

Redwine
Boettger
Szymoniak

SSB-1130

Human Resources

Succeeded by

HF 248

SENATE FILE
BY (PROPOSED COMMITTEE ON HUMAN
RESOURCES BILL BY
CHAIRPERSON BOETTGER)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to acquired immune deficiency syndrome, providing
2 penalties, and providing for a repeal.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

1980-0008

1 Section 11.77 Section 80.9, subsection 2, paragraph d, Code
2 1999, is amended to read as follows:
3 d. To collect and classify, and keep at all times
4 available, complete information useful for the detection of
5 crime, and the identification and apprehension of criminals.
6 Such information shall be available for all peace officers
7 within the state, under such regulations as the commissioner
8 may prescribe. The provisions of chapter ~~141~~ 141A do not
9 apply to the entry of human immunodeficiency virus-related
10 information by criminal or juvenile justice agencies, as
11 defined in section 692.1, into the Iowa criminal justice
12 information system or the national crime information center
13 system. The provisions of chapter ~~141~~ 141A also do not apply
14 to the transmission of the same information from either or
15 both information systems to criminal or juvenile justice
16 agencies. The provisions of chapter ~~141~~ 141A also do not
17 apply to the transmission of the same information from either
18 or both information systems to employees of state correctional
19 institutions subject to the jurisdiction of the department of
20 corrections, employees of secure facilities for juveniles
21 subject to the jurisdiction of the department of human
22 services, and employees of city and county jails, if those
23 employees have direct physical supervision over inmates of
24 those facilities or institutions. Human immunodeficiency
25 virus-related information shall not be transmitted over the
26 police radio broadcasting system under chapter 693 or any
27 other radio-based communications system. An employee of an
28 agency receiving human immunodeficiency virus-related
29 information under this section who communicates the
30 information to another employee who does not have direct
31 physical supervision over inmates, other than to a supervisor
32 of an employee who has direct physical supervision over
33 inmates for the purpose of conveying the information to such
34 an employee, or who communicates the information to any person
35 not employed by the agency or uses the information outside the

1 agency is guilty of a class "D" felony. The commissioner
 2 shall adopt rules regarding the transmission of human
 3 immunodeficiency virus-related information including
 4 provisions for maintaining confidentiality of the information.
 5 The rules shall include a requirement that persons receiving
 6 information from the Iowa criminal justice information system
 7 or the national crime information center system receive
 8 training regarding confidentiality standards applicable to the
 9 information received from the system. The commissioner shall
 10 develop and establish, in cooperation with the department of
 11 corrections and the Iowa department of public health, training
 12 programs and program criteria for persons receiving human
 13 immunodeficiency virus-related information through the Iowa
 14 criminal justice information system or the national crime
 15 information center system.

16 Sec. 2. Section 139B.1, subsection 1, paragraph a, Code
 17 1999, is amended to read as follows:

18 a. "Contagious or infectious disease" means hepatitis in
 19 any form, meningococcal disease, tuberculosis, and any other
 20 disease with the exception of AIDS or HIV infection as defined
 21 in section ~~141-21~~ 141A.1, determined to be life-threatening to
 22 a person exposed to the disease as established by rules
 23 adopted by the department based upon a determination by the
 24 state epidemiologist and in accordance with guidelines of the
 25 centers for disease prevention and control of the United
 26 States department of health and human services.

27 Sec. 3. Section 139C.1, subsection 6, Code 1999, is
 28 amended to read as follows:

29 6. "HIV" means HIV as defined in section ~~141-21~~ 141A.1.

30 Sec. 4. Section 139C.2, subsection 7, Code 1999, is
 31 amended to read as follows:

32 7. Information relating to the HIV status of a health care
 33 provider is confidential and subject to the provisions of
 34 section ~~141-23~~ 141A.9. A person who intentionally or
 35 recklessly makes an unauthorized disclosure of such

1 information is subject to a civil penalty of one thousand
2 dollars. The attorney general or the attorney general's
3 designee may maintain a civil action to enforce this section.
4 Proceedings maintained under this section shall provide for
5 the anonymity of the individual and all documentation shall be
6 maintained in a confidential manner. Information relating to
7 the HIV status of a health care provider is confidential and
8 shall not be accessible to the public. Information regulated
9 by this section, however, may be disclosed to members of the
10 expert review panel established by the department or a panel
11 established by hospital protocol under this section. The
12 information may also be disclosed to the appropriate examining
13 board by filing a report as required by this section. The
14 examining board shall consider the report a complaint subject
15 to the confidentiality provisions of section 272C.6. A
16 licensee, upon the filing of a formal charge or notice of
17 hearing by the examining board based on such a complaint, may
18 seek a protective order from the board.

19 Sec. 5. NEW SECTION. 141A.1 DEFINITIONS.

20 As used in this chapter, unless the context otherwise
21 requires:

22 1. "AIDS" means acquired immune deficiency syndrome as
23 defined by the centers for disease control and prevention of
24 the United States department of health and human services.

25 2. "AIDS-related conditions" means the human
26 immunodeficiency virus, or any other condition resulting from
27 the human immunodeficiency virus infection.

28 3. "Blinded epidemiological studies" means studies in
29 which specimens which were collected for other purposes are
30 selected according to established criteria, are permanently
31 stripped of personal identifiers, and are then tested.

32 4. "Blood bank" means a facility for the collection,
33 processing, or storage of human blood or blood derivatives,
34 including blood plasma, or from which or by means of which
35 human blood or blood derivatives are distributed or otherwise

1 made available.

2 5. "Care provider" means any emergency care provider,
3 health care provider, or any other person providing health
4 care services of any kind.

5 6. "Department" means the Iowa department of public
6 health.

7 7. "Emergency care provider" means a person who is trained
8 and authorized by federal or state law to provide emergency
9 medical assistance or treatment, for compensation or in a
10 voluntary capacity, including but not limited to all of the
11 following:

12 (1) An emergency medical care provider as defined in
13 section 147A.1.

14 (2) A health care provider.

15 (3) A fire fighter.

16 (4) A peace officer.

17 "Emergency care provider" also includes a person who
18 renders emergency aid without compensation.

19 8. "Good faith" means objectively reasonable and not in
20 violation of clearly established statutory rights or other
21 rights of a person which a reasonable person would know or
22 should have known.

23 9. "Health care provider" means a person licensed or
24 certified under chapter 148, 148C, 150, 150A, 152, or 153 to
25 provide professional health care service to a person during
26 the person's medical care, treatment, or confinement.

27 10. "Health facility" means a hospital, health care
28 facility, clinic, blood bank, blood center, sperm bank,
29 laboratory organ transplant center and procurement agency, or
30 other health care institution.

31 11. "HIV" means the human immunodeficiency virus
32 identified as the causative agent of AIDS.

33 12. "HIV-related test" means a diagnostic test conducted
34 by a laboratory approved pursuant to the federal Clinical
35 Laboratory Improvements Act for determining the presence of

1 HIV.

2 13. "Infectious bodily fluids" means bodily fluids capable
3 of transmitting HIV infection as determined by the centers for
4 disease control and prevention of the United States department
5 of health and human services and adopted by rule of the
6 department.

7 14. "Legal guardian" means a person appointed by a court
8 pursuant to chapter 633 or an attorney in fact as defined in
9 section 144B.1. In the case of a minor, "legal guardian" also
10 means a parent or other person responsible for the care of the
11 minor.

12 15. "Nonblinded epidemiological studies" means studies in
13 which specimens are collected for the express purpose of
14 testing for the HIV infection and persons included in the
15 nonblinded study are selected according to established
16 criteria.

17 16. "Release of test results" means a written
18 authorization for disclosure of HIV-related test results which
19 is signed and dated, and which specifies to whom disclosure is
20 authorized and the time period during which the release is to
21 be effective.

22 17. "Sample" means a human specimen obtained for the
23 purpose of conducting an HIV-related test.

24 18. "Significant exposure" means the risk of contracting
25 HIV infection by means of exposure to a person's infectious
26 bodily fluids in a manner capable of transmitting HIV
27 infection as determined by the centers for disease control and
28 prevention of the United States department of health and human
29 services and adopted by rule of the department.

30 Sec. 6. NEW SECTION. 141A.2 LEAD AGENCY.

31 1. The department is designated as the lead agency in the
32 coordination and implementation of the state comprehensive
33 AIDS-related conditions prevention and intervention plan.

34 2. The department shall adopt rules pursuant to chapter
35 17A to implement and enforce this chapter. The rules may

1 include procedures for taking appropriate action with regard
2 to health facilities or health care providers which violate
3 this chapter or the rules adopted pursuant to this chapter.

4 3. The department shall adopt rules pursuant to chapter
5 17A which require that if a health care provider attending a
6 person prior to the person's death determines that the person
7 suffered from or was suspected of suffering from a contagious
8 or infectious disease, the health care provider shall place
9 with the remains written notification of the condition for the
10 information of any person handling the body of the deceased
11 person subsequent to the person's death. For purposes of this
12 subsection, "contagious or infectious disease" means hepatitis
13 in any form, meningococcal disease, tuberculosis, and any
14 other disease including AIDS or HIV infection, determined to
15 be life-threatening to a person exposed to the disease as
16 established by rules adopted by the department based upon a
17 determination by the state epidemiologist and in accordance
18 with guidelines of the centers for disease prevention and
19 control of the United States department of health and human
20 services.

21 4. The department, in cooperation with the department of
22 public safety, and persons who represent those who attend dead
23 bodies shall establish for all care providers, including
24 paramedics, ambulance personnel, physicians, nurses, hospital
25 personnel, first responders, peace officers, and fire
26 fighters, who provide care services to a person, and for all
27 persons who attend dead bodies, protocol and procedures for
28 the use of universal precautions to prevent the transmission
29 of contagious and infectious diseases.

30 5. The department shall coordinate efforts with local
31 health officers to investigate sources of HIV infection and
32 use every appropriate means to prevent the spread of the
33 infection.

34 6. The department, with the approval of the state board of
35 health, may conduct epidemiological blinded and nonblinded

1 studies to determine the incidence and prevalence of the HIV
2 infection. Initiation of any new epidemiological studies
3 shall be contingent upon the receipt of funding sufficient to
4 cover all the costs associated with the studies. The informed
5 consent, reporting, and counseling requirements of this
6 chapter shall not apply to blinded studies.

7 Sec. 7. NEW SECTION. 141A.3 DUTIES OF THE DEPARTMENT.

8 1. All federal and state moneys appropriated to the
9 department for AIDS-related activities shall be allocated in
10 accordance with a prioritized schedule developed by rule of
11 the department, and grants shall be awarded to the maximum
12 extent feasible to community-based organizations.

13 2. The department shall do all of the following:

14 a. Provide consultation to agencies and organizations
15 regarding appropriate policies for testing, education,
16 confidentiality, and infection control.

17 b. Conduct health information programs for the public
18 relating to HIV infection, including information about how the
19 infection is transmitted and how transmittal can be prevented.
20 The department shall prepare, for free distribution, printed
21 information relating to HIV infection and prevention.

22 c. Provide educational programs concerning HIV infection
23 in the workplace.

24 d. Develop and implement HIV education risk-reduction
25 programs for specific populations at high risk for infection.

26 e. Provide an informational brochure for patients who
27 provide samples for purposes of performing an HIV test which,
28 at a minimum, shall include a summary of the patient's rights
29 and responsibilities under the law.

30 f. In cooperation with the department of education,
31 develop and update a medically correct AIDS prevention
32 curriculum for use at the discretion of secondary and middle
33 schools.

34 3. The department shall, in cooperation with the
35 department of education and other agencies, organizations,

1 coalitions, and local health departments, develop and
2 implement a program of public and professional AIDS-related
3 education.

4 4. School districts shall provide to every elementary,
5 middle school, and secondary school student, with parental
6 consent, instruction concerning HIV infection and AIDS and its
7 prevention.

8 Sec. 8. NEW SECTION. 141A.4 TESTING AND COUNSELING.

9 1. HIV testing and counseling shall be offered to the
10 following:

11 a. All persons seeking treatment for a sexually
12 transmitted disease.

13 b. All persons seeking treatment for intravenous drug
14 abuse or having a history of intravenous drug abuse.

15 c. All persons who consider themselves at risk for the HIV
16 infection.

17 d. Male and female prostitutes.

18 2. Pregnant women shall be provided information about HIV
19 prevention, risk reduction, and treatment opportunities to
20 reduce the possible transmission of HIV to a fetus. Pregnant
21 women who report one or more recognized risk factors for HIV
22 shall be strongly encouraged to undergo HIV-related testing.
23 A pregnant woman who requests testing shall be tested
24 regardless of the absence of risk factors.

25 Sec. 9. NEW SECTION. 141A.5 PARTNER NOTIFICATION PROGRAM
26 -- HIV.

27 1. The department shall maintain a partner notification
28 program for persons known to have tested positive for the HIV
29 infection.

30 2. The department shall initiate the program at
31 alternative testing and counseling sites and at sexually
32 transmitted disease clinics.

33 3. In administering the program, the department shall
34 provide for the following:

35 a. A person who tests positive for the HIV infection shall

1 receive posttest counseling, during which time the person
2 shall be encouraged to refer for counseling and HIV testing
3 any person with whom the person has had sexual relations or
4 has shared intravenous equipment.

5 b. The physician or other health care provider attending
6 the person may provide to the department any relevant
7 information provided by the person regarding any person with
8 whom the tested person has had sexual relations or has shared
9 intravenous equipment. The department disease prevention
10 staff shall then conduct partner notification in the same
11 manner as that utilized for sexually transmitted diseases
12 consistent with the provisions of this chapter.

13 c. Devise a procedure, as a part of the partner
14 notification program, to provide for the notification of an
15 identifiable third party who is a sexual partner of or who
16 shares intravenous equipment with a person who has tested
17 positive for HIV, by the department or a physician, when all
18 of the following situations exist:

19 (1) A physician for the infected person is of the good
20 faith opinion that the nature of the continuing contact poses
21 an imminent danger of HIV infection transmission to the third
22 party.

23 (2) When the physician believes in good faith that the
24 infected person, despite strong encouragement, has not and
25 will not warn the third party and will not participate in the
26 voluntary partner notification program.

27 Notwithstanding subsection 4, the department or a physician
28 may reveal the identity of a person who has tested positive
29 for the HIV infection pursuant to this subsection only to the
30 extent necessary to protect a third party from the direct
31 threat of transmission. This subsection shall not be
32 interpreted to create a duty to warn third parties of the
33 danger of exposure to HIV through contact with a person who
34 tests positive for the HIV infection.

35 The department shall adopt rules pursuant to chapter 17A to

1 implement this paragraph "c". The rules shall provide a
2 detailed procedure by which the department or a physician may
3 directly notify an endangered third party.

4 4. In making contact the department shall not disclose the
5 identity of the person who provided the names of the persons
6 to be contacted and shall protect the confidentiality of
7 persons contacted.

8 5. The department may delegate its partner notification
9 duties under this section to local health authorities unless
10 the local authority refuses or neglects to conduct the contact
11 tracing program in a manner deemed to be effective by the
12 department.

13 6. In addition to the provisions for partner notification
14 provided under this section and notwithstanding any provision
15 to the contrary, a county medical examiner or deputy medical
16 examiner performing official duties pursuant to sections
17 331.801 through 331.805 or the state medical examiner or
18 deputy medical examiner performing official duties pursuant to
19 chapter 691, who determines through an investigation that a
20 deceased person was infected with HIV, may notify directly, or
21 request that the department notify, the immediate family of
22 the deceased or any person known to have had a significant
23 exposure from the deceased of the finding.

24 Sec. 10. NEW SECTION. 141A.6 AIDS-RELATED CONDITIONS --
25 SCREENING, TESTING, AND REPORTING.

26 1. Prior to obtaining a sample for the purpose of
27 performing a voluntary HIV-related test, a health care
28 provider shall inform the subject of the test that the test is
29 voluntary. Within seven days of the testing of a person with
30 a test result indicating HIV infection which has been
31 confirmed as positive according to prevailing medical
32 technology, the physician or other health care provider at
33 whose request the test was performed shall make a report to
34 the department on a form provided by the department.

35 2. Within seven days of diagnosing a person as having an

1 AIDS-related condition, the diagnosing physician shall make a
2 report to the department on a form provided by the department.

3 3. Within seven days of the death of a person resulting
4 from an AIDS-related condition, the attending physician shall
5 make a report to the department on a form provided by the
6 department.

7 4. Within seven days of the testing of a person with a
8 test result indicating HIV infection which has been confirmed
9 as positive according to prevailing medical technology, the
10 director of a blood bank shall make a report to the department
11 on a form provided by the department.

12 5. Within seven days of the testing of a person with a
13 test result indicating HIV infection which has been confirmed
14 as positive according to prevailing medical technology, the
15 director of a clinical laboratory shall make a report to the
16 department on a form provided by the department.

17 6. The forms provided by the department shall require
18 inclusion of all of the following information:

- 19 a. The name of the patient.
- 20 b. The address of the patient.
- 21 c. The patient's date of birth.
- 22 d. The gender of the patient.
- 23 e. The race or ethnicity of the patient.
- 24 f. The patient's marital status.
- 25 g. The patient's telephone number.
- 26 h. The name and address of the laboratory or blood bank.
- 27 i. The date the test was found to be positive and the
28 collection date.
- 29 j. The name of the physician or health care provider who
30 performed the test.
- 31 k. If the patient is female, whether the patient is
32 pregnant.

33 Sec. 11. NEW SECTION. 141A.7 TEST RESULTS -- COUNSELING
34 -- APPLICATION FOR SERVICES.

35 1. At any time that the subject of an HIV-related test is

1 informed of confirmed positive test results, counseling
2 concerning the emotional and physical health effects shall be
3 initiated. Particular attention shall be given to explaining
4 the need for the precautions necessary to avoid transmitting
5 the virus. The subject shall be given information concerning
6 additional counseling.

7 2. Notwithstanding subsection 1, the provisions of this
8 section do not apply to any of the following:

9 a. The performance by a health care provider or health
10 facility of an HIV-related test when the health care provider
11 or health facility procures, processes, distributes, or uses a
12 human body part donated for a purpose specified under the
13 uniform anatomical gift Act, or semen provided prior to July
14 1, 1988, for the purpose of artificial insemination, or
15 donations of blood, and such test is necessary to ensure
16 medical acceptability of such gift or semen for the purposes
17 intended.

18 b. A person engaged in the business of insurance who is
19 subject to section 505.16.

20 c. The performance by a health care provider or health
21 facility of an HIV-related test when the subject of the test
22 is deceased and a documented significant exposure has
23 occurred.

24 3. A person may apply for voluntary treatment,
25 contraceptive services, or screening or treatment for HIV
26 infection and other sexually transmitted diseases directly to
27 a licensed physician and surgeon, an osteopathic physician and
28 surgeon, or a family planning clinic. Notwithstanding any
29 other provision of law, however, a minor shall be informed
30 prior to testing that, upon confirmation according to
31 prevailing medical technology of a positive HIV-related test
32 result, the minor's legal guardian is required to be informed
33 by the testing facility. Testing facilities where minors are
34 tested shall have available a program to assist minors and
35 legal guardians with the notification process which emphasizes

1 the need for family support and assists in making available
2 the resources necessary to accomplish that goal. However, a
3 testing facility which is precluded by federal statute,
4 regulation, or centers for disease control and prevention
5 guidelines from informing the legal guardian is exempt from
6 the notification requirement. The minor shall give written
7 consent to these procedures and to receive the services,
8 screening, or treatment. Such consent is not subject to later
9 disaffirmance by reason of minority.

10 Sec. 12. NEW SECTION. 141A.8 CARE PROVIDER NOTIFICATION.

11 1. A hospital licensed under chapter 135B shall provide
12 notification to a care provider who renders assistance or
13 treatment to an individual, following submission of a
14 significant exposure report by the care provider to the
15 hospital and a diagnosis or confirmation by an attending
16 physician that the individual has HIV infection, and
17 determination that the exposure reported was a significant
18 exposure. The notification shall advise the care provider of
19 possible exposure to HIV infection. Notification shall be
20 made in accordance with both of the following:

21 a. The hospital informs the individual, when the
22 individual's condition permits, of the submission of a
23 significant exposure report.

24 b. The individual consents to serological testing by or
25 voluntarily discloses the individual's HIV status to the
26 hospital and consents to notification.

27 Notwithstanding paragraphs "a" and "b", notification shall
28 be made when the individual denies consent for or consent is
29 not reasonably obtainable for serological testing, and in the
30 course of admission, care, and treatment of the individual,
31 the individual is diagnosed or is confirmed as having HIV
32 infection.

33 2. The hospital shall notify the care provider involved in
34 attending or transporting an individual who submitted a
35 significant exposure report. This shall include a person who

1 renders direct emergency aid without compensation, or in the
 2 case of an emergency care provider, the designated officer of
 3 the emergency care provider service, who in turn shall notify
 4 any emergency care providers. The identity of the designated
 5 officer shall not be revealed to the individual. The
 6 designated officer shall inform the hospital of those parties
 7 who received the notification, and following receipt of this
 8 information and upon request of the individual, the hospital
 9 shall inform the individual of the parties to whom
 10 notification was provided.

11 3. The hospital, upon request of the individual, shall
 12 inform the individual of the persons to whom notification was
 13 made.

14 4. The process for notification under this section shall
 15 be initiated as soon as is reasonably possible.

16 5. A health care provider, with consent of the individual,
 17 may provide the notification required of hospitals in this
 18 section to care providers if an individual who has HIV
 19 infection is delivered by a care provider to the office or
 20 clinic of the health care provider for treatment. The
 21 notification shall take place only upon submission of a
 22 significant exposure report form by the care provider to the
 23 health care provider and the determination by the health care
 24 provider that a significant exposure has occurred.

25 6. This section does not require or permit, unless
 26 otherwise provided, a hospital or health care provider to
 27 administer a test for the express purpose of determining the
 28 presence of HIV infection, except that testing may be
 29 performed if the individual consents, and if the requirements
 30 of this section are satisfied.

31 7. When a care provider in the course of providing care
 32 sustains a significant exposure on the premises of a hospital
 33 or health facility, the individual to whom the care provider
 34 was exposed is deemed to consent to a test to be administered
 35 by the hospital or health care facility upon the written

1 request of the exposed care provider for the express purpose
2 of determining the presence of HIV infection in that
3 individual. The sample and test results shall only be
4 identified by the name of the exposed care provider on whose
5 behalf the test is administered and no reports otherwise
6 required by this chapter shall be made which identify the
7 individual tested. However, if the test results are positive,
8 the hospital or health care facility shall notify the
9 individual tested and ensure performance of counseling and
10 reporting requirements of this chapter in the same manner as
11 for an individual from whom actual consent was obtained.

12 8. A hospital or health care provider, or other person
13 participating in good faith in making a report under the
14 notification provisions of this section, under procedures
15 similar to this section for notification of its own employees
16 upon filing of a significant exposure report, or in failing to
17 make a report under this section, is immune from any
18 liability, civil or criminal, which might otherwise be
19 incurred or imposed.

20 9. Notifications made pursuant to this section shall not
21 disclose the identity of the individual who is diagnosed or
22 confirmed as having HIV infection unless the individual
23 provides a specific written release as provided in subsection
24 1, paragraph "b". If the care provider determines the
25 identity of the individual, the identity of the individual
26 shall be confidential information and shall not be disclosed
27 by the care provider to any other person unless a specific
28 written release is obtained from the individual.

29 10. A hospital's duty to notify under this section is not
30 continuing but is limited to the diagnosis of HIV infection
31 made in the course of admission, care, and treatment following
32 the rendering of assistance or treatment of the individual
33 with the infection.

34 11. Notwithstanding subsection 10, if, following discharge
35 or completion of care or treatment, an individual for whom a

1 significant exposure report was submitted but which report did
2 not result in notification, wishes to provide information
3 regarding the individual's HIV infection status to the care
4 provider who submitted the report, the hospital shall provide
5 a procedure for notifying the care provider.

6 12. The employer of a care provider who submits a report
7 of significant exposure under this section sustained in the
8 course of employment shall pay the costs of HIV testing for
9 the individual and the costs of HIV testing and counseling for
10 the care provider. However, the department shall pay the
11 costs of HIV testing for the individual and the costs of HIV
12 testing and counseling for a care provider who renders direct
13 aid without compensation.

14 Sec. 13. NEW SECTION. 141A.9 CONFIDENTIALITY OF
15 INFORMATION.

16 Any information, including reports and records, obtained,
17 submitted, and maintained pursuant to this chapter is strictly
18 confidential medical information. The information shall not
19 be released, shared with an agency or institution, or made
20 public upon subpoena, search warrant, discovery proceedings,
21 or by any other means except as provided in this chapter. A
22 person shall not be compelled to disclose the identity of any
23 person upon whom an HIV-related test is performed, or the
24 results of the test in a manner which permits identification
25 of the subject of the test, except to persons entitled to that
26 information under this chapter. Information shall be made
27 available for release to the following individuals or under
28 the following circumstances:

- 29 1. To the subject of the test or the subject's legal
30 guardian subject to the provisions of section 141A.7,
31 subsection 3, when applicable.
- 32 2. To any person who secures a written release of test
33 results executed by the subject of the test or the subject's
34 legal guardian.
- 35 3. To an authorized agent or employee of a health facility

1 or health care provider, if the health facility or health care
2 provider ordered or participated in the testing or is
3 otherwise authorized to obtain the test results, the agent or
4 employee provides patient care or handles or processes
5 samples, and the agent or employee has a medical need to know
6 such information.

7 4. To a health care provider providing care to the subject
8 of the test when knowledge of the test results is necessary to
9 provide care or treatment.

10 5. To the department in accordance with reporting
11 requirements for an HIV-related condition.

12 6. To a health facility or health care provider which
13 procures, processes, distributes, or uses a human body part
14 from a deceased person with respect to medical information
15 regarding that person, or semen provided prior to July 1,
16 1988, for the purpose of artificial insemination.

17 7. Release may be made of medical or epidemiological
18 information for statistical purposes in a manner such that no
19 individual person can be identified.

20 8. Release may be made of medical or epidemiological
21 information to the extent necessary to enforce the provisions
22 of this chapter and related rules concerning the treatment,
23 control, and investigation of HIV infection by public health
24 officials.

25 9. Release may be made of medical or epidemiological
26 information to medical personnel to the extent necessary to
27 protect the health or life of the named party.

28 10. Release may be made of test results concerning a
29 patient pursuant to procedures established under section
30 141A.5, subsection 3, paragraph "c".

31 11. To a person allowed access to a record by a court
32 order which is issued in compliance with the following
33 provisions:

34 a. A court has found that the person seeking the test
35 results has demonstrated a compelling need for the test

1 results which need cannot be accommodated by other means. In
2 assessing compelling need, the court shall weigh the need for
3 disclosure against the privacy interest of the test subject
4 and the public interest which may be disserved by disclosure
5 due to its deterrent effect on future testing or due to its
6 effect in leading to discrimination.

7 b. Pleadings pertaining to disclosure of test results
8 shall substitute a pseudonym for the true name of the subject
9 of the test. The disclosure to the parties of the subject's
10 true name shall be communicated confidentially in documents
11 not filed with the court.

12 c. Before granting an order, the court shall provide the
13 person whose test results are in question with notice and a
14 reasonable opportunity to participate in the proceedings if
15 the person is not already a party.

16 d. Court proceedings as to disclosure of test results
17 shall be conducted in camera unless the subject of the test
18 agrees to a hearing in open court or unless the court
19 determines that a public hearing is necessary to the public
20 interest and the proper administration of justice.

21 e. Upon the issuance of an order to disclose test results,
22 the court shall impose appropriate safeguards against
23 unauthorized disclosure, which shall specify the persons who
24 may gain access to the information, the purposes for which the
25 information shall be used, and appropriate prohibitions on
26 future disclosure.

27 12. To an employer, if the test is authorized to be
28 required under any other provision of law.

29 13. To a convicted or alleged sexual assault offender; the
30 physician or other health care provider who orders the test of
31 a convicted or alleged offender; the victim; the parent,
32 guardian, or custodian of the victim if the victim is a minor;
33 the physician of the victim; the victim counselor or person
34 requested by the victim to provide counseling regarding the
35 HIV-related test and results; the victim's spouse; persons

1 with whom the victim has engaged in vaginal, anal, or oral
2 intercourse subsequent to the sexual assault; members of the
3 victim's family within the third degree of consanguinity; and
4 the county attorney who may use the results as evidence in the
5 prosecution of sexual assault under chapter 915, subchapter
6 IV, or prosecution of the offense of criminal transmission of
7 HIV under chapter 709C. For the purposes of this paragraph,
8 "victim" means victim as defined section 915.40.

9 14. To employees of state correctional institutions
10 subject to the jurisdiction of the department of corrections,
11 employees of secure facilities for juveniles subject to the
12 department of human services, and employees of city and county
13 jails, if the employees have direct supervision over inmates
14 of those facilities or institutions in the exercise of the
15 duties prescribed pursuant to section 80.9, subsection 2,
16 paragraph "d".

17 Sec. 14. NEW SECTION. 141A.10 IMMUNITIES.

18 1. A person making a report in good faith pursuant to this
19 chapter is immune from any liability, civil or criminal, which
20 might otherwise be incurred or imposed as a result of the
21 report.

22 2. A health care provider attending a person who tests
23 positive for the HIV infection has no duty to disclose to or
24 to warn third parties of the dangers of exposure to HIV
25 infection through contact with that person and is immune from
26 any liability, civil or criminal, for failure to disclose to
27 or warn third parties of the condition of that person.

28 Sec. 15. NEW SECTION. 141A.11 REMEDIES.

29 1. A person aggrieved by a violation of this chapter shall
30 have a right of civil action for damages in district court.

31 2. A care provider who intentionally or recklessly makes
32 an unauthorized disclosure under this chapter is subject to a
33 civil penalty of one thousand dollars.

34 3. A person who violates a confidentiality requirement of
35 section 141A.5 is guilty of an aggravated misdemeanor.

1 4. A civil action under this chapter is barred unless the
2 action is commenced within two years after the cause of action
3 accrues.

4 5. The attorney general may maintain a civil action to
5 enforce this chapter.

6 6. This chapter does not limit the rights of the subject
7 of an HIV-related test to recover damages or other relief
8 under any other applicable law.

9 7. This chapter shall not be construed to impose civil
10 liability or criminal sanction for disclosure of HIV-related
11 test results in accordance with any reporting requirement for
12 a diagnosed case of AIDS or a related condition by the
13 department or the centers for disease control and prevention
14 of the United States public health service.

15 Sec. 16. Section 321.186, unnumbered paragraph 4, Code
16 1999, is amended to read as follows:

17 A physician licensed under chapter 148, 150, or 150A, or an
18 optometrist licensed under chapter 154, may report to the
19 department the identity of a person who has been diagnosed as
20 having a physical or mental condition which would render the
21 person physically or mentally incompetent to operate a motor
22 vehicle in a safe manner. The physician or optometrist shall
23 make reasonable efforts to notify the person who is the
24 subject of the report, in writing. The written notification
25 shall state the nature of the disclosure and the reason for
26 the disclosure. A physician or optometrist making a report
27 under this section shall be immune from any liability, civil
28 or criminal, which might otherwise be incurred or imposed as a
29 result of the report. A physician or optometrist has no duty
30 to make a report or to warn third parties with regard to any
31 knowledge concerning a person's mental or physical competency
32 to operate a motor vehicle in a safe manner. Any report
33 received by the department from a physician or optometrist
34 under this section shall be kept confidential. Information
35 regulated by chapter ~~141~~ 141A shall be subject to the

1 confidentiality provisions and remedies of sections-141-23-and
2 141-24 that chapter.

3 Sec. 17. Section 505.16, subsection 1, Code 1999, is
4 amended to read as follows:

5 1. A person engaged in the business of insurance shall not
6 require a test of an individual in connection with an
7 application for insurance for the presence of an antibody to
8 the human immunodeficiency virus unless the individual
9 provides a written release on a form approved by the insurance
10 commissioner. The form shall include information regarding
11 the purpose, content, use, and meaning of the test, disclosure
12 of test results including information explaining the effect of
13 releasing the information to a person engaged in the business
14 of insurance, the purpose for which the test results may be
15 used, and other information approved by the insurance
16 commissioner. The form shall also authorize the person
17 performing the test to provide the results of the test to the
18 insurance company subject to rules of confidentiality,
19 consistent with section ~~141-23~~ 141A.9, approved by the
20 insurance commissioner. As used in this section, "a person
21 engaged in the business of insurance" includes hospital
22 service corporations organized under chapter 514 and health
23 maintenance organizations subject to chapter 514B.

24 Sec. 18. Section 904.515, Code 1999, is amended to read as
25 follows:

26 904.515 HUMAN IMMUNODEFICIENCY VIRUS-RELATED MATTERS --
27 EXEMPTION.

28 The provisions of chapter ~~141~~ 141A relating to knowledge
29 and consent do not apply to persons committed to the custody
30 of the department. The department may provide for medically
31 acceptable procedures to inform employees, visitors, and
32 persons committed to the department of possible infection and
33 to protect them from possible infection.

34 Sec. 19. Section 915.40, subsection 3, paragraph c, Code
35 1999, is amended to read as follows:

1 c. The victim counselor or person requested by the victim
2 ~~who-is-authorized~~ to provide the counseling required-pursuant
3 ~~to-section-141-22~~ regarding the HIV-related test and results.

4 Sec. 20. Section 915.42, subsection 4, paragraph a, Code
5 1999, is amended to read as follows:

6 a. Prior to the scheduling of a hearing, refer the victim
7 for counseling by a victim counselor or a person requested by
8 the victim ~~who-is-authorized~~ to provide the counseling
9 ~~required-pursuant-to-section-141-22~~, regarding the nature,
10 reliability, and significance of the HIV-related test and of
11 the serologic status of the convicted offender.

12 Sec. 21. Section 915.43, subsections 1, 2, 4, and 5, Code
13 1999, are amended to read as follows:

14 1. The physician or other practitioner who orders the test
15 of a convicted or alleged offender for HIV under this
16 subchapter shall disclose the results of the test to the
17 convicted or alleged offender, and to the victim counselor or
18 a person requested by the victim ~~who-is-authorized~~ to provide
19 the counseling ~~required-pursuant-to-section-141-22~~, regarding
20 the HIV-related test and results who shall disclose the
21 results to the petitioner.

22 2. All testing under this chapter shall be accompanied by
23 pretest and posttest counseling ~~as-required-under-section~~
24 ~~141-22~~.

25 4. Results of a test performed under this subchapter,
26 except as provided in subsection 13, shall be disclosed only
27 to the physician or other practitioner who orders the test of
28 the convicted or alleged offender, the convicted or alleged
29 offender, the victim, the victim counselor or person requested
30 by the victim ~~who-is-authorized~~ to provide the counseling
31 ~~required-pursuant-to-section-141-22~~ regarding the HIV-related
32 test and results, the physician of the victim if requested by
33 the victim, the parent, guardian, or custodian of the victim,
34 if the victim is a minor, and the county attorney who filed
35 the petition for HIV-related testing under this chapter, who

1 may use the results to file charges of criminal transmission
2 of HIV under chapter 709C. Results of a test performed under
3 this subchapter shall not be disclosed to any other person
4 without the written informed consent of the convicted or
5 alleged offender. A person to whom the results of a test have
6 been disclosed under this subchapter is subject to the
7 confidentiality provisions of section ~~141-23~~ 141A.9, and shall
8 not disclose the results to another person except as
9 authorized by section ~~141-23~~, ~~subsection-1~~ 141A.9, subsection
10 13.

11 5. If testing is ordered under this subchapter, the court
12 shall also order periodic testing of the convicted offender
13 during the period of incarceration, probation, or parole or of
14 the alleged offender during a period of six months following
15 the initial test if the physician or other practitioner who
16 ordered the initial test of the convicted or alleged offender
17 certifies that, based upon prevailing scientific opinion
18 regarding the maximum period during which the results of an
19 HIV-related test may be negative for a person after being HIV-
20 infected, additional testing is necessary to determine whether
21 the convicted or alleged offender was HIV-infected at the time
22 the sexual assault or alleged sexual assault was perpetrated.
23 The results of the test conducted pursuant to this subsection
24 shall be released only to the physician or other practitioner
25 who orders the test of the convicted or alleged offender, the
26 convicted or alleged offender, the victim counselor or person
27 requested by the victim ~~who-is-authorized~~ to provide the
28 counseling ~~required-pursuant-to-section-141-22~~, regarding the
29 HIV-related test and results who shall disclose the results to
30 the petitioner, the physician of the victim, if requested by
31 the victim, and the county attorney who may use the results as
32 evidence in the prosecution of the sexual assault or in the
33 prosecution of the offense of criminal transmission of HIV
34 under chapter 709C.

35 Sec. 22. Chapter 141, Code 1999, is repealed.

EXPLANATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

This bill replaces the statute pertaining to acquired immune deficiency syndrome (AIDS), which is currently divided into subchapters, with a new chapter which combines the subchapters and makes changes to the chapter. Existing Code chapter 141 is repealed.

The bill combines all definitions used in the chapter into one section. The bill provides a new definition of "care provider" which encompasses any person providing health care services of any kind, including emergency medical assistance or treatment. The definition of "legal guardian" is expanded to include an "attorney in fact". The definition of "ARC" or "AIDS-related complex" is deleted. The definition of "sample" is added to include any specimen obtained for the purposes of conducting an HIV-related test.

The bill designates the Iowa department of public health as the lead agency in the coordination and implementation of the state's AIDS prevention and intervention plan. The bill also authorizes the department to adopt rules to implement and enforce the bill. The bill continues the authorization for the department to coordinate efforts with local health officers to investigate sources of HIV infection and to use every appropriate means to prevent the spread of the disease. The bill also continues authorization for the department to conduct epidemiological blinded and nonblinded studies.

The bill assigns several duties to the department. These duties include broad responsibilities for testing, education, and disease control. The bill retains the requirement in existing law that school districts, with parental consent, provide education concerning HIV infection and prevention to students.

The bill continues the requirement that testing and counseling be offered for specified groups. In addition, the bill requires that all pregnant women receive information about testing and treatment opportunities to reduce the

1 possible transmission of HIV to a fetus, requires that all
2 pregnant women with risk factors for HIV be strongly
3 encouraged to be tested, and requires that upon request a
4 pregnant woman be tested regardless of the absence of risk
5 factors.

6 The bill requires that the department maintain a partner
7 notification program for persons known to have tested positive
8 for HIV infection. Persons who test positive shall receive
9 posttest counseling and be encouraged to refer for counseling
10 and testing any person who may have sustained a significant
11 exposure from them. The section continues the provision that
12 a physician for an infected person may initiate partner
13 notification when the infected person will not participate and
14 will not warn an exposed third party. The bill deletes the
15 current provision that when a person who tests positive for
16 HIV infection will not participate in partner notification
17 prior to notification of a third party, the physician
18 proposing to cause the notification make reasonable efforts to
19 inform, in writing, the person who tested positive.

20 The bill provides for the performance of voluntary testing,
21 eliminates anonymous testing, and contains the reporting
22 requirements for positive test results.

23 The bill eliminates the provision of pretest counseling.
24 The bill provides that upon informing the subject of positive
25 test results, counseling is required to be initiated with
26 emphasis given to the need for precautions to prevent
27 transmitting the virus. The bill continues the provisions
28 granting exceptions to counseling in instances of donation of
29 body parts, patients unable to give consent, insurance exams,
30 and testing of deceased persons involved in a documented
31 significant exposure incident. The provisions relating to
32 minors are amended to eliminate the provision that if a person
33 who personally applies for services, screening, or treatment
34 is a minor, the fact that the minor sought services or is
35 receiving services, screening, or treatment is not to be

1 reported or disclosed except for statistical purposes. The
2 bill retains the provision that confirmed positive HIV test
3 results are to be reported to a minor's legal guardian.

4 The bill provides a notification process under which care
5 providers who have suffered a significant exposure to an
6 individual in the course of providing assistance may obtain
7 information concerning that individual's HIV status. The bill
8 adds a provision that if a care provider in the course of
9 providing care on the premises of a hospital or health
10 facility sustains a significant exposure, the person to whom
11 the care provider was exposed is deemed to have consented to
12 an HIV-related test, upon the written request of the care
13 provider. The sample and test results are identified by the
14 name of the care provider and no report otherwise required is
15 to be made which identifies the subject of the test. If the
16 results are positive, the subject of the test is to be
17 informed and provided with counseling.

18 The bill provides for strict confidentiality of medical
19 information relating to a patient's HIV status. The bill
20 contains specific provisions relating to when that information
21 may be released and to whom.

22 The bill provides immunities for persons making reports
23 pursuant to the bill and provides that health care providers
24 have no duty to warn third parties regarding contact with a
25 person who has positive HIV test results.

26 The bill establishes civil and criminal remedies for
27 violations of confidentiality and other provisions of the
28 bill. The penalty for violation of a confidentiality
29 requirement relating to the partner notification program is
30 reduced from a class "D" felony (which carries a maximum
31 sentence of confinement of not more than 5 years and in
32 addition may include a fine of at least \$500 but not more than
33 \$7,500) to an aggravated misdemeanor (which carries a maximum
34 sentence of imprisonment not to exceed 2 years and a fine of
35 at least \$500 but not more than \$5,000). The bill contains

1 the specific civil penalty of \$1,000 for a care provider who
2 intentionally or recklessly makes an unauthorized disclosure.

3 The bill eliminates the provisions for accreditation of HIV
4 testing laboratories.

5 The remainder of the bill makes conforming changes
6 necessitated by the enactment of new Code chapter 141A and the
7 repeal of Code chapter 141. .

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

REPRINTED

FILED FEB 25 1999

SENATE FILE 248
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 1130)

Passed Senate, Date 3/2/99 Passed House, Date 4/6/99
Vote: Ayes 48 Nays 0 Vote: Ayes 100 Nays 0
Approved May 26, 1999

A BILL FOR

1 An Act relating to acquired immune deficiency syndrome, providing
2 penalties, and providing for a repeal.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 248

S-3024

1 Amend Senate File 248 as follows:
2 1. By striking page 14, line 31, through page 15,
3 line 10, and inserting the following:
4 " . When a care provider in the course of
5 providing care sustains a significant exposure on the
6 premises of a health care facility or while engaged in
7 rendering aid or providing transportation to an
8 individual in circumstances which lead to the
9 individual's presence at a health care facility, the
10 individual to whom the care provider was exposed is
11 deemed to consent to a test to be administered by the
12 health care facility upon the written request of the
13 exposed care provider for the express purpose of
14 determining the presence of HIV infection in that
15 individual. The sample and test results shall only be
16 identified by a number and no reports otherwise
17 required by this chapter shall be made which identify
18 the individual tested. However, if the test results
19 are positive, the health care facility shall notify
20 the individual tested and ensure performance of
21 counseling and reporting requirements of this chapter
22 in the same manner as for an individual from whom
23 actual consent was obtained."

3/2/99 adopted (R 449)

By JOHN REDWINE

S-3024 FILED MARCH 1, 1999

SF 248

1 Section 1. Section 80.9, subsection 2, paragraph d, Code
2 1999, is amended to read as follows:

3 d. To collect and classify, and keep at all times
4 available, complete information useful for the detection of
5 crime, and the identification and apprehension of criminals.
6 Such information shall be available for all peace officers
7 within the state, under such regulations as the commissioner
8 may prescribe. The provisions of chapter ~~141~~ 141A do not
9 apply to the entry of human immunodeficiency virus-related
10 information by criminal or juvenile justice agencies, as
11 defined in section 692.1, into the Iowa criminal justice
12 information system or the national crime information center
13 system. The provisions of chapter ~~141~~ 141A also do not apply
14 to the transmission of the same information from either or
15 both information systems to criminal or juvenile justice
16 agencies. The provisions of chapter ~~141~~ 141A also do not
17 apply to the transmission of the same information from either
18 or both information systems to employees of state correctional
19 institutions subject to the jurisdiction of the department of
20 corrections, employees of secure facilities for juveniles
21 subject to the jurisdiction of the department of human
22 services, and employees of city and county jails, if those
23 employees have direct physical supervision over inmates of
24 those facilities or institutions. Human immunodeficiency
25 virus-related information shall not be transmitted over the
26 police radio broadcasting system under chapter 693 or any
27 other radio-based communications system. An employee of an
28 agency receiving human immunodeficiency virus-related
29 information under this section who communicates the
30 information to another employee who does not have direct
31 physical supervision over inmates, other than to a supervisor
32 of an employee who has direct physical supervision over
33 inmates for the purpose of conveying the information to such
34 an employee, or who communicates the information to any person
35 not employed by the agency or uses the information outside the

1 agency is guilty of a class "D" felony. The commissioner
2 shall adopt rules regarding the transmission of human
3 immunodeficiency virus-related information including
4 provisions for maintaining confidentiality of the information.
5 The rules shall include a requirement that persons receiving
6 information from the Iowa criminal justice information system
7 or the national crime information center system receive
8 training regarding confidentiality standards applicable to the
9 information received from the system. The commissioner shall
10 develop and establish, in cooperation with the department of
11 corrections and the Iowa department of public health, training
12 programs and program criteria for persons receiving human
13 immunodeficiency virus-related information through the Iowa
14 criminal justice information system or the national crime
15 information center system.

16 Sec. 2. Section 139B.1, subsection 1, paragraph a, Code
17 1999, is amended to read as follows:

18 a. "Contagious or infectious disease" means hepatitis in
19 any form, meningococcal disease, tuberculosis, and any other
20 disease with the exception of AIDS or HIV infection as defined
21 in section ~~141.21~~ 141A.1, determined to be life-threatening to
22 a person exposed to the disease as established by rules
23 adopted by the department based upon a determination by the
24 state epidemiologist and in accordance with guidelines of the
25 centers for disease prevention and control of the United
26 States department of health and human services.

27 Sec. 3. Section 139C.1, subsection 6, Code 1999, is
28 amended to read as follows:

29 6. "HIV" means HIV as defined in section ~~141.21~~ 141A.1.

30 Sec. 4. Section 139C.2, subsection 7, Code 1999, is
31 amended to read as follows:

32 7. Information relating to the HIV status of a health care
33 provider is confidential and subject to the provisions of
34 section ~~141.23~~ 141A.9. A person who intentionally or
35 recklessly makes an unauthorized disclosure of such

1 information is subject to a civil penalty of one thousand
2 dollars. The attorney general or the attorney general's
3 designee may maintain a civil action to enforce this section.
4 Proceedings maintained under this section shall provide for
5 the anonymity of the individual and all documentation shall be
6 maintained in a confidential manner. Information relating to
7 the HBV status of a health care provider is confidential and
8 shall not be accessible to the public. Information regulated
9 by this section, however, may be disclosed to members of the
10 expert review panel established by the department or a panel
11 established by hospital protocol under this section. The
12 information may also be disclosed to the appropriate examining
13 board by filing a report as required by this section. The
14 examining board shall consider the report a complaint subject
15 to the confidentiality provisions of section 272C.6. A
16 licensee, upon the filing of a formal charge or notice of
17 hearing by the examining board based on such a complaint, may
18 seek a protective order from the board.

19 Sec. 5. NEW SECTION. 141A.1 DEFINITIONS.

20 As used in this chapter, unless the context otherwise
21 requires:

- 22 1. "AIDS" means acquired immune deficiency syndrome as
23 defined by the centers for disease control and prevention of
24 the United States department of health and human services.
- 25 2. "AIDS-related conditions" means the human
26 immunodeficiency virus, or any other condition resulting from
27 the human immunodeficiency virus infection.
- 28 3. "Blinded epidemiological studies" means studies in
29 which specimens which were collected for other purposes are
30 selected according to established criteria, are permanently
31 stripped of personal identifiers, and are then tested.
- 32 4. "Blood bank" means a facility for the collection,
33 processing, or storage of human blood or blood derivatives,
34 including blood plasma, or from which or by means of which
35 human blood or blood derivatives are distributed or otherwise

1 made available.

2 5. "Care provider" means any emergency care provider,
3 health care provider, or any other person providing health
4 care services of any kind.

5 6. "Department" means the Iowa department of public
6 health.

7 7. "Emergency care provider" means a person who is trained
8 and authorized by federal or state law to provide emergency
9 medical assistance or treatment, for compensation or in a
10 voluntary capacity, including but not limited to all of the
11 following:

12 (1) An emergency medical care provider as defined in
13 section 147A.1.

14 (2) A health care provider.

15 (3) A fire fighter.

16 (4) A peace officer.

17 "Emergency care provider" also includes a person who
18 renders emergency aid without compensation.

19 8. "Good faith" means objectively reasonable and not in
20 violation of clearly established statutory rights or other
21 rights of a person which a reasonable person would know or
22 should have known.

23 9. "Health care provider" means a person licensed or
24 certified under chapter 148, 148C, 150, 150A, 152, or 153 to
25 provide professional health care service to a person during
26 the person's medical care, treatment, or confinement.

27 10. "Health facility" means a hospital, health care
28 facility, clinic, blood bank, blood center, sperm bank,
29 laboratory organ transplant center and procurement agency, or
30 other health care institution.

31 11. "HIV" means the human immunodeficiency virus
32 identified as the causative agent of AIDS.

33 12. "HIV-related test" means a diagnostic test conducted
34 by a laboratory approved pursuant to the federal Clinical
35 Laboratory Improvements Act for determining the presence of

1 HIV.

2 13. "Infectious bodily fluids" means bodily fluids capable
3 of transmitting HIV infection as determined by the centers for
4 disease control and prevention of the United States department
5 of health and human services and adopted by rule of the
6 department.

7 14. "Legal guardian" means a person appointed by a court
8 pursuant to chapter 633 or an attorney in fact as defined in
9 section 144B.1. In the case of a minor, "legal guardian" also
10 means a parent or other person responsible for the care of the
11 minor.

12 15. "Nonblinded epidemiological studies" means studies in
13 which specimens are collected for the express purpose of
14 testing for the HIV infection and persons included in the
15 nonblinded study are selected according to established
16 criteria.

17 16. "Release of test results" means a written
18 authorization for disclosure of HIV-related test results which
19 is signed and dated, and which specifies to whom disclosure is
20 authorized and the time period during which the release is to
21 be effective.

22 17. "Sample" means a human specimen obtained for the
23 purpose of conducting an HIV-related test.

24 18. "Significant exposure" means the risk of contracting
25 HIV infection by means of exposure to a person's infectious
26 bodily fluids in a manner capable of transmitting HIV
27 infection as determined by the centers for disease control and
28 prevention of the United States department of health and human
29 services and adopted by rule of the department.

30 Sec. 6. NEW SECTION. 141A.2 LEAD AGENCY.

31 1. The department is designated as the lead agency in the
32 coordination and implementation of the state comprehensive
33 AIDS-related conditions prevention and intervention plan.

34 2. The department shall adopt rules pursuant to chapter
35 17A to implement and enforce this chapter. The rules may

1 include procedures for taking appropriate action with regard
2 to health facilities or health care providers which violate
3 this chapter or the rules adopted pursuant to this chapter.

4 3. The department shall adopt rules pursuant to chapter
5 17A which require that if a health care provider attending a
6 person prior to the person's death determines that the person
7 suffered from or was suspected of suffering from a contagious
8 or infectious disease, the health care provider shall place
9 with the remains written notification of the condition for the
10 information of any person handling the body of the deceased
11 person subsequent to the person's death. For purposes of this
12 subsection, "contagious or infectious disease" means hepatitis
13 in any form, meningococcal disease, tuberculosis, and any
14 other disease including AIDS or HIV infection, determined to
15 be life-threatening to a person exposed to the disease as
16 established by rules adopted by the department based upon a
17 determination by the state epidemiologist and in accordance
18 with guidelines of the centers for disease control and
19 prevention of the United States department of health and human
20 services.

21 4. The department, in cooperation with the department of
22 public safety, and persons who represent those who attend dead
23 bodies shall establish for all care providers, including
24 paramedics, ambulance personnel, physicians, nurses, hospital
25 personnel, first responders, peace officers, and fire
26 fighters, who provide care services to a person, and for all
27 persons who attend dead bodies, protocol and procedures for
28 the use of universal precautions to prevent the transmission
29 of contagious and infectious diseases.

30 5. The department shall coordinate efforts with local
31 health officers to investigate sources of HIV infection and
32 use every appropriate means to prevent the spread of the
33 infection.

34 6. The department, with the approval of the state board of
35 health, may conduct epidemiological blinded and nonblinded

1 studies to determine the incidence and prevalence of the HIV
2 infection. Initiation of any new epidemiological studies
3 shall be contingent upon the receipt of funding sufficient to
4 cover all the costs associated with the studies. The informed
5 consent, reporting, and counseling requirements of this
6 chapter shall not apply to blinded studies.

7 Sec. 7. NEW SECTION. 141A.3 DUTIES OF THE DEPARTMENT.

8 1. All federal and state moneys appropriated to the
9 department for AIDS-related activities shall be allocated in
10 accordance with a prioritized schedule developed by rule of
11 the department, and grants shall be awarded to the maximum
12 extent feasible to community-based organizations.

13 2. The department shall do all of the following:

14 a. Provide consultation to agencies and organizations
15 regarding appropriate policies for testing, education,
16 confidentiality, and infection control.

17 b. Conduct health information programs for the public
18 relating to HIV infection, including information about how the
19 infection is transmitted and how transmittal can be prevented.
20 The department shall prepare, for free distribution, printed
21 information relating to HIV infection and prevention.

22 c. Provide educational programs concerning HIV infection
23 in the workplace.

24 d. Develop and implement HIV education risk-reduction
25 programs for specific populations at high risk for infection.

26 e. Provide an informational brochure for patients who
27 provide samples for purposes of performing an HIV test which,
28 at a minimum, shall include a summary of the patient's rights
29 and responsibilities under the law.

30 f. In cooperation with the department of education,
31 develop and update a medically correct AIDS prevention
32 curriculum for use at the discretion of secondary and middle
33 schools.

34 3. The department shall, in cooperation with the
35 department of education and other agencies, organizations,

1 coalitions, and local health departments, develop and
2 implement a program of public and professional AIDS-related
3 education.

4 Sec. 8. NEW SECTION. 141A.4 TESTING AND COUNSELING.

5 1. HIV testing and counseling shall be offered to the
6 following:

7 a. All persons seeking treatment for a sexually
8 transmitted disease.

9 b. All persons seeking treatment for injecting drug abuse
10 or having a history of injecting drug abuse.

11 c. All persons who consider themselves at risk for the HIV
12 infection.

13 d. Male and female prostitutes.

14 2. Pregnant women shall be provided information about HIV
15 prevention, risk reduction, and treatment opportunities to
16 reduce the possible transmission of HIV to a fetus. Pregnant
17 women who report one or more recognized risk factors for HIV
18 shall be strongly encouraged to undergo HIV-related testing.

19 A pregnant woman who requests testing shall be tested
20 regardless of the absence of risk factors.

21 Sec. 9. NEW SECTION. 141A.5 PARTNER NOTIFICATION PROGRAM
22 -- HIV.

23 1. The department shall maintain a partner notification
24 program for persons known to have tested positive for the HIV
25 infection.

26 2. The department shall initiate the program at
27 alternative testing and counseling sites and at sexually
28 transmitted disease clinics.

29 3. In administering the program, the department shall
30 provide for the following:

31 a. A person who tests positive for the HIV infection shall
32 receive posttest counseling, during which time the person
33 shall be encouraged to refer for counseling and HIV testing
34 any person with whom the person has had sexual relations or
35 has shared drug injecting equipment.

1 b. The physician or other health care provider attending
2 the person may provide to the department any relevant
3 information provided by the person regarding any person with
4 whom the tested person has had sexual relations or has shared
5 drug injecting equipment. The department disease prevention
6 staff shall then conduct partner notification in the same
7 manner as that utilized for sexually transmitted diseases
8 consistent with the provisions of this chapter.

9 c. Devise a procedure, as a part of the partner
10 notification program, to provide for the notification of an
11 identifiable third party who is a sexual partner of or who
12 shares drug injecting equipment with a person who has tested
13 positive for HIV, by the department or a physician, when all
14 of the following situations exist:

15 (1) A physician for the infected person is of the good
16 faith opinion that the nature of the continuing contact poses
17 an imminent danger of HIV infection transmission to the third
18 party.

19 (2) When the physician believes in good faith that the
20 infected person, despite strong encouragement, has not and
21 will not warn the third party and will not participate in the
22 voluntary partner notification program.

23 Notwithstanding subsection 4, the department or a physician
24 may reveal the identity of a person who has tested positive
25 for the HIV infection pursuant to this subsection only to the
26 extent necessary to protect a third party from the direct
27 threat of transmission. This subsection shall not be
28 interpreted to create a duty to warn third parties of the
29 danger of exposure to HIV through contact with a person who
30 tests positive for the HIV infection.

31 The department shall adopt rules pursuant to chapter 17A to
32 implement this paragraph "c". The rules shall provide a
33 detailed procedure by which the department or a physician may
34 directly notify an endangered third party.

35 4. In making contact the department shall not disclose the

1 identity of the person who provided the names of the persons
2 to be contacted and shall protect the confidentiality of
3 persons contacted.

4 5. The department may delegate its partner notification
5 duties under this section to local health authorities unless
6 the local authority refuses or neglects to conduct the contact
7 tracing program in a manner deemed to be effective by the
8 department.

9 6. In addition to the provisions for partner notification
10 provided under this section and notwithstanding any provision
11 to the contrary, a county medical examiner or deputy medical
12 examiner performing official duties pursuant to sections
13 331.801 through 331.805 or the state medical examiner or
14 deputy medical examiner performing official duties pursuant to
15 chapter 691, who determines through an investigation that a
16 deceased person was infected with HIV, may notify directly, or
17 request that the department notify, the immediate family of
18 the deceased or any person known to have had a significant
19 exposure from the deceased of the finding.

20 Sec. 10. NEW SECTION. 141A.6 AIDS-RELATED CONDITIONS --
21 SCREENING, TESTING, AND REPORTING.

22 1. Prior to obtaining a sample for the purpose of
23 performing a voluntary HIV-related test, a health care
24 provider shall inform the subject of the test that the test is
25 voluntary. Within seven days of the receipt of a test result
26 indicating HIV infection which has been confirmed as positive
27 according to prevailing medical technology, the physician or
28 other health care provider at whose request the test was
29 performed shall make a report to the department on a form
30 provided by the department.

31 2. Within seven days of diagnosing a person as having an
32 AIDS-related condition, the diagnosing physician shall make a
33 report to the department on a form provided by the department.

34 3. Within seven days of the death of a person resulting
35 from an AIDS-related condition, the attending physician shall

1 make a report to the department on a form provided by the
2 department.

3 4. Within seven days of the receipt of a test result
4 indicating HIV infection which has been confirmed as positive
5 according to prevailing medical technology, the director of a
6 blood bank shall make a report to the department on a form
7 provided by the department.

8 5. Within seven days of the receipt of a test result
9 indicating HIV infection which has been confirmed as positive
10 according to prevailing medical technology, the director of a
11 clinical laboratory shall make a report to the department on a
12 form provided by the department.

13 6. The forms provided by the department shall require
14 inclusion of all of the following information:

- 15 a. The name of the patient.
- 16 b. The address of the patient.
- 17 c. The patient's date of birth.
- 18 d. The gender of the patient.
- 19 e. The race or ethnicity of the patient.
- 20 f. The patient's marital status.
- 21 g. The patient's telephone number.
- 22 h. The name and address of the laboratory or blood bank.
- 23 i. The date the test was found to be positive and the
24 collection date.
- 25 j. The name of the physician or health care provider who
26 performed the test.
- 27 k. If the patient is female, whether the patient is
28 pregnant.

29 Sec. 11. NEW SECTION. 141A.7 TEST RESULTS -- COUNSELING
30 -- APPLICATION FOR SERVICES.

31 1. Prior to undergoing an HIV-related test, information
32 shall be available to the subject of the test concerning
33 testing and any means of obtaining additional information
34 regarding HIV infection and risk reduction. At any time that
35 the subject of an HIV-related test is informed of confirmed

1 positive test results, counseling concerning the emotional and
2 physical health effects shall be initiated. Particular
3 attention shall be given to explaining the need for the
4 precautions necessary to avoid transmitting the virus. The
5 subject shall be given information concerning additional
6 counseling.

7 2. Notwithstanding subsection 1, the provisions of this
8 section do not apply to any of the following:

9 a. The performance by a health care provider or health
10 facility of an HIV-related test when the health care provider
11 or health facility procures, processes, distributes, or uses a
12 human body part donated for a purpose specified under the
13 uniform anatomical gift Act, or semen provided prior to July
14 1, 1988, for the purpose of artificial insemination, or
15 donations of blood, and such test is necessary to ensure
16 medical acceptability of such gift or semen for the purposes
17 intended.

18 b. A person engaged in the business of insurance who is
19 subject to section 505.16.

20 c. The performance by a health care provider or health
21 facility of an HIV-related test when the subject of the test
22 is deceased and a documented significant exposure has
23 occurred.

24 3. A person may apply for voluntary treatment,
25 contraceptive services, or screening or treatment for HIV
26 infection and other sexually transmitted diseases directly to
27 a licensed physician and surgeon, an osteopathic physician and
28 surgeon, or a family planning clinic. Notwithstanding any
29 other provision of law, however, a minor shall be informed
30 prior to testing that, upon confirmation according to
31 prevailing medical technology of a positive HIV-related test
32 result, the minor's legal guardian is required to be informed
33 by the testing facility. Testing facilities where minors are
34 tested shall have available a program to assist minors and
35 legal guardians with the notification process which emphasizes

1 the need for family support and assists in making available
2 the resources necessary to accomplish that goal. However, a
3 testing facility which is precluded by federal statute,
4 regulation, or centers for disease control and prevention
5 guidelines from informing the legal guardian is exempt from
6 the notification requirement. The minor shall give written
7 consent to these procedures and to receive the services,
8 screening, or treatment. Such consent is not subject to later
9 disaffirmance by reason of minority.

10 Sec. 12. NEW SECTION. 141A.8 CARE PROVIDER NOTIFICATION.

11 1. A hospital licensed under chapter 135B shall provide
12 notification to a care provider who renders assistance or
13 treatment to an individual, following submission of a
14 significant exposure report by the care provider to the
15 hospital and a diagnosis or confirmation by an attending
16 physician that the individual has HIV infection, and
17 determination that the exposure reported was a significant
18 exposure. The notification shall advise the care provider of
19 possible exposure to HIV infection. Notification shall be
20 made in accordance with both of the following:

21 a. The hospital informs the individual, when the
22 individual's condition permits, of the submission of a
23 significant exposure report.

24 b. The individual consents to serological testing by or
25 voluntarily discloses the individual's HIV status to the
26 hospital and consents to notification.

27 Notwithstanding paragraphs "a" and "b", notification shall
28 be made when the individual denies consent for or consent is
29 not reasonably obtainable for serological testing, and in the
30 course of admission, care, and treatment of the individual,
31 the individual is diagnosed or is confirmed as having HIV
32 infection.

33 2. The hospital shall notify the care provider involved in
34 attending or transporting an individual who submitted a
35 significant exposure report. This shall include a person who

1 renders direct emergency aid without compensation, or in the
2 case of an emergency care provider, the designated officer of
3 the emergency care provider service, who in turn shall notify
4 any emergency care providers. The identity of the designated
5 officer shall not be revealed to the individual. The
6 designated officer shall inform the hospital of those parties
7 who received the notification, and following receipt of this
8 information and upon request of the individual, the hospital
9 shall inform the individual of the parties to whom
10 notification was provided.

11 3. The hospital, upon request of the individual, shall
12 inform the individual of the persons to whom notification was
13 made.

14 4. The process for notification under this section shall
15 be initiated as soon as is reasonably possible.

16 5. A health care provider, with consent of the individual,
17 may provide the notification required of hospitals in this
18 section to care providers if an individual who has HIV
19 infection is delivered by a care provider to the office or
20 clinic of the health care provider for treatment. The
21 notification shall take place only upon submission of a
22 significant exposure report form by the care provider to the
23 health care provider and the determination by the health care
24 provider that a significant exposure has occurred.

25 6. This section does not require or permit, unless
26 otherwise provided, a hospital or health care provider to
27 administer a test for the express purpose of determining the
28 presence of HIV infection, except that testing may be
29 performed if the individual consents, and if the requirements
30 of this section are satisfied.

31 7. When a care provider in the course of providing care
32 sustains a significant exposure on the premises of a hospital
33 or health facility, the individual to whom the care provider
34 was exposed is deemed to consent to a test to be administered
35 by the hospital or health care facility upon the written

1 request of the exposed care provider for the express purpose
2 of determining the presence of HIV infection in that
3 individual. The sample and test results shall only be
4 identified by a number and no reports otherwise required by
5 this chapter shall be made which identify the individual
6 tested. However, if the test results are positive, the
7 hospital or health care facility shall notify the individual
8 tested and ensure performance of counseling and reporting
9 requirements of this chapter in the same manner as for an
10 individual from whom actual consent was obtained.

11 8. A hospital or health care provider, or other person
12 participating in good faith in making a report under the
13 notification provisions of this section, under procedures
14 similar to this section for notification of its own employees
15 upon filing of a significant exposure report, or in failing to
16 make a report under this section, is immune from any
17 liability, civil or criminal, which might otherwise be
18 incurred or imposed.

19 9. Notifications made pursuant to this section shall not
20 disclose the identity of the individual who is diagnosed or
21 confirmed as having HIV infection unless the individual
22 provides a specific written release as provided in subsection
23 1, paragraph "b". If the care provider determines the
24 identity of the individual, the identity of the individual
25 shall be confidential information and shall not be disclosed
26 by the care provider to any other person unless a specific
27 written release is obtained from the individual.

28 10. A hospital's duty to notify under this section is not
29 continuing but is limited to the diagnosis of HIV infection
30 made in the course of admission, care, and treatment following
31 the rendering of assistance or treatment of the individual
32 with the infection.

33 11. Notwithstanding subsection 10, if, following discharge
34 or completion of care or treatment, an individual for whom a
35 significant exposure report was submitted but which report did

1 not result in notification, wishes to provide information
2 regarding the individual's HIV infection status to the care
3 provider who submitted the report, the hospital shall provide
4 a procedure for notifying the care provider.

5 12. The employer of a care provider who submits a report
6 of significant exposure under this section sustained in the
7 course of employment shall pay the costs of HIV testing for
8 the individual and the costs of HIV testing and counseling for
9 the care provider. However, the department shall pay the
10 costs of HIV testing for the individual and the costs of HIV
11 testing and counseling for a care provider who renders direct
12 aid without compensation.

13 Sec. 13. NEW SECTION. 141A.9 CONFIDENTIALITY OF
14 INFORMATION.

15 Any information, including reports and records, obtained,
16 submitted, and maintained pursuant to this chapter is strictly
17 confidential medical information. The information shall not
18 be released, shared with an agency or institution, or made
19 public upon subpoena, search warrant, discovery proceedings,
20 or by any other means except as provided in this chapter. A
21 person shall not be compelled to disclose the identity of any
22 person upon whom an HIV-related test is performed, or the
23 results of the test in a manner which permits identification
24 of the subject of the test, except to persons entitled to that
25 information under this chapter. Information shall be made
26 available for release to the following individuals or under
27 the following circumstances:

28 1. To the subject of the test or the subject's legal
29 guardian subject to the provisions of section 141A.7,
30 subsection 3, when applicable.

31 2. To any person who secures a written release of test
32 results executed by the subject of the test or the subject's
33 legal guardian.

34 3. To an authorized agent or employee of a health facility
35 or health care provider, if the health facility or health care

1 provider ordered or participated in the testing or is
2 otherwise authorized to obtain the test results, the agent or
3 employee provides patient care or handles or processes
4 samples, and the agent or employee has a medical need to know
5 such information.

6 4. To a health care provider providing care to the subject
7 of the test when knowledge of the test results is necessary to
8 provide care or treatment.

9 5. To the department in accordance with reporting
10 requirements for an HIV-related condition.

11 6. To a health facility or health care provider which
12 procures, processes, distributes, or uses a human body part
13 from a deceased person with respect to medical information
14 regarding that person, or semen provided prior to July 1,
15 1988, for the purpose of artificial insemination.

16 7. Release may be made of medical or epidemiological
17 information for statistical purposes in a manner such that no
18 individual person can be identified.

19 8. Release may be made of medical or epidemiological
20 information to the extent necessary to enforce the provisions
21 of this chapter and related rules concerning the treatment,
22 control, and investigation of HIV infection by public health
23 officials.

24 9. Release may be made of medical or epidemiological
25 information to medical personnel to the extent necessary to
26 protect the health or life of the named party.

27 10. Release may be made of test results concerning a
28 patient pursuant to procedures established under section
29 141A.5, subsection 3, paragraph "c".

30 11. To a person allowed access to a record by a court
31 order which is issued in compliance with the following
32 provisions:

33 a. A court has found that the person seeking the test
34 results has demonstrated a compelling need for the test
35 results which need cannot be accommodated by other means. In

1 assessing compelling need, the court shall weigh the need for
2 disclosure against the privacy interest of the test subject
3 and the public interest which may be disserved by disclosure
4 due to its deterrent effect on future testing or due to its
5 effect in leading to discrimination.

6 b. Pleadings pertaining to disclosure of test results
7 shall substitute a pseudonym for the true name of the subject
8 of the test. The disclosure to the parties of the subject's
9 true name shall be communicated confidentially in documents
10 not filed with the court.

11 c. Before granting an order, the court shall provide the
12 person whose test results are in question with notice and a
13 reasonable opportunity to participate in the proceedings if
14 the person is not already a party.

15 d. Court proceedings as to disclosure of test results
16 shall be conducted in camera unless the subject of the test
17 agrees to a hearing in open court or unless the court
18 determines that a public hearing is necessary to the public
19 interest and the proper administration of justice.

20 e. Upon the issuance of an order to disclose test results,
21 the court shall impose appropriate safeguards against
22 unauthorized disclosure, which shall specify the persons who
23 may gain access to the information, the purposes for which the
24 information shall be used, and appropriate prohibitions on
25 future disclosure.

26 12. To an employer, if the test is authorized to be
27 required under any other provision of law.

28 13. To a convicted or alleged sexual assault offender; the
29 physician or other health care provider who orders the test of
30 a convicted or alleged offender; the victim; the parent,
31 guardian, or custodian of the victim if the victim is a minor;
32 the physician of the victim; the victim counselor or person
33 requested by the victim to provide counseling regarding the
34 HIV-related test and results; the victim's spouse; persons
35 with whom the victim has engaged in vaginal, anal, or oral

1 intercourse subsequent to the sexual assault; members of the
2 victim's family within the third degree of consanguinity; and
3 the county attorney who may use the results as evidence in the
4 prosecution of sexual assault under chapter 915, subchapter
5 IV, or prosecution of the offense of criminal transmission of
6 HIV under chapter 709C. For the purposes of this paragraph,
7 "victim" means victim as defined section 915.40.

8 14. To employees of state correctional institutions
9 subject to the jurisdiction of the department of corrections,
10 employees of secure facilities for juveniles subject to the
11 department of human services, and employees of city and county
12 jails, if the employees have direct supervision over inmates
13 of those facilities or institutions in the exercise of the
14 duties prescribed pursuant to section 80.9, subsection 2,
15 paragraph "d".

16 Sec. 14. NEW SECTION. 141A.10 IMMUNITIES.

17 1. A person making a report in good faith pursuant to this
18 chapter is immune from any liability, civil or criminal, which
19 might otherwise be incurred or imposed as a result of the
20 report.

21 2. A health care provider attending a person who tests
22 positive for the HIV infection has no duty to disclose to or
23 to warn third parties of the dangers of exposure to HIV
24 infection through contact with that person and is immune from
25 any liability, civil or criminal, for failure to disclose to
26 or warn third parties of the condition of that person.

27 Sec. 15. NEW SECTION. 141A.11 REMEDIES.

28 1. A person aggrieved by a violation of this chapter shall
29 have a right of civil action for damages in district court.

30 2. A care provider who intentionally or recklessly makes
31 an unauthorized disclosure under this chapter is subject to a
32 civil penalty of one thousand dollars.

33 3. A person who violates a confidentiality requirement of
34 section 141A.5 is guilty of an aggravated misdemeanor.

35 4. A civil action under this chapter is barred unless the

1 action is commenced within two years after the cause of action
2 accrues.

3 5. The attorney general may maintain a civil action to
4 enforce this chapter.

5 6. This chapter does not limit the rights of the subject
6 of an HIV-related test to recover damages or other relief
7 under any other applicable law.

8 7. This chapter shall not be construed to impose civil
9 liability or criminal sanction for disclosure of HIV-related
10 test results in accordance with any reporting requirement for
11 a diagnosed case of AIDS or a related condition by the
12 department or the centers for disease control and prevention
13 of the United States public health service.

14 Sec. 16. Section 321.186, unnumbered paragraph 4, Code
15 1999, is amended to read as follows:

16 A physician licensed under chapter 148, 150, or 150A, or an
17 optometrist licensed under chapter 154, may report to the
18 department the identity of a person who has been diagnosed as
19 having a physical or mental condition which would render the
20 person physically or mentally incompetent to operate a motor
21 vehicle in a safe manner. The physician or optometrist shall
22 make reasonable efforts to notify the person who is the
23 subject of the report, in writing. The written notification
24 shall state the nature of the disclosure and the reason for
25 the disclosure. A physician or optometrist making a report
26 under this section shall be immune from any liability, civil
27 or criminal, which might otherwise be incurred or imposed as a
28 result of the report. A physician or optometrist has no duty
29 to make a report or to warn third parties with regard to any
30 knowledge concerning a person's mental or physical competency
31 to operate a motor vehicle in a safe manner. Any report
32 received by the department from a physician or optometrist
33 under this section shall be kept confidential. Information
34 regulated by chapter ~~141~~ 141A shall be subject to the
35 confidentiality provisions and remedies of sections-141-23-and

1 ~~141-24~~ that chapter.

2 Sec. 17. Section 505.16, subsection 1, Code 1999, is
3 amended to read as follows:

4 1. A person engaged in the business of insurance shall not
5 require a test of an individual in connection with an
6 application for insurance for the presence of an antibody to
7 the human immunodeficiency virus unless the individual
8 provides a written release on a form approved by the insurance
9 commissioner. The form shall include information regarding
10 the purpose, content, use, and meaning of the test, disclosure
11 of test results including information explaining the effect of
12 releasing the information to a person engaged in the business
13 of insurance, the purpose for which the test results may be
14 used, and other information approved by the insurance
15 commissioner. The form shall also authorize the person
16 performing the test to provide the results of the test to the
17 insurance company subject to rules of confidentiality,
18 consistent with section ~~141-23~~ 141A.9, approved by the
19 insurance commissioner. As used in this section, "a person
20 engaged in the business of insurance" includes hospital
21 service corporations organized under chapter 514 and health
22 maintenance organizations subject to chapter 514B.

23 Sec. 18. Section 904.515, Code 1999, is amended to read as
24 follows:

25 904.515 HUMAN IMMUNODEFICIENCY VIRUS-RELATED MATTERS --
26 EXEMPTION.

27 The provisions of chapter ~~141~~ 141A relating to knowledge
28 and consent do not apply to persons committed to the custody
29 of the department. The department may provide for medically
30 acceptable procedures to inform employees, visitors, and
31 persons committed to the department of possible infection and
32 to protect them from possible infection.

33 Sec. 19. Section 915.40, subsection 3, paragraph c, Code
34 1999, is amended to read as follows:

35 c. The victim counselor or person requested by the victim

1 ~~who-is-authorized~~ to provide the counseling required-pursuant
2 ~~to-section-141-22~~ regarding the HIV-related test and results.

3 Sec. 20. Section 915.42, subsection 4, paragraph a, Code
4 1999, is amended to read as follows:

5 a. Prior to the scheduling of a hearing, refer the victim
6 for counseling by a victim counselor or a person requested by
7 the victim ~~who-is-authorized~~ to provide the counseling
8 ~~required-pursuant-to-section-141-22,~~ regarding the nature,
9 reliability, and significance of the HIV-related test and of
10 the serologic status of the convicted offender.

11 Sec. 21. Section 915.43, subsections 1, 2, 4, and 5, Code
12 1999, are amended to read as follows:

13 1. The physician or other practitioner who orders the test
14 of a convicted or alleged offender for HIV under this
15 subchapter shall disclose the results of the test to the
16 convicted or alleged offender, and to the victim counselor or
17 a person requested by the victim ~~who-is-authorized~~ to provide
18 ~~the counseling required-pursuant-to-section-141-22,~~ regarding
19 the HIV-related test and results who shall disclose the
20 results to the petitioner.

21 2. All testing under this chapter shall be accompanied by
22 ~~pretest-and-posttest~~ counseling as required under section
23 ~~141-22~~ 141A.7.

24 4. Results of a test performed under this subchapter,
25 except as provided in subsection 13, shall be disclosed only
26 to the physician or other practitioner who orders the test of
27 the convicted or alleged offender, the convicted or alleged
28 offender, the victim, the victim counselor or person requested
29 by the victim ~~who-is-authorized~~ to provide the counseling
30 ~~required-pursuant-to-section-141-22~~ regarding the HIV-related
31 test and results, the physician of the victim if requested by
32 the victim, the parent, guardian, or custodian of the victim,
33 if the victim is a minor, and the county attorney who filed
34 the petition for HIV-related testing under this chapter, who
35 may use the results to file charges of criminal transmission

1 of HIV under chapter 709C. Results of a test performed under
2 this subchapter shall not be disclosed to any other person
3 without the written informed consent of the convicted or
4 alleged offender. A person to whom the results of a test have
5 been disclosed under this subchapter is subject to the
6 confidentiality provisions of section ~~141-23~~ 141A.9, and shall
7 not disclose the results to another person except as
8 authorized by section ~~141-23,--subsection-1~~ 141A.9, subsection
9 13.

10 5. If testing is ordered under this subchapter, the court
11 shall also order periodic testing of the convicted offender
12 during the period of incarceration, probation, or parole or of
13 the alleged offender during a period of six months following
14 the initial test if the physician or other practitioner who
15 ordered the initial test of the convicted or alleged offender
16 certifies that, based upon prevailing scientific opinion
17 regarding the maximum period during which the results of an
18 HIV-related test may be negative for a person after being HIV-
19 infected, additional testing is necessary to determine whether
20 the convicted or alleged offender was HIV-infected at the time
21 the sexual assault or alleged sexual assault was perpetrated.
22 The results of the test conducted pursuant to this subsection
23 shall be released only to the physician or other practitioner
24 who orders the test of the convicted or alleged offender, the
25 convicted or alleged offender, the victim counselor or person
26 requested by the victim ~~who-is-authorized~~ to provide the
27 counseling ~~required-pursuant-to-section-141-22,~~ regarding the
28 HIV-related test and results who shall disclose the results to
29 the petitioner, the physician of the victim, if requested by
30 the victim, and the county attorney who may use the results as
31 evidence in the prosecution of the sexual assault or in the
32 prosecution of the offense of criminal transmission of HIV
33 under chapter 709C.

34 Sec. 22. Chapter 141, Code 1999, is repealed.

35

EXPLANATION

1 This bill replaces the statute pertaining to acquired
2 immune deficiency syndrome (AIDS), which is currently divided
3 into subchapters, with a new chapter which combines the
4 subchapters and makes changes to the chapter. Existing Code
5 chapter 141 is repealed.

6 The bill combines all definitions used in the chapter into
7 one section. The bill provides a new definition of "care
8 provider" which encompasses any person providing health care
9 services of any kind, including emergency medical assistance
10 or treatment. The definition of "legal guardian" is expanded
11 to include an "attorney in fact". The definition of "ARC" or
12 "AIDS-related complex" is deleted. The definition of "sample"
13 is added to include any specimen obtained for the purposes of
14 conducting an HIV-related test.

15 The bill designates the Iowa department of public health as
16 the lead agency in the coordination and implementation of the
17 state's AIDS prevention and intervention plan. The bill also
18 authorizes the department to adopt rules to implement and
19 enforce the bill. The bill continues the authorization for
20 the department to coordinate efforts with local health
21 officers to investigate sources of HIV infection and to use
22 every appropriate means to prevent the spread of the disease.
23 The bill also continues authorization for the department to
24 conduct epidemiological blinded and nonblinded studies.

25 The bill assigns several duties to the department. These
26 duties include broad responsibilities for testing, education,
27 and disease control.

28 The bill continues the requirement that testing and
29 counseling be offered for specified groups. In addition, the
30 bill requires that all pregnant women receive information
31 about testing and treatment opportunities to reduce the
32 possible transmission of HIV to a fetus, requires that all
33 pregnant women with risk factors for HIV be strongly
34 encouraged to be tested, and requires that upon request a
35 pregnant woman be tested regardless of the absence of risk

1 factors.

2 The bill requires that the department maintain a partner
3 notification program for persons known to have tested positive
4 for HIV infection. Persons who test positive shall receive
5 posttest counseling and be encouraged to refer for counseling
6 and testing any person who may have sustained a significant
7 exposure from them. The section continues the provision that
8 a physician for an infected person may initiate partner
9 notification when the infected person will not participate and
10 will not warn an exposed third party. The bill deletes the
11 current provision that when a person who tests positive for
12 HIV infection will not participate in partner notification
13 prior to notification of a third party, the physician
14 proposing to cause the notification make reasonable efforts to
15 inform, in writing, the person who tested positive.

16 The bill provides for the performance of voluntary testing,
17 eliminates anonymous testing, and contains the reporting
18 requirements for positive test results.

19 The bill replaces pretest counseling with the requirement
20 that prior to undergoing an HIV-related test, information
21 shall be made available to the subject of the test concerning
22 testing and any means of obtaining additional information
23 regarding HIV infection and risk reduction. The bill provides
24 that upon informing the subject of positive test results,
25 counseling is required to be initiated with emphasis given to
26 the need for precautions to prevent transmitting the virus.
27 The bill continues the provisions granting exceptions to
28 counseling in instances of donation of body parts, patients
29 unable to give consent, insurance exams, and testing of
30 deceased persons involved in a documented significant exposure
31 incident. The provisions relating to minors are amended to
32 eliminate the provision that if a person who personally
33 applies for services, screening, or treatment is a minor, the
34 fact that the minor sought services or is receiving services,
35 screening, or treatment is not to be reported or disclosed

1 except for statistical purposes. The bill retains the
2 provision that confirmed positive HIV test results are to be
3 reported to a minor's legal guardian.

4 The bill provides a notification process under which care
5 providers who have suffered a significant exposure to an
6 individual in the course of providing assistance may obtain
7 information concerning that individual's HIV status. The bill
8 adds a provision that if a care provider in the course of
9 providing care on the premises of a hospital or health
10 facility sustains a significant exposure, the person to whom
11 the care provider was exposed is deemed to have consented to
12 an HIV-related test, upon the written request of the care
13 provider. The sample and test results are identified by a
14 number and no report otherwise required is to be made which
15 identifies the subject of the test. If the results are
16 positive, the subject of the test is to be informed and
17 provided with counseling.

18 The bill provides for strict confidentiality of medical
19 information relating to a patient's HIV status. The bill
20 contains specific provisions relating to when that information
21 may be released and to whom.

22 The bill provides immunities for persons making reports
23 pursuant to the bill and provides that health care providers
24 have no duty to warn third parties regarding contact with a
25 person who has positive HIV test results.

26 The bill establishes civil and criminal remedies for
27 violations of confidentiality and other provisions of the
28 bill. The penalty for violation of a confidentiality
29 requirement relating to the partner notification program is
30 reduced from a class "D" felony (which carries a maximum
31 sentence of confinement of not more than 5 years and in
32 addition may include a fine of at least \$500 but not more than
33 \$7,500) to an aggravated misdemeanor (which carries a maximum
34 sentence of imprisonment not to exceed 2 years and a fine of
35 at least \$500 but not more than \$5,000). The bill contains

1 the specific civil penalty of \$1,000 for a care provider who
2 intentionally or recklessly makes an unauthorized disclosure.

3 The bill eliminates the provisions for accreditation of HIV
4 testing laboratories.

5 The remainder of the bill makes conforming changes
6 necessitated by the enactment of new Code chapter 141A and the
7 repeal of Code chapter 141.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

**SENATE FILE 248
FISCAL NOTE**

The estimate for Senate File 248 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 248 replaces the statute pertaining to the acquired immune deficiency syndrome (AIDS) with a new chapter which combines the subchapters and makes changes. Among the changes, the Bill requires that all pregnant women receive education about testing and treatment opportunities.

FISCAL IMPACT

Senate File 248 would have a General Fund impact of approximately \$25,000 in FY 2000. Federal funds are not authorized to be used for prenatal testing. As a result of the testing provision, the General Funds would be required to pay for the \$10.00 test for approximately 2,500 women per year, who would not have the test covered by a third-party payor.

CORRECTIONAL IMPACT

Senate File 248 has no significant correctional impact.

SOURCES

Department of Public Health
Criminal and Juvenile Justice Planning Division, Department of Human Rights

(LSB 1785SV, VMT)

FILED MARCH 2, 1999

BY DENNIS PROUTY, FISCAL DIRECTOR

H. 3/3/99 Human Res
H. 3/24/99 Do Pass

SENATE FILE 248
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 1130)

(AS AMENDED AND PASSED BY THE SENATE MARCH 2, 1999)

_____ - New Language by the Senate

Passed Senate, ^(p. 1599) Date 4/22/99 Passed House, ^(p. 1058) Date 4/6/99
Vote: Ayes 91 Nays 1 Vote: Ayes 100 Nays 0
Approved May 26, 1999

A BILL FOR

1 An Act relating to acquired immune deficiency syndrome, providing
2 penalties, and providing for a repeal.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21

S.F. 248

1 Section 1. Section 80.9, subsection 2, paragraph d, Code
2 1999, is amended to read as follows:

3 d. To collect and classify, and keep at all times
4 available, complete information useful for the detection of
5 crime, and the identification and apprehension of criminals.
6 Such information shall be available for all peace officers
7 within the state, under such regulations as the commissioner
8 may prescribe. The provisions of chapter ~~141~~ 141A do not
9 apply to the entry of human immunodeficiency virus-related
10 information by criminal or juvenile justice agencies, as
11 defined in section 692.1, into the Iowa criminal justice
12 information system or the national crime information center
13 system. The provisions of chapter ~~141~~ 141A also do not apply
14 to the transmission of the same information from either or
15 both information systems to criminal or juvenile justice
16 agencies. The provisions of chapter ~~141~~ 141A also do not
17 apply to the transmission of the same information from either
18 or both information systems to employees of state correctional
19 institutions subject to the jurisdiction of the department of
20 corrections, employees of secure facilities for juveniles
21 subject to the jurisdiction of the department of human
22 services, and employees of city and county jails, if those
23 employees have direct physical supervision over inmates of
24 those facilities or institutions. Human immunodeficiency
25 virus-related information shall not be transmitted over the
26 police radio broadcasting system under chapter 693 or any
27 other radio-based communications system. An employee of an
28 agency receiving human immunodeficiency virus-related
29 information under this section who communicates the
30 information to another employee who does not have direct
31 physical supervision over inmates, other than to a supervisor
32 of an employee who has direct physical supervision over
33 inmates for the purpose of conveying the information to such
34 an employee, or who communicates the information to any person
35 not employed by the agency or uses the information outside the

1 agency is guilty of a class "D" felony. The commissioner
2 shall adopt rules regarding the transmission of human
3 immunodeficiency virus-related information including
4 provisions for maintaining confidentiality of the information.
5 The rules shall include a requirement that persons receiving
6 information from the Iowa criminal justice information system
7 or the national crime information center system receive
8 training regarding confidentiality standards applicable to the
9 information received from the system. The commissioner shall
10 develop and establish, in cooperation with the department of
11 corrections and the Iowa department of public health, training
12 programs and program criteria for persons receiving human
13 immunodeficiency virus-related information through the Iowa
14 criminal justice information system or the national crime
15 information center system.

16 Sec. 2. Section 139B.1, subsection 1, paragraph a, Code
17 1999, is amended to read as follows:

18 a. "Contagious or infectious disease" means hepatitis in
19 any form, meningococcal disease, tuberculosis, and any other
20 disease with the exception of AIDS or HIV infection as defined
21 in section ~~141-21~~ 141A.1, determined to be life-threatening to
22 a person exposed to the disease as established by rules
23 adopted by the department based upon a determination by the
24 state epidemiologist and in accordance with guidelines of the
25 centers for disease prevention and control of the United
26 States department of health and human services.

27 Sec. 3. Section 139C.1, subsection 6, Code 1999, is
28 amended to read as follows:

29 6. "HIV" means HIV as defined in section ~~141-21~~ 141A.1.

30 Sec. 4. Section 139C.2, subsection 7, Code 1999, is
31 amended to read as follows:

32 7. Information relating to the HIV status of a health care
33 provider is confidential and subject to the provisions of
34 section ~~141-23~~ 141A.9. A person who intentionally or
35 recklessly makes an unauthorized disclosure of such

1 information is subject to a civil penalty of one thousand
2 dollars. The attorney general or the attorney general's
3 designee may maintain a civil action to enforce this section.
4 Proceedings maintained under this section shall provide for
5 the anonymity of the individual and all documentation shall be
6 maintained in a confidential manner. Information relating to
7 the HBV status of a health care provider is confidential and
8 shall not be accessible to the public. Information regulated
9 by this section, however, may be disclosed to members of the
10 expert review panel established by the department or a panel
11 established by hospital protocol under this section. The
12 information may also be disclosed to the appropriate examining
13 board by filing a report as required by this section. The
14 examining board shall consider the report a complaint subject
15 to the confidentiality provisions of section 272C.6. A
16 licensee, upon the filing of a formal charge or notice of
17 hearing by the examining board based on such a complaint, may
18 seek a protective order from the board.

19 Sec. 5. NEW SECTION. 141A.1 DEFINITIONS.

20 As used in this chapter, unless the context otherwise
21 requires:

22 1. "AIDS" means acquired immune deficiency syndrome as
23 defined by the centers for disease control and prevention of
24 the United States department of health and human services.

25 2. "AIDS-related conditions" means the human
26 immunodeficiency virus, or any other condition resulting from
27 the human immunodeficiency virus infection.

28 3. "Blinded epidemiological studies" means studies in
29 which specimens which were collected for other purposes are
30 selected according to established criteria, are permanently
31 stripped of personal identifiers, and are then tested.

32 4. "Blood bank" means a facility for the collection,
33 processing, or storage of human blood or blood derivatives,
34 including blood plasma, or from which or by means of which
35 human blood or blood derivatives are distributed or otherwise

1 made available.

2 5. "Care provider" means any emergency care provider,
3 health care provider, or any other person providing health
4 care services of any kind.

5 6. "Department" means the Iowa department of public
6 health.

7 7. "Emergency care provider" means a person who is trained
8 and authorized by federal or state law to provide emergency
9 medical assistance or treatment, for compensation or in a
10 voluntary capacity, including but not limited to all of the
11 following:

12 (1) An emergency medical care provider as defined in
13 section 147A.1.

14 (2) A health care provider.

15 (3) A fire fighter.

16 (4) A peace officer.

17 "Emergency care provider" also includes a person who
18 renders emergency aid without compensation.

19 8. "Good faith" means objectively reasonable and not in
20 violation of clearly established statutory rights or other
21 rights of a person which a reasonable person would know or
22 should have known.

23 9. "Health care provider" means a person licensed or
24 certified under chapter 148, 148C, 150, 150A, 152, or 153 to
25 provide professional health care service to a person during
26 the person's medical care, treatment, or confinement.

27 10. "Health facility" means a hospital, health care
28 facility, clinic, blood bank, blood center, sperm bank,
29 laboratory organ transplant center and procurement agency, or
30 other health care institution.

31 11. "HIV" means the human immunodeficiency virus
32 identified as the causative agent of AIDS.

33 12. "HIV-related test" means a diagnostic test conducted
34 by a laboratory approved pursuant to the federal Clinical
35 Laboratory Improvements Act for determining the presence of

1 HIV.

2 13. "Infectious bodily fluids" means bodily fluids capable
3 of transmitting HIV infection as determined by the centers for
4 disease control and prevention of the United States department
5 of health and human services and adopted by rule of the
6 department.

7 14. "Legal guardian" means a person appointed by a court
8 pursuant to chapter 633 or an attorney in fact as defined in
9 section 144B.1. In the case of a minor, "legal guardian" also
10 means a parent or other person responsible for the care of the
11 minor.

12 15. "Nonblinded epidemiological studies" means studies in
13 which specimens are collected for the express purpose of
14 testing for the HIV infection and persons included in the
15 nonblinded study are selected according to established
16 criteria.

17 16. "Release of test results" means a written
18 authorization for disclosure of HIV-related test results which
19 is signed and dated, and which specifies to whom disclosure is
20 authorized and the time period during which the release is to
21 be effective.

22 17. "Sample" means a human specimen obtained for the
23 purpose of conducting an HIV-related test.

24 18. "Significant exposure" means the risk of contracting
25 HIV infection by means of exposure to a person's infectious
26 bodily fluids in a manner capable of transmitting HIV
27 infection as determined by the centers for disease control and
28 prevention of the United States department of health and human
29 services and adopted by rule of the department.

30 Sec. 6. NEW SECTION. 141A.2 LEAD AGENCY.

31 1. The department is designated as the lead agency in the
32 coordination and implementation of the state comprehensive
33 AIDS-related conditions prevention and intervention plan.

34 2. The department shall adopt rules pursuant to chapter
35 17A to implement and enforce this chapter. The rules may

1 include procedures for taking appropriate action with regard
2 to health facilities or health care providers which violate
3 this chapter or the rules adopted pursuant to this chapter.

4 3. The department shall adopt rules pursuant to chapter
5 17A which require that if a health care provider attending a
6 person prior to the person's death determines that the person
7 suffered from or was suspected of suffering from a contagious
8 or infectious disease, the health care provider shall place
9 with the remains written notification of the condition for the
10 information of any person handling the body of the deceased
11 person subsequent to the person's death. For purposes of this
12 subsection, "contagious or infectious disease" means hepatitis
13 in any form, meningococcal disease, tuberculosis, and any
14 other disease including AIDS or HIV infection, determined to
15 be life-threatening to a person exposed to the disease as
16 established by rules adopted by the department based upon a
17 determination by the state epidemiologist and in accordance
18 with guidelines of the centers for disease control and
19 prevention of the United States department of health and human
20 services.

21 4. The department, in cooperation with the department of
22 public safety, and persons who represent those who attend dead
23 bodies shall establish for all care providers, including
24 paramedics, ambulance personnel, physicians, nurses, hospital
25 personnel, first responders, peace officers, and fire
26 fighters, who provide care services to a person, and for all
27 persons who attend dead bodies, protocol and procedures for
28 the use of universal precautions to prevent the transmission
29 of contagious and infectious diseases.

30 5. The department shall coordinate efforts with local
31 health officers to investigate sources of HIV infection and
32 use every appropriate means to prevent the spread of the
33 infection.

34 6. The department, with the approval of the state board of
35 health, may conduct epidemiological blinded and nonblinded

1 studies to determine the incidence and prevalence of the HIV
2 infection. Initiation of any new epidemiological studies
3 shall be contingent upon the receipt of funding sufficient to
4 cover all the costs associated with the studies. The informed
5 consent, reporting, and counseling requirements of this
6 chapter shall not apply to blinded studies.

7 Sec. 7. NEW SECTION. 141A.3 DUTIES OF THE DEPARTMENT.

8 1. All federal and state moneys appropriated to the
9 department for AIDS-related activities shall be allocated in
10 accordance with a prioritized schedule developed by rule of
11 the department, and grants shall be awarded to the maximum
12 extent feasible to community-based organizations.

13 2. The department shall do all of the following:

14 a. Provide consultation to agencies and organizations
15 regarding appropriate policies for testing, education,
16 confidentiality, and infection control.

17 b. Conduct health information programs for the public
18 relating to HIV infection, including information about how the
19 infection is transmitted and how transmittal can be prevented.
20 The department shall prepare, for free distribution, printed
21 information relating to HIV infection and prevention.

22 c. Provide educational programs concerning HIV infection
23 in the workplace.

24 d. Develop and implement HIV education risk-reduction
25 programs for specific populations at high risk for infection.

26 e. Provide an informational brochure for patients who
27 provide samples for purposes of performing an HIV test which,
28 at a minimum, shall include a summary of the patient's rights
29 and responsibilities under the law.

30 f. In cooperation with the department of education,
31 develop and update a medically correct AIDS prevention
32 curriculum for use at the discretion of secondary and middle
33 schools.

34 3. The department shall, in cooperation with the
35 department of education and other agencies, organizations,

1 coalitions, and local health departments, develop and
2 implement a program of public and professional AIDS-related
3 education.

4 Sec. 8. NEW SECTION. 141A.4 TESTING AND COUNSELING.

5 1. HIV testing and counseling shall be offered to the
6 following:

7 a. All persons seeking treatment for a sexually
8 transmitted disease.

9 b. All persons seeking treatment for injecting drug abuse
10 or having a history of injecting drug abuse.

11 c. All persons who consider themselves at risk for the HIV
12 infection.

13 d. Male and female prostitutes.

14 2. Pregnant women shall be provided information about HIV
15 prevention, risk reduction, and treatment opportunities to
16 reduce the possible transmission of HIV to a fetus. Pregnant
17 women who report one or more recognized risk factors for HIV
18 shall be strongly encouraged to undergo HIV-related testing.
19 A pregnant woman who requests testing shall be tested
20 regardless of the absence of risk factors.

21 Sec. 9. NEW SECTION. 141A.5 PARTNER NOTIFICATION PROGRAM
22 -- HIV.

23 1. The department shall maintain a partner notification
24 program for persons known to have tested positive for the HIV
25 infection.

26 2. The department shall initiate the program at
27 alternative testing and counseling sites and at sexually
28 transmitted disease clinics.

29 3. In administering the program, the department shall
30 provide for the following:

31 a. A person who tests positive for the HIV infection shall
32 receive posttest counseling, during which time the person
33 shall be encouraged to refer for counseling and HIV testing
34 any person with whom the person has had sexual relations or
35 has shared drug injecting equipment.

1 b. The physician or other health care provider attending
2 the person may provide to the department any relevant
3 information provided by the person regarding any person with
4 whom the tested person has had sexual relations or has shared
5 drug injecting equipment. The department disease prevention
6 staff shall then conduct partner notification in the same
7 manner as that utilized for sexually transmitted diseases
8 consistent with the provisions of this chapter.

9 c. Devise a procedure, as a part of the partner
10 notification program, to provide for the notification of an
11 identifiable third party who is a sexual partner of or who
12 shares drug injecting equipment with a person who has tested
13 positive for HIV, by the department or a physician, when all
14 of the following situations exist:

15 (1) A physician for the infected person is of the good
16 faith opinion that the nature of the continuing contact poses
17 an imminent danger of HIV infection transmission to the third
18 party.

19 (2) When the physician believes in good faith that the
20 infected person, despite strong encouragement, has not and
21 will not warn the third party and will not participate in the
22 voluntary partner notification program.

23 Notwithstanding subsection 4, the department or a physician
24 may reveal the identity of a person who has tested positive
25 for the HIV infection pursuant to this subsection only to the
26 extent necessary to protect a third party from the direct
27 threat of transmission. This subsection shall not be
28 interpreted to create a duty to warn third parties of the
29 danger of exposure to HIV through contact with a person who
30 tests positive for the HIV infection.

31 The department shall adopt rules pursuant to chapter 17A to
32 implement this paragraph "c". The rules shall provide a
33 detailed procedure by which the department or a physician may
34 directly notify an endangered third party.

35 4. In making contact the department shall not disclose the

1 identity of the person who provided the names of the persons
2 to be contacted and shall protect the confidentiality of
3 persons contacted.

4 5. The department may delegate its partner notification
5 duties under this section to local health authorities unless
6 the local authority refuses or neglects to conduct the contact
7 tracing program in a manner deemed to be effective by the
8 department.

9 6. In addition to the provisions for partner notification
10 provided under this section and notwithstanding any provision
11 to the contrary, a county medical examiner or deputy medical
12 examiner performing official duties pursuant to sections
13 331.801 through 331.805 or the state medical examiner or
14 deputy medical examiner performing official duties pursuant to
15 chapter 691, who determines through an investigation that a
16 deceased person was infected with HIV, may notify directly, or
17 request that the department notify, the immediate family of
18 the deceased or any person known to have had a significant
19 exposure from the deceased of the finding.

20 Sec. 10. NEW SECTION. 141A.6 AIDS-RELATED CONDITIONS --
21 SCREENING, TESTING, AND REPORTING.

22 1. Prior to obtaining a sample for the purpose of
23 performing a voluntary HIV-related test, a health care
24 provider shall inform the subject of the test that the test is
25 voluntary. Within seven days of the receipt of a test result
26 indicating HIV infection which has been confirmed as positive
27 according to prevailing medical technology, the physician or
28 other health care provider at whose request the test was
29 performed shall make a report to the department on a form
30 provided by the department.

31 2. Within seven days of diagnosing a person as having an
32 AIDS-related condition, the diagnosing physician shall make a
33 report to the department on a form provided by the department.

34 3. Within seven days of the death of a person resulting
35 from an AIDS-related condition, the attending physician shall

1 make a report to the department on a form provided by the
2 department.

3 4. Within seven days of the receipt of a test result
4 indicating HIV infection which has been confirmed as positive
5 according to prevailing medical technology, the director of a
6 blood bank shall make a report to the department on a form
7 provided by the department.

8 5. Within seven days of the receipt of a test result
9 indicating HIV infection which has been confirmed as positive
10 according to prevailing medical technology, the director of a
11 clinical laboratory shall make a report to the department on a
12 form provided by the department.

13 6. The forms provided by the department shall require
14 inclusion of all of the following information:

- 15 a. The name of the patient.
- 16 b. The address of the patient.
- 17 c. The patient's date of birth.
- 18 d. The gender of the patient.
- 19 e. The race or ethnicity of the patient.
- 20 f. The patient's marital status.
- 21 g. The patient's telephone number.
- 22 h. The name and address of the laboratory or blood bank.
- 23 i. The date the test was found to be positive and the
24 collection date.
- 25 j. The name of the physician or health care provider who
26 performed the test.
- 27 k. If the patient is female, whether the patient is
28 pregnant.

29 Sec. 11. NEW SECTION. 141A.7 TEST RESULTS -- COUNSELING
30 -- APPLICATION FOR SERVICES.

31 1. Prior to undergoing an HIV-related test, information
32 shall be available to the subject of the test concerning
33 testing and any means of obtaining additional information
34 regarding HIV infection and risk reduction. At any time that
35 the subject of an HIV-related test is informed of confirmed

1 positive test results, counseling concerning the emotional and
2 physical health effects shall be initiated. Particular
3 attention shall be given to explaining the need for the
4 precautions necessary to avoid transmitting the virus. The
5 subject shall be given information concerning additional
6 counseling.

7 2. Notwithstanding subsection 1, the provisions of this
8 section do not apply to any of the following:

9 a. The performance by a health care provider or health
10 facility of an HIV-related test when the health care provider
11 or health facility procures, processes, distributes, or uses a
12 human body part donated for a purpose specified under the
13 uniform anatomical gift Act, or semen provided prior to July
14 1, 1988, for the purpose of artificial insemination, or
15 donations of blood, and such test is necessary to ensure
16 medical acceptability of such gift or semen for the purposes
17 intended.

18 b. A person engaged in the business of insurance who is
19 subject to section 505.16.

20 c. The performance by a health care provider or health
21 facility of an HIV-related test when the subject of the test
22 is deceased and a documented significant exposure has
23 occurred.

24 3. A person may apply for voluntary treatment,
25 contraceptive services, or screening or treatment for HIV
26 infection and other sexually transmitted diseases directly to
27 a licensed physician and surgeon, an osteopathic physician and
28 surgeon, or a family planning clinic. Notwithstanding any
29 other provision of law, however, a minor shall be informed
30 prior to testing that, upon confirmation according to
31 prevailing medical technology of a positive HIV-related test
32 result, the minor's legal guardian is required to be informed
33 by the testing facility. Testing facilities where minors are
34 tested shall have available a program to assist minors and
35 legal guardians with the notification process which emphasizes

1 the need for family support and assists in making available
2 the resources necessary to accomplish that goal. However, a
3 testing facility which is precluded by federal statute,
4 regulation, or centers for disease control and prevention
5 guidelines from informing the legal guardian is exempt from
6 the notification requirement. The minor shall give written
7 consent to these procedures and to receive the services,
8 screening, or treatment. Such consent is not subject to later
9 disaffirmance by reason of minority.

10 Sec. 12. NEW SECTION. 141A.8 CARE PROVIDER NOTIFICATION.

11 1. A hospital licensed under chapter 135B shall provide
12 notification to a care provider who renders assistance or
13 treatment to an individual, following submission of a
14 significant exposure report by the care provider to the
15 hospital and a diagnosis or confirmation by an attending
16 physician that the individual has HIV infection, and
17 determination that the exposure reported was a significant
18 exposure. The notification shall advise the care provider of
19 possible exposure to HIV infection. Notification shall be
20 made in accordance with both of the following:

21 a. The hospital informs the individual, when the
22 individual's condition permits, of the submission of a
23 significant exposure report.

24 b. The individual consents to serological testing by or
25 voluntarily discloses the individual's HIV status to the
26 hospital and consents to notification.

27 Notwithstanding paragraphs "a" and "b", notification shall
28 be made when the individual denies consent for or consent is
29 not reasonably obtainable for serological testing, and in the
30 course of admission, care, and treatment of the individual,
31 the individual is diagnosed or is confirmed as having HIV
32 infection.

33 2. The hospital shall notify the care provider involved in
34 attending or transporting an individual who submitted a
35 significant exposure report. This shall include a person who

1 renders direct emergency aid without compensation, or in the
2 case of an emergency care provider, the designated officer of
3 the emergency care provider service, who in turn shall notify
4 any emergency care providers. The identity of the designated
5 officer shall not be revealed to the individual. The
6 designated officer shall inform the hospital of those parties
7 who received the notification, and following receipt of this
8 information and upon request of the individual, the hospital
9 shall inform the individual of the parties to whom
10 notification was provided.

11 3. The hospital, upon request of the individual, shall
12 inform the individual of the persons to whom notification was
13 made.

14 4. The process for notification under this section shall
15 be initiated as soon as is reasonably possible.

16 5. A health care provider, with consent of the individual,
17 may provide the notification required of hospitals in this
18 section to care providers if an individual who has HIV
19 infection is delivered by a care provider to the office or
20 clinic of the health care provider for treatment. The
21 notification shall take place only upon submission of a
22 significant exposure report form by the care provider to the
23 health care provider and the determination by the health care
24 provider that a significant exposure has occurred.

25 6. This section does not require or permit, unless
26 otherwise provided, a hospital or health care provider to
27 administer a test for the express purpose of determining the
28 presence of HIV infection, except that testing may be
29 performed if the individual consents, and if the requirements
30 of this section are satisfied.

31 7. When a care provider in the course of providing care
32 sustains a significant exposure on the premises of a health
33 care facility or while engaged in rendering aid or providing
34 transportation to an individual in circumstances which lead to
35 the individual's presence at a health care facility, the

1 individual to whom the care provider was exposed is deemed to
2 consent to a test to be administered by the health care
3 facility upon the written request of the exposed care provider
4 for the express purpose of determining the presence of HIV
5 infection in that individual. The sample and test results
6 shall only be identified by a number and no reports otherwise
7 required by this chapter shall be made which identify the
8 individual tested. However, if the test results are positive,
9 the health care facility shall notify the individual tested
10 and ensure performance of counseling and reporting
11 requirements of this chapter in the same manner as for an
12 individual from whom actual consent was obtained.

13 8. A hospital or health care provider, or other person
14 participating in good faith in making a report under the
15 notification provisions of this section, under procedures
16 similar to this section for notification of its own employees
17 upon filing of a significant exposure report, or in failing to
18 make a report under this section, is immune from any
19 liability, civil or criminal, which might otherwise be
20 incurred or imposed.

21 9. Notifications made pursuant to this section shall not
22 disclose the identity of the individual who is diagnosed or
23 confirmed as having HIV infection unless the individual
24 provides a specific written release as provided in subsection
25 1, paragraph "b". If the care provider determines the
26 identity of the individual, the identity of the individual
27 shall be confidential information and shall not be disclosed
28 by the care provider to any other person unless a specific
29 written release is obtained from the individual.

30 10. A hospital's duty to notify under this section is not
31 continuing but is limited to the diagnosis of HIV infection
32 made in the course of admission, care, and treatment following
33 the rendering of assistance or treatment of the individual
34 with the infection.

35 11. Notwithstanding subsection 10, if, following discharge

1 or completion of care or treatment, an individual for whom a
2 significant exposure report was submitted but which report did
3 not result in notification, wishes to provide information
4 regarding the individual's HIV infection status to the care
5 provider who submitted the report, the hospital shall provide
6 a procedure for notifying the care provider.

7 12. The employer of a care provider who submits a report
8 of significant exposure under this section sustained in the
9 course of employment shall pay the costs of HIV testing for
10 the individual and the costs of HIV testing and counseling for
11 the care provider. However, the department shall pay the
12 costs of HIV testing for the individual and the costs of HIV
13 testing and counseling for a care provider who renders direct
14 aid without compensation.

15 Sec. 13. NEW SECTION. 141A.9 CONFIDENTIALITY OF
16 INFORMATION.

17 Any information, including reports and records, obtained,
18 submitted, and maintained pursuant to this chapter is strictly
19 confidential medical information. The information shall not
20 be released, shared with an agency or institution, or made
21 public upon subpoena, search warrant, discovery proceedings,
22 or by any other means except as provided in this chapter. A
23 person shall not be compelled to disclose the identity of any
24 person upon whom an HIV-related test is performed, or the
25 results of the test in a manner which permits identification
26 of the subject of the test, except to persons entitled to that
27 information under this chapter. Information shall be made
28 available for release to the following individuals or under
29 the following circumstances:

30 1. To the subject of the test or the subject's legal
31 guardian subject to the provisions of section 141A.7,
32 subsection 3, when applicable.

33 2. To any person who secures a written release of test
34 results executed by the subject of the test or the subject's
35 legal guardian.

1 3. To an authorized agent or employee of a health facility
2 or health care provider, if the health facility or health care
3 provider ordered or participated in the testing or is
4 otherwise authorized to obtain the test results, the agent or
5 employee provides patient care or handles or processes
6 samples, and the agent or employee has a medical need to know
7 such information.

8 4. To a health care provider providing care to the subject
9 of the test when knowledge of the test results is necessary to
10 provide care or treatment.

11 5. To the department in accordance with reporting
12 requirements for an HIV-related condition.

13 6. To a health facility or health care provider which
14 procures, processes, distributes, or uses a human body part
15 from a deceased person with respect to medical information
16 regarding that person, or semen provided prior to July 1,
17 1988, for the purpose of artificial insemination.

18 7. Release may be made of medical or epidemiological
19 information for statistical purposes in a manner such that no
20 individual person can be identified.

21 8. Release may be made of medical or epidemiological
22 information to the extent necessary to enforce the provisions
23 of this chapter and related rules concerning the treatment,
24 control, and investigation of HIV infection by public health
25 officials.

26 9. Release may be made of medical or epidemiological
27 information to medical personnel to the extent necessary to
28 protect the health or life of the named party.

29 10. Release may be made of test results concerning a
30 patient pursuant to procedures established under section
31 141A.5, subsection 3, paragraph "c".

32 11. To a person allowed access to a record by a court
33 order which is issued in compliance with the following
34 provisions:

35 a. A court has found that the person seeking the test

1 results has demonstrated a compelling need for the test
2 results which need cannot be accommodated by other means. In
3 assessing compelling need, the court shall weigh the need for
4 disclosure against the privacy interest of the test subject
5 and the public interest which may be disserved by disclosure
6 due to its deterrent effect on future testing or due to its
7 effect in leading to discrimination.

8 b. Pleadings pertaining to disclosure of test results
9 shall substitute a pseudonym for the true name of the subject
10 of the test. The disclosure to the parties of the subject's
11 true name shall be communicated confidentially in documents
12 not filed with the court.

13 c. Before granting an order, the court shall provide the
14 person whose test results are in question with notice and a
15 reasonable opportunity to participate in the proceedings if
16 the person is not already a party.

17 d. Court proceedings as to disclosure of test results
18 shall be conducted in camera unless the subject of the test
19 agrees to a hearing in open court or unless the court
20 determines that a public hearing is necessary to the public
21 interest and the proper administration of justice.

22 e. Upon the issuance of an order to disclose test results,
23 the court shall impose appropriate safeguards against
24 unauthorized disclosure, which shall specify the persons who
25 may gain access to the information, the purposes for which the
26 information shall be used, and appropriate prohibitions on
27 future disclosure.

28 12. To an employer, if the test is authorized to be
29 required under any other provision of law.

30 13. To a convicted or alleged sexual assault offender; the
31 physician or other health care provider who orders the test of
32 a convicted or alleged offender; the victim; the parent,
33 guardian, or custodian of the victim if the victim is a minor;
34 the physician of the victim; the victim counselor or person
35 requested by the victim to provide counseling regarding the

1 HIV-related test and results; the victim's spouse; persons
2 with whom the victim has engaged in vaginal, anal, or oral
3 intercourse subsequent to the sexual assault; members of the
4 victim's family within the third degree of consanguinity; and
5 the county attorney who may use the results as evidence in the
6 prosecution of sexual assault under chapter 915, subchapter
7 IV, or prosecution of the offense of criminal transmission of
8 HIV under chapter 709C. For the purposes of this paragraph,
9 "victim" means victim as defined section 915.40.

10 14. To employees of state correctional institutions
11 subject to the jurisdiction of the department of corrections,
12 employees of secure facilities for juveniles subject to the
13 department of human services, and employees of city and county
14 jails, if the employees have direct supervision over inmates
15 of those facilities or institutions in the exercise of the
16 duties prescribed pursuant to section 80.9, subsection 2,
17 paragraph "d".

18 Sec. 14. NEW SECTION. 141A.10 IMMUNITIES.

19 1. A person making a report in good faith pursuant to this
20 chapter is immune from any liability, civil or criminal, which
21 might otherwise be incurred or imposed as a result of the
22 report.

23 2. A health care provider attending a person who tests
24 positive for the HIV infection has no duty to disclose to or
25 to warn third parties of the dangers of exposure to HIV
26 infection through contact with that person and is immune from
27 any liability, civil or criminal, for failure to disclose to
28 or warn third parties of the condition of that person.

29 Sec. 15. NEW SECTION. 141A.11 REMEDIES.

30 1. A person aggrieved by a violation of this chapter shall
31 have a right of civil action for damages in district court.

32 2. A care provider who intentionally or recklessly makes
33 an unauthorized disclosure under this chapter is subject to a
34 civil penalty of one thousand dollars.

35 3. A person who violates a confidentiality requirement of

1 section 141A.5 is guilty of an aggravated misdemeanor.

2 4. A civil action under this chapter is barred unless the
3 action is commenced within two years after the cause of action
4 accrues.

5 5. The attorney general may maintain a civil action to
6 enforce this chapter.

7 6. This chapter does not limit the rights of the subject
8 of an HIV-related test to recover damages or other relief
9 under any other applicable law.

10 7. This chapter shall not be construed to impose civil
11 liability or criminal sanction for disclosure of HIV-related
12 test results in accordance with any reporting requirement for
13 a diagnosed case of AIDS or a related condition by the
14 department or the centers for disease control and prevention
15 of the United States public health service.

16 Sec. 16. Section 321.186, unnumbered paragraph 4, Code
17 1999, is amended to read as follows:

18 A physician licensed under chapter 148, 150, or 150A, or an
19 optometrist licensed under chapter 154, may report to the
20 department the identity of a person who has been diagnosed as
21 having a physical or mental condition which would render the
22 person physically or mentally incompetent to operate a motor
23 vehicle in a safe manner. The physician or optometrist shall
24 make reasonable efforts to notify the person who is the
25 subject of the report, in writing. The written notification
26 shall state the nature of the disclosure and the reason for
27 the disclosure. A physician or optometrist making a report
28 under this section shall be immune from any liability, civil
29 or criminal, which might otherwise be incurred or imposed as a
30 result of the report. A physician or optometrist has no duty
31 to make a report or to warn third parties with regard to any
32 knowledge concerning a person's mental or physical competency
33 to operate a motor vehicle in a safe manner. Any report
34 received by the department from a physician or optometrist
35 under this section shall be kept confidential. Information

1 regulated by chapter ~~141~~ 141A shall be subject to the
2 confidentiality provisions and remedies of ~~sections-141-23-and~~
3 ~~141-24~~ that chapter.

4 Sec. 17. Section 505.16, subsection 1, Code 1999, is
5 amended to read as follows:

6 1. A person engaged in the business of insurance shall not
7 require a test of an individual in connection with an
8 application for insurance for the presence of an antibody to
9 the human immunodeficiency virus unless the individual
10 provides a written release on a form approved by the insurance
11 commissioner. The form shall include information regarding
12 the purpose, content, use, and meaning of the test, disclosure
13 of test results including information explaining the effect of
14 releasing the information to a person engaged in the business
15 of insurance, the purpose for which the test results may be
16 used, and other information approved by the insurance
17 commissioner. The form shall also authorize the person
18 performing the test to provide the results of the test to the
19 insurance company subject to rules of confidentiality,
20 consistent with section ~~141-23~~ 141A.9, approved by the
21 insurance commissioner. As used in this section, "a person
22 engaged in the business of insurance" includes hospital
23 service corporations organized under chapter 514 and health
24 maintenance organizations subject to chapter 514B.

25 Sec. 18. Section 904.515, Code 1999, is amended to read as
26 follows:

27 904.515 HUMAN IMMUNODEFICIENCY VIRUS-RELATED MATTERS --
28 EXEMPTION.

29 The provisions of chapter ~~141~~ 141A relating to knowledge
30 and consent do not apply to persons committed to the custody
31 of the department. The department may provide for medically
32 acceptable procedures to inform employees, visitors, and
33 persons committed to the department of possible infection and
34 to protect them from possible infection.

35 Sec. 19. Section 915.40, subsection 3, paragraph c, Code

1 1999, is amended to read as follows:

2 c. The victim counselor or person requested by the victim
3 ~~who-is-authorized~~ to provide the counseling required-pursuant
4 ~~to-section-141-22~~ regarding the HIV-related test and results.

5 Sec. 20. Section 915.42, subsection 4, paragraph a, Code
6 1999, is amended to read as follows:

7 a. Prior to the scheduling of a hearing, refer the victim
8 for counseling by a victim counselor or a person requested by
9 the victim ~~who-is-authorized~~ to provide the counseling
10 ~~required-pursuant-to-section-141-22,~~ regarding the nature,
11 reliability, and significance of the HIV-related test and of
12 the serologic status of the convicted offender.

13 Sec. 21. Section 915.43, subsections 1, 2, 4, and 5, Code
14 1999, are amended to read as follows:

15 1. The physician or other practitioner who orders the test
16 of a convicted or alleged offender for HIV under this
17 subchapter shall disclose the results of the test to the
18 convicted or alleged offender, and to the victim counselor or
19 a person requested by the victim ~~who-is-authorized~~ to provide
20 the counseling ~~required-pursuant-to-section-141-22,~~ regarding
21 the HIV-related test and results who shall disclose the
22 results to the petitioner.

23 2. All testing under this chapter shall be accompanied by
24 ~~pretest-and-posttest~~ counseling as required under section
25 ~~141-22~~ 141A.7.

26 4. Results of a test performed under this subchapter,
27 except as provided in subsection 13, shall be disclosed only
28 to the physician or other practitioner who orders the test of
29 the convicted or alleged offender, the convicted or alleged
30 offender, the victim, the victim counselor or person requested
31 by the victim ~~who-is-authorized~~ to provide the counseling
32 ~~required-pursuant-to-section-141-22~~ regarding the HIV-related
33 test and results, the physician of the victim if requested by
34 the victim, the parent, guardian, or custodian of the victim,
35 if the victim is a minor, and the county attorney who filed

1 the petition for HIV-related testing under this chapter, who
2 may use the results to file charges of criminal transmission
3 of HIV under chapter 709C. Results of a test performed under
4 this subchapter shall not be disclosed to any other person
5 without the written informed consent of the convicted or
6 alleged offender. A person to whom the results of a test have
7 been disclosed under this subchapter is subject to the
8 confidentiality provisions of section ~~141-23~~ 141A.9, and shall
9 not disclose the results to another person except as
10 authorized by section ~~141-23, subsection 1~~ 141A.9, subsection
11 13.

12 5. If testing is ordered under this subchapter, the court
13 shall also order periodic testing of the convicted offender
14 during the period of incarceration, probation, or parole or of
15 the alleged offender during a period of six months following
16 the initial test if the physician or other practitioner who
17 ordered the initial test of the convicted or alleged offender
18 certifies that, based upon prevailing scientific opinion
19 regarding the maximum period during which the results of an
20 HIV-related test may be negative for a person after being HIV-
21 infected, additional testing is necessary to determine whether
22 the convicted or alleged offender was HIV-infected at the time
23 the sexual assault or alleged sexual assault was perpetrated.
24 The results of the test conducted pursuant to this subsection
25 shall be released only to the physician or other practitioner
26 who orders the test of the convicted or alleged offender, the
27 convicted or alleged offender, the victim counselor or person
28 requested by the victim ~~who-is-authorized~~ to provide the
29 counseling ~~required-pursuant-to-section-141-22,~~ regarding the
30 HIV-related test and results who shall disclose the results to
31 the petitioner, the physician of the victim, if requested by
32 the victim, and the county attorney who may use the results as
33 evidence in the prosecution of the sexual assault or in the
34 prosecution of the offense of criminal transmission of HIV
35 under chapter 709C.

1 Sec. 22. Chapter 141, Code 1999, is repealed.

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35

SENATE FILE 248

H-1399

1 Amend Senate File 248, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 11, by striking lines 31 through 34 and
 4 inserting the following:
 5 "____. Prior to obtaining a sample for the purpose
 6 of performing an HIV-related test, the subject of the
 7 test shall be provided with preliminary counseling
 8 which includes but is not limited to an explanation of
 9 the test, an explanation of the nature of AIDS and
 10 AIDS-related conditions, an explanation of the
 11 procedures to be followed, and information regarding
 12 HIV infection and risk reduction. At any time that".
 By MILLAGE of Scott

H-1399 FILED APRIL 5, 1999

adopted
4/6/99 (P. 1058)

HOUSE AMENDMENT TO
SENATE FILE 248

S-3265

1 Amend Senate File 248, as amended, passed, and
 2 reprinted by the Senate, as follows:
 3 1. Page 11, by striking lines 31 through 34 and
 4 inserting the following:
 5 "____. Prior to obtaining a sample for the purpose
 6 of performing an HIV-related test, the subject of the
 7 test shall be provided with preliminary counseling
 8 which includes but is not limited to an explanation of
 9 the test, an explanation of the nature of AIDS and
 10 AIDS-related conditions, an explanation of the
 11 procedures to be followed, and information regarding
 12 HIV infection and risk reduction. At any time that".

RECEIVED FROM THE HOUSE

S-3265 FILED APRIL 6, 1999

Senate Referred 4/20/99
House needed 4/21/99 (P. 159)

AN ACT

RELATING TO ACQUIRED IMMUNE DEFICIENCY SYNDROME, PROVIDING
PENALTIES, AND PROVIDING FOR A REPEAL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 80.9, subsection 2, paragraph d, Code 1999, is amended to read as follows:

d. To collect and classify, and keep at all times available, complete information useful for the detection of crime, and the identification and apprehension of criminals. Such information shall be available for all peace officers within the state, under such regulations as the commissioner may prescribe. The provisions of chapter ~~141~~ 141A do not apply to the entry of human immunodeficiency virus-related information by criminal or juvenile justice agencies, as defined in section 692.1, into the Iowa criminal justice information system or the national crime information center system. The provisions of chapter ~~141~~ 141A also do not apply to the transmission of the same information from either or both information systems to criminal or juvenile justice agencies. The provisions of chapter ~~141~~ 141A also do not apply to the transmission of the same information from either or both information systems to employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the jurisdiction of the department of human services, and employees of city and county jails, if those employees have direct physical supervision over inmates of those facilities or institutions. Human immunodeficiency virus-related information shall not be transmitted over the police radio broadcasting system under chapter 693 or any other radio-based communications system. An employee of an

agency receiving human immunodeficiency virus-related information under this section who communicates the information to another employee who does not have direct physical supervision over inmates, other than to a supervisor of an employee who has direct physical supervision over inmates for the purpose of conveying the information to such an employee, or who communicates the information to any person not employed by the agency or uses the information outside the agency is guilty of a class "D" felony. The commissioner shall adopt rules regarding the transmission of human immunodeficiency virus-related information including provisions for maintaining confidentiality of the information. The rules shall include a requirement that persons receiving information from the Iowa criminal justice information system or the national crime information center system receive training regarding confidentiality standards applicable to the information received from the system. The commissioner shall develop and establish, in cooperation with the department of corrections and the Iowa department of public health, training programs and program criteria for persons receiving human immunodeficiency virus-related information through the Iowa criminal justice information system or the national crime information center system.

Sec. 2. Section 139B.1, subsection 1, paragraph a, Code 1999, is amended to read as follows:

a. "Contagious or infectious disease" means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease with the exception of AIDS or HIV infection as defined in section ~~141~~~~21~~ 141A.1, determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease prevention and control of the United States department of health and human services.

Sec. 3. Section 139C.1, subsection 6, Code 1999, is amended to read as follows:

6. "HIV" means HIV as defined in section ~~141.21~~ 141A.1.

Sec. 4. Section 139C.2, subsection 7, Code 1999, is amended to read as follows:

7. Information relating to the HIV status of a health care provider is confidential and subject to the provisions of section ~~141.23~~ 141A.9. A person who intentionally or recklessly makes an unauthorized disclosure of such information is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this section. Proceedings maintained under this section shall provide for the anonymity of the individual and all documentation shall be maintained in a confidential manner. Information relating to the HBV status of a health care provider is confidential and shall not be accessible to the public. Information regulated by this section, however, may be disclosed to members of the expert review panel established by the department or a panel established by hospital protocol under this section. The information may also be disclosed to the appropriate examining board by filing a report as required by this section. The examining board shall consider the report a complaint subject to the confidentiality provisions of section 272C.6. A licensee, upon the filing of a formal charge or notice of hearing by the examining board based on such a complaint, may seek a protective order from the board.

Sec. 5. NEW SECTION. 141A.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "AIDS" means acquired immune deficiency syndrome as defined by the centers for disease control and prevention of the United States department of health and human services.

2. "AIDS-related conditions" means the human immunodeficiency virus, or any other condition resulting from the human immunodeficiency virus infection.

3. "Blinded epidemiological studies" means studies in which specimens which were collected for other purposes are selected according to established criteria, are permanently stripped of personal identifiers, and are then tested.

4. "Blood bank" means a facility for the collection, processing, or storage of human blood or blood derivatives, including blood plasma, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.

5. "Care provider" means any emergency care provider, health care provider, or any other person providing health care services of any kind.

6. "Department" means the Iowa department of public health.

7. "Emergency care provider" means a person who is trained and authorized by federal or state law to provide emergency medical assistance or treatment, for compensation or in a voluntary capacity, including but not limited to all of the following:

- (1) An emergency medical care provider as defined in section 147A.1.
- (2) A health care provider.
- (3) A fire fighter.
- (4) A peace officer.

"Emergency care provider" also includes a person who renders emergency aid without compensation.

8. "Good faith" means objectively reasonable and not in violation of clearly established statutory rights or other rights of a person which a reasonable person would know or should have known.

9. "Health care provider" means a person licensed or certified under chapter 148, 148C, 150, 150A, 152, or 153 to provide professional health care service to a person during the person's medical care, treatment, or confinement.

10. "Health facility" means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ transplant center and procurement agency, or other health care institution.

11. "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

12. "HIV-related test" means a diagnostic test conducted by a laboratory approved pursuant to the federal Clinical Laboratory Improvements Act for determining the presence of HIV.

13. "Infectious bodily fluids" means bodily fluids capable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

14. "Legal guardian" means a person appointed by a court pursuant to chapter 633 or an attorney in fact as defined in section 144B.1. In the case of a minor, "legal guardian" also means a parent or other person responsible for the care of the minor.

15. "Nonblinded epidemiological studies" means studies in which specimens are collected for the express purpose of testing for the HIV infection and persons included in the nonblinded study are selected according to established criteria.

16. "Release of test results" means a written authorization for disclosure of HIV-related test results which is signed and dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

17. "Sample" means a human specimen obtained for the purpose of conducting an HIV-related test.

18. "Significant exposure" means the risk of contracting HIV infection by means of exposure to a person's infectious bodily fluids in a manner capable of transmitting HIV

infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

Sec. 6. NEW SECTION. 141A.2 LEAD AGENCY.

1. The department is designated as the lead agency in the coordination and implementation of the state comprehensive AIDS-related conditions prevention and intervention plan.

2. The department shall adopt rules pursuant to chapter 17A to implement and enforce this chapter. The rules may include procedures for taking appropriate action with regard to health facilities or health care providers which violate this chapter or the rules adopted pursuant to this chapter.

3. The department shall adopt rules pursuant to chapter 17A which require that if a health care provider attending a person prior to the person's death determines that the person suffered from or was suspected of suffering from a contagious or infectious disease, the health care provider shall place with the remains written notification of the condition for the information of any person handling the body of the deceased person subsequent to the person's death. For purposes of this subsection, "contagious or infectious disease" means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease including AIDS or HIV infection, determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

4. The department, in cooperation with the department of public safety, and persons who represent those who attend dead bodies shall establish for all care providers, including paramedics, ambulance personnel, physicians, nurses, hospital personnel, first responders, peace officers, and fire fighters, who provide care services to a person, and for all

persons who attend dead bodies, protocol and procedures for the use of universal precautions to prevent the transmission of contagious and infectious diseases.

5. The department shall coordinate efforts with local health officers to investigate sources of HIV infection and use every appropriate means to prevent the spread of the infection.

6. The department, with the approval of the state board of health, may conduct epidemiological blinded and nonblinded studies to determine the incidence and prevalence of the HIV infection. Initiation of any new epidemiological studies shall be contingent upon the receipt of funding sufficient to cover all the costs associated with the studies. The informed consent, reporting, and counseling requirements of this chapter shall not apply to blinded studies.

Sec. 7. NEW SECTION. 141A.3 DUTIES OF THE DEPARTMENT.

1. All federal and state moneys appropriated to the department for AIDS-related activities shall be allocated in accordance with a prioritized schedule developed by rule of the department, and grants shall be awarded to the maximum extent feasible to community-based organizations.

2. The department shall do all of the following:

a. Provide consultation to agencies and organizations regarding appropriate policies for testing, education, confidentiality, and infection control.

b. Conduct health information programs for the public relating to HIV infection, including information about how the infection is transmitted and how transmittal can be prevented. The department shall prepare, for free distribution, printed information relating to HIV infection and prevention.

c. Provide educational programs concerning HIV infection in the workplace.

d. Develop and implement HIV education risk-reduction programs for specific populations at high risk for infection.

e. Provide an informational brochure for patients who provide samples for purposes of performing an HIV test which, at a minimum, shall include a summary of the patient's rights and responsibilities under the law.

f. In cooperation with the department of education, develop and update a medically correct AIDS prevention curriculum for use at the discretion of secondary and middle schools.

3. The department shall, in cooperation with the department of education and other agencies, organizations, coalitions, and local health departments, develop and implement a program of public and professional AIDS-related education.

Sec. 8. NEW SECTION. 141A.4 TESTING AND COUNSELING.

1. HIV testing and counseling shall be offered to the following:

a. All persons seeking treatment for a sexually transmitted disease.

b. All persons seeking treatment for injecting drug abuse or having a history of injecting drug abuse.

c. All persons who consider themselves at risk for the HIV infection.

d. Male and female prostitutes.

2. Pregnant women shall be provided information about HIV prevention, risk reduction, and treatment opportunities to reduce the possible transmission of HIV to a fetus. Pregnant women who report one or more recognized risk factors for HIV shall be strongly encouraged to undergo HIV-related testing. A pregnant woman who requests testing shall be tested regardless of the absence of risk factors.

Sec. 9. NEW SECTION. 141A.5 PARTNER NOTIFICATION PROGRAM -- HIV.

1. The department shall maintain a partner notification program for persons known to have tested positive for the HIV infection.

2. The department shall initiate the program at alternative testing and counseling sites and at sexually transmitted disease clinics.

3. In administering the program, the department shall provide for the following:

a. A person who tests positive for the HIV infection shall receive posttest counseling, during which time the person shall be encouraged to refer for counseling and HIV testing any person with whom the person has had sexual relations or has shared drug injecting equipment.

b. The physician or other health care provider attending the person may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment. The department disease prevention staff shall then conduct partner notification in the same manner as that utilized for sexually transmitted diseases consistent with the provisions of this chapter.

c. Devise a procedure, as a part of the partner notification program, to provide for the notification of an identifiable third party who is a sexual partner of or who shares drug injecting equipment with a person who has tested positive for HIV, by the department or a physician, when all of the following situations exist:

(1) A physician for the infected person is of the good faith opinion that the nature of the continuing contact poses an imminent danger of HIV infection transmission to the third party.

(2) When the physician believes in good faith that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

Notwithstanding subsection 4, the department or a physician may reveal the identity of a person who has tested positive for the HIV infection pursuant to this subsection only to the

extent necessary to protect a third party from the direct threat of transmission. This subsection shall not be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with a person who tests positive for the HIV infection.

The department shall adopt rules pursuant to chapter 17A to implement this paragraph "c". The rules shall provide a detailed procedure by which the department or a physician may directly notify an endangered third party.

4. In making contact the department shall not disclose the identity of the person who provided the names of the persons to be contacted and shall protect the confidentiality of persons contacted.

5. The department may delegate its partner notification duties under this section to local health authorities unless the local authority refuses or neglects to conduct the contact tracing program in a manner deemed to be effective by the department.

6. In addition to the provisions for partner notification provided under this section and notwithstanding any provision to the contrary, a county medical examiner or deputy medical examiner performing official duties pursuant to sections 331.801 through 331.805 or the state medical examiner or deputy medical examiner performing official duties pursuant to chapter 691, who determines through an investigation that a deceased person was infected with HIV, may notify directly, or request that the department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

Sec. 10. NEW SECTION. 141A.6 AIDS-RELATED CONDITIONS -- SCREENING, TESTING, AND REPORTING.

1. Prior to obtaining a sample for the purpose of performing a voluntary HIV-related test, a health care provider shall inform the subject of the test that the test is voluntary. Within seven days of the receipt of a test result

indicating HIV infection which has been confirmed as positive according to prevailing medical technology, the physician or other health care provider at whose request the test was performed shall make a report to the department on a form provided by the department.

2. Within seven days of diagnosing a person as having an AIDS-related condition, the diagnosing physician shall make a report to the department on a form provided by the department.

3. Within seven days of the death of a person resulting from an AIDS-related condition, the attending physician shall make a report to the department on a form provided by the department.

4. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology, the director of a blood bank shall make a report to the department on a form provided by the department.

5. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology, the director of a clinical laboratory shall make a report to the department on a form provided by the department.

6. The forms provided by the department shall require inclusion of all of the following information:

- a. The name of the patient.
- b. The address of the patient.
- c. The patient's date of birth.
- d. The gender of the patient.
- e. The race or ethnicity of the patient.
- f. The patient's marital status.
- g. The patient's telephone number.
- h. The name and address of the laboratory or blood bank.
- i. The date the test was found to be positive and the collection date.

j. The name of the physician or health care provider who performed the test.

k. If the patient is female, whether the patient is pregnant.

Sec. 11. NEW SECTION. 141A.7 TEST RESULTS -- COUNSELING -- APPLICATION FOR SERVICES.

1. Prior to undergoing an HIV-related test, information shall be available to the subject of the test concerning testing and any means of obtaining additional information regarding HIV infection and risk reduction. At any time that the subject of an HIV-related test is informed of confirmed positive test results, counseling concerning the emotional and physical health effects shall be initiated. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject shall be given information concerning additional counseling.

2. Notwithstanding subsection 1, the provisions of this section do not apply to any of the following:

a. The performance by a health care provider or health facility of an HIV-related test when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the uniform anatomical gift Act, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to ensure medical acceptability of such gift or semen for the purposes intended.

b. A person engaged in the business of insurance who is subject to section 505.16.

c. The performance by a health care provider or health facility of an HIV-related test when the subject of the test is deceased and a documented significant exposure has occurred.

3. A person may apply for voluntary treatment, contraceptive services, or screening or treatment for HIV infection and other sexually transmitted diseases directly to a licensed physician and surgeon, an osteopathic physician and surgeon, or a family planning clinic. Notwithstanding any other provision of law, however, a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to assist minors and legal guardians with the notification process which emphasizes the need for family support and assists in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or centers for disease control and prevention guidelines from informing the legal guardian is exempt from the notification requirement. The minor shall give written consent to these procedures and to receive the services, screening, or treatment. Such consent is not subject to later disaffirmance by reason of minority.

Sec. 12. NEW SECTION. 141A.8 CARE PROVIDER NOTIFICATION.

1. A hospital licensed under chapter 135B shall provide notification to a care provider who renders assistance or treatment to an individual, following submission of a significant exposure report by the care provider to the hospital and a diagnosis or confirmation by an attending physician that the individual has HIV infection, and determination that the exposure reported was a significant exposure. The notification shall advise the care provider of possible exposure to HIV infection. Notification shall be made in accordance with both of the following:

a. The hospital informs the individual, when the individual's condition permits, of the submission of a significant exposure report.

b. The individual consents to serological testing by or voluntarily discloses the individual's HIV status to the hospital and consents to notification.

Notwithstanding paragraphs "a" and "b", notification shall be made when the individual denies consent for or consent is not reasonably obtainable for serological testing, and in the course of admission, care, and treatment of the individual, the individual is diagnosed or is confirmed as having HIV infection.

2. The hospital shall notify the care provider involved in attending or transporting an individual who submitted a significant exposure report. This shall include a person who renders direct emergency aid without compensation, or in the case of an emergency care provider, the designated officer of the emergency care provider service, who in turn shall notify any emergency care providers. The identity of the designated officer shall not be revealed to the individual. The designated officer shall inform the hospital of those parties who received the notification, and following receipt of this information and upon request of the individual, the hospital shall inform the individual of the parties to whom notification was provided.

3. The hospital, upon request of the individual, shall inform the individual of the persons to whom notification was made.

4. The process for notification under this section shall be initiated as soon as is reasonably possible.

5. A health care provider, with consent of the individual, may provide the notification required of hospitals in this section to care providers if an individual who has HIV infection is delivered by a care provider to the office or clinic of the health care provider for treatment. The notification shall take place only upon submission of a significant exposure report form by the care provider to the health care provider and the determination by the health care provider that a significant exposure has occurred.

6. This section does not require or permit, unless otherwise provided, a hospital or health care provider to administer a test for the express purpose of determining the presence of HIV infection, except that testing may be performed if the individual consents, and if the requirements of this section are satisfied.

7. When a care provider in the course of providing care sustains a significant exposure on the premises of a health care facility or while engaged in rendering aid or providing transportation to an individual in circumstances which lead to the individual's presence at a health care facility, the individual to whom the care provider was exposed is deemed to consent to a test to be administered by the health care facility upon the written request of the exposed care provider for the express purpose of determining the presence of HIV infection in that individual. The sample and test results shall only be identified by a number and no reports otherwise required by this chapter shall be made which identify the individual tested. However, if the test results are positive, the health care facility shall notify the individual tested and ensure performance of counseling and reporting requirements of this chapter in the same manner as for an individual from whom actual consent was obtained.

8. A hospital or health care provider, or other person participating in good faith in making a report under the notification provisions of this section, under procedures similar to this section for notification of its own employees upon filing of a significant exposure report, or in failing to make a report under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

9. Notifications made pursuant to this section shall not disclose the identity of the individual who is diagnosed or confirmed as having HIV infection unless the individual provides a specific written release as provided in subsection

1, paragraph "b". If the care provider determines the identity of the individual, the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual.

10. A hospital's duty to notify under this section is not continuing but is limited to the diagnosis of HIV infection made in the course of admission, care, and treatment following the rendering of assistance or treatment of the individual with the infection.

11. Notwithstanding subsection 10, if, following discharge or completion of care or treatment, an individual for whom a significant exposure report was submitted but which report did not result in notification, wishes to provide information regarding the individual's HIV infection status to the care provider who submitted the report, the hospital shall provide a procedure for notifying the care provider.

12. The employer of a care provider who submits a report of significant exposure under this section sustained in the course of employment shall pay the costs of HIV testing for the individual and the costs of HIV testing and counseling for the care provider. However, the department shall pay the costs of HIV testing for the individual and the costs of HIV testing and counseling for a care provider who renders direct aid without compensation.

Sec. 13. NEW SECTION. 141A.9 CONFIDENTIALITY OF INFORMATION.

Any information, including reports and records, obtained, submitted, and maintained pursuant to this chapter is strictly confidential medical information. The information shall not be released, shared with an agency or institution, or made public upon subpoena, search warrant, discovery proceedings, or by any other means except as provided in this chapter. A person shall not be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the

results of the test in a manner which permits identification of the subject of the test, except to persons entitled to that information under this chapter. Information shall be made available for release to the following individuals or under the following circumstances:

1. To the subject of the test or the subject's legal guardian subject to the provisions of section 141A.7, subsection 3, when applicable.
2. To any person who secures a written release of test results executed by the subject of the test or the subject's legal guardian.
3. To an authorized agent or employee of a health facility or health care provider, if the health facility or health care provider ordered or participated in the testing or is otherwise authorized to obtain the test results, the agent or employee provides patient care or handles or processes samples, and the agent or employee has a medical need to know such information.
4. To a health care provider providing care to the subject of the test when knowledge of the test results is necessary to provide care or treatment.
5. To the department in accordance with reporting requirements for an HIV-related condition.
6. To a health facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person with respect to medical information regarding that person, or semen provided prior to July 1, 1988, for the purpose of artificial insemination.
7. Release may be made of medical or epidemiological information for statistical purposes in a manner such that no individual person can be identified.
8. Release may be made of medical or epidemiological information to the extent necessary to enforce the provisions of this chapter and related rules concerning the treatment, control, and investigation of HIV infection by public health officials.

9. Release may be made of medical or epidemiological information to medical personnel to the extent necessary to protect the health or life of the named party.

10. Release may be made of test results concerning a patient pursuant to procedures established under section 141A.5, subsection 3, paragraph "c".

11. To a person allowed access to a record by a court order which is issued in compliance with the following provisions:

- a. A court has found that the person seeking the test results has demonstrated a compelling need for the test results which need cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure due to its deterrent effect on future testing or due to its effect in leading to discrimination.
- b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.
- c. Before granting an order, the court shall provide the person whose test results are in question with notice and a reasonable opportunity to participate in the proceedings if the person is not already a party.
- d. Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.
- e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may gain access to the information, the purposes for which the

information shall be used, and appropriate prohibitions on future disclosure.

12. To an employer, if the test is authorized to be required under any other provision of law.

13. To a convicted or alleged sexual assault offender; the physician or other health care provider who orders the test of a convicted or alleged offender; the victim; the parent, guardian, or custodian of the victim if the victim is a minor; the physician of the victim; the victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results; the victim's spouse; persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault; members of the victim's family within the third degree of consanguinity; and the county attorney who may use the results as evidence in the prosecution of sexual assault under chapter 915, subchapter IV, or prosecution of the offense of criminal transmission of HIV under chapter 709C. For the purposes of this paragraph, "victim" means victim as defined section 915.40.

14. To employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the department of human services, and employees of city and county jails, if the employees have direct supervision over inmates of those facilities or institutions in the exercise of the duties prescribed pursuant to section 80.9, subsection 2, paragraph "d".

Sec. 14. NEW SECTION. 141A.10 IMMUNITIES.

1. A person making a report in good faith pursuant to this chapter is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report.

2. A health care provider attending a person who tests positive for the HIV infection has no duty to disclose to or to warn third parties of the dangers of exposure to HIV

infection through contact with that person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of that person.

Sec. 15. NEW SECTION. 141A.11 REMEDIES.

1. A person aggrieved by a violation of this chapter shall have a right of civil action for damages in district court.

2. A care provider who intentionally or recklessly makes an unauthorized disclosure under this chapter is subject to a civil penalty of one thousand dollars.

3. A person who violates a confidentiality requirement of section 141A.5 is guilty of an aggravated misdemeanor.

4. A civil action under this chapter is barred unless the action is commenced within two years after the cause of action accrues.

5. The attorney general may maintain a civil action to enforce this chapter.

6. This chapter does not limit the rights of the subject of an HIV-related test to recover damages or other relief under any other applicable law.

7. This chapter shall not be construed to impose civil liability or criminal sanction for disclosure of HIV-related test results in accordance with any reporting requirement for a diagnosed case of AIDS or a related condition by the department or the centers for disease control and prevention of the United States public health service.

Sec. 16. Section 321.186, unnumbered paragraph 4, Code 1999, is amended to read as follows:

A physician licensed under chapter 148, 150, or 150A, or an optometrist licensed under chapter 154, may report to the department the identity of a person who has been diagnosed as having a physical or mental condition which would render the person physically or mentally incompetent to operate a motor vehicle in a safe manner. The physician or optometrist shall make reasonable efforts to notify the person who is the subject of the report, in writing. The written notification

shall state the nature of the disclosure and the reason for the disclosure. A physician or optometrist making a report under this section shall be immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report. A physician or optometrist has no duty to make a report or to warn third parties with regard to any knowledge concerning a person's mental or physical competency to operate a motor vehicle in a safe manner. Any report received by the department from a physician or optometrist under this section shall be kept confidential. Information regulated by chapter ~~141~~ 141A shall be subject to the confidentiality provisions and remedies of sections ~~141-23 and 141-24~~ that chapter.

Sec. 17. Section 505.16, subsection 1, Code 1999, is amended to read as follows:

1. A person engaged in the business of insurance shall not require a test of an individual in connection with an application for insurance for the presence of an antibody to the human immunodeficiency virus unless the individual provides a written release on a form approved by the insurance commissioner. The form shall include information regarding the purpose, content, use, and meaning of the test, disclosure of test results including information explaining the effect of releasing the information to a person engaged in the business of insurance, the purpose for which the test results may be used, and other information approved by the insurance commissioner. The form shall also authorize the person performing the test to provide the results of the test to the insurance company subject to rules of confidentiality, consistent with section ~~141-23~~ 141A.9, approved by the insurance commissioner. As used in this section, "a person engaged in the business of insurance" includes hospital service corporations organized under chapter 514 and health maintenance organizations subject to chapter 514B.

Sec. 18. Section 904.515, Code 1999, is amended to read as follows:

904.515 HUMAN IMMUNODEFICIENCY VIRUS-RELATED MATTERS -- EXEMPTION.

The provisions of chapter ~~141~~ 141A relating to knowledge and consent do not apply to persons committed to the custody of the department. The department may provide for medically acceptable procedures to inform employees, visitors, and persons committed to the department of possible infection and to protect them from possible infection.

Sec. 19. Section 915.40, subsection 3, paragraph c, Code 1999, is amended to read as follows:

c. The victim counselor or person requested by the victim ~~who is authorized~~ to provide the counseling ~~required pursuant to section ~~141-22~~ regarding the HIV-related test and results.~~

Sec. 20. Section 915.42, subsection 4, paragraph a, Code 1999, is amended to read as follows:

a. Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim ~~who is authorized~~ to provide the counseling ~~required pursuant to section ~~141-22~~~~, regarding the nature, reliability, and significance of the HIV-related test and of the serologic status of the convicted offender.

Sec. 21. Section 915.43, subsections 1, 2, 4, and 5, Code 1999, are amended to read as follows:

1. The physician or other practitioner who orders the test of a convicted or alleged offender for HIV under this subchapter shall disclose the results of the test to the convicted or alleged offender, and to the victim counselor or a person requested by the victim ~~who is authorized~~ to provide the counseling ~~required pursuant to section ~~141-22~~~~, regarding the HIV-related test and results who shall disclose the results to the petitioner.

2. All testing under this chapter shall be accompanied by ~~pretest and posttest~~ counseling as required under section ~~141-22~~ 141A.7.

4. Results of a test performed under this subchapter, except as provided in subsection 13, shall be disclosed only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim, the victim counselor or person requested by the victim ~~who-is-authorized~~ to provide the counseling ~~required-pursuant-to-section-141-22~~ regarding the HIV-related test and results, the physician of the victim if requested by the victim, the parent, guardian, or custodian of the victim, if the victim is a minor, and the county attorney who filed the petition for HIV-related testing under this chapter, who may use the results to file charges of criminal transmission of HIV under chapter 709C. Results of a test performed under this subchapter shall not be disclosed to any other person without the written informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under this subchapter is subject to the confidentiality provisions of section ~~141-23~~ 141A.9, and shall not disclose the results to another person except as authorized by section ~~141-23, subsection-1~~ 141A.9, subsection 13.

5. If testing is ordered under this subchapter, the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the test conducted pursuant to this subsection shall be released only to the physician or other practitioner

who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim counselor or person requested by the victim ~~who-is-authorized~~ to provide the counseling ~~required-pursuant-to-section-141-22~~, regarding the HIV-related test and results who shall disclose the results to the petitioner, the physician of the victim, if requested by the victim, and the county attorney who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV under chapter 709C.

Sec. 22. Chapter 141, Code 1999, is repealed.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 248, Seventy-eighth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved May 26, 1999

THOMAS J. VILSACK
Governor