



State of Wisconsin  
2007 - 2008 LEGISLATURE

TUESDAY, if possible

D-NOTE

LRB-1092/84  
DAK:kjf:www  
Stays

2007 BILL

Sec eff

REGENERATE  
CATALOG

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 and amend** 252.15 (2) (a) 3., 252.15  
3 (2) (b) (intro.), 252.15 (2) (b) 2., 252.15 (2) (bm) 1., 252.15 (2) (bm) 2. and 252.15  
4 (7m); **to amend** 48.371 (1) (a), 49.686 (1) (g), 59.69 (15) (im), 60.63 (10m), 62.23  
5 (7) (i) 9m., 103.15 (title), 103.15 (2) (a), 103.15 (2) (b), 103.15 (3), 118.125 (2m)  
6 (b), 149.12 (1) (intro.), 252.01 (8), 252.11 (5m), 252.11 (7), 252.12 (2) (a) 3. d.,  
7 252.12 (2) (a) 5., 252.12 (2) (a) 7., 252.13 (title), 252.13 (1m), 252.13 (1r) (intro.),  
8 252.13 (1r) (a), 252.13 (1r) (b), 252.13 (2), 252.13 (3), 252.13 (4), 252.13 (5),  
9 252.14 (2) (intro.), 252.14 (3), 252.14 (4), 252.15 (title), 252.15 (1) (d), 252.15 (2)  
10 (title), 252.15 (2) (a) (intro.), 252.15 (2) (a) 1., 252.15 (2) (a) 1g., 252.15 (2) (a) 2.,  
11 252.15 (2) (a) 4., 252.15 (2) (a) 6., 252.15 (2) (a) 7. a., 252.15 (2) (a) 7. ak., 252.15  
12 (2) (a) 7. am., 252.15 (2) (a) 7. ap., 252.15 (2) (a) 7. ar., 252.15 (2) (a) 7. at., 252.15  
13 (2) (a) 7. av., 252.15 (2) (a) 7. b., 252.15 (2) (a) 7. c., 252.15 (2) (a) 7. d., 252.15  
14 (2) (a) 7m., 252.15 (2) (am) 1., 252.15 (2) (am) 2., 252.15 (4) (intro.), 252.15 (4)

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1 (b), 252.15 (4) (c), 252.15 (5) (a) (intro.), 252.15 (5) (a) 1., 252.15 (5) (a) 2., 252.15  
2 (5) (a) 4. (intro.), 252.15 (5) (a) 4. a., 252.15 (5) (a) 4. b., 252.15 (5) (a) 10. (intro.),  
3 252.15 (5) (a) 10. c., 252.15 (5) (a) 13., 252.15 (5) (a) 14., 252.15 (5) (a) 15., 252.15  
4 (5) (a) 19., 252.15 (5) (a) 20., 252.15 (5) (b), 252.15 (5m) (intro.), 252.15 (5m) (a),  
5 252.15 (5m) (b), 252.15 (5m) (c), 252.15 (6), 252.15 (7) (title), 252.15 (7) (a),  
6 252.15 (7) (b) (intro.), 252.15 (7) (b) 3., 252.15 (7) (b) 4., 252.15 (7) (b) 5., 252.15  
7 (7) (c) 1., 252.15 (7) (c) 2., 252.15 (8) (a), 252.15 (9), 631.90 (1), 631.90 (2) (a),  
8 631.90 (2) (b), 631.90 (2) (c), 631.90 (3) (a), 631.90 (3) (b), 901.05 (2) (intro.),  
9 938.296 (2) (intro.), 938.296 (4) (intro.), 938.296 (5) (intro.), 938.346 (1) (e),  
10 938.371 (1) (a), 968.38 (2) (intro.), 968.38 (4) (intro.), 968.38 (5) (intro.), 973.017  
11 (4) (b) 1. and 973.017 (4) (b) 2.; **to repeal and recreate** 252.15 (3) and 252.15  
12 (5) (title); and **to create** 103.15 (1) (bm), 146.82 (2) (a) 22., 252.01 (2m), 252.15  
13 (1) (cw), 252.15 (4) (bm), 252.15 (5) (a) 21., 252.15 (7) (b) 5m., 252.15 (7m) (bg),  
14 938.296 (1) (bm), 968.38 (1) (bc) and 973.017 (4) (a) 1m. of the statutes; **relating**  
15 **to:** changing informed consent requirements for HIV testing, disclosure of test  
16 results, reporting significantly exposed persons, increasing liability for certain  
17 violations, and providing penalties.

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***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 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.

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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.

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.

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 a routine part of medical care, a test will be performed unless the potential test subject declines to provide consent. The potential test subject may give oral consent, or, if he or she does not decline, the health care provider, blood bank, blood center, or plasma center may infer that the potential test subject has given informed consent for testing.

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the likely significant exposure

The bill also eliminates the requirement that consent for disclosure of 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 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 or refusal to consent made; a record of persons to whom disclosure may be made or from whom disclosure must be withheld; and a record of test results obtained.

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state epidemiologist

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.

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state epidemiologist may designate an individual including the

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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.

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." In addition, the bill makes numerous technical changes to the laws restricting use of a test.

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

- 1           **SECTION 1.** 48.371 (1) (a) of the statutes is amended to read:
- 2           48.371 (1) (a) Results of a an HIV test or a series of tests, as defined in s. 252.01
- 3           (2m), of the child to determine the presence of HIV, as defined in s. 968.38 (1) (b),

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1 ~~antigen or nonantigenic products of HIV, or an antibody to HIV~~, as provided under  
2 s. 252.15 (5) (a) 19., including results included in a court report or permanency plan.  
3 At the time that the HIV test results are provided, the agency shall notify the foster  
4 parent, treatment foster parent, relative, or operator of the group home or residential  
5 care center for children and youth of the confidentiality requirements under s. 252.15  
6 (6).

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

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

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

13 59.69 (15) (im) The fact that an individual with acquired immunodeficiency  
14 syndrome or a positive HIV test ~~for the presence of HIV~~, as defined in s. 252.01 (1m),  
15 ~~antigen or nonantigenic products of HIV or an antibody to HIV~~ (2m), resides in a  
16 community living arrangement with a capacity for 8 or fewer persons may not be  
17 used under par. (i) to assert or prove that the existence of the community living  
18 arrangement in the municipality poses a threat to the health, safety or welfare of the  
19 residents of the municipality.

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

21 60.63 (10m) The fact that an individual with acquired immunodeficiency  
22 syndrome or a positive HIV test ~~for the presence of HIV~~, as defined in s. 252.01 (1m),  
23 ~~antigen or nonantigenic products of HIV or an antibody to HIV~~ (2m), resides in a  
24 community living arrangement with a capacity for 8 or fewer persons may not be  
25 used under sub. (10) to assert or prove that the existence of the community living

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

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

4 62.23 (7) (i) 9m. 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 ~~antigen or nonantigenic products of HIV or an antibody to HIV~~ (2m), resides in a  
7 community living arrangement with a capacity for 8 or fewer persons may not be  
8 used under subd. 9. to assert or prove that the existence of the community living  
9 arrangement in the city poses a threat to the health, safety or welfare of the residents  
10 of the city.

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

12 **103.15 (title) Restrictions on use of -a- an HIV test for HIV.**

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

14 103.15 (1) (bm) "HIV test" has the meaning given in s. 252.01 (2m).

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

16 103.15 (2) (a) Solicit or require an HIV test as a condition of employment of any  
17 employee or prospective employee ~~-a test for the presence of HIV, antigen or~~  
18 ~~nonantigenic products of HIV or an antibody to HIV.~~

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

20 103.15 (2) (b) Affect the terms, conditions or privileges of employment or  
21 terminate the employment of any employee who obtains ~~-a- an HIV test for the~~  
22 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, as~~  
23 defined in s. 252.01 (2m).

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

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1           103.15 (3) Any agreement by an employer or agent of the employer and an  
2 employee or prospective employee offering employment or any pay or benefit to an  
3 employee or prospective employee in return for taking ~~a~~ an HIV test for the presence  
4 of HIV, antigen or nonantigenic products of HIV or an antibody to HIV is prohibited,  
5 except as provided under sub. (2) (intro.).

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

7           118.125 (2m) (b) Any pupil record that concerns the results of ~~a~~ an HIV test  
8 for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to  
9 HIV, as defined in s. 252.01 (2m), shall be treated as provided under s. 252.15. In this  
10 subsection, "HIV" has the meaning given in s. 252.01 (1m). (bg)

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

12           146.82 (2) (a) 22. To a local health officer, as specified under s. 252.03, 252.05,  
13 252.06, 252.12, 252.15 (7m) ~~(b)~~, or 252.21 (1).

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

15           149.12 (1) (intro.) Except as provided in subs. (1m), (2), and (3), the authority  
16 shall certify as eligible a person who is covered by Medicare because he or she is  
17 disabled under 42 USC 423, a person who submits evidence that he or she has tested  
18 ~~positive for the presence of HIV, antigen or nonantigenic products of HIV, or an~~  
19 ~~antibody to HIV,~~ a positive, validated HIV test result, as defined in s. 252.01 (8); a  
20 person who is an eligible individual; and any person who receives and submits any  
21 of the following based wholly or partially on medical underwriting considerations  
22 within 9 months prior to making application for coverage by the plan:

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

24           252.01 (2m) "HIV test" means a test or series of tests that the state  
25 epidemiologist finds under s. 252.13 (1r) to be medically significant and sufficiently

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1 reliable to detect the presence of HIV, antigen or antigenic products of HIV, or an  
2 antibody to HIV.

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

4 252.01 (8) "Validated HIV test result" means a result of ~~a~~ an HIV test ~~for the~~  
5 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV~~ that  
6 meets the validation requirements determined to be necessary by the state  
7 epidemiologist.

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

9 252.11 (5m) A health care professional, as defined in s. 968.38 (1) (a), acting  
10 under an order of a court under s. 938.296 (4) ~~or (5)~~ or 968.38 (4) ~~or (5)~~ may, without  
11 first obtaining informed consent to the testing, subject an individual to a test or a  
12 series of tests to ascertain whether that individual is infected with a sexually  
13 transmitted disease. No sample used for performance of a test under this subsection  
14 may disclose the name of the test subject.

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

16 252.11 (7) Reports, examinations and inspections and all records concerning  
17 sexually transmitted diseases are confidential and not open to public inspection, and  
18 may not be divulged except as may be necessary for the preservation of the public  
19 health, in the course of commitment proceedings under sub. (5), or as provided under  
20 s. 938.296 (4) ~~or (5)~~ or 968.38 (4) ~~or (5)~~. If a physician or advanced practice nurse  
21 prescriber has reported a case of sexually transmitted disease to the department  
22 under sub. (4), information regarding the presence of the disease and treatment is  
23 not privileged when the patient, physician, or advanced practice nurse prescriber is  
24 called upon to testify to the facts before any court of record.

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



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1           252.12 (2) (a) 3. d. Locations for procuring additional information or obtaining  
2           HIV testing services.

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

4           252.12 (2) (a) 5. The department shall perform HIV tests ~~for the presence of~~  
5           HIV and, if appropriate, tests for the presence of related infections and shall conduct  
6           behavioral surveys among population groups determined by the department to be  
7           highly at risk of becoming infected with or transmitting HIV and related infections.  
8           Information obtained shall be used to develop targeted HIV infection and related  
9           infection prevention efforts for these groups and to evaluate the state's prevention  
10          strategies.

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

12          252.12 (2) (a) 7. The department shall distribute funding in each fiscal year to  
13          contract with organizations to provide, at alternate testing sites, anonymous or  
14          confidential counseling services for HIV and, laboratory HIV testing services ~~for the~~  
15          ~~presence of HIV,~~ and, if appropriate, laboratory testing services for the presence of  
16          related viruses.

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

18          **252.13** (title) **Blood HIV tests for HIV.**

19          **SECTION 22.** 252.13 (1m) of the statutes is amended to read:

20          252.13 (1m) Except as provided under sub. (3), any blood bank, blood center  
21          or plasma center in this state that purchases or receives whole blood, blood plasma,  
22          a blood product or a blood derivative shall, prior to its distribution or use and after  
23          complying with informed consent for HIV testing under the requirements of s. 252.15  
24          (2) (b), subject that blood, plasma, product or derivative to ~~a~~ an HIV test ~~or series~~  
25          ~~of tests that the state epidemiologist finds medically significant and sufficiently~~

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1 ~~reliable under sub. (1r) (a) to detect the presence of HIV, antigen or nonantigenic~~  
2 ~~products of HIV or an antibody to HIV.~~ This subsection does not apply to a blood bank  
3 that purchases or receives whole blood, blood plasma, a blood product or a blood  
4 derivative from a blood bank, blood center or plasma center in this state if the whole  
5 blood, blood plasma, blood product or blood derivative has previously been subjected  
6 to ~~a~~ an HIV test or series of tests that the state epidemiologist finds medically  
7 ~~significant and sufficiently reliable under sub. (1r) (a) to detect the presence of HIV,~~  
8 ~~antigen or nonantigenic products of HIV or an antibody to HIV.~~

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

10 252.13 (1r) (intro.) For the purposes of this section, the state epidemiologist  
11 shall make separate findings of medical significance and sufficient reliability for ~~a~~  
12 ~~test or a series of tests to detect the presence of HIV, antigen or nonantigenic products~~  
13 ~~of HIV or an antibody to HIV~~ an HIV test for each of the following purposes:

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

15 252.13 (1r) (a) Subjecting whole blood, blood plasma, a blood product or a blood  
16 derivative to ~~a~~ an HIV test prior to distribution or use of the whole blood, blood  
17 plasma, blood product or blood derivative.

18 **SECTION 25.** 252.13 (1r) (b) of the statutes is amended to read:

19 252.13 (1r) (b) Providing disclosure of HIV test results to the subject of the test.

20 **SECTION 26.** 252.13 (2) of the statutes is amended to read:

21 252.13 (2) If performance of a test under sub. (1m) yields a positive, validated  
22 HIV test result ~~positive for the presence of HIV, antigen or nonantigenic products of~~  
23 ~~HIV or an antibody to HIV,~~ the whole blood, blood plasma, blood product or blood  
24 derivative so tested with this result may not be distributed or used except for  
25 purposes of research or as provided under sub. (5).

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1           **SECTION 27.** 252.13 (3) of the statutes is amended to read:

2           252.13 (3) If a medical emergency, including a threat to the preservation of life  
3 of a potential donee, exists under which whole blood, blood plasma, a blood product,  
4 or a blood derivative that has been subjected to HIV testing under sub. (1m) is  
5 unavailable, the requirement of sub. (1m) shall not apply.

6           **SECTION 28.** 252.13 (4) of the statutes is amended to read:

7           252.13 (4) Subsections (1m) and (2) do not apply to the extent that federal law  
8 or regulations require that a blood bank, blood center, or plasma center administer  
9 an HIV test to whole blood, blood plasma, a blood product, or a blood derivative.

10          **SECTION 29.** 252.13 (5) of the statutes is amended to read:

11          252.13 (5) Whole blood, blood plasma, a blood product, or a blood derivative  
12 described under sub. (2) that is voluntarily donated solely for the purpose of an  
13 autologous transfusion may be distributed to or used by the person who has donated  
14 the whole blood, blood plasma, blood product, or blood derivative. No person other  
15 than the person who has donated the whole blood, blood plasma, blood product, or  
16 blood derivative may receive or use the whole blood, blood plasma, blood product, or  
17 blood derivative unless it has been subjected to ~~a~~ an HIV test under sub. (1m) and  
18 performance of the test has yielded a negative, validated HIV test result ~~for the~~  
19 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.~~

20          **SECTION 30.** 252.14 (2) (intro.) of the statutes is amended to read:

21          252.14 (2) (intro.) No health care provider, peace officer, fire fighter,  
22 correctional officer, state patrol officer, jailer or keeper of a jail or person designated  
23 with custodial authority by the jailer or keeper, home health agency, inpatient health  
24 care facility, or person who has access to a validated HIV test result may do any of  
25 the following with respect to an individual who has acquired immunodeficiency

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1 syndrome or has a positive, validated HIV test for the presence of HIV, antigen or  
2 ~~nonantigenic products of HIV or an antibody to HIV~~ result, solely because the  
3 individual has HIV infection or an illness or medical condition that is caused by,  
4 arises from, or is related to HIV infection:

5 **SECTION 31.** 252.14 (3) of the statutes is amended to read:

6 252.14 (3) A health care provider, home health agency, or inpatient health care  
7 facility that ~~tests~~ administers an HIV test to an individual for ~~HIV infection~~ shall  
8 provide counseling about HIV and referral for appropriate health care and support  
9 services as necessary. A health care provider, home health agency, or inpatient  
10 health care facility that treats an individual who has an HIV infection or acquired  
11 immunodeficiency syndrome shall develop and follow procedures that shall ensure  
12 continuity of care for the individual in the event that his or her condition exceeds the  
13 scope of licensure or certification of the provider, agency, or facility.

14 **SECTION 32.** 252.14 (4) of the statutes is amended to read:

15 252.14 (4) Any person violating sub. (2) is liable to the patient for actual  
16 damages and costs, plus exemplary damages of up to ~~\$5,000~~ \$10,000 for an  
17 intentional violation. In determining the amount of exemplary damages, a court  
18 shall consider the ability of a health care provider who is an individual to pay  
19 exemplary damages.

20 **SECTION 33.** 252.15 (title) of the statutes is amended to read:

21 **252.15 (title) Restrictions on use of ~~a~~ an HIV test for HIV.**

22 **SECTION 34.** 252.15 (1) (cw) of the statutes is created to read:

23 252.15 (1) (cw) "Informed consent for disclosure" means, under the  
24 requirements of sub. (3), consent by an individual to the disclosure to a specified  
25 person of the results of an HIV test that is administered to the individual consenting.

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1           **SECTION 35.** 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), oral consent or inferred consent by a person an~~  
5 ~~individual~~ to the administration of ~~a~~ an HIV test to him or her ~~for the presence of~~  
6 ~~HIV, antigen or nonantigenic products of HIV or an antibody to HIV or to the~~  
7 ~~disclosure to another specified person of the results of a test administered to the~~  
8 ~~person consenting.~~

9           **SECTION 36.** 252.15 (1) (e) of the statutes is repealed.

10          **SECTION 37.** 252.15 (2) (title) of the statutes is amended to read:

11          252.15 (2) (title) INFORMED CONSENT FOR HIV TESTING ~~OR DISCLOSURE~~.

12          **SECTION 38.** 252.15 (2) (a) (intro.) of the statutes is amended to read:

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

19          **SECTION 39.** 252.15 (2) (a) 1. of the statutes is amended to read:

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

donor

; CERTAIN

RESTORE  
TO PLAIN  
TEXT

## BILL

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

8 SECTION 40. 252.15 (2) (a) 1g. of the statutes is amended to read:

9 252.15 (2) (a) 1g. If a medical emergency, as determined by the attending  
10 physician of a potential donee and including a threat to the preservation of life of the  
11 potential donee, exists under which a human body part or human tissue that has  
12 been subjected to HIV testing under subd. 1. is unavailable, the requirement of subd.  
13 1. does not apply.

14 SECTION 41. 252.15 (2) (a) 2. of the statutes is amended to read:

15 252.15 (2) (a) 2. The department, a laboratory certified under 42 USC 263a, or  
16 a health care provider, blood bank, blood center, or plasma center may, for the  
17 purpose of research and without first obtaining written informed consent to the for  
18 HIV testing, subject any body fluids or tissues to ~~a~~ an HIV test for the presence of  
19 ~~HIV, antigen or nonantigenic products of HIV or an antibody to HIV~~ if the testing is  
20 performed in a manner by which the identity of the test subject is not known and may  
21 not be retrieved by the researcher.

22 SECTION 42. 252.15 (2) (a) 3. of the statutes is renumbered 252.15 (2) (a) 3.  
23 (intro.) and amended to read:

24 252.15 (2) (a) 3. (intro.) The medical director of a center for the developmentally  
25 disabled, as defined in s. 51.01 (3), or a mental health institute, as defined in s. 51.01

except as  
provided in  
par. (am) i.d.  
or 2. b. or

**BILL**

1 (12), may, without obtaining informed consent ~~to the~~ for HIV testing, subject a  
2 resident or patient of the center or institute to ~~a~~ an HIV test for the presence of HIV,  
3 antigen or nonantigenic products of HIV or an antibody to HIV if he or she  
4 determines that the conduct of the resident or patient poses a significant risk of  
5 transmitting HIV to another resident or patient of the center or institute. The  
6 medical director shall provide the HIV test subject and the test subject's guardian,  
7 if the HIV test subject is an individual found incompetent in this state, with all of the  
8 following:

9 **SECTION 43.** 252.15 (2) (a) 4. of the statutes is amended to read:

10 252.15 (2) (a) 4. A health care provider may subject an individual to ~~a~~ an HIV  
11 test for the presence of HIV, antigen or nonantigenic products of HIV or an antibody  
12 to HIV, without obtaining informed consent ~~to the~~ for HIV testing from the  
13 individual, if all of the following apply:

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

17 b. The health care provider obtains informed consent for the HIV testing from  
18 the individual's guardian, if the individual is adjudicated incompetent in this state;  
19 from the individual's parent ~~or~~ guardian, if the individual is under 14 years of age;  
20 or from the individual's closest living relative or another with whom the individual  
21 has a meaningful social and emotional relationship, if the individual is not a minor  
22 nor adjudicated incompetent but is unable to communicate due to a medical  
23 condition.

24 **SECTION 44.** 252.15 (2) (a) 6. of the statutes is amended to read:

**BILL**

1           252.15 (2) (a) 6. A health care professional acting under an order of the court  
2 under subd. 7. or s. 938.296 (4) or (5) or 968.38 (4) or (5) may, without first obtaining  
3 informed consent to the for HIV testing, subject an individual to ~~a~~ an HIV test or  
4 ~~a series of tests to detect the presence of HIV, antigen or nonantigenic products of~~  
5 ~~HIV or an antibody to HIV.~~ No sample used for laboratory test purposes under this  
6 subdivision may disclose the name of the HIV test subject, and, ~~notwithstanding sub.~~  
7 (4) (e), the HIV test results may not be made part of the individual's permanent  
8 medical record.

9           **SECTION 45.** 252.15 (2) (a) 7. a. of the statutes is amended to read:

10           252.15 (2) (a) 7. a. If all of the conditions under subd. 7. ai. to c. are met, an  
11 emergency medical technician; first responder; fire fighter; peace officer;  
12 correctional officer; person who is employed at a juvenile correctional facility, as  
13 defined in s. 938.02 (10p), or a secured residential care center for children and youth,  
14 as defined in s. 938.02 (15g); state patrol officer; jailer, keeper of a jail, or person  
15 designated with custodial authority by the jailer or keeper, during the course of  
16 providing care or services to an individual; a peace officer, correctional officer, state  
17 patrol officer, jailer, or keeper of a jail, or person designated with custodial authority  
18 by the jailer or keeper, while searching or arresting an individual or while controlling  
19 or transferring an individual in custody; a health care provider or an employee of a  
20 health care provider, during the course of providing care or treatment to an  
21 individual or handling or processing specimens of body fluids or tissues of an  
22 individual; a staff member of a state crime laboratory, during the course of handling  
23 or processing specimens of body fluids or tissues of an individual; social worker; or  
24 an employee of a school district, cooperative educational service agency, charter  
25 school, private school, the Wisconsin Educational Services Program for the Deaf and



**BILL**

1 Hard of Hearing, or the Wisconsin Center for the Blind and Visually Impaired, while  
2 performing employment duties involving an individual; who is significantly exposed  
3 to the individual may subject the individual's blood to ~~a~~ an HIV test ~~or a series of~~  
4 ~~tests for the presence of HIV, antigen or nonantigenic products of HIV or an antibody~~  
5 ~~to HIV~~ and may receive disclosure of the results.

6 **SECTION 46.** 252.15 (2) (a) 7. ak. of the statutes is amended to read:

7 252.15 (2) (a) 7. ak. A physician or advanced practice nurse prescriber, based  
8 on information provided to the physician or advanced practice nurse prescriber,  
9 determines and certifies in writing that the affected person has been significantly  
10 exposed. The certification shall accompany the request for HIV testing and  
11 disclosure. If the affected person who is significantly exposed is a physician or  
12 advanced practice nurse prescriber, he or she may not make this determination or  
13 certification. The information that is provided to a physician or advanced practice  
14 nurse prescriber to document the occurrence of a significant exposure and the  
15 physician's or advanced practice nurse prescriber's certification that an affected  
16 person has been significantly exposed, under this subd. 7. ak., shall be provided on  
17 a report form that is developed by the department of commerce under s. 101.02 (19)  
18 (a) or on a report form that the department of commerce determines, under s. 101.02  
19 (19) (b), is substantially equivalent to the report form that is developed under s.  
20 101.02 (19) (a).

21 **SECTION 47.** 252.15 (2) (a) 7. am. of the statutes is amended to read:

22 252.15 (2) (a) 7. am. The affected person submits to ~~a~~ an HIV test ~~for the~~  
23 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV,~~ as  
24 soon as feasible or within a time period established by the department after

**BILL**

1 consulting guidelines of the centers for disease control of the federal public health  
2 service, whichever is earlier.

3 **SECTION 48.** 252.15 (2) (a) 7. ap. of the statutes is amended to read:

4 252.15 (2) (a) 7. ap. Except as provided in subd. 7. av. to c., the HIV test is  
5 performed on blood that is drawn for a purpose other than HIV testing ~~for the~~  
6 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.~~

7 **SECTION 49.** 252.15 (2) (a) 7. ar. of the statutes is amended to read:

8 252.15 (2) (a) 7. ar. The individual, if capable of consenting, has been given an  
9 opportunity to be tested with his or her provide informed consent for HIV testing and  
10 has ~~not consented~~ declined.

11 **SECTION 50.** 252.15 (2) (a) 7. at. of the statutes is amended to read:

12 252.15 (2) (a) 7. at. The individual has been informed that an HIV test may be  
13 performed on his or her blood ~~may be tested for the presence of HIV, antigen or~~  
14 ~~nonantigenic products of HIV or an antibody to HIV;~~ that the test results may be  
15 disclosed to no one, including that individual, without his or her consent, except to  
16 the person who is certified to have been significantly exposed; that, if the person  
17 knows the identity of the individual, he or she may not disclose the identity to any  
18 other person except for the purpose of having the test ~~or series of tests~~ performed;  
19 and that a record may be kept of the test results only if the record does not reveal the  
20 individual's identity.

21 **SECTION 51.** 252.15 (2) (a) 7. av. of the statutes is amended to read:

22 252.15 (2) (a) 7. av. If blood that is specified in subd. 7. ap. is unavailable, the  
23 person who is certified under subd. 7. ak. to have been significantly exposed may  
24 request the district attorney to apply to the circuit court for his or her county to order  
25 the individual to submit to ~~a~~ an HIV test ~~or a series of tests for the presence of HIV,~~

**BILL**

1 antigen or nonantigenic products of HIV or an antibody to HIV and to disclose the  
2 results to that person. The person who is certified under subd. 7. ak. to have been  
3 significantly exposed shall accompany the request with the certification under subd.  
4 7. ak.

5 **SECTION 52.** 252.15 (2) (a) 7. b. of the statutes is amended to read:

*Notwithstanding  
Subs. (3) and (5)(a)  
(intro.) the*

6 252.15 (2) (a) 7. b. Upon receipt of a request and certification under the  
7 requirements of this subdivision, a district attorney shall, as soon as possible so as  
8 to enable the court to provide timely notice, apply to the circuit court for his or her  
9 county to order the individual to submit to ~~a~~ an HIV test or a series of tests as  
10 specified in subd. 7. a., administered by a health care professional, and to disclose  
11 the results of the test ~~or tests~~ as specified in subd. 7. c.

12 **SECTION 53.** 252.15 (2) (a) 7. c. of the statutes is amended to read:

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

*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*

**BILL**

**SECTION 53**

*notwithstanding subs. (3) and (5)(a) (intro.)*

1 for laboratory test purposes under this subd. 7. c. may disclose the name of the HIV  
2 test subject.

3 **SECTION 54.** 252.15 (2) (a) 7. d. of the statutes is amended to read:

4 252.15 (2) (a) 7. d. The court is not required to order the individual to submit  
5 to ~~a~~ an HIV test under subd. 7. c. if the court finds substantial reason relating to  
6 the life or health of the individual not to do so and states the reason on the record.

7 **SECTION 55.** 252.15 (2) (a) 7m. of the statutes is amended to read:

8 252.15 (2) (a) 7m. ~~The HIV test results of an individual under subd. 7. may be~~  
9 ~~disclosed only to the individual, if he or she so consents, to anyone authorized by the~~  
10 ~~individual and to the affected person who was certified to have been significantly~~  
11 ~~exposed.~~ A record may be retained of the HIV test results only if the record does not  
12 reveal the individual's identity. If the affected person knows the identity of the  
13 individual whose blood was tested, he or she may not disclose the identity to any  
14 other person except for the purpose of having the HIV test or series of tests  
15 performed. *of an individual under subd. 7.*

16 **SECTION 56.** 252.15 (2) (am) 1. of the statutes is amended to read:

17 252.15 (2) (am) 1. A health care provider who procures, processes, distributes  
18 or uses human sperm donated as specified under s. 157.06 (6) (a) or (b) shall, prior  
19 to the distribution or use and with after obtaining informed consent under the  
20 requirements of par. (b), ~~test~~ for HIV testing, have the proposed donor for the  
21 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV  
22 administered an HIV test in order to assure medical acceptability of the gift for the  
23 purpose intended. The health care provider shall use ~~as a test for the presence of~~  
24 HIV, antigen or nonantigenic products of HIV or an antibody to HIV ~~a test or series~~  
25 of tests that the state epidemiologist finds medically significant and sufficiently

**BILL**

1 reliable under s. 252.13 (1r) to detect the presence of HIV, antigen or nonantigenic  
2 products of HIV or an antibody to HIV. The health care provider shall test the donor  
3 initially and, if the initial test result is negative, shall perform a 2nd test on a date  
4 that is not less than 180 days from the date of the procurement of the sperm. No  
5 person may use the donated sperm until the health care provider has obtained the  
6 results of the 2nd test. If any validated HIV test result of the donor for the presence  
7 of HIV, antigen or nonantigenic products of HIV or an antibody to HIV is positive,  
8 the sperm donated for use may not be used and, if donated, shall be destroyed.

9 **SECTION 57.** 252.15 (2) (am) 2. of the statutes is amended to read:

10 252.15 (2) (am) 2. A health care provider who procures, processes, distributes,  
11 or uses human ova donated as specified under s. 157.06 (6) (a) or (b) shall, prior to  
12 the distribution or use and with informed consent under the requirements of par. (b),  
13 test for HIV testing, have the proposed donor for the presence of HIV, antigen or  
14 nonantigenic products of HIV or an antibody to HIV administered an HIV test in  
15 order to assure medical acceptability of the gift for the purpose intended.

INSERT  
21-15

16 **SECTION 58.** 252.15 (2) (b) (intro.) of the statutes is renumbered 252.15 (2) (b)  
17 and amended to read:

18 252.15 (2) (b) The A health care provider, blood bank, blood center, or plasma  
19 center that subjects a person to -a- an HIV test for the presence of HIV, antigen or  
20 nonantigenic products of HIV or an antibody to HIV under pars. (a) and (am) shall,  
21 in instances under those paragraphs in which informed consent for HIV testing is  
22 required, provide first orally inform the potential HIV test subject with an informed  
23 consent form for testing or disclosure that shall contain the following information  
24 and on the form shall obtain the potential test subject's signature or may, if the  
25 potential test subject has executed a power of attorney for health care instrument

**BILL**

1 under ch. 155 and has been found to be incapacitated under s. 155.05 (2), instead  
2 ~~obtain the signature of the health care agent: that, as a routine part of medical care,~~  
3 ~~the test will be performed unless the potential test subject or, if applicable, agent~~  
4 ~~declines to provide consent. The potential HIV test subject or agent may orally~~  
5 ~~consent or, if the test subject or agent does not so decline, the health care provider,~~  
6 ~~blood bank, blood center, or plasma center may infer that the potential test subject~~  
7 ~~or agent has given informed consent for testing.~~

8 **SECTION 59.** 252.15 (2) (b) 1. of the statutes is repealed.

9 **SECTION 60.** 252.15 (2) (b) 2. of the statutes is renumbered 252.15 (3) (c) and  
10 amended to read:

11 252.15 (3) (c) ~~A~~ Provide to the individual a statement of explanation to the  
12 potential HIV test subject that the HIV test results may be disclosed as specified  
13 under sub. (5) (a) and either a listing that duplicates the persons or circumstances  
14 specified under sub. (5) (a) 2. to 19. 20. or a statement that the listing is available  
15 upon request.

16 **SECTION 61.** 252.15 (2) (b) 3. of the statutes is repealed.

17 **SECTION 62.** 252.15 (2) (bm) (intro.) of the statutes is repealed.

18 **SECTION 63.** 252.15 (2) (bm) 1. of the statutes is renumbered 252.15 (2) (a) 3.  
19 a. and amended to read:

20 252.15 (2) (a) 3. a. A statement of explanation concerning the HIV test that was  
21 performed, the date of performance of the test and the test results.

22 **SECTION 64.** 252.15 (2) (bm) 2. of the statutes is renumbered 252.15 (2) (a) 3.  
23 b. and amended to read:

24 252.15 (2) (a) 3. b. A statement of explanation that the HIV test results may  
25 be disclosed as specified under sub. (5) (a) and either a listing that duplicates the

**BILL**

1 persons or circumstances specified under sub. (5) (a) 2. to ~~18.~~ 21. or a statement that  
2 the listing is available upon request.

3 **SECTION 65.** 252.15 (3) of the statutes is repealed and recreated to read:

4 **252.15 (3) INFORMED CONSENT FOR DISCLOSURE; REFUSAL OF DISCLOSURE.** A health  
5 care provider, blood bank, blood center, or plasma center that subjects an individual  
6 to an HIV test under sub. (2) (a) or (am) shall do all of the following:

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

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

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

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

18 **SECTION 66.** 252.15 (4) (intro.) of the statutes is amended to read:

19 **252.15 (4) RECORD MAINTENANCE.** (intro.) A health care provider, blood bank,  
20 blood center, or plasma center that obtains from ~~a person~~ an individual a specimen  
21 of body fluids or tissues for the purpose of ~~testing for the presence of HIV, antigen or~~  
22 ~~nonantigenic products of HIV or an antibody to HIV~~ an HIV test shall maintain in  
23 the individual's health care record all of the following:

24 **SECTION 67.** 252.15 (4) (a) of the statutes is repealed.

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

**BILL**

1           252.15 (4) (b) ~~Maintain a~~ A record of the informed consent received or refusal  
2 of consent made under par. (a) sub. (2) (b).

3           **SECTION 69.** 252.15 (4) (bm) of the statutes is created to read:

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

6           **SECTION 70.** 252.15 (4) (c) of the statutes is amended to read:

7           252.15 (4) (c) ~~Maintain~~ Except for a record made under the circumstances  
8 described in sub. (2) (a) 6. or 7m., 938.296 (4) (intro.) or (5) (intro.), or s. 968.38 (4)  
9 (intro.) or (5) (intro.), a record of the HIV test results obtained. A record that is made  
10 under the circumstances described in sub. (2) (a) 7m. may not reveal the identity of  
11 the test subject.

12           **SECTION 71.** 252.15 (5) (title) of the statutes is repealed and recreated to read:

13           252.15 (5) (title) HIV TEST CONFIDENTIALITY; EXCEPTIONS.

14           **SECTION 72.** 252.15 (5) (a) (intro.) of the statutes is amended to read:

15           252.15 (5) (a) (intro.) An individual who is the subject of ~~a~~ an HIV test for the  
16 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or  
17 the individual's health care agent, if the individual has executed a power of attorney  
18 for health care instrument under ch. 155 and has been found to be incapacitated  
19 under s. 155.05 (2), may disclose the results of the individual's test to anyone. A  
20 person who is neither the individual nor the individual's health care agent may not,  
21 unless he or she is specifically authorized under sub. (3) by the individual or health  
22 care agent to do so, disclose the individual's HIV test results except to the following  
23 persons or under the following circumstances:

24           **SECTION 73.** 252.15 (5) (a) 1. of the statutes is amended to read:



**BILL**

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

4           **SECTION 74.** 252.15 (5) (a) 2. of the statutes is amended to read:

5           252.15 (5) (a) 2. To a health care provider who provides care to the subject of  
6           the HIV test subject, including those instances in which a health care provider  
7           provides emergency care to the subject.

8           **SECTION 75.** 252.15 (5) (a) 4. (intro.) of the statutes is amended to read:

9           252.15 (5) (a) 4. (intro.) To a blood bank, blood center or plasma center that  
10          subjects a person to ~~a~~ an HIV test under sub. (2) (a), for any of the following purposes:

11          **SECTION 76.** 252.15 (5) (a) 4. a. of the statutes is amended to read:

12          252.15 (5) (a) 4. a. Determining the medical acceptability of blood or plasma  
13          secured from the HIV test subject.

14          **SECTION 77.** 252.15 (5) (a) 4. b. of the statutes is amended to read:

15          252.15 (5) (a) 4. b. Notifying the test subject of the HIV test of the test results.

16          **SECTION 78.** 252.15 (5) (a) 10. (intro.) of the statutes is amended to read:

17          252.15 (5) (a) 10. (intro.) ~~To~~ Except as provided in par. (b), to a person who  
18          conducts research, for the purpose of research, if the researcher:

19          **SECTION 79.** 252.15 (5) (a) 10. c. of the statutes is amended to read:

20          252.15 (5) (a) 10. c. Provides written assurance to the person disclosing the HIV  
21          test results that use of the information requested is only for the purpose under which  
22          it is provided to the researcher, the information will not be released to a person not  
23          connected with the study, and the final research product will not reveal information  
24          that may identify the test subject unless the researcher has first received informed  
25          consent for disclosure from the test subject.

**BILL**

1           **SECTION 80.** 252.15 (5) (a) 13. of the statutes is amended to read:

2           252.15 (5) (a) 13. To a sheriff, jailer or keeper of a prison, jail, or house of  
3 correction or a person designated with custodial authority by the sheriff, jailer, or  
4 keeper, for whom disclosure is necessitated in order to permit the assigning of a  
5 private cell to a prisoner who has a positive HIV test result.

6           **SECTION 81.** 252.15 (5) (a) 14. of the statutes is amended to read:

7           252.15 (5) (a) 14. If the test results of ~~a~~ an HIV test administered to an  
8 individual are positive and the individual is deceased, by the individual's attending  
9 physician or advanced practice nurse prescriber, to persons, if known to the  
10 physician or advanced practice nurse prescriber, with whom the individual has had  
11 sexual contact or has shared intravenous drug use paraphernalia.

12           **SECTION 82.** 252.15 (5) (a) 15. of the statutes is amended to read:

13           252.15 (5) (a) 15. To anyone who provides consent for the HIV testing under  
14 sub. (2) (a) 4. b., except that disclosure may be made under this subdivision only  
15 during a period in which the HIV test subject is adjudicated incompetent in this  
16 state, is under 14 years of age, or is unable to communicate due to a medical  
17 condition.

18           **SECTION 83.** 252.15 (5) (a) 19. of the statutes is amended to read:

19           252.15 (5) (a) 19. If the HIV test was administered to a child who has been  
20 placed in a foster home, treatment foster home, group home, residential care center  
21 for children and youth, or juvenile correctional facility, as defined in s. 938.02 (10p),  
22 including a placement under s. 48.205, 48.21, 938.205, or 938.21, or for whom  
23 placement in a foster home, treatment foster home, group home, residential care  
24 center for children and youth, or juvenile correctional facility is recommended under  
25 s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by

**BILL**

1 a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831  
2 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report  
3 under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency  
4 responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1)  
5 (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the  
6 child, or to an agency that placed the child or arranged for the placement of the child  
7 in any of those placements and, by any of those agencies, to any other of those  
8 agencies and, by the agency that placed the child or arranged for the placement of  
9 the child in any of those placements, to the child's foster parent or treatment foster  
10 parent or the operator of the group home, residential care center for children and  
11 youth, or juvenile correctional facility in which the child is placed, as provided in s.  
12 48.371 or 938.371.

13 **SECTION 84.** 252.15 (5) (a) 20. of the statutes is amended to read:

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

25 **SECTION 85.** 252.15 (5) (a) 21. of the statutes is created to read:

**BILL**

1           252.15 (5) (a) 21. To a local health officer, as specified under sub. (7m) (b) or s.  
2           252.03, 252.05, 252.06, 252.12, or 252.21 (1).

3           **SECTION 86.** 252.15 (5) (b) of the statutes is amended to read:

4           252.15 (5) (b) A private pay patient may deny access to disclosure of his or her  
5           HIV test results granted under par. (a) 10. if he or she annually submits to the  
6           maintainer of his or her HIV test results under sub. (4) (c) a signed, written request  
7           that denial be made.

8           **SECTION 87.** 252.15 (5m) (intro.) of the statutes is amended to read:

9           252.15 (5m)    AUTOPSIES; HIV TESTING OF CERTAIN CORPSES.   (intro.)  
10           Notwithstanding s. 157.05, a corpse may be subjected to ~~a~~ an HIV test ~~for the~~  
11           ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and~~  
12           the test results disclosed to ~~the~~ person who has been significantly exposed under any  
13           of the following conditions:

14           **SECTION 88.** 252.15 (5m) (a) of the statutes is amended to read:

15           252.15 (5m) (a) If a person, including a person exempted from civil liability  
16           under the conditions specified under s. 895.48, 895.4802, or 895.4803, who renders  
17           to the victim of an emergency or accident emergency care during the course of which  
18           the emergency caregiver is significantly exposed to the emergency or accident victim  
19           and the emergency or accident victim subsequently dies prior to ~~testing for the~~  
20           ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV;~~  
21           performance of an HIV test on the victim; if a physician or advanced practice nurse  
22           prescriber, based on information provided to the physician or advanced practice  
23           nurse prescriber, determines and certifies in writing that the emergency caregiver  
24           has been significantly exposed; and if the certification accompanies the request for  
25           testing performance of an HIV test and disclosure. ~~Testing of a corpse under this~~

**BILL**

1 paragraph shall be ordered by the The coroner, medical examiner, or physician who  
2 certifies the victim's cause of death under s. 69.18 (2) (b), (c), or (d) shall order  
3 performance of an HIV test of the corpse.

4 **SECTION 89.** 252.15 (5m) (b) of the statutes is amended to read:

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

16 **SECTION 90.** 252.15 (5m) (c) of the statutes is amended to read:

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

**BILL**

1 ordered by the The physician or advanced practice nurse prescriber who certifies  
2 that the significant exposure has occurred shall order performance of an HIV test of  
3 the corpse.

4 **SECTION 91.** 252.15 (6) of the statutes is amended to read:

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

9 **SECTION 92.** 252.15 (7) (title) of the statutes is amended to read:

10 252.15 (7) (title) REPORTING OF POSITIVE HIV TEST RESULTS.

11 **SECTION 93.** 252.15 (7) (a) of the statutes is amended to read:

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

19 **SECTION 94.** 252.15 (7) (b) (intro.) of the statutes is amended to read:

20 252.15 (7) (b) (intro.) If a positive, validated HIV test result is obtained from  
21 a test subject, the health care provider, blood bank, blood center or plasma center  
22 that maintains a record of the test results result under sub. (4) (c) shall report to the  
23 state epidemiologist the following information:

24 **SECTION 95.** 252.15 (7) (b) 3. of the statutes is amended to read:

**BILL**

1           252.15 (7) (b) 3. The name, address, telephone number, age or date of birth, race  
2 and ethnicity, sex and county of residence of the HIV test subject, if known.

3           **SECTION 96.** 252.15 (7) (b) 4. of the statutes is amended to read:

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

5           **SECTION 97.** 252.15 (7) (b) 5. of the statutes is amended to read:

6           252.15 (7) (b) 5. The HIV test result.

7           **SECTION 98.** 252.15 (7) (b) 5m. of the statutes is created to read:

8           252.15 (7) (b) 5m. The mode of transmission to the test subject of HIV.

9           **SECTION 99.** 252.15 (7) (c) 1. of the statutes is amended to read:

10          252.15 (7) (c) 1. Information with respect to the sexual orientation of the HIV  
11 test subject.

12          **SECTION 100.** 252.15 (7) (c) 2. of the statutes is amended to read:

13          252.15 (7) (c) 2. The identity of persons with whom the HIV test subject may  
14 have had sexual contact.

15          **SECTION 101.** 252.15 (7m) of the statutes is renumbered 252.15 (7m) (ag) and  
16 amended to read:

17          252.15 (7m) (ag) REPORTING OF PERSONS PERSONS SIGNIFICANTLY EXPOSED;  
18 REPORTING; INFORMING. If a positive, validated HIV test result is obtained from ~~a~~ an

19 HIV test subject, the test subject's physician or advanced practice nurse prescriber  
20 who maintains a record of the test result under sub. (4) (c) may report to the state

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

22 ~~physician or advanced practice nurse prescriber~~ likely to have been significantly exposed

23 to the test subject, only after the physician or advanced practice nurse prescriber has  
24 done all of the following:

**BILL**

**SECTION 101**

likely

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

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 to have been significantly exposed to the test subject will be reported to the state epidemiologist and to the local health officer and that the local health officer may inform the person as specified under par. (bg).

a designee of the state epidemiologist

**SECTION 102.** 252.15 (7m) (bg) of the statutes is created to read:

252.15 (7m) (bg) A local health officer who has, 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 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.

or as a designee of the state epidemiologist under par. (ag) 2, has

likely

**SECTION 103.** 252.15 (8) (a) of the statutes is amended to read:

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

\$50,000

\$2,000

**SECTION 104.** 252.15 (9) of the statutes is amended to read:

252.15 (9) PENALTIES. Whoever intentionally discloses the results of a blood an HIV test in violation of sub. (2) (a) 7m., (5) (a) or, (5m), or (7m) and thereby causes bodily harm or psychological harm to the subject of the test may be fined not more than \$25,000 \$50,000 or imprisoned not more than 9 months or both. Whoever negligently discloses the results of a blood an HIV test in violation of sub. (2) (a) 7m.,



**BILL**

1 (5) (a) ~~or, (5m), or (7m)~~ is subject to a forfeiture of not more than \$1,000 \$2,000 for  
2 each violation. Whoever intentionally discloses the results of ~~a blood~~ an HIV test  
3 in violation of sub. (2) (a) 7m., (5) (a) ~~or, (5m), or (7m)~~, knowing that the information  
4 is confidential, and discloses the information for pecuniary gain may be fined not  
5 more than ~~\$100,000~~ \$200,000 or imprisoned not more than 3 years and 6 months, or  
6 both.

7 **SECTION 105.** 631.90 (1) of the statutes is amended to read:

8 631.90 (1) In this section, "HIV test" means ~~any strain of human~~  
9 ~~immunodeficiency virus, which causes acquired immunodeficiency syndrome~~ has  
10 the meaning given in s. 252.01 (2m).

11 **SECTION 106.** 631.90 (2) (a) of the statutes is amended to read:

12 631.90 (2) (a) Require or request directly or indirectly any individual to reveal  
13 whether the individual has obtained ~~a~~ an HIV test for the presence of HIV, antigen  
14 ~~or nonantigenic products of HIV or an antibody to HIV~~ or what the results of this test,  
15 if obtained by the individual, were.

16 **SECTION 107.** 631.90 (2) (b) of the statutes is amended to read:

17 631.90 (2) (b) Condition the provision of insurance coverage on whether an  
18 individual has obtained ~~a~~ an HIV test for the presence of HIV, antigen or  
19 ~~nonantigenic products of HIV or an antibody to HIV~~ or what the results of this test,  
20 if obtained by the individual, were.

21 **SECTION 108.** 631.90 (2) (c) of the statutes is amended to read:

22 631.90 (2) (c) Consider in the determination of rates or any other aspect of  
23 insurance coverage provided to an individual whether an individual has obtained  
24 ~~a~~ an HIV test for the presence of HIV, antigen or nonantigenic products of HIV or  
25 ~~an antibody to HIV~~ or what the results of this test, if obtained by the individual, were.

**BILL**

1           **SECTION 109.** 631.90 (3) (a) of the statutes is amended to read:

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

10           **SECTION 110.** 631.90 (3) (b) of the statutes is amended to read:

11           631.90 (3) (b) Paragraph (a) does not authorize the use of any an HIV test or  
12 ~~series of tests for the presence of HIV, antigen or nonantigenic products of HIV or an~~  
13 ~~antibody to HIV~~ to discriminate in violation of s. 628.34 (3).

14           **SECTION 111.** 901.05 (2) (intro.) of the statutes is amended to read:

15           901.05 (2) (intro.) Except as provided in sub. (3), the results of ~~a test or tests~~  
16 ~~for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to~~  
17 ~~HIV~~ an HIV test, as defined in s. 252.01 (2m), are not admissible during the course  
18 of a civil or criminal action or proceeding or an administrative proceeding, as  
19 evidence of a person's character or a trait of his or her character for the purpose of  
20 proving that he or she acted in conformity with that character on a particular  
21 occasion unless the evidence is admissible under s. 904.04 (1) or 904.05 (2) and unless  
22 the following procedures are used:

23           **SECTION 112.** 938.296 (1) (bm) of the statutes is created to read:

24           938.296 (1) (bm) "HIV test" has the meaning given in s. 252.01 (2m).

25           **SECTION 113.** 938.296 (2) (intro.) of the statutes is amended to read:

**BILL**

1           938.296 (2) SEXUALLY TRANSMITTED DISEASE AND HIV TESTING. (intro.) In a  
2 proceeding under s. 938.12 or 938.13 (12) in which the juvenile is alleged to have  
3 violated s. 940.225, 948.02, 948.025, 948.05, 948.06, or 948.085 (2), the district  
4 attorney or corporation counsel shall apply to the court for an order requiring the  
5 juvenile to submit to ~~a~~ an HIV test and a test or a series of tests administered by  
6 ~~a health care professional~~ to detect the presence of HIV, ~~antigen or nonantigenic~~  
7 ~~products of HIV, an antibody to HIV or a sexually transmitted disease, each of which~~  
8 tests are to be administered by a health care professional, and to disclose the results  
9 of that test or series of those tests as specified in sub. (4) (a) to (e), if all of the following  
10 apply:

11           **SECTION 114.** 938.296 (4) (intro.) of the statutes is amended to read:

12           938.296 (4) DISCLOSURE OF SEXUALLY TRANSMITTED DISEASE AND HIV TEST  
13 RESULTS. (intro.) On receipt of an application for an order under sub. (2), the court  
14 shall set a time for a hearing on the application. If the juvenile has been found not  
15 competent to proceed under s. 938.30 (5), the court may hold a hearing under this  
16 subsection only if the court first determines that the probable cause finding can be  
17 fairly made without the personal participation of the juvenile. If, after hearing, the  
18 court finds probable cause to believe that the juvenile has significantly exposed the  
19 victim or alleged victim, the court shall order the juvenile to submit to ~~a~~ an HIV test  
20 ~~or and a test or series of tests administered by a health care professional~~ to detect  
21 the presence of HIV, ~~antigen or nonantigenic products of HIV, an antibody to HIV or~~  
22 ~~a sexually transmitted disease.~~ The tests shall be administered by a health care  
23 professional. The court shall require the health care professional who performs the  
24 ~~test or series of tests to refrain, notwithstanding s. 252.15 (4) (e), from making the~~

**BILL**

*and (5)(a) (intro.)*

1 test results part of the juvenile's permanent medical record and, notwithstanding s.  
2 252.15 (3) ~~(d)~~, to disclose the results of the test tests to any of the following:

3 **SECTION 115.** 938.296 (5) (intro.) of the statutes is amended to read:

4 938.296 (5) DISCLOSURE OF COMMUNICABLE DISEASE TEST RESULTS. (intro.) On  
5 receipt of an application for an order under sub. (2m), the court shall set a time for  
6 a hearing on the application. If the juvenile has been found not competent to proceed  
7 under s. 938.30 (5), the court may hold a hearing under this subsection only if the  
8 court first determines that the probable cause finding can be fairly made without the  
9 personal participation of the juvenile. If, after hearing, the court finds probable  
10 cause to believe that the act or alleged act of the juvenile that constitutes a violation  
11 of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the  
12 victim or alleged victim and involved the juvenile's blood, semen, vomit, saliva, urine  
13 or feces or other bodily substance of the juvenile, the court shall order the juvenile  
14 to submit to a test or a series of tests administered by a health care professional to  
15 detect the presence of any communicable disease that was potentially transmitted  
16 by the act or alleged act of the juvenile. The court shall require the health care  
17 professional who performs the test or series of tests to refrain, notwithstanding s.  
18 252.15 (4) (e), if applicable, from making the test results part of the juvenile's

19 permanent medical record and to disclose the results of the test to any of the  
20 following:

*notwithstanding s. 252.15 (3) ~~(d)~~ and (5)(a) (intro.)*

21 **SECTION 116.** 938.346 (1) (e) of the statutes is amended to read:

22 938.346 (1) (e) The procedure under s. 938.296 under which the victim, if an  
23 adult, or the parent, guardian or legal custodian of the victim, if the victim is a child,  
24 may request an order requiring a juvenile who is alleged to have violated s. 940.225,  
25 948.02, 948.025, 948.05, 948.06, or 948.085 (2) to submit to ~~a~~ an HIV test or, as

**BILL**

1 defined in s. 252.01 (2m), and a test or a series of tests to detect the presence of HIV,  
 2 as defined in s. 252.01 (1m), antigen or nonantigenic products of HIV, an antibody  
 3 to HIV or a sexually transmitted disease, as defined in s. 252.11 (1), and to have the  
 4 results of that test or series of the tests disclosed as provided in s. 938.296 (4) (a) to  
 5 (e).

6 **SECTION 117.** 938.371 (1) (a) of the statutes is amended to read:

7 938.371 (1) (a) ~~Results of a~~ an HIV test or a series of tests, as defined in s.  
 8 252.01 (2m), of the juvenile to determine the presence of HIV, as defined in s. 968.38  
 9 (1) (b), antigen or nonantigenic products of HIV, or an antibody to HIV, under s.  
 10 252.15 (5) (a) 19., including results included in a court report or permanency plan.  
 11 At the time that the HIV test results are provided, the agency shall notify the foster  
 12 parent, treatment foster parent, relative, or operator of the group home, residential  
 13 care center for children and youth, or juvenile correctional facility of the  
 14 confidentiality requirements under s. 252.15 (6).

15 **SECTION 118.** 968.38 (1) (bc) of the statutes is created to read:

16 968.38 (1) (bc) "HIV test" has the meaning given in s. 252.01 (2m).

17 **SECTION 119.** 968.38 (2) (intro.) of the statutes is amended to read:

18 968.38 (2) (intro.) In a criminal action under s. 940.225, 948.02, 948.025,  
 19 948.05, 948.06, 948.085, or 948.095, if all of the following apply, the district attorney  
 20 shall apply to the circuit court for his or her county to order the defendant to submit  
 21 to ~~a~~ an HIV test or and to a test or a series of tests administered by a health care  
 22 professional to detect the presence of HIV, antigen or nonantigenic products of HIV,  
 23 an antibody to HIV or a sexually transmitted disease, each of which tests shall be  
 24 administered by a health care professional, and, notwithstanding s. 252.15 (3) (a),  
 25 to disclose the results of the test or tests as specified in sub. (4) (a) to (c):

**BILL**

1           **SECTION 120.** 968.38 (4) (intro.) of the statutes is amended to read:

2           968.38 (4) (intro.) The court shall set a time for a hearing on the matter under

3 sub. (2) during the preliminary examination, if sub. (3) (a) applies; after the

4 defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b)

5 applies; after conviction or a finding of not guilty by reason of mental disease or

6 defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that

7 the defendant is not competent, if sub. (3) (d) applies. The court shall give the district

8 attorney and the defendant notice of the hearing at least 72 hours prior to the

9 hearing. The defendant may have counsel at the hearing, and counsel may examine

10 and cross-examine witnesses. If the court finds probable cause to believe that the

11 defendant has significantly exposed the victim or alleged victim, the court shall order

12 the defendant to submit to ~~a~~ an HIV test and to a test or a series of tests administered

13 ~~by a health care professional to detect the presence of HIV, antigen or nonantigenic~~

14 ~~products of HIV, an antibody to HIV or a sexually transmitted disease.~~ The tests

15 shall be performed by a health care professional. The court shall require the health

16 care professional who performs the test to disclose the test results to the defendant.

17 ~~The court shall require the health care professional who performs the test, to refrain,~~

18 ~~notwithstanding s. 252.15 (4) (c), from making the test results part of the defendant's~~

19 ~~permanent medical record, and, notwithstanding s. 252.15 (3) (a), to disclose the~~

20 results of the test to any of the following:

*and (5)(a)  
(intro.)*

21           **SECTION 121.** 968.38 (5) (intro.) of the statutes is amended to read:

22           968.38 (5) (intro.) The court shall set a time for a hearing on the matter under

23 sub. (2m) during the preliminary examination, if sub. (3) (a) applies; after the

24 defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b)

25 applies; after conviction or a finding of not guilty by reason of mental disease or

**BILL**

1 defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that  
 2 the defendant is not competent, if sub. (3) (d) applies. The court shall give the district  
 3 attorney and the defendant notice of the hearing at least 72 hours prior to the  
 4 hearing. The defendant may have counsel at the hearing, and counsel may examine  
 5 and cross-examine witnesses. If the court finds probable cause to believe that the  
 6 act or alleged act of the defendant that constitutes a violation of s. 946.43 (2m) carried  
 7 a potential for transmitting a communicable disease to the victim or alleged victim  
 8 and involved the defendant's blood, semen, vomit, saliva, urine or feces or other  
 9 bodily substance of the defendant, the court shall order the defendant to submit to  
 10 a test or a series of tests administered by a health care professional to detect the  
 11 presence of any communicable disease that was potentially transmitted by the act  
 12 or alleged act of the defendant. The court shall require the health care professional  
 13 who performs the test to disclose the test results to the defendant. The court shall  
 14 require the health care professional who performs the test to refrain,  
 15 notwithstanding s. 252.15 (4) (c), if applicable, from making the test results part of  
 16 the defendant's permanent medical record and, notwithstanding s. 252.15 (3) (a), to  
 17 disclose the results of the test to any of the following:

18 **SECTION 122.** 973.017 (4) (a) 1m. of the statutes is created to read:

19 973.017 (4) (a) 1m. "HIV test" has the meaning given in s. 252.01 (2m).

20 **SECTION 123.** 973.017 (4) (b) 1. of the statutes is amended to read:

21 973.017 (4) (b) 1. At the time that he or she committed the serious sex crime,  
 22 the person convicted of committing the serious sex crime had a sexually transmitted  
 23 disease or acquired immunodeficiency syndrome or had had a positive HIV test for  
 24 the presence of HIV, antigen, or nonantigenic products of HIV or an antibody to HIV.

25 **SECTION 124.** 973.017 (4) (b) 2. of the statutes is amended to read:

and (5)  
(a)  
(intro.)





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**INSERT ANAL-1**

*No #* Lastly, a violator of the prohibition is civilly liable to the individual whose test results are disclosed, for actual damages, costs, and reasonable actual attorneys fees, plus exemplary damages of up to \$1,000 for a negligent violation and of up to \$25,000 for an intentional violation.

**INSERT ANAL-2**

*#* Lastly, currently, a health care provider who procures, processes, distributes, or uses human sperm that is donated to take effect on or after the donor's death (an anatomical gift) must, before distributing or using the donation and with informed consent, test the proposed donor for HIV initially and, if the initial results are negative, perform a second test not less than 180 days from the date of procurement of the sperm. If any HIV test result is positive, the sperm may not be used and must be destroyed. A health care provider must also test for HIV a proposed donor of human ova that is donated as an anatomical gift.

**INSERT ANAL-3**

*#* The bill changes requirements for distribution and use of donated human sperm and ova. Under the bill, a health care provider must obtain informed consent for HIV testing from the donor, unless the donation is an anatomical gift; must have the donor administered an initial HIV test; and may not use the donated sperm unless the donor is administered a second test not less than 180 days after procuring the sperm. This second test is not required, however, if the sperm is donated as an anatomical gift or if the donation is from a donor known to the donee and the donee waives, in a written statement, performance of the second test. If any validated HIV test result of the donor is positive, the sperm donated may not be used and must be destroyed unless the donation is from a donor known to the donee, the health care provider informs the donee of potential medical risks associated with use of the sperm, the donee provides informed consent to the use, and the health care provider provides prophylactic treatments of the sperm and appropriate follow-up testing to the donee. For donated human ova or fertilized human ova, a health care provider must, before distribution and use, have the donor or, for fertilized ova, donors administered an HIV test. If any validated HIV test result of the donor or donors is positive, the donated ova or fertilized ova may not be used and shall be destroyed, unless the donation is from a donor known to the donee, the health care provider informs the donee of potential medical risks associated with use of the ova or fertilized ova, the donee provides informed consent to the use, and the health care provider provides prophylactic treatments of the sperm and appropriate follow-up testing to the donee. *e ova*

**INSERT ANAL-4**

*No #* The exemplary damages, under civil liability, are increased to up to \$2,000 for a negligent disclosure and up to \$50,000 for an intentional disclosure.

**INSERT 21-15**

1           **SECTION 1.** 252.15 (2) (am) 1. of the statutes is renumbered 252.15 (2) (am) 1.

2           a. and amended to read:

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

18          c. Donated sperm that is not donated as specified under s. 157.06 (6) (a) or (b)  
19          or that is not from a donor known to the donee who has provided a waiver under subd.  
20          1. b. may not be distributed or used until the health care provider has obtained the  
21          results of the 2nd test under subd. 1. a.

22          d. If any validated HIV test result of the donor ~~for the presence of HIV, antigen~~  
23          ~~or nonantigenic products of HIV or an antibody to HIV~~ is positive, the sperm donated  
24          for use may not be used and, ~~if donated,~~ shall be destroyed, except that, if the

1 donation is from a donor known to the donee, the donee may use the donation if, after  
 2 the health care provider, notwithstanding subs. (3) and (5) (a) (intro.), informs the  
 3 donee of the potential medical risks associated with the use, the donee provides  
 4 informed consent to the use, and if the health care provider provides prophylactic  
 5 treatments of the donation and appropriate follow-up testing to the donee.

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 2.** 252.15 (2) (am) 1. b. of the statutes is created to read:

7 252.15 (2) (am) 1. b. A 2nd test need not be performed under subd. 1. a. if the  
 8 sperm is donated as specified under s. 157.06 (6) (a) or (b); or if the donation is from  
 9 a donor known to the donee and, notwithstanding subs. (3) and (5) (a) (intro.), the  
 10 donee waives, in a written statement provided to the health care provider,  
 11 performance of the 2nd test.

12 **SECTION 3.** 252.15 (2) (am) 2. of the statutes is renumbered 252.15 (2) (am) 2.

13 a. and amended to read:

14 252.15 (2) (am) 2. a. A health care provider who procures, processes, distributes  
 15 or uses donated human ova ~~donated as specified under s. 157.06 (6) (a) or (b) or~~ or  
 16 fertilized human ova shall, prior to the distribution or use and ~~with~~ after obtaining  
 17 informed consent under the requirements of par. (b), test for HIV testing unless par.  
 18 (a) 1. applies, have the proposed donor for the presence of HIV, antigen or  
 19 nonantigenic products of HIV or an antibody to HIV or, for fertilized ova, donors,  
 20 administered an HIV test in order to assure medical acceptability of the gift for the  
 21 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).

22 **SECTION 4.** 252.15 (2) (am) 2. b. of the statutes is created to read:

1           252.15 (2) (am) 2. b. If any validated HIV test result of the donor under subd.  
2           2. a. is positive, the ova or fertilized ova donated for use may not be used and shall  
3           be destroyed, except that, if the donation is from a donor, or, for fertilized ova, donors,  
4           known to the donee, the donee may use the donation if, after the health care provider,  
5           notwithstanding subs. (3) and (5) (a) (intro.), informs the donee of the potential  
6           medical risks associated with the use, the donee provides informed consent to the  
7           use, and if the health care provider provides prophylactic treatments of the donation  
8           and appropriate follow-up testing to the donee.  
9

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

LRB-1092/4dn  
DAK:kjf:nwn

Date

To Representative Wasserman:

1. In s. 252.15 (2) (am) 1. a. (renumbered in the draft from s. 252.15 (2) (am) 1., stats.), please review these changes:

a. I made an exception to obtaining informed consent, referring to s. 252.15 (2) (a) 1., stats. (tissue donated as an anatomical gift).

b. I struck the word "proposed" modifying "donor" in the first sentence, because it seems to me the donation has been made; if it's unacceptable, it's destroyed or accepted under a waiver.

c. I used the term "have the donor administered an HIV test" in order to deal with health care providers who rely on test results of other providers.

2. In s. 252.15 (2) (am) 1. d. and 2. b., please review these changes or issues:

a. I specified that prophylactic treatments are for the donation, not the donee. Isn't that what the "washing" is?

b. I also struck "if donated," since the sentence already presumes that the sperm, ova, or fertilized ova have been donated.

c. These provisions require destruction of the donation if any *validated* HIV test result of the donor is positive. However, only the sperm has to be tested twice; I'm not sure that the test result for the ova or fertilized ova could be called a validated HIV test result. (See, for instance, the treatment of s. 252.15 (2) (a) 1., stats., which explicitly requires a validated test result.) Is there some way to check on this?

3. In amending s. 252.15 (7m) (ag) (intro.), stats., I struck "known to the physician or advanced practice nurse prescriber" and inserted "likely," in order to conform to the change to s. 252.15 (7m) (as) 2., stats. I also inserted the word "likely" in s. 252.15 (7m) (ag) 1. stats. Okay?

4. Note that I have made exceptions for both s. 252.25 (3) and (5) (a) (intro.), stats., in s. 252.15 (2) (a) 7. c. and 7m. and (am) 1. b. (d.) and 2. b., 938.296 (4) (intro.) and (5) (intro.), 938.371 (1) (a), and 968.38 (4) (intro.) and (5) (intro.).

Debora A. Kennedy  
Managing Attorney  
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E-mail: debora.kennedy@legis.wisconsin.gov

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

LRB-1092/4dn  
DAK:kjf:nwn

February 4, 2008

To Representative Wasserman:

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2. In s. 252.15 (2) (am) 1. d. and 2. b., please review these changes or issues:

a. I specified that prophylactic treatments are for the donation, not the donee. Isn't that what the "washing" is?

b. I also struck "if donated," since the sentence already presumes that the sperm, ova, or fertilized ova have been donated.

c. These provisions require destruction of the donation if any *validated* HIV test result of the donor is positive. However, only the sperm has to be tested twice; I'm not sure that the test result for the ova or fertilized ova could be called a validated HIV test result. (See, for instance, the treatment of s. 252.15 (2) (a) 1., stats., which explicitly requires a validated test result.) Is there some way to check on this?

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4. Note that I have made exceptions for both s. 252.15 (3) and (5) (a) (intro.), stats., in s. 252.15 (2) (a) 7. c. and 7m. and (am) 1. b. and d. and 2. b., 938.296 (4) (intro.) and (5) (intro.), 938.371 (1) (a), and 968.38 (4) (intro.) and (5) (intro.).

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**Basford, Sarah**

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**From:** Hoey, Joseph  
**Sent:** Friday, March 07, 2008 2:47 PM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-1092/4 Topic: Permit testing for HIV unless patient refuses consent

Please Jacket LRB 07-1092/4 for the ASSEMBLY.