minimum or maximum security ward of such institution; or when a person is bound over for trial for a sexual offense and is tested by a health care provider or facility other than one which exclusively provides testing and counseling. Any patient tested for HIV infection without such person's knowledge and consent shall be given notice promptly, personally, and confidentially that a test sample was taken and that the results of the test may be obtained upon request. § 25-4-1405.

(11) The provision of confidential counseling and testing services for HIV is the preferred screening service for detection of HIV infection. However, the Department of Public Health and Environment shall, consistent with generally accepted practices for the protection of the public health and safety, conduct an anonymous counseling and testing program for persons considered to be at high risk for infection with HIV. Such program shall be conducted at selected HIV testing sites. The disclosure of an individual's name, address, phone number, or birth date shall not be required under the anonymous testing program as a condition of being tested for HIV. The age and sex of a person seeking to be tested at an anonymous test site may be required. A person may

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36. *Belle Bonfils Memorial Blood Center v. District Court*, 763 P.2d 1003, 1008-09 (Colo. 1988) (identity of an infected blood donor should not be disclosed, but limited discovery should be permitted).

provide personal identifying information after counseling, if the person volunteers to do so. § 25-4-1405.5.

(12) When investigating HIV infection, state and local health departments may inspect and have access to medical and laboratory records relevant to the investigation of HIV infection. § 25-4-1405.

Criminal Law (1), (4)

Education (2)

Insurance (2)

Social & Medical Services (1), (2), (6), (9)

Miscellaneous (1), (2)

#### MISCELLANEOUS

(1) Orders directed to individuals with HIV infection or restrictive measures on individuals with HIV infection shall be used as the last resort when other measures to protect the public health have failed, including all reasonable efforts to obtain the voluntary cooperation of the individual who may be subject to such an order. The orders and measures shall be applied serially with the least intrusive measures used first. When the executive director of the Department of Public Health and Environment or the director of a local department of health knows or has reason to believe, on the basis of medical or epidemiological information, that a person is infected with HIV and is a danger to the public health, such director may issue an order to: require a person to be examined and tested to determine whether that person is infected with HIV; require a person with HIV infection to report to a qualified physician or health worker for counseling on the disease and for information on how to avoid infecting others; and direct a person with HIV infection to cease and desist from specified conduct which endangers the health of others, but only if the director has determined that clear and convincing evidence exists to believe that such person has been ordered to report for counseling or has received counseling and continues to demonstrate behavior which endangers the health of others. If a person violates a cease and desist order and it is shown that the person is a danger to others, the executive director of the Department of Public Health and Environment or the director of the local department of health may enforce the cease and desist order by imposing upon the HIV-

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infected person such restrictions as are necessary to prevent the specific conduct which endangers the health of others. Upon issuance of any order by the Department of Public Health and Environment or the local department of health pursuant to this section, such department shall give prompt notice, personally and confidentially, to the person who is the subject of the order, stating the grounds and provisions of the order and that such person has a right to refuse to comply with such order and a right to a judicial hearing to review the order. Any hearing conducted pursuant to this section shall be closed and confidential. § 25-4-1406.

(2) When restrictive measures at the departmental level (see Miscellaneous (1)) have been exhausted or cannot be satisfied as a result of threatened criminal behavior and the executive director of the Department of Public Health and Environment or the director of a local health department knows or has reason to believe that a person has HIV and presents an imminent danger to the public health, such director may bring an action in district court to enjoin such person from engaging in specific conduct which endangers the public health. In addition, the district court may take such person into custody for up to seventy-two hours and place such person in a facility designated or approved by the director. A custody order issued for the purpose of counseling and testing to determine whether such person is infected with HIV shall provide for the immediate release from custody of any person who tests negative and may provide for counseling or other appropriate measures to be imposed on any person who tests positive. The person who is the subject of the order shall be notified of the right to refuse to comply with such order and the right to a judicial hearing with an attorney present. If such person contests testing or treatment, no invasive medical procedures shall be carried out prior to a hearing. Any hearing conducted pursuant to this section shall be closed and confidential. Any order entered by the district court pursuant to this section shall impose terms no more restrictive than necessary to protect the public health. § 25-4-1407.

## CONNECTICUT

All citations are to “Conn. Gen. Stat.” unless otherwise noted.

### DEFINITIONS

(1) “AIDS,” “confidential HIV-related information,” “exposure evaluation group,” “HIV infection,” “HIV-related illness,” “HIV-related test,” “health facility,” “protected individual,” “release of confidential HIV-related information,” “significant exposure,”<sup>37</sup> and “significant risk of transmission” are defined at § 19a-581.

(2) “Communicable disease control clinic” is defined at § 19a-216a.

(3) “Psychologically impacted” is defined at § 20-329cc.

(4) “Sexual act” is defined at § 54-102b.

### CRIMINAL LAW

(1) Any person who fails to comply with a court order requiring a person accused of a sexual offense to be tested for HIV shall be guilty of a class C misdemeanor. § 54-102a.

Education (5)

Social & Medical Services (7)

Testing & Reporting (3), (5), (12)

### EDUCATION

(1) Each local and regional board of education shall offer ongoing and systematic instruction on AIDS, taught by legally qualified teachers. The content and scheduling of the instruction shall be within the discretion of the regional or local school board. Each school board shall adopt a policy concerning the exemption of pupils from such instruction upon written request of a parent or guardian. § 10-19.

(2) Each local or regional board of education shall provide an in-service training program for its certified teachers, administrators, and pupil personnel. Such programs shall include health and mental health

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37. Barrett v. Danbury Hospital, 654 A.2d 748, 756 (Conn. 1995) (“significant exposure” language does not create tort liability between a hospital and a patient).

risk reduction education including the prevention of risk taking behavior by children and the relation of such behavior to sexually transmitted diseases, including AIDS and HIV-infection. § 10-220a.

(3) The Board of Governors of Higher Education shall establish an endowed chair in infectious diseases at the University of Connecticut. This chair will provide support for investigator(s) who will coordinate research activities into the microbiologic, immunologic, and clinical aspects of infectious diseases including AIDS. The investigator(s) will provide a link between ongoing basic science research in infectious diseases and the clinical application of the new knowledge that is being generated. § 10a-132a.

(4) All moneys deposited in the AIDS research education account (see Miscellaneous (1)) shall be used by the Department of Public Health and Addiction Services to assist AIDS research, education, and AIDS-related community service programs or to promote contributions to the AIDS research education account. § 19a-32a.

(5) The Department of Health and Addiction Services shall work with the Connecticut Sexual Assault Crisis Services to develop educational materials about HIV and AIDS, specifically as they relate to sexual assault. These educational materials shall be distributed to the Division of Criminal Justice and other agencies. The material shall include subjects such as the risks associated with HIV and sexual violence, testing options, risk reduction, and referrals and information regarding rape crisis centers and HIV testing sites. The Department of Public Health and Addiction Services shall provide funds to local health departments for the purpose of providing innovative and preventative programs on AIDS. The Department shall establish a public information program for the distribution of materials, including but not limited to pamphlets, films, and public service announcements. §§ 19a-112c, 121a, 121c.

(6) Any municipality, hospital, public or independent college or university, or individual may apply to the Commissioner of Public Health and Addiction Services for a grant-in-aid for the study or treatment of AIDS. § 19a-121f.

Social & Medical Services (8), (10)

Miscellaneous (1)

[CONNECTICUT]

## EMPLOYMENT

(1) Each town shall notify its police, fire, and emergency medical services personnel of the proper procedures pertaining to workers who have experienced a significant exposure (see Definitions (1)) to AIDS. § 19a-588.

## HOUSING

(1) The existence of any fact or circumstances which may have a psychological impact (which includes the fact that an occupant of real property is, or was at any time suspected to be, infected with HIV (see Definitions (3)) on the purchaser or lessee is not a material fact that must be disclosed in a real estate transaction. No cause of action shall arise against an owner of real estate or an owner's agent for the failure to disclose to the transferee that the transferred property was psychologically impacted. If a purchaser or lessee of real estate advises an owner of real estate or an agent, in writing, that knowledge of a psychological impact is important to a decision to purchase or lease the property, the owner shall report any findings to the purchaser or lessee, in writing, subject to privacy laws. If the owner refuses to disclose such information, the agent shall so advise the purchaser or lessee in writing. §§ 20-329dd, 329ee.

Social & Medical Services (1), (6)

## INSURANCE

Social & Medical Services (3)

Testing & Reporting (3), (5), (9), (10)

## RESEARCH

(1) A manufacturer, research institution, or researcher shall, prior to the administration of an AIDS vaccine to a person, obtain the informed consent of that person. A parent or legal guardian of a child may give informed consent for the child. Whoever administers such a vaccine shall not be liable to a research subject for civil damages for personal injury resulting from the administration of any AIDS vaccine to the research subject, unless such injury was caused by gross negligence or reckless, willful, or wanton misconduct. This immunity shall not

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apply to a manufacturer, researcher, or research institution who intentionally provides false information in connection with an investigational new drug application. The research subject shall be provided with a written explanation of the above-mentioned immunity provisions. §§ 19a-591a, 591b.

(2) No person shall be denied the opportunity to be a research subject because of the inability to pay for medical treatment. § 19a-591c.

Education (3), (4)

Testing & Reporting (3)

Miscellaneous (1)

#### SOCIAL & MEDICAL SERVICES

(1) If a person temporarily residing in a substance abuse clinic or group home for persons with AIDS applies for general assistance in the town where the clinic or group home is located, such town shall transfer the application to the town of the applicant's legal domicile in accordance with Department of Social Services regulations. § 17b-62.

(2) The Department of Social Services shall determine the rates to be charged by home health care agencies and the rates to be paid to such agencies by the state or any town in the state for persons aided or cared for by the state or any such town. The Department may increase any fee payable to a home health care agency or home-maker home health aid agency upon the application of such an agency evidencing extraordinary costs related to serving persons with AIDS. § 17b-242.

(3) A program to provide insurance assistance for people with AIDS is established in the Department of Social Services. The state shall pay insurance premiums for persons who, due to AIDS-related disease, are unable to obtain health insurance coverage through an employer. To qualify for assistance, a person shall have a family income less than 200 percent of the federal poverty level, shall have less than \$10,000 in cash assets and shall have health insurance which may be continued upon termination of employment of the person or a family member. In order to qualify for this assistance, an applicant must submit to the Department of Social Services a physician's statement that the applicant has an AIDS-related disease. § 17b-255.

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(4) The Commissioner of Social Services may administer a program providing payment for the cost of drugs prescribed by a physician for the prevention or treatment of AIDS, AIDS-related complex, or HIV. The Commissioner shall determine specific drugs to be covered and may implement a pharmacy look-in procedure (a procedure that limits the purchase of drugs) for the program. § 17b-256.

(5) The Department of Social Services shall establish rates based on reasonable costs related to patient care for a demonstration project which shall provide skilled and intermediate nursing home care for persons with AIDS in a facility which is located within the Connecticut metropolitan area which has the highest incidence of AIDS and which is specifically established, equipped, and staffed for such purpose. § 17b-348.

(6) The state, acting at the discretion of the Commissioner of Social Services, may enter into a contract with a nonprofit corporation to provide financial assistance in the form of a state grant-in-aid to such corporation for the purpose of providing housing for homeless persons suffering from AIDS. § 17b-803.

(7) The Department of Public Health and Addiction Services shall fund and provide HIV counseling, testing, and referral to appropriate health care and support services to victims of a criminal sexual act (see Definitions (4)), regardless of whether any person is convicted or adjudicated delinquent for such act. § 19a-112b.

(8) The Department of Public Health and Addiction Services shall establish a grant program to provide funds to private agencies which provide services to persons suffering from AIDS and to their families. The grants shall be used for services including education, counseling, and prevention. Any agency which receives funds from the Department to provide AIDS tests shall give priority to persons in high-risk categories and shall establish a fee schedule based upon a person's ability to pay for the test. § 19a-121.

(9) A task force is established to work with the Department of Public Health and Addiction Services in the planning of programs for persons suffering from AIDS and for their families. The task force shall act as an advisory board to the Commissioner of Public Health and Addiction Services for a four-year term and shall prepare an annual report on its findings and recommendations. § 19a-121e.

(10) The Department of Public Health and Addiction Services shall establish needle and syringe exchange programs in the Health Department of the three cities having the highest total number of cases of AIDS among intravenous drug users. The programs shall be incorporated into existing AIDS prevention and outreach projects in the selected cities and shall provide for free and anonymous exchange of needles and syringes. The programs shall also offer education on the transmission of HIV and prevention measures and assist program participants in obtaining drug treatment services. The Commissioner shall require such programs to evaluate the effectiveness of the program in the first year. § 19a-124.

(11) A statewide Adolescent Health Council shall make recommendations on facilitating federal, state, and community action to address issues such as sexually transmitted diseases and AIDS. § 19a-125.

(12) Any licensed physician who provides examination or treatment for HIV to a minor shall obtain the consent of the parent or guardian of the minor unless the physician determines that notification of the parent or guardian will result in the treatment being denied, or the physician determines that the minor will not seek, pursue, or continue treatment if the parent or guardian is notified, and the minor requests that the parent or guardian not be notified. The physician shall fully document the reasons for the determination to provide treatment without parental consent, and such documentation shall be signed by the minor and included in the minor's clinical record. The minor shall be personally liable for all costs and expenses. § 19a-592.

(13) A court may require a child who has engaged in sexual intercourse with another person who is thirteen years of age or older to participate in a teen pregnancy program and require such child to perform community service, such as for an AIDS prevention program. § 46b-149.

Education (2), (3), (4), (5), (6)

Research (2)

Miscellaneous (2)

## TESTING &amp; REPORTING

(1) No person shall order the performance of an HIV-related test (see Definitions (1)) without first receiving written informed consent or oral informed consent which has been documented in the medical record of the test subject or a person authorized to consent for such individual. The consent of a parent or guardian shall not be necessary for the testing of a minor. No laboratory shall perform an HIV-related test without a written certification that informed consent has been obtained, or without written certification that testing without consent is authorized pursuant to an exception to this section. The laboratory analyzing the HIV test shall report the test result to the person who orders the performance of the test. Prior to obtaining informed consent, a person ordering the performance of an HIV-related test shall provide to the subject of the test an explanation of the nature of AIDS and HIV-related illness (see Definitions (1)) and information about behaviors known to pose risks for transmission of HIV. Informed consent shall include a statement provided to the subject of the test (or person authorized to consent for the subject), which includes at least the following: an explanation of the test, including its purpose, the meaning of its results, and the benefits of early diagnostic and medical intervention; acknowledgment that consent to an HIV test is not a precondition to receiving health care, but that refusal to consent may affect a health care provider's ability to diagnose and treat the illness; an explanation of the procedures to be followed, including that the test is voluntary, and a statement advising the subject on the availability of anonymous testing; and an explanation of the confidentiality protections afforded confidential HIV-related information. Such explanation shall specifically acknowledge that known partners of the protected individual may be warned of their potential risk of infection without identifying the protected individual and that the law permits the recording of HIV and AIDS-related information in medical records. § 19a-582.

(2) At the time of communicating the test result to the subject of the test, a person ordering the performance of an HIV-related test shall provide the subject of the test with counseling or referrals for counseling. § 19a-582.

(3) Informed consent and counseling are not required for the performance of HIV-related tests under the following circumstances:

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where the subject of the test is unable to grant or withhold consent and no other person is available who is authorized to consent for the test subject, and the test results are needed for diagnostic purposes to provide appropriate urgent care, except that in such cases the counseling and notification of test results as provided above shall be given as soon as it is practical; by a health care provider or health facility in relation to the procuring, processing, distributing, or use of a human body or body part for use in medical research or therapy, or for transplantation to individuals, provided the test results are communicated to the subject, and counseling is provided to the test subject; where the testing is performed for research purposes in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher; on a deceased person when such test is conducted to determine the cause of death or for epidemiological purposes; in cases where a health care provider or other person in the course of occupational duties has had a significant exposure (see Definitions (1)); in correctional facilities if the facility physician determines that testing is needed for diagnostic purposes to determine the need for treatment or medical care specific to HIV-related illness; in correctional facilities if the facility physician and chief administrator of the facility determine that the behavior of the inmate poses a significant risk of transmission (see Definitions (1)) to another inmate or has resulted in a significant exposure to another inmate and that no reasonable alternative exists that will achieve the same goal; under a court order where the court finds a clear and imminent danger to the public health or the health of a person; or when the test is conducted by any life or health insurer or health care center for purposes of assessing a person's fitness for insurance coverage. § 19a-582.

(4) The personal medical records of persons examined or treated in a communicable disease control clinic (see Definitions (2)) shall be held strictly confidential by the local director of health and shall not be released, made public, or be subject to discovery proceedings except: for statistical purposes; with the informed consent of the person identified in the record; to health care providers in a medical emergency to the extent necessary to protect the health or life of the patient; to health care providers and public health officials authorized to receive such information in order to protect the public health or safety; to any agency authorized to receive reports of abuse or neglect of minors; or by court

order as necessary to enforce statutes or provisions pertaining to public health or safety. Any violation of this shall result in a fine. § 19a-216a.

(5) Anyone who obtains confidential HIV-related information (see Definitions (1)) may disclose it only to the following: the protected individual (see Definitions (1)); a person who secures a release of confidential HIV-related information; a health officer when such disclosure is mandated by law; a health care provider or health facility when knowledge of HIV-related information is necessary to provide appropriate care or treatment to the protected individual or when such confidential information is already recorded in a medical chart or record and a health care provider has access to such record for the purpose of providing medical care to the protected individual; a medical examiner to assist in determining the cause of death; health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring or evaluation; a health care provider or other person who, in the course of occupational duties, has had a significant exposure to HIV; employees of mental hospitals if it is determined that the behavior of a patient poses a significant risk of transmission (see Definitions (1)) to another patient of the hospital; employees of correctional facilities where it has been determined that the behavior of an inmate poses a significant risk of transmission to another inmate or has resulted in a significant exposure of another inmate; any person allowed access to such information by a court order; life and health insurers, government payers and health care centers in connection with underwriting and claim activity for life, health, and disability benefits; or any health care provider specifically designated by the protected individual to receive such information. No person, except the protected individual, to whom confidential HIV-related information is disclosed may further disclose such information. § 19a-583.<sup>38</sup>

(6) Whenever confidential HIV-related information (see Definitions (1)) is disclosed it shall be accompanied by a statement in writing, whenever possible, which includes the language:

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38. See *Lampart v. State of Connecticut*, No. 322668, 1995 Conn. Super. LEXIS 2976, at \*5 (Super. Ct. Oct. 17, 1995) (legislature has mandated that the release of HIV-related information be narrowly circumscribed); *Washington v. Meachum*, No. 534616, 1995 Conn. Super. LEXIS 849 (Super Ct. Mar. 6, 1995) (Department of Corrections' monitoring of telephone calls does not violate AIDS testing and medical information statute).

This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains or as otherwise permitted by said law. A general authorization for the release of medical or other information is NOT sufficient for this purpose.

§ 19a-585.

(7) A clinical laboratory which discovers a medical error made in the performance or reporting of an HIV-related test shall report such an error in person and provide counseling to the person ordering the test. Failure to comply with these provisions may be cause for suspension or revocation of a license to perform such tests. § 19a-30a.

(8) A public health officer may inform or warn partners (see Definitions (1)) of an individual that they may have been exposed to HIV under the following conditions: the public health officer reasonably believes there is a significant risk of transmission to the partner; the public health officer has counseled the protected individual regarding the need to notify the partner and the officer reasonably believes the protected individual will not inform the partner; and the public health officer has informed the protected individual that the officer intends to make such a disclosure. When making such a disclosure, the officer shall provide or refer the individual to appropriate medical advice and counseling for coping with the emotional consequences of learning the information and for changing behavior to prevent transmission or contraction of HIV. The public health officer shall not disclose the identity of the protected individual. The public health officer shall have no obligation to warn, inform, identify or locate any partner. The provisions above apply to physicians as well. § 19a-584.

(9) Life and health insurers and health care facilities are not prohibited from disclosing a positive HIV-related test result to an organization which assembles or collects information about insurance applicants for the purposes of detecting fraud, misrepresentation, or nondisclosure in connection with insurance underwriting, if such result is provided as a nonspecific blood test result, within a general code category, which code is not designated solely for HIV-related test results and the majority of results included in the general code are not HIV-

related, and which code does not otherwise allow members of the organization to reasonably identify an applicant's test result as an HIV-related test. § 19a-587.

(10) Any insurer that requests an applicant for insurance coverage to take an HIV-related test shall obtain the applicant's written informed consent for such test before conducting it. § 19a-586.

(11) Any person who willfully violates any provision concerning AIDS testing shall be liable in a private cause of action for injuries suffered as a result of such violation. Compensatory damages shall be awarded upon a finding that the individual has been injured as a result of such violation. § 19a-590.<sup>39</sup>

(12) When a pending case involves a sexual act (see Definitions (4)), a court may, before final disposition of such case, order HIV testing of the accused person. If the victim of the offense requests that the accused person be tested for HIV, the court may order the testing of the accused person, and the results may be disclosed to the victim. A report of the result of such examination or test shall be filed with the Department of Public Health and Addiction Services. A court entering a judgment of conviction or an adjudication of delinquency for a violation involving a sexual act shall, at the request of the victim of the crime, order that the offender be tested for HIV and that the results be disclosed to the victim and the offender. §§ 54-102a, 102b.

(13) Every obstetrician-gynecologist giving prenatal care to a pregnant woman shall notify her of the availability of AIDS testing. 1995 Ct. P.A. 269.

Criminal Law (1)

Education (5)

Research (2)

Social & Medical Services (7), (8)

## MISCELLANEOUS

(1) Any taxpayer may contribute any part of a refund to the AIDS Research Education Account. The Commissioner of Revenue

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39. *Doe v. Marselle*, 660 A.2d 871, 875 (Conn. App. Ct. 1995), *appeal granted, in part, on other grounds* (Conn. 1995) (§ 19a-590 expressly creates a claim solely for willful violations of § 19a-583).

Services shall include in the instructions accompanying the tax return a description of the purposes for which the AIDS Research Education Account was created. A designated contribution of all or any part of a refund shall be irrevocable upon the filing of the tax return. § 12-743.

(2) The state shall provide reimbursement in the form of a grant-in-aid to municipalities for expenses incurred in connection with a one-time mass bulk-rate mailing of the United States Surgeon General's report on AIDS to all of its residents. § 19a-121d.



**DELAWARE**

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

**DEFINITIONS**

(1) “Emergency medical provider,” “receiving medical facility,” “communicable disease,” and “universal precautions” pertaining to notification of emergency medical providers are defined at 16, § 1201A.

(2) “Forensic medical examination” is defined at 11, § 9019.

(3) “HIV,” “HIV test,” and “informed consent” as it pertains to testing for insurance purposes are defined at 18, § 7402.

(4) “HIV-related test,” “health care provider,” and “release of test results” pertaining to informed consent and confidentiality regarding HIV-related tests are defined at 16, § 1201.

(5) “HIV test” pertaining to sex offenders is defined at 10, § 1075.

(6) “Psychologically impacted property” refers to property that was or is suspected to have been the site of a homicide, suicide, or other felony, or the residence of a person who has been infected with HIV or diagnosed with AIDS. 24, § 2929.

(7) “Sexually transmitted diseases” (STDs), “health care professional,” “health facility,” and “invasive medical procedure” are defined at 16, § 701.

**CRIMINAL LAW**

(1) Under sperm bank and tissue bank registry law, all such donations shall be tested for exposure to HIV or any other causative agent of AIDS, except in an emergency, when life saving measures do not permit the delay. Violation of this is a class E felony. 16, § 2801.

(2) Violation of any regulatory provision relating to sexually transmitted diseases (see Definitions (7)) shall result in a fine. 16, § 713.

Testing & Reporting (1), (2), (3), (8), (9), (10), (11)

Miscellaneous (2)

[DELAWARE]

## EDUCATION

## EMPLOYMENT

- Social & Medical Services (1)
- Testing & Reporting (4), (6)

## HOUSING

(1) The fact that real property is or was occupied by someone suspected to be HIV positive or AIDS diagnosed is not material to a real property transaction (no cause of action arises for failure to disclose). The agent shall not make any disclosure concerning those psychological impacts (see Definitions (6)) relating to an occupant of real property who is or was at any time suspected to be HIV positive or diagnosed with AIDS. 24, § 2929.

## INSURANCE

(1) An insurer may not require an applicant to submit to an HIV test (see Definitions (3)) unless: the insurer obtains prior written informed consent (see Definitions (3)); explains to the applicant the use to which the test results may be put and the entities to whom the test results may be disclosed; and provides appropriate written information on HIV and AIDS. No positive test (see Definitions (3)) may be used by the insurer unless it has been confirmed by a more accurate confirmatory test. 18, § 7403

(2) Insurers shall maintain strict confidentiality regarding HIV test results. Disclosure may be made to those involved in underwriting and claims insurance and on a limited confidential basis to a medical information exchange agency. 18, § 7404.

(3) If the insurer fails to issue a policy due to the results of HIV testing, the insurer shall advise the applicant that the policy has been denied based on the results of the medical examination, but not the specific reason. The applicant will be told to check with the physician designated by the applicant at the time of application. If no physician was designated, the insurer shall request the applicant to designate a physician. The information as to the applicant's positive HIV test results will be transmitted to the applicant's physician. If the applicant fails to

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designate a physician, the insurer shall transmit the information to the Department of Health and Social Services to allow the Department to locate the applicant and report the test results. If the applicant has designated a physician, but does not contact the physician within thirty days of notification, the physician shall transmit the information to the Department of Health and Social Services to allow the Department to locate the applicant and report the test results. 18, § 7405.

## RESEARCH

Testing & Reporting (3)

Miscellaneous (3)

## SOCIAL & MEDICAL SERVICES

(1) A person employed by the Division of Public Health as a sexually transmitted disease case investigator may perform venipuncture or skin puncture for the purpose of withdrawing blood for test purposes, even though he or she is not otherwise licensed to withdraw blood, provided that such a person works under the direction of a licensed physician, has been trained by a licensed physician in the proper procedures to be employed when withdrawing blood, and has a statement signed by the instructing physician that such training has been completed. 16, § 709.

Testing & Reporting (3)

Miscellaneous (3)

## TESTING & REPORTING

(1) Any physician who diagnoses, suspects, or treats a reportable sexually transmitted disease (STD) and every administrator of a health facility or prison in which there is a case of a reportable STD shall report such a case to the Division of Public Health. Such report shall be confidential and protected from release (see Definitions (7)). 16 § 702.

(2) All records held by the Division of Public Health relating to known or suspected STD incidence, specifically including HIV infection, are confidential and not to be made public, upon subpoena or otherwise, except: for anonymous statistical purposes; with consent; to

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medical and state agencies and courts to enforce the control of STDs; for child abuse investigation, to medical and emergency personnel to protect the health of the HIV positive subject; or for release in a civil or criminal litigation where the court finds compelling need for the information. Pleadings pertaining to the disclosure of such testing records shall substitute a pseudonym for the name of the subject of the records. The subject is permitted to participate, if not already a party, in the disclosure proceedings, which shall be in camera unless otherwise necessary or agreed to, and if the court limits the disclosure and prohibits further disclosure. 16, § 711.

(3) The Director of the Division of Public Health shall, in order to protect the public health: make examinations of persons reasonably suspected of being infected with an STD of a communicable nature (see Definitions (1)); examine medical records of suspected or diagnosed cases which may be maintained by a health facility or health care professional (see Definitions (7)); require persons infected with a communicable STD to report for treatment to a health care professional; and may issue an order seeking to examine, isolate, or quarantine persons infected with or suspected of being infected with a communicable STD. 16, § 703. The Director may order a person with a communicable disease to cease and desist from specified conduct which endangers the health of others when the Director has determined that such a person has been ordered to report to counseling and continues to demonstrate behavior which endangers the health of others. If a person violates a cease and desist order of this nature, the Director may enforce such an order by imposing certain restrictions such as an injunction or taking such a person into custody and placing the person in a facility designated by the Director. 16, §§ 704, 705.

(4) No government health employee shall be examined in a court or other proceeding regarding public or private health care records pertaining to examination or treatment for an STD or HIV infection without consent of the subject or as otherwise authorized. 16, § 712.

(5) An HIV-related test requires a voluntary informed consent agreement executed by the subject. A minor twelve years of age or older may consent or refuse consent to testing. Any qualified health facility or health care professional (see Definitions (7)) may examine and provide treatment for an STD for a minor. Oral consent may be given if

it is documented by customary practice. Informed consent consists of an explanation of the meaning of the test, the procedure, including ability to withdraw consent, the nature of AIDS and HIV and their relationship to the test, and behaviors known to create a risk of HIV transmission. Informed consent is not necessary: in a medical emergency where the subject is unable to grant or withhold consent; when testing is for anonymous research purposes; for purposes related to donation of anatomical parts, blood or semen; when a health care worker has been exposed to blood or body fluids in a manner known to transmit HIV; in the control of HIV transmission; or where ordered by a civil or criminal court. A non-consenting person must be notified confidentially and may then request the test results. The subject of the test, upon learning of the result, must be provided with counseling. 16, §§ 710, 1202

(6) The identity of a person undergoing HIV-related testing (see Definitions (4)) or the results of such test shall be confidential, and disclosed only to the following: the subject; someone with a legally effective release; employees of health care facilities that are authorized and where the employee has a medical need to know; health care providers with an emergency medical need to know; the Public Health Authority when required by regulation; facilities handling anatomical, blood, or semen donations; health facilities' committees which conduct oversight; a civil or criminal court; emergency medical providers; or relating to the investigation of child abuse or to the control of STDs. These provisions shall not interfere with the transmission of information as may be necessary to obtain third party payment for medical care related to HIV infection or with documentation of cause of death on death certificates. 16, § 1203. A person with knowledge of the identity of the subject of HIV-related testing or of the test results shall maintain confidentiality. 16, § 1206A.

(7) Damages for violations of provisions regarding informed consent and confidentiality of HIV testing and test results may be sought. These damages include money damages, an injunction, and attorney's fees. 16, § 1204.

(8) When the circumstances of a case demonstrate a possibility of transmission of HIV, a person charged with a sex offense shall be informed by the judge of the availability of HIV testing. The victim of the sex offense shall be notified that the defendant has been

informed of this. 10, § 1076; 11, § 3911. If the victim so requests, the court shall order that a defendant in a sex offense be tested for HIV under the direction of the Division of Public Health. 10, § 1077; 11, § 3912. The result of an HIV test of a sex offender shall not be a public record and shall only be made available to the victim, the defendant, and the court or a related agency. The Division of Public Health shall provide counseling to the victim and the defendant if the defendant tests positive for HIV. The cost of testing shall be paid by the defendant unless the defendant is indigent. The filing of an appeal does not stay an order for a sex offender to be tested for HIV. 10, § 1077; 11, §§ 3913, 3914.

(9) The Division of Public Health shall provide to the Department of Corrections any positive HIV test result of a sex offender solely for the purpose of providing medical treatment for the defendant while incarcerated. 11, § 3914. The Division of Public Health shall provide any positive test result to the Department of Services to Children, Youth, and Their Families solely for the purpose of providing medical treatment to the defendant while incarcerated under the department's jurisdiction. 10, § 1077.

(10) Prison authorities of any state, county, or city prison shall ensure that all persons confined or imprisoned in their respective prisons are provided services for the examination, treatment, and cure, if possible, of STDs. 16, § 706.

(11) The victim of a sexual offense shall not have to pay any out-of-pocket costs for a forensic medical examination (see Definitions (2)). If these costs can not be recovered from the victim's insurer, they may be paid out of the Victim Compensation Fund. 11, § 9019.

(12) Every health care professional (see Definitions (7)) shall take suitable specimens from every pregnant woman for testing for syphilis, gonorrhea, chlamydia and other STDs as may be designated by the State Board of Health. 16, § 708.

Criminal Law (1)

Insurance (1), (2), (3)

Social and Medical Services (1)

Miscellaneous (3)

## MISCELLANEOUS

(1) Based on findings that adult entertainment establishments are conducive to the spread of communicable diseases (see Definitions (1)), and that AIDS is found to be of particular danger to people who frequent these establishments, adult entertainment establishments should be regulated, and standards for the prevention of the spread of AIDS and other communicable diseases should be set for the protection of the public health, safety, and welfare. 24, § 1631.

(2) Prison authorities of any state, county, or city prison shall make available to the Division of Public Health such portion of any state, county, or city prison as may be necessary to isolate or quarantine persons known or suspected to have a communicable sexually transmitted disease (STD) (see Definitions (1), (7)) provided that no other suitable place is available. 16, § 706.

(3) The State Board of Health shall make such rules and regulations designating STDs to be reported, providing for the control and treatment of persons isolated or quarantined, and such rules and regulations concerning the care, treatment, and quarantine of persons infected therewith. 16, § 707.

**DISTRICT OF COLUMBIA**

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

**DEFINITIONS**

- (1) “AIDS” is defined at §§ 35-221 and 6-2801.
- (2) “ARC,” “health maintenance organization,” and “HIV” are defined at § 35-221.

**CRIMINAL LAW<sup>40</sup>**

- Insurance (6)
- Social & Medical Services (1), (4)

**EDUCATION**

- Social & Medical Services (2), (3)

**EMPLOYMENT**

- Insurance (1)

**HOUSING**

- (1) It shall not be a material fact that must be disclosed in a real estate transaction that an occupant of real property, at any time, was or was suspected of being infected with HIV or has been diagnosed with AIDS (see Definitions (1)). § 45-1936.

**INSURANCE**

- (1) An insurer may not use age, marital status, geographic area of residence, occupation, sex, sexual orientation, or any similar factor or combination of factors for the purpose of seeking to predict whether any individual may develop AIDS in the future in determining whether to issue, cancel, or renew coverage, or in determining rates, premiums, dues, assessments, benefits covered, or expenses

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40. See *Applewhite v. United States*, 614 A.2d 888 (D.C. 1992) (taking into account intravenous drug using defendant’s HIV status in deciding whether to revoke or continue probation is not improper).



reimbursable. No health or disability insurance policy or contract shall contain any exclusion, reduction, other limitation of coverage, deductible, or coinsurance provision related to the care and treatment of AIDS, ARC, HIV infection (see Definitions (1), (2)), or any illness or disease arising from these medical conditions, unless the provisions apply generally to all benefits under the policy or contract. No life insurance policy or contract shall contain any exclusion, reduction, or other limitation of benefits related to AIDS, ARC, HIV infection, or any disease arising from these medical conditions, as a cause of death. § 35-223. No insurer shall inquire about the sexual orientation of an applicant in an application for health, life, or disability income insurance coverage or in an investigation conducted by an insurer in connection with an application for coverage. Sexual orientation shall not be used as a factor in the underwriting process or in the determination of insurability. Insurance support organizations shall be directed by insurers not to investigate the sexual orientation of a proposed insured. An insurance company shall not use sexual orientation, lifestyle, living arrangements, occupation, gender, or beneficiary designation to determine whether to administer an HIV test to an individual who applies for life, health, or disability income insurance. § 35-230.

(2) Insurers shall not be prevented or restricted from following standard procedures for determining the insurability of or establishing the rates or premiums for new applicants diagnosed by a licensed physician as having AIDS, provided that the procedures: apply in the same manner to all other new applicants within the same category of insurance; are justified on the basis of actuarial evidence; and comply with other laws and rules of the District. § 35-225.

(3) The Commissioner of Public Health of the District of Columbia shall certify the testing protocol that is the most reliable and accurate in identifying exposure to HIV and AIDS. The notice of the certification shall include an estimate based on scientific evidence of the proportion of false positive results expected in use of the testing protocol. A named insured who tests positive for HIV under the certified testing protocol may appeal to the Superintendent of Insurance to review the testing procedures and results, and may present additional medical evidence, including the results of HIV tests independently obtained by the insured, to rebut the positive test results. If the Superintendent determines that the result of the test of the proposed insured is not a true

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positive, the Superintendent shall order the insurer (see Definitions (2)) from which the applicant sought coverage to disregard the positive test result. § 35-224.

(4) No insurer shall request or require a proposed insured to take the certified testing protocol (see Insurance (3)) without first obtaining the signature of the proposed insured on a standard informed consent statement prepared by the Superintendent of Insurance. An insurer shall provide information about the availability of counseling at public and private health facilities to each proposed test subject. Before any proposed insured is requested to sign an informed consent statement, the insurer shall provide the proposed insured with an explanation of the nature of AIDS and HIV, an explanation of the testing protocol, an explanation of the meaning of the test results, and a description of disclosure requirements. Once an insurer has requested a signature on an informed consent statement the proposed insured may wait 14 days before signing the informed consent statement. An insurer shall not disclose the fact that a proposed insured was tested for HIV or the results of such test except to: the proposed insured; a court pursuant to a court order; or any person named in a written authorization executed by the proposed insured. An insurer that requires testing of a proposed insured shall maintain the confidentiality of the test results and records of the proposed insured. The Superintendent of Insurance may require an insurer to report numerical data regarding test results to the Commissioner of Public Health for the purpose of performing epidemiological studies. The name, address, or other information that reveals the identity of the individual tested shall not be reported to the Superintendent. An insurer shall report numerical data regarding test results to actuaries employed or consulted by the insurer for the purpose of performing actuarial studies related to the business of insurance. The identity of the individual tested shall not be disclosed. § 35-226.

(5) An insurer may contest the validity of a policy or contract for 3 years from the date of issuance, amendment, or renewal of the policy or contract, if the basis for contesting the validity is that the insured knowingly failed or refused to disclose to the insurer that the insured had AIDS at the time of issuance, amendment, or renewal of the policy, and the insurance company was prohibited by law from conducting an AIDS test on the insured on the date the contract was entered into. § 35-227.

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(6) An insurer or an agent, broker, or employee of the insurer who violates any provision of this subchapter concerning prohibition of discrimination in the provision of insurance on the basis of AIDS or HIV infection shall be subject to the suspension or revocation of its license to transact business in the District of Columbia. Any person injured as the result of a violation of this subchapter may bring an action for civil damages and other appropriate relief in the Superior Court of the District of Columbia without first pursuing administrative remedies. § 35-228.

## RESEARCH

### Social & Medical Services (2)

## SOCIAL & MEDICAL SERVICES

(1) The Commission on Youth Affairs shall recommend new services for youth in areas such as the prevention of juvenile delinquency, drug and alcohol deterrence and abuse, and HIV infection and AIDS. § 1-2623.

(2) The Mayor of the District of Columbia shall develop and present to the Council a comprehensive AIDS Health-Care Response Plan for the District of Columbia. The plan shall include: the development of short-term and long-term goals and schemes for administrative coordination by District of Columbia government agencies; educational programs; prevention methods and programs; a compilation of private sector services available to AIDS patients; medical research and information gathering; outpatient and inpatient health care services delivery; social services delivery; exploration of the feasibility of establishing a separate compensation rate for D.C. employees working in health care treatment facilities; housing; and identifying other general services needed. This plan shall be updated annually by the Mayor. In preparing the comprehensive plan, the Mayor shall investigate the need for a residential health-care facility or facilities which shall provide a program of medical, nursing, counseling, social, and support services to AIDS patients and their families §§ 6-2802, 6-2803.

(3) The Mayor shall establish, within the Department of Human Services, an AIDS Program Coordination Office. The AIDS Program Coordination Office shall be responsible for coordination of and serving as the point of contact for the District of Columbia's

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comprehensive AIDS Health-Care Response Plan. The AIDS Program Coordination Office shall: analyze medical data, reports, and information to determine the effectiveness with which the AIDS program is meeting the needs of the residents of D.C.; coordinate and assist in the development of grant proposals to obtain funds from both the federal government and the private sector for AIDS and AIDS-related activities; develop and coordinate, with other agencies of the District government, a program of health-care services delivery and other supportive services for persons with AIDS living at home; disseminate information on AIDS to the public; assist officials from the federal government, community groups, nursing homes, hospitals, and others in the coordination of AIDS plans, programs, and services for persons with AIDS living in the District of Columbia; serve as the liaison for the District's AIDS program to other District government agencies and monitor their compliance with the District's comprehensive AIDS program; and conduct community outreach and education programs. § 6-2804.

(4) The Mayor is authorized to establish a Needle Exchange Program (Program). The Program shall provide clean hypodermic needles and syringes to injecting drug abusers. Counseling on substance abuse addiction, information on appropriate drug treatment referrals, and counseling and information on HIV and referrals for appropriate HIV testing and services shall be made available to persons participating in the Program. Only qualified medical officers, registered nurses, and counselors specifically designated by the Commissioner of Public Health shall be authorized to distribute needles and syringes in the Program. The Commissioner of Public Health shall provide all persons participating in the Program with a written statement of the person's participation in the Program, signed by the Commissioner, or the Commissioner's designee. No person participating in the Program shall be required to carry such statement. It shall not be unlawful for any person who is participating in the Program to possess or deliver any hypodermic needles or syringes distributed as part of the Program. Neither the District of Columbia nor its officers or employees shall be liable for injury or damage resulting from use or contact with any needle or syringe distributed as part of the Program. All needles and syringes distributed by the Commission of Public Health as part of the Program shall be made identifiable through the use of permanent markings, color coding, or any other effective method for identifying the needles and syringes. The Mayor shall issue

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an annual evaluation report on the Program. The mayor shall explore the feasibility of establishing a system to test used needles and syringes received by the Commission of Public Health for HIV antibody contamination. § 33-603.1.

Testing & Reporting (2)

#### TESTING & REPORTING

Insurance (1), (3), (4), (5)

Social & Medical Services (4)

#### MISCELLANEOUS

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

**DEFINITIONS**

- (1) “Criminal quarantine community control” is defined at § 948.001.
- (2) “High-risk behavior” as it pertains to inmates in a correctional facility is defined at § 945.35.
- (3) “HIV test,” “HIV test result,” “significant exposure,” and “test subject” are defined at § 381.004.
- (4) “Sexually transmissible diseases” (STD) may include HIV. § 384.23.

**CRIMINAL LAW**

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

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(6) A person who has been convicted of or has pled nolo contendere or guilty to assault; aggravated assault; battery; aggravated battery; child abuse; aggravated child abuse; failure to comply with the provisions pertaining to donation of blood plasma, organs, skin or other human tissue; incest; lascivious or indecent assault or act upon a person less than sixteen years of age; prostitution; sexual battery; sexual performance by a person less than eighteen years of age; or any offense which involves transmission of body fluids from one person to another and who tests positive for HIV (see Testing & Reporting (14)) is also guilty of criminal transmission of HIV. No infection in another must occur for this violation. In addition to the penalty for the particular offense, the court may require the offender to serve a term of criminal quarantine community control (see Definitions (1)). § 775.0877.

(7) A person who commits prostitution after testing HIV positive or a person who procures another to commit prostitution after testing HIV positive commits criminal transmission of HIV, a felony in the third degree. § 796.08.

Education (11), (12)

Social & Medical Services (13)

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

## EDUCATION

(1) The comprehensive health education and substance abuse prevention program for teachers, counselors, and other persons shall include inservice education programs which deal with AIDS and HIV. § 233.067.

(2) Each district school board may provide age-appropriate instruction in AIDS as a specific area of health education. The school shall emphasize abstinence from sexual activity as a certain way to avoid AIDS. § 233.0672. One half credit in life management skills, which includes HIV and AIDS prevention, is required for graduation from high school. § 232.246.

(3) The State University System and each community college shall develop a comprehensive policy on instruction, information, and activities regarding HIV and AIDS. Each orientation for freshman or transfer students in the State University System shall include education

on the prevention of transmission of HIV with emphasis on behavior and attitude change. Each state university shall compile and update annually a student handbook that includes a statement as to the University System policy on AIDS, including the name and telephone number of the university AIDS counselor. §§ 240.2097, 240.3192. Each community college handbook shall provide information related to AIDS education or identify AIDS education information sites. § 240.3191.

(4) The Department of Health and Rehabilitation Services (Department) shall require each employee licensed or certified in health testing services, medical telecommunications and transport, midwifery, radiologic technology, acupuncture, chiropractic, dentistry, medical practice, nursing, nursing and home administration, occupational therapy, optometry, osteopathy, pharmacy, physical therapy, podiatry, respiratory therapy, funeral directing, embalming and direct disposition, barbering, cosmetology, or massage practice, and of each center for developmental disabilities, mental health, or substance abuse, or home health agency, hospice, nursing home, or adult congregate living facility to complete an education course on HIV and AIDS as a condition of biennial relicensure or initial licensure. The course shall cover infection control, clinical management, prevention, treatment, and Florida AIDS law. Failure to complete the educational requirement shall be grounds for disciplinary action. §§ 381.0034-35, 455.2226 to 2228. The Department of Business and Professional Regulation and the Department of Health and Rehabilitative Services shall be responsible for planning HIV and AIDS educational courses for the specified professions. § 381.0036.

(5) The Department shall establish a program to educate the public about AIDS. The AIDS program shall: be designed to reach all segments of Florida's population; teach the public and health care workers about prevention of transmission of AIDS in social, employment, and educational situations; contain special components to reach persons who engage in behaviors placing them at high risk for contracting AIDS; provide information and consultation to state and local agencies as well as to private employers so that they may educate their employees; and contain special components which emphasize appropriate behavior and attitude change. § 381.0038. The AIDS education program shall include a component about the risk factors associated with domestic violence and AIDS. § 381.0038.



(6) The Department of Education, the Department of Health and Rehabilitative Services, and the Department of Business and Professional Regulation shall establish an interagency agreement to oversee the quality and cost efficiency of AIDS education programs administered in the state. § 381.0039.

(7) Graduates of a dental college shall be entitled to take licensure examinations for the profession of dental hygienist if they have successfully completed one or more courses on HIV and AIDS. § 466.007.<sup>41</sup>

(8) All individuals not licensed by the Department who intend to be employed as personnel in a direct disposal establishment, incinerator facility, removal service, refrigeration facility, or centralized embalming facility or who intend to be involved in the removal or transportation of human remains shall complete one course on communicable diseases within ten days after they begin their functions. This course shall not replace the course on HIV and AIDS required for individuals licensed by the Department. § 470.0201.

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

(10) Instruction in HIV and AIDS for law enforcement officers shall include information on known modes of transmission and methods of controlling and preventing HIV and AIDS with emphasis on appropriate behavior and attitude change. § 943.1725.

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

(12) The drug punishment program for offenders who have engaged in criminal activity linked to drug abuse shall complete the core

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

treatment program in which AIDS education is a component. §§ 953.005, 953.27.

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

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

Social & Medical Services (1), (8), (9)

Testing & Reporting (9)

## EMPLOYMENT

(1) No person may require an individual to take an HIV test as a condition for hiring, promotion, or continued employment unless the absence of HIV is a bona fide occupational qualification. No person may fail or refuse to hire or discharge any individual so as to deprive the individual of employment opportunities or adversely affect the person's employee status or otherwise discriminate against the individual with respect to compensation, terms, conditions, or privileges of employment on the basis of: knowledge or belief that the individual has taken an HIV test or the results of such test, unless the absence of HIV is a bona fide occupational qualification; or the fact that the individual is a licensed health care professional who treats HIV positive persons. § 760.50.<sup>42</sup>

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

Education (4), (5), (6), (7), (8), (9), (10), (11), (13), (14)

Insurance (2), (3)

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

Social & Medical Services (1), (4)  
Testing & Reporting (3), (4), (6), (10)

## HOUSING

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

(2) A person or entity receiving state financial assistance may not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental services on the basis of the fact that the individual is infected with HIV. § 760.50.<sup>43</sup>

Education (4)  
Social & Medical Services (3), (5), (13)

## INSURANCE

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

(2) With respect to HIV exposure and infection and related illness, an insurer or health maintenance organization (HMO) may use only medical tests that are reliable predictors of risk. A test recommended by the Centers for Disease Control (CDC) or the Food and Drug Administration (FDA) is reliable for the purposes of insurance. The insurer or HMO, before relying on a single test result to deny or limit coverage or to rate the coverage, shall follow all applicable CDC or FDA

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

protocol, including follow-up tests or a series of tests to confirm the result. Prior to testing, the insurer or HMO shall inform the test subject of the intent to test for HIV infection and shall obtain the person's written informed consent. The written informed consent shall include a fair explanation of the test including its purpose, uses, limitations, the meaning of its results, and the right to confidential treatment of test information. A designated physician or the Department of Insurance shall inform the test subject of a positive test result. The test subject, when receiving a positive result, shall also receive post-test counseling. For insurance, an HIV test may be given only if the test is based on the person's current medical condition or medical history or if the test is triggered by threshold coverage amounts which apply to all persons in the risk class. In the case of an HMO, HIV testing may be given only if required of all subscribers or applicants or if the decision to require the test is based on the person's medical history. Sexual orientation may not be used in the underwriting process. Marital status, living arrangements, occupation, gender, beneficiary designation, zip code, or other territorial designation may not be used to establish the applicant's sexual orientation. An insurer or HMO may inquire whether a person has tested positive for HIV but not whether a person has been tested in general or whether a person has received a negative HIV test result. Insurers and HMOs shall maintain strict confidentiality with regard to HIV test results, exposure to HIV, and sickness resulting from HIV exposure. HIV test results which may reveal the test subject's identity shall not be placed in an insurance industry data bank. An insurer of a group policy or an HMO may not exclude coverage of an eligible individual because of a positive HIV test either as a condition for issuance of a policy or HMO subscription or subsequent to the issuance of the policy or subscription. No health insurance policy or HMO subscription shall contain an exclusion or limitation with respect to coverage for HIV infection, except as provided in a preexisting condition clause. An insurance policy may contain a total benefits limit that applies universally and not just to HIV coverage. Except for preexisting conditions specifically applying to a sickness or medical condition of the insured, benefits under a life insurance policy shall not be denied or limited on the basis that the insured's death was caused, directly or indirectly, by exposure to HIV. If, in the opinion of a legally qualified physician, the insured first exhibited objective manifestations of AIDS or ARC, as defined by the CDC, within

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the first year of coverage, and the manifestations are attributable to no other cause, the policy may contain a provision excluding coverage if: the applicant for the policy is not required to test for HIV; the provision is set forth separately in the policy, under an appropriate caption or heading, and in a conspicuous manner; the defense is asserted before the insured has had the policy for two years and the policy so states; the insurer notifies the insured of the determination in writing within 90 days of the determination, even if no claim has been submitted for AIDS or ARC; and objective manifestations first exhibited after the twelve month period are covered in the same manner as any other illness. §§ 627.429,<sup>44</sup> 641.3007.

(3) “Sickness disability” or “disability due to sickness” as used in group disability insurance policies includes any restriction of a health care practitioner’s ability to perform an occupation because of an action taken by a state licensing board as a result of a positive HIV test. § 627.4237.

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

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

Employment (1), (2)

Testing & Reporting (4)

## RESEARCH

Testing & Reporting (2), (3)

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

## SOCIAL &amp; MEDICAL SERVICES

(1) Each new and continuing state employee shall receive annually an informational pamphlet about HIV and AIDS. The pamphlet, which shall be written and printed by the Department of Health and Rehabilitative Services (Department), shall contain information about the nature and extent of HIV and AIDS, methods of transmission, preventative measures, and referral services. § 110.1125.

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

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

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

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

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

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

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

(8) The student support services team program shall refer students for care of STDs. The program shall also provide STD prevention services. § 402.321.

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

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

(11) Child abuse and neglect cases involving STDs are appropriate for referral by the children, youth, and families program to child protection teams for support services including but not limited to medical diagnosis, medical consultation, and psychological and psychiatric diagnosis and treatment. § 415.5055.

(12) The Department and each appropriate board within the division of Medical Quality Assurance shall have authority to establish

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procedures to handle, counsel, and provide other services to HIV positive health care professionals within their respective boards. § 455.2224.

(13) The Department of Corrections shall establish policies consistent with CDC guidelines and recommendations of the Correctional Medical Authority on the housing, physical contact, dining, recreation, and exercise locations for HIV positive inmates. § 945.35.

Criminal Law (1)

Education (1), (3), (4), (5), (7), (12), (14)

Employment (1)

Housing (2)

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

Testing & Reporting (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (15), (16), (17)

Miscellaneous (1), (2)

#### TESTING & REPORTING

(1) The results of any HIV test performed on a serious or habitual juvenile offender shall become part of the offender's permanent medical file. If the child is transferred to any other designated treatment facility the file shall be transferred in an envelope marked confidential. § 39.058.

(2) Every donation of blood, plasma, organs, skin, or other human tissue for transfusion or transplantation to another shall be tested for HIV prior to transfusion or other use. HIV tests shall be performed only after obtaining written informed consent from the potential donor or the donor's legal representative. Written informed consent shall not be required in the following circumstances: on materials obtained from an out-of-state blood bank; on blood or tissue received from a health care facility for reference testing if the results of such test are reported back to the facility; or when an anatomical gift has been made by will or other written instrument and the donor is deceased or incompetent. HIV testing shall not be required in the following cases: when there is a life-threatening emergency and blood is transferred without the recipient's informed consent; for semen donations made by the spouse of the recipient for the purposes of artificial insemination or another reproductive procedure; or when there is insufficient time to obtain the

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results of confirmatory test results (see Definitions (3)) for tissue or an organ which is to be transplanted. All blood, plasma, organs, skin, or other human tissue which tests positive for HIV shall be rendered noncommunicable, destroyed, or properly labeled to identify the HIV virus. HIV positive materials may be used for research purposes or to save the life of another if the recipient provides informed consent. The person collecting the donation shall inform the donor when a donation tests positive for HIV and shall explain the following: the meaning of the test results; how to prevent further transmission; what health care, counseling, and social support services are available in the geographical area; and the benefits of contacting persons who are possible sources of exposure and any persons the individual may have exposed to the virus. Preliminary HIV tests, not confirmed as positive, performed for autologous blood donations may be revealed to the attending physician for the purposes of diagnosis, treatment, and care of the donor. Any donor whose HIV test is confirmed positive shall be notified by certified mail of an abnormal result and shall be offered the chance to discuss the results in person or by telephone. If no response is received from the donor within thirty days, the actual test results and required information shall be sent to the donor by certified mail. Prior to transplant of an organ or artificial insemination, the facility or person performing the procedure must provide the patient with a warning as to the risk of contracting HIV. § 381.0041.

(3) All HIV tests performed in the State of Florida shall be conducted with prior informed consent of the test subject. The test subject shall be informed of the right to confidential treatment concerning the test subject's identity and test results. Written informed consent is not required as long as there is documentation of the consent in the patient's medical record. A legal guardian or other person authorized by law must give informed consent on behalf of persons who are incompetent or incapable of making an informed judgment or who have not yet reached the age of majority. The person ordering the test shall inform the test subject prior to testing about prevention of exposure to and transmission of HIV and shall schedule a return visit for the purpose of disclosing test results and conducting post-test counseling. No test shall be determined as positive or revealed to any person without confirmatory testing. Medical personnel who have been subjected to significant exposure (see Definitions (3)) may obtain release of preliminary test results. Test

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results shall not be revealed to the test subject without affording the subject an opportunity for face-to-face counseling about the meaning of the test results, the need for additional testing, prevention of transmission, availability of appropriate health care services in the area, and the benefits of locating any of the test subject's significant contacts by whom the test subject may have been exposed or whom the test subject may have exposed to HIV. Test results and the identity of the test subject are confidential. No person who has obtained a test result may disclose or be compelled to disclose the test results or the identity of the test subject except to: the test subject; a legally authorized representative of the test subject; any person designated in a legally effective release; an agent of a health facility who cares for the patient, handles the specimen, or has a need to know as defined by the Department of Health and Rehabilitative Services (Department); the Department; a health care provider who procures, possesses or distributes human body parts of a deceased person, or semen provided for artificial insemination prior to July 6, 1988; health facility staff committees for the purposes of service reviews; authorized researchers who may not further disclose any identifying characteristics or information; persons allowed access by court order; persons involved in the placement of a child test subject in a child-care agency; or medical personnel or other individuals subject to significant exposure. A written statement shall accompany every disclosure, prohibiting further disclosure without specific written consent of the test subject, and stating that a generalized authorization shall be insufficient. HIV test results contained in the records of a licensed hospital may be released provided the hospital has obtained written informed consent to the HIV test. Informed consent is not required for testing in the following situations: when state or federal law requires sexually transmitted disease (see Definitions (4)) testing; for donation of blood, plasma, organs, skin, semen, or other human tissue; in a bona fide medical emergency; for medical diagnosis of acute illness where the physician determines based on evidence in the medical record that obtaining informed consent would be detrimental to the patient; as part of an autopsy for which consent was obtained; for HIV testing of a defendant pursuant to a request by a victim in a prosecution for any type of sexual battery where a blood sample is taken from the defendant; when testing is mandated by court order; for research purposes; on tissue lawfully collected without consent for corneal removal; in cases of significant exposure occurring in the scope

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of employment; and on an infant when no parent can be contacted to consent. Telephonic post-test counseling is permitted when reporting the HIV test results of a home access HIV test approved by the FDA and analyzed by a state or federally certified laboratory. § 381.004.<sup>45</sup>

(4) The Department shall provide a network of voluntary HIV testing programs in every county in the state. The programs shall provide counseling and testing on both an anonymous and a confidential basis. The results of such tests shall not be used to determine insurance eligibility or to screen persons for employment or discharge from employment. No public health unit or other person in the state shall hold itself out to the public as an AIDS or HIV test site without first registering with the Department. § 381.004.<sup>46</sup>

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

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

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

(8) It is unlawful for any health care facility licensed by the Department to require any person to take an HIV test as a condition of admission or of obtaining or purchasing services for which the Department license was required. A licensed physician may, in good faith, decline to provide a particular treatment requested by a patient if the appropriateness of the treatment can only be determined through HIV testing. § 381.004. Such HIV test shall not be a condition for providing further health services. § 483.314.

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45. Florida v. Brewster, 601 So. 2d 1289 (Fla. Dist. Ct. App. 1992) (provision supports court's position that defendant could not obtain HIV testing of assault victim without a compelling need or probative value to the information).

(9) Each person who makes a diagnosis of or treats an STD and each laboratory that performs an STD test which yields a positive result shall report the case to the Department within two weeks. The Department shall specify the information required in the report. Reporting requirements for AIDS and AIDS-related condition shall be based on criteria set out by the CDC. The Department may require reporting of information sufficient to identify the HIV test subject in instances where the test subject has authorized the county public health unit to do a partner notification and contact investigation. The HIV reports shall include patient names and shall be maintained in the form of individual client records rather than in the form of a roster. County public health units shall periodically submit demographic information compiled from the HIV reports to the State Health Officer. With the test subject's consent, the Department may notify school superintendents of HIV positive test results of students and school personnel. Violations of this section shall result in a fine for each individual offense. § 384.25.

(10) An officer, firefighter, ambulance driver, paramedic, or emergency medical technician, acting within the scope of employment, who is significantly exposed (see Definitions (3)) may request that the source person be tested for STDs. If the source person will not voluntarily submit to screening, the professional or the employer may seek a court order directing the source person to submit to STD screening. A physician must provide a sworn statement that a significant exposure has occurred and that screening is medically necessary in order to determine the treatment for the employee. Such sworn statement constitutes probable cause for the issuing of the court order. The significantly exposed employee must also undergo STD screening. Results of the screening are exempt from confidentiality requirements for the purpose of releasing the results to the source person, the significantly exposed employee, to the employer as necessary for filing a worker's compensation or other disability claim, and to the parties' physicians. Persons receiving such test results shall maintain the confidentiality of the results and the identity of the test subject. § 384.287.

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

(11) A practitioner regulated through the Division of Medical Quality Assurance of the Department shall not be civilly or criminally liable for disclosure of otherwise confidential information pertaining to an HIV positive patient to the patient's sexual partner or needle-sharing partner if: the HIV positive patient discloses to the practitioner the identity of a partner; the practitioner recommends that the patient notify the partner about the positive test and refrain from engaging in sexual or drug activity in a manner likely to transmit the virus and the patient refuses; the practitioner informs the patient of the intention to inform the partner; and the practitioner reasonably and in good faith informs the partner pursuant to a perceived civil duty or the ethical guidelines of the profession. The practitioner shall observe the protocol of the Department for notification of the partner. The practitioner shall not be held civilly or criminally liable for failure to disclose information pertaining to an HIV positive test result to a partner. § 455.2416.

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

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

(14) A court shall order an offender to undergo HIV testing when the offender has been convicted of or has pled nolo contendere or guilty to any of the following offenses: assault; aggravated assault; battery; aggravated battery; child abuse; aggravated child abuse; failure to comply with the provisions pertaining to donation of blood plasma, organs, skin, or other human tissue (see Testing & Reporting (2)); incest; lascivious or indecent assault or act upon a person less than sixteen years of age; prostitution; sexual battery; sexual performance by a person less than eighteen years of age; or any offense which involves transmission of body fluids from one person to another. The results of the HIV test are not admissible in a criminal proceeding arising out of the alleged offense. The results of the HIV test must be disclosed to the offender, the public health agency of the county where the conviction occurred and of the county of residence of the offender, and, upon request, to the victim. The test results may not be disclosed to any other person except as expressly authorized by law or court order. In a case where a person convicted of

an offense has not been tested but undergoes testing during incarceration, detention, or placement, the test results shall be disclosed to the victim if the initial test is conducted within the first year of the imprisonment, detention, or placement. §§ 775.0877, 960.003.<sup>47</sup>

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

(16) When there is evidence that an inmate in the custody of the Department of Corrections has engaged in behavior that places the inmate at high risk (see Definitions (2)) of transmitting or contracting HIV, the Department of Corrections may begin a testing program which is consistent with guidelines of the CDC and recommendations of the Correctional Medical Authority. The test results shall become part of the inmate's medical file. § 945.35. The inmate's HIV test results are confidential but may be provided to sheriffs or correctional officers who are responsible for the care of the inmate and who have a need to know. § 951.27.

(17) An individual forwarding a sample of the individual's own blood to a clinical laboratory for the purposes of a home access HIV test administered with an FDA approved kit is authorized to request that a clinical laboratory examine the specimen. § 483.181.

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

Education (4)

Employment (1)

Insurance (2), (3)

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

## MISCELLANEOUS

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

(2) It is a violation of the Florida Drug and Cosmetic Act to advertise any drug or device represented to have an effect on HIV, AIDS, or related disorders or conditions. § 499.0054.

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

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All citations are to "Ga. Code Ann." unless otherwise noted.

**DEFINITIONS**

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

(2) "Infectious or communicable disease" includes AIDS. § 42-1-7.

(3) "Significant exposure" is defined at § 17-10-15.

**CRIMINAL LAW**

(1) A person who, after obtaining knowledge of being infected with HIV and without disclosing such information: engages in sexual intercourse or performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another person; allows another person to use a hypodermic needle, syringe, or both, which has been previously used by the HIV-infected person (see Definitions (1)); offers or consents to perform an act of sexual intercourse with another person for money; solicits another person to perform or submit to an act of sodomy for money; or donates blood, blood products, other body fluids (see Definitions (1)), or any body organ or part, is guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than ten years. § 16-5-60.<sup>48</sup>

(2) Any person who knowingly refuses or omits to prepare written notification that a deceased person has been diagnosed with an infectious or communicable disease (see Definitions (2)) (see Testing & Reporting (4)) is guilty of a misdemeanor. § 31-21-3.

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



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

(4) Any person who violates the provisions relating to the HIV testing of body parts by health care facilities (see Definitions (1)) (see Testing & Reporting (11)) is guilty of a misdemeanor. § 44-5-151.

(5) Any person who violates the provisions regarding AIDS confidential information (see Definitions (1)) (see Testing & Reporting (3)) shall be guilty of a misdemeanor. § 24-9-47.<sup>49</sup>

Social & Medical Services (1)

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

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

## EDUCATION

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

## EMPLOYMENT

Testing & Reporting (5), (9)

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

Miscellaneous (7), (10)

## HOUSING

Testing & Reporting (9)

## INSURANCE

Testing & Reporting (6)

Miscellaneous (10)

## RESEARCH

Testing & Reporting (5), (11)

## SOCIAL & MEDICAL SERVICES

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

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

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

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

#### TESTING & REPORTING

(1) As part of any order of disposition regarding a child suspected to have committed a delinquent act constituting an AIDS transmitting crime (see Definitions (1)), the court may order the child to submit to an HIV test within forty-five days following the adjudication of delinquency. The court shall mail a copy of such order to the Department of Children and Youth Services within three days following its issue. The Department of Children and Youth Services, within thirty days following receipt of the copy of the order, shall arrange for the child to be tested for HIV. Any juvenile sentenced to the custody and control of the Department of Corrections or the Department of Children and Youth Services shall be tested for HIV in accordance with the policies and procedures of the respective department. If a child is required to submit to an HIV test and is thereby determined to be infected with HIV, the test result and the name of the child shall be deemed to be AIDS confidential information (see Definitions (1)) and shall be reported to: the Department of Children and Youth Services or the Department of Corrections, and the Department of Human Resources (Department), which may disclose the name of the child in order to provide counseling to victims of that child's crime; the court which ordered the HIV test; and those persons in charge of the facility to which the child has been confined by court order. A child who is infected with HIV may be confined in that facility separately from any other children in that facility who are not infected with HIV. § 15-11-35.1.

(2) A victim or the parent or legal guardian of a minor or incompetent victim of a sexual offense or other crime which involves significant exposure (see Definitions (3)) may request that the person arrested for the sexual offense submit to an HIV test and consent to the release of the test results to the victim. If the person arrested declines to submit to an HIV test, the judge of the superior court in which the criminal charge is pending may order the test to be performed upon a showing of probable cause that the arrested person committed the offense and that significant exposure occurred. The cost of the test shall be paid by either the victim or the arrested person, at the court's discretion. Upon

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a verdict or plea of guilty or a plea of nolo contendere to any AIDS transmitting crime (see Criminal Law (1)), the court shall require the defendant to submit to an HIV test within forty-five days following the date of such verdict or plea. A copy of the verdict or plea shall be mailed to the Department. Following receipt of a court order for an HIV test or guilty verdict or plea of guilty or nolo contendere, the Department shall arrange for the offender to be tested for HIV. Any person who fails or refuses to submit to such testing shall be subject to such measures as deemed necessary by the court, and submission to the HIV test may be made a condition of suspending or probating any part of that person's sentence. If a person required by this section to be tested is determined to be infected with HIV (see Definitions (1)), the test result and name of the person shall be reported to: the court which ordered the test, which shall include the report in that person's criminal record; the officer in charge of the penal institution or other facility in which the person has been confined for purposes of enabling that officer to confine the person separately from those not infected with HIV; and the Department of Human Resources, which shall disclose the name of the person who is tested as necessary to provide counseling to each victim of the person's AIDS transmitting crime. § 17-10-15.

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

(4) The Department is directed and empowered, when in its judgment it is necessary to protect the public health, to make examinations of persons infected or suspected of being infected with HIV and to test them, with their consent, for HIV. If the person infected or suspected of being infected with HIV refuses to consent to testing, the Department may petition the court for an order authorizing the testing of such person. The Department may file a civil complaint with the superior court of the county in which the person who refuses testing resides. If the court finds clear and convincing evidence that the person is reasonably

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likely to be infected with HIV and there is a compelling need to protect the public health, the court may order the person to submit to an HIV test. §§ 31-17A-2, 31-17A-3.

(5) When a person who has been diagnosed as having an infectious or communicable disease (see Definitions (2)) dies in a health care facility (see Definitions (1)), the attending physician shall prepare a written notification describing such disease to accompany the body when it is picked up for disposition. When a person dies outside of a health care facility and without an attending physician, any family member or person making arrangements for the disposition of the body who knows that the decedent has been diagnosed with an infectious or communicable disease shall prepare a written notification describing the disease to accompany the body when it is picked up for disposition. Any person who picks up a dead body for disposition and who has been notified that the person had been diagnosed as having an infectious or communicable disease shall present such notification accompanying the dead body to any embalmer, funeral director, or other person taking possession of the body. Information contained in any notification regarding the deceased person's infectious or communicable disease shall be confidential and may only be disclosed for the following reasons: disclosure is required by law; disclosure is made by a physician pursuant to any law authorizing a physician to disclose otherwise privileged information; the disclosure is for research purposes and does not reveal the identity of the deceased; the disclosure involves information regarding sexual assault or sexual exploitation of a deceased child and is required by law to be reported; the disclosure involves information regarding a deceased minor and is made to the parent or guardian of the minor; or the disclosure is made to the person who picks up the dead body or is made in the ordinary course of business to any employee or agent of any person or entity authorized to receive or report that information. Information that is privileged and confidential under this section may not be disclosed pursuant to discovery proceedings, subpoena, or court order. § 31-21-3.

(6) Each health care provider (see Definitions (1)), health care facility, or any other person or legal entity which orders an HIV test for any person shall report each confirmed positive HIV test to the Department of Human Resources, along with the age, sex, race, and county of residence of the person having the confirmed positive HIV test. The report shall not include any other identifying characteristics

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

(7) When exposure of a health care provider to any body fluids of a patient occurs in such a manner as to create a risk that such provider might contract HIV if the patient were infected with HIV, a health care provider shall be authorized to order an HIV test on the patient and obtain the results of the test, if the patient does not refuse after being notified that the test is to be ordered, has been provided with counseling, and has been given an opportunity to refuse the test. If the patient refuses the test, the health care provider shall be authorized to order the test when at least one other health care provider who is otherwise authorized to order an HIV test concurs in writing to the testing, and the patient is informed of the test results and is provided counseling with regard to the results. If the patient refuses the testing and the test results are negative, the occurrence of the test may not be made a

part of the patient's medical records without the patient's consent. § 31-22-9.2.

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

(9) Where any person is committed to serve time in any penal institution, that person shall submit to an HIV test within thirty days after the person is committed unless the person is in custody because of having committed an AIDS transmitting crime and has, therefore, already submitted to an AIDS test. Upon failure of an inmate to cooperate in HIV test procedures, the superior court may issue an order authorizing the use of such measures as are reasonably necessary to require submission to an HIV test. Any inmate who is infected with HIV should be housed at existing institutions separately from any other person not infected with HIV if that person is reasonably believed to be sexually active or predatory or if other conditions or circumstances indicate that separate confinement would be in the best interest of the Department of Corrections and the inmate population. Neither the Department of Corrections nor any of its officials, employees, or agents shall be civilly or criminally liable for failing or refusing to house HIV-infected inmates away from those who are not infected with HIV. § 42-5-52.1.

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

granted, which may include measures designed to prevent the spread of HIV by that person. § 42-9-42.1.

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

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

Criminal Law (2), (3), (4)

Social & Medical Services (1), (2)

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

#### MISCELLANEOUS

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



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

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

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

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

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

(6) AIDS confidential information may be disclosed as medical information if the person identified by the information has

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

(7) A superior court may order a person or legal entity to disclose AIDS confidential information in its custody or control to any of the following: a prosecutor in connection with a prosecution for commission of certain reckless conduct; any party in a civil cause of action; or a public safety agent or the Department if that agency or department has an employee who has come into contact with the body fluids of a person infected with AIDS in the course of employment. A petition seeking disclosure of AIDS confidential information shall substitute a pseudonym for the true name of the person concerning whom the information is sought. Court proceedings as to disclosure of AIDS confidential information shall be conducted in camera unless the person concerning whom the information is sought agrees to a hearing in open court. AIDS confidential information may be disclosed when that disclosure is otherwise authorized by any law or code section. § 24-9-47.

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

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

(10) The protection against disclosure afforded to AIDS confidential information shall be waived to the extent that the person identified by the information, the person's heirs, successors, assigns, or a beneficiary: files a claim or claims other entitlements under any insurance policy or benefit plan or is involved in any civil proceeding regarding such claim; places such person's care and treatment, the nature

and extent of the person's injuries, the extent of damages, the person's medical condition, or the reasons for the person's death at issue in any civil or criminal proceeding; or is involved in a dispute regarding coverage under any insurance policy or benefit plan. AIDS confidential information may be collected, used, and disclosed by an insurer in accordance with the provisions of the code relating to use of information by insurers. § 24-9-47.

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

(12) AIDS confidential information may be disclosed as a part of any proceeding regarding a person who is mentally ill, mentally retarded, alcoholic, or drug dependent, or as part of any proceeding regarding the guardianship of a person or that person's estate. Any document filed or transmitted which contains AIDS confidential information shall have a cover page which contains the type of proceeding, the court in which the proceeding is or will be pending, and the words, "CONFIDENTIAL INFORMATION." AIDS confidential information shall only be disclosed after disclosure to and with written consent of the person identified by that information or that person's parent or guardian. If consent is not obtained, the court receiving the information shall either obtain such written consent, or: return the petition or document to the person who filed or transmitted it, with directions against further filing or transmitting of such information; delete or expunge all references to such AIDS confidential information from the particular petition or other document; or, if the court determines there is a compelling need for such information, petition a superior court for permission to obtain or disclose the information. The confidentiality of any AIDS confidential information disclosed under this section shall be maintained by the court having jurisdiction over the proceeding for which the information has been obtained. § 24-9-47.

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

**HAWAII**

All citations are to “Haw. Rev. Stat.” unless otherwise noted.

**DEFINITIONS**

(1) “Disclosure of real property condition statement” is defined at § 508D-1.

**CRIMINAL LAW**

Testing & Reporting (2)

Miscellaneous (1), (2), (3)

**EDUCATION**

(1) The Department of Health shall formulate, supervise, and coordinate an educational program for the purposes of preventing sexually transmitted diseases (STDs), instructing the general public in detecting the diseases, and encouraging early treatment. The information shall be made available upon request to all members of the general public and to minors without parental consent and shall be distributed to all public school counselors requesting educational materials concerning STD prevention, detection, and treatment. § 321-111.

Social & Medical Services (2)

Testing & Reporting (2)

**EMPLOYMENT****HOUSING**

(1) The fact that an occupant of real property has AIDS or has been tested for HIV shall not be considered a material fact which must be ascertained and disclosed for the purpose of fulfilling a real estate licensee’s obligation to avoid error, misrepresentation, or concealment of material facts. § 467-14. The fact that an occupant of real property had AIDS or has been tested for HIV is a fact that may be excluded from a disclosure of real property condition statement (see Definitions (1)). § 508D-8.

(2) It is a discriminatory practice for an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesperson, because a person is infected with HIV, to: refuse to engage in a real estate transaction with the person; discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith; refuse to receive or fail to transmit a bona fide offer to engage in a real estate transaction; refuse to negotiate for a real estate transaction with a person; represent to a person that real property is not available for inspection, sale, rental, or lease when, in fact, it is available, or to fail to bring a property listing to the person's attention, or to refuse to permit the person to inspect real property; print circulate, post or mail a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto; offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith; solicit or require as a condition of engaging in a real estate transaction that the buyer, renter, or lessee be tested for HIV; or discriminate against or deny a person access to, or membership or participation in, any multiple listing service, real estate broker's organization, or other service, organization, or facility involved in real estate transactions, or to discriminate against any person in the terms or conditions of such access, membership, or participation. § 515-3.

(3) It is a discriminatory practice for a person, a person's representative, or a real estate broker or sales person to whom an inquiry or application is made for financial assistance in connection with a real estate transaction or repair to: discriminate against the applicant; use any form of application for financial assistance in a way that indicates an intent to limit, specify, or discriminate; discriminate in the making or purchasing of loans or the provision of other financial assistance in connection with real estate; or discriminate in the selling, brokering, or appraising of residential property because a person is infected with HIV. § 515-5.

(4) Every provision in an oral agreement or a written instrument relating to real property which forbids or restricts the conveyance, encumbrance, occupancy, or lease of property to individuals because they are infected with HIV is void. Every condition, restriction, or prohibition which limits the use or occupancy of real property on the basis of HIV infection is void. Any attempt to include or honor such provision is a discriminatory practice. § 515-6.

(5) It is a discriminatory practice for a person, representative of that person, real estate broker, or salesperson, for the purpose of inducing a real estate transaction from which the person may benefit financially, to represent that because HIV-infected persons are living in the area, a change has occurred or will or may occur in the composition of the owners or occupants in the block, neighborhood, or area in which the property is located that would result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools. § 515-7.

(6) It is a discriminatory practice to retaliate, threaten, or discriminate against a person because the person has HIV or has opposed a discriminatory practice, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing relating to a discriminatory practice in a real estate transaction. It is a discriminatory practice to aid, abet, incite, or coerce a person to engage in a discriminatory practice, or to prevent a person from complying with laws relating to discriminatory practices. It is a discriminatory practice to threaten, intimidate, or interfere with persons in their enjoyment of a housing accommodation because such persons or their visitors are infected with HIV. § 515-16.

## INSURANCE

(1) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual based solely upon the individual's having been tested for HIV prior to applying for insurance are unfair methods of competition and unfair or deceptive acts or practices in the insurance business. § 431:13-103.

Miscellaneous (1)

## RESEARCH

Social &amp; Medical Services (2)

Testing &amp; Reporting (2)

## SOCIAL &amp; MEDICAL SERVICES

(1) The Director of Health may appoint ad hoc advisory committees as needed to provide advice and recommendations to health care workers infected with HIV on the risk of HIV transmission through exposure-prone invasive procedures. An advisory committee may recommend changes in a health care worker's practice, including patient notification, to reduce the possibility of transmission to patients. Each committee shall include an infectious disease specialist with expertise appropriate to the case and a professional peer of the infected health care worker, who has expertise in the professional practice performed by that worker. The committee may also include the health care worker's personal physician and, if the health care worker's practice is facility based, members of the facility's infection control committee. Work of the advisory committee shall be confidential, except that a summary of non-identifying information and general policy recommendations may be made available to the public. § 325-18.

(2) The Needle Exchange Program (Program) shall be operated for the purpose of preventing the transmission of HIV and of providing injection drug users with referrals to appropriate health and social services. The Program shall provide for maximum security of exchange sites and equipment, including a full accounting of the number of needles and syringes in use, the number in storage, and any other measure that may be required to control the use and dispersal of sterile needles and syringes. A participant may exchange used needles and syringes at any exchange site if more than one site is available. The Program shall provide for a one-to-one exchange, whereby the participant shall receive one sterile needle and syringe unit in exchange for each used one. The Program shall also screen participants to prevent non-injection drug users from participating in the Program. The Department of Health shall keep records to identify and authorize its employees to have access to needles, syringes, or the Program's records. The Program shall include services to educate the participant about the dangers of contracting HIV infection through needle-sharing practices and shall offer substance abuse

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treatment referral and counseling services to all participants. The Program shall compile research data on behavioral changes, enrollment in drug abuse treatment, counseling, education relating to disease transmission, and other information that may be relevant and useful to assist in efforts to combat the spread of blood borne diseases. § 325-113.

(3) The Department of Health shall submit a report each year to the oversight committee. The report shall include: information as to the number of participants served and the number of needles and syringes distributed in the Program; a demographic profile of the participants served, including age, sex, ethnicity, occupation, type and length of drug use, and frequency of injection; impact of the Program on needle and syringe sharing and other high risk behavior; data on participants regarding HIV testing, counseling, drug treatment, and other social services, including referrals for HIV testing; impact on the transmission of HIV infection among injection drug users; impact on behaviors that cause participants to be at risk for HIV transmission; assessment of the cost-effectiveness of the Program versus direct and indirect costs of HIV infection; and information on the percentage of persons served through treatment programs for injection drug users that were funded through the Department of Health and attributed to needle exchange referrals. The report shall address the strengths and weaknesses of the Program, the advisability of its continuation, amendments to the law, if appropriate, and other matters that may be helpful to the oversight committee in evaluating the program's efficacy. § 325-116.

Education (1)

Testing & Reporting (1), (2)

Miscellaneous (1)

#### TESTING & REPORTING

(1) The Department of Health shall furnish information relating to AIDS and anonymous testing for HIV infection to marriage license applicants. § 572-5.

(2) No health care provider, blood bank, plasma center, or any other public or private agency, institution, or individual may subject a person's body fluids or tissue to an HIV test unless the subject of the test first provides informed written consent to the testing. Any person who is tested for HIV shall have the opportunity to receive HIV counseling by  
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the party ordering the test and shall be able to obtain the test results. The opportunity to receive counseling shall be afforded prior to testing and upon disclosure of test results, regardless of whether the test result is negative or positive. Consent to testing is not required for: anatomical gifts; research; anonymous testing; testing of body fluids of tissue which is ordered by a third party, as long as the third party obtains the informed written consent of the person to be tested; patient diagnosis or treatment where the patient is unable to give consent if the patient is later informed that such a test was performed; or the protection of health care workers where there is reason to believe that a health care worker may be exposed to the body fluids of a patient who is suspected to be infected with HIV. All records pertaining to HIV testing shall be confidential. Any person who willfully violates this section shall be fined, and any person's right to recover actual damages shall not be limited by such fine. No health care provider, blood bank, plasma center, or other institution, agency, or individual which, in good faith, provides results of any HIV test to a specified third party in response to an informed written consent by the test subject shall be in violation of the confidentiality requirements of this section if the test results later prove to be false or otherwise defective. § 325-16.<sup>50</sup>

(3) All laboratories performing screening and diagnostic HIV tests shall confirm any initially reactive ELISA test by a second ELISA. Any sera yielding reactive results to both ELISA tests must have a supplemental test performed such as the Western Blot, an IFA, or an antigen detection assay. Any laboratory performing HIV tests may be required by the Department of Health to refer a sample from any specimen yielding a reactive result to the Department for the purpose of supplemental testing for quality assurance purposes. Any information accompanying a specimen for epidemiological purposes shall not include any personal identifiers. § 325-17.

(4) Every physician, health care professional, or laboratory having a client affected by or suspected of being affected by a communicable or contagious disease, including HIV, shall report the incidence or suspected incidence of such disease in writing to the Department of Health. Any physician, health care professional, or

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50. *State v. Abbott*, 901 P.2d 1296, 1300 (Haw. Ct. App. 1995) (sentencing court has no authority to order a criminal defendant to undergo HIV testing as a condition of probation).

laboratory director who refuses or neglects to give such notice or make such report shall be fined. §§ 325-2, 325-104.

Housing (1), (2)

Insurance (1)

Social & Medical Services (3)

Miscellaneous (3)

#### MISCELLANEOUS

(1) The records of any person which indicate that a person is infected with HIV or has AIDS shall be strictly confidential. "Records" shall be construed to include all communication which identifies any individual who has AIDS or HIV. Records of a person with AIDS or HIV shall not be released or made public upon subpoena or any other method of discovery. Release of records otherwise protected shall be made, with prior written consent of the person to whom the records pertain, to the Department of Health in order that it may comply with federal reporting requirements imposed on the state, and to medical personnel in a medical emergency, only to the extent necessary to protect the health, life, or well being of the named party. Release of records may also be made under the following circumstances: from a physician to the Department of Health, without disclosing the identity of the subject of the records, in order to inform sexual or needle-sharing contacts of an HIV positive patient that they are at risk of HIV transmission, when the patient has been counseled by a physician about the need for disclosure, and the patient is unwilling to inform the contacts directly or is unwilling to consent to the disclosure; by the Department of Health to medical personnel, county and state agencies, blood banks, plasma centers, organ and tissue banks, schools, day care centers, or courts to enforce rules concerning the control and treatment of HIV; release of a child's records made within the Department of Human Services and to child protective services team consultants, or by employees of the Department of Human Services in situations relating to child abuse; to the patient's health care insurer in order to obtain reimbursement for services rendered to the patient; by the patient's health care provider to another health care provider for the purpose of continued care or treatment of the patient; pursuant to a court order, after an in camera review of the records, and upon a showing of good cause by the party seeking the release of the

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records; or on a confidential basis, disclosure by a physician of the identity of a person who is HIV positive and who also shows evidence of tuberculosis infection, to a person within the Department of Health for purposes of evaluating the need for or the monitoring of tuberculosis chemotherapy for the person and the person's contacts who are at risk of developing tuberculosis. Recording or maintaining confidential information under this part shall not be construed as a breach of an individual's confidentiality. Any person who receives or comes into possession of any medical records indicating a person's HIV infection shall be subject to the same obligation of confidentiality as the party from whom the record was received. § 325-101.<sup>51</sup>

(2) Any person who willfully violates any provision relating to the confidentiality of records that indicate that a person has an HIV infection shall be fined. § 325-102.

(3) No officer or employee of the Department of Health shall be examined in any civil, criminal, special, or other proceeding as to the existence or content of any individual's records or reports retained by the Department relating to the HIV infection of the individual without the individual's written consent. § 325-103.

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51. *Id.* (provision does not authorize court ordered HIV testing of a criminal defendant as a condition of probation).