

SOON - in edit 10/24

2007 - 2008 LEGISLATURE

LRB-1092/23

D-NOTE

DAK:kjf:rs

## 2007 BILL

reporting significantly exposed persons, increasing liability and providing penalties

REGENERATE CATALOG

for certain violations

1 **AN ACT to repeal** 252.15 (1) (e), 252.15 (2) (b) 1., 252.15 (2) (b) 3., 252.15 (2) (bm)

2 (intro.) and 252.15 (4) (a); **to renumber** 252.15 (2) (bm) 1.; **to renumber and**

3 **amend** 252.15 (2) (a) 3., 252.15 (2) (b) (intro.), 252.15 (2) (b) 2. and 252.15 (2)

4 (bm) 2.; **to amend** 252.13 (1m), 252.15 (1) (d), 252.15 (2) (title), 252.15 (2) (a)

5 (intro.), 252.15 (2) (a) 1., 252.15 (2) (a) 2., 252.15 (2) (a) 4., 252.15 (2) (a) 6.,

6 252.15 (2) (a) 7. ar., 252.15 (2) (am) 1., 252.15 (2) (am) 2., 252.15 (4) (intro.),

7 252.15 (4) (b), 252.15 (4) (c), 252.15 (5) (a) (intro.), 252.15 (5) (a) 1., 252.15 (5)

8 (a) 10. (intro.), 968.38 (4) (intro.) and 968.38 (5) (intro.); **to repeal and recreate**

9 252.15 (3) and 252.15 (5) (title); and **to create** 252.15 (1) (cw) and 252.15 (4)

10 (bm) of the statutes; **relating to:** changing informed consent requirements for

11 HIV testing and disclosure of test results.

### ***Analysis by the Legislative Reference Bureau***

Currently, before administering a test for the presence of the human immunodeficiency virus (HIV), antigen or nonantigenic products of HIV, or an antibody to HIV (test) and before disclosing the test results, the administrator of the test or the discloser must, with certain exceptions, obtain the written consent of the

**BILL**

part of medical

test subject. The consent must be given on an informed consent form for testing or disclosure, which must be signed and which must contain all of the following:

1. The name of the potential test subject who is giving consent and whose test results may be disclosed and, if the potential test subject has executed a power of attorney for health care instrument and has been found to be incapacitated, the name of the health care agent.

2. A statement of explanation to the potential test subject that the test results may be disclosed without consent under certain circumstances.

3. Spaces specifically designated for the signatures of the potential test subject, or, if the potential test subject has executed a power of attorney for health care instrument and has been found to be incapacitated, of the health care agent providing informed consent for the testing and the date on which the consent form is signed.

4. The name of a person to whom the potential test subject, or, if the potential test subject has executed a power of attorney for health care instrument and has been found to be incapacitated, the health care agent, authorizes that disclosure of test results may be made, if any; the date on which the consent to disclosure is signed; and the time period during which the consent to disclosure is effective.

INSERT  
A1

This bill eliminates the requirement that consent for testing for HIV be obtained on an informed consent to testing and disclosure form before administering the test. Instead, the bill requires that a health care provider, blood bank, blood center, or plasma center first orally inform the potential test subject that, as routine health care, a test will be performed unless the potential test subject declines to provide or defers providing consent. ~~If~~ the potential test subject does not ~~so~~ decline or defer, the health care provider, blood bank, blood center, or plasma center may infer that the potential test subject has given informed consent for testing.

The bill also eliminates the requirement that consent for disclosure of ~~HIV~~ test results be obtained on an informed consent to testing and disclosure form before disclosure may be made. Instead, the bill requires that a health care provider, blood bank, blood center, or plasma center inform the ~~HIV~~ test subject (or the test subject's health care agent, under certain circumstances) that the test subject or agent has the right to identify persons to whom the test results may be disclosed, to identify persons to whom test results may not be disclosed, and to specify the time period for the authorization or refusal to disclose. The health care provider, blood bank, blood center, or plasma center must furnish the means by which this authorization or refusal may be indicated by the test subject or agent and must provide the test subject or agent with a statement of explanation about persons to whom disclosure may be made without consent under certain circumstances and a listing of those persons and circumstances. The bill clarifies that the health care provider, blood bank, blood center, or plasma center that tests an individual must maintain in the individual's health care record a record of informed consent, refusal to consent, or ~~deferral of consent~~ made; a record of persons to whom disclosure may be made or from

may give oral consent, or, if he or she

**BILL**

INSERT A 2

no #

a

whom disclosure must be withheld; and a record of test results obtained. In addition, the bill makes numerous technical changes to the laws restricting use of an HIV test.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

INSERT 3-1

HIV

1 SECTION 1. 252.13 (1m) of the statutes is amended to read:

2 252.13 (1m) Except as provided under sub. (3), any blood bank, blood center  
3 or plasma center in this state that purchases or receives whole blood, blood plasma,  
4 a blood product or a blood derivative shall, prior to its distribution or use and after  
5 complying with informed consent for testing under the requirements of s. 252.15 (2)  
6 (b), subject that blood, plasma, product or derivative to a test or series of tests that  
7 ~~the state epidemiologist finds medically significant and sufficiently reliable under~~  
8 ~~sub. (1r) (a) to detect the presence of HIV, antigen or nonantigenic products of HIV~~  
9 ~~or an antibody to HIV.~~ This subsection does not apply to a blood bank that purchases  
10 or receives whole blood, blood plasma, a blood product or a blood derivative from a  
11 blood bank, blood center or plasma center in this state if the whole blood, blood  
12 plasma, blood product or blood derivative has previously been subjected to a test or  
13 ~~series of tests that the state epidemiologist finds medically significant and~~  
14 ~~sufficiently reliable under sub. (1r) (a) to detect the presence of HIV, antigen or~~  
15 ~~nonantigenic products of HIV or an antibody to HIV.~~

an HIV

← use twice

INSERT 3-15

16 SECTION 2. 252.15 (1) (cw) of the statutes is created to read:

17 252.15 (1) (cw) "Informed consent for disclosure" means, under the  
18 requirements of sub. (3), consent by an individual to the disclosure to a specified  
19 person of the results of a test for the presence of HIV, antigen or nonantigenic  
20 products of HIV, or an antibody to HIV that is administered to the individual  
21 consenting.

an HIV

BILL

oral consent  
or

an HIV

1 SECTION 3. 252.15 (1) (d) of the statutes is amended to read:

2 252.15 (1) (d) "Informed consent for testing ~~or disclosure~~" means consent in  
3 ~~writing on an informed consent for testing or disclosure form, under the~~  
4 ~~requirements of sub. (2) (b), inferred consent by a person an individual to the~~  
5 ~~administration of a test to him or her for the presence of HIV, antigen or nonantigenic-~~  
6 ~~products of HIV or an antibody to HIV or to the disclosure to another specified person~~  
7 ~~of the results of a test administered to the person consenting.~~

8 SECTION 4. 252.15 (1) (e) of the statutes is repealed.

9 SECTION 5. 252.15 (2) (title) of the statutes is amended to read:

10 252.15 (2) (title) INFORMED CONSENT FOR HIV TESTING OR DISCLOSURE.

an HIV

11 SECTION 6. 252.15 (2) (a) (intro.) of the statutes is amended to read:

12 252.15 (2) (a) (intro.) No health care provider, blood bank, blood center, or  
13 plasma center may subject ~~a person~~ an individual to ~~a test for the presence of HIV,~~  
14 ~~antigen or nonantigenic products of HIV, or an antibody to HIV unless if the subject~~  
15 ~~of the test first provides~~ has declined to provide or has deferred providing informed  
16 consent for HIV ~~testing or disclosure~~ as specified under par. (b), except that HIV informed  
17 consent to HIV ~~for testing~~ is not required under sub. (5m) or for any of the following:

18 SECTION 7. 252.15 (2) (a) 1. of the statutes is amended to read:

19 252.15 (2) (a) 1. Except as provided in subd. 1g., a health care provider who  
20 procures, processes, distributes <sup>2</sup> or uses a human body part or human tissue donated  
21 as specified under s. 157.06 (6) (a) or (b) shall, without obtaining HIV informed consent  
22 to the HIV ~~for testing, test for the presence of HIV, antigen or nonantigenic products of~~  
23 ~~HIV, or an antibody to HIV~~ in order to assure medical acceptability of the gift for the  
24 purpose intended. The health care provider shall use ~~as a test for the presence of~~  
25 ~~HIV, antigen or nonantigenic products of HIV, or an antibody to HIV a test or series~~

have an HIV

HIV

performed on the body part or tissue

an HIV

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that yields a validated HIV test result

HIV

1 of tests ~~that the state epidemiologist finds medically significant and sufficiently~~  
2 ~~reliable to detect the presence of HIV, antigen or nonantigenic products of HIV, or an~~  
3 ~~antibody to HIV.~~ If the validated test result of the donor from the test or series of tests  
4 performed is positive, the human body part or human tissue donated for use or  
5 proposed for donation may not be used.

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6 **SECTION 8.** 252.15 (2) (a) 2. of the statutes is amended to read:

7 252.15 (2) (a) 2. The department, a laboratory certified under 42 USC 263a, or  
8 a health care provider, blood bank, blood center, or plasma center may, for the  
9 purpose of research and without first obtaining written informed consent to the for  
10 testing, subject any body fluids or tissues to a test for the presence of HIV, antigen  
11 or nonantigenic products of HIV, or an antibody to HIV if the testing is performed in  
12 a manner by which the identity of the test subject is not known and may not be  
13 retrieved by the researcher.

14 **SECTION 9.** 252.15 (2) (a) 3. of the statutes is renumbered 252.15 (2) (a) 3.  
15 (intro.) and amended to read:

16 252.15 (2) (a) 3. (intro.) The medical director of a center for the developmentally  
17 disabled, as defined in s. 51.01 (3), or a mental health institute, as defined in s. 51.01  
18 (12), may, without obtaining informed consent to the for testing, subject a resident  
19 or patient of the center or institute to a test for the presence of HIV, antigen or  
20 nonantigenic products of HIV, or an antibody to HIV if he or she determines that the  
21 conduct of the resident or patient poses a significant risk of transmitting HIV to  
22 another resident or patient of the center or institute. The medical director shall  
23 provide the test subject and the test subject's guardian, if the test subject is an  
24 individual found incompetent in this state, with all of the following:

25 **SECTION 10.** 252.15 (2) (a) 4. of the statutes is amended to read:

an HIV

HIV

HIV

HIV

SECTION 10

BILL

(intro.)

an HIV

1 252.15 (2) (a) 4. A health care provider may subject an individual to a test for  
 2 ~~the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV,~~  
 3 without obtaining informed consent to the for testing from the individual, if all of the  
 4 following apply:

HIV

HIV

5 a. The individual has been adjudicated incompetent in this state, is under 14  
 6 years of age, or is unable to give informed consent for testing because he or she is  
 7 unable to communicate due to a medical condition.

8 b. The health care provider obtains informed consent for the testing from the  
 9 individual's guardian, if the individual is adjudicated incompetent in this state; from  
 10 the individual's parent or guardian, if the individual is under 14 years of age; or from  
 11 the individual's closest living relative or another with whom the individual has a  
 12 meaningful social and emotional relationship, if the individual is not a minor nor  
 13 adjudicated incompetent but is unable to communicate due to a medical condition.

14 SECTION 11. 252.15 (2) (a) 6. of the statutes is amended to read:

an HIV

15 252.15 (2) (a) 6. A health care professional acting under an order of the court  
 16 under subd. 7. or s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining  
 17 informed consent to the for testing, subject an individual to a test or a series of tests  
 18 ~~to detect the presence of HIV, antigen or nonantigenic products of HIV, or an antibody~~  
 19 ~~to HIV.~~ No sample used for laboratory test purposes under this subdivision may  
 20 disclose the name of the test subject, and, notwithstanding sub. (4) (e), the test  
 21 results may not be made part of the individual's permanent medical record.

HIV

HIV

HIV

INSERT 6-21

22 SECTION 12. 252.15 (2) (a) 7. ar. of the statutes is amended to read:

23 252.15 (2) (a) 7. ar. The individual, if capable of consenting, has been given an  
 24 opportunity to be tested with his or her provide informed consent for testing and has  
 25 not consented declined.

HIV

## BILL

1           **SECTION 13.** 252.15 (2) (am) 1. of the statutes is amended to read:

2           252.15 (2) (am) 1. A health care provider who procures, processes, distributes,  
3 or uses human sperm donated as specified under s. 157.06 (6) (a) or (b) shall, prior  
4 to the distribution or use and with after obtaining informed consent under the  
5 requirements of par. (b) ~~for testing~~, <sup>have</sup> test the proposed donor for the presence of HIV;  
6 antigen or nonantigenic products of HIV, or an antibody to HIV in order to assure  
7 medical acceptability of the gift for the purpose intended. The health care provider  
8 shall use as a test for the presence of HIV, antigen or nonantigenic products of HIV,  
9 or an antibody to HIV a test or series of tests that the state epidemiologist finds  
10 medically significant and sufficiently reliable under s. 252.13 (1r) to detect the  
11 presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV. The  
12 health care provider shall test the donor initially and, if the initial test result is  
13 negative, shall perform a 2nd test on a date that is not less than 180 days from the  
14 date of the procurement of the sperm. No person may use the donated sperm until  
15 the health care provider has obtained the results of the 2nd test. If any validated <sup>HIV</sup> test  
16 result of the donor for the presence of HIV, antigen or nonantigenic products of HIV,  
17 or an antibody to HIV is positive, the sperm donated for use may not be used and, if  
18 donated, shall be destroyed. <sup>HIV</sup>

19           **SECTION 14.** 252.15 (2) (am) 2. of the statutes is amended to read:

20           252.15 (2) (am) 2. A health care provider who procures, processes, distributes,  
21 or uses human ova donated as specified under s. 157.06 (6) (a) or (b) shall, prior to  
22 the distribution or use and with after obtaining informed consent under the  
23 requirements of par. (b) ~~for testing~~, test the proposed donor for the presence of HIV,  
24 antigen or nonantigenic products of HIV, or an antibody to HIV in order to assure  
25 medical acceptability of the gift for the purpose intended.

**BILL**

**SECTION 15**

INSERT 8-1

part of medical

1 SECTION 15. 252.15 (2) (b) (intro.) of the statutes is renumbered 252.15 (2) (b)  
2 and amended to read:

3 252.15 (2) (b) The <sup>an</sup> ~~A~~ health care provider, blood bank, blood center, or plasma  
4 center that subjects a person to a test for the presence of HIV, antigen or nonantigenic

5 ~~products of HIV, or an antibody to HIV~~ under pars. (a) and (am) shall, in instances

6 under those paragraphs in which informed consent for testing is required, provide

7 first orally inform the potential test subject with an informed consent form for testing

8 ~~or disclosure that shall contain the following information and on the form shall~~

9 ~~obtain the potential test subject's signature or may, if the potential test subject has~~

10 ~~executed a power of attorney for health care instrument under ch. 155 and has been~~

11 ~~found to be incapacitated under s. 155.05 (2), instead obtain the signature of the~~

12 ~~health care agent: that, as <sup>a</sup> routine health care, <sup>the</sup> such a test will be performed unless~~

13 ~~the potential test subject or, if applicable, agent declines to provide or defers~~

14 ~~providing consent. If the potential <sup>HIV</sup> test subject or agent does not so decline or defer,~~

15 ~~the health care provider, blood bank, blood center, or plasma center may infer that~~

16 ~~the potential test subject or agent has given informed consent for testing.~~

17 SECTION 16. 252.15 (2) (b) 1. of the statutes is repealed.

18 SECTION 17. 252.15 (2) (b) 2. of the statutes is renumbered 252.15 (3) (c) and  
19 amended to read:

20 252.15 (3) (c) ~~A~~ Provide to the individual a statement of explanation to the  
21 potential test subject that the test results may be disclosed as specified under sub.

22 (5) (a) and either a listing that duplicates the persons or circumstances specified  
23 under sub. (5) (a) 2. to ~~19.~~ 20. or a statement that the listing is available upon request.

24 SECTION 18. 252.15 (2) (b) 3. of the statutes is repealed.

25 SECTION 19. 252.15 (2) (bm) (intro.) of the statutes is repealed.

may orally consent or, if the  
test subject or agent



## BILL

1 **SECTION 20.** 252.15 (2) (bm) 1. of the statutes is renumbered 252.15 (2) (a) 3.

2 a.

3 **SECTION 21.** 252.15 (2) (bm) 2. of the statutes is renumbered 252.15 (2) (a) 3.

4 b. and amended to read:

5 252.15 (2) (a) 3. b. A statement of explanation that the test results may be  
6 disclosed as specified under sub. (5) (a) and either a listing that duplicates the  
7 persons or circumstances specified under sub. (5) (a) 2. to 18. 20. or a statement that  
8 the listing is available upon request. an HIV

9 **SECTION 22.** 252.15 (3) of the statutes is repealed and recreated to read:

10 252.15 (3) INFORMED CONSENT FOR DISCLOSURE; REFUSAL OF DISCLOSURE. A health  
11 care provider, blood bank, blood center, or plasma center that subjects an individual  
12 to a test for the presence of HIV, antigen or nonantigenic products of HIV, or an  
13 antibody to HIV under sub. (2) (a) or (am) shall do all of the following:

14 (a) Inform the individual or, if the individual has executed a power of attorney  
15 for health care instrument under ch. 155 and has been found to be incapacitated  
16 under s. 155.05 (2), the individual's health care agent that, except as provided under  
17 sub. (5), the individual or health care agent has the right to do all of the following:

18 1. Identify persons to whom the individual or health care agent authorizes that  
19 test results may be disclosed and the time period in which disclosure may be made.

20 2. Identify persons to whom test results may not be disclosed and the time  
21 period for refusal of disclosure.

22 (b) Furnish the means by which the individual or the health care agent may  
23 indicate his or her authorization under par. (a) 1., refusal under par. (a) 2., or both.

24 **SECTION 23.** 252.15 (4) (intro.) of the statutes is amended to read:

**BILL**

**SECTION 23**

an HIV test

1           252.15 (4) RECORD MAINTENANCE. (intro.) A health care provider, blood bank,  
 2 blood center, or plasma center that obtains from ~~a person~~ an individual a specimen  
 3 of body fluids or tissues for the purpose of ~~testing for the presence of HIV, antigen or~~  
 4 ~~nonantigenic products of HIV, or an antibody to HIV~~ shall maintain in the  
 5 individual's health care record all of the following:

6           **SECTION 24.** 252.15 (4) (a) of the statutes is repealed.

7           **SECTION 25.** 252.15 (4) (b) of the statutes is amended to read:

8           252.15 (4) (b) ~~Maintain a~~ A record of the informed consent received, refusal of  
 9 consent, or deferral of consent made under par. (a) sub. (2) (b).

or

10          **SECTION 26.** 252.15 (4) (bm) of the statutes is created to read:

11          252.15 (4) (bm) A record of any persons identified by the individual under sub.  
 12 (3) (a) 1. or 2.

HIV

938.296 (4) (intro.) or (5) (intro.)

13          **SECTION 27.** 252.15 (4) (c) of the statutes is amended to read:

14          252.15 (4) (c) Maintain Except for a record made under the circumstances  
 15 described in sub. (2) (a) 6. or 7m. or s. 968.38 (4) (intro.) or (5) (intro.), a record of the  
 16 test results obtained. A record that is made under the circumstances described in  
 17 sub. (2) (a) 7m. may not reveal the identity of the test subject.

HIV TEST

18          **SECTION 28.** 252.15 (5) (title) of the statutes is repealed and recreated to read:

19          252.15 (5) (title) ~~TEST~~ CONFIDENTIALITY; EXCEPTIONS.

an HIV

20          **SECTION 29.** 252.15 (5) (a) (intro.) of the statutes is amended to read:

21          252.15 (5) (a) (intro.) An individual who is the subject of ~~a test for the presence~~  
 22 ~~of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV~~ or the  
 23 individual's health care agent, if the individual has executed a power of attorney for  
 24 health care instrument under ch. 155 and has been found to be incapacitated under  
 25 s. 155.05 (2), may disclose the results of the individual's test to anyone. A person who

**BILL**

1 is neither the individual nor the individual's health care agent may not, unless he  
2 or she is specifically authorized under sub. (3) by the individual or health care agent  
3 to do so, disclose the individual's test results except to the following persons or under  
4 the following circumstances:

5 **SECTION 30.** 252.15 (5) (a) 1. of the statutes is amended to read:

6 252.15 (5) (a) 1. To the subject of the test and, if the test subject has executed  
7 a power of attorney for health care instrument under ch. 155 and has been found to  
8 be incapacitated under s. 155.05 (2), the test subject's health care agent.

9 **SECTION 31.** 252.15 (5) (a) 10. (intro.) of the statutes is amended to read:

10 252.15 (5) (a) 10. (intro.) ~~To~~ Except as provided in par. (b), to a person who  
11 conducts research, for the purpose of research, if the researcher:

12 **SECTION 32.** 968.38 (4) (intro.) of the statutes is amended to read:

13 968.38 (4) (intro.) The court shall set a time for a hearing on the matter under  
14 sub. (2) during the preliminary examination, if sub. (3) (a) applies; after the  
15 defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b)  
16 applies; after conviction or a finding of not guilty by reason of mental disease or  
17 defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that  
18 the defendant is not competent, if sub. (3) (d) applies. The court shall give the district  
19 attorney and the defendant notice of the hearing at least 72 hours prior to the  
20 hearing. The defendant may have counsel at the hearing, and counsel may examine  
21 and cross-examine witnesses. If the court finds probable cause to believe that the  
22 defendant has significantly exposed the victim or alleged victim, the court shall order  
23 the defendant to submit to <sup>an HIV</sup> a test or a series of tests administered by a health care  
24 professional to detect the presence of ~~HIV, antigen or nonantigenic products of HIV,~~  
25 ~~an antibody to HIV,~~ or a sexually transmitted disease. The court shall require the

HIV

HIV

INSERT  
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INSERT  
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an HIV

to  
and a test

The tests shall  
be performed by  
a health care professional.

## BILL

## SECTION 32

1 health care professional who performs the test to disclose the test results to the  
2 defendant. ~~The court shall require the health care professional who performs the~~  
3 ~~test to refrain, notwithstanding s. 252.15 (4) (e), from making the test results part~~  
4 of the defendant's permanent medical record and to disclose the results of the test  
5 to any of the following:

6 **SECTION 33.** 968.38 (5) (intro.) of the statutes is amended to read:

7 968.38 (5) (intro.) The court shall set a time for a hearing on the matter under  
8 sub. (2m) during the preliminary examination, if sub. (3) (a) applies; after the  
9 defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b)  
10 applies; after conviction or a finding of not guilty by reason of mental disease or  
11 defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that  
12 the defendant is not competent, if sub. (3) (d) applies. The court shall give the district  
13 attorney and the defendant notice of the hearing at least 72 hours prior to the  
14 hearing. The defendant may have counsel at the hearing, and counsel may examine  
15 and cross-examine witnesses. If the court finds probable cause to believe that the  
16 act or alleged act of the defendant that constitutes a violation of s. 946.43 (2m) carried  
17 a potential for transmitting a communicable disease to the victim or alleged victim  
18 and involved the defendant's blood, semen, vomit, saliva, urine or feces or other  
19 bodily substance of the defendant, the court shall order the defendant to submit to  
20 a test or a series of tests administered by a health care professional to detect the  
21 presence of any communicable disease that was potentially transmitted by the act  
22 or alleged act of the defendant. The court shall require the health care professional  
23 who performs the test to disclose the test results to the defendant. The court shall  
24 require the health care professional who performs the test to refrain,  
25 ~~notwithstanding s. 252.15 (4) (e), if applicable, from making the test results part of~~

**BILL**

1 the defendant's permanent medical record and to disclose the results of the test to  
2 any of the following:

INSERT  
13-2/3

(END)

notwithstanding  
s. 252.15(3)(a),

D-NOTE

**2007-2008 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1092/3ins  
DAK:kjfrs

**INSERT A 1**

Currently, a health care provider, peace officer, fire fighter, correctional officer, state patrol officer, jailer, home health agency, inpatient health care facility, or person who has access to a validated test result is prohibited from performing certain discriminatory actions with respect to an individual who has AIDS or HIV (for example, refusing to treat) solely because of the existence of that condition. A violator of these provisions is liable to the patient for actual damages and costs, plus exemplary damages of up to \$5,000 for an intentional violation.

Also, currently, disclosure of an individual's test results is prohibited; an intentional disclosure in violation of the prohibition is subject to a fine of up to \$25,000 or imprisonment of up to nine months, or both, and negligent disclosure is subject to a forfeiture of \$1,000. Intentional disclosure of an individual's test results for pecuniary gain is subject to a fine of up to \$100,000 and imprisonment of up to three years and six months, or both. However, numerous exceptions exist to the test disclosure prohibition; one of these requires the health care provider, blood bank, blood center, or plasma center that obtains a positive, validated test result from a test subject to report certain information to the state epidemiologist. Such a report may not include information about the test subject's sexual orientation or the identity of persons with whom he or she may have had sexual contact, except that a physician or advanced practice nurse prescriber of such a test subject may, after first counseling and notifying the subject, report to the state epidemiologist the name of any person known to the physician or nurse prescriber to have been exposed with a possibility of transmission of HIV (significantly exposed) to the test subject. In addition, an individual may be tested without his or her consent and the test results disclosed, in certain circumstances in which a person is significantly exposed to the individual or in certain instances of alleged sexual assault by the individual.

**INSERT A 2**

Ⓢ The bill requires a health care provider, blood bank, blood center, or plasma center that must report to the state epidemiologist information concerning a test subject's positive, validated test result also to report to the state epidemiologist the mode by which HIV was transmitted to the test subject. Also, the bill authorizes the physician or advanced practice nurse prescriber of the subject of a positive, validated test result, after counseling and notifying the subject, to report to the local health officer the name of any person known to the physician or advanced practice nurse prescriber to have been significantly exposed to the test subject; the local health officer may notify this person of this information.

X The bill increases the monetary penalties for intentional disclosure of the results of a test to a \$50,000 fine and, for negligent disclosure, to a \$2,000 forfeiture. The monetary penalty for intentional disclosure of a test, for pecuniary gain, is increased to \$200,000. The bill also increases, to up to \$10,000, the amount of liability in exemplary damages for violation of prohibitions on discriminatory actions against individuals with AIDS or HIV. Y

The bill modifies the definitions of "validated test result" and "informed consent for testing or disclosure" in current law and defines "HIV test" and "informed consent for disclosure."

**INSERT 3-1**

**SECTION 1.** 48.371 (1) (a) of the statutes is amended to read:

48.371 (1) (a) Results of <sup>↓</sup> ~~a~~ an HIV test or a series of tests, as defined in s. 252.01 (2m), of the child ~~to determine the presence of HIV~~, as defined in s. 968.38 (1) (b), antigen or nonantigenic products of HIV, or an antibody to HIV, as provided under s. 252.15 (5) (a) 19., including results included in a court report or permanency plan. At the time that the HIV test results are provided, the agency shall notify the foster parent, treatment foster parent, relative, or operator of the group home or residential care center for children and youth of the confidentiality requirements under s. 252.15 (6).

History: 1993 a. 395; 1995 a. 275; 1997 a. 272; 2001 a. 59, 69, 105; 2005 a. 232, 277; s. 13.93 (2) (c).

**SECTION 2.** 49.686 (1) (g) of the statutes is amended to read:

49.686 (1) (g) "Validated <sup>HIV</sup> test result" means a result of a test for the presence of HIV, ~~antigen or nonantigenic products of HIV or an antibody to HIV~~ that meets the validation requirements determined to be necessary by the state epidemiologist has the meaning given in s. 252.01 (8).

History: 1989 a. 31; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 3061 to 3062d; Stats. 1995 s. 49.686; 1997 a. 27; 2001 a. 81.

**SECTION 3.** 59.69 (15) (im) of the statutes is amended to read:

59.69 (15) (im) The fact that an individual with acquired immunodeficiency syndrome or a positive HIV test for the presence of HIV, as defined in s. 252.01 (1m) <sup>strike comma</sup> (2m), <sup>↓</sup> ~~antigen or nonantigenic products of HIV or an antibody to HIV~~ resides in a community living arrangement with a capacity for 8 or fewer persons may not be used under par. (i) to assert or prove that the existence of the community living

1 arrangement in the municipality poses a threat to the health, safety or welfare of the  
2 residents of the municipality.

**History:** 1971 c. 40 s. 93; 1971 c. 86, 224; 1973 c. 274; 1977 c. 205; 1979 c. 233 ss. 2 to 5, 7 and 8; 1979 c. 323; 1981 c. 341, 354, 374; 1983 a. 192 s. 303 (1); 1983 a. 410; 1983 a. 532 s. 36; 1985 a. 29, 136, 196, 281, 316; 1987 a. 161, 395; 1989 a. 80, 201; 1991 a. 255, 269, 316; 1993 a. 16, 27, 246, 327, 400, 446, 491; 1995 a. 27 ss. 9130 (4), 9126 (19); 1995 a. 201 s. 475; Stats. 1995 s. 59.69; 1995 a. 225 s. 174; 1995 a. 227; 1997 a. 3, 35; 1999 a. 9, 148, 185; 2001 a. 16, 30, 50, 105; 2003 a. 214; 2005 a. 26, 79, 81, 112, 171, 208; 2007 a. 11.

3 **SECTION 4.** 60.63 (10m) of the statutes is amended to read:

4 60.63 (10m) The fact that an individual with acquired immunodeficiency  
5 syndrome or a positive HIV test for the presence of HIV, as defined in s. 252.01 (1m)  
6 (2m), antigen or nonantigenic products of HIV or an antibody to HIV, resides in a  
7 community living arrangement with a capacity for 8 or fewer persons may not be  
8 used under sub. (10) to assert or prove that the existence of the community living  
9 arrangement in the town poses a threat to the health, safety or welfare of the  
10 residents of the town.

**History:** 1983 a. 532; 1985 a. 281; 1987 a. 161; 1989 a. 56, 201; 1993 a. 27, 327, 446, 491; 1995 a. 27 s. 9126 (19); 1995 a. 225, 417.

11 **SECTION 5.** 62.23 (7) (i) 9m. of the statutes is amended to read:

12 62.23 (7) (i) 9m. The fact that an individual with acquired immunodeficiency  
13 syndrome or a positive HIV test for the presence of HIV, as defined in s. 252.01 (1m)  
14 (2m), antigen or nonantigenic products of HIV or an antibody to HIV, resides in a  
15 community living arrangement with a capacity for 8 or fewer persons may not be  
16 used under subd. 9. to assert or prove that the existence of the community living  
17 arrangement in the city poses a threat to the health, safety or welfare of the residents  
18 of the city.

**History:** 1973 c. 60; 1975 c. 281; 1977 c. 205; 1979 c. 221, 355; 1981 c. 289, 341, 354, 374; 1983 a. 49, 410; 1985 a. 136 ss. 7 to 9, 10; 1985 a. 187, 225, 281, 316; 1987 a. 161, 395; 1989 a. 201; 1991 a. 255, 316; 1993 a. 27, 184, 301, 327, 400, 446, 471, 490, 491; 1995 a. 27 ss. 9126 (19), 9130 (4); 1995 a. 225; 1997 a. 3, 35, 246; 1999 a. 9, 148; 1999 a. 150 s. 672; 2001 a. 30 ss. 16, 17, 108; 2001 a. 50; 2005 a. 26, 34, 79, 81, 112, 171, 208.

19 **SECTION 6.** 103.15 (title) of the statutes is amended to read:

20 **103.15 (title) Restrictions on use of a an HIV test for HIV.**

**History:** 1985 a. 29, 73; 1987 a. 70 ss. 1, 36; 1987 a. 403 s. 256; 1989 a. 201 ss. 6, 36; 1989 a. 225; 1993 a. 27; 1995 a. 27 s. 9126 (19).

21 **SECTION 7.** 103.15 (1) (bm) of the statutes is created to read:

22 103.15 (1) (bm) "HIV test" has the meaning given in s. 252.01 (2m).



1           **SECTION 8.** 103.15 (2) (a) of the statutes is amended to read:

2           103.15 (2) (a) Solicit or require an HIV test as a condition of employment of any  
3 employee or prospective employee ~~↓ a test for the presence of HIV, antigen or~~  
4 ~~nonantigenic products of HIV or an antibody to HIV.~~

5 History: 1985 a. 29, 73; 1987 a. 70 ss. 1, 36; 1987 a. 403 s. 256; 1989 a. 201 ss. 6, 36; 1989 a. 225; 1993 a. 27; 1995 a. 27 s. 9126 (19).

5           **SECTION 9.** 103.15 (2) (b) of the statutes is amended to read:

6           103.15 (2) (b) Affect the terms, conditions or privileges of employment or  
7 terminate the employment of any employee who obtains ~~↓ a~~ an HIV test for the  
8 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, as  
9 defined in s. 252.01 (2m).

10 History: 1985 a. 29, 73; 1987 a. 70 ss. 1, 36; 1987 a. 403 s. 256; 1989 a. 201 ss. 6, 36; 1989 a. 225; 1993 a. 27; 1995 a. 27 s. 9126 (19).

10           **SECTION 10.** 103.15 (3) of the statutes is amended to read:

11           103.15 (3) Any agreement by an employer or agent of the employer and an  
12 employee or prospective employee offering employment or any pay or benefit to an  
13 employee or prospective employee in return for taking ~~↓ a~~ an HIV test for the presence  
14 of HIV, antigen or nonantigenic products of HIV or an antibody to HIV is prohibited,  
15 except as provided under sub. (2) (intro.).

16 History: 1985 a. 29, 73; 1987 a. 70 ss. 1, 36; 1987 a. 403 s. 256; 1989 a. 201 ss. 6, 36; 1989 a. 225; 1993 a. 27; 1995 a. 27 s. 9126 (19).

16           **SECTION 11.** 118.125 (2m) (b) of the statutes is amended to read:

17           118.125 (2m) (b) Any pupil record that concerns the results of ~~↓ a~~ an HIV test for  
18 the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV,  
19 as defined in s. 252.01 (2m), shall be treated as provided under s. 252.15. ~~In this~~  
20 subsection, ~~"HIV" has the meaning given in s. 252.01 (1m).~~

History: 1973 c. 254; 1977 c. 418; 1979 c. 205; 1981 c. 20, 273; 1983 a. 189; 1985 a. 218; 1987 a. 27, 70, 206, 285, 337, 355; 1987 a. 399 s. 491r; 1987 a. 403 ss. 123, 124, 256; 1989 a. 31, 168; 1989 a. 201 s. 36; 1989 a. 336; 1991 a. 39, 189; 1993 a. 27, 172, 334, 377, 385, 399, 450, 491; 1995 a. 27 ss. 3939, 3940, 9126 (19), 9130 (4), 9145 (1); 1995 a. 77, 173, 225, 352; 1997 a. 3, 27, 205, 237, 239; 1999 a. 9, 149; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265.

21           **SECTION 12.** 146.82 (2) (a) 22. of the statutes is created to read:

22           146.82 (2) (a) 22. To a local health officer, as specified under s. 252.03, 252.05,  
23 252.06, 252.12, 252.15 (7m) (b), or 252.21 (1).

1           **SECTION 13.** 149.12 (1) (intro.) of the statutes is amended to read:

2           149.12 (1) (intro.) Except as provided in subs. (1m), (2), and (3), the authority  
3 shall certify as eligible a person who is covered by Medicare because he or she is  
4 disabled under 42 USC 423, a person who submits evidence that he or she has tested  
5 ~~positive for the presence of HIV, antigen or nonantigenic products of HIV, or an~~  
6 ~~antibody to HIV,~~ a positive, validated HIV test result, as defined in s. 252.01<sup>✓</sup> (8); a  
7 person who is an eligible individual; and any person who receives and submits any  
8 of the following based wholly or partially on medical underwriting considerations  
9 within 9 months prior to making application for coverage by the plan:

History: 1979 c. 313; 1983 a. 27, 215; 1985 a. 29, 73; 1987 a. 27, 70, 239; 1989 a. 201 s. 36; 1989 a. 332, 359; 1991 a. 39, 250; 1993 a. 27; 1995 a. 27, 407; 1997 a. 27 ss. 3025f, 4826 to 4831e; Stats. 1997 s. 149.12; 1999 a. 9; 2005 a. 74.

10           **SECTION 14.** 252.01 (2m) of the statutes is created to read:

11           252.01 (2m) "HIV test" means a test or series of tests that the state  
12 epidemiologist finds under <sup>s. 252.13</sup> (sub.) (1r) to be medically significant and sufficiently  
13 reliable to detect the presence of HIV, antigen or antigenic products of HIV, or an  
14 antibody to HIV.

15           **SECTION 15.** 252.01 (8) of the statutes is amended to read:

16           252.01 (8) "Validated HIV<sup>✓</sup> test result" means a result of ~~a~~ <sup>↓</sup> an HIV test for the  
17 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV~~ that  
18 meets the validation requirements determined to be necessary by the state  
19 epidemiologist.

History: 1993 a. 27 ss. 281, 283, 320, 338, 339, 341; 1993 a. 252; 2005 a. 187.

20           **SECTION 16.** 252.11 (5m) of the statutes is amended to read:

21           252.11 (5m) A health care professional, as defined in s. 968.38 (1) (a), acting  
22 under an order of a court under s. 938.296 (4) ~~or (5)~~ or 968.38 (4) ~~or (5)~~ may, without  
23 first obtaining informed consent to the testing, subject an individual to a test or a  
24 series of tests to ascertain whether that individual is infected with a sexually

1 transmitted disease. No sample used for performance of a test under this subsection  
2 may disclose the name of the test subject.

History: 1971 c. 42, 125; 1973 c. 90; 1975 c. 6; 1975 c. 383 s. 4; 1975 c. 421; 1981 c. 291; 1991 a. 269; 1993 a. 27 s. 297; Stats. 1993 s. 252.11; 1993 a. 32; 1995 a. 77; 1999 a. 188; 2005 a. 187.

3 **SECTION 17.** 252.11 (7) of the statutes is amended to read:

4 252.11 (7) Reports, examinations and inspections and all records concerning  
5 sexually transmitted diseases are confidential and not open to public inspection, and  
6 may not be divulged except as may be necessary for the preservation of the public  
7 health, in the course of commitment proceedings under sub. (5), or as provided under  
8 s. 938.296 (4) ~~or (5)~~ or 968.38 (4) ~~or (5)~~. If a physician or advanced practice nurse  
9 prescriber has reported a case of sexually transmitted disease to the department  
10 under sub. (4), information regarding the presence of the disease and treatment is  
11 not privileged when the patient, physician, or advanced practice nurse prescriber is  
12 called upon to testify to the facts before any court of record.

History: 1971 c. 42, 125; 1973 c. 90; 1975 c. 6; 1975 c. 383 s. 4; 1975 c. 421; 1981 c. 291; 1991 a. 269; 1993 a. 27 s. 297; Stats. 1993 s. 252.11; 1993 a. 32; 1995 a. 77; 1999 a. 188; 2005 a. 187.

13 **SECTION 18.** 252.12 (2) (a) 3. d. of the statutes is amended to read:

14 252.12 (2) (a) 3. d. Locations for procuring additional information or obtaining  
15 HIV testing services.

History: 1987 a. 27, 70, 399; 1989 a. 31, 201, 336; 1991 a. 39, 80; 1993 a. 16; 1993 a. 27 ss. 318, 319, 321, 323; Stats. 1993 s. 252.12; 1995 a. 27; 1997 a. 27, 79; 1999 a. 9; 2001 a. 16; 2005 a. 25.

16 **SECTION 19.** 252.12 (2) (a) 5. of the statutes is amended to read:

17 252.12 (2) (a) 5. The department shall perform HIV tests ~~for the presence of~~  
18 ~~HIV~~ and, if appropriate, tests for the presence of related infections and shall conduct  
19 behavioral surveys among population groups determined by the department to be  
20 highly at risk of becoming infected with or transmitting HIV and related infections.  
21 Information obtained shall be used to develop targeted HIV infection and related

1 infection prevention efforts for these groups and to evaluate the state's prevention  
2 strategies.

History: 1987 a. 27, 70, 399; 1989 a. 31, 201, 336; 1991 a. 39, 80; 1993 a. 16; 1993 a. 27 ss. 318, 319, 321, 323; Stats. 1993 s. 252.12; 1995 a. 27; 1997 a. 27, 79; 1999 a. 9; 2001 a. 16; 2005 a. 25.

3 **SECTION 20.** 252.12 (2) (a) 7. of the statutes is amended to read:

4 252.12 (2) (a) 7. The department shall distribute funding in each fiscal year to  
5 contract with organizations to provide, at alternate testing sites, anonymous or  
6 confidential counseling services for HIV and, laboratory HIV testing services for the  
7 presence of HIV, and, if appropriate, laboratory testing services for the presence of  
8 related viruses.

History: 1987 a. 27, 70, 399; 1989 a. 31, 201, 336; 1991 a. 39, 80; 1993 a. 16; 1993 a. 27 ss. 318, 319, 321, 323; Stats. 1993 s. 252.12; 1995 a. 27; 1997 a. 27, 79; 1999 a. 9; 2001 a. 16; 2005 a. 25.

9 **SECTION 21.** 252.13 (title) of the statutes is amended to read:

10 **252.13 (title) Blood HIV tests for HIV.**

History: 1985 a. 73; 1987 a. 70; 1989 a. 201 ss. 9, 36; 1993 a. 27 ss. 325, 473; Stats. 1993 s. 252.13.

**INSERT 3-15**

11 **SECTION 22.** 252.13 (1r) (intro.) of the statutes is amended to read:

12 252.13 (1r) (intro.) For the purposes of this section, the state epidemiologist  
13 shall make separate findings of medical significance and sufficient reliability for a  
14 test or a series of tests to detect the presence of HIV, antigen or nonantigenic products  
15 of HIV or an antibody to HIV an HIV test for each of the following purposes:

History: 1985 a. 73; 1987 a. 70; 1989 a. 201 ss. 9, 36; 1993 a. 27 ss. 325, 473; Stats. 1993 s. 252.13.

16 **SECTION 23.** 252.13 (1r) (a) of the statutes is amended to read:

17 252.13 (1r) (a) Subjecting whole blood, blood plasma, a blood product or a blood  
18 derivative to an HIV test prior to distribution or use of the whole blood, blood  
19 plasma, blood product or blood derivative.

History: 1985 a. 73; 1987 a. 70; 1989 a. 201 ss. 9, 36; 1993 a. 27 ss. 325, 473; Stats. 1993 s. 252.13.

20 **SECTION 24.** 252.13 (1r) (b) of the statutes is amended to read:

21 252.13 (1r) (b) Providing disclosure of HIV test results to the subject of the test.

History: 1985 a. 73; 1987 a. 70; 1989 a. 201 ss. 9, 36; 1993 a. 27 ss. 325, 473; Stats. 1993 s. 252.13.

22 **SECTION 25.** 252.13 (2) of the statutes is amended to read:

1           252.13 (2) If performance of a test under sub. (1m) yields a positive, validated  
 2           HIV test result ~~positive for the presence of HIV, antigen or nonantigenic products of~~  
 3           ~~HIV or an antibody to HIV~~, the whole blood, blood plasma, blood product or blood  
 4           derivative so tested with this result may not be distributed or used except for  
 5           purposes of research or as provided under sub. (5).

6           History: 1985 a. 73; 1987 a. 70; 1989 a. 201 ss. 9, 36; 1993 a. 27 ss. 325, 473; Stats. 1993 s. 252.13.

6           **SECTION 26.** 252.13 (3) of the statutes is amended to read:

7           252.13 (3) If a medical emergency, including a threat to the preservation of life  
 8           of a potential donee, exists under which whole blood, blood plasma, a blood product,  
 9           or a blood derivative that has been subjected to HIV testing under sub. (1m) is  
 10          unavailable, the requirement of sub. (1m) shall not apply.

11          History: 1985 a. 73; 1987 a. 70; 1989 a. 201 ss. 9, 36; 1993 a. 27 ss. 325, 473; Stats. 1993 s. 252.13.

11          **SECTION 27.** 252.13 (4) of the statutes is amended to read:

12          252.13 (4) Subsections (1m) and (2) do not apply to the extent that federal law  
 13          or regulations require that a blood bank, blood center, or plasma center administer  
 14          an HIV test to whole blood, blood plasma, a blood product, or a blood derivative.

15          History: 1985 a. 73; 1987 a. 70; 1989 a. 201 ss. 9, 36; 1993 a. 27 ss. 325, 473; Stats. 1993 s. 252.13.

15          **SECTION 28.** 252.13 (5) of the statutes is amended to read:

16          252.13 (5) Whole blood, blood plasma, a blood product, or a blood derivative  
 17          described under sub. (2) that is voluntarily donated solely for the purpose of an  
 18          autologous transfusion may be distributed to or used by the person who has donated  
 19          the whole blood, blood plasma, blood product, or blood derivative. No person other  
 20          than the person who has donated the whole blood, blood plasma, blood product, or  
 21          blood derivative may receive or use the whole blood, blood plasma, blood product, or  
 22          blood derivative unless it has been subjected to ~~a~~ an HIV test under sub. (1m) and

1 ~~performance of the test has yielded a negative, validated HIV test result for the~~  
2 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.~~

History: 1985 a. 73; 1987 a. 70; 1989 a. 201 ss. 9, 36; 1993 a. 27 ss. 325, 473; Stats. 1993 s. 252.13.

3 **SECTION 29.** 252.14 (2) (intro.) of the statutes is amended to read:

4 252.14 (2) (intro.) No health care provider, peace officer, fire fighter,  
5 correctional officer, state patrol officer, jailer or keeper of a jail or person designated  
6 with custodial authority by the jailer or keeper, home health agency, inpatient health  
7 care facility, or person who has access to a validated HIV test result may do any of  
8 the following with respect to an individual who has acquired immunodeficiency  
9 syndrome or has a positive, validated HIV test for the presence of HIV, antigen or  
10 nonantigenic products of HIV or an antibody to HIV result, solely because the  
11 individual has HIV infection or an illness or medical condition that is caused by,  
12 arises from, or is related to HIV infection:

History: 1989 a. 201; 1991 a. 32, 39, 160, 189, 269, 315; 1993 a. 27 ss. 326 to 331; Stats. 1993 s. 252.14; 1993 a. 105, 190, 252, 443; 1993 a. 490 s. 143; 1993 a. 491, 495; 1995 a. 27 ss. 6322, 9145 (1); 1997 a. 27, 35, 67, 75, 175; 1999 a. 9, 32, 180; 2001 a. 70, 80, 89; 2005 a. 22.

13 **SECTION 30.** 252.14 (3) of the statutes is amended to read:

14 252.14 (3) A health care provider, home health agency, or inpatient health care  
15 facility that tests administers an HIV test to an individual for HIV infection shall  
16 provide counseling about HIV and referral for appropriate health care and support  
17 services as necessary. A health care provider, home health agency, or inpatient  
18 health care facility that treats an individual who has an HIV infection or acquired  
19 immunodeficiency syndrome shall develop and follow procedures that shall ensure  
20 continuity of care for the individual in the event that his or her condition exceeds the  
21 scope of licensure or certification of the provider, agency, or facility.

History: 1989 a. 201; 1991 a. 32, 39, 160, 189, 269, 315; 1993 a. 27 ss. 326 to 331; Stats. 1993 s. 252.14; 1993 a. 105, 190, 252, 443; 1993 a. 490 s. 143; 1993 a. 491, 495; 1995 a. 27 ss. 6322, 9145 (1); 1997 a. 27, 35, 67, 75, 175; 1999 a. 9, 32, 180; 2001 a. 70, 80, 89; 2005 a. 22.

22 **SECTION 31.** 252.14 (4) of the statutes is amended to read:

1 patrol officer, jailer, or keeper of a jail, or person designated with custodial authority  
 2 by the jailer or keeper, while searching or arresting an individual or while controlling  
 3 or transferring an individual in custody; a health care provider or an employee of a  
 4 health care provider, during the course of providing care or treatment to an  
 5 individual or handling or processing specimens of body fluids or tissues of an  
 6 individual; a staff member of a state crime laboratory, during the course of handling  
 7 or processing specimens of body fluids or tissues of an individual; social worker; or  
 8 an employee of a school district, cooperative educational service agency, charter  
 9 school, private school, the Wisconsin Educational Services Program for the Deaf and  
 10 Hard of Hearing, or the Wisconsin Center for the Blind and Visually Impaired, while  
 11 performing employment duties involving an individual; who is significantly exposed  
 12 to the individual may subject the individual's blood to ~~a~~ <sup>an</sup> HIV test or a series of tests  
 13 for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to  
 14 ~~HIV~~ and may receive disclosure of the results.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

15 **SECTION 35.** 252.15 (2) (a) 7. ak. of the statutes is amended to read:

16 252.15 (2) (a) 7. ak. A physician or advanced practice nurse prescriber, based  
 17 on information provided to the physician or advanced practice nurse prescriber,  
 18 determines and certifies in writing that the affected person has been significantly  
 19 exposed. The certification shall accompany the request for HIV testing and  
 20 disclosure. If the affected person who is significantly exposed is a physician or  
 21 advanced practice nurse prescriber, he or she may not make this determination or  
 22 certification. The information that is provided to a physician or advanced practice  
 23 nurse prescriber to document the occurrence of a significant exposure and the  
 24 physician's or advanced practice nurse prescriber's certification that an affected

1 person has been significantly exposed, under this subd. 7. ak., shall be provided on  
 2 a report form that is developed by the department of commerce under s. 101.02 (19)  
 3 (a) or on a report form that the department of commerce determines, under s. 101.02  
 4 (19) (b), is substantially equivalent to the report form that is developed under s.  
 5 101.02 (19) (a).

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

6 **SECTION 36.** 252.15 (2) (a) 7. am. of the statutes is amended to read:

7 252.15 (2) (a) 7. am. The affected person submits to ~~a~~ <sup>↓</sup> an HIV test for the  
 8 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV~~, as  
 9 soon as feasible or within a time period established by the department after  
 10 consulting guidelines of the centers for disease control of the federal public health  
 11 service, whichever is earlier.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

12 **SECTION 37.** 252.15 (2) (a) 7. ap. of the statutes is amended to read:

13 252.15 (2) (a) 7. ap. Except as provided in subd. 7. av. to c., the HIV test is  
 14 performed on blood that is drawn for a purpose other than HIV testing ~~for the~~  
 15 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV~~.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

**INSERT 8-1**

16 **SECTION 38.** 252.15 (2) (a) 7. at. of the statutes is amended to read:

17 252.15 (2) (a) 7. at. The individual has been informed that an HIV test may be  
 18 performed on his or her blood ~~may be tested for the presence of HIV, antigen or~~  
 19 ~~nonantigenic products of HIV or an antibody to HIV~~; that the test results may be  
 20 disclosed to no one, including that individual, without his or her consent, except to  
 21 the person who is certified to have been significantly exposed; that, if the person



1 knows the identity of the individual, he or she may not disclose the identity to any  
2 other person except for the purpose of having the test ~~or series of tests~~ performed;  
3 and that a record may be kept of the test results only if the record does not reveal the  
4 individual's identity.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

5 **SECTION 39.** 252.15 (2) (a) 7. av. of the statutes is amended to read:

6 252.15 (2) (a) 7. av. If blood that is specified in subd. 7. ap. is unavailable, the  
7 person who is certified under subd. 7. ak. to have been significantly exposed may  
8 request the district attorney to apply to the circuit court for his or her county to order  
9 the individual to submit to <sup>↓</sup> ~~a~~ an HIV test ~~or a series of tests for the presence of HIV,~~  
10 ~~antigen or nonantigenic products of HIV or an antibody to HIV~~ and to disclose the  
11 results to that person. The person who is certified under subd. 7. ak. to have been  
12 significantly exposed shall accompany the request with the certification under subd.  
13 7. ak.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

14 **SECTION 40.** 252.15 (2) (a) 7. b. of the statutes is amended to read:

15 252.15 (2) (a) 7. b. Upon receipt of a request and certification under the  
16 requirements of this subdivision, a district attorney shall, as soon as possible so as  
17 to enable the court to provide timely notice, apply to the circuit court for his or her  
18 county to order the individual to submit to <sup>↓</sup> ~~a~~ an HIV test ~~or a series of tests~~ as  
19 specified in subd. 7. a., administered by a health care professional, and to disclose  
20 the results of the test ~~or tests~~ as specified in subd. 7. c.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

21 **SECTION 41.** 252.15 (2) (a) 7. c. of the statutes is amended to read:

1           252.15 (2) (a) 7. c. The court shall set a time for a hearing on the matter under  
 2           subd. 7. a. within 20 days after receipt of a request under subd. 7. b. The court shall  
 3           give the district attorney and the individual from whom ~~a~~ an HIV test is sought notice  
 4           of the hearing at least 72 hours prior to the hearing. The individual may have counsel  
 5           at the hearing, and counsel may examine and cross-examine witnesses. If the court  
 6           finds probable cause to believe that the individual has significantly exposed the  
 7           affected person, the court shall, except as provided in subd. 7. d., order the individual  
 8           to submit to ~~a~~ an HIV test ~~or a series of tests for the presence of HIV, antigen or~~  
 9           ~~nonantigenic products of HIV or an antibody to HIV.~~ The court shall require the  
 10          health care professional who performs the HIV test ~~or series of tests~~ to refrain from  
 11          disclosing the test results to the individual and to disclose the test results to the  
 12          affected person and his or her health care professional. No sample used for  
 13          laboratory test purposes under this subd. 7. c. may disclose the name of the HIV test  
 14          subject.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

15           **SECTION 42.** 252.15 (2) (a) 7. d. of the statutes is amended to read:

16           252.15 (2) (a) 7. d. The court is not required to order the individual to submit  
 17           to ~~a~~ an HIV test under subd. 7. c. if the court finds substantial reason relating to the  
 18           life or health of the individual not to do so and states the reason on the record.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

19           **SECTION 43.** 252.15 (2) (a) 7m. of the statutes is amended to read:

20           252.15 (2) (a) 7m. The HIV test results of an individual under subd. 7. may be  
 21           disclosed only to the individual, if he or she so consents, to anyone authorized by the  
 22           individual, and to the affected person who was certified to have been significantly  
 23           exposed. A record may be retained of the HIV test results only if the record does not

1 reveal the individual's identity. If the affected person knows the identity of the  
2 individual whose blood was tested, he or she may not disclose the identity to any  
3 other person except for the purpose of having the HIV test ~~or series of tests~~  
4 performed.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

5 **SECTION 44.** 252.15 (2) (am) 1. of the statutes is amended to read:

6 252.15 (2) (am) 1. A health care provider who procures, processes, distributes  
7 or uses human sperm donated as specified under s. 157.06 (6) (a) or (b) shall, prior  
8 to the distribution or use and ~~with~~ after obtaining informed consent under the  
9 requirements of par. (b), ~~test for HIV testing,~~ have the proposed donor for the  
10 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV  
11 administered an HIV test in order to assure medical acceptability of the gift for the  
12 purpose intended. ~~The health care provider shall use as a test for the presence of~~  
13 ~~HIV, antigen or nonantigenic products of HIV or an antibody to HIV a test or series~~  
14 ~~of tests that the state epidemiologist finds medically significant and sufficiently~~  
15 ~~reliable under s. 252.13 (1r) to detect the presence of HIV, antigen or nonantigenic~~  
16 ~~products of HIV or an antibody to HIV.~~ The health care provider shall test the donor  
17 initially and, if the initial test result is negative, shall perform a 2nd test on a date  
18 that is not less than 180 days from the date of the procurement of the sperm. No  
19 person may use the donated sperm until the health care provider has obtained the  
20 results of the 2nd test. If any validated HIV test result of the donor for the presence  
21 of HIV, antigen or nonantigenic products of HIV or an antibody to HIV is positive,  
22 the sperm donated for use may not be used and, if donated, shall be destroyed.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

23 **SECTION 45.** 252.15 (2) (am) 2. of the statutes is amended to read:

1           252.15 (2) (am) 2. A health care provider who procures, processes, distributes,  
 2 or uses human ova donated as specified under s. 157.06 (6) (a) or (b) shall, prior to  
 3 the distribution or use and with informed consent ~~under the requirements of par. (b),~~  
 4 ~~test for HIV testing, have the proposed donor for the presence of HIV, antigen or~~  
 5 ~~nonantigenic products of HIV or an antibody to HIV~~ administered an HIV test in  
 6 order to assure medical acceptability of the gift for the purpose intended.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

**INSERT 9-2**

7           **SECTION 46.** 252.15 (2) (bm) 1. of the statutes is renumbered 252.15 (2) (a) 3.  
 8 a. and amended to read:

9           252.15 (2) (a) 3. a. A statement of explanation concerning the HIV test that was  
 10 performed, the date of performance of the test and the test results.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

**INSERT 11-8**

11           **SECTION 47.** 252.15 (5) (a) 2. of the statutes is amended to read:  
 12           252.15 (5) (a) 2. To a health care provider who provides care to the subject of  
 13 the HIV test subject, including those instances in which a health care provider  
 14 provides emergency care to the subject.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

15           **SECTION 48.** 252.15 (5) (a) 4. (intro.) of the statutes is amended to read:  
 16           252.15 (5) (a) 4. (intro.) To a blood bank, blood center or plasma center that  
 17 subjects a person to ~~a~~ an HIV test under sub. (2) (a), for any of the following purposes:

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

18           **SECTION 49.** 252.15 (5) (a) 4. a. of the statutes is amended to read:

1           252.15 (5) (a) 4. a. Determining the medical acceptability of blood or plasma  
2 secured from the HIV test subject.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

3           **SECTION 50.** 252.15 (5) (a) 4. b. of the statutes is amended to read:

4           252.15 (5) (a) 4. b. Notifying the test subject of the HIV test of the test results.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

**INSERT 11-11**

5           **SECTION 51.** 252.15 (5) (a) 10. c. of the statutes is amended to read:

6           252.15 (5) (a) 10. c. Provides written assurance to the person disclosing the HIV  
7 test results that use of the information requested is only for the purpose under which  
8 it is provided to the researcher, the information will not be released to a person not  
9 connected with the study, and the final research product will not reveal information  
10 that may identify the test subject unless the researcher has first received informed  
11 consent for disclosure from the test subject.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

12           **SECTION 52.** 252.15 (5) (a) 13. of the statutes is amended to read:

13           252.15 (5) (a) 13. To a sheriff, jailer or keeper of a prison, jail, or house of  
14 correction or a person designated with custodial authority by the sheriff, jailer, or  
15 keeper, for whom disclosure is necessitated in order to permit the assigning of a  
16 private cell to a prisoner who has a positive HIV test result.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

17           **SECTION 53.** 252.15 (5) (a) 14. of the statutes is amended to read:

18           252.15 (5) (a) 14. If the test results of ~~a~~ an HIV test administered to an  
19 individual are positive and the individual is deceased, by the individual's attending  
20 physician or advanced practice nurse prescriber, to persons, if known to the

1 physician or advanced practice nurse prescriber, with whom the individual has had  
2 sexual contact or has shared intravenous drug use paraphernalia.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

3 **SECTION 54. 252.15 (5) (a) 15.** of the statutes is amended to read:

4 252.15 (5) (a) 15. To anyone who provides consent for the HIV testing under  
5 sub. (2) (a) 4. b., except that disclosure may be made under this subdivision only  
6 during a period in which the HIV test subject is adjudicated incompetent in this  
7 state, is under 14 years of age, or is unable to communicate due to a medical  
8 condition.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

9 **SECTION 55. 252.15 (5) (a) 19.** of the statutes is amended to read:

10 252.15 (5) (a) 19. If the HIV test was administered to a child who has been  
11 placed in a foster home, treatment foster home, group home, residential care center  
12 for children and youth, or juvenile correctional facility, as defined in s. 938.02 (10p),  
13 including a placement under s. 48.205, 48.21, 938.205, or 938.21, or for whom  
14 placement in a foster home, treatment foster home, group home, residential care  
15 center for children and youth, or juvenile correctional facility is recommended under  
16 s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by  
17 a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831  
18 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report  
19 under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency  
20 responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1)  
21 (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the  
22 child, or to an agency that placed the child or arranged for the placement of the child  
23 in any of those placements and, by any of those agencies, to any other of those

1 agencies and, by the agency that placed the child or arranged for the placement of  
 2 the child in any of those placements, to the child's foster parent or treatment foster  
 3 parent or the operator of the group home, residential care center for children and  
 4 youth, or juvenile correctional facility in which the child is placed, as provided in s.  
 5 48.371 or 938.371.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

6 **SECTION 56.** 252.15 (5) (a) 20. of the statutes is amended to read:

7 252.15 (5) (a) 20. To a prisoner's health care provider, the medical staff of a  
 8 prison or jail in which a prisoner is confined, the receiving institution intake staff at  
 9 a prison or jail to which a prisoner is being transferred, or a person designated by a  
 10 jailer to maintain prisoner medical records, if the disclosure is made with respect to  
 11 the prisoner's patient health care records under s. 302.388, to the medical staff of a  
 12 jail to whom the HIV test results are disclosed under s. 302.388 (2) (c) or (d), to the  
 13 medical staff of a jail to which a prisoner is being transferred, if the test results are  
 14 provided to the medical staff by the department of corrections as part of the prisoner's  
 15 medical file, to a health care provider to whom the test results are disclosed under  
 16 s. 302.388 (2) (c) or (f), or to the department of corrections if the disclosure is made  
 17 with respect to a prisoner's patient health care records under s. 302.388 (4).

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

18 **SECTION 57.** 252.15 (5) (a) 21. of the statutes is created to read:

19 252.15 (5) (a) 21. To a local health officer, as specified under sub. (7m) (b) or s.  
 20 252.03, 252.05, 252.06, 252.12, or 252.21 (1).

21 **SECTION 58.** 252.15 (5) (b) of the statutes is amended to read:

22 252.15 (5) (b) A private pay patient may deny access to disclosure of his or her  
 23 HIV test results granted under par. (a) 10. if he or she annually submits to the

1 maintainer of his or her HIV test results under sub. (4) (c) a signed, written request  
2 that denial be made.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

3 **SECTION 59.** 252.15 (5m) (intro.) of the statutes is amended to read:

4 252.15 (5m) AUTOPSIES; HIV TESTING OF CERTAIN CORPSES. (intro.)

5 Notwithstanding s. 157.05, a corpse may be subjected to ~~a~~ an HIV test for the  
6 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and  
7 the test results disclosed to the person who has been significantly exposed under any  
8 of the following conditions:

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

9 **SECTION 60.** 252.15 (5m) (a) of the statutes is amended to read:

10 252.15 (5m) (a) If a person, including a person exempted from civil liability  
11 under the conditions specified under s. 895.48, 895.4802, or 895.4803, who renders  
12 to the victim of an emergency or accident emergency care during the course of which  
13 the emergency caregiver is significantly exposed to the emergency or accident victim  
14 and the emergency or accident victim subsequently dies prior to ~~testing for the~~  
15 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV~~ ↙ strike  
↘ services  
16 performance of an HIV test on the victim; and if a physician or advanced practice  
17 nurse prescriber, based on information provided to the physician or advanced  
18 practice nurse prescriber, determines and certifies in writing that the emergency  
19 caregiver has been significantly exposed and if the certification accompanies the  
20 request for testing performance of an HIV test and disclosure. ~~Testing of a corpse~~  
21 ~~under this paragraph shall be ordered by the~~ The coroner, medical examiner, or  
22 physician who certifies the victim's cause of death under s. 69.18 (2) (b), (c), or (d)  
23 shall order performance of an HIV test of the corpse.



1 ~~NOTE: NOTE: NOTE: Par. (a) is shown as affected by 2 acts of the Wisconsin legislature and as merged by the revisor under s. 13.93(2)(c), stats.~~NOTE:

~~History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).~~

2 **SECTION 61. 252.15 (5m) (b) of the statutes is amended to read:**

3 252.15 (5m) (b) If a funeral director, coroner, medical examiner, or appointed  
4 assistant to a coroner or medical examiner who prepares the corpse of a decedent for  
5 burial or other disposition or a person who performs an autopsy or assists in  
6 performing an autopsy is significantly exposed to the corpse; if a physician or  
7 advanced practice nurse prescriber, based on information provided to the physician  
8 or advanced practice nurse prescriber, determines and certifies in writing that the  
9 funeral director, coroner, medical examiner, or appointed assistant has been  
10 significantly exposed; and if the certification accompanies the request for HIV  
11 testing and disclosure. Testing An HIV test of a corpse under this paragraph shall  
12 be ordered by the attending physician or advanced practice nurse prescriber of the  
13 funeral director, coroner, medical examiner, or appointed assistant who is so exposed.

~~History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).~~

14 **SECTION 62. 252.15 (5m) (c) of the statutes is amended to read:**

15 252.15 (5m) (c) If a health care provider or an agent or employee of a health  
16 care provider is significantly exposed to the corpse or to a patient who dies  
17 subsequent to the exposure and prior to ~~testing for the presence of HIV, antigen or~~  
18 ~~nonantigenic products of HIV, or an antibody to HIV~~ performance of an HIV test; if  
19 a physician or advanced practice nurse prescriber who is not the health care provider,  
20 based on information provided to the physician or advanced practice nurse  
21 prescriber, determines and certifies in writing that the health care provider, agent  
22 or employee has been significantly exposed; and if the certification accompanies the  
23 request for testing and disclosure. ~~Testing of a corpse under this paragraph shall be~~  
24 ordered by the The physician or advanced practice nurse prescriber who certifies

1 that the significant exposure has occurred shall order performance of an HIV test of  
2 the corpse.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

3 **SECTION 63.** 252.15 (6) of the statutes is amended to read:

4 **252.15 (6) EXPANDED DISCLOSURE OF HIV TEST RESULTS PROHIBITED.** No person  
5 to whom the results of ~~a~~ an HIV test for the presence of HIV, antigen or nonantigenic  
6 products of HIV or an antibody to HIV have been disclosed under sub. (5) (a) or (5m)  
7 may disclose the test results except as authorized under sub. (5) (a) or (5m).

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

8 **SECTION 64.** 252.15 (7) (title) of the statutes is amended to read:

9 **252.15 (7) (title) REPORTING OF POSITIVE HIV TEST RESULTS.**

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

10 **SECTION 65.** 252.15 (7) (a) of the statutes is amended to read:

11 **252.15 (7) (a)** Notwithstanding ss. 227.01 (13) and 227.10 (1), for the purposes  
12 of this subsection, the state epidemiologist shall determine, based on the  
13 preponderance of available scientific evidence, the procedures necessary in this state  
14 to obtain a validated HIV test result and the secretary shall so declare under s.  
15 250.04 (1) or (2) (a). The state epidemiologist shall revise this determination if, in  
16 his or her opinion, changed available scientific evidence warrants a revision, and the  
17 secretary shall declare the revision under s. 250.04 (1) or (2) (a).

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

18 **SECTION 66.** 252.15 (7) (b) (intro.) of the statutes is amended to read:

19 **252.15 (7) (b) (intro.)** If a positive, validated HIV test result is obtained from  
20 a test subject, the health care provider, blood bank, blood center or plasma center

1 that maintains a record of the test results result under sub. (4) (c) shall report to the  
2 state epidemiologist the following information:

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

3 **SECTION 67.** 252.15 (7) (b) 3. of the statutes is amended to read:

4 252.15 (7) (b) 3. The name, address, telephone number, age or date of birth, race  
5 and ethnicity, sex and county of residence of the HIV test subject, if known.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

6 **SECTION 68.** 252.15 (7) (b) 4. of the statutes is amended to read:

7 252.15 (7) (b) 4. The date on which the HIV test was performed.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

8 **SECTION 69.** 252.15 (7) (b) 5. of the statutes is amended to read:

9 252.15 (7) (b) 5. The HIV test result.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

10 **SECTION 70.** 252.15 (7) (b) 5m. of the statutes is created to read:

11 252.15 (7) (b) 5m. The mode of transmission to the test subject of HIV.

12 **SECTION 71.** 252.15 (7) (c) 1. of the statutes is amended to read:

13 252.15 (7) (c) 1. Information with respect to the sexual orientation of the HIV  
14 test subject.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

15 **SECTION 72.** 252.15 (7) (c) 2. of the statutes is amended to read:

16 252.15 (7) (c) 2. The identity of persons with whom the HIV test subject may  
17 have had sexual contact.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

18 **SECTION 73.** 252.15 (7m) of the statutes is renumbered 252.15 (7m) (ag) and  
19 amended to read:

1           252.15 (7m) (ag) ~~REPORTING OF PERSONS~~ PERSONS SIGNIFICANTLY EXPOSED;  
 2           ~~REPORTING; INFORMING.~~ If a positive, validated HIV test result is obtained from ~~a~~ an  
 3           HIV test subject, the test subject's physician or advanced practice nurse prescriber  
 4           who maintains a record of the test result under sub. (4) (c) may report to the state  
 5           epidemiologist and to the local health officer the name of any person known to the  
 6           physician or advanced practice nurse prescriber to have been significantly exposed  
 7           to the test subject, only after the physician or advanced practice nurse prescriber has  
 8           done all of the following:

9           1. Counseled the HIV test subject to inform any person who has been  
 10          significantly exposed to the test subject.

11          2. Notified the HIV test subject that, notwithstanding subs. (3) and (5) (a)  
 12          (intro.), the name of any person known to the physician or advanced practice nurse  
 13          prescriber to have been significantly exposed to the test subject will be reported to  
 14          the state epidemiologist and to the local health officer and that the local health officer  
 15          may inform the person as specified under par. (bg).

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

16          **SECTION 74.** 252.15 (7m) (bg) of the statutes is created to read:

17          252.15 (7m) (bg) A local health officer who has, under par. (ag) (intro) or under  
 18          s. 252.03, 252.05, 252.06, 252.12, or 252.21 (1), received information that a positive,  
 19          validated HIV test result has been obtained from a test subject and that a person is  
 20          known to have been significantly exposed to the test subject or is likely to have been  
 21          so exposed, may, notwithstanding subs. (3) and (5) (a) (intro.), notify that person that  
 22          a positive, validated test result has been obtained from the test subject.

23          **SECTION 75.** 252.15 (8) (a) of the statutes is amended to read:

1           252.15 (8) (a) Any person violating sub. (2), (5) (a), (5m), (6) or (7) (c) is liable  
2 to the subject of the HIV test for actual damages, costs and reasonable actual  
3 attorney fees, plus exemplary damages of up to \$1,000 for a negligent violation and  
4 up to \$25,000 for an intentional violation.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

5           **SECTION 76.** 252.15 (9) of the statutes is amended to read:

6           252.15 (9) PENALTIES. Whoever intentionally discloses the results of a blood an  
7 HIV test in violation of sub. (2) (a) 7m., (5) (a) ~~or~~, (5m), or (7m) and thereby causes  
8 bodily harm or psychological harm to the subject of the test may be fined not more  
9 than ~~\$25,000~~ \$50,000 or imprisoned not more than 9 months or both. Whoever  
10 negligently discloses the results of a blood an HIV test in violation of sub. (2) (a) 7m.,  
11 (5) (a) ~~or~~, (5m), or (7m) is subject to a forfeiture of not more than ~~\$1,000~~ \$2,000 for  
12 each violation. Whoever intentionally discloses the results of a blood an HIV test in  
13 violation of sub. (2) (a) 7m., (5) (a) ~~or~~, (5m), or (7m), knowing that the information is  
14 confidential, and discloses the information for pecuniary gain may be fined not more  
15 than ~~\$100,000~~ \$200,000 or imprisoned not more than 3 years and 6 months, or both.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

16           **SECTION 77.** 631.90 (1) of the statutes is amended to read:

17           631.90 (1) In this section, "HIV test" ~~means any strain of human~~  
18 ~~immunodeficiency virus, which causes acquired immunodeficiency syndrome has~~  
19 ~~the meaning given in s. 252.01 (2m).~~

**History:** 1985 a. 29, 73; 1987 a. 70 ss. 34, 36; 1989 a. 201 ss. 31, 36; 1995 a. 27 s. 9126 (19).

20           **SECTION 78.** 631.90 (2) (a) of the statutes is amended to read:

21           631.90 (2) (a) Require or request directly or indirectly any individual to reveal  
22 whether the individual has obtained ~~a~~ an HIV test for the presence of HIV, antigen

1 ~~or nonantigenic products of HIV or an antibody to HIV~~ or what the results of this test,  
2 if obtained by the individual, were.

3 History: 1985 a. 29, 73; 1987 a. 70 ss. 34, 36; 1989 a. 201 ss. 31, 36; 1995 a. 27 s. 9126 (19).

3 SECTION 79. 631.90 (2) (b) of the statutes is amended to read:

4 631.90 (2) (b) Condition the provision of insurance coverage on whether an  
5 individual has obtained ~~a~~ an HIV test for the presence of HIV, antigen or  
6 nonantigenic products of HIV or an antibody to HIV or what the results of this test,  
7 if obtained by the individual, were.

8 History: 1985 a. 29, 73; 1987 a. 70 ss. 34, 36; 1989 a. 201 ss. 31, 36; 1995 a. 27 s. 9126 (19).

8 SECTION 80. 631.90 (2) (c) of the statutes is amended to read:

9 631.90 (2) (c) Consider in the determination of rates or any other aspect of  
10 insurance coverage provided to an individual whether an individual has obtained ~~a~~  
11 an HIV test for the presence of HIV, antigen or nonantigenic products of HIV or an  
12 antibody to HIV or what the results of this test, if obtained by the individual, were.

13 History: 1985 a. 29, 73; 1987 a. 70 ss. 34, 36; 1989 a. 201 ss. 31, 36; 1995 a. 27 s. 9126 (19).

13 SECTION 81. 631.90 (3) (a) of the statutes is amended to read:

14 631.90 (3) (a) Subsection (2) does not apply with regard to any an HIV test or  
15 series of tests for use in the underwriting of individual life, accident and health  
16 insurance policies ~~that the person designated by the secretary of health and family~~  
17 ~~services as the state epidemiologist finds medically significant and sufficiently~~  
18 ~~reliable for the presence of HIV, antigen or nonantigenic products of HIV or an~~  
19 ~~antibody to HIV~~ and that the commissioner finds and designates by rule as  
20 sufficiently reliable for use in the underwriting of individual life, accident and health  
21 insurance policies.

22 History: 1985 a. 29, 73; 1987 a. 70 ss. 34, 36; 1989 a. 201 ss. 31, 36; 1995 a. 27 s. 9126 (19).

22 SECTION 82. 631.90 (3) (b) of the statutes is amended to read:

1           631.90 (3) (b) Paragraph (a) does not authorize the use of ~~any an HIV test or~~  
2           ~~series of tests for the presence of HIV, antigen or nonantigenic products of HIV or an~~  
3           ~~antibody to HIV~~ to discriminate in violation of s. 628.34 (3).

History: 1985 a. 29, 73; 1987 a. 70 ss. 34, 36; 1989 a. 201 ss. 31, 36; 1995 a. 27 s. 9126 (19).

4           **SECTION 83.** 901.05 (2) (intro.) of the statutes is amended to read:

5           901.05 (2) (intro.) Except as provided in sub. (3), the results of ~~a test or tests~~  
6           ~~for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to~~  
7           ~~HIV~~ an HIV test, as defined in s. 252.01 (2m), are not admissible during the course  
8           of a civil or criminal action or proceeding or an administrative proceeding, as  
9           evidence of a person's character or a trait of his or her character for the purpose of  
10          proving that he or she acted in conformity with that character on a particular  
11          occasion unless the evidence is admissible under s. 904.04 (1) or 904.05 (2) and unless  
12          the following procedures are used:

History: 1987 a. 70; 1989 a. 201 ss. 34, 36; 1991 a. 269; 1993 a. 32; 1995 a. 77; 1999 a. 188.

13          **SECTION 84.** 938.296 (1) (bm) of the statutes is created to read:

14          938.296 (1) (bm) "HIV test" has the meaning given in s. 252.01 (2m).

15          **SECTION 85.** 938.296 (2) (intro.) of the statutes is amended to read:

16          938.296 (2) (title) SEXUALLY TRANSMITTED DISEASE AND HIV TESTING. (intro.) In  
17          a proceeding under s. 938.12 or 938.13 (12) in which the juvenile is alleged to have  
18          violated s. 940.225, 948.02, 948.025, 948.05, 948.06, or 948.085 (2), the district  
19          attorney or corporation counsel shall apply to the court for an order requiring the  
20          juvenile to submit to ~~a~~ an HIV test and a test or a series of tests administered by a  
21          ~~health care professional~~ to detect the presence of HIV, antigen or nonantigenic  
22          ~~products of HIV, an antibody to HIV or a sexually transmitted disease, each of which~~  
23          ~~tests are to be administered by a health care professional, and to disclose the results~~

1 of that test or series of those tests as specified in sub. (4) (a) to (e), if all of the following  
2 apply:

3 History: 1995 a. 77; 1997 a. 181, 182, 237; 1999 a. 188; 2005 a. 277, 344.

**SECTION 86. 938.296 (4)** (intro.) of the statutes is amended to read:

4 **938.296 (4)** (title) **DISCLOSURE OF SEXUALLY TRANSMITTED DISEASE AND HIV TEST**

5 RESULTS. (intro.) On receipt of an application for an order under sub. (2), the court  
6 shall set a time for a hearing on the application. If the juvenile has been found not  
7 competent to proceed under s. 938.30 (5), the court may hold a hearing under this  
8 subsection only if the court first determines that the probable cause finding can be  
9 fairly made without the personal participation of the juvenile. If, after hearing, the  
10 court finds probable cause to believe that the juvenile has significantly exposed the  
11 victim or alleged victim, the court shall order the juvenile to submit to ~~a~~ an HIV test  
12 ~~or and a test or series of tests administered by a health care professional to detect~~  
13 ~~the presence of HIV, antigen or nonantigenic products of HIV, an antibody to HIV or~~  
14 ~~a sexually transmitted disease. The tests shall be administered by a health care~~  
15 ~~professional.~~ The court shall require the health care professional who performs the  
16 ~~test or series of tests to refrain, notwithstanding s. 252.15 (4) (c), from making the~~  
17 ~~test results part of the juvenile's permanent medical record and, notwithstanding s.~~  
18 ~~252.15 (3) (a),~~ to disclose the results of the test tests to any of the following:

19 History: 1995 a. 77; 1997 a. 181, 182, 237; 1999 a. 188; 2005 a. 277, 344.

**SECTION 87. 938.296 (5)** (intro.) of the statutes is amended to read:

20 **938.296 (5) DISCLOSURE OF COMMUNICABLE DISEASE TEST RESULTS.** (intro.) On  
21 receipt of an application for an order under sub. (2m), the court shall set a time for  
22 a hearing on the application. If the juvenile has been found not competent to proceed  
23 under s. 938.30 (5), the court may hold a hearing under this subsection only if the  
24 court first determines that the probable cause finding can be fairly made without the



1 personal participation of the juvenile. If, after hearing, the court finds probable  
 2 cause to believe that the act or alleged act of the juvenile that constitutes a violation  
 3 of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the  
 4 victim or alleged victim and involved the juvenile's blood, semen, vomit, saliva, urine  
 5 or feces or other bodily substance of the juvenile, the court shall order the juvenile  
 6 to submit to a test or a series of tests administered by a health care professional to  
 7 detect the presence of any communicable disease that was potentially transmitted  
 8 by the act or alleged act of the juvenile. The court shall require the health care  
 9 professional who performs the test or series of tests to refrain, ~~notwithstanding s.~~  
 10 ~~252.15 (4) (c), if applicable,~~ from making the test results part of the juvenile's  
 11 permanent medical record and to disclose the results of the test to any of the  
 12 following:

History: 1995 a. 77; 1997 a. 181, 182, 237; 1999 a. 188; 2005 a. 277, 344.

13 **SECTION 88.** 938.346 (1) (e) of the statutes is amended to read:

14 938.346 (1) (e) The procedure under s. 938.296 under which the victim, if an  
 15 adult, or the parent, guardian or legal custodian of the victim, if the victim is a child,  
 16 may request an order requiring a juvenile who is alleged to have violated s. 940.225,  
 17 948.02, 948.025, 948.05, 948.06, or 948.085 (2) to submit to ~~a~~ an HIV test or, as  
 18 defined in s. 252.01 (2m), and a test or a series of tests to detect the presence of HIV,  
 19 as defined in s. 252.01 (1m), ~~antigen or nonantigenic products of HIV, an antibody~~  
 20 ~~to HIV or~~ a sexually transmitted disease, as defined in s. 252.11 (1), and to have the  
 21 results of ~~that test or series of~~ the tests disclosed as provided in s. 938.296 (4) (a) to  
 22 (e).

History: 1995 a. 77; 1997 a. 181, 205; 1999 a. 188; 2005 a. 155, 277, 344.

23 **SECTION 89.** 938.371 (1) (a) of the statutes is amended to read:

1

938.371 (1) (a) Results of ~~a~~ an HIV test or a series of tests, as defined in s. 252.01

2

(2m), of the juvenile to determine the presence of HIV, as defined in s. 968.38 (1) (b),

3

antigen or nonantigenic products of HIV, or an antibody to HIV, under s. 252.15 (5)

4

(a) 19., including results included in a court report or permanency plan. At the time

5

that the HIV test results are provided, the agency shall notify the foster parent,

6

treatment foster parent, relative, or operator of the group home, residential care

7

center for children and youth, or juvenile correctional facility of the confidentiality

8

requirements under s. 252.15 (6).

History: 1995 a. 77, 275, 352; 1997 a. 35, 272; 1999 a. 32; 2001 a. 59; 2005 a. 232, 277, 344; ~~13.93~~ (2) (c).

9

**SECTION 90.** 968.38 (1) (bc) of the statutes is created to read:

10

968.38 (1) (bc) "HIV test" has the meaning given in s. 252.01 (2m).

11

**SECTION 91.** 968.38 (2) (intro.) of the statutes is amended to read:

12

968.38 (2) (intro.) In a criminal action under s. 940.225, 948.02, 948.025,

13

948.05, 948.06, 948.085, or 948.095, if all of the following apply, the district attorney

14

shall apply to the circuit court for his or her county to order the defendant to submit

15

to ~~a~~ an HIV test or and to a test or a series of tests administered by a health care

16

professional to detect the presence of HIV, antigen or nonantigenic products of HIV,

17

~~an antibody to HIV or a sexually transmitted disease, each of which tests shall be~~

18

administered by a health care professional, and, notwithstanding s. 252.15 (3) (a),

19

to disclose the results of the test or tests as specified in sub. (4) (a) to (c):

History: 1991 a. 269; 1993 a. 27, 32, 183, 227, 495; 1995 a. 456; 1997 a. 182; 1999 a. 188; 2005 a. 277.

**INSERT 13-2**

20

**SECTION 92.** 973.017 (4) (a) 1m. of the statutes is created to read:

21

973.017 (4) (a) 1m. "HIV test" has the meaning given in s. 252.01 (2m).

22

**SECTION 93.** 973.017 (4) (b) 1. of the statutes is amended to read:

1           973.017 (4) (b) 1. At the time that he or she committed the serious sex crime,  
2 the person convicted of committing the serious sex crime had a sexually transmitted  
3 disease or acquired immunodeficiency syndrome or had had a positive HIV test for  
4 the presence of HIV, antigen, or nonantigenic products of HIV or an antibody to HIV.

5 History: 2001 a. 109; 2003 a. 321; 2005 a. 14, 277.

5           **SECTION 94.** 973.017 (4) (b) 2. of the statutes is amended to read:

6           973.017 (4) (b) 2. At the time that he or she committed the serious sex crime,  
7 the person convicted of committing the serious sex crime knew that he or she had a  
8 sexually transmitted disease or acquired immunodeficiency syndrome or that he or  
9 she had had a positive HIV test for the presence of HIV, antigen, or nonantigenic  
10 products of HIV or an antibody to HIV.

11 History: 2001 a. 109; 2003 a. 321; 2005 a. 14, 277.

11           **SECTION 95. Initial applicability.**

12           (1) POSITIVE HIV TEST RESULT REPORTING. The treatment of section 252.15 (7)  
13 (b) 5m. of the statutes, as created by this act, first applies to records of test results  
14 reported to the state epidemiologist on the first day of the 4th month beginning after  
15 the effective date of this subsection.  
16

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1092/3dn

DAK:kjf:ts

Date

To Representative Wasserman:

X  
X  
X  
1. Under current law, "sexually transmitted disease" is defined under s. 252.11 (1), stats., to mean syphilis, gonorrhea, chlamydia, and other diseases the department (DHFS) includes by rule. The DHFS rule defining "sexually transmitted disease" (HFS 145.14 (4), Wis. Admin. Code) does not include AIDS or HIV; thus, HIV is not a "sexually transmitted disease" within the meaning of the statutes. Also, under current law, "communicable disease" is defined under s. 990.01 (5g), stats., to be "any disease that the department of health and family services determines, by rule, to be communicable in fact." The DHFS rule defining "communicable disease" (HFS 145.03 (4), Wis. Admin. Code) refers to "... a disease or condition listed in Appendix A of Chapter HFS 145." That Appendix lists AIDS and HIV in Category III; thus, AIDS and HIV are "communicable diseases" within the meaning of the statutes. Sections 938.296 (4) and 968.38 (4), stats., describe hearings to order a juvenile or an adult who has significantly exposed a victim to be tested for sexually transmitted disease or HIV; ss. 938.296 (5) and 968.38 (5), stats., describe hearings to order a juvenile or an adult who has significantly exposed a victim to be tested for communicable disease. Section 252.11 (5m) and (7), stats., refer to all of these statutes with respect to testing for sexually transmitted disease; therefore, I have in this draft deleted erroneous cross-references to s. 938.296 (5) and 968.38 (5) in s. 252.11 (5m) and (7), stats.

X  
2. Please review the definition of "HIV test" created under s. 252.01 (2m). The language concerning medical sufficiency and sufficient reliability is taken from s. 252.13 (1r) (intro.), stats., which is correspondingly amended under this bill. I have added this language because, otherwise, it appears that HIV tests are not required to meet any standards. (Note that, because of the wording of this definition, I have not, in this bill, amended s. 252.15 (5r), stats.) Is this what you want?

3. I have defined "validated test result" under s. 252.01 (8), stats. Note that most statutes in current law only refer to a "test" or a "test result," not a "validated test result." I have not changed these statutes, except for s. 252.13 (5), stats., assuming that you do not want the addition. Is that correct? Is the change that I have made what you want?

4. I have added "to the test subject" to s. 252.15 (7) (b) 5m., for clarification. Please review.

5. Section 252.15 (7m) (bg), stats., as requested, authorizes a local health officer to report a positive, validated test result obtained from a test subject to a person who is known to have been *or is likely to have been* significantly exposed; however, s. 252.15 (7m) (ag) (intro.) and 2., stats (as renumbered in the bill) only authorize the test subject's physician or advanced practice nurse to report to the local health officer the name of any person *known* to have been significantly exposed. This appears to be a conflict. How do you prefer that I resolve it?
6. Your instructions were to add "oral" to "consent" under s. 252.15 (1) (d). This has necessitated a restructuring of that paragraph and a change to the last (amending) sentence of s. 252.15 (2) (b), stats. Please review.
7. Should the requirement for two tests and prohibition on use in s. 252.15 (2) (am) 1. also apply to s. 252.15 (2) (am) 2., for the sake of consistency?
8. Did you want any of the civil liability limits under s. 252.15 (8), stats., to be increased?
9. Please review the Initial Applicability provision to ensure that it does what you want.
10. There seems to be a direct conflict about HIV test disclosure between s. 252.15 (2) (a) 7. c. and 7m., stats.; the first provision states that a health care provider may not disclose test results to an individual, and the second allows disclosure. Do you want to resolve this conflict?

Debora A. Kennedy  
Managing Attorney  
Phone: (608) 266-0137  
E-mail: debora.kennedy@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1092/3dn  
DAK:kjf:nwn

November 7, 2007

To Representative Wasserman:

1. Under current law, "sexually transmitted disease" is defined under s. 252.11 (1), stats., to mean syphilis, gonorrhea, chlamydia, and other diseases the department (DHFS) includes by rule. The DHFS rule defining "sexually transmitted disease" (HFS 145.14 (4), Wis. Adm. Code) does not include AIDS or HIV; thus, HIV is not a "sexually transmitted disease" within the meaning of the statutes. Also, under current law, "communicable disease" is defined under s. 990.01 (5g), stats., to be "any disease that the department of health and family services determines, by rule, to be communicable in fact." The DHFS rule defining "communicable disease" (HFS 145.03 (4), Wis. Adm. Code) refers to "...a disease or condition listed in Appendix A of Chapter HFS 145." That Appendix lists AIDS and HIV in Category III; thus, AIDS and HIV are "communicable diseases" within the meaning of the statutes. Sections 938.296 (4) and 968.38 (4), stats., describe hearings to order a juvenile or an adult who has significantly exposed a victim to be tested for sexually transmitted disease or HIV; ss. 938.296 (5) and 968.38 (5), stats., describe hearings to order a juvenile or an adult who has significantly exposed a victim to be tested for communicable disease. Section 252.11 (5m) and (7), stats., refer to all of these statutes with respect to testing for sexually transmitted disease; therefore, I have in this draft deleted erroneous cross-references to s. 938.296 (5) and 968.38 (5) in s. 252.11 (5m) and (7), stats.

2. Please review the definition of "HIV test" created under s. 252.01 (2m). The language concerning medical sufficiency and sufficient reliability is taken from s. 252.13 (1r) (intro.), stats., which is correspondingly amended under this bill. I have added this language because, otherwise, it appears that HIV tests are not required to meet any standards. (Note that, because of the wording of this definition, I have not, in this bill, amended s. 252.15 (5r), stats.) Is this what you want?

3. I have defined "validated HIV test result" under s. 252.01 (8), stats. Note that most statutes in current law only refer to a "test" or a "test result," not a "validated test result." I have not changed these statutes, except for s. 252.13 (5), stats., assuming that you do not want the addition. Is that correct? Is the change that I have made what you want?

4. I have added "to the test subject" to s. 252.15 (7) (b) 5m., for clarification. Please review.

5. Section 252.15 (7m) (bg), stats., as requested, authorizes a local health officer to report a positive, validated test result obtained from a test subject to a person who is known to have been *or is likely to have been* significantly exposed; however, s. 252.15 (7m) (ag) (intro.) and 2., stats (as renumbered in the bill) only authorize the test subject's physician or advanced practice nurse to report to the local health officer the name of any person *known* to have been significantly exposed. This appears to be a conflict. How do you prefer that I resolve it?
6. Your instructions were to add "oral" to "consent" under s. 252.15 (1) (d). This has necessitated a restructuring of that paragraph and a change to the last (amending) sentence of s. 252.15 (2) (b), stats. Please review.
7. Should the requirement for two tests and prohibition on use in s. 252.15 (2) (am) 1. also apply to s. 252.15 (2) (am) 2., for the sake of consistency?
8. Did you want any of the civil liability limits under s. 252.15 (8), stats., to be increased?
9. Please review the Initial Applicability provision to ensure that it does what you want.
10. There seems to be a direct conflict about HIV test disclosure between s. 252.15 (2) (a) 7. c. and 7m., stats.; the first provision states that a health care provider may not disclose test results to an individual, and the second allows disclosure. Do you want to resolve this conflict?

Debora A. Kennedy  
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## STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

11/7/07

Redraft of - 1092/3

From Joe Hoey:

In response to D-Note # 10, move the 1st sentence of s. 252.15 (2)(a) 7m. into (2)(a) 7c. - allow disclosure to the indiv, if he/she consents + to anyone auth. by the indiv.

[ See FAX of proposed language sent to Joe 1/8/08. ]



**Senate Bill No. 443**

**CHAPTER 207**

An act to amend Section 1644.5 of the Health and Safety Code, relating to public health.

[Approved by Governor September 11, 2007. Filed with Secretary of State September 11, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 443, Migden. Tissue donors: sperm donors.

Existing law prohibits the transfer of any tissues, as defined, into the body of another person by means of transplantation, unless the donor of the tissues has been screened and found nonreactive for evidence of infection with HIV, agents of viral hepatitis (HBV and HCV), human T lymphotropic virus-1 (HTLV-1), and syphilis.

Existing law provides an exception to that prohibition for therapeutic insemination of sperm or use of sperm in other advanced reproductive technologies if the sperm donor is found reactive for hepatitis B, hepatitis C, or syphilis if the sperm donor is the spouse of, partner of, or designated donor for that recipient.

This bill would expand the exception to that prohibition for therapeutic insemination of sperm or use of sperm in other advanced reproductive technologies if the sperm donor is found reactive for HIV or HTLV-1.

The bill would authorize the use of sperm whose donor has tested reactive for HIV or HTLV-1 for the purposes of insemination or advanced reproductive technology only after the donor's sperm has been effectively processed to minimize the infectiousness of the sperm for that specific donation, and where informed and mutual consent has occurred. The bill would require the State Department of Public Health to adopt regulations by January 1, 2010, regulating facilities that perform sperm processing pursuant to those provisions.

The bill would require a physician providing insemination or advanced reproductive technologies to, among other things, provide, as appropriate, prophylactic treatments, including, but not limited to, antiretroviral treatments, to the recipient to reduce the risk of acquiring infection during and subsequent to insemination, and to perform appropriate followup testing of the recipient for HIV or HTLV-1 following the insemination or other advanced reproductive technology.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1644.5 of the Health and Safety Code is amended to read:

1644.5. (a) No tissues shall be transferred into the body of another person by means of transplantation, unless the donor of the tissues has been screened and found nonreactive by laboratory tests for evidence of infection with HIV, agents of viral hepatitis (HBV and HCV), human T lymphotropic virus-1 (HTLV-1), and syphilis, except as provided in subdivision (c). The department may adopt regulations requiring additional screening tests of donors of tissues when, in the opinion of the department, the action is necessary for the protection of the public, donors, or recipients.

(b) Notwithstanding subdivision (a), infectious disease screening of blood and blood products shall be carried out solely in accordance with Article 2 (commencing with Section 1601) of Chapter 4.

(c) All donors of sperm shall be screened and found nonreactive as required under subdivision (a), except in the following instances:

(1) A recipient of sperm, from a sperm donor known to the recipient, may waive a second or other repeat testing of that donor if the recipient is informed of the requirements for testing donors under this section and signs a written waiver.

(2) A recipient of sperm may consent to therapeutic insemination of sperm or use of sperm in other advanced reproductive technologies even if the sperm donor is found reactive for hepatitis B, hepatitis C, syphilis, HIV or HTLV-1 if the sperm donor is the spouse of, partner of, or designated donor for that recipient. The physician providing insemination or advanced reproductive technology services shall advise the donor and recipient of the potential medical risks associated with receiving sperm from a reactive donor. The donor and the recipient shall sign a document affirming that each comprehends the medical repercussions of using sperm from a reactive donor for the proposed procedure and that each consents to it. Copies of the document shall be placed in the medical records of the donor and the recipient.

(3) (A) Sperm whose donor has tested reactive for syphilis may be used for the purposes of insemination or advanced reproductive technology only after the donor has been treated for syphilis. Sperm whose donor has tested reactive for hepatitis B may be used for the purposes of insemination or advanced reproductive technology only after the recipient has been vaccinated against hepatitis B.

(B) (i) Sperm whose donor has tested reactive for HIV or HTLV-1 may be used for the purposes of insemination or advanced reproductive technology for a recipient testing negative for HIV or HTLV-1 only after the donor's sperm has been effectively processed to minimize the infectiousness of the sperm for that specific donation and where informed and mutual consent has occurred.

(ii) The department shall adopt regulations by January 1, 2010, regulating facilities that perform sperm processing, pursuant to this subparagraph, that

prescribe standards for the handling and storage of sperm samples of carriers of HIV, HTLV-1, or any other virus as deemed appropriate by the department. Until the department adopts these regulations, facilities that perform sperm processing shall follow facility and sperm processing guidelines developed by the American Society of Reproductive Medicine.

(iii) Prior to insemination or other advanced reproductive technology services, the physician shall inform the recipient of sperm from a donor who has tested reactive for HIV or HTLV-1 that sperm processing may not eliminate all risks of HIV or HTLV-1 transmission, and that the sperm may be tested to determine whether or not it is free of HIV or HTLV-1. The physician shall also inform the recipient of potential adverse effects the testing may have on the processed sperm.

(iv) The physician providing insemination or advanced reproductive technology services shall provide, as appropriate, prophylactic treatments, including, but not limited to, antiretroviral treatments, to the recipient to reduce the risk of acquiring infection during, and subsequent to, insemination or advanced reproductive technology. The physician shall also treat, as appropriate, the donor of sperm that tests reactive for HIV or HTLV-1 with antiretroviral treatments prior to insemination or advanced reproductive technology services. The physician shall perform appropriate followup testing of the recipient for HIV or HTLV-1 following the insemination or other advanced reproductive technology, and recommend ongoing monitoring by a physician during treatment and pregnancy. The physician shall also recommend in the sperm recipient's medical record that the recipient be monitored during treatment and pregnancy.

(v) In the event that the recipient tests reactive for HIV or HTLV-1 following insemination or other advanced reproductive technology, the physician shall inform the recipient of appropriate treatments during and after pregnancy, and of treatments or procedures that may reduce the risk of transmission to the offspring.

(vi) Sperm whose donor has tested reactive for HIV or HTLV-1 may be used for the purposes of insemination or advanced reproductive technology if the recipient already has been previously documented with HIV or HTLV-1 infection, and where informed and mutual consent has occurred.

(4) The penalties of Section 1621.5 shall not apply to a sperm donor covered under this subdivision.

(d) Subdivision (a) shall not apply to the transplantation of tissue from a donor who has not been tested or, with the exception of HIV and HTLV-1, has been found reactive for the infectious diseases listed in subdivision (a) or for which the department has, by regulation, required additional screening tests, if both of the following conditions are satisfied:

(1) The physician and surgeon performing the transplantation has determined any one or more of the following:

(A) Without the transplantation the intended recipient will most likely die during the period of time necessary to obtain other tissue or to conduct the required tests.

(B) The intended recipient already is diagnosed with the infectious disease for which the donor has tested positive.

(C) The symptoms from the infectious disease for which the donor has tested positive will most likely not appear during the intended recipient's likely lifespan after transplantation with the tissue or may be treated prophylactically if they do appear.

(2) Consent for the use of the tissue has been obtained from the recipient, if possible, or if not possible, from a member of the recipient's family, or the recipient's legal guardian. For purposes of this section, "family" shall mean spouse, adult son or daughter, either parent, adult brother or sister, or grandparent.

(e) Human breast milk from donors who test reactive for agents of viral hepatitis (HBV and HCV), human T lymphotropic virus-1 (HTLV-1), HIV, or syphilis shall not be used for deposit into a milk bank for human ingestion in California.

1/18/08 From Joe Hoey:

Redraft of 1092/3

- ① Drafter's Notes 1 through 4 are ok
- ② D-N # 5 - waiting for answer
- ③ D-N # 6 - ok
- ④ D-N # 8 - yes ~~no~~ - see e-mail
- ⑤ D-N # 9 - ok
- ⑥ D-N # 10 - DK send over proposed changes by FAX  
282-3622

⑦ p. 7, l. 13 - 252.15 (7m) (b) → (7m) (as) 2.

⑧ p. 15, l. 22 - is ok

A. p. 20+  
p. 21, SEC 56  
57

Take out ref on l. 11 to avat gifts after death  
(for sperm or ova) + add fertilized egg  
Scheme: sperm, ova + fertil. eggs

For married & sexually intim. indivis +  
designated donors  
Anonymous donors

Sperm - require initial test for all sperm donated  
(married, + anon); Quar. 180 days + 2d test  
For married, etc (but not anon), can waive report  
for 2d test if waiver is in writing

For anon, have to have 2d test

✓ p. 21, d. 6 - make exception, " unless the recip + the donor choose to use gas. sample - must be in writing - does not apply to anonymous [can be washed] so risk is very small

(I will send Calif. law + Fed law)

Same distinction to be made for ova + fert. eggs - neither needs a 2d test

(Make same waivers for married, etc.)

✓ If any of these <sup>specim</sup> is from a dead person, don't need a second test

**Kennedy, Debora**

---

**From:** Hoey, Joseph  
**Sent:** Friday, January 18, 2008 2:19 PM  
**To:** Kennedy, Debora  
**Subject:** RE: Redraft of 07-1092/3 (HIV bill)

Debora,

I think that it would make sense to double the current penalties to match the new penalties in 252.15 (9). Your fax came through, I hope to have time later this afternoon to go read it over.

Once again, than you for all your help.

Joe

---

**From:** Kennedy, Debora  
**Sent:** Friday, January 18, 2008 2:12 PM  
**To:** Hoey, Joseph  
**Subject:** Redraft of 07-1092/3 (HIV bill)

Joe, you indicated "yes" to my Drafter's Note #8--that has to do with increasing any of the civil liability limits under s. 252.15 (8), stats. How do you want them increased?

I hope you received my FAX, which I sent about noon--no need to respond if you did.

Debora

*Debora A. Kennedy*  
Managing Attorney  
Legislative Reference Bureau  
(608) 266-0137  
debora.kennedy@legis.state.wi.us

## Kennedy, Debora

---

**To:** Hoey, Joseph  
**Subject:** RE:

Also, the bill at this stage specifies that the health care provider shall have the proposed donor administered an HIV test (instead of testing the proposed donor), so that eliminates the problem about relying on documented test results performed by other health care providers.

---

**From:** Hoey, Joseph  
**Sent:** Friday, January 18, 2008 3:15 PM  
**To:** Kennedy, Debora  
**Subject:**

Debora,

Sorry to do this to you, but after thinking about 252.15 (2) (am) 1 and 252.15 (2) (am) 2, I wonder if it might be easier to simplify things by eliminating any reference to married, sexually intimate, directed and/or anonymous donors. I'm thinking we could use the distinction and language they used in California (see bill, below) - "from a donor known to the recipient." This covers married, sexually intimate and directed donors.

If we do that then we can -

-For donated sperm - allow recipients to waive quarantine and second testing requirement if the donation is from a donor known to the recipient.

-For donated ova/ovum and embryos - no need to distinguish between known and unknown donors since there is no medical need to quarantine and retest.

-For all three, include a provision allowing use of specimens from a donor(s) that test positive, if the donor is known to the recipient, with specific requirements for informed written consent.

-In those instances where the recipient has waived quarantine and second testing, or provided informed consent to the use of sperm, ova or embryo from a donor who has tested positive, require the health care provider to inform the recipient of the potential medical risks associated with using sperm, ova or embryo from a donor who has tested positive, and to provide, as appropriate, prophylactic treatments and follow-up testing. (Sorry, we didn't talk about this on the phone.)

One more question - some health care providers who use sperm, ova and embryos do not actually do the testing themselves, instead they rely on documented test results performed by other health care providers. Is that a problem considering the way our statutes are written?

In case you're interested, a link to the Federal guidelines on Donor testing -  
<http://www.fda.gov/cber/gdlns/tissdonor.htm#vii>

Let me know if you have any questions.

Thanks,

Joe

<< File: sb\_443\_bill\_20070911\_chaptered[1].pdf >>



## Kennedy, Debora

---

**To:** Hoey, Joseph  
**Subject:** RE:

I think these are good changes.  
Debora

---

**From:** Hoey, Joseph  
**Sent:** Friday, January 18, 2008 3:15 PM  
**To:** Kennedy, Debora  
**Subject:**

Debora,

Sorry to do this to you, but after thinking about 252.15 (2) (am) 1 and 252.15 (2) (am) 2, I wonder if it might be easier to simplify things by eliminating any reference to married, sexually intimate, directed and/or anonymous donors. I'm thinking we could use the distinction and language they used in California (see bill, below) - "from a donor known to the recipient." This covers married, sexually intimate and directed donors.

If we do that then we can -

-For donated sperm - allow recipients to waive quarantine and second testing requirement if the donation is from a donor known to the recipient.

-For donated ova/ovum and embryos - no need to distinguish between known and unknown donors since there is no medical need to quarantine and retest.

-For all three, include a provision allowing use of specimens from a donor(s) that test positive, if the donor is known to the recipient, with specific requirements for informed written consent.

-In those instances where the recipient has waived quarantine and second testing, or provided informed consent to the use of sperm, ova or embryo from a donor who has tested positive, require the health care provider to inform the recipient of the potential medical risks associated with using sperm, ova or embryo from a donor who has tested positive, and to provide, as appropriate, prophylactic treatments and follow-up testing. (Sorry, we didn't talk about this on the phone.).

One more question - some health care providers who use sperm, ova and embryos do not actually do the testing themselves, instead they rely on documented test results performed by other health care providers. Is that a problem considering the way our statues are written?

In case you're interested, a link to the Federal guidelines on Donor testing - <http://www.fda.gov/cber/gdlns/tissdonor.htm#vii>

Let me know if you have any questions.

Thanks,

Joe

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MESSAGE: As we discussed.

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Senders Name: Debra A. Kennedy

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#### Abbreviations:

HS: Host send  
HR: Host receive  
WS: Waiting send

PL: Polled local  
PR: Polled remote  
MS: Mailbox save

MP: Mailbox print  
CP: Completed  
FA: Fail

TU: Terminated by user  
TS: Terminated by system  
RP: Report

G3: Group 3  
EC: Error Correct

Section #. 252.15 (2) (a) 7m. of the statutes is amended to read:

252.15 (2) (a) 7m. ~~The test results of an individual under subd. 7. may be disclosed only to the individual, if he or she so consents, to anyone authorized by the individual and to the affected person who was certified to have been significantly exposed.~~ A record may be retained of the test results only if the record does not reveal the individual's identity. If the affected person knows the identity of the individual whose blood was tested, he or she may not disclose the identity to any other person except for the purpose of having the test or series of tests performed.

**History:** 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

of an individual  
under subd. 7.

Section #. 252.15 (2) (a) 7. c. of the statutes is amended to read:

252.15 (2) (a) 7. c. The court shall set a time for a hearing on the matter under subd. 7. a. within 20 days after receipt of a request under subd. 7. b. The court shall give the district attorney and the individual from whom a test is sought notice of the hearing at least 72 hours prior to the hearing. The individual may have counsel at the hearing, and counsel may examine and cross-examine witnesses. If the court finds probable cause to believe that the individual has significantly exposed the affected person, the court shall, except as provided in subd. 7. d., order the individual to submit to a test or a series of tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV. The court shall require the health care professional who performs the test or series of tests to ~~refrain from disclosing the test results to the individual and to disclose the test results to the affected person and his or her health care professional.~~ No sample used for laboratory test purposes under this subd. 7. c. may disclose the name of the test subject.

History: 1985 a. 29, 73, 120; 1987 a. 70 ss. 13 to 27, 36; 1987 a. 403 ss. 136, 256; 1989 a. 200; 1989 a. 201 ss. 11 to 25, 36; 1989 a. 298, 359; 1991 a. 269; 1993 a. 16 s. 2567; 1993 a. 27 ss. 332, 334, 337, 340, 342; Stats. 1993 s. 252.15; 1993 a. 32, 183, 190, 252, 395, 491; 1995 a. 27 ss. 6323, 9116 (5), 9126 (19); 1995 a. 77, 275; 1997 a. 54, 80, 156, 188; 1999 a. 9, 32, 79, 151, 162, 188; 2001 a. 38, 59, 69, 74, 103, 105; 2003 a. 271; 2005 a. 155, 187, 266, 344, 387; s. 13.93 (2) (c).

and authorize the health care professional to disclose the test results to the individual, if he or she consents, and to anyone authorized by the individual

## Kennedy, Debora

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**From:** Hoey, Joseph  
**Sent:** Thursday, January 24, 2008 1:57 PM  
**To:** Kennedy, Debora  
**Subject:** LRB 1092/3

Debora,

- ✓ 1. I like the language that you faxed over that would solve the problem in Drafter Note #10. Let's go with that.
- ✓ 2. I know that we asked for this change, but can we delete the additional language that is added on page 31, line 21 -

"epidemiologist ~~and to the local health officer~~ the name of any person known to the . . . "

The public health people had second thoughts about this - felt it was better to have the state epidemiologist serve as the clearing house and not make docs and nurses report to two different entities. The language that we propose adding and changing below takes care of the problem that they had with identifying the authority that local health officers had for notifying significantly exposed individuals.

- ✓ 3. In response to Drafter Note #5 about conflict in standards for reporting of significantly exposed persons, the suggestion was to make the standard for both "likely to have been significantly exposed."

Here is the suggestion we got -

Starting on page 32 line 3

2. Notified the HIV test subject that, notwithstanding subs. (3) and (5) (a) (intro.), the name of any person ~~known to the physician or advanced practice nurse prescriber~~ likely to have been significantly exposed to the test subject will be reported to the state epidemiologist ~~and to the local health officer~~ and that a designee of the local health officer state epidemiologist may inform the person as specified under par. (bg).

Starting on page 32 line 9 -

252.15 (7m) (bg) A local health officer who has, as designee of the state epidemiologist under par. (ag) (intro) or under s. 252.03, 252.05, 252.06, 252.12, or 252.21 (1), received information that a positive, validated HIV test result has been obtained from a test subject and that a person is ~~known~~ likely to have been significantly exposed to the test subject or ~~is likely to have been so exposed~~, may, notwithstanding subs. (3) and (5) (a) (intro.), notify that person that a positive, validated test result has been obtained from the test subject.

I think that takes care of all the changes we need. Let me know if you have any questions or if I need to provide you with any additional information.

Thanks.

Joe

## Kennedy, Debora

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**To:** Hoey, Joseph  
**Subject:** RE:

It's not at all a problem to make the change--I had already caught the exception for the new language. Every time I redraft this bill, because it's so complex, new issues seem to crop up, and I'm afraid that is the case with this redraft. With luck, the Drafter's Note for this one will be easier to deal with than past ones.

Debora

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**From:** Hoey, Joseph  
**Sent:** Thursday, January 31, 2008 7:15 PM  
**To:** Kennedy, Debora  
**Subject:**

Debora,

I'm really sorry to do this, but I just found out about another potential problem with the HIV testing bill. In section 39 on page 13 we added language saying the HIV test should be "performed on the body part or tissue." Turns out that they don't test tissue or body parts, but instead rely on a test of the donor. So I think we need to take out "on the body part or tissue." And I'm wondering if we need to add an exception to the last sentence of that section for the new language that you are drafting allowing sperm, ova and/or embryos from a donor who test positive to be used if the recipient consents in writing.

Let me know if you have any questions.

Thanks.

Joe