

LC01630/SUB A

# STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

A N A C T

RELATING TO CRIMINAL OFFENSES

Introduced By: Senator C Levesque

Date Introduced: February 14, 2006

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 11-34-10 of the General Laws in Chapter 11-34 entitled  
2 "Prostitution and Lewdness" is hereby amended to read as follows:  
3           **11-34-10. Human Immunodeficiency Virus (HIV).** -- (a) Any person convicted of a  
4 violation of any provisions of this chapter shall be required to be tested for Human  
5 Immunodeficiency Virus (HIV). No consent for the testing shall be required.

6           (b) ~~The department of health shall be responsible for reasonable costs associated with~~  
7 ~~performing and reporting the results of the HIV tests, including the costs of pretest and post test~~  
8 ~~counseling.~~ The department of health shall maintain sites for providing both anonymous and  
9 confidential HIV testing, and HIV counseling and referral. Each site, funded by the department of  
10 health, shall offer free testing, counseling and referral for indigent parties and other individuals  
11 without health insurance, offer a sliding scale for payment for all other individuals and, in the  
12 case of confidential testing, screen for ability to pay through a third-party insurer. In the case of  
13 nonfunded sites for HIV testing, organizations and/or institutions performing the test shall offer  
14 free testing, counseling and referral for indigent parties and other individuals without health  
15 insurance.

16           (c) All persons tested under this section shall be provided ~~pretest~~ pre-test and post-test  
17 counseling by individuals trained by the department of health, as an HIV testing counselor, in  
18 accordance with regulations ~~adopted~~ promulgated by the department of health; ~~provided, that the~~  
19 ~~counseling shall be in accordance with acceptable medical standards.~~

(d) All persons who are tested under this section, who are determined to be ~~intravenous drug abusers~~, injecting drug users, shall be referred to appropriate sources of ~~drug~~ substance abuse treatment by the ~~department of health~~ HIV testing counselor and/or the attending practitioner as follows:

(1) Those persons who test positive for HIV infection shall be given priority for those outpatient substance abuse treatment programs ~~which that~~ are sponsored or supported by the ~~department of health~~ appropriate state agency responsible for these services.

(2) Those persons who are injecting drug users and test negative for HIV infection shall be referred, by the HIV testing counselor and/or attending practitioner, to the appropriate ~~division~~ state agency responsible for these services ~~in the department of health~~ for earliest possible evaluation and treatment.

SECTION 2. Section 21-28-4.20 of the General Laws in Chapter 21-28 entitled "Uniform Controlled Substances Act" is hereby amended to read as follows:

**21-28-4.20. Human Immunodeficiency Virus (HIV) -- Testing.** -- (a) Any person convicted of possession of any controlled substance that has been administered with a hypodermic instrument ~~associated with intravenous drug use~~, retractable hypodermic syringe, needle, or any similar instrument adapted for the administration of drugs shall be required to be tested for human immunodeficiency virus (HIV). No consent for the testing shall be required.

(b) ~~The department of health shall be responsible for reasonable costs associated with performing and reporting the results of the HIV tests, including the costs of pre-test and post-test counseling.~~ The department of health shall maintain sites for providing both anonymous and confidential HIV testing, and HIV counseling and referral. Each site, funded by the department of health, shall offer free testing, counseling and referral for indigent parties and other individuals without health insurance, offer a sliding scale for payment for all other individuals and, in the case of confidential testing, screen for ability to pay through a third-party insurer. In the case of nonfunded sites for HIV testing, organizations and/or institutions performing the test shall offer free testing, counseling and referral for indigent parties and other individuals without health insurance.

(c) All persons tested under this section shall be provided pre-test and post-test counseling by individuals trained by the department of health in accordance with regulations ~~adopted promulgated~~ by the department of health; ~~provided, that this counseling shall be in accordance with acceptable medical standards.~~

(d) All persons who are tested under this section, who are ~~determined to be intravenous drug abusers~~, convicted of possession of any controlled substance that has been administered with

1 a hypodermic instrument, retractable hypodermic syringe, needle, or any similar instrument  
2 adopted for the administration of drugs shall be referred by the HIV testing counselor and/or  
3 attending practitioner to appropriate sources of drug treatment by the department of health as  
4 follows:

5 (1) Those persons who test positive for HIV infection shall be given priority for those  
6 outpatient treatment programs which are ~~sponsored or~~ supported by ~~the department of health~~ a  
7 state agency;

8 (2) Those persons who test negative for HIV infection shall be referred to the appropriate  
9 division in the department of health for earliest possible evaluation and treatment.

10 SECTION 3. Sections 23-6-11, 23-6-12, 23-6-14, 23-6-17, 23-6-18, 23-6-20, 23-6-25 and  
11 23-6-26 of the General Laws in Chapter 23-6 entitled "Prevention and Suppression of Contagious  
12 Diseases" are hereby amended to read as follows:

13 **23-6-11. Definitions.** -- As used in sections 23-6-10 -- 23-6-24:

14 (1) "AIDS" means the medical condition known as acquired immune deficiency  
15 syndrome, caused by infection of an individual by the human immunodeficiency virus (HIV).

16 ~~(2) (i) "Exposure evaluation group" means three (3) impartial health care providers~~  
17 ~~designated to determine if a health care provider has been involved in a significant exposure. No~~  
18 ~~member of the group shall be directly involved in the exposure.~~

19 ~~(ii) For inpatient services in a licensed health care facility hospital setting the group shall~~  
20 ~~consist of the patient's attending physician or designee, the chief of service or designee and a staff~~  
21 ~~nurse. For other non inpatient exposures in a licensed health care facility, the third member of the~~  
22 ~~exposure evaluation group shall be a representative from the employee health office. If the~~  
23 ~~exposure involves the attending physician, another physician shall be designated by the chief of~~  
24 ~~service.~~

25 ~~(iii) In any other licensed health care facility or in a private office of a physician the~~  
26 ~~group shall consist of three (3) physicians.~~

27 ~~(3)~~ (2) "HIV" means the human immunodeficiency virus, the pathogenic organism  
28 responsible for the acquired immunodeficiency syndrome (AIDS).

29 ~~(4)~~ (3) ~~"HIV informed~~ "Informed consent form" means a standardized form provided by  
30 the Rhode Island department of health to those individuals offered HIV testing. The form shall be  
31 developed by the department and shall contain the following information:

32 (i) The public health rationale for HIV testing and information describing the nature of  
33 the HIV disease;

34 (ii) The availability and cost of HIV testing and counseling;

1 (iii) That test results are confidential with certain exceptions;

2 (iv) A list of exceptions to confidentiality of test results;

3 (v) That the test is voluntary and that an informed consent form must be signed before

4 testing;

5 (vi) That by signing this form the person is only acknowledging that the ~~AIDS~~ HIV test

6 and counseling have been offered and/or that he or she has declined (opt-out) the offer to be

7 tested- ; and

8 (vii) Notwithstanding the provisions of subsections (v) and (vi) above, in the event an

9 individual consents to anonymous testing, the HIV testing counselor and/or attending practitioner

10 ordering the test shall receive only verbal confirmation from the client that the client understands

11 all applicable information contained within the informed consent form.

12 ~~(5)~~ (4) "HIV test" means any currently medically accepted diagnostic test for

13 determining infection of an individual by HIV.

14 ~~(6)~~ (5) "Person" means any individual, firm, partnership, corporation, company,

15 association, or joint stock association, state or political subdivision or instrumentality of a state.

16 ~~(7)~~ (6) "Physician" means a person licensed to practice allopathic or osteopathic

17 medicine pursuant to the provisions of chapter 37 of title 5.

18 ~~(8)~~ (7) "Services" means health care and social support services.

19 (8) "Occupational health representative" is an individual, within a health care facility,

20 trained to respond to occupational, particularly blood borne, exposures.

21 **23-6-12. Testing.** – (a) Recommendations regarding HIV testing shall reference the most

22 current guidelines issued by the Centers for Disease Control and Prevention (CDC) pertaining to

23 HIV Counseling, Testing and Referral of Adults, Adolescents and Pregnant Women; provided,

24 however, those guidelines shall be interpreted by the department of health so as to best serve the

25 clients and patients seeking HIV testing, and shall in no event be interpreted or implemented in a

26 manner inconsistent with the minimum informed consent standards of this Title or other

27 protections of state law. The recommendations shall emphasize that: (1) HIV screening is

28 recommended in all health care settings, after the patient is informed, in accordance with this

29 chapter's informed consent standards, that HIV testing will be done unless the patient declines;

30 (2) persons at high- risk for HIV infection should be screened for HIV at least annually, in

31 accordance with this chapter's informed consent standards; and (3) only verbal informed consent

32 is required for anonymous testing.

33 (b) Unless otherwise excepted by the provisions of this chapter, no person may be tested

34 for the presence of HIV where the test result can be identified with a specific individual, unless he

1 or she has given his or her informed consent by his or her signature or that of a parent, guardian,  
2 or agent on a written informed consent form specifically relating to the test after discussion of  
3 implications of the test with a qualified professional. A physician or health care provider  
4 attending to any person who may be at risk for HIV infection shall routinely offer the HIV test to  
5 those patients. All testing pursuant to this section shall be performed in accordance with sections  
6 23-6-17 (confidentiality) and 23-6-18 (protection of the medical record) and this chapter's  
7 informed consent standards.

8 (c) In the event an individual consents to anonymous testing and tests positive for HIV,  
9 the HIV testing counselor shall discuss with the client options regarding referrals and reporting of  
10 this positive screening, including the necessity of accessing a physician.

11 (d) In addition to, and separate from, the requirement of subdivision 23-6-26(b)(4), all  
12 CD4 T-lymphocyte test results and all viral load detection test results, detectable and  
13 nondetectable, shall be reported to the department of health through a department designed  
14 reporting system that uses a nonnamed based code and contains no patient identifying  
15 information. These reports may be used by the department to improve the clinical progress of  
16 patients through contact with their physicians, and to use the aggregate information collected to  
17 develop and improve prevention programs and create better access to care.

18 **23-6-14. Exceptions.** -- ~~Notwithstanding the provisions of sections 23-6-12 and 23-6-13,~~  
19 ~~a~~ A physician or other health care provider acting within the scope of his/her practice may ~~draw~~  
20 ~~blood and~~ secure a test sample for the presence of HIV without ~~informed~~ consent under the  
21 following conditions:

22 (1) When the person to be tested is under one year of age;

23 (2) When the person to be tested is between one and thirteen (13) years of age and  
24 appears to be symptomatic for HIV;

25 (3) When the person to be tested is a minor under the care and authority of the  
26 department of children, youth, and families, and the director of that department certifies that an  
27 HIV test is necessary to secure health or human services for that person;

28 (4) When a person (the complainant) can document significant exposure to blood or  
29 other bodily fluids of another person (the individual to be tested), during the performance of the  
30 complainant's occupation, providing:

31 (i) The complainant completes an incident report within forty-eight (48) hours of the  
32 exposure, identifying the parties to the exposure, witnesses, time, place, and nature of the event;

33 (ii) The complainant submits to a baseline HIV test and is negative on that test for the  
34 presence of HIV, within seventy-two (72) hours of the exposure; ~~and~~

(iii) There has been a significant percutaneous or mucus membrane exposure, i.e., needlestick, bite, splash over open wound, broken skin, or mucus membrane, by blood or bodily fluids of the person to be tested of a type and in sufficient concentration to permit transmission of HIV if present in those fluids- ; and

(iv) If a sample of the patient's blood is not otherwise available and the patient refuses to grant informed consent, then the complainant may petition the superior court for a court order mandating that the test be performed.

(5) (i) In a licensed health care facility or in the private office of a physician in the event that an occupational health representative or physician, registered nurse practitioner, physician assistant, or nurse-midwife not directly involved in the exposure ~~evaluation group, as defined in section 23-6-11(2),~~ determines that a health care provider, other than one in a supervisory position to the person making the determination had ~~has~~ a significant exposure to the blood and/or body fluids of a patient and the patient or the patient's guardian refuses to grant ~~informed~~ consent for an HIV test to determine whether the patient has HIV, then, if a sample of the patient's blood is available, that blood shall be tested for HIV.

(ii) If a sample of the patient's blood is not otherwise available and the patient refuses to grant informed consent, then the health care worker may petition the superior court for a court order mandating that the test be performed.

(iii) Before a patient or a sample of the patient's blood is required to undergo an HIV test, the health care provider must submit to a baseline HIV test within seventy-two (72) hours of the exposure.

(iv) No ~~member of the exposure evaluation group~~ person who determines that a health care worker has sustained a significant exposure and authorizes the HIV testing of a patient, nor any person or health care facility who ~~relies~~ acts in good faith ~~on the group's determination~~ and recommends ~~performs~~ the test be performed, shall have any liability as a result of their actions carried out under this chapter, unless those persons are proven to have ~~act~~ acted in bad faith.

(6) In an emergency, where due to a grave medical or psychiatric condition, it is impossible to obtain consent from the patient or the patient's parent, guardian, or agent.

(7) As permitted under sections 23-18.6-12 (organ transplant), 23-1-38 (sperm donation) and 23-8-1.1 (person under eighteen (18) years may give consent for testing for communicable diseases).

(8) Mandatory testing for human immunodeficiency virus (HIV) conducted pursuant to sections 42-56-37 (testing at ACD), 11-34-10 (prostitution) , and 21-28-4.20 (IDU and needles).

**23-6-17. Confidentiality.** – (a) It is unlawful for any person to disclose to a third party

1 the results of an individual's HIV test without the prior written consent of that individual, or in the  
2 case of a minor, the minor's parent, guardian, or agent, on a form that specifically states that HIV  
3 test results may be released, except:

4 (1) A licensed laboratory or other health care facility which performs HIV tests shall  
5 report test results to a patient's licensed physician or other medical personnel who requested the  
6 test, and to the director of the department of health, pursuant to rules and regulations adopted for  
7 that purpose.

8 (2) A physician:

9 (i) May enter HIV test results in the medical record, as would be the case with any other  
10 diagnostic test;

11 (ii) May notify other health professionals directly involved in the care of the individual  
12 testing positive on the HIV test, or to whom that individual is referred for treatment;

13 (iii) May notify persons exposed to blood or other body fluids of an individual who tests  
14 positive for HIV, pursuant to section 23-6-14(4) through (8) [\(exceptions\)](#) and section 23-17-31  
15 [\(testing of hospitalized patients\)](#);

16 (iv) May notify the director of the department of children, youth, and families, pursuant  
17 to section 23-6-14(3) [\(testing of a minor to secure services\)](#); and

18 (v) May inform third parties with whom an HIV-infected patient is in close and  
19 continuous [exposure related](#) contact, including but not limited to a spouse [and/or partner](#), if the  
20 nature of the contact, in the physician's opinion, poses a clear and present danger of HIV  
21 transmission to the third party, and if the physician has reason to believe that the patient, despite  
22 the physician's strong encouragement, has not and will not ~~warn~~ [inform](#) the third party [that they](#)  
23 [may have been exposed to HIV](#); ~~the procedure to be followed by the physician shall be~~  
24 ~~established by the director of the department of health~~;

25 (3) As permitted in subsections (b)(1), (2), (5), (6), (8), (9), (10), (11), (12), (13), (14),  
26 and (15) of section 5-37.3-4 [\(confidentiality of health care information\)](#) and section 40.1-5-26  
27 [\(disclosure of confidential information under mental health law\)](#), or as otherwise required by law.

28 (4) By a health care provider to appropriate persons entitled to receive notification of  
29 persons with infectious or communicable diseases pursuant to sections 23-5-9 [\(report of](#)  
30 [infectious disease upon death\)](#) and 23-28.36-3 [\(notification to EMT, firefighter, police officer of](#)  
31 [infectious disease\)](#).

32 [\(b\) Facilities and other health care providers subject to this section will have](#)  
33 [documentation that each person with access to any confidential information understands and](#)  
34 [acknowledges that the information may not be disclosed except as provided herein. The director](#)

1 shall establish protocols for collecting, maintaining and transferring the information (and  
2 ultimately destroying the information) to insure the integrity of the transfer, and, if possible, the  
3 director may suspend any transfer, even to CDC, if he or she is not confident that the transfer is  
4 secure.

5 **23-6-18. Protection of records.** – (a) Providers of health care, public health officials, and  
6 any other person who maintains records containing information on HIV test results of individuals  
7 are responsible for maintaining full confidentiality of these data, as provided in section 23-6-17,  
8 and shall take appropriate steps for their protection, including:

9 (1) Keeping records secure at all times and establishing adequate confidentiality  
10 safeguards for any records electronically stored;

11 (2) Establishing and enforcing reasonable rules limiting access to these records; and

12 (3) Training persons who handle records in security objectives and technique.

13 (b) The department shall evaluate reports of HIV/AIDS for completeness and potential  
14 referrals for service. All case reports shall be kept in a confidential and secure setting. An  
15 HIV/AIDS policy and protocol for security shall be developed and implemented by the  
16 department for this purpose.

17 (1) The department shall evaluate its procedures for HIV/AIDS reporting on a  
18 continuous basis for timeliness, completeness of reporting, and security of confidential  
19 information.

20 (2) The department's protocol shall be in accordance with the recommendations of the  
21 December 10, 1999 Morbidity and Mortality Weekly Report Recommendations and Reports,  
22 "CDC Guidelines for National Human Immunodeficiency Virus Case Surveillance, including  
23 monitoring for Human Immunodeficiency Virus infection and Acquired Immunodeficiency  
24 Syndrome" document, or its successor document, that pertains to patient records and  
25 confidentiality; provided, however, that in no event shall the protocol be less protective than that  
26 required by state law.

27 (3) All reports and notifications made pursuant to this section shall be confidential and  
28 protected from release except under the provisions of this law. Any person aggrieved by a  
29 violation of this section shall have a right of action in the superior court and may recover for each  
30 violation:

31 (i) Against any person who negligently violates a provision of this section, damages of  
32 one thousand dollars (\$1,000) or actual damages, whichever is greater.

33 (ii) Against any person who intentionally or recklessly violates a provision of this section,  
34 damages of five thousand dollars (\$5,000) or actual damages, whichever is greater.



- 1           (iii) Reasonable attorneys' fees;  
2           (iv) Such other relief, including an injunction, as the court may deem appropriate; and  
3           (v) Any action under this section is barred unless the action is commenced within three  
4           (3) years after the cause of action accrues. A cause of action shall accrue when the injured party  
5           becomes aware of an unauthorized disclosure.

6           **23-6-20. Notification of disclosure.** -- In all cases when an individual's HIV test results  
7           are disclosed to a third party, other than a person involved in the care and treatment of the  
8           individual, and except as permitted ~~in~~ by subsections (1), (2)(i), (2)(ii), (2)(iv), ~~and~~ or (4) of  
9           section 23-6-17 (permitted disclosures re: confidentiality), and permitted by and disclosed in  
10          accordance with the federal health insurance portability and accountability act of 1996 (Public  
11          law 104-191) enacted on August 21, 1996, the person so disclosing shall make reasonable efforts  
12          to inform that individual in advance of:

- 13               (1) The nature and purpose of the disclosure;  
14               (2) The date of disclosure;  
15               (3) The recipient of the disclosed information.

16          **23-6-25. Alternative test sites.** -- ~~The department of health shall maintain alternative~~  
17          ~~sites for providing free, voluntary, anonymous HIV testing, counseling, and referral on a~~  
18          ~~continuing basis and at sites that may be designated by the director of the department of health.~~  
19          The department of health shall maintain sites for providing both anonymous and confidential HIV  
20          testing, and HIV counseling and referral. Each site, funded by the department of health, shall  
21          offer free testing, counseling and referral for indigent parties and other individuals without health  
22          insurance, offer a sliding scale for payment for all other individuals and, in the case of  
23          confidential testing, screen for ability to pay through a third-party insurer. In the case of  
24          nonfunded sites for HIV testing, organizations and/or institutions performing the test shall offer  
25          free testing, counseling and referral for indigent parties and other individuals without health  
26          insurance.

27          **23-6-26. Laboratory analysis for HIV.** -- (a) HIV/AIDS is regarded to cause significant  
28          morbidity and mortality, can be screened, diagnosed and treated, and is of major public health  
29          concern, such that surveillance of the disease occurrence is in the public interest, and therefore  
30          shall be designated as notifiable and reportable by name.

31               (b) Under this provision the following shall be reported:

32                   (1) A diagnosis of HIV, according to the U.S. Centers for Disease Control and Prevention  
33                   case definition of HIV.

34                   (2) A diagnosis of AIDS, according to the U.S. Centers for Disease Control and

Prevention case definition of AIDS.

(3) A positive ELIZA result of any HIV test and/or other FDA approved test indicative of the presence of HIV.

(4) CD4 T-lymphocyte test results <200 mg/dl and or fourteen percent (14%).

(5) A perinatal exposure of a newborn to HIV indicated by two positive PCR tests; <18 months; and/or other U.S. Food and Drug Administration approved tests that indicate the presence of HIV in pediatric cases.

(6) Other U.S. Food and Drug Administration approved tests indicative of the presence of HIV/AIDS, as approved by the department.

~~(a)~~ (c) All biological samples or specimens taken from Rhode Island residents for the purpose of performing laboratory analysis for the detection of antibody to human immunodeficiency virus (HIV), by or under the direction or order of any physician licensed to practice medicine in this state, or on order of any duly licensed health care provider shall be sent to the Rhode Island department of health laboratory for analysis. ~~Specimens analyzed for the sole purpose of assuring the safety of the blood supply or for strictly research purposes may be tested for HIV antibody in other licensed laboratories.~~ This provision shall not apply to those HIV tests performed in a hospital laboratory. Hospitals shall forward all positive HIV test results to the department of health. The department of health laboratory shall conduct all confirmatory testing for HIV/AIDS; exceptions, for alternative testing methods, may be granted through written approval by the department of health.

~~(b)~~ (d) ~~No~~ Except in the case of anonymous testing, a physician or laboratory or duly licensed health care provider providing samples or specimens for HIV-testing, or results of HIV tests to the department, shall include the name of the patient. ~~or any other information which would identify the person tested.~~

(e) Any HIV cases reported in the previous code based system, shall remain in a code based data set. The department of health shall only use and require HIV name case reports submitted after the enactment of this law.

SECTION 4. Chapter 23-6 of the General Laws entitled "Prevention and Suppression of Contagious Diseases" is hereby amended by adding thereto the following section:

**23-6-27. Reporting of HIV/AIDS and perinatal exposure of newborns. – (a) The following persons shall report information required by this section to the department's HIV/AIDS surveillance team:**

(1) a physician/health care provider who diagnoses or treats HIV/AIDS;

(2) The administrator of a health care facility as defined in Rhode Island general laws

chapter 23-17 who diagnoses or treats HIV/AIDS; or

(3) the administrator of a prison in which there is an HIV/AIDS infected person or perinatal exposure to HIV/AIDS.

Reports provided under this section shall specify the infected person's name, as well as all information required on the official department HIV Case Report Form.

(b) Any high managerial agent who is responsible for the administration of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields serological, or other evidence of HIV/AIDS, including perinatal exposure to HIV/AIDS shall notify the department in a timely manner as stipulated in the rules promulgated by the department. Reports provided under this section shall specify the name as well as all information indicated on the official department HIV Case Report Form.

(c) Reports as required by this section shall only be made if confirmed with a Western Blot or other FDA approved confirmatory test.

(1) All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report HIV/AIDS consistent with this section.

(2) Any laboratory that processes specimens shall permit the department to examine the records of said laboratory, facility, or office in order to evaluate compliance with this section.

(d) Perinatal HIV/AIDS exposure reporting shall be made to the department regardless of confirmatory testing.

(e) Reports required by this section shall be mailed within forty-eight (48) hours of diagnosis or treatment, to the department using a designated envelope that shall be provided by the department's HIV/AIDS Surveillance Team within forty-eight (48) hours of diagnosis or treatment. Any other reporting method shall be approved in advance by the department.

(f) Nothing in this section shall preclude the performance of anonymous HIV/AIDS testing.

SECTION 5. Sections 23-11-17 and 23-11-19 of the General Laws in Chapter 23-11 entitled "Sexually Transmitted Diseases" are hereby amended to read as follows:

**23-11-17. Human immunodeficiency virus (HIV) testing.** -- (a) The physician or health care provider attending any person for a suspected sexually transmitted disease shall offer testing for human immunodeficiency virus (HIV). All testing pursuant to this section shall be performed in accordance with sections 23-6-17 ([confidentiality](#)) and 23-6-18 ([protection of the medical record](#)) and the informed consent standards contained in chapter 6 of title 23. ~~The identity of the individuals tested under this section shall be maintained only at the site where the sample is~~

~~drawn, and shall not be released except as otherwise provided by statute.~~

(b) Each person who ~~is offered~~ elects to be a ~~test~~ tested and ~~counseling~~ counseled shall first be provided with an "informed consent form" as provided by subsection 23-6-11(3), and shall specifically be given the opportunity to decline or opt-out of testing, which he or she shall sign and date in acknowledgment of his/her election to be tested. ~~the offer. The department of health is responsible for costs associated with performing and reporting the results of the HIV tests, including the reasonable costs of pretest and post test counseling. Those reasonable costs shall be negotiated and specified by contract.~~

(b) In the event an individual consents to anonymous testing and tests positive for HIV, the HIV testing counselor shall provide the client an informed consent form as provided by subsection 23-6-11(3). If an individual is tested anonymously and is found positive on the initial screening test or during a post-test consultation, the counselor shall discuss, with the client, options regarding referrals and reporting of this positive screening, including the necessity of accessing a physician. The department of health shall maintain sites for providing both anonymous and confidential HIV testing, and HIV counseling and referral. Each site, funded by the department of health, shall offer free testing, counseling and referral for indigent parties and other individuals without health insurance, offer a sliding scale for payment for all other individuals and, in the case of confidential testing, screen, for ability to pay through a third-party insurer. In the case of nonfunded sites for HIV testing, organizations and/or institutions performing the test shall offer free testing, counseling and referral for indigent parties and other individuals without health insurance.

(c) All persons tested under this section shall be ~~provided pretest and post test counseling~~ counseled and tested in accordance with regulations ~~adopted~~ promulgated by the department of health; ~~provided, however, that the counseling shall be in accordance with acceptable medical standards.~~ , and no test results shall be given by any means (e.g. phone, mail, e-mail, fax, etc.) other than in person.

**23-11-19. Exchange of hypodermic needles and syringes.** -- (a) The director of the department of health shall maintain a program offering the free exchange of new hypodermic needles and syringes for used hypodermic needles and syringes as a means to prevent the transmission of human immunodeficiency virus (HIV) or viral hepatitis among ~~intravenous~~ injecting drug users eighteen (18) years of age or older. Any site used in the program shall be approved by the director of health and shall make available educational materials, HIV counseling and testing, and referral services targeted to the education of HIV/AIDS and viral hepatitis transmission as well as information and referrals pertaining to ~~and drug~~ substance abuse

1 prevention and treatment. ~~Any individual(s) who either administers or participates in the program~~  
2 ~~shall be immune from criminal prosecution for violating the provisions of section 21-28.5-~~  
3 ~~1(a)(11) [deleted] unless the individual(s) is found to have in his or her possession hypodermic~~  
4 ~~needles and syringes that are not a part of the exchange program.~~

5 (b) Any program of needle and syringe exchange must be implemented pursuant to the  
6 provisions of this section and shall incorporate an on-going evaluation plan to determine the  
7 impact of the needle exchange program on the participants and the community in the efforts to  
8 lower the HIV rate among injecting users including successful referrals to substance abuse  
9 treatment.

10 SECTION 6. Section 23-13-19 of the General Laws in Chapter 23-13 entitled "Maternal  
11 and Child Health Services for Children with Special Health Care Needs" is hereby amended to  
12 read as follows:

13 **23-13-19. Human immunodeficiency virus (HIV) testing.** -- (a) ~~Every physician or~~  
14 ~~health care provider attending any person for prenatal care or family planning services shall offer~~  
15 ~~testing for human immunodeficiency virus (HIV) unless deemed inappropriate by the physician.~~  
16 ~~All testing pursuant to this section shall be performed in accordance with sections 23-6-12 and~~  
17 ~~23-6-13. The identity of the individuals tested under this section shall be maintained only at the~~  
18 ~~site where the sample is drawn and shall not be released except as otherwise provided by statute.~~  
19 ~~Each person who is offered a human immunodeficiency virus (HIV) test and counseling shall be~~  
20 ~~provided with an "informed consent form" which he or she shall sign and date in~~  
21 ~~acknowledgment of that offer. The department of health is responsible for reasonable costs~~  
22 ~~associated with performing and reporting the results of the HIV tests including the reasonable~~  
23 ~~costs of pretest and post-test counseling. Those reasonable costs shall be negotiated and specified~~  
24 ~~by contract.~~

25 Every physician or health care provider attending any person for prenatal care or family  
26 planning services shall universally offer HIV screening in these settings so as to promote earlier  
27 detection of HIV with unrecognized or no identified risk factors. HIV should be included in the  
28 routine panel of prenatal tests for all pregnant women. Repeat testing in the third trimester is  
29 recommended if determined by the physician. Each person who is offered testing and counseling  
30 shall first be provided with an "informed consent form" as provided by subsection 23-6-11(3),  
31 which he/she shall sign and date, and shall specifically be given the opportunity to decline or opt-  
32 out of the testing. All testing pursuant to this section shall be performed in accordance with  
33 sections 23-6-12 and 23-6-13.

34 (b) In the event an individual consents to anonymous testing and tests positive for HIV,

the HIV testing counselor shall discuss with the client options regarding referrals and reporting of this positive screening, including the necessity of accessing a physician. The department of health shall maintain sites for providing both anonymous and confidential HIV testing, and HIV counseling and referral. Each site, funded by the department of health, shall offer free testing, counseling and referral for indigent parties and other individuals without health insurance, offer a sliding scale for payment for all other individuals and, in the case of confidential testing, screen for ability to pay through a third-party insurer. In the case of nonfunded sites for HIV testing, organizations and/or institutions performing the test shall offer free testing, counseling and referral for indigent parties and other individuals without health insurance.

~~(b)~~ (c) All persons tested under this section shall be counseled and tested ~~provided~~ ~~pretest and post test counseling~~ in accordance with regulations ~~adopted~~ promulgated by the department of health; ~~provided, however, that the counseling shall be in accordance with acceptable medical standards.~~

SECTION 7. Section 23-17-31.1 of the General Laws in Chapter 23-17 entitled "Licensing of Health Care Facilities" is hereby amended to read as follows:

~~23-17-31.1. Human immunodeficiency virus (HIV) testing --- Facilities for drug abusers.~~ 23-17-31.1. Human immunodeficiency virus (HIV) testing – Facilities for drug users. -- (a)

Every physician or health care provider attending any person for any service offered at a facility for ~~intravenous~~ injecting drug users, shall offer testing for human immunodeficiency virus (HIV) ~~unless deemed inappropriate by the physician.~~ All testing pursuant to this section shall be performed in accordance with sections 23-6-17 (confidentiality) and 23-6-18 (protection of records), except where federal confidentiality laws may supersede. ~~The identity of the individuals tested under this section shall be maintained only at the site where the sample is drawn, and shall not be released except as otherwise provided by the statute.~~

~~(b) Each person who is offered a test and counseling shall be provided with an "AIDS testing and notification form" which he or she shall sign and date in acknowledgement of the offer.~~

Each person tested and counseled shall first be provided an "informed consent form" as provided by subsection 23-6-11(3), which he/she shall sign and date, and shall specifically be given the opportunity to decline or opt-out of the testing.

(c) In the event an individual consents to anonymous testing and tests positive for HIV, the HIV testing counselor shall discuss, with the client, options regarding referrals and reporting of this positive screening, including the necessity of accessing a physician.

~~(e)~~ (d) ~~The department of health shall be responsible for reasonable costs associated with~~

~~performing and reporting the results of the HIV tests, including the costs of pretest and post test~~  
~~counseling. The reasonable costs shall be negotiated and specified by contract.~~ The department  
of health shall maintain sites for providing both anonymous and confidential HIV testing, and  
HIV counseling and referral. Each site, funded by the department of health, shall offer free  
testing, counseling and referral for indigent parties and other individuals without health insurance,  
offer a sliding scale for payment for all other individuals and, in the case of confidential testing,  
screen for ability to pay through a third-party insurer. In the case of nonfunded sites for HIV  
testing, organizations and/or institutions performing the test shall offer free testing, counseling  
and referral for indigent parties and other individuals without health insurance.

~~(d)~~ (e) All persons tested under this section shall be ~~provided pretest and post test~~  
~~counseling~~ counseled and tested in accordance with regulations adopted by the department of  
health. ~~The counseling shall be in accordance with acceptable medical standards.~~

SECTION 8. Sections 23-28.36-2 and 23-28.36-3 of the General Laws in Chapter 23-  
28.36 entitled "Notification of Fire Fighters, Police Officers and Emergency Medical Technicians  
After Exposure to infectious diseases" are hereby amended to read as follows:

**23-28.36-2. Definitions.** -- The following terms when used in this chapter shall have the  
following meanings herein ascribed:

(1) "Contagious disease" means an infectious disease.

(2) "Disability" means a condition of physical incapacity to perform any assigned duty or  
duties in the fire department or emergency medical service.

(3) "Emergency medical technician" means a person licensed pursuant to chapter 4.1 of  
this title to provide emergency medical services.

(4) "Fire department" means service groups (paid or volunteer) that are organized and  
trained for the prevention and control of loss of life and property from fire or other emergency.

(5) "Fire fighter" means an individual who is assigned to fire fighting activity and is  
required to respond to alarms and perform emergency action at the location of a fire, hazardous  
materials, or other emergency incident.

(6) "Infectious disease" means interruption, cessation, or disorder of body functions,  
systems, or organs transmissible by association with the sick or their secretions or excretions,  
excluding the common cold. Infectious disease includes, but is not limited to, human  
immunodeficiency virus (HIV), hepatitis B virus (HBV), and hepatitis C virus (HCV).

(7) "Licensed facility" means a hospital, nursing home, ~~medical clinic~~, dialysis center,  
physician's office operatory, or the like, as may be licensed by the ~~province~~ state to provide  
medical care.



1 (8) "Police officer" means any permanently employed city or town police officer, state  
2 police officer, committing squad member, or other permanent law enforcement officer as defined  
3 in section 12-7-21; provided, however, this shall not include the highest ranking officer of any of  
4 the departments.

5 (9) "Strike force member" means any member of the statewide strike force of the  
6 department of attorney general.

7 **23-28.36-3. Notification of infectious diseases.** -- (a) Notwithstanding the provisions of  
8 sections 40.1-5-26 ([disclosure of confidential information and records under mental health law](#))  
9 and 5-37.3-4 ([confidentiality of health care information](#)), if, while treating, investigating, or  
10 transporting an ill or injured person to a licensed facility, a fire fighter, police officer, strike force  
11 member or emergency medical technician ~~comes into contact with~~ [is occupationally exposed \(e.g.](#)  
12 [blood borne exposure\)](#) to a person who is subsequently diagnosed as having an infectious disease,  
13 [and the exposure is sufficient to create the risk of transmission of the disease](#), the licensed facility  
14 receiving that person shall notify the highest ranking officer of the treating, investigating, or  
15 transporting individual's department of health of the exposure to that person which officer shall  
16 then notify the exposed individual. Further, any city or town police department notified of  
17 infectious diseases pursuant to the provisions of this section shall, within forty-eight (48) hours,  
18 notify any strike force member who was exposed to the infected person.

19 (b) The notification shall be made within forty-eight (48) hours, or sooner, of  
20 confirmation of the patient's diagnosis.

21 (c) The notified employee shall contact the licensed health care facility to determine the  
22 infectious disease to which he or she has been exposed, and to receive the appropriate medical  
23 direction for dealing with the infectious disease.

24 (d) Notification made pursuant to this section shall be conducted in a manner which will  
25 protect the confidentiality of the patient, fire fighter, police officer, or emergency technician.

26 SECTION 9. Section 40.1-24-20 of the General Laws in Chapter 40.1-24 entitled  
27 "Licensing of Facilities and Programs for People who are Mentally Ill and/or Developmentally  
28 Disabled" is hereby amended to read as follows:

29 **40.1-24-20. ~~Human immunodeficiency virus (HIV) testing -- Facilities for drug~~**  
30 **~~abusers.~~ – Human immunodeficiency virus (HIV) testing – Facilities for drug users.** -- (a)  
31 Every physician or health care provider attending any person for any service offered at a facility  
32 for intravenous drug users, shall offer testing for human immunodeficiency virus (HIV) ~~unless~~  
33 ~~deemed inappropriate by the physician~~. All testing pursuant to this section shall be performed in  
34 accordance with sections 23-6-17 ([confidentiality](#)) and 23-6-18 ([protection of medical records](#))



1 and the informed consent standards contained in chapter 6 of title 23, except where federal  
2 confidentiality laws may supercede. ~~The identity of the individuals tested under this section shall~~  
3 ~~be maintained only at the site where the sample is drawn, and shall not be released except as~~  
4 ~~otherwise provided by statute.~~

5 (b) ~~Each person who is offered a test and counseling shall be provided with an "informed~~  
6 ~~consent form" which he or she shall sign and date in acknowledgment of the offer.~~

7 Each person tested and counseled shall first be provided with an "informed consent form"  
8 as provided by subsection 23-6-11(3), which he/she shall sign and date, and shall specifically be  
9 given the opportunity to decline or opt-out of the testing.

10 (c) In the event an individual consents to anonymous testing and tests positive for HIV,  
11 the HIV testing counselor shall discuss with the client options regarding referrals and reporting of  
12 this positive screening, including the necessity of accessing a physician.

13 (d) The department of health shall assist providers with performing and reporting the  
14 results of the HIV tests.

15 (e) ~~(e) The department of health shall be responsible for reasonable costs associated with~~  
16 ~~performing and reporting the results of the HIV tests, including the costs of pretest and post test~~  
17 ~~counseling. The reasonable costs shall be negotiated and specified by contract.~~

18 The department of health shall maintain sites for providing both anonymous and  
19 confidential HIV testing, and HIV counseling and referral. Each site, funded by the department of  
20 health, shall offer free testing, counseling and referral for indigent parties and other individuals  
21 without health insurance, offer a sliding scale for payment for all other individuals and, in the  
22 case of confidential testing, screen for ability to pay through a third-party insurer. In the case of  
23 nonfunded sites for HIV testing, organizations and/or institutions performing the test shall offer  
24 free testing, counseling and referral for indigent parties and other individuals without health  
25 insurance.

26 (f) ~~(d) (f) All persons tested under this section shall be provided pretest and post test~~  
27 ~~counseling~~ counseled and tested in accordance with regulations ~~adopted~~ promulgated by the  
28 department of health. ~~provided, however, that the counseling shall be in accordance with~~  
29 ~~acceptable medical standards.~~

30 SECTION 10. This act shall take effect upon passage.

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LC01630/SUB A  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO CRIMINAL OFFENSES

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- 1           This act would amend several sections relating to Human Immunodeficiency Virus (HIV)  
2   testing and counseling relating to, but not limited to indigent individuals and other individuals  
3   without health insurance coverage.  
4           This act would take effect upon passage.

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LC01630/SUB A

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