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LC01630/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

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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.

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

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

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

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

14 **21-28-4.20. Human Immunodeficiency Virus (HIV) -- Testing.** -- (a) Any person
15 convicted of possession of any controlled substance that has been administered with a
16 hypodermic instrument ~~associated with intravenous drug use,~~ retractable hypodermic syringe,
17 needle, or any similar instrument adapted for the administration of drugs shall be required to be
18 tested for human immunodeficiency virus (HIV). No consent for the testing shall be required.

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

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

33 (d) All persons who are tested under this section, who are ~~determined to be intravenous~~
34 ~~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~~ 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 (opted-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 non-named 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 may ~~draw blood and~~ secure a test sample for the
20 presence of HIV without ~~informed~~ consent under the following conditions:

- 21 (1) When the person to be tested is under one year of age;
- 22 (2) When the person to be tested is between one and thirteen (13) years of age and
23 appears to be symptomatic for HIV;
- 24 (3) When the person to be tested is a minor under the care and authority of the
25 department of children, youth, and families, and the director of that department certifies that an
26 HIV test is necessary to secure health or human services for that person;
- 27 (4) When a person (the complainant) can document significant exposure to blood or
28 other bodily fluids of another person (the individual to be tested), during the performance of the
29 complainant's occupation, providing:
 - 30 (i) The complainant completes an incident report within forty-eight (48) hours of the
31 exposure, identifying the parties to the exposure, witnesses, time, place, and nature of the event;
 - 32 (ii) The complainant submits to a baseline HIV test and is negative on that test for the
33 presence of HIV, within seventy-two (72) hours of the exposure; ~~and~~
 - 34 (iii) There has been a significant percutaneous or mucus membrane exposure, i.e.,

1 needlestick, bite, splash over open wound, broken skin, or mucus membrane, by blood or bodily
2 fluids of the person to be tested of a type and in sufficient concentration to permit transmission of
3 HIV if present in those fluids- ; and

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

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

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

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

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

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

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

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

33 **23-6-17. Confidentiality.** – (a) It is unlawful for any person to disclose to a third party
34 the results of an individual's HIV test without the prior written consent of that individual, or in the

1 case of a minor, the minor's parent, guardian, or agent, on a form that specifically states that HIV
2 test results may be released, except:

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

7 (2) A physician:

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

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

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

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

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

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

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

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

1 ultimately destroying the information) to ensure the integrity of the transfer, and, if possible, the
2 director may suspend any transfer, even to CDC, if he or she is not confident that the transfer is
3 secure.

4 **23-6-18. Protection of records.** – (a) Providers of health care, public health officials, and
5 any other person who maintains records containing information on HIV test results of individuals
6 are responsible for maintaining full confidentiality of these data, as provided in section 23-6-17,
7 and shall take appropriate steps for their protection, including:

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

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

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

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

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

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

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

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

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

34 (iii) Reasonable attorneys' fees;

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

5 **23-6-20. Notification of disclosure.** -- In all cases when an individual's HIV test results
6 are disclosed to a third party, other than a person involved in the care and treatment of the
7 individual, and except as permitted ~~in~~ by subsections (1), (2)(i), (2)(ii), (2)(iv), ~~and~~ or (4) of
8 section 23-6-17 (permitted disclosures re: confidentiality), and permitted by and disclosed in
9 accordance with the federal health insurance portability and accountability act of 1996 (Public
10 law 104-191) enacted on August 21, 1996, and as thereafter amended the person so disclosing
11 shall make reasonable efforts to inform that individual in advance of:

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

15 **23-6-25. Alternative test sites.** -- ~~The department of health shall maintain alternative~~
16 ~~sites for providing free, voluntary, anonymous HIV testing, counseling, and referral on a~~
17 ~~continuing basis and at sites that, may be designated by the director of the department of health.~~
18 The department of health shall maintain sites for providing both anonymous and confidential HIV
19 testing, and HIV counseling and referral. Each site, funded by the department of health, shall
20 offer free testing, counseling and referral for indigent parties and other individuals without health
21 insurance, offer a sliding scale for payment for all other individuals and, in the case of
22 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 **23-6-26. Laboratory analysis for HIV.** -- (a) HIV/AIDS is regarded to cause significant
27 morbidity and mortality, can be screened, diagnosed and treated, and is of major public health
28 concern, such that surveillance of the disease occurrence is in the public interest, and therefore
29 shall be designated as notifiable and reportable by name.

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

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

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

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

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

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

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

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

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

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

27 (f) In addition to, and separate from, the requirement of subdivision 23-6-26(b)(4), all
28 CD4 T-lymphocyte test results and all viral load detection test results, detectable and
29 nondetectable, shall be reported to the department of health through a department designed
30 reporting system that uses a non-name based code and contains no patient identifying
31 information. These reports may be used by the department to improve the clinical progress of
32 patients through contact with their physicians, and to use the aggregate information collected to
33 develop and improve prevention programs and create better access to care."

34 SECTION 4. Chapter 23-6 of the General Laws entitled "Prevention and Suppression of

1 Contagious Diseases" is hereby amended by adding thereto the following section:

2 **23-6-27. Reporting of HIV/AIDS and perinatal exposure of newborns.** – (a) The
3 following persons shall report information required by this section to the department's HIV/AIDS
4 surveillance team:

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

6 (2) The administrator of a health care facility as defined in Rhode Island general laws
7 chapter 23-17 who diagnoses or treats HIV/AIDS; or

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

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

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

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

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

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

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

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

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

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

1 **23-11-17. Human immunodeficiency virus (HIV) testing.** -- (a) The physician or health
2 care provider attending any person for a suspected sexually transmitted disease shall offer testing
3 for human immunodeficiency virus (HIV). All testing pursuant to this section shall be performed
4 in accordance with sections 23-6-17 (confidentiality) and 23-6-18 (protection of the medical
5 record) and the informed consent standards contained in chapter 6 of title 23. ~~The identity of the~~
6 ~~individuals tested under this section shall be maintained only at the site where the sample is~~
7 ~~drawn, and shall not be released except as otherwise provided by statute.~~

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

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

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

33 **23-11-19. Exchange of hypodermic needles and syringes.** -- (a) The director of the
34 department of health shall maintain a program offering the free exchange of new hypodermic

1 needles and syringes for used hypodermic needles and syringes as a means to prevent the
2 transmission of human immunodeficiency virus (HIV) or viral hepatitis among ~~intravenous~~
3 injecting drug users eighteen (18) years of age or older. Any site used in the program shall be
4 approved by the director of health and shall make available educational materials, HIV
5 counseling and testing, and referral services targeted to the education of HIV/AIDS and viral
6 hepatitis transmission as well as information and referrals pertaining to ~~and drug substance~~ abuse
7 prevention and treatment. ~~Any individual(s) who either administers or participates in the program~~
8 ~~shall be immune from criminal prosecution for violating the provisions of section 21-28.5-~~
9 ~~1(a)(11) [deleted] unless the individual(s) is found to have in his or her possession hypodermic~~
10 ~~needles and syringes that are not a part of the exchange program.~~

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

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

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

31 Every physician or health care provider attending any person for prenatal care or family
32 planning services shall universally offer HIV screening in these settings so as to promote earlier
33 detection of HIV with unrecognized or no identified risk factors. HIV should be included in the
34 routine panel of prenatal tests for all pregnant women. Repeat testing in the third trimester is

1 recommended if determined by the physician. Each person who is offered testing and counseling
2 shall first be provided with an "informed consent form" as provided by subsection 23-6-11(3),
3 which he/she shall sign and date, and shall specifically be given the opportunity to decline or opt-
4 out of the testing. All testing pursuant to this section shall be performed in accordance with
5 sections 23-6-12 and 23-6-13.

6 (b) In the event an individual consents to anonymous testing and tests positive for HIV,
7 the HIV testing counselor shall discuss with the client options regarding referrals and reporting of
8 this positive screening, including the necessity of accessing a physician. The department of health
9 shall maintain sites for providing both anonymous and confidential HIV testing, and HIV
10 counseling and referral. Each site, funded by the department of health, shall offer free testing,
11 counseling and referral for indigent parties and other individuals without health insurance, offer a
12 sliding scale for payment for all other individuals and, in the case of confidential testing, screen
13 for ability to pay through a third-party insurer. In the case of nonfunded sites for HIV testing,
14 organizations and/or institutions performing the test shall offer free testing, counseling and
15 referral for indigent parties and other individuals without health insurance.

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

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

22 ~~**23-17-31.1. Human immunodeficiency virus (HIV) testing -- Facilities for drug**~~
23 ~~**abusers. -- Human immunodeficiency virus (HIV) testing -- Facilities for drug users. --**~~ (a)
24 Every physician or health care provider attending any person for any service offered at a facility
25 for ~~intravenous~~ injecting drug users, shall offer testing for human immunodeficiency virus (HIV)
26 ~~unless deemed inappropriate by the physician.~~ All testing pursuant to this section shall be
27 performed in accordance with sections 23-6-17 (confidentiality) and 23-6-18 (protection of
28 records), except where federal confidentiality laws may supersede. ~~The identity of the individuals~~
29 ~~tested under this section shall be maintained only at the site where the sample is drawn, and shall~~
30 ~~not be released except as otherwise provided by the statute.~~

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

34 Each person tested and counseled shall first be provided an "informed consent form" as

1 provided by subsection 23-6-11(3), which he/she shall sign and date, and shall specifically be
2 given the opportunity to decline or opt-out of the testing.

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

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

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

19 SECTION 8. Sections 23-28.36-2 and 23-28.36-3 of the General Laws in Chapter 23-
20 28.36 entitled "Notification of Fire Fighters, Police Officers and Emergency Medical Technicians
21 After Exposure to infectious diseases" are hereby amended to read as follows:

22 **23-28.36-2. Definitions.** -- The following terms when used in this chapter shall have the
23 following meanings herein ascribed:

- 24 (1) "Contagious disease" means an infectious disease.
- 25 (2) "Disability" means a condition of physical incapacity to perform any assigned duty or
26 duties in the fire department or emergency medical service.
- 27 (3) "Emergency medical technician" means a person licensed pursuant to chapter 4.1 of
28 this title to provide emergency medical services.
- 29 (4) "Fire department" means service groups (paid or volunteer) that are organized and
30 trained for the prevention and control of loss of life and property from fire or other emergency.
- 31 (5) "Fire fighter" means an individual who is assigned to fire fighting activity and is
32 required to respond to alarms and perform emergency action at the location of a fire, hazardous
33 materials, or other emergency incident.
- 34 (6) "Infectious disease" means interruption, cessation, or disorder of body functions,

1 systems, or organs transmissible by association with the sick or their secretions or excretions,
2 excluding the common cold. Infectious disease includes, but is not limited to, human
3 immunodeficiency virus (HIV), hepatitis B virus (HBV), and hepatitis C virus (HCV).

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

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

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

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

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

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

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

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

1 ~~40.1-24-20. Human immunodeficiency virus (HIV) testing --- Facilities for drug~~
2 ~~abusers. -- Human immunodeficiency virus (HIV) testing -- Facilities for drug users. --~~ (a)
3 Every physician or health care provider attending any person for any service offered at a facility
4 for intravenous drug users, shall offer testing for human immunodeficiency virus (HIV) ~~unless~~
5 ~~deemed inappropriate by the physician.~~ All testing pursuant to this section shall be performed in
6 accordance with sections 23-6-17 (confidentiality) and 23-6-18 (protection of medical records)
7 and the informed consent standards contained in chapter 6 of title 23, except where federal
8 confidentiality laws may supercede. ~~The identity of the individuals tested under this section shall~~
9 ~~be maintained only at the site where the sample is drawn, and shall not be released except as~~
10 ~~otherwise provided by statute.~~

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

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

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

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

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

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

32 ~~(d) (f) All persons tested under this section shall be provided pretest and post test~~
33 ~~counseling~~ counseled and tested in accordance with regulations ~~adopted~~ promulgated by the
34 department of health. ~~provided, however, that the counseling shall be in accordance with~~

- 1 ~~acceptable medical standards.~~
- 2 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

- 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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