

2024 -- H 7219

LC003632

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO HEALTH AND SAFETY -- PREVENTION AND SUPPRESSION OF
CONTAGIOUS DISEASES -- HIV/AIDS

Introduced By: Representatives Ajello, Craven, Tanzi, Cruz, Shallcross Smith, Potter,
McGaw, Handy, Sanchez, and Kislak

Date Introduced: January 18, 2024

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. WHEREAS, The Rhode Island House of Representatives passed House
2 Resolution 5250, creating a “Special Legislative Study Commission Ensuring Racial Equity and
3 Optimizing Health and Safety Laws Affecting Marginalized Individuals” (hereinafter “the
4 Commission”) in 2021; and

5 WHEREAS, This thirteen member Commission specifically sought to draw from and
6 expand upon the significant research on the health and safety implications of laws related to
7 violence, exploitation, stigma, human trafficking and sexual health; laws that disproportionately
8 impact women, transgender individuals, and people of color; and

9 WHEREAS, Members of the Commission met seven times between November 2021 and
10 April 2023 and heard testimony from a variety of experts and individuals with lived experience in
11 the sex trade. This included public health testimony that supported the removal of mandatory HIV
12 testing laws; and

13 WHEREAS, The Commission issued a comprehensive final report on August 14, 2023,
14 calling for numerous recommendations. In relevant part, the report issued the following
15 recommendation on page 7:

16 Recommend the General Assembly repeal § 23-6.3-4(a)(7), which requires any individual
17 convicted of prostitution to have an HIV test performed on them; and

18 WHEREAS, States around the country have similarly amended laws in accordance with

1 public health data, recommendations by experts, and legislative task force findings. Nevada,
2 Virginia, and Colorado recently made similar amendments to repeal mandatory HIV testing for
3 those arrested for prostitution crimes; and

4 WHEREAS, Existing Rhode Island law provides necessary access to resources for those
5 persons living with HIV that are arrested for commercial sexual activity that will stay intact.

6 SECTION 2. Section 23-6.3-4 of the General Laws in Chapter 23-6.3 entitled "Prevention
7 and Suppression of Contagious Diseases — HIV/AIDS" is hereby amended to read as follows:

8 **23-6.3-4. Exceptions to consent requirements.**

9 (a) A healthcare provider may test for the presence of HIV without obtaining consent from
10 the individual to be tested under the following conditions:

11 (1) When the individual to be tested is under one year of age;

12 (2) When a child between one and thirteen (13) years of age appears to be symptomatic for
13 HIV;

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

17 (4) In a licensed healthcare facility or healthcare setting, in the event that an occupational
18 health representative or physician, registered nurse practitioner, physician assistant, or nurse-
19 midwife, not directly involved in the exposure, determines that an employee or emergency service
20 worker, other than one in a supervisory position to the person making the determination, had a
21 significant exposure to the blood and/or body fluids of a patient and the patient or the patient's
22 guardian refuses to grant consent for an HIV test to determine whether the patient has HIV, then,
23 if a sample of the patient's blood is available, that blood shall be tested for HIV.

24 (i) If a sample of the patient's blood is not otherwise available and the patient refuses to
25 grant consent to draw blood, the employee or emergency service worker may petition the superior
26 court for a court order mandating that the test be performed.

27 (ii) Before a patient or a sample of the patient's blood is required to undergo an HIV test,
28 the employee or emergency service worker must submit to a baseline HIV test within seventy-two
29 (72) hours of the exposure.

30 (iii) No person who determines that an employee or emergency service worker has
31 sustained a significant exposure and authorizes the HIV testing of a patient, nor any person or
32 healthcare facility who acts in good faith and recommends the test be performed, shall have any
33 liability as a result of their actions carried out under this chapter, unless those persons are proven
34 to have acted in bad faith.

1 (iv) For the purposes of this section, “emergency service worker” means a worker
2 responding on behalf of a licensed ambulance/rescue service, or a fire department or a law
3 enforcement agency, who, in the course of his/her professional duties, has been exposed to bodily
4 fluids in circumstances that present a significant risk of transmission of HIV, and has completed a
5 pre-hospital exposure form in accordance with § 23-4.1-19.

6 (5) In an emergency, where due to a grave medical or psychiatric condition, and it is
7 impossible to obtain consent from the patient or, if applicable under state law, the patient’s parent,
8 guardian, or agent.

9 (6) As permitted under § 23-1-38 entitled “HIV Antibody Testing-Sperm Collection or
10 Donation.”

11 ~~(7) Any individual convicted of a violation of any provisions of chapter 34.1 of title 11~~
12 ~~entitled “Commercial Sexual Activity,” shall be required to be tested for HIV unless already~~
13 ~~documented HIV positive. All individuals tested under this section shall be informed of their test~~
14 ~~results. All individuals tested under this section who are determined to be injecting and/or intra-~~
15 ~~nasal drug users shall be referred to appropriate substance abuse treatment as outlined in § 23-6.3-~~
16 ~~3(e).~~

17 (8) Any individual convicted of possession of any controlled substance as defined in
18 chapter 28 of title 21 entitled “Uniform Controlled Substances Act,” that has been administered
19 with a hypodermic instrument, retractable hypodermic syringe, needle, intra-nasally, or any similar
20 instrument adapted for the administration of drugs shall be required to be tested for HIV unless
21 already documented HIV positive.

22 (9) All individuals tested under this section shall be informed of their test results.

23 (10) In accordance with the provisions of chapter 37 of title 11, entitled, “Sexual Assault,”
24 any individual who has admitted to or been convicted of or adjudicated wayward or delinquent by
25 reason of having committed any sexual offense involving penetration whether or not a sentence or
26 fine is imposed or probation granted, shall be ordered by the court upon petition of the victim,
27 immediate family members of the victim or legal guardian of the victim, to submit to a blood test
28 for the presence of a sexually transmitted disease including, but not limited to, HIV. All individuals
29 tested under this section shall be informed of their test results.

30 (11) In accordance with the provisions of § 42-56-37, entitled “HIV Testing,” every
31 individual who is committed to the adult correctional institutions to any criminal offense, after
32 conviction, is required to be tested for HIV.

33 (b) It is unlawful for any person to disclose to a third party the results of an individual’s
34 HIV test without the prior written consent of that individual, except in accordance with § 23-6.3-7.

1 SECTION 3. Section 11-34.1-12 of the General Laws in Chapter 11-34.1 entitled
2 "Commercial Sexual Activity" is hereby amended to read as follows:

3 **11-34.1-12. Human Immunodeficiency Virus (HIV).**

4 (a) Any person convicted of a violation of any provisions of this chapter shall be ~~required~~
5 provided the option to be tested for Human Immunodeficiency Virus (HIV). ~~No consent for the~~
6 ~~testing shall be required.~~

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

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

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

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

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

28 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO HEALTH AND SAFETY -- PREVENTION AND SUPPRESSION OF
CONTAGIOUS DISEASES -- HIV/AIDS

1 This act would repeal the required HIV testing for an individual convicted under chapter
2 34.1 of title 11 ("commercial sexual activity"). It would also allow the option for HIV testing for
3 any person convicted under this chapter.

4 This act would take effect upon passage.

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