

IDAHO

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

DEFINITIONS

- (1) “Body fluid” and “transfer” are defined at § 39-608.
- (2) “HTLV-III” is defined at § 39-5408.
- (3) “Injury, for the purposes of crime victim’s compensation, is defined at § 72-1003 and includes venereal disease among the listed injuries.
- (4) “Venereal diseases” are enumerated at § 39-601, and the list includes HIV.

CRIMINAL LAW

(1) The State Health Authority may isolate and quarantine AIDS afflicted prisoners during incarceration.⁵² § 39-603.

(2) It is unlawful to expose another person to a venereal disease (see Definitions (4)). § 39-601. One who exposes another with intent to infect or transfers or attempts to transfer body fluid (see Definitions (1)), tissue or organs, knowing that he or she is HIV afflicted, is guilty of a felony. Consent and medical advice are affirmative defenses. § 39-608. A prosecution under § 39-608 for the crime of transferring HIV does not bar by double jeopardy subsequent prosecution for another crime if the elements of the second crime do not constitute an HIV offense. § 18-1508.⁵³

Social & Medical Services (1)

Testing & Reporting (1)

Miscellaneous (1)

52. 87 Op. Att’y Gen. 53 (1987). *But see* 89 Op. Att’y Gen. 48 (1989) (HIV-positive prisoners will not be quarantined except on a case-by-case basis).

53. *State v. Lewis*, 848 P.2d 394, 399 (Idaho 1993) (mistrial for crime of knowing transmission of HIV does not bar by double jeopardy subsequent trial for lewd conduct offense arising out of the same conduct).

EDUCATION

(1) Marriage license applicants shall be provided a pamphlet describing AIDS, HIV transmission, and transmission risk prevention. A confidential questionnaire shall be administered, and if the applicants appear to be at risk, it shall be recommended that they contact a physician or a state health agency. § 32-412A.

Social & Medical Services (1), (2)

EMPLOYMENT

(1) AIDS and other manifestations of HIV are included as occupational diseases when the occupation involves exposure to human blood or body fluids (see Definitions (1)). The worker is entitled to compensation in the event of disability or death. § 72-438.

HOUSING

INSURANCE

RESEARCH

SOCIAL & MEDICAL SERVICES

(1) The State Board of Correction is authorized to provide medical and counseling services to inmates exposed to or infected with HIV. Educational information shall be provided to inmates in order to diminish transmission of HIV within correctional facilities. § 20-209.

(2) The advertisement of a drug or device represented to have an effect on venereal disease (see Definitions (4)) shall be deemed false or misleading unless: it is not false or misleading in any particular, and is disseminated only to the medical and scientific community; or it is disseminated only for public health education by persons not commercially interested. If self medication is deemed safe, the Board shall authorize the advertisement of the drug or device subject to any conditions that may be necessary to protect the public health. § 37-131.

(3) Semen shall not be donated or used for artificial insemination by any male who knows or has reason to know he has a venereal disease. § 39-5404.

Education (1)

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

TESTING & REPORTING

(1) All detainees in State prison facilities shall be examined for venereal disease (VD) (see Definitions (4)), including HIV, on admission and before release. All detainees in county or city jails charged with a sex offense, or if exposed to potential infection during incarceration, shall be tested for VD including HIV.⁵⁴ Test results from sex offenders shall be revealed, upon request, to the court, which may release the results to the victim of the offense, where health and safety interests indicate. Where a sex offender tests HIV positive, the victim shall be entitled to state sponsored HIV testing and counseling and referred to appropriate health care and support services, provided the counseling and referral service does not otherwise obligate the district health department to provide or pay for the victim's health care. § 39-604.

(2) Donated body parts, blood, tissue, semen, et cetera, or the donor of such parts, shall be tested for HIV. § 39-3402, § 39-3407, § 39-3703. All hospitals, sperm banks, or other storage facilities accepting semen donations shall use reasonable means to detect antibodies to HTLV-III (see Definitions(2)) in the donor's blood. The semen of donors possessing the antibody shall not be used for artificial insemination. § 39-5408.

(3) Any physician diagnosing or treating a case of VD, or any superintendent or manager of a hospital, dispensary, or charitable or penal institution in which there is a case of VD, shall immediately make a report of the case to the Department of Health and Welfare. § 39-602. Reports to the Director of the Department of Health and Welfare shall include patient identification but shall be confidential and shall be used

54. Each inmate entering a detention facility must be tested for HIV. 87 Op. Att'y Gen. 53 (1987).

only by public health officials who must conduct investigations. § 39-606; § 39-610.

(4) Absent a medical need to know, HIV status confidentiality is declared to be in the public interest. § 39-609. Confidential public health records (§ 39-606) shall not be discoverable or compelled to be produced in any civil or administrative hearing. Health authorities may contact and advise persons who have been exposed to HIV. The Department of Health and Welfare shall accept reports from medical and emergency personnel of significant exposure to blood or body fluids (see Definitions (1)), and, upon receipt of a report pursuant to § 39-602 confirming HIV, shall contact and advise those exposed while not identifying by name the infected patient. § 39-610.

MISCELLANEOUS

(1) Crime victims compensation may not be awarded unless the claim is filed with the Industrial Commission within one year after the injury (see Definitions (3)). The time limit may be extended for good cause shown. §72-1016.

ILLINOIS

All citations are to “Ill. Ann. Stat. ch.” unless otherwise noted.

DEFINITIONS

- (1) “AIDS” is defined at 410, §§ 310/3 and 305/3.
- (2) “ARC” is defined at 410, § 310/3.
- (3) “Exceptional Medical Care” means the level of medical care required by persons (including persons with AIDS or a related condition) who are medically stable for discharge from a hospital but who require acute intensity hospital level care for physician, nurse, and ancillary specialist services. 305, § 5/5-1.1.
- (4) “Health care provider,” “health facility,” “HIV,” and “written informed consent” are defined at 410, § 305/3.
- (5) “Sexually transmissible disease” is defined at 410, § 325/3.
- (6) “Supportive Residence” is defined at 210, § 65/10.

CRIMINAL LAW

(1) In performing the technique of artificial insemination, no person shall intentionally, knowingly, recklessly, or negligently use the semen of a donor who has not been tested for HIV or who has tested positive for HIV. Such a violation shall be a Class A misdemeanor. 20, § 2310/55.45.

(2) No person may intentionally, knowingly, recklessly, or negligently use the semen, corneas, bones, organs, or other human tissue of a donor unless they have been tested for HIV. Such donations may not be used if they have tested positive for HIV. A violation of this section shall be a Class 4 felony. 20, § 2310/55.46.

(3) Intentional or reckless violation of the AIDS Confidentiality Act (see Testing & Reporting (13)) shall constitute a Class A misdemeanor. 410, § 305/12.

(4) A person commits criminal transmission of HIV when such person, knowing that he or she is infected with HIV: engages in intimate contact with another involving the exposure of one person to the body fluid of another in a manner that could result in the transmission of

[ILLINOIS]

HIV; transfers, donates, or provides his or her blood, tissue, semen, organs, or other potentially infectious body fluids for transfusion, transplantation, insemination, or other administration to another; or dispenses, delivers, exchanges, sells, or in any other way transfers to another any nonsterile intravenous or intramuscular drug paraphernalia. Criminal transmission of HIV does not require that HIV infection in the transferee has occurred. It shall be an affirmative defense that the person exposed knew that the infected person was infected with HIV, knew that the action could result in infection with HIV, and consented to the action with that knowledge. The criminal transmission of HIV is a Class 2 felony. 720, § 5/12-16.2.

(5) Any person who knowingly or maliciously disseminates any information or report concerning the existence of any disease under the Illinois Sexually Transmissible Disease Control Act (see Definitions (5)) is guilty of a Class A misdemeanor. 410, §§ 325/5.5, 325/8.

(6) In prosecutions for aggravated criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, criminal sexual abuse, or criminal transmission of HIV; and in prosecutions for battery and aggravated battery involving sexual conduct; and with the trial or retrial of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, and aggravated indecent liberties with a child, the prior sexual activity or the reputation of the alleged victim is inadmissible except as evidence concerning the past sexual conduct of the alleged victim with the accused when this evidence is offered by the accused upon the issue of consent of the victim to the sexual conduct at issue, or when constitutionally required to be admitted. 725, § 5/115-7.

Employment (1)

Social & Medical Services (16), (19), (20)

Testing & Reporting (14), (21), (22), (23), (24)

EDUCATION

(1) The Department of Public Health shall develop and implement a public education program to reduce the prenatal transmission of HIV infection. The program shall be targeted toward population groups whose behavior places them at risk of HIV infection. 20, § 2310/55.52.

[ILLINOIS]

(2) The Department of Public Health shall prepare a brochure describing sexually transmitted diseases including AIDS (see Definitions (1)). The brochure shall be distributed in each county clerk's office in the state and to any other office where applications for a marriage license are taken, and shall be distributed free of charge to persons applying for a marriage license or others. 20, § 2310/55.55.

(3) The Department of Public Health (Department) shall include within its AIDS awareness programs and campaign materials information directed towards high risk populations, such as Hispanics and African Americans. The Department shall seek the advice and assistance of community-based organizations representing these populations with respect to the most effective methods to educate persons within these populations about AIDS. 20, § 2310/55.56.

(4) School guidance counselors, nurses, teachers and other school personnel who work with pupils may be trained to have a basic knowledge of matters relating to AIDS. The School Board shall supervise such training. 105, §§ 5/10-22.39, 5/34-18.8

(5) Each course in comprehensive sex education or family life education in public elementary, junior high, and senior high schools shall include instruction on AIDS. No pupil shall be required to take or participate in any class or course in comprehensive sex education if the pupil's parent or guardian submits written objection thereto. Refusal to take or participate in such course shall not be a reason for suspension or expulsion of such pupil. 105, §§ 5/27-9.1, 9.2.

(6) The Comprehensive Health Education Program shall include AIDS education in its curricula in all elementary and secondary schools in the state. 105, § 110/3.

(7) The county clerk shall distribute free of charge, to all persons applying for a marriage license, a brochure prepared by the Department of Public Health concerning sexually transmitted diseases. 750, § 5/204.

Social & Medical Services (3), (7), (8)

Testing & Reporting (16)

EMPLOYMENT

(1) No applicant may receive a child care license and no person may be employed by a licensed child care facility who has been declared a sexually dangerous person or convicted of committing the offense of criminal transmission of HIV (see Criminal Law (4)). 225, § 10/4.2.

Education (4)

Social & Medical Services (5), (7), (12)

Testing & Reporting (10), (12), (18)

HOUSING

(1) No cause of action shall arise against a real estate licensee for the failure to disclose that an occupant of that property was HIV positive. 225, § 455/31.1.

Social & Medical Services (10), (11), (13)

INSURANCE

(1) The Illinois Department of Public Aid may pay for health insurance coverage with funds appropriated for this purpose on behalf of persons who are infected with HIV and are eligible for “continuation coverage” as provided by the federal Consolidated Omnibus Budget Reconciliation Act of 1985 or group health insurance policies. 305, § 5/5-18.

(2) Sections 1 through 15 of the AIDS Confidentiality Act (see Testing & Reporting (13)) shall not apply to a health maintenance organization nor to any insurance company, fraternal benefit society, or other insurer regulated under the Illinois Insurance Code. 410, § 305/15.1.

Testing & Reporting (6)

RESEARCH

Testing & Reporting (3), (11)

SOCIAL & MEDICAL SERVICES

(1) A minor, twelve years of age or older, who may have come into contact with any sexually transmitted disease (STD) (see Definitions (5)), or may be determined to be an addict, an alcoholic or an intoxicated person, or who may have a family member who abuses drugs or alcohol, may consent to medical care or counseling related to the diagnosis or treatment of the disease. The consent of the parent or legal guardian of the minor shall not be necessary to authorize such medical care or counseling. Each incident of STD shall be reported to the State Department of Public Health or the local board of health. 410, § 210/4.

(2) An advertisement of a drug or device that represents it to have any effect on STDs shall be deemed false unless such advertisement is disseminated only to members of the medical, dental, or veterinary professions. 410, § 620/20.

(3) The Department of Alcoholism and Substance abuse shall coordinate a statewide strategy among state agencies for the prevention, intervention, treatment, and rehabilitation of alcohol and other drug abuse and dependency. This strategy shall identify problems, needs, priorities, services, and other pertinent information, including the needs of minorities and other specific populations in the state, including persons with AIDS (see Definitions (1)) or who are HIV-infected. The Department may also develop and coordinate education and training programs for persons who provide services relating to drug and alcohol dependency, including specific HIV education. 20, § 301/5-10.

(4) No patient shall be denied services under the Substance Abuse and Other Drug Abuse and Dependency Act based solely on HIV status. 20, § 301/30-5.

(5) The Department of Mental Health and Developmental Disabilities may develop an annual plan for staff training, which shall address AIDS. 20, § 1705/33.3.

(6) The Department of Public Health (Department) shall develop and implement a state plan for control of AIDS to guide the activities of state and local health authorities. The Department shall review the provisions of the AIDS control plan with the AIDS Advisory Council (see Social & Medical Services (7)) prior to its adoption and implementation. 20, § 2305/6.

(7) The Department of Public Health shall establish a State AIDS Control Unit to coordinate all state programs and services relating to the prevention, treatment, and amelioration of AIDS. The Department shall conduct a public information campaign on AIDS for physicians, hospitals, health facilities, public health departments, law enforcement personnel, public employees, laboratories, and the general public. This program shall establish a statewide hotline and a state AIDS information clearinghouse that will provide periodic reports and releases to public officials, health professionals, community service organizations, and the general public regarding new developments or procedures concerning prevention and treatment of AIDS. The Department shall: establish an AIDS Advisory Council to advise the Department on the State AIDS Control Plan; establish alternative blood test services that are not operated by a blood bank, plasma center, or hospital which shall offer counseling and referrals for people who test positive for HIV; establish regional and community service networks of public and private service providers or health care professionals who may be involved in AIDS research, prevention, and treatment; provide grants to individuals, organizations, and facilities; accept any gift, donation, bequest or grant of funds from private or public agencies, including federal funds that may be provided for AIDS control efforts; develop and implement standards for long-term care facilities that provide care for persons with AIDS; create and administer a training program for state employees who need to understand matters relating to AIDS in order to deal with or advise the public; and approve HIV tests or testing procedures. 20, § 2310/55.41.

(8) The Department shall publish in English and Spanish a pamphlet providing information regarding health care for women which shall include a summary of the various medical conditions, including STDs, that widely affect women's reproductive health. 20, § 2310/55.66.

(9) The Department shall prescribe criteria for review of permit applications for projects to construct or modify health care facilities which treat persons with AIDS. 20, § 3960/12.

(10) The purpose of the Supportive Residences Licensing Act is to authorize the Department to license Supportive Residences (see Definitions (6)) for Persons with HIV using standards appropriate to this type of residential setting. Supportive Residences provide a home-like

atmosphere as well as a continuum of care which takes into account the special needs of persons with HIV. 210, § 65/5.

(11) The Department may promulgate special rules and regulations establishing minimum standards for Supportive Residences that permit the admission of residents who are parents with children, whether either or both have HIV, or residents with HIV who are also developmentally or physically disabled. 210, § 65/20.

(12) A hospital shall send a letter of notification within seventy-two hours after a confirmed diagnosis to police officers, paramedics, and ambulance personnel who have provided or are about to provide emergency care or life support services to a patient who has been diagnosed as having a dangerous infectious or communicable disease, with the exception of AIDS. If there is a confirmed diagnosis of AIDS, the hospital shall send the letter of notification only if the emergency personnel have indicated on the ambulance run sheet that a reasonable possibility exists that they have had blood or body fluid contact with the patient, or if the hospital personnel providing the notification have reason to know of a possible exposure. An emergency services provider agency which fails to inform a paramedic or ambulance crew member in a timely fashion of the receipt of a notification letter may be liable for civil damages. 210, § 85/6.08.

(13) Medical assistance shall be available to persons with AIDS with respect to whom there has been a determination that but for home or community-based services such individual would require the level of care provided in an inpatient hospital. 305, § 5/5-2.

(14) The Department shall establish procedures for the expedited review, for purposes of inclusion in the Illinois Public Aid formulary, of any drug for the treatment of AIDS which the federal Food and Drug Administration has indicated is subject to a treatment investigational new drug application. 305, § 5/5-5.13.

(15) A person who has taken temporary protective custody of a child who such person has reason to believe has been abused shall be provided with information relating to the HIV status of the child and shall not disclose such information to any other person. 325, § 5/5.

(16) Every hospital providing emergency hospital services to an alleged survivor of sexual assault shall provide, at a minimum, and with consent of the victim: appropriate oral and written information

[ILLINOIS]

concerning the possibility of infection, STD, and pregnancy resulting from sexual assault; information concerning accepted medical procedures, medication, and possible contraindications of such medication available for the prevention or treatment of infection or disease resulting from sexual assault; such medication as deemed appropriate by the attending physician; a blood test to determine the presence or absence of STDs; written and oral instructions indicating the need for a second blood test six weeks after the sexual assault to determine the presence or absence of an STD; and appropriate counseling. Any minor who is an alleged survivor of sexual assault who seeks emergency services shall be provided such services without the consent of the parent, guardian, or custodian of the minor. 410, § 70/5.

(17) The Department shall make grants to public and private agencies for direct patient care, counseling and assistance for persons with AIDS from funds appropriated from the Ryan White AIDS Victims Assistance Fund. 410, §§ 315/2c, 315/2b.

(18) Under the Uniform Anatomical Gift Act, if a donee is provided information or determines through independent examination that there is evidence that the gift was exposed to HIV, the donee may reject the gift and shall treat the information as a confidential medical record. The donor's physician shall determine whether the person who executed the gift should be notified of the confirmed positive test result. 755, § 50/8.

(19) In placing any child under the Children and Family Services Act, the Department of Children and Family Services may place a child with a relative if it has reason to believe that the relative will be able to adequately provide for the child's safety and welfare. The Department may not place a child with a relative if the results of a check of the law enforcement agency data system identify a prior criminal conviction of the relative or any adult member of the relative's household for criminal transmission of HIV. 20, § 505/7.

(20) Upon the release of a committed person on parole, mandatory supervised release, final discharge, or pardon, the Department of Corrections shall provide such person with information concerning programs and services of the Department of Public Health to ascertain whether such person has been exposed to HIV. 730, § 5/3-14-1.

Criminal Law (1), (2), (4)

[ILLINOIS]

Education (3)

Testing & Reporting (1), (2), (3), (4), (5), (6), (8), (10), (11), (12), (15), (16), (17), (18), (20), (21), (25), (27)

TESTING & REPORTING

(1) The Department of Children and Family Services shall provide HIV testing for any child in its custody who is being placed in adoptive care, upon the request of the child's adoptive parent. The prospective adoptive parent shall be confidentially notified of the test result and, if the test is positive, the Department of Children and Family Services shall provide the prospective adoptive parents and child with treatment and counseling, as appropriate. The Department of Children and Family Services shall report positive HIV test results to the Department of Public Health. 20, § 505/22.3.

(2) The Department of Public Health (Department) shall require that all donors of semen for purposes of artificial insemination or donors of corneas, bones, organs, or other human tissue, not including whole blood, for the purpose of injecting any of them in the human body be tested for HIV prior to being made available for such use. However, when in the opinion of the attending physician the life of the recipient of a bone, organ, or other tissue donation would be jeopardized by delays caused by HIV testing, testing shall not be required. 20, §§ 2310/55.45, 2310/55.46.

(3) The Department shall provide by rule for the testing of blood for HIV. These rules shall require the disposal of blood showing evidence of HIV exposure, unless a research facility requests, in writing, the use of this blood for AIDS research. The rules shall also provide for the personal and confidential notification of the donor in the case of a positive test result. No blood may be withdrawn from any individual in the state for transfusion or industrial use without giving the individual notice that the blood withdrawn will be subjected to HIV testing and giving the individual an opportunity to refuse to consent to the withdrawal of blood. In a medical emergency constituting an imminent threat to the life of a potential transfusion recipient, if tested blood is not available, the testing and notification requirements of this section shall not apply. 210, § 25/7-115.

(4) The Department shall adopt rules requiring hospitals to offer HIV testing to patients upon request. Such rules shall provide for appropriate pretest and post-test counseling and may provide for the payment of the cost of testing the medically indigent in appropriate cases. Tests requested or administered under such rules shall be subject to the provisions of the AIDS Confidentiality Act (see Testing & Reporting (13)). 210, § 85/6.10.

(5) Under the Healthy Kids Program, the Department shall insure that testing for HIV is provided for as clinically indicated. 305, § 5/5-19.

(6) An insurance company or health services corporation that requires any insured patient or applicant for new or continued insurance coverage to be tested for HIV shall: give the patient or applicant prior written notice of such requirement; proceed with such testing only upon the written authorization of the applicant or patient; and keep the results of such testing confidential. Notice of an adverse underwriting decision may be given to any appropriately interested party, but the insurer may only disclose the test result itself to a physician designated by the applicant or patient, and such disclosure shall be confidential. 410, § 50/3.

(7) The General Assembly finds that HIV tests can be a valuable tool in protecting the public health. However, many people are deterred from seeking HIV testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. Therefore, the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to reveal HIV infection. 410, § 305/2.

(8) No person may order an HIV test without first receiving the written informed consent (see Definitions (4)) of the test subject or the subject's legally authorized representative. No physician may order an HIV test without making available to the person tested information about the meaning of the test results, the availability of additional or confirmatory testing, if appropriate, and the availability of referrals for further information or counseling. 410, §§ 305/4, 305/5.

(9) A subject of an HIV test who wishes to remain anonymous shall have the right to do so, and to provide written informed consent by using a coded system that does not link individual identity

with the request or result, except where written informed consent is not required by law. 410, § 305/6.

(10) Written informed consent is not required for HIV testing in the following circumstances: when a health care provider or health facility (see Definitions (4)) procures, processes, distributes or uses a human body part or semen, and such a test is necessary to assure medical acceptability of such gift or semen; when a health care provider or employee of a health facility or a firefighter or an emergency medical technician is involved in an accidental direct skin or mucous membrane contact with the blood or bodily fluids of an individual that is of a nature that may transmit HIV; or when a law enforcement officer is involved in the line of duty in a direct skin or mucous membrane contact with the blood or bodily fluids of an individual that is of a nature that may transmit HIV. 410, § 305/7.

(11) Written informed consent, information and counseling are not required for the performance of an HIV test for the purpose of research, if the testing is performed in such a way that the identity of the test subject is unknown and may not be retrieved by the researcher, or when, in the judgment of the physician, such testing is medically indicated to provide appropriate diagnosis and treatment to the test subject, provided that the subject has otherwise provided consent to the physician for medical treatment. 410, § 305/8.

(12) The identity of an HIV test subject may only be disclosed to: the test subject or the subject's legally authorized representative; the spouse of the test subject, provided the test result is positive, and the physician is convinced that the patient has not notified the spouse of the positive test result; any person designated in a legally effective release of the test results executed by the test subject or the test subject's legally authorized representative; an authorized agent or employee of a health facility or health care provider if the health facility or health care provider is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues, and the agent or employee has a need to know such information; the Department, in accordance with rules for reporting and controlling the spread of disease; a health facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person or semen provided for purposes of artificial insemination; health facility

staff committees for the purposes of conducting program monitoring, program evaluation, or service reviews; a person allowed access to said record by a court order; any health care provider or employee of a health facility, and any firefighter or emergency medical technician or law enforcement officer (see Testing & Reporting (10)); a temporary caretaker of a child (see Social & Medical Services (15)); and, in certain enumerated circumstances, the parent or legal guardian of a minor child under eighteen years of age who tests positive for HIV. 410, § 305/9.

(13) Under the AIDS Confidentiality Act, no person to whom the results of an HIV test have been disclosed may disclose the test results to another person except as authorized above. Written informed consent is not required for the performance of an HIV test upon a person who is specifically required by law to be so tested. 410, §§ 305/ 10, 305/ 11.

(14) Nothing in the AIDS Confidentiality Act limits the right of the subject of an HIV test to recover damages or other relief under any other applicable law. Nothing in this Act shall be construed to impose civil liability or criminal sanction for the disclosure of a test result in accordance with any reporting requirement of the Department for a diagnosed case of HIV infection, AIDS (see Definitions (1)), or a related condition. Nothing in the AIDS Confidentiality Act shall be construed to impose civil liability or criminal sanction for performing a test without written informed consent pursuant to the provisions of the AIDS Confidentiality Act. 410, §§ 305/14, 305/15.

(15) More complete and precise statistical data than are presently available are necessary to evaluate AIDS treatment and prevention measures that are currently available. Thus, the creation of an AIDS registry will provide a vital foundation for a concerted effort to reduce the incidence of AIDS in this state. The AIDS registry shall be established by the Department of Public Health and shall consist of a record of cases of AIDS and ARC which occur in Illinois. Cases included in the registry shall be identified by a code rather than by name. The Department shall have the authority to require hospitals, laboratories, and other facilities that diagnose such conditions to report cases of AIDS and ARC to the Department. The Department shall have the authority to accept, receive, and administer on behalf of the registry grants, gifts, loans, and other funds made available to the registry. The Department

shall file an annual report to the General Assembly which shall include information on the progress of the registry, as well as descriptions of any related studies which are underway or have been completed. The Department shall not release information relating to persons reported in the registry unless it is in a statistical, nonidentifiable form or the release or transfer is to an Illinois local public health department or to a registry or health department in another state and is of information concerning a person who is residing in that jurisdiction. All data obtained directly from the medical records of an individual and the identity of any persons whose condition or treatment has been studied shall be confidential. 410, §§ 310/2 to 310/8.

(16) Whenever a child of school age is reported to the Department or a local health department as having been diagnosed with AIDS or HIV infection, prompt and confidential notice of the identity of the child to the principal of the school in which the child is enrolled shall be given. If the child is enrolled in a public school, the principal shall disclose the identity of the child to the superintendent of the school district where the child resides. The principal may, as necessary, disclose the identity of an infected child to: the school nurse; the classroom teachers in whose classes the child is enrolled; and those persons who, pursuant to federal or state law, are required to decide the placement or educational program of the child. In addition, the principal may inform such other persons as may be necessary that an infected child is enrolled at that school, so long as the child's identity is not revealed. 410, § 315/2a.

(17) Whenever the Department receives a report of HIV infection or AIDS pursuant to the Illinois Sexually Transmissible Disease Act (see Definitions (5)) and the Department determines that the subject of the report may present or may have presented a possible risk of HIV transmission, the Department shall, when medically appropriate, investigate the subject of the report and that person's contacts to assess the potential risks of transmission. Any investigation and action shall be conducted in a timely fashion. If the Department determines that there may have been potential risks of HIV transmission from the subject of the report to other persons, the Department shall afford the subject the opportunity to submit any information and comment on proposed actions the Department intends to take with respect to the subject's contacts who are at potential risk of infection. The Department shall afford the subject

[ILLINOIS]

of the report the opportunity to notify the subject's contacts prior to the Department taking any steps to notify contacts. If the subject declines to notify such contacts or if the Department determines such notices to be inadequate or incomplete, the Department shall endeavor to notify such other persons of the potential risk and offer testing and counseling services to these individuals. When the contacts are notified, they shall be informed of the disclosure provisions of the AIDS Confidentiality Act (see Testing & Reporting (13)). Contacts investigated under this section shall include individuals who have undergone invasive procedures performed by an HIV-infected health care provider and health care providers who have performed invasive procedures for persons infected with HIV, provided that the Department has concluded that there is or may have been a potential risk of HIV transmission. All information and records held by the Department and local health authorities pertaining to activities conducted pursuant to this section shall be strictly confidential. 410, § 325/5.5.

(18) All information and records held by the Department and its authorized representatives relating to known or suspected cases of sexually transmissible diseases (see Definitions (5)) shall be strictly confidential and exempt from inspection and copying under the Freedom of Information Act. Such information shall be released only under the following circumstances: when made with the consent of all persons to whom the information applies; when made for statistical purposes and medical or epidemiologic information is summarized so that no person can be identified and no names are revealed; when made to medical personnel, appropriate state agencies or courts of appropriate jurisdiction to enforce the provisions of the Illinois Sexually Transmissible Disease Control Act; or when made to persons determined by the Department to be or have been at potential risk of HIV transmission. 410, § 325/8.

(19) Any data or other information which is to be processed by a computer or other type of artificial intelligence and which is related to HIV testing or the results of such testing or to any list of persons known to have been exposed to HIV or to have a diagnosed case of AIDS shall be stored and processed in the most secure manner available. 410, § 520/6.

(20) With respect to any minor for whom the Department of Children and Family Services Guardianship Administrator is appointed

the temporary custodian, the Guardianship Administrator shall be deemed the minor's legally authorized representative for purposes of consenting to an HIV test and obtaining and disclosing information concerning such test pursuant to the AIDS Confidentiality Act and for purposes of consenting to the release of information pursuant to the Illinois Sexually Transmissible Disease Control Act. Any person who administers an HIV test upon the consent of the Department of Children and Family Services or who discloses the results of such tests to the Department's Guardianship Administrator shall have immunity from any liability that might result by reason of such actions. 705, § 405/2-11.

(21) In addition to any other order of disposition, the court shall order any minor found to be delinquent for an act which would constitute criminal sexual assault, aggravated criminal sexual abuse, or criminal sexual abuse if committed by an adult, to undergo HIV testing. The result of such test shall be kept strictly confidential. The court shall notify the minor of the test result and shall also notify the victim, if so requested. The court shall provide information on the availability of HIV testing and counseling at Department facilities to all parties to whom the results of the testing are revealed. 705, § 405/5-23, 730, § 5/5-5-3.

(22) After a finding at a preliminary hearing that there is probable cause to believe that an accused has committed criminal sexual assault or aggravated criminal sexual assault, or after an indictment is returned charging an accused with such a crime, at the request of the victim, the prosecuting state's attorney shall seek a court order to compel the accused to be tested for HIV. The results of the test shall be kept strictly confidential. 720, § 5/12-18.

(23) Prior to the release of any inmate who has a documented history of intravenous drug use, and upon the receipt of that inmate's written informed consent, the Department of Corrections shall provide for the testing of such inmate for HIV. 730, § 5/3-6-2.

(24) When a defendant is convicted of an offense under the Hypodermic Syringes and Needles Act, the defendant shall undergo HIV testing. 730, § 5/5-5-3.

(25) Any person who provides or offers to provide immigration assistance service may arrange for the performance of medical testing, including HIV testing, and the obtaining of reports of such test results. 815, § 505/2AA.

(26) Any person aggrieved by a violation of the AIDS Confidentiality Act (see Testing & Reporting (13)) shall have a right of action in the circuit court and may recover for each violation liquidated damages or actual damages, reasonable attorneys fees, and such other relief, including an injunction, as the court may deem appropriate. 410, § 305/13.

(27) The Department shall promulgate rules and regulations concerning implementation and enforcement of the AIDS Confidentiality Act (see Testing & Reporting (13)). Such rules and regulations may include procedures for taking appropriate action with regard to health care facilities or health care providers who violate this Act. 410, § 305/16.

Criminal Law (1), (2), (3), (5)

Social & Medical Services (1), (7), (16), (18)

MISCELLANEOUS

(1) The standard individual income tax form shall contain a provision indicating that, if the taxpayer wishes to contribute to the Ryan White AIDS Victim Assistance Fund or the Ryan White Pediatric and Adult AIDS Fund, he or she may do so by stating the amount of such contribution on the return. The Department of Revenue shall determine the total amount contributed to each of the funds and shall notify the State Comptroller and the State Treasurer of the amounts to be transferred from the General Revenue Fund to each fund. 35, §§ 5/507D, 5/507J, 5/509, 5/510.

INDIANA

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

DEFINITIONS

(1) "AIDS" and "council" are defined at §§ 20-8.1-11-1 and 20-8.1-11-2.

(2) "Artificial insemination," "donor insemination" and "practitioner," as they relate to the testing of semen used in artificial insemination, are defined at §§ 16-41-14-2 and 16-41-14-3.

(3) "Chronically medically dependent" refers to a person who is infected with HIV and has been certified by a physician as requiring a skilled or intermediate level of care and is defined at § 12-15-36-2.

(4) "Comprehensive care bed" refers to a hospital comprehensive care bed used for a patient diagnosed with HIV infection and is defined at § 16-29-2-1.

(5) "Confirmatory test" and "screening test" relating to the regulation of blood centers are defined at §§ 16-41-12-4 and 16-41-12-8.

(6) "HIV" is defined at §§ 16-18-2-171 and 35-42-2-6.

(7) "Psychologically affected property" and "transferee" are defined at §§ 24-4.6-2.1-2 and 24-4.6-2.1-3.

(8) "Universal precautions" is defined at § 16-41-11-3.

CRIMINAL LAW

(1) A person who recklessly violates or fails to comply with the provisions relating to AIDS literature distributed to school children (see Education (1)) commits a Class B misdemeanor. § 16-41-4-3.

(2) A practitioner who is responsible for conducting a screening test (see Definitions (5)) for semen used in artificial insemination (see Definitions (2)) (see Testing & Reporting (8)) and knowingly or intentionally fails to conduct the screening test commits a Class A misdemeanor. § 16-41-14-16.

(3) A person who, for the purpose of artificial insemination, recklessly, knowingly, or intentionally donates, sells, or transfers semen that contains antibodies for HIV commits a Class C felony. The offense

[INDIANA]

is a Class A felony if it results in the transmission of the virus to another person. This does not apply to a researcher who transfers semen that contains HIV antibodies. § 16-41-14-17.

(4) A person who recklessly violates or fails to comply with provisions relating to the HIV testing of semen used in artificial insemination (see Testing & Reporting (8)) commits a Class B misdemeanor. § 16-41-14-20.

(5) A court may consider the following factors as aggravating circumstances or as favoring consecutive terms of imprisonment: that a person committed an offense related to the use of a sharp object that created a risk of transmitting HIV through percutaneous contact; the person had knowledge that the person was a carrier of HIV; and the person had received risk counseling including written notification that tests had confirmed that the person was infected with HIV and warning of behavior that can transmit HIV. § 35-38-1-7.1.⁵⁵

(6) If a person is convicted of a sex crime and the crime created a risk of transmission of HIV or if a person is convicted of an offense relating to controlled substances (see Criminal Law (5)), a probation officer shall obtain confidential information from the State Department of Health to determine whether the convicted person was a carrier of HIV when the crime was committed. § 35-38-1-9.5.

(7) A person who recklessly, knowingly, or intentionally donates, sells, or transfers blood or a blood component that contains antibodies for HIV commits a Class C felony. The offense is a Class A felony if it results in the transmission of HIV to any person other than the defendant. This does not apply to a person who, for reasons of privacy, donates, sells, or transfers blood or a blood component at a blood center after the person has notified the blood center that the blood or blood component must be disposed of and may not be used for any purpose, or a person who transfers infected blood or an infected blood component for research purposes. §§ 35-42-1-7, 16-41-12-15.

55. *White v. State*, 647 N.E.2d 684, 689 (Ind. Ct. App. 1995) (aggravating factor concerning risk of spreading HIV did not apply to defendant in child molestation case where record contained no evidence that defendant had HIV, knew he had the virus, or received counseling for such).

(8) Any person who sells or distributes testing equipment intended for home use to diagnose or confirm HIV infection commits a Class A misdemeanor. § 35-42-1-8.

(9) A person who knowingly or intentionally, in a rude, insolent, or angry manner, places blood or another body fluid or waste on a law enforcement officer or a corrections officer identified as such and while engaged in the performance of official duties or coerces another person to do such an act commits a Class D felony. However, the offense is a Class C felony if the person knew or recklessly failed to know that the person was infected with HIV. The offense is a Class A felony if the person knew or recklessly failed to know that the person was infected with HIV and the offense results in the transmission of HIV to the law enforcement or corrections officer. § 35-42-2-6.

(10) An employee of a blood center who is responsible for conducting a screening test for blood products who knowingly or intentionally fails to conduct a screening test commits a Class A misdemeanor. § 16-41-12-13.

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

Miscellaneous (3)

EDUCATION

(1) The Department of Health and the Board of Education shall provide information stressing the moral aspects of abstinence from sexual activity in any literature that the Department of Health distributes to school children and young adults concerning available methods for the prevention of AIDS. Such literature must state that the best way for young people to avoid AIDS is to refrain from sexual activity until they are ready as adults to establish, in the context of marriage, a mutually faithful monogamous relationship. Such literature may not be provided to school children without the consent of the governing body of the appropriate school corporation. §§ 16-41-4-1, 16-41-4-2, 20-8.1-7-21.

(2) The governing body of a school corporation shall establish a council (see Definitions (1)) which shall identify and study educational materials and resources on AIDS that are available for use in the schools within the school corporation, determine which materials and resources are based on sound medical principles and reflect the attitude of the community, and recommend to the school corporation educational

[INDIANA]

materials and resources that reflect the standards of the community. §§ 20-8.1-11-3 to 14.

(3) Each school corporation shall include AIDS instruction in its curriculum and shall integrate this effort to the extent possible with instruction on other dangerous communicable diseases. A school corporation shall consider the recommendations of the AIDS advisory council concerning community standards on the content and instruction, the manner in which the information is taught, and the grades in which it is taught. § 20-10.1-4-10.

(4) Throughout instruction on human sexuality or sexually transmitted diseases, an accredited school shall teach abstinence from sexual activity outside of marriage as the expected standard for all school age children and include that abstinence from sexual activity is the only certain way to avoid sexually transmitted diseases (STDs). § 20-10.1-4-11.

(5) The circuit court clerk shall distribute to marriage license applicants written or videotaped information approved by the AIDS advisory council concerning dangerous sexually transmitted communicable diseases. Written and videotaped information must be current with regard to HIV infection and other dangerous sexually transmitted communicable diseases. Such information shall include: the causes of dangerous sexually transmitted communicable diseases; the behaviors that create a high risk of transmission of such diseases; precautionary measures that reduce the risk of contracting such diseases; and the necessity for consulting medical specialists if infection is suspected. In addition to the information provided marriage license applicants, each marriage license applicant shall be informed of the availability of voluntary HIV testing and provided with a list of testing sites. An applicant who objects to the written or videotaped information on religious grounds shall not be required to receive such information. All applications for marriage shall contain an acknowledgment that both applicants must sign, affirming that they have received the information concerning AIDS and HIV. §§ 31-7-3-3, 31-7-3-3.5.

(6) The Department of Health shall develop educational program materials concerning the transmission of HIV prenatally and neonatally. The Department of Health shall promote the use of

educational program materials by providers of prenatal health care services. §16-38-4-16.

(7) Cosmetology professionals shall complete sixteen hours of continuing education before the end of each license renewal period. Such education may include instruction on AIDS. § 25-8-15-4.

(8) The Indiana Freeway School Corporation must develop a school-by-school strategy, including a curriculum, in which character education is demonstrated to be a priority. The strategy must include the subject of STDs, including AIDS, as an integral part of each school's character education. § 20-5-62-8.

Criminal Law (1)

EMPLOYMENT

Criminal Law (10)

Education (7)

Testing & Reporting (8)

HOUSING

(1) An owner or agent is not required to disclose to a transferee (see Definitions (7)) any knowledge of a psychologically affected property (see Definitions (7)) in a real estate transaction. An owner or agent is not liable for the refusal to disclose to a transferee that a dwelling or real estate is a psychologically affected property or details concerning the psychologically affected nature of such property. This includes the fact that an occupant of the property was HIV positive. However, an owner or agent may not intentionally misrepresent a fact concerning a psychologically affected property in response to a direct inquiry from a transferee. §§ 24-4.6-2.1-4, 24-4.6-2.1-5.

INSURANCE

RESEARCH

Criminal Law (3), (7)

Testing & Reporting (4), (6)

[INDIANA]

SOCIAL & MEDICAL SERVICES

(1) Health care providers may market or advertise special therapies or services, such as those offered to patients with AIDS. § 12-15-25-2.

(2) The Department of Health shall administer the Indiana Acquired Immune Drug Assistance Program. § 16-19-3-24.

(3) The Department of Health may authorize expert review panels to provide confidential consultation and advice to health care workers who are infected with HIV. A member of an authorized expert review panel is immune from any civil liability for any act, statement, determination, or recommendation made in good faith in the scope of the panel's duties. § 16-41-11-10.

(4) The procurement, processing, distribution, or use of whole blood, plasma, blood products, blood derivatives, or other human tissue by a bank, storage facility, or hospital, and the injection, transfusion, or transplantation of any such human tissue into a human body by a hospital, physician, or surgeon, regardless of whether or not there is payment, is the rendition of services and not the sale of a product. Such services do not give rise to an implied warranty of merchantability or fitness for a particular purpose, nor do the services give rise to liability in tort. § 16-41-12-11.

(5) The attending physician or health care provider shall prepare and attach to the body of a deceased individual a conspicuous notice with the statement: "Observe body fluid precautions" whenever the physician or provider knows that at least one of the following diseases was present in the deceased at the time of death: Hepatitis; HIV; tuberculosis; herpes; gonorrhea; syphilis; Burkett's lymphoma; Kaposi's sarcoma; arthropod-borne viral diseases; babesiosis; Creutzfeldt-Jakob disease; leptospirosis; malaria; rat-bite fever; relapsing fever; Y. pestis; hemorrhagic fevers; rabies; or any other communicable disease. The notice must accompany the body when it is picked up for disposition. § 16-41-13-1.

(6) A council consisting of at least fifty percent minority members shall identify and study special health care needs and health problems of minorities and recommend preventative measures concerning the leading causes of death or injury among minorities, including HIV and AIDS. §§ 16-46-6-10, 16-46-6-4.

[INDIANA]

Criminal Law (2), (3), (4), (5), (7), (10)

Education (5), (6)

Miscellaneous (1)

TESTING & REPORTING

(1) If a child is adjudicated delinquent due to the commission of an act that, if committed by an adult, would be either a sex crime which would create an epidemiologically demonstrated risk of transmission of HIV or an offense related to controlled substances involving the use of a contaminated sharp object which would create an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact, the juvenile court shall order the child to undergo a screening test (see Definitions (5)) for HIV. If the test result is positive, the court shall order the child to undergo a confirmatory test. If the result of the confirmatory test is positive, the court shall report the results to the Department of Health (Department). The Department shall notify the victim(s) of the offense of the test results and shall provide counseling and referral for appropriate health care to the victims. § 31-6-4-15.9.

(2) As a condition of probation, the court may require a person to undergo HIV testing if the person had been convicted of a sex crime or an offense relating to controlled substances (see Criminal Law (6)). § 35-38-2-2.3.

(3) A hospital, physician, or other person is not required to perform another screening test on blood provided by a blood center if the blood is labeled indicating that it has been tested for HIV. § 16-41-12-11.

(4) Each licensed physician, hospital, and medical laboratory shall report to the Department each case of HIV infection, including each confirmed case of AIDS. The records of the Department must indicate, if known, whether the individual had undergone any blood transfusions before being diagnosed with AIDS or HIV, the place where the transfusion took place, the blood center that furnished the blood, and any other known risk factors. A case report concerning HIV infection that does not involve a confirmed case of AIDS submitted to the Department under this section and involves an individual enrolled in a formal research project, an individual who is tested anonymously at a designated counseling or testing site, or one who is tested by a health care provider

under a number identifier code may not include the name or other identifying characteristics of the individual tested. § 16-41-2-3.

(5) A person may not perform a screening or confirmatory test for HIV without the consent of the individual to be tested or a representative of the individual. A physician ordering the test shall document whether or not the individual has consented. An HIV test may be performed without consent if one of the following conditions exists: if ordered by a physician who has obtained a health care consent or an implied consent under emergency circumstances, and the test is medically necessary to diagnose or treat the patient's condition; under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual; or if the test is performed on blood collected or tested anonymously as part of an epidemiologic survey. § 16-41-6-1.

(6) A blood center shall perform a screening test on a donor's blood and obtain the results of the test before blood, plasma, a blood product, or a blood derivative is distributed for use. The blood center shall label such blood before distribution by the center to indicate the results of the screening test. The blood center shall perform a confirmatory test on a blood donation that yields a positive result upon an initial screening test. Except for units used for research purposes or in the production of pharmaceutical products if the blood center has obtained approval from the Federal Food and Drug Administration, blood for which the result of a screening test is positive or inconclusive shall be disposed of by the blood center. Blood centers shall report to the Department the results of each positive confirmatory test and shall attempt to notify a donor and refer the donor to counseling when the confirmatory test on the donor's blood is inconclusive or indicates HIV infection. Each health care provider that administers blood transfusions shall keep a record of the blood center that furnished the blood and the unit number assigned to the blood. § 16-41-12-13.

(7) Blood centers shall report to the Department the names and addresses of blood donors whose blood is confirmed as testing positive for HIV. Blood centers shall inform blood donors that every donor's blood will be tested for HIV, and that the blood center reports to the State Department of Health the names and addresses of blood donor's whose blood tests positive for HIV. § 16-41-12-15.

(8) A practitioner shall test each semen donor for HIV before the donor provides a donation. As long as artificial insemination (see Definitions (2)) procedures are continuing, the practitioner shall continue to annually test each donor for HIV. If an initial screening test yields a positive result, the practitioner shall perform a confirmatory test for HIV. The practitioner shall report all confirmed positive HIV test results to the Department. A practitioner may not use a semen donation until the specimen has been frozen for at least 180 days and the donor is retested after 180 days for HIV. If the recipient indicates that the donor is in a mutually monogamous relationship with the recipient, the practitioner shall perform the required HIV test for the donor at least annually as long as artificial insemination procedures are continuing, and may not perform artificial insemination unless the HIV test results are negative. A practitioner shall dispose of any semen donation that tests positive for HIV after confirmatory testing and attempt to notify a donor and recipient of such result. If a donor tests positive for HIV, the practitioner shall refer both the donor and recipient to appropriate counseling. If semen is labeled indicating that it has been previously tested for HIV and evidence is submitted that the donor tests negative for HIV, a practitioner is not required to perform an HIV test on the donor's semen. Semen donors are required to provide to the practitioner their name, address, and date of birth and are requested to provide their social security number. Practitioners shall notify all donors of the testing procedures followed by the facility, as well as the reporting requirements and criminal liability of donors who test positive for HIV and knowingly donate semen. Such information shall be provided to all donors to enable them to give informed consent to the procedures. A practitioner shall keep records of information relating to testing of semen used in artificial insemination, as well as the results of all tests. Records kept by practitioners relating to testing of semen shall be made available to the Department for inspection. The Department may enter and inspect a practitioner's facility to investigate the premises, books, and records as necessary to carry out this chapter. A person may not disclose or be compelled to disclose information collected under this chapter, except under the following circumstances: release may be made of the information for statistical purposes in a manner by which an individual may not be identified; release may be made with written consent of all individuals identified in the information released; and release may be made to the

extent necessary to enforce public health laws or to protect the health or life of the named person. A public employee who violates this section is subject to discharge or other disciplinary action under the personnel rules of the agency that employs the employee. This chapter does not apply to a donor who is the husband of the recipient of a semen donation. §§ 16-41-14-1, 16-41-14-5 to 16-41-14-15, 16-41-14-18, 16-41-14-19.

(9) A court shall order a person to undergo testing if the person is convicted of a sex crime which created a risk of transmission of HIV or an offense related to controlled substances (see Criminal Law (5)). If the HIV test is positive, the court shall order the person to undergo a confirmatory test. If the person tests positive after confirmatory testing, the court shall report the results to the Department and require a probation officer to conduct a pre-sentence investigation to obtain the medical record of the convicted person and determine whether the convicted person had received risk counseling including information on the behavior that facilitates the transmission of HIV. A person who, in good faith, makes a report required under this section or testifies in a judicial proceeding on matters arising from the report is immune from civil and criminal liability due to the offering of that report or testimony. The privileged status of communications between a husband and a wife or between a health care provider and the health care provider's patient is not a ground for excluding information required under this section. A mental health service provider who discloses information that must be disclosed to comply with this section is immune from civil and criminal liability under Indiana statutes that protect patient privacy and confidentiality. § 35-38-1-10.5.

(10) The Department shall notify victims of crimes listed under § 35-38-1-7.1 if HIV tests confirm that the person who committed the crime was HIV positive. The Department shall also provide counseling to such persons. § 35-38-1-10.6.

(11) In addition to any other conditions of probation, the court may order each person convicted of a misdemeanor to pay the costs of screening and confirmatory tests for HIV. § 35-38-2-1.

Criminal Law (2), (4), (5), (8), (10)

Education (5)

Miscellaneous (1), (2)

MISCELLANEOUS

(1) The Department of Health shall consider the availability of resources, the population size, and the reported incidence of HIV in determining the allocation of funds to a political subdivision for the prevention of the spread of AIDS. § 16-30-4-1.

(2) Carriers who know of their status as a carrier of HIV or AIDS have a duty to warn past and present sexual or needle-sharing partners of the carrier's disease status and the need to seek counseling and testing. § 16-41-7-1.

(3) All court records relating to AIDS are confidential. Ind. Admin. Code tit. 34 r. 9.

IOWA

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

DEFINITIONS

(1) “AIDS” and “HIV-related test” are defined at §§ 141.21 and 709B.1.

(2) “ARC,” “health facility,” and “release of test results” are defined at § 141.21.

(3) “Blinded epidemiological studies” and “nonblinded epidemiological studies” are defined at § 141.23A.

(4) “Convicted offender,” “sexual assault,” “significant exposure” as it relates to sexual assault, and “victim counselor” are defined at § 709B.1.

(5) “Disability,” “public accommodation,” “unfair practice,” and “discriminatory practice” are defined at § 216.2.

(6) “Emergency care provider,” “HIV infection,” “infectious bodily fluids,” and “significant exposure” are defined at § 141.22A.

(7) “Exposure-prone procedure” is defined at § 139C.1.

(8) “Health care provider” is defined at §§ 141.21, 141.22A, and 139C.1.

(9) “HIV” is defined at §§ 141.21, 709.B.1, and 139C.1.

CRIMINAL LAW

(1) Any person who advertises or sells a home testing kit for HIV testing is guilty of a Class D felony. § 126.25.

(2) A person employed by a public safety agency who receives HIV-related information and communicates the information to another employee who does not have direct physical supervision over inmates, other than to a supervisor of an employee who has direct physical supervision over inmates, communicates the information to a person not employed by an agency under the Department of Corrections, or uses the information outside the agency is guilty of a Class D felony. § 80.9.

(3) Any violation of confidentiality requirements under the partner notification program (see Testing & Reporting (2)) shall be a Class D felony. § 141.6.

Testing & Reporting (1), (6), (7), (9), (11), (12), (13)

Miscellaneous (4)

EDUCATION

(1) The Department of Public Health (Department) shall, in cooperation with the Department of Education and other agencies and departments, develop and implement a program of public and professional AIDS-related education. The program shall include pertinent AIDS-related conditions information directed toward individuals who are at risk for an AIDS-related condition, all health care providers (see Definitions (8)), and the general public. § 141.3.

(2) The Department shall investigate sources of HIV infection and shall use every appropriate means to prevent the spread of the disease. The Department shall also: provide consultation to agencies and organizations regarding appropriate policies for testing, education, confidentiality, and infection control; conduct health information programs for the public relating to HIV infection, including information about transmission and prevention of the virus; prepare printed information relating to HIV infection and prevention for free distribution; provide educational programs concerning HIV infection in the workplace; develop and implement HIV education risk-reduction programs for specific populations at high risk for infection; and, in cooperation with the Department of Education, develop and update a medically correct AIDS prevention curriculum for use at the discretion of secondary and middle schools. School districts shall provide to every elementary and secondary school student, with parental consent, education concerning HIV infection and AIDS. § 141.9.

(3) The State Board of Education shall implement an educational program which shall include a health curriculum, which includes instruction on AIDS, in all grade levels. §§ 256.11, 279.50.

Social & Medical Services (3)

EMPLOYMENT

(1) It is an unfair or discriminatory practice (see Definitions (5)) for a person to solicit or require of an employee or a prospective employee, as a condition of employment, an HIV test or to affect the terms, conditions, or privileges of employment solely as a result of the employee obtaining an HIV test. An agreement between an employer, employment agency, or labor organization concerning employment, pay, or benefits to an employee or prospective employee in return for taking an HIV test is prohibited. § 216.6.

(2) It shall be an unfair or discriminatory practice for: any person to refuse to hire or refer for employment, discharge, or in any other way discriminate against an employee because of a disability (see Definitions (5)), including AIDS; a labor organization to refuse to admit an applicant, expel a member, or otherwise discriminate against an applicant for membership or any member because of a disability; or an employer, employment agency, or labor organization to advertise, publicize, or indicate in any other manner that individuals with a particular disability are unwelcome, objectionable, not acceptable, or not solicited for employment or membership unless based on the nature of the occupation. § 216.6.

Criminal Law (2)

Education (2)

Testing & Reporting (6)

Miscellaneous (4)

HOUSING

INSURANCE

Testing & Reporting (5), (10)

RESEARCH

Testing & Reporting (4)

SOCIAL & MEDICAL SERVICES

(1) Each hospital and other health care facility shall establish protocols applicable, on a case-by-case basis, to HIV-infected health care providers (see Definitions (8)) who ordinarily perform exposure-prone invasive procedures (see Definitions (7)) within the hospital or facility. Such protocols shall be based on recommendations issued by the Centers for Disease Control (CDC). The Department of Health (Department) shall establish an expert review panel to determine on a case-by-case basis under what circumstances, if any, an HIV-infected health care provider practicing outside the hospital setting, may perform exposure-prone invasive procedures. If an HIV-infected health care provider does not comply with the determination of the expert review panel, the panel shall report the noncompliance to the examining board with jurisdiction over the health care provider. An HIV-infected health care provider who works in a hospital setting may elect either an expert review panel established by the hospital or the expert review panel established by the Department for the purpose of determining the circumstances under which the health care provider may perform exposure-prone procedures. An infected health care provider shall not perform an exposure-prone procedure except as approved by the expert review panel. Health care licensing boards shall require that licensees comply with the recommendations issued by the CDC for preventing transmission of HIV to patients during exposure-prone procedures, or with the recommendations of expert review panels established by a hospital or the Department. § 139C.2.

(2) Information regarding the HIV status of a health care provider is confidential. A person who intentionally or recklessly makes an unauthorized disclosure of such information is subject to a civil penalty of \$1,000. An expert review panel established by the Department or by a hospital, individual members of panels, and hospitals shall be immune from liability for the good faith performance of functions authorized or required by this section. Complaints, investigations, reports, deliberations, and findings of the hospital and its panel with respect to a named health care provider suspected, alleged, or found to be in violation of the protocol required by this section are subject to confidentiality requirements. § 139C.2.

(3) The Department is designated as the lead agency in the coordination and implementation of the State Comprehensive AIDS-related Conditions Prevention and Intervention Plan. The Plan shall include public and professional health education, testing and counseling, contact counseling, and public information. Public information campaigns shall include: the conducting of informational campaigns designed to increase the understanding of AIDS-related conditions in all segments of the population to alleviate fear and anxiety; the stimulation of individual and community actions to develop AIDS public service activities; and the encouragement of the use of AIDS public service announcements. §§ 141.1, 141.2, 141.5.

(4) If a health care provider attending a person prior to the person's death determines that the person suffered from or was suspected of suffering from a contagious or infectious disease, the health care provider shall place with the remains written notification of the condition to any person subsequently handling the body of the deceased person. The Department, in cooperation with the Department of Public Safety, shall establish for all emergency medical providers, including paramedics, ambulance personnel, physicians, nurses, hospital personnel, first responders, peace officers, or firefighters, and all others who attend dead bodies, protocol and procedures for the use of universal precautions to prevent the transmission of contagious and infectious disease. § 141.25.

(5) An anatomical gift is subject to reasonable examination, including HIV testing, which is necessary to ensure medical acceptability of the gift for the purpose intended. A health care provider who complies with or attempts to comply with this in good faith is immune from any liability which might result from the making or acceptance of an anatomical gift. An individual who makes an anatomical gift and the individual's estate are not liable for any injury or damages that may result from the making or use of the anatomical gift, if the gift is made in good faith. § 142C.11.

Education (1), (2)

Testing & Reporting (1), (2), (4), (5), (6), (8), (12), (13)

Miscellaneous (1), (2)

TESTING & REPORTING

(1) Testing and counseling shall be offered to all persons seeking treatment for sexually transmitted diseases (STDs); all persons seeking treatment for intravenous drug abuse or having a history of intravenous drug abuse; all persons who consider themselves at risk for HIV infection; and all male and female prostitutes. Counseling and testing shall be provided at alternative testing and counseling sites and at STD clinics. The Department of Public Health (Department) shall assist local boards of health in the development of programs which provide free anonymous testing to the public. § 141.4.

(2) The Department shall implement, as a part of the Comprehensive AIDS Prevention and Intervention Plan, a partner notification program for persons known to have tested positive for HIV. The program shall be initiated by the Department at alternative testing and counseling sites and at STD clinics. A person who tests positive for HIV shall receive post-test counseling, during which time the person shall be encouraged on a strictly confidential basis to refer for counseling and HIV testing any person with whom the person has had sexual relations or has shared intravenous drug paraphernalia. If, following counseling, a person who tests positive for HIV chooses to disclose the identity of any sexual partners or persons with whom the person has shared intravenous equipment, the physician or health practitioner attending the person shall obtain written consent which acknowledges that the person is making a voluntary disclosure. A physician or health care practitioner attending the person shall forward any written consent forms to the Department. Identifiable third parties who are sexual or needle-sharing partners shall be notified by the Department or a physician when a physician for the infected person is of the good faith opinion that the nature of the continuing contact poses an imminent danger of HIV transmission to the third party and the physician believes in good faith that the infected person, despite encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program. A physician may reveal the identity of a person who has tested positive for HIV pursuant to this section only to the extent necessary to protect a third party from the direct threat of transmission. Prior to notification of a third party, the physician shall make reasonable efforts to inform, in writing, the person who tested positive for HIV that such notification will be

made. A county medical examiner or deputy medical examiner performing official duties who determines through an investigation that a deceased person was infected with HIV may notify the immediate family and any identified partners of the deceased of such finding. § 141.6.

(3) HIV screening and confirmatory testing shall be performed only by certified laboratories. The Department may conduct periodic inspections of laboratory facilities, methods, procedures, materials, staff, and equipment for compliance with the standards established by the Department. A laboratory's certifications may be revoked, suspended, or limited if at any time the laboratory is found to be in violation of any standards adopted by the Department. § 141.7.

(4) Prior to withdrawing blood for the purpose of performing an HIV-related test (see Definitions (1)), the physician or other practitioner shall inform the subject of the test that the test is voluntary and may be performed anonymously if requested. Within seven days after the testing of a person who tests positive for HIV, the physician or practitioner who ordered the test shall make a report to the Department. The physician shall, prior to making the report, provide written information regarding the partner notification program and inquire if the person wishes to take part in the program by agreeing to have identifying information reported to the Department on a confidential basis. Within seven days of diagnosing a person as having an AIDS-related condition, or within seven days of the death of a person resulting from an AIDS-related condition, the attending physician shall make a report to the Department. Directors of clinical laboratories, blood plasma centers, and blood banks shall make a report to the Department within seven days of testing a person for HIV when the person tests positive. The test subject shall be provided with information regarding the confidentiality measures followed by the Department and may request that the Department maintain the subject's confidential file for the purpose of partner notification, or for the inclusion of the subject in research or treatment programs. § 141.8.

(5) Prior to withdrawing blood for the purpose of performing an HIV-related test, the subject of the test shall be provided with preliminary counseling which shall include: an explanation of the test, including the test's purpose, potential uses, limitations, and the meaning of both positive and negative results; an explanation of the nature of

AIDS, including the relationship between the test results and the disease; an explanation of the procedures to be followed, including the fact that the test is entirely voluntary and can be performed anonymously if requested; and information concerning behavioral patterns known to expose a person to the possibility of contracting AIDS and methods for minimizing the risk of exposure. A person seeking an HIV-related test shall have the right to remain anonymous. A health care provider (see Definitions (8)) shall provide for the anonymous administration of the test at the subject's request or shall confidentially refer the subject to a site which provides anonymous testing. At any time that a subject is informed of test results, counseling concerning the emotional and physical health effects shall be initiated. Particular attention shall be given to explaining the need for precautions necessary to avoid transmitting the virus. The subject shall be given information concerning additional counseling. Any additional testing that is advisable shall be explained to the subject and arrangements for the testing shall be made. This section does not apply to: HIV-related testing of semen or human body parts for the purpose of artificial insemination or anatomical gift which is performed by health care providers or health facilities for the purpose of assuring the medical acceptability of such gift or semen; HIV testing performed by licensed medical personnel in medical emergencies where the test subject is unable to grant or withhold consent; and certain persons engaged in the insurance business (see Testing & Reporting (10)). If a minor seeks screening or treatment for AIDS or other STDs, the fact that the minor sought such services shall not be reported or disclosed except for statistical purposes. The minor shall be informed prior to testing that, upon confirmation of a positive result to an HIV test, the minor's legal guardian is required to be informed by the testing facility. The minor shall give written consent to these procedures, and the consent shall not be subject to later disaffirmance by reason of minority. § 141.22.

(6) A person possessing confidential information pertaining to a person upon whom an HIV test was performed shall not disclose the identity of the person or the results of the test except to the following: the test subject; any person who secures a written release of test results executed by the test subject; an authorized agent or employee of a health facility or care provider if the health facility or health care provider ordered or participated in the testing or is otherwise authorized to obtain

the test results, the agent or employee provides patient care or handles specimens of body fluids or tissue, and the agent or employee has a medical need to know such information; licensed medical personnel providing care to the test subject, when knowledge of the test results is necessary to provide care or treatment; the Department in accordance with reporting requirements for an HIV-related condition; a health facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person with respect to medical information regarding that person, or semen for the purpose of artificial insemination; a person allowed access to a record by a court order; an employer, if the test is authorized under any other provision of law; pertaining to a sexual assault (see Definitions (4)), the convicted offender (see Definitions (4)), the physician or other practitioner who orders an HIV test for the convicted offender, the victim of the offense, the victim's physician, the victim counselor (see Definitions (4)), the victim's spouse or sexual partner(s), and the victim's family within the third degree of consanguinity; and employees of state correctional institutions subject to the jurisdiction of the Department of Corrections, employees of secure facilities for juveniles, and employees of city and county jails, if the employees have direct supervision over inmates of those facilities or institutions in the exercise of their duties. A person to whom results of an HIV-related test have been disclosed shall not disclose the test results to another person except as authorized by this section. If disclosure is made pursuant to this section, the disclosure shall be accompanied by a written statement which signifies that the confidentiality of the disclosed information is protected by state law, which prohibits further disclosure of the information without specific written consent of the person to whom it pertains or as otherwise permitted by law. § 141.23.

(7) A person aggrieved by a violation of statutory provisions concerning HIV-related testing shall have a right of action for damages in district court. Any action commenced after two years from when the cause of action arose shall be barred. There shall be no civil or criminal liability for disclosure of HIV-related test results in accordance with any reporting requirement for a diagnosed case of AIDS or a related condition by the Department or the Centers for Disease Control. § 141.24.

(8) Every health practitioner who, in the scope of professional practice, receives information that a child is infected with an STD shall make a child abuse report within twenty-four hours. § 232.69.

[IOWA]

(9) A person confined to a jail who bites another person, who causes an exchange of bodily fluids with another person or who causes any bodily secretion to be cast upon another person shall submit to testing for contagious infectious disease. Personnel at the jail shall be notified if a person confined is found to have a contagious infectious disease. The sheriff or person in charge of the jail shall take any appropriate measure to prevent the transmittal of contagious infectious disease to other persons, including the segregation of a confined person who tests positive for AIDS from other confined persons. "Infectious disease" refers to any infectious condition which, if spread by contamination, would place others at serious health risk. § 356.48.

(10) A person engaged in the business of insurance shall not require an HIV test of an individual in connection with an application for insurance unless the individual provides a written release on a form approved by the commissioner of insurance. The form shall include information regarding: the purpose, content, use, and meaning of the test; disclosure of test results including information explaining the effect of releasing information to a person in the insurance business; the purpose for which the test results may be used; and other information approved by the commissioner of insurance. The form shall also authorize the person performing the test to provide the results of the test to the insurance company, subject to rules of confidentiality (see Testing & Reporting (6)). § 505.16.

(11) If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault (see Definitions (4)), the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender to submit to an HIV test provided that: the sexual assault in question included sufficient contact between the victim and the convicted offender to be deemed a significant exposure (see Definitions (4)); the authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent to the testing from the convicted offender; and written informed consent was not provided by the offender. The court shall conduct a hearing to determine whether the contact involved in the sexual offense could be deemed a significant exposure. If the sexual assault involved significant exposure, the offender shall be required to undergo HIV testing. § 709B.2.

(12) The physician or other practitioner who orders an HIV test of a convicted sexual offender shall disclose the results of the test to the convicted offender and to the victim counselor or person requested by the victim who is authorized to provide counseling, who shall disclose the results to the petitioner. All testing under this section shall be accompanied by pretest and post-test counseling. Results of a test performed under this chapter shall be disclosed only to: the physician or practitioner ordering the HIV test; the convicted offender; the victim; the victim counselor; the victim's physician; and the parent or guardian of a minor victim. Test results shall not be disclosed to any other person without written, informed consent of the convicted offender. A person to whom test results have been disclosed is subject to confidentiality requirements (see Testing & Reporting (6)). If testing is ordered under this section, the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole, if the person ordering the test certifies that additional testing is necessary to determine whether the convicted offender was infected with HIV at the time the sexual assault was perpetrated. The court shall not consider the disclosure of an alleged offender's HIV status to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence. The fact that an HIV test was performed and the results of the test shall not be included in the convicted offender's medical or criminal record unless otherwise included in Department of Corrections records. The fact that an HIV test was performed and the results of the test shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing. If a petition is filed with the court requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted offender while under the control of the Department of Corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted offender. The victim shall receive counseling and referral to appropriate health care and support services. The victim may disclose the results of the offender's HIV test to the victim's spouse, sexual partners, or members of the victim's family within the third degree of consanguinity. A person to whom disclosure of HIV test results is made under this section shall not further disclose the results to any unauthorized person. Any such unauthorized disclosure carries a civil penalty of \$1,000. § 709B.3.

(13) Reports, information, and records relating to HIV testing of individuals are strictly confidential medical information. The information shall not be released, shared with an agency or institution, or made public upon subpoena, search warrant, discovery proceedings, or by any other means except under the following circumstances: release may be made of medical or epidemiological information for statistical purposes in a manner such that no individual can be identified; release may be made of medical or epidemiological information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party; and release may be made of HIV test results pursuant to partner notification (see Testing & Reporting (2)). Reports, information, and records which contain the identity of persons tested for HIV shall be destroyed immediately after the extraction of statistical data and completion of contact identification, or in no event longer than six months from the date the report, information, or record was received. A physician or health care practitioner attending a person who tests positive for HIV has no duty to disclose to or to warn third parties of the dangers of exposure to HIV infection through contact with that person and is immune from any civil or criminal liability for failure to disclose such information. § 141.10.

Criminal Law (1)

Education (2)

Employment (1)

Social & Medical Services (2), (3), (5)

Miscellaneous (2)

MISCELLANEOUS

(1) The Department of Public Health shall adopt rules which require all emergency medical services personnel, firefighters, and law enforcement personnel to complete a minimum of two hours of training concerning AIDS and the prevention of HIV infection. § 135.11.

(2) The Department of Public Health may conduct epidemiological blinded and nonblinded studies (see Definitions (3)) to determine the incidence and prevalence of HIV infection. In blinded studies, personal identifiers shall be permanently stripped from the specimens selected prior to testing for HIV. The informed consent,

reporting, and counseling requirements of sections 141.8 and 141.22 (see Testing & Reporting (4), (5)) do not apply. § 141.23A.

(3) HIV-related information shall not be transmitted over the police radio broadcasting system. § 80.9.

(4) The Department of Corrections may provide for medically acceptable procedures to inform employees, visitors, and persons committed to the Department of Corrections of possible infection with HIV and to protect them from possible infection. § 904.515.

KANSAS

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

DEFINITIONS

- (1) “Adjudicated person” is defined at § 38-1692.
- (2) “AIDS,” “positive reaction to an AIDS test,” and “HIV infection” are defined at § 65-6001.
- (3) “Body fluid(s)” and “test for HIV infection” are defined at §§ 38-1692, 65-6015, and 22-2913.
- (4) “HIV” is defined at §§ 65-6001 and 65-6015.
- (5) “Infectious or contagious disease” includes HIV and AIDS and is defined at § 65-2438.
- (6) “Laboratory confirmation of HIV infection” and “sexual act” are defined at §§ 38-1692 and 22-2913.

CRIMINAL LAW

- (1) Any person violating, refusing, or neglecting to obey any provision of the rules and regulations adopted by the Secretary of Health for the prevention and control of AIDS shall be guilty of a Class C misdemeanor. § 65-6005.
- (2) Any person who fails to make proper notification that a deceased person was infected with an infectious or contagious disease (see Definitions (5)) (see Testing & Reporting (5)) shall be guilty of a Class C misdemeanor. § 65-2438.
- (3) Any disclosure of information concerning a patient’s HIV status by corrections employees which is not authorized (see Social & Medical Services (2)) is a Class C misdemeanor. § 65-6016.
- (4) Any violation of the provisions relating to HIV testing of convicted sex offenders (see Testing & Reporting (1)) is a Class C misdemeanor. § 22-2913.
- (5) Any person who divulges confidential HIV test results or reports, obtained pursuant to a court order on behalf of a corrections employee, to any other person not authorized to receive such information (see Testing & Reporting (2)) shall be guilty of a Class C misdemeanor. § 65-6017.

[KANSAS]

Social & Medical Services (1), (2)

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

EDUCATION

(1) The Secretary of Health shall prepare educational material explaining the nature, causes, and effects of AIDS and other information relating to AIDS as may be appropriate for distribution to the district courts of the state. The clerks and judges of the district courts shall provide copies of such educational material to applicants for marriage licenses. § 65-6006.

Testing & Reporting (3)

EMPLOYMENT

Criminal Law (3)

Social & Medical Services (2)

Testing & Reporting (2), (3)

HOUSING

Testing & Reporting (3)

INSURANCE

Testing & Reporting (3)

RESEARCH

SOCIAL & MEDICAL SERVICES

(1) A physician performing medical or surgical procedures on a patient who the physician knows has AIDS or has tested positive for HIV may disclose such information to other health care providers, emergency personnel, or law enforcement officers who have been or will be placed in contact with bodily fluids of such patient. The information shall be confidential and shall not be disclosed by such health care providers, emergency personnel, or law enforcement officers except as may be necessary in providing treatment for such patient. A physician

who has reason to believe that the spouse or partner of a person who has tested positive for HIV may have been exposed to HIV and is unaware of such exposure may inform the spouse or partner of the risk of exposure. The information shall be confidential and shall not be disclosed by such spouse or partner to other persons except to the spouse or partner who has tested positive for HIV. A physician shall not have a duty to warn others of possible exposure to HIV. Any physician who discloses information in accordance with the provisions of this section in good faith and without malice shall be immune from any civil or criminal liability that might otherwise be imposed in an action resulting from disclosure. § 65-6004.

(2) A physician performing medical or surgical procedures on a patient who the physician knows has tested positive for HIV may disclose such information to corrections employees who have been or will be placed in contact with body fluid (see Definitions (3)) of such patient. The information shall be confidential and shall not be disclosed by corrections employees except as may be necessary in providing treatment for such patient. Any physician who discloses information in accordance with the provisions of this section in good faith and without malice shall be immune from all civil or criminal liability that might otherwise be imposed in an action resulting from disclosure. § 65-6016.

Testing & Reporting (1), (2), (3), (5)

TESTING & REPORTING

(1) At the time of an appearance before the court, the court shall inform every person arrested and charged with a crime in which it appears from the nature of the charge that a sexual act (see Definitions (6)) or the transmission of body fluids (see Definitions (3)) from one person to another may have been involved of the availability of HIV testing and counseling. The court shall also notify each alleged victim of the crime of the availability of HIV testing and counseling. Upon conviction of such a crime, the court may order the convicted person to submit to a test for HIV infection (see Definitions (3)). The court shall order the convicted person to submit to an HIV test if a victim of the crime, or parent or legal guardian of a minor victim, requests that the court issue such an order. Victims of crimes involving sexual acts or transmission of body fluids who request that the perpetrator of such crime

submit to an HIV test shall designate a health care provider or counselor to receive the information on behalf of the victim. If the convicted person tests negative for HIV, the court shall order the convicted person to undergo another HIV test six months after the first test was administered. The results of any HIV test ordered under this section shall be disclosed to the court ordering the test, to the convicted person, and to each person designated by a victim to receive such results. If an HIV test ordered under this section is positive, the results shall be reported to the Secretary of Health and Environment and to the Secretary of Corrections for inclusion in the convicted person's medical file. If the offender is a juvenile or a person not adjudicated because of mental disease or defect, the results shall be disclosed to the parent or legal guardian of the adjudicated person (see Definitions (1)) and the Secretary of Social and Rehabilitation Services. The Secretary of Health and Environment shall provide HIV counseling and testing and referral for appropriate health care and services for each victim of the crime. The costs of any counseling and testing provided by the Secretary of Health and Environment shall be paid from amounts appropriated to the Department of Health and Environment for that purpose. The court shall order the convicted person to pay restitution to the Department of Health and Environment for the costs of any testing or counseling provided under this section. When a court orders a convicted person to submit to an HIV test, the withdrawal of blood may be performed only by: a licensed physician; a licensed professional nurse or practical nurse; or a qualified medical technician. No person authorized to withdraw blood or assisting in the performance of an HIV test, nor any medical care facility where blood is withdrawn or tested pursuant to a court order under this section shall be liable in any civil or criminal action when the test is performed in a reasonable manner according to generally accepted medical practices. The results of tests or reports obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive such information. §§ 22-2913, 38-1692.

(2) If a corrections employee has been placed in contact with body fluids from one or more offenders while performing the duties of a corrections employee, the Secretary of Corrections may apply to the appropriate county district court for an order requiring each offender to submit to HIV testing. Such application shall include an allegation that each offender has been requested to voluntarily submit to HIV testing and

has refused the tests and that the corrections employee has agreed to voluntary testing for HIV. The court shall issue the order for testing if there is probable cause to believe that the employee involved has been placed in contact with body fluids of the offender and the offender has refused to submit to testing. If an HIV test ordered under this section is negative, the court, upon application, shall order the offender tested to submit to another test six months after the date the first test was administered. The corrections employee shall designate a health care provider or counselor to receive the test results on behalf of the corrections employee. The results shall be disclosed to the court ordering the testing, the person tested, and the health care provider or counselor designated by the corrections employee to receive the results. The results shall also be disclosed to the Secretary of Corrections for inclusion in the offender's medical files. Test results of the corrections employee shall not be disclosed except as specifically authorized in writing by the employee. § 65-6017.

(3) Whenever any physician has information indicating that a person is suffering from or has died from AIDS, such knowledge or information shall be reported immediately to the Secretary of Health, together with the name and address of the person who has AIDS or the name and former address of the deceased individual. Any laboratory director shall report all positive reactions to an AIDS test to the Secretary of Health. Reports by physicians and laboratory directors shall be provided within one week of knowledge of positive test results and shall designate the type of test performed, the date of performance of the test, the test result, and the sex, date of birth, county of residence, and racial/ethnic group of the person tested. For the purpose of reporting HIV infection only, the name of the patient shall not be reported. This section shall not apply to a physician who, while performing services other than the direct rendition of medical services, for an insurance company, health maintenance organization, or nonprofit medical and hospital service corporation, becomes aware that a person has tested positive for HIV or is suffering from or has died from AIDS. Any physician or laboratory director who reports such information in good faith and without malice shall have immunity from any civil or criminal liability that might otherwise be imposed in an action resulting from such report. Information required to be reported under this section and information obtained through laboratory tests conducted by the Department of Health

and Environment relating to persons with HIV infection or AIDS shall be confidential and shall only be disclosed under the following circumstances: if no person can be identified in the information disclosed and the disclosure is for statistical purposes; if all persons who are identifiable in the disclosed information consent in writing to its disclosure; if the disclosure is necessary, and only to the extent necessary, to protect the public health; in a medical emergency, where disclosure is to medical personnel qualified to treat AIDS and HIV infection, and disclosure is only to the extent necessary to protect the health or life of the subject of the information; or if the information is required in a court proceeding involving a minor, and the information is disclosed in camera. Information disclosed under this section shall not be used in any form or manner which would lead to discrimination against any individual or group with regard to employment, provision of medical care, housing, education, transportation, or the provision of any other goods or services. § 65-6002.

(4) The Secretary of Health shall establish and maintain sites throughout the state for anonymous HIV testing. § 65-6007.

(5) When a person who has been diagnosed as having an infectious or contagious disease (see Definitions (5)) dies, the attending physician or, if there is no attending physician, the director of nursing at a medical care facility or adult care home, or a family member or the person making arrangements for the disposition of the body who knows of such diagnosis shall indicate, on a form promulgated by the Secretary of Health, that the deceased person had an infectious or contagious disease. The completed form shall accompany the body when it is transported for disposition. Any person who transports a dead body for disposition and who has been notified that the deceased person had been diagnosed as having an infectious or contagious disease shall present such notification to any embalmer, funeral director, or other person taking possession of the body. No liability shall be incurred by anyone who completes the form in good faith and without malice. Any information relating to an infectious or contagious disease which is required to be disclosed or communicated under this section shall be confidential. § 65-2438.

Criminal Law (4), (5)

Social & Medical Services (1), (2)

[KANSAS]

MISCELLANEOUS

(1) The Secretary of Health shall investigate cases of persons who have AIDS and maintain a supervision over such cases during their continuance. The Secretary of Health may adopt and enforce rules and regulations for the prevention and control of AIDS and for other matters relating to cases of persons who have AIDS as may be necessary to protect the public health. Any information relating to persons who have AIDS which is required to be disclosed or communicated under this section shall be confidential. § 65-6003.

KENTUCKY

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

DEFINITIONS

(1) “Blood establishment,” “blood-borne communicable disease,” “donor,” “health facility,” “health care provider,” and “health service” are defined at § 214.450.

(2) “Exceptional children and youth” and “other health impaired” include children with AIDS and are defined at § 157.200.

(3) “HIV,” “insurance contract,” and “insurer” are defined at § 304.12-013.

(4) “Sexually transmitted disease” includes AIDS and HIV. § 214.410.

CRIMINAL LAW

(1) Any person who fails to test organs, skin, or other human tissue that is to be transplanted or violates the confidentiality provisions relating to HIV testing (see Testing & Reporting (6), (8)) shall be guilty of a Class A misdemeanor. Any person infected with HIV who knowingly donates organs, skin, or other human tissue shall be guilty of a Class D felony. § 311.990.

(2) Any person who commits, offers, or agrees to commit prostitution by engaging in sexual activity in a manner likely to transmit HIV and who, prior to the commission of the crime, had tested positive for HIV and knew of such test result and that HIV could be transmitted through sexual activity is guilty of a Class D felony. A person may be convicted and sentenced separately for such violation and for the underlying crime of prostitution. § 529.090.

(3) Any person convicted of procuring another to commit prostitution in a manner likely to transmit HIV and who, prior to the commission of the crime, had tested positive for HIV and knew of such test result and that they could possibly communicate the disease to another person is guilty of a Class D felony. § 529.090.

(4) The sale, delivery, holding, or offering for sale of any self-testing kits designed to tell persons their AIDS or HIV status, or any advertising of such kits, shall be a Class C felony. § 367.175.

[KENTUCKY]

Education (1), (7)

Testing & Reporting (1), (2), (4), (8), (9), (10), (11), (12), (13),
(14)

EDUCATION

(1) The Kentucky Law Enforcement Council shall develop, in conjunction with the Cabinet for Human Resources, an educational program on HIV and AIDS to be delivered annually by the Department of Criminal Justice Training to all law enforcement officers. The education program may be a part of any continuing education program offered by the Department of Criminal Justice Training. § 15.333.

(2) The Justice Cabinet shall require all of its officers to complete an educational course approved by the Cabinet for Human Resources on HIV and AIDS. The Justice Cabinet shall develop literature on HIV and AIDS and a training curriculum for the instruction of officers. The literature and training curriculum shall include information of known modes of transmission and methods of controlling and preventing HIV and AIDS with an emphasis on appropriate behavior and attitude change. This training may be part of any other training required and for which law enforcement officers receive an allowance to attend. All officers shall successfully complete the required training. No person holding the position of officer shall hold such position for more than one year without successfully completing the required training. § 16.095.

(3) The Commissioner of the Department of Personnel shall provide to each state employee on an annual basis an informational pamphlet about HIV infection and AIDS. The pamphlet shall be approved by the Cabinet for Human Resources and shall contain information about the nature and extent of these diseases, methods of transmission, preventative measures, and referral services. § 18A.030.

(4) No person shall be eligible to hold the office of deputy coroner unless such person has completed a training course including material developed by the Cabinet for Human Resources on HIV and AIDS. § 72.415.

(5) State colleges and universities shall provide information consistent with Centers for Disease Control guidelines on how to prevent the transmission of HIV to all first year and transfer students. Each state

[KENTUCKY]

college or university shall inform students of the name and telephone number of a college or university counselor trained to provide counseling concerning HIV. § 164.351.

(6) The Department of Corrections shall develop an educational course on HIV and AIDS, approved by the Cabinet for Human Resources (Cabinet), for the instruction of corrections personnel who may be expected to respond to crisis situations. The literature and training curriculum shall include information on known modes of transmission and methods of controlling and preventing HIV and AIDS with an emphasis on appropriate behavior and attitude changes. All persons to whom this training applies must successfully complete the training within one year. Otherwise, such persons shall be suspended from further service until training is successfully completed. §§ 196.171, 441.115.

(7) The Department of Corrections, in conjunction with the Cabinet, shall establish a mandatory introductory and continuing education program on HIV and AIDS for all inmates. Programs shall be specifically designed for inmates while incarcerated and in preparation for release into the community. Consideration shall be given to cultural and other relevant differences among inmates in the development of educational materials and shall include emphasis on behavior and attitude changes. The education program shall be continuously updated to reflect the latest medical information available. § 197.055.

(8) As a condition of being issued a certificate as an emergency medical technician, the applicant shall have completed a Cabinet approved educational course on the transmission, control, treatment, and prevention of HIV and AIDS with an emphasis on appropriate behavior and attitude changes. §§ 211.967, 214.610.

(9) The Cabinet shall establish a program to educate the public about the threat of AIDS. The AIDS education program shall: be designed to reach all segments of the Commonwealth's population; contain special components designed to reach minority groups; impart knowledge to the public about methods of transmission of AIDS and methods of prevention; educate the public about transmission risks in social, employment, and educational situations; educate health care workers and health facility (see Definitions (1)) employees about methods of transmission and prevention in their unique workplace

environments; contain special components designed to reach persons who may frequently engage in high risk behavior; provide information and consultation to state agencies to educate all state employees; provide information and consultation to state and local agencies to educate law enforcement and correctional personnel and inmates; provide information and consultation to local governments to educate local government employees; make information available to private employers and encourage them to distribute this information to their employees; contain special components which emphasize appropriate behavior and attitude change; and utilize all appropriate forms of the media and identify sources of educational materials that can be used by businesses, schools, and health care providers (see Definitions (1)). § 214.605.

(10) All applicants for the following licenses must complete an educational course approved by the Cabinet on the transmission, control, treatment, and prevention of HIV and AIDS: paramedic, medicine, osteopathy, podiatry, chiropractic, pharmaceutical, dentistry, dental hygienist, registered nurse, practical nurse, physical therapist, marriage and family therapist, optometry, and medical laboratory. An applicant who has not taken a course at the time of licensure shall be allowed six months to complete this requirement upon an affidavit showing good cause. §§ 214.615, 311.653.

(11) The Cabinet shall develop instructional material on HIV to be provided to licensed health care professionals. The Cabinet shall require that all employees, except for those who have completed a similar course as required for their professional licensure or while employed by another health facility (see Definitions (1)), complete an educational course on HIV and AIDS. Such course shall also be required of certified athletic trainers. Any continuing education required by the Board of Medical Licensure shall include a Cabinet approved educational course on HIV and AIDS. Information on HIV shall be presented to any person who receives treatment at any hospital or other health care facility. §§ 214.620, 311.654, 311.908.

Testing & Reporting (5), (9)

EMPLOYMENT

(1) No person may require an individual to take an HIV test as a condition of hiring, promotion, or continued employment unless the

[KENTUCKY]

absence of HIV infection is a bona fide occupational qualification for the job in question. A person who asserts that a bona fide occupational qualification exists for HIV testing shall have the burden of proving that: the HIV test is necessary to ascertain whether an employee is currently able to reasonably perform the duties of the particular job or whether an employee will present a significant risk of transmitting HIV to other persons in the course of normal work activities; and there exists no means of reasonable accommodation short of requiring the test. § 207.135.

(2) No employer shall fail to hire, discharge, or discriminate against any individual with respect to wages, rates of pay, hours, or other terms and conditions of employment on the basis of the results of an HIV test unless the absence of HIV infection is a bona fide occupational qualification of the job in question. No employer shall limit, segregate, or classify individuals on the basis of the results of an HIV test unless the absence of HIV infection constitutes a bona fide and necessary reason for such limitation, segregation, or classification. § 207.150.

(3) No labor organization shall exclude from its membership or otherwise discriminate against individuals on the basis of an HIV test; nor shall a labor organization limit, segregate, or classify its membership, nor fail or refuse to refer for employment any individual, nor otherwise adversely affect the employment status of an individual on the basis of an HIV test. § 207.160.

(4) The right to worker's compensation resulting from work-related exposure to HIV shall be barred unless notice of injurious exposure is given as soon as practicable after the exposure and unless an application for adjustment of claim for compensation shall have been made within five years after the injurious exposure. § 342.185.

Education (1), (3), (6), (8), (9), (10), (11)

Testing & Reporting (9)

HOUSING

(1) The fact that an occupant of real property is infected or has been infected with HIV or diagnosed with AIDS is not a material fact that shall be disclosed in a real estate transaction. No cause of action shall arise against an owner of real property for the failure to disclose to a transferee that an occupant of that property was infected with HIV or diagnosed with AIDS. § 207.250.

[KENTUCKY]

Social & Medical Services (1)

Testing & Reporting (2)

INSURANCE

(1) In the underwriting of an insurance contract (see Definitions (3)) regarding HIV infection and health conditions derived from such infection, the insurer (see Definitions (3)) shall utilize medical tests recommended by the Centers for Disease Control (CDC) or the Food and Drug Administration (FDA) which are reliable predictors of risk of HIV infection. If a test indicates the existence or possible existence of HIV infection or a health condition related to HIV infection, before relying on a single test to deny issuance of an insurance contract, limit coverage, or establish the premium for an insurance contract, the insurer shall follow the test protocol recommended by the CDC or FDA and shall utilize any CDC or FDA recommended follow-up tests or series of tests to confirm the indication. Prior to testing, the insurer shall disclose in writing its intent to test the applicant for HIV and shall obtain the applicant's written informed consent to administer the test, explaining its purpose, potential uses and limitations, the meaning of its results, and the right to confidential treatment of information. The applicant shall be notified of a positive test result by a physician designated by the applicant or, if the applicant has not designated a physician, by the Cabinet for Human Resources. Such notification shall include: face-to-face post-test counseling on the meaning of the test results, the possible need for additional testing, and the need to eliminate behavior which might spread the disease to others; the availability of appropriate health care services in the area, including mental health care and social and support services; and the benefits of locating and counseling any person by whom the infected person may have been exposed to HIV and any person whom the infected person may have exposed to the virus, as well as the availability, if any, of the services of public health authorities with respect to locating and counseling such persons. An HIV test shall only be administered to an applicant for an insurance contract on the basis of the applicant's health condition or health history, on the basis of the amount of insurance applied for, or if the test is required of all applicants. An insurer may ask whether an applicant for insurance has tested positive for HIV. Insurers

shall not inquire whether the applicant has been tested for HIV or has received a negative result from an HIV test. § 304.12-013.

(2) Insurers shall maintain strict confidentiality of HIV test results. Information regarding specific test results shall be disclosed only as required by law or pursuant to a written request or authorization by the applicant. Insurers may disclose results pursuant to a specific written request only to the following parties or for the following purposes: the applicant; a licensed physician or other person designated by the applicant; an insurance medical information exchange under procedures that are used to assure confidentiality; for the preparation of statistical reports that do not disclose the identity of any particular applicant; reinsurers, contractually retained medical personnel, and insurer affiliates if these entities are involved solely in the underwriting process and under procedures that are designed to assure confidentiality; insurer personnel who have the responsibility to make underwriting decisions; and outside legal counsel who need the information to represent the insurer effectively in regard to matters concerning the applicant. A health insurance contract shall not be canceled or nonrenewed solely because a person covered by the contract has been diagnosed as having or has been treated for HIV infection. Sexual orientation shall not be used in the underwriting process or in the determination of which applicants shall be tested for exposure to HIV infection. § 304.12-013.

(3) Any basic insurance policy or annuity contract form which excludes coverage for HIV infection or AIDS, or contains limitations in the benefits payable or in the terms or conditions of the contract for HIV infection or AIDS which are different from those which apply to any other sickness or medical condition, shall be disapproved by the Commissioner of Insurance. § 304.14-130.

Testing & Reporting (9)

RESEARCH

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

SOCIAL & MEDICAL SERVICES

(1) A person shall not discriminate against an otherwise qualified individual in housing, public accommodations, or governmental

[KENTUCKY]

services on the basis of the fact that such an individual is, or is regarded as being, infected with HIV. A person or other entity receiving or benefiting from state financial assistance shall not discriminate against an otherwise qualified individual on the basis of the fact that such individual is, or is regarded as being, infected with HIV. A person who asserts that an individual who is infected with HIV is not otherwise qualified shall have the burden of proving that no reasonable accommodation can be made to prevent the likelihood that the individual will, under the circumstances involved, expose others to a significant possibility of being infected with HIV. § 207.135.

(2) No person shall donate blood if the person is at high risk for HIV infection, has AIDS, or has tested positive for HIV. No person shall give false information to the staff of a blood establishment (see Definitions (1)) regarding any item of the person's personal history which would affect the person's suitability as a donor. § 214.454.

(3) Based on legislative findings that AIDS constitutes a serious and unique danger to the public health and welfare, the General Assembly intends to establish programs and requirements related to AIDS which carefully balance medical necessity, the right to privacy, and protection of the public from harm, as well as programs for the care and treatment of persons with AIDS and related conditions. § 214.600.

Criminal Law (1)

Education (3), (5), (8), (9)

Insurance (1)

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

Miscellaneous (1), (2)

TESTING & REPORTING

(1) Each county and each municipal detention facility shall develop a written procedure to establish conditions under which an inmate will be tested for infectious diseases. The person receiving the test results may divulge the results to the jailer or chief correctional officer, but the results shall otherwise be confidential. No person to whom test results have been disclosed may further disclose such test results. The results of any serologic blood test on an inmate shall become

[KENTUCKY]

a part of that inmate's permanent medical file. Upon transfer of the inmate to any other correctional facility, the file shall be transferred in an envelope marked confidential. § 71.130.

(2) If there is evidence that an inmate, while in the custody of the Department of Corrections, has engaged in behavior which places the inmate at a high risk of transmitting or contracting HIV, the Department of Corrections shall begin a testing program which is consistent with guidelines of the Centers for Disease Control and recommendations of the Correctional Medical Authority and shall target persons who have been involved in or reasonably thought to have been involved in high risk behavior. The results of the tests shall become a part of that inmate's medical file, accessible only to persons designated by agency administrative regulations. The Department of Corrections shall establish policies concerning the housing, physical contact, dining, recreation, and exercise hours or locations for inmates with HIV. If an inmate is involved in a situation with a Department of Corrections employee which could result, according to the institution's physician, in the transmission of HIV, the inmate shall be tested. § 197.055.

(3) The Cabinet for Human Resources (Cabinet) shall formulate, promote, establish, and execute policies, plans, and programs relating to all matters of public health, including the adoption of regulations specifying the information required in and a minimum time period for reporting sexually transmitted diseases (see Definitions (4)). The Cabinet shall require reporting of physician diagnosed cases of AIDS and HIV but shall be prohibited from requiring the reporting of names and addresses. A code may be used as long as it does not identify the patient. When, and if, a cure for HIV infection is found, the Cabinet may identify infected patients for the purpose of offering or making the cure or treatment known to the patient. § 211.180.

(4) All blood establishments (see Definitions (1)) shall test blood for HIV. It shall be the duty of the administrator of any blood establishment which collects blood for the purpose of distributing it to another health service, health facility (see Definitions (1)), or health care provider (see Definitions (1)) for transfusion to secure donor (see Definitions (1)) consent and a signed written risk factor history and donor consent form for each potential paid or volunteer donor for the purpose of determining if the potential donor is at high risk for infection with HIV,

has tested positive for HIV, or has AIDS. Blood establishments shall provide a means for a potential donor to self-elect not to donate blood, and they shall refuse donation or sale of blood by persons at high risk of infection with HIV, persons who have tested positive for HIV, and those diagnosed with AIDS. Blood establishments shall post a sign visible to all potential donors which states: "Persons with AIDS, or who have tested positive for HIV, or who have one or more risk factors for HIV are prohibited by law from donating or selling blood. Persons violating the law are guilty of a Class D felony. ASK STAFF OF THIS BLOOD ESTABLISHMENT." § 214.452.

(5) No blood may be transfused into any patient in any health facility or health service or by any health care provider unless the unit of blood has tested negative for HIV. Any unit of blood testing confirmatory positive for an agent of a blood-borne communicable disease (see Definitions (1)) and in the possession of a health facility, health service, or health care provider may be donated to educational or scientific research institutions for the purpose of scientific research only and not for transfusion. § 214.458.

(6) Every donation of organs, skin, or other human tissue for transplantation to another shall be tested by the agency responsible for procuring the organs, skin, or tissue, prior to use, for HIV infection. Tests for HIV infection shall be performed only after obtaining written, informed consent from the potential donor. Obtaining consent shall include a fair explanation of the procedures to be followed and the meaning and use of the test results. The explanation shall include a description of the confidential nature of the test. If consent for testing is not given, the person shall not be accepted as a donor. Written informed consent shall not be required if the organ, skin, or other human tissue is received for processing or testing from out-of-state, or if tissue is received from a health care facility or health care provider for reference testing or processing and the results of the test are reported back to the facility or provider. No person shall collect any organ, skin, or other human tissue from one human being and implant, transplant, graft, or in any other way transfer it to another human being without first testing it for HIV. All human organs, skin, or other human tissue which is to be transplanted to another and tests positive for HIV shall be rendered noncommunicable by the person holding the tissue or shall be destroyed unless the human tissue is specifically labeled to identify HIV and is used for research

[KENTUCKY]

purposes or to save the life of another and is transferred with the recipient's informed consent. Each agency which procures organs, skin, or other human tissue and finds evidence of HIV in the donor after confirmatory positive testing shall notify the donor. If the donor is a patient of a health facility in the state, the following information shall be given: the meaning of the test results; the availability of any appropriate health care services, including mental health care, and appropriate social and support services; measures for the prevention of the transmission of HIV; and the benefits of locating and counseling any individual by whom the infected individual may have been exposed to HIV and any individual whom the infected individual may have exposed to the virus. The donor shall be notified of the confirmed positive test results in person. The donor shall be notified of negative test results either in person, by registered mail, or by phone. Notification is the responsibility of the agency responsible for procuring the donated tissue. Prior to the transplantation of an organ or artificial insemination, the institution or physician responsible for overseeing the procedure shall provide the prospective recipient information as to the risks of contracting HIV. § 311.281.

(7) The General Assembly finds that the use of tests designed to reveal a condition indicative of HIV infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that AZT prolongs the lives of AIDS victims and may also be effective when introduced in the early stages of HIV infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear the test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect HIV infection. § 214.625.

(8) A person who has signed a general consent form for the performance of medical procedures and tests is not required to also sign a specific consent form relating to HIV testing that will be performed during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for HIV if a doctor orders the test for diagnostic purposes. The results of a test or procedure to determine HIV infection under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to

[KENTUCKY]

medical treatment. In any emergency situation where informed consent cannot reasonably be obtained before providing health care services, there is no requirement that a health care provider obtain a previous informed consent. The physician who orders an HIV test, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for HIV infection. If the tests results are positive, the physician shall also be responsible for either referring the patient to, or directly providing to the patient, information concerning the infection or diagnosis and the known medical implications of such status or condition. No person in the state shall perform an HIV test without first obtaining the informed consent of the person upon whom the test is being performed, except as specified above. No test result shall be determined to be positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted. No person who has obtained or has knowledge of an HIV test result shall disclose or be compelled to disclose the identity of any person upon whom a test is performed or the results of the test in a manner which permits identification of the test subject, except to the following persons: the test subject or the subject's legally authorized representative; any person designated by a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative; a physician, nurse, or other health care personnel who has a legitimate need to know the test result in order to provide for such health care personnel's own protection and to provide for the patient's health and welfare; health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment; the Cabinet for Human Resources, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law; a health facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person or semen provided prior to July 13, 1990 for the purpose of artificial insemination; health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews; authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information; a parent, foster parent, or legal guardian of a minor; a crime victim or certain other victims (see Testing & Reporting (10)); or a person allowed access by a court order. § 214.625.

[KENTUCKY]

(9) The Cabinet shall establish a network of voluntary HIV testing programs in every county in the state. Such programs shall be conducted in each public health department. Each public health department shall have the ability to provide counseling and testing for HIV to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test. Each public health department shall also provide a program of anonymous or confidential counseling and testing, depending on the patient's desire. The result of a serologic test conducted under the auspices of the Cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance, or to screen or determine suitability for, or to discharge a person from, employment. Any violation shall result in a Class A misdemeanor. No public health department and no other person in the state shall conduct or hold themselves out to the public as conducting a testing program for AIDS or HIV without first registering with the Cabinet and meeting the following requirements: the program shall be directed by a person who has completed an educational course in the counseling of persons with AIDS or HIV; all medical care provided by the program shall be supervised by a licensed physician; all laboratory procedures performed by the program shall be carried out in a licensed laboratory; and informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results; the program, unless it is a blood donor center, shall provide pretest counseling on the meaning of an HIV test, the possibility of false positive or false negative results, the potential need for confirmatory testing, the potential social, medical, and economic consequences of a positive test result, and the need to eliminate high risk behavior; the program shall provide supplemental corroborative testing on all positive test results before the results of any positive test are provided to the patient; the program shall provide face-to-face post-test counseling; each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the Cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate; and when services are provided for a charge, the program shall provide a complete list of all charges to the patient and the Cabinet. Any violation of this

section by a licensed health care provider shall result in disciplinary action. § 214.625.

(10) When a public servant or victim of a crime is bitten by, suffers a puncture wound caused by, or is exposed to the blood or body fluids of a criminal defendant, inmate, parolee, or probationer, or when the blood or body fluids of such person have come into contact with the skin or unprotected clothing of a public servant, the criminal defendant, inmate, parolee, or probationer shall be ordered to submit to HIV testing. The written results of the testing shall be made available to such public servant, criminal defendant, inmate, parolee, or probationer. However, the results shall not be public records and shall be disclosed to others only on a need-to-know basis. If a criminal defendant, inmate, parolee, or probationer fails or refuses to be tested as ordered, such person may be held in criminal contempt. The costs of the testing shall be borne by the criminal defendant, inmate, parolee, or probationer unless such person is determined by a court to be unable to pay for such testing, in which case, the state shall pay for the testing. The above provisions shall apply to juveniles as well as to adults. § 438.250.

(11) A defendant charged with an offense which has sexual intercourse or deviate sexual intercourse as an element, or which has sexual contact as an element when the circumstances of the case suggest a possibility of transmission of HIV, shall, upon initial court appearance on the charge, be informed by the judge of the availability of HIV testing. The judge shall also notify the victim of such offense that the defendant has been so notified. When a defendant has been convicted of such a sexual offense, the sentencing court shall order the defendant to undergo HIV testing, under the direction of the Cabinet. The result of any HIV test conducted pursuant to this section shall not be a public record and shall only be made available to the victim, the defendant, the court issuing the order for testing, and to any other appropriate agency as directed pursuant to the statutory provisions concerning HIV testing. The Cabinet for Human Resources shall provide to the Department of Corrections the result of any HIV test conducted pursuant to this section which indicates that the defendant is infected with HIV. The Department of Corrections shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in a state penitentiary or correctional institution or county jail. If the HIV test is positive the Cabinet shall provide counseling to the victim and the

[KENTUCKY]

defendant and referral for appropriate health care and support services. § 510.320.

(12) Any person convicted of prostitution or procuring another to commit prostitution shall be required to undergo HIV testing. If infected, such person shall submit to treatment and counseling as a condition of release from probation, community control, or incarceration. The results of such tests shall be made available to medical personnel, appropriate state agencies, or courts of appropriate jurisdiction. § 529.090.

(13) A juvenile session of a District Court shall order a child who is adjudicated a public offender to submit to an HIV test if the offense is of a sexual nature (see Testing & Reporting (11)). The result of any HIV test conducted pursuant to this section shall only be made available by the Cabinet to the victim or parent or guardian of a minor victim, the child adjudicated as a public offender and such child's parent or guardian, the court ordering the testing, and as otherwise directed pursuant to the statutory provisions concerning HIV testing. If the HIV test indicates the presence of HIV infection, the Cabinet shall provide counseling to the victim and the juvenile offender regarding HIV and referral for appropriate health care and support services. § 635.110.

(14) A licensed physician shall not be civilly or criminally liable for the disclosure of otherwise confidential information under the following circumstances: if a patient who has tested positive for HIV discloses to the physician the identity of a spouse or sexual partner with whom the patient cohabitated for more than one year, and the physician recommends that the patient notify the spouse or sexual partner of the positive test and refrain from engaging in sexual activity in a manner likely to transmit the virus and the patient refuses; and if, pursuant to a perceived civil duty or the ethical guidelines of the profession, the physician reasonably and in good faith advises the spouse or long-term sexual partner of the patient of the positive test and facts concerning the transmission of the virus. A physician shall not be civilly or criminally liable for failure to disclose information relating to a positive HIV test result of a patient to a spouse. § 311.282.

Criminal Law (1), (2), (3), (4)

Employment (1), (2), (3)

Insurance (1), (2)

[KENTUCKY]

Social & Medical Services (2)

Miscellaneous (1)

MISCELLANEOUS

(1) All information, records and reports in the possession of local health departments or the Cabinet for Human Resources and which concern persons infected with or suspected of being infected with a sexually transmitted disease (STD) (see Definitions (4)) are strictly confidential and only personnel of local health departments and the Cabinet for Human Resources who are assigned to STD control activities shall have access to such information, records and reports. This section shall not prevent the release of medical information: to the physician retained by the person infected with or suspected of being infected with an STD; for statistical purposes in a manner by which no individual person can be identified; with written consent of all persons identified in the information to be released; necessary to enforce the provisions of the rules and regulations of the Cabinet for Human Resources relating to the control and treatment of STDs; and to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party. § 214.420.

(2) The Cabinet for Human Resources shall, on an annual basis, estimate the potential impact of AIDS and HIV on total state spending for health. § 214.635.

LOUISIANA

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

DEFINITIONS

(1) “HIV-related test” and “HIV test result” are defined at § 40:1300.12.

CRIMINAL LAW

(1) Intentional exposure of another to the AIDS virus through sexual contact, or through any means or contact without knowing and lawful consent, is a crime of violence, with enhanced penalties where the potential victim is a police officer. § 14:43.5.⁵⁶

(2) Physicians or others reporting the death of a patient shall notify the coroner if the patient was infected with AIDS or HIV. Anyone who fails to comply with the section shall be guilty of a misdemeanor and upon conviction shall be fined. § 33:1562.

Social & Medical Services (2)

Testing & Reporting (2), (5), (10), (11)

EDUCATION

(1) Teacher education programs for grades seven through twelve shall include the causes, effects, and means of prevention of sexually transmitted diseases (STDs) including AIDS. § 17:7.2.

(2) Instruction in sex education may emphasize that abstinence from sexual activity is a way to avoid unwanted pregnancy, STDs including AIDS, and other associated health problems. § 17:281.

(3) The Department of Health and Hospitals shall make grants available to parishes, municipalities, and nonprofit organizations for community-based prevention education programs relating to AIDS. § 40:2018.2.

(4) As part of adolescent pregnancy protection, the Adolescent Pregnancy Protection Commission shall award grants to eligible recipients who provide educational services in sexuality and

56. *Meany v. Meany*, 639 So. 2d 229, 235 (La. 1994) (violation requires a showing that the infected person knew or should have known he was infected).

family life and that teach abstinence as the only one hundred percent effective method of preventing pregnancy and STDs. § 46:2559.

Social & Medical Services (6)

Testing & Reporting (8)

EMPLOYMENT

Testing & Reporting (6)

HOUSING

(1) Psychologically impacted property includes real property occupied by someone suspected to be, actually infected with HIV, or diagnosed with AIDS. No cause of action arises against an owner or his agent for failure to disclose this information to the transferee. § 37:1468.

INSURANCE

(1) Cancellation of insurance is prohibited when such cancellation is a result of a claim associated with a terminal, incapacitating, or debilitating condition, including AIDS and HIV. Group, family group, or blanket health insurers shall not cancel coverage until the condition has concluded. An increase in the rate of insurance for this group is expressly not prohibited. § 22:228.

RESEARCH

SOCIAL & MEDICAL SERVICES

(1) The Department of Health and Hospitals shall implement an expedited Medicaid eligibility review program for persons diagnosed as having AIDS. If a preliminary review indicates a preponderance of evidence for presumptive Medicaid eligibility, then full, temporary Medicaid coverage for the person with AIDS shall be extended immediately and shall continue until such time as the final Medicaid application is denied or until permanent coverage commences. If a final determination of ineligibility is made, the person with AIDS shall reimburse the department for funds expended on his behalf by the department during the period of temporary Medicaid coverage. § 46:153.

(2) Those persons convicted of prostitution shall be referred to parish (local) health unit(s) for AIDS counseling. § 14:82.

(3) Each state owned and operated medical acute care hospital in the state shall establish, operate, and maintain an AIDS Testing and Treatment Services program. Such hospitals shall have an AIDS counselor or system of AIDS counseling designed to insure that the needs of the patient are met. Each AIDS Testing and Treatment Services program shall develop links with other providers of services to AIDS patients in the community. § 46:924.

(4) Planning duties of the Primary Care Advisory Council include an annual report regarding public health care needs which shall include the needs of HIV-infected persons. § 40:2194.4. Grants and contracts of up to \$50,000 annually shall be awarded and based on relationship to one of the enumerated health priority areas for Louisiana, including HIV-infected individuals. § 40:2196.5.

(5) A properly licensed registered nurse may administer medication for the treatment of sexually transmitted diseases (STDs) provided the delivery of such treatment is in accordance with the procedures developed by the Director of Pharmacy of the Office of Public Health and approved by the Louisiana Board of Pharmacy. § 37:933.

(6) Commissions established under the Rural Health Care Authority shall develop adequate educational experiences and public policy to reduce STDs. § 40:2198.2.

Testing & Reporting (1), (2), (3), (4), (6), (7), (8), (9), (10)

TESTING & REPORTING

(1) Semen for artificial insemination services shall be quarantined while the donor is tested for HIV-1 antibodies and tested again six months later. Wives' spouses are exempted. Semen from donors who test positive may not be used for anonymous artificial insemination, and the test results shall be released only to the test subject, test subject's physician, or the office of public health for the limited purpose of statistical summary and analysis. § 40:1062.1.

(2) HIV-related tests in a hospital shall not be ordered without written informed consent or oral informed consent with

[LOUISIANA]

contemporaneous written documentation in the medical record. Exceptions include tissue or blood donations, anonymous research situations, autopsy, sex crime arrestees, and children. § 40:1300.13. General medical information releases do not authorize disclosure of HIV test results when such releases contain an explicit refusal to release HIV test results. Exceptions include tissue or blood donation, disclosure mandated by law or court order, foster care or adoption situations, corrections custody situations, physicians and their patients' contacts. § 40:1300.14. Courts are authorized to order disclosure upon application showing compelling need for the adjudication of a criminal or civil proceeding, clear and imminent danger to an individual or to the public health, or where the applicant is lawfully entitled to disclosure. The application proceedings shall be in camera (open only to concerned parties) and documentation shall be sealed. The concerned individual shall be notified unless an ex parte application by a public health officer shows clear and imminent danger to an individual whose health may be at risk. § 40:1300.15. The Office of Public Health shall promulgate rules and develop forms and informational materials for informed consent and disclosure, use of which forms shall constitute legal presumption of consent, and the forms shall contain notice of the individual's right to refuse to disclose HIV test results. (See Definitions (1)). § 40:1300.16.

(3) Blood and tissue banks shall test donations for HIV. Donations which test positive may be used only for research purposes. Test results shall be released to the subject, the subject's physician, those whose job it is to ascertain the medical acceptability of the anatomical gift, those who handle the body of a decedent, or the relevant state agencies for the limited purpose of statistical summary and analysis. §§ 40:1299.141 to 143. This part does not apply in emergency situations where screened blood or tissue is not available, § 40:1299.144, or to autologous donations for reimplantation into the original donor, § 40:1299.147. Violation of this provision may result in a fine. § 40:1299.145.

(4) Should a physician or other medical, police, or emergency employee be exposed, by Centers for Disease Control (CDC) exposure guidelines or standards determined by a hospital infection control committee, to blood or bodily fluid so as to create a risk of HIV infection, the patient's blood may be tested without consent. Test results are confidential, excluded from the patient's medical record, and given

[LOUISIANA]

only to the exposed person. If test result is positive, the patient shall be the informed and provided follow up testing and counseling according to accepted standards of care. § 40:1299.40.

(5) State licensing boards shall establish requirements based on CDC guidelines to protect the public from HIV. They shall also establish procedures for licensees to report carrier status, and such status reports shall be confidential and exempt from the public records except for investigation or prosecution of alleged violations of this law by the relevant health board. § 37:1747.

(6) If, while treating or transporting an ill or injured patient to a hospital, an emergency medical technician, paramedic, firefighter, police officer, or other person who is employed by or voluntarily working with a firm, agency, or organization which provides emergency treatment or transportation comes into direct contact with a patient who is subsequently diagnosed as being infected with HIV, the hospital receiving the patient shall notify the appropriate firm, agency, or organization which shall notify its emergency worker or other person treating or transporting the patient of the individual's exposure to the infectious disease within forty-eight hours of confirmation of the patient's diagnosis and shall advise same of the appropriate treatment, if any. Notification shall be made in a manner that protects the confidentiality of the patient and the emergency medical worker. § 40:1099.

(7) A physician who admits a patient to a hospital or nursing home and who has actual knowledge that a patient is infected with HIV shall notify the hospital or nursing home of this condition. If a patient is transferred from a hospital or nursing home to another hospital or nursing home, and the transferor has actual knowledge that the patient is infected with HIV, the transferor must inform the transferee of the patient's condition. The hospital or nursing home must notify all health care providers involved in the treatment of that patient of the patient's condition. § 40:1099.

(8) Students in the health care professions and volunteers in health care institutions who are HIV positive shall be required to have a chest X-ray in addition to the TB skin test. Such persons with TB shall not be denied access to such learning experience provided the infection is not communicable. § 40:4.

(9) All patients who are HIV positive and receiving treatment for such shall be screened for TB in a communicable state. § 40:4.

(10) Persons convicted of a sexual offense shall submit to testing for sexually transmitted diseases (STDs), including HIV, with notification of positive test results to the Department of Public Safety and Corrections, and either result, positive or negative, to the victim. If the offender tests HIV positive, the victim shall be offered HIV testing, counseling, and referral to appropriate health care and support services. § 15:535. These same provisions apply to a juvenile who is adjudicated a delinquent for a sexual offense. La. Children's Code art. 908.1.

(11) A person indicted for a sexual offense shall be tested for HIV infection (among other STDs) at the direction of the court. The results are to be reported to the court, to the victim, and to health authorities, as provided by law. Such testing and the results of such testing shall not be used by the state in any criminal proceeding for the alleged offense. La. Code Crim. Proc. art. 499.

MISCELLANEOUS

(1) The coroner shall investigate the cause and manner of death of cases involving deaths due to virulent contagious disease that might be caused by, or cause, a public hazard, including AIDS. § 33:1563.

(2) The Department of Health and Hospitals shall form the Louisiana Commission on HIV and AIDS to serve as advisory board on HIV and AIDS-related matters. § 40:2018.1.

MAINE

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

DEFINITIONS

(1) “Antibody to HIV,” “health care provider,” “HIV,” “HIV antigen,” “HIV infection,” “HIV test,” “informed consent,” “seropositivity,” and “viral positivity” are defined at 5, § 19201.

(2) “Community-based AIDS organization” and “fiscal agent” are defined at 5, § 19251.

(3) “Convicted offender,” “incapacitated adult,” and “sexual crime” are defined at 5, § 19203-F.

(4) “Pretest counseling” and “post-test counseling” are defined at 5, § 19204-A.

CRIMINAL LAW

Social & Medical Services (2)

Testing & Reporting (1), (2), (4), (6)

EDUCATION

Social & Medical Services (1), (2)

EMPLOYMENT

(1) An employee or applicant for employment may not be required to submit to an HIV test as a condition of employment or to maintain employment, except when based on a bona fide occupational qualification. The employment status of any employee may not be affected or changed: if the employee declines to be tested for HIV; if the employee testifies or assists in any proceeding under this chapter; if the employee asserts any rights exercised in good faith pursuant to the statutory provisions relating to medical conditions; or because of the result of any test taken pursuant to the statutory provisions relating to medical conditions. 5, § 19204-B.

Insurance (2)

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

[MAINE]

HOUSING

Social & Medical Services (2)

INSURANCE

(1) It shall be an unfair trade practice in the business of insurance for any insurer to discriminate against any person who has tested positive for HIV or who has AIDS. An insurer may, however, treat individuals of different classes or life expectancy differently. It shall not be unfair discrimination for group life insurance policies or contracts to contain an exclusion or restriction for death caused by AIDS or HIV-related diseases which existed six months prior to the individual's effective date of insurance if an actuarial justification is filed and approved. 24-A, § 2159.

(2) A policy of employee benefit excess insurance may not discriminate unfairly among or against beneficiaries of the underlying benefit plan, or treat HIV-related conditions more restrictively than other sicknesses or disabling conditions. 24-A, § 2452.

(3) The following may not exclude coverage for AIDS or HIV-related deaths or provide more restrictive coverage for deaths resulting from AIDS or HIV-related diseases than for deaths resulting from any other disease or sickness: individual or group life insurance policies; individual, family, or group health insurance policies; certificates which do not provide benefits for specific diseases or accidental injuries only; and other policies, contracts, or certificates issued in this state. 24-A, §§ 2526-A, 2629, 2750, 2846, 4121-A, 4229.

(4) No life benefit certificate containing any provision providing more restrictive coverage or excluding coverage for death resulting from AIDS or HIV-related diseases may be delivered or issued for delivery in this state. This shall not apply to death by accidental means. 24-A, § 4120.

(5) No nonprofit hospital or medical services organization or nonprofit health care plan may request any person to reveal whether the person has been tested for HIV or the results of such tests taken prior to an application for coverage. 24, § 2332-B.

(6) No insurer, nonprofit hospital or medical services organization, nonprofit health care plan, or health maintenance

organization may request any person to reveal whether the person has been tested for HIV or to reveal the results of such tests taken prior to an application for insurance coverage. 5, § 19204-C.

Social & Medical Services (4)

Testing & Reporting (2)

RESEARCH

Testing & Reporting (1), (5)

SOCIAL & MEDICAL SERVICES

(1) The Maine HIV Advisory Committee shall advise all departments and agencies of the State on: prevention of and education related to HIV; crises that might develop related to HIV; services to persons with HIV; services for families and other persons providing care and support to persons with HIV; HIV-related policy, planning, rules, or legislation; and all fiscal matters related to HIV. 5, § 19202.

(2) It is a policy of the state to provide the services of the Departments of Education, Mental Health and Retardation, Human Services, Corrections, and other departments and agencies to people with AIDS or HIV. A person designated by the Commissioner of Human Services shall insure coordination of new and existing services so as to meet the needs of people with AIDS or HIV (see Definitions (1)). A client support services system shall be developed to assist individuals infected with HIV and to ensure that they receive necessary services. The client support service, arranged by the staff of community-based agencies, shall include assisting the individual with obtaining access to necessary health care, social services, housing, transportation, counseling, and income maintenance services. The client support services system shall be directed by the Department of Human Services. 5, § 19205.

(3) The Department of Human Services, Bureau of Health may make grants to community-based AIDS organizations (see Definitions (2)) or fiscal agents (see Definitions (2)) for the purpose of maintaining a statewide network of volunteer organizations that are members of a statewide AIDS alliance and supporting the work of those organizations. 5, §§ 19252, 19253, 19254.

(4) No individual or group hospital, medical, or health care service contract, other than a contract that provides benefits for specific diseases or accidental injuries only, may exclude coverage for or provide more restrictive coverage for AIDS or HIV-related diseases. 24, § 2332-B.

Insurance (5), (6)

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

TESTING & REPORTING

(1) No person may disclose the results of an HIV test except: to the subject of the test; to a health care provider designated by the subject of the test in writing; to a person or persons authorized in writing by the test subject; to an anonymous testing site; to employees or designees of the Department of Corrections, the Department of Human Services, and the Department of Mental Health and Retardation, to the extent that those employees are responsible for the treatment or care of a test subject; to the Bureau of Health; as part of a medical record when release or disclosure of that record is authorized in writing by the patient; to a person authorized by a court order to receive test results following an accidental exposure; or to a victim-witness advocate authorized to receive test results of a person convicted of gross sexual assault. When a patient has authorized disclosure of HIV test results to a health care provider (see Definitions (1)), the patient's health care provider may make these results available only to other health care providers working directly with the patient and only for the purpose of providing direct medical or dental patient care. A health care provider who procures, processes, distributes, or uses a donated human body part may, without obtaining informed consent (see Definitions (1)) to the testing, perform an HIV test in order to assure medical acceptability of the gift. Testing for this purpose does not require pretest and post-test counseling (see Definition (4)). The Department of Human Services, a laboratory certified by the Department of Human Services, or a health care provider, blood bank, blood center, or plasma center may, for the purpose of research, test any body fluids or tissues for HIV without first obtaining informed consent to the testing if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher. 5, § 19203.

(2) No person may perform an HIV test without first obtaining the written informed consent of the person to be tested. Informed consent is not required for repeated HIV testing by health care providers to monitor the course of established infection. Anonymous test sites are exempt from the requirement that the informed consent be in writing. Pretest and post-test counseling must be provided by the person or organization requesting the test. No health care provider may deny any person medical treatment or care solely for refusal to give consent for an HIV test. No health care provider may request a person's written consent to an HIV test as a precondition to the provision of health care. Nothing in this section may prohibit a health care provider from recommending an HIV test for diagnostic or treatment purposes. No physician or other health care provider may be civilly liable for failing to have an HIV test performed for diagnostic or treatment purposes if the test was recommended and refused in writing by the patient. Consent need not be obtained when a bona fide occupational exposure creates a significant risk of infection provided that a court order has been obtained authorizing HIV testing. The fact that an HIV test was given as a result of an occupational exposure and the result of that test may not appear in any records of the person whose blood or body fluid is the source of the exposure. Pretest and post-test counseling must be offered, but the subject of the test may choose not to be informed about the result of the test. Consent need not be obtained when a court order has been issued authorizing the testing (see Testing & Reporting (6)). The fact that an HIV test was given as a result of the exposure and the results of that test may not appear in the convicted offender's (see Definitions (3)) medical record. Counseling on risk reduction must be offered, but the convicted offender may choose not to be informed about the result of the test unless the court has ordered that the convicted offender be informed of the result. 5, § 19203-A.

(3) Any person who experiences a bona fide occupational exposure may petition the District Court with jurisdiction over the facility or other place where the exposure occurred to require the person whose blood or body fluid is the source of the exposure to submit to an HIV test provided that the following conditions are met: the exposure to blood or body fluids creates a significant risk of HIV infection; the authorized representative of the employer of the person exposed has informed the person who is the source of the exposure of such petition and has sought

to obtain written informed consent from the person; and written informed consent was not given by the person who is the source of the exposure and that person has refused to be tested. The court may not order a person who is the source of an occupational exposure to obtain an HIV test unless the employee exposed to the blood or body fluids of that person has consented to and obtained an HIV test immediately following the documented exposure. The employer of the person exposed is responsible for the petitioner's reasonable costs related to the HIV test sought, including attorney's fees. 5, § 19203-C.

(4) When a medical entry is made concerning information of a person's HIV infection status, including the results of an HIV test, the subject of the HIV test shall elect, in writing, whether to authorize the release of that portion of the medical record containing the HIV infection status information when that person's medical record has been requested. A new election may be made when a change in the person's HIV infection status occurs. The person must be advised of the potential implications of authorizing the release of that information. When release has not been authorized, the custodian of the medical record may, upon request, release that portion of the medical record that does not contain the HIV infection status information. Medical records containing results of an HIV test may not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceedings without the consent of the subject of the HIV test, except in proceedings held pursuant to the Communicable Disease Law, the Adult Protective Services Act, child protection laws, mental health laws, or pursuant to a court order upon a showing of good cause, provided that the court order limits the use and disclosure of records and provides sanctions for misuse of records or sets forth other methods for ensuring confidentiality. 5, § 19203-D.

(5) Medical records containing HIV infection status information may be reviewed by utilization review committees or peer review organizations. Qualified personnel conducting scientific research, management audits, financial audits, or program evaluation with the use of medical records may not identify any individual in any report of such research, audit, or evaluation. Health care providers and others with access to medical records containing HIV infection status information shall have a written policy providing for confidentiality of all patient information relating to HIV infection status. That policy shall require, at

[MAINE]

a minimum, action consistent with disciplinary procedures for violation of the confidentiality policy. 5, § 19203-D.

(6) A person who is the victim of a sexual crime (see Definitions (3)), or that person's parent, legal guardian, or authorized representative, may petition the court at any time prior to sentencing or no later than 180 days after conviction to order the convicted offender to be tested for HIV and to order the offender to be informed of the test results. The health care facility in which the convicted offender is tested shall disclose the results of the test to the victim-witness advocate, who shall disclose the result to the victim only after the victim has received counseling. All tests conducted pursuant to this section must be accompanied by pretest and post-test counseling. 5, §§ 19203-F, 19204-A.

(7) Persons who are the subjects of HIV tests must be offered pretest and post-test counseling. Persons offered counseling may decline the offer by signing a waiver stating that counseling has been offered and is being declined. 5, § 19204-A.

(8) The Department of Human Services may designate or establish certification and approval standards for and support anonymous testing sites. 5, § 19203-B.

Employment (1)

Insurance (1), (5), (6)

MISCELLANEOUS