

LC01630

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~~ Depending on available funding, the department of health shall be responsible
7 for reasonable costs associated with performing and reporting the results of the HIV tests,
8 including the costs of pretest and post-test counseling ~~for indigent parties and other individuals~~
9 without health insurance coverage.

10 (c) All persons tested under this section shall be provided ~~pretest~~ pre-test and post-test
11 counseling by individuals trained by the department of health, as an HIV testing counselor, in
12 accordance with regulations ~~adopted~~ promulgated by the department of health; ~~provided, that the~~
13 ~~counseling shall be in accordance with acceptable medical standards.~~ Although physicians are
14 exempt from having to be trained as an HIV counselor they must offer appropriate counselin g,
15 testing and referral services.

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

19 (1) Those persons who test positive for HIV infection shall be given priority for those

1 outpatient substance abuse treatment programs ~~which that~~ are sponsored or supported by the
2 ~~department of health.~~ appropriate state agency responsible for these services.

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

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

9 **21-28-4.20. Human Immunodeficiency Virus (HIV) -- Testing.** -- (a) Any person
10 convicted of possession of any controlled substance that has been administered with a
11 hypodermic instrument ~~associated with intravenous drug use,~~ retractable hypodermic syringe,
12 needle, or any instrument adapted for the administration of drugs shall be required to be tested for
13 human immunodeficiency virus (HIV). No consent for the testing shall be required.

14 (b) ~~The~~ Depending on available funding, the department of health shall be responsible
15 for reasonable costs associated with performing and reporting the results of the HIV tests,
16 including the costs of pre-test and post-test counseling for indigent parties and other individuals
17 without health insurance coverage.

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

22 (d) All persons who are tested under this section, who are ~~determined to be intravenous~~
23 ~~drug abusers,~~ convicted of possession of any controlled substance that has been administered with
24 a hypodermic instrument, retractable hypodermic syringe, needle, or any instrument adopted for
25 the administration of drugs shall be referred by the HIV testing counselor and/or attending
26 practitioner to appropriate sources of drug treatment by the department of health as follows:

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

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

32 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
33 23-6-26 of the General Laws in Chapter 23-6 entitled "Prevention and Suppression of Contagious
34 Diseases" are hereby amended to read as follows:

1 **23-6-11. Definitions.** – As used in sections 23-6-10 -- 23-6-24:

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

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

7 ~~(ii) For inpatient services in a licensed health care facility hospital setting the group shall~~
8 ~~consist of the patient's attending physician or designee, the chief of service or designee and a staff~~
9 ~~nurse. For other non-inpatient exposures in a licensed health care facility, the third member of the~~
10 ~~exposure evaluation group shall be a representative from the employee health office. If the~~
11 ~~exposure involves the attending physician, another physician shall be designated by the chief of~~
12 ~~service.~~

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

15 ~~(3)~~ (2) "HIV" means the human immunodeficiency virus, the pathogenic organism
16 responsible for the acquired immunodeficiency syndrome (AIDS).

17 ~~(4)~~ (3) "HIV informed consent form" means a standardized form provided by the Rhode
18 Island department of health [to those individuals consenting to confidential HIV testing](#). The form
19 shall be developed by the department and shall contain the following information:

- 20 (i) The public health rationale for HIV testing;
21 (ii) The availability and cost of HIV testing and counseling;
22 (iii) That test results are confidential with certain exceptions;
23 (iv) A list of exceptions to confidentiality of test results;
24 (v) That the test is voluntary and that an informed consent form must be signed before
25 testing;
26 (vi) That by signing this form the person is only acknowledging that the AIDS test and
27 counseling have been offered.

28 [\(vii\) In the event an individual consents to anonymous testing, the HIV testing counselor](#)
29 [and/or attending practitioner ordering the test shall receive verbal confirmation from the client](#)
30 [that the client understands all applicable information contained within the informed consent form.](#)

31 ~~(5)~~ (4) "HIV test" means any currently medically accepted diagnostic test for
32 determining infection of an individual by HIV.

33 ~~(6)~~ (5) "Person" means any individual, firm, partnership, corporation, company,
34 association, or joint stock association, state or political subdivision or instrumentality of a state.

1 ~~(7)~~ (6) "Physician" means a person licensed to practice allopathic or osteopathic
2 medicine pursuant to the provisions of chapter 37 of title 5.

3 ~~(8)~~ (7) "Services" means health care and social support services.

4 (8) "Occupational health representative" is an individual, within a health care facility,
5 trained to respond to occupational, particularly blood borne, exposures.

6 **23-6-12. Testing.** – (a) Unless otherwise excepted by the provisions of this chapter, no
7 person may be tested for the presence of HIV where the test result can be identified with a
8 specific individual, unless he or she has given his or her informed consent by his or her signature
9 or that of a parent, guardian, or agent on a written informed consent form specifically relating to
10 the test after discussion of implications of the test with a qualified professional. A physician or
11 health care provider acting within the scope of his/her practice attending any person who may be
12 at risk for HIV infection shall routinely offer the HIV test to patients unless deemed inappropriate
13 by the physician or health care provider acting within the scope of his/her practice. All testing
14 pursuant to this section shall be performed in accordance with sections 23-6-17 (confidentiality)
15 and 23-6-18 (protection of the medical record). Each person who elects to be tested and counseled
16 shall first be provided with an "informed consent form" and educational materials or brochures
17 that describe the nature of HIV disease, which he or she shall sign and date in acknowledgement
18 of his/her election to be tested.

19 (b) In the event an individual consents to anonymous testing and tests positive for HIV,
20 the HIV testing counselor shall provide the client an informed consent form, and educational
21 materials or brochures that describe the nature of HIV disease. If an individual is tested
22 anonymously and is found positive on the initial screening test or during a post-test consultation,
23 the counselor shall discuss, with the client, options regarding referrals and reporting of this
24 positive screening. Specifically, the counselor shall, during the test consultation, discuss the
25 necessity of accessing a physician and ask the anonymous test client if they are willing to provide
26 their name for the purposes of completing a positive test report.

27 **23-6-14. Exceptions.** -- ~~Notwithstanding the provisions of sections 23-6-12 and 23-6-13,~~
28 ~~a~~ A physician or other health care provider acting within the scope of his/her practice may draw
29 ~~blood and~~ secure a test sample for the presence of HIV without ~~informed~~ consent under the
30 following conditions:

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

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

34 (3) When the person to be tested is a minor under the care and authority of the

1 department of children, youth, and families, and the director of that department certifies that an
2 HIV test is necessary to secure health or human services for that person;

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

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

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

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

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

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

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

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

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

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

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

6 **23-6-17. Confidentiality.** -- It is unlawful for any person to disclose to a third party the
7 results of an individual's HIV test without the prior written consent of that individual, or in the
8 case of a minor, the minor's parent, guardian, or agent, on a form that specifically states that HIV
9 test results may be released, except:

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

14 (2) A physician:

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

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

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

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

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

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

34 (4) By a health care provider [acting within the scope of his/her practice](#) to appropriate

1 persons entitled to receive notification of persons with infectious or communicable diseases
2 pursuant to sections 23-5-9 ([report of infectious disease upon death](#)) and 23-28.36-3 ([notification](#)
3 [to EMT, firefighter, police officer of infectious disease](#)).

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.](#)

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

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

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

33 (iii) [Reasonable attorneys' fees.](#)

34 (iv) [Such other relief, including an injunction, as the court may deem appropriate.](#)

1 (v) Any action under this section is barred unless the action is commenced within three
2 (3) years after the cause of action accrues. A cause of action shall accrue when the injured party
3 becomes aware of an unauthorized disclosure.

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

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

14 **23-6-25. Alternative test sites.** -- The department of health shall maintain alternative
15 sites for providing ~~free~~, voluntary, anonymous HIV testing, counseling, and referral on a
16 continuing basis and at limited funded sites that given appropriate resources, may be designated
17 by the director of the department of health. Each site, funded by the department of health, shall
18 offer a sliding scale for payment, screen for ability to pay through a third-party insurer, and offer
19 free testing for indigent parties.

20 **23-6-26. Laboratory analysis for HIV.** -- (a) HIV/AIDS is regarded to cause significant
21 morbidity and mortality, can be screened, diagnosed and treated, and is of major public health
22 concern, such that surveillance of the disease occurrence is in the public interest, and therefore
23 shall be designated as notifiable and reportable by name.

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

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

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

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

31 (4) All CD4 T-lymphocyte (<? percent) test results and all viral load detection test results
32 (detectable and undetectable).

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

1 presence of HIV in pediatric cases.

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

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

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

19 (e) In the event that the federal government requests retrospective HIV/AIDS analysis of
20 cases that were previously reported by code, the department shall have the authority to identify
21 names for such cases, only with explicit and informed patient consent obtained after such a
22 request has been made.

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

25 **23-6-27. Reporting of HIV/AIDS and perinatal exposure of newborns. – (a) The**
26 **following persons shall report information required by this section to the department's HIV/AIDS**
27 **surveillance team:**

- 28 (1) a physician/health care provider who diagnoses or treats HIV/AIDS;
- 29 (2) The administrator of a health care facility as defined in Rhode Island general laws
30 chapter 23-17 who diagnoses or treats HIV/AIDS; or
- 31 (3) the administrator of a prison in which there is an HIV/AIDS infected person or
32 perinatal exposure to HIV/AIDS.

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

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

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

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

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

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

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

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

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

23 **23-11-17. Human immunodeficiency virus (HIV) testing.** -- (a) The physician or health
24 care provider acting within the scope of his/her practice attending any person for a suspected
25 sexually transmitted disease shall offer testing for human immunodeficiency virus (HIV). All
26 testing pursuant to this section shall be performed in accordance with sections 23-6-17
27 (confidentiality) and 23-6-18 (protection of the medical record). ~~The identity of the individuals~~
28 ~~tested under this section shall be maintained only at the site where the sample is drawn, and shall~~
29 ~~not be released except as otherwise provided by statute.~~

30 ~~(b)~~ Each person who ~~is offered~~ elects to be a test tested and ~~counseling~~ counseled shall
31 first be provided with an "informed consent form" and educational materials or brochures that
32 describe the nature of the HIV disease which he or she shall sign and date in acknowledgment of
33 his/her election to be tested ~~the offer. The department of health is responsible for costs associated~~
34 ~~with performing and reporting the results of the HIV tests, including the reasonable costs of~~

1 ~~pretest and post test counseling. Those reasonable costs shall be negotiated and specified by~~
2 ~~contract.~~

3 (b) In the event an individual consents to anonymous testing and tests positive for HIV,
4 the HIV testing counselor shall provide the client an informed consent form, and educational
5 materials or brochures that describe the nature of HIV disease. If an individual is tested
6 anonymously and is found positive on the initial screening test or during a post-test consultation,
7 the counselor shall discuss, with the client, options regarding referrals and reporting of this
8 positive screening. Specifically, the counselor shall, during the test consultation, discuss the
9 necessity of accessing a physician and ask the anonymous test client if they are willing to
10 provide their name for the purposes of completing a positive test report. The department of health
11 shall be responsible for reasonable costs associated with performing and reporting the results of
12 the HIV tests, including the cost of pre-test and post-test counseling, for indigent parties and other
13 individuals without health insurance coverage.

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

19 **23-11-19. Exchange of hypodermic needles and syringes.** -- (a) The director of the
20 department of health shall maintain a program offering the free exchange of new hypodermic
21 needles and syringes for used hypodermic needles and syringes as a means to prevent the
22 transmission of human immunodeficiency virus (HIV) or viral hepatitis among intravenous drug
23 users eighteen (18) years of age or older. Any site used in the program shall be approved by the
24 director of health and shall make available educational materials, HIV counseling and testing, and
25 referral services targeted to the education of HIV/AIDS and viral hepatitis transmission as well as
26 information and referrals pertaining to ~~and drug~~ substance abuse prevention and treatment. ~~Any~~
27 ~~individual(s) who either administers or participates in the program shall be immune from criminal~~
28 ~~prosecution for violating the provisions of section 21-28.5-1(a)(11) [deleted] unless the~~
29 ~~individual(s) is found to have in his or her possession hypodermic needles and syringes that are~~
30 ~~not a part of the exchange program.~~

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

1 treatment.

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

5 **23-13-19. Human immunodeficiency virus (HIV) testing.** -- (a) ~~Every physician or~~
6 ~~health care provider attending any person for prenatal care or family planning services shall offer~~
7 ~~testing for human immunodeficiency virus (HIV) unless deemed inappropriate by the physician.~~
8 ~~All testing pursuant to this section shall be performed in accordance with sections 23-6-12 and~~
9 ~~23-6-13. The identity of the individuals tested under this section shall be maintained only at the~~
10 ~~site where the sample is drawn and shall not be released except as otherwise provided by statute.~~
11 Each person who elects to be tested and counseled for ~~is offered a~~ human immunodeficiency
12 virus (HIV) test ~~and counseling~~ shall be first provided with an "informed consent form" which he
13 or she shall sign and date in acknowledgment of ~~that offer.~~ his/her election to be tested and
14 educational materials or brochures that describe the nature of the disease.

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, and educational
17 materials or brochures that describe the nature of HIV disease. If an individual is tested
18 anonymously and is found positive on the initial screening test or during a post-test consultation,
19 the counselor shall discuss, with the client, options regarding referrals and reporting of this
20 positive screening. Specifically, the counselor shall, during the test consultation, discuss the
21 necessity of accessing a physician and ask the anonymous test client if they are willing to provide
22 their name for the purposes of completing a positive test report.

23 ~~The~~ Depending on available funding, the department of health is responsible for
24 reasonable costs associated with performing and reporting the results of the HIV tests including
25 the reasonable costs of pretest and post-test counseling for indigent parties and other individuals
26 without health insurance coverage. ~~Those reasonable costs shall be negotiated and specified by~~
27 ~~contract.~~

28 ~~(b)~~ (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.~~

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

34 **23-17-31.1. Human immunodeficiency virus (HIV) testing -- Facilities for drug**

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

9 (b) Each person who ~~is offered a test and counseling~~ elects to be tested and counseled
10 shall first be provided with an "AIDS testing and notification form" "informed consent form"
11 which he or she shall sign and date in acknowledgement of ~~the offer.~~ his/her election to be tested
12 and educational materials or brochures that describe the nature of HIV disease

13 (c) In the event an individual consents to anonymous testing and tests positive for HIV,
14 the HIV testing counselor shall provide the client an informed consent form, and educational
15 materials or brochures that describes the nature of HIV disease. If an individual is tested
16 anonymously and is found positive on the initial screening test or during a post-test consultation,
17 the counselor shall discuss, with the client, options regarding referrals and reporting of this
18 positive screening. Specifically, the counselor shall, during the test consultations, discuss the
19 necessity of accessing a physician and ask the anonymous test client if they are willing to provide
20 their name for the purposes of completing a positive test report.

21 (e) (d) ~~The~~ Depending on available funding, the department of health shall be
22 responsible for reasonable costs associated with performing and reporting the results of the HIV
23 tests, including the costs of pretest and post-test counseling for indigent parties and other
24 individuals without health insurance coverage. The reasonable costs shall be negotiated and
25 specified by contract.

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

29 SECTION 8. Sections 23-28.36-2 and 23-28.36-3 of the General Laws in Chapter 23-
30 28.36 entitled "Notification of Fire Fighters, Police Officers and Emergency Medical Technicians
31 After Exposure to infectious diseases" are hereby amended to read as follows:

32 **23-28.36-2. Definitions. --** The following terms when used in this chapter shall have the
33 following meanings herein ascribed:

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

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

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

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

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

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

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

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

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

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

34 (b) The notification shall be made within forty-eight (48) hours, or sooner, of

1 confirmation of the patient's diagnosis.

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

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

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

10 **40.1-24-20. Human immunodeficiency virus (HIV) testing -- Facilities for drug**

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

19 (b) Each person who ~~is offered a test and counseling~~ elects to be tested and counseled
20 shall first be provided with an "informed consent form" which he or she shall sign and date in
21 acknowledgment of ~~the offer.~~ his/her election to be tested and educational materials or brochures
22 that describe the nature of HIV disease.

23 (c) In the event an individual consents to anonymous testing and tests positive for HIV,
24 the HIV testing counselor shall provide the client an informed consent form, and educational
25 materials or brochures that describe the nature of HIV disease. If an individual is tested
26 anonymously and is found positive on the initial screening test or during a post-test consultation,
27 the counselor shall discuss, with the client, options regarding referrals and reporting of this
28 positive screening. Specifically, the counselor shall, during the test consultation, discuss the
29 necessity of accessing a physician and ask the anonymous test client if they are willing to provide
30 their name for the purposes of completing a positive test report.

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

33 ~~(e)~~ (e) The department of health shall be responsible for reasonable costs associated with
34 performing and reporting the results of the HIV tests, including the costs of pretest and post test

1 counseling. The reasonable costs shall be negotiated and specified by contract.

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

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

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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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