



2007 ASSEMBLY BILL 969

March 13, 2008 - Introduced by Representative WASSERMAN. Referred to
Committee on Public Health.

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

ASSEMBLY BILL 969

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 (2) (am) 1. b., 252.15 (2) (am) 2. b., 252.15 (4) (bm), 252.15 (5)
14 (a) 21., 252.15 (7) (b) 5m., 252.15 (7m) (bg), 938.296 (1) (bm), 968.38 (1) (bc) and
15 973.017 (4) (a) 1m. of the statutes; **relating to:** changing informed consent
16 requirements for HIV testing, disclosure of test results, reporting significantly
17 exposed persons, increasing liability for certain violations, and providing
18 penalties.

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

ASSEMBLY BILL 969

attorney for health care instrument and has been found to be incapacitated, the name of the health care agent.

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

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

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

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. 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. 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.

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

ASSEMBLY BILL 969

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.

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.

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.

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

ASSEMBLY BILL 969

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 ova and appropriate follow-up testing to the donee.

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 state epidemiologist the name of any person likely to have been significantly exposed to the test subject; the state epidemiologist may designate an individual, including the local health officer, to notify this person of the likely significant exposure.

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 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. 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.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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),~~
- 4 ~~antigen or nonantigenic products of HIV, or an antibody to HIV, as provided under~~
- 5 s. 252.15 (5) (a) 19., including results included in a court report or permanency plan.

ASSEMBLY BILL 969**SECTION 1**

1 At the time that the HIV test results are provided, the agency shall notify the foster
2 parent, treatment foster parent, relative, or operator of the group home or residential
3 care center for children and youth of the confidentiality requirements under s. 252.15
4 (6).

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

6 49.686 (1) (g) “Validated HIV test result” ~~means a result of a test for the~~
7 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV that~~
8 ~~meets the validation requirements determined to be necessary by the state~~
9 ~~epidemiologist~~ has the meaning given in s. 252.01 (8).

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

11 59.69 (15) (im) The fact that an individual with acquired immunodeficiency
12 syndrome or a positive HIV test ~~for the presence of HIV, as defined in s. 252.01 (1m),~~
13 ~~antigen or nonantigenic products of HIV or an antibody to HIV (2m),~~ resides in a
14 community living arrangement with a capacity for 8 or fewer persons may not be
15 used under par. (i) to assert or prove that the existence of the community living
16 arrangement in the municipality poses a threat to the health, safety or welfare of the
17 residents of the municipality.

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

19 60.63 (10m) The fact that an individual with acquired immunodeficiency
20 syndrome or a positive HIV test ~~for the presence of HIV, as defined in s. 252.01 (1m),~~
21 ~~antigen or nonantigenic products of HIV or an antibody to HIV (2m),~~ resides in a
22 community living arrangement with a capacity for 8 or fewer persons may not be
23 used under sub. (10) to assert or prove that the existence of the community living
24 arrangement in the town poses a threat to the health, safety or welfare of the
25 residents of the town.

ASSEMBLY BILL 969

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

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

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

10 **103.15** (title) **Restrictions on use of a an HIV test for HIV.**

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

12 103.15 (1) (bm) "HIV test" has the meaning given in s. 252.01 (2m).

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

14 103.15 (2) (a) Solicit or require an HIV test as a condition of employment of any
15 employee or prospective employee ~~a test for the presence of HIV, antigen or~~
16 ~~nonantigenic products of HIV or an antibody to HIV.~~

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

18 103.15 (2) (b) Affect the terms, conditions or privileges of employment or
19 terminate the employment of any employee who obtains ~~a an HIV test for the~~
20 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, as~~
21 defined in s. 252.01 (2m).

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

23 103.15 (3) Any agreement by an employer or agent of the employer and an
24 employee or prospective employee offering employment or any pay or benefit to an
25 employee or prospective employee in return for taking ~~a an HIV test for the presence~~

ASSEMBLY BILL 969

1 of HIV, antigen or nonantigenic products of HIV or an antibody to HIV is prohibited,
2 except as provided under sub. (2) (intro.).

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

4 118.125 (2m) (b) Any pupil record that concerns the results of ~~a~~ an HIV test
5 ~~for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to~~
6 ~~HIV, as defined in s. 252.01 (2m),~~ shall be treated as provided under s. 252.15. ~~In this~~
7 subsection, "HIV" has the meaning given in s. 252.01 (1m).

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

9 146.82 (2) (a) 22. To a local health officer, as specified under s. 252.03, 252.05,
10 252.06, 252.12, 252.15 (7m) (bg), or 252.21 (1).

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

12 149.12 (1) (intro.) Except as provided in subs. (1m), (2), and (3), the authority
13 shall certify as eligible a person who is covered by Medicare because he or she is
14 disabled under 42 USC 423, a person who submits evidence that he or she has tested
15 ~~positive for the presence of HIV, antigen or nonantigenic products of HIV, or an~~
16 ~~antibody to HIV,~~ a positive, validated HIV test result, as defined in s. 252.01 (8); a
17 person who is an eligible individual; and any person who receives and submits any
18 of the following based wholly or partially on medical underwriting considerations
19 within 9 months prior to making application for coverage by the plan:

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

21 252.01 (2m) "HIV test" means a test or series of tests that the state
22 epidemiologist finds under s. 252.13 (1r) to be medically significant and sufficiently
23 reliable to detect the presence of HIV, antigen or antigenic products of HIV, or an
24 antibody to HIV.

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

ASSEMBLY BILL 969

1 252.01 (8) “Validated HIV test result” means a result of ~~a~~ an HIV test for the
2 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV that
3 meets the validation requirements determined to be necessary by the state
4 epidemiologist.

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

6 252.11 (5m) A health care professional, as defined in s. 968.38 (1) (a), acting
7 under an order of a court under s. 938.296 (4) ~~or (5)~~ or 968.38 (4) ~~or (5)~~ may, without
8 first obtaining informed consent to the testing, subject an individual to a test or a
9 series of tests to ascertain whether that individual is infected with a sexually
10 transmitted disease. No sample used for performance of a test under this subsection
11 may disclose the name of the test subject.

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

13 252.11 (7) Reports, examinations and inspections and all records concerning
14 sexually transmitted diseases are confidential and not open to public inspection, and
15 may not be divulged except as may be necessary for the preservation of the public
16 health, in the course of commitment proceedings under sub. (5), or as provided under
17 s. 938.296 (4) ~~or (5)~~ or 968.38 (4) ~~or (5)~~. If a physician or advanced practice nurse
18 prescriber has reported a case of sexually transmitted disease to the department
19 under sub. (4), information regarding the presence of the disease and treatment is
20 not privileged when the patient, physician, or advanced practice nurse prescriber is
21 called upon to testify to the facts before any court of record.

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

23 252.12 (2) (a) 3. d. Locations for procuring additional information or obtaining
24 HIV testing services.

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

ASSEMBLY BILL 969

1 252.12 (2) (a) 5. The department shall perform HIV tests for the presence of
2 ~~HIV~~ and, if appropriate, tests for the presence of related infections and shall conduct
3 behavioral surveys among population groups determined by the department to be
4 highly at risk of becoming infected with or transmitting HIV and related infections.
5 Information obtained shall be used to develop targeted HIV infection and related
6 infection prevention efforts for these groups and to evaluate the state's prevention
7 strategies.

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

9 252.12 (2) (a) 7. The department shall distribute funding in each fiscal year to
10 contract with organizations to provide, at alternate testing sites, anonymous or
11 confidential counseling services for HIV and, laboratory HIV testing services for the
12 ~~presence of HIV~~, and, if appropriate, laboratory testing services for the presence of
13 related viruses.

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

15 **252.13** (title) **Blood HIV tests for HIV.**

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

17 252.13 (1m) Except as provided under sub. (3), any blood bank, blood center
18 or plasma center in this state that purchases or receives whole blood, blood plasma,
19 a blood product or a blood derivative shall, prior to its distribution or use and after
20 complying with informed consent for HIV testing under the requirements of s. 252.15
21 (2) (b), subject that blood, plasma, product or derivative to ~~a~~ an HIV test or series
22 of tests that the state epidemiologist finds medically significant and sufficiently
23 reliable under sub. (1r) (a) to detect the presence of ~~HIV~~, antigen or nonantigenic
24 products of ~~HIV~~ or an antibody to ~~HIV~~. This subsection does not apply to a blood bank
25 that purchases or receives whole blood, blood plasma, a blood product or a blood

ASSEMBLY BILL 969

1 derivative from a blood bank, blood center or plasma center in this state if the whole
2 blood, blood plasma, blood product or blood derivative has previously been subjected
3 to ~~a~~ an HIV test or series of tests that the state epidemiologist finds medically
4 significant and sufficiently reliable under sub. (1r) (a) to detect the presence of HIV,
5 antigen or nonantigenic products of HIV or an antibody to HIV.

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

7 252.13 (1r) (intro.) For the purposes of this section, the state epidemiologist
8 shall make separate findings of medical significance and sufficient reliability for ~~a~~
9 test or a series of tests to detect the presence of HIV, antigen or nonantigenic products
10 of HIV or an antibody to HIV an HIV test for each of the following purposes:

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

12 252.13 (1r) (a) Subjecting whole blood, blood plasma, a blood product or a blood
13 derivative to ~~a~~ an HIV test prior to distribution or use of the whole blood, blood
14 plasma, blood product or blood derivative.

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

16 252.13 (1r) (b) Providing disclosure of HIV test results to the subject of the test.

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

18 252.13 (2) If performance of a test under sub. (1m) yields a positive, validated
19 HIV test result ~~positive for the presence of HIV, antigen or nonantigenic products of~~
20 ~~HIV or an antibody to HIV~~, the whole blood, blood plasma, blood product or blood
21 derivative so tested with this result may not be distributed or used except for
22 purposes of research or as provided under sub. (5).

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

24 252.13 (3) If a medical emergency, including a threat to the preservation of life
25 of a potential donee, exists under which whole blood, blood plasma, a blood product,

ASSEMBLY BILL 969

1 or a blood derivative that has been subjected to HIV testing under sub. (1m) is
2 unavailable, the requirement of sub. (1m) shall not apply.

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

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

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

8 252.13 (5) Whole blood, blood plasma, a blood product, or a blood derivative
9 described under sub. (2) that is voluntarily donated solely for the purpose of an
10 autologous transfusion may be distributed to or used by the person who has donated
11 the whole blood, blood plasma, blood product, or blood derivative. No person other
12 than the person who has donated the whole blood, blood plasma, blood product, or
13 blood derivative may receive or use the whole blood, blood plasma, blood product, or
14 blood derivative unless it has been subjected to ~~a~~ an HIV test under sub. (1m) and
15 performance of the test has yielded a negative, validated HIV test result ~~for the~~
16 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.~~

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

18 252.14 (2) (intro.) No health care provider, peace officer, fire fighter,
19 correctional officer, state patrol officer, jailer or keeper of a jail or person designated
20 with custodial authority by the jailer or keeper, home health agency, inpatient health
21 care facility, or person who has access to a validated HIV test result may do any of
22 the following with respect to an individual who has acquired immunodeficiency
23 syndrome or has a positive, validated HIV test ~~for the presence of HIV, antigen or~~
24 ~~nonantigenic products of HIV or an antibody to HIV~~ result, solely because the

ASSEMBLY BILL 969

1 individual has HIV infection or an illness or medical condition that is caused by,
2 arises from, or is related to HIV infection:

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

4 252.14 (3) A health care provider, home health agency, or inpatient health care
5 facility that ~~tests~~ administers an HIV test to an individual for ~~HIV infection~~ shall
6 provide counseling about HIV and referral for appropriate health care and support
7 services as necessary. A health care provider, home health agency, or inpatient
8 health care facility that treats an individual who has an HIV infection or acquired
9 immunodeficiency syndrome shall develop and follow procedures that shall ensure
10 continuity of care for the individual in the event that his or her condition exceeds the
11 scope of licensure or certification of the provider, agency, or facility.

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

13 252.14 (4) Any person violating sub. (2) is liable to the patient for actual
14 damages and costs, plus exemplary damages of up to \$5,000 \$10,000 for an
15 intentional violation. In determining the amount of exemplary damages, a court
16 shall consider the ability of a health care provider who is an individual to pay
17 exemplary damages.

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

19 **252.15 (title) Restrictions on use of ~~a~~ an HIV test for HIV.**

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

21 252.15 (1) (cw) "Informed consent for disclosure" means, under the
22 requirements of sub. (3), consent by an individual to the disclosure to a specified
23 person of the results of an HIV test that is administered to the individual consenting.

24 **SECTION 35.** 252.15 (1) (d) of the statutes is amended to read:

ASSEMBLY BILL 969

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

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

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

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

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

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

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

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

ASSEMBLY BILL 969

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

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

ASSEMBLY BILL 969

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, or legal custodian, if the individual is
20 under 14 years of age; or from the individual's closest living relative or another with
21 whom the individual has a meaningful social and emotional relationship, if the
22 individual is not a minor nor adjudicated incompetent but is unable to communicate
23 due to a medical condition.

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

ASSEMBLY BILL 969

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

ASSEMBLY BILL 969

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

ASSEMBLY BILL 969

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,~~

ASSEMBLY BILL 969**SECTION 51**

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:

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
22 Notwithstanding subs. (3) and (5) (a) (intro.), the court shall require the health care
23 professional who performs the HIV test ~~or series of tests to refrain from disclosing~~
24 ~~the test results to the individual and to disclose the test results to the affected person~~
25 and his or her health care professional and authorize the health care professional to

ASSEMBLY BILL 969

1 disclose the test results to the individual, if he or she consents, and to anyone
2 authorized by the individual. No sample used for laboratory test purposes under this
3 subd. 7. c. may disclose the name of the HIV test subject.

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

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

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

9 252.15 (2) (a) 7m. ~~The test results of an individual under subd. 7. may be~~
10 ~~disclosed only to the individual, if he or she so consents, to anyone authorized by the~~
11 ~~individual and to the affected person who was certified to have been significantly~~
12 ~~exposed.~~ A record may be retained of the HIV test results of an individual under
13 subd. 7. only if the record does not reveal the individual's identity. If the affected
14 person knows the identity of the individual whose blood was tested, he or she may
15 not disclose the identity to any other person except, notwithstanding subs. (3) and
16 (5) (a) (intro.), for the purpose of having the HIV test ~~or series of tests~~ performed.

17 **SECTION 56.** 252.15 (2) (am) 1. of the statutes is renumbered 252.15 (2) (am)
18 1. a. and amended to read:

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

ASSEMBLY BILL 969

1 the presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV
2 a test or series of tests that the state epidemiologist finds medically significant and
3 sufficiently reliable under s. 252.13 (1r) to detect the presence of HIV, antigen or
4 nonantigenic products of HIV or an antibody to HIV. The Except as provided under
5 subd. 1. b., the health care provider shall test have the donor tested initially and, if
6 the initial test result is negative, shall perform have performed a 2nd test on a date
7 that is not less than 180 days from the date of the procurement of the sperm. No
8 person may use the donated

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

13 d. If any validated HIV test result of the donor for the presence of HIV, antigen
14 or nonantigenic products of HIV or an antibody to HIV is positive, the sperm donated
15 for use may not be used and, if donated, shall be destroyed, except that, if the
16 donation is from a donor known to the donee, the donee may use the donation if, after
17 the health care provider, notwithstanding subs. (3) and (5) (a) (intro.), informs the
18 donee of the potential medical risks associated with the use, the donee provides
19 informed consent to the use, and if the health care provider provides prophylactic
20 treatments of the donation and appropriate follow-up testing to the donee.

21 **SECTION 57.** 252.15 (2) (am) 1. b. of the statutes is created to read:

22 252.15 (2) (am) 1. b. A 2nd test need not be performed under subd. 1. a. if the
23 sperm is donated as specified under s. 157.06 (6) (a) or (b); or if the donation is from
24 a donor known to the donee and, notwithstanding subs. (3) and (5) (a) (intro.), the

ASSEMBLY BILL 969

1 donee waives, in a written statement provided to the health care provider,
2 performance of the 2nd test.

3 **SECTION 58.** 252.15 (2) (am) 2. of the statutes is renumbered 252.15 (2) (am)
4 2. a. and amended to read:

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

13 **SECTION 59.** 252.15 (2) (am) 2. b. of the statutes is created to read:

14 252.15 (2) (am) 2. b. If any validated HIV test result of the donor under subd.
15 2. a. is positive, the ova or fertilized ova donated for use may not be used and shall
16 be destroyed, except that, if the donation is from a donor, or, for fertilized ova, donors,
17 known to the donee, the donee may use the donation if, after the health care provider,
18 notwithstanding subs. (3) and (5) (a) (intro.), informs the donee of the potential
19 medical risks associated with the use, the donee provides informed consent to the
20 use, and if the health care provider provides prophylactic treatments of the donation
21 and appropriate follow-up testing to the donee.

22 **SECTION 60.** 252.15 (2) (b) (intro.) of the statutes is renumbered 252.15 (2) (b)
23 and amended to read:

24 252.15 (2) (b) The A health care provider, blood bank, blood center, or plasma
25 center that subjects a person to ~~a~~ an HIV test ~~for the presence of HIV, antigen or~~

ASSEMBLY BILL 969

1 ~~nonantigenic products of HIV or an antibody to HIV~~ under pars. (a) and (am) shall,
2 in instances under those paragraphs in which informed consent for HIV testing is
3 required, ~~provide~~ first orally inform the potential HIV test subject ~~with an informed~~
4 ~~consent form for testing or disclosure that shall contain the following information~~
5 ~~and on the form shall obtain the potential test subject's signature~~ or may, if the
6 potential test subject has executed a power of attorney for health care instrument
7 under ch. 155 and has been found to be incapacitated under s. 155.05 (2), ~~instead~~
8 ~~obtain the signature of the health care agent: that, as a routine part of medical care,~~
9 the test will be performed unless the potential test subject or, if applicable, agent
10 declines to provide consent. The potential HIV test subject or agent may orally
11 consent or, if the test subject or agent does not so decline, the health care provider,
12 blood bank, blood center, or plasma center may infer that the potential test subject
13 or agent has given informed consent for testing.

14 **SECTION 61.** 252.15 (2) (b) 1. of the statutes is repealed.

15 **SECTION 62.** 252.15 (2) (b) 2. of the statutes is renumbered 252.15 (3) (c) and
16 amended to read:

17 252.15 (3) (c) ~~A~~ Provide to the individual a statement of explanation to the
18 potential HIV test subject that the HIV test results may be disclosed as specified
19 under sub. (5) (a) and either a listing that duplicates the persons or circumstances
20 specified under sub. (5) (a) 2. to 19, 20, or a statement that the listing is available
21 upon request.

22 **SECTION 63.** 252.15 (2) (b) 3. of the statutes is repealed.

23 **SECTION 64.** 252.15 (2) (bm) (intro.) of the statutes is repealed.

24 **SECTION 65.** 252.15 (2) (bm) 1. of the statutes is renumbered 252.15 (2) (a) 3.
25 a. and amended to read:

ASSEMBLY BILL 969

1 252.15 (2) (a) 3. a. A statement of explanation concerning the HIV test that was
2 performed, the date of performance of the test and the test results.

3 **SECTION 66.** 252.15 (2) (bm) 2. of the statutes is renumbered 252.15 (2) (a) 3.
4 b. and amended to read:

5 252.15 (2) (a) 3. b. A statement of explanation that the HIV test results may
6 be disclosed as specified under sub. (5) (a) and either a listing that duplicates the
7 persons or circumstances specified under sub. (5) (a) 2. to ~~18.~~ 21. or a statement that
8 the listing is available upon request.

9 **SECTION 67.** 252.15 (3) of the statutes is repealed and recreated to read:

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

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

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

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

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

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

ASSEMBLY BILL 969

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

6 **SECTION 69.** 252.15 (4) (a) of the statutes is repealed.

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

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

10 **SECTION 71.** 252.15 (4) (bm) of the statutes is created to read:

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

13 **SECTION 72.** 252.15 (4) (c) of the statutes is amended to read:

14 252.15 (4) (c) ~~Maintain~~ Except for a record made under the circumstances
15 described in sub. (2) (a) 6. or 7m., 938.296 (4) (intro.) or (5) (intro.), or s. 968.38 (4)
16 (intro.) or (5) (intro.), a record of the HIV test results obtained. ~~A record that is made~~
17 ~~under the circumstances described in sub. (2) (a) 7m. may not reveal the identity of~~
18 ~~the test subject.~~

19 **SECTION 73.** 252.15 (5) (title) of the statutes is repealed and recreated to read:

20 252.15 (5) (title) HIV TEST CONFIDENTIALITY; EXCEPTIONS.

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

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

ASSEMBLY BILL 969

1 under s. 155.05 (2), may disclose the results of the individual's test to anyone. A
2 person who is neither the individual nor the individual's health care agent may not,
3 unless he or she is specifically authorized under sub. (3) by the individual or health
4 care agent to do so, disclose the individual's HIV test results except to the following
5 persons or under the following circumstances:

6 **SECTION 75.** 252.15 (5) (a) 1. of the statutes is amended to read:

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

10 **SECTION 76.** 252.15 (5) (a) 2. of the statutes is amended to read:

11 252.15 (5) (a) 2. To a health care provider who provides care to the subject of
12 the HIV test subject, including those instances in which a health care provider
13 provides emergency care to the subject.

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

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

17 **SECTION 78.** 252.15 (5) (a) 4. a. of the statutes is amended to read:

18 252.15 (5) (a) 4. a. Determining the medical acceptability of blood or plasma
19 secured from the HIV test subject.

20 **SECTION 79.** 252.15 (5) (a) 4. b. of the statutes is amended to read:

21 252.15 (5) (a) 4. b. Notifying the test subject of the HIV test of the test results.

22 **SECTION 80.** 252.15 (5) (a) 10. (intro.) of the statutes is amended to read:

23 252.15 (5) (a) 10. (intro.) ~~To~~ Except as provided in par. (b), to a person who
24 conducts research, for the purpose of research, if the researcher:

25 **SECTION 81.** 252.15 (5) (a) 10. c. of the statutes is amended to read:

ASSEMBLY BILL 969

1 252.15 (5) (a) 10. c. Provides written assurance to the person disclosing the HIV
2 test results that use of the information requested is only for the purpose under which
3 it is provided to the researcher, the information will not be released to a person not
4 connected with the study, and the final research product will not reveal information
5 that may identify the test subject unless the researcher has first received informed
6 consent for disclosure from the test subject.

7 **SECTION 82.** 252.15 (5) (a) 13. of the statutes is amended to read:

8 252.15 (5) (a) 13. To a sheriff, jailer or keeper of a prison, jail, or house of
9 correction or a person designated with custodial authority by the sheriff, jailer, or
10 keeper, for whom disclosure is necessitated in order to permit the assigning of a
11 private cell to a prisoner who has a positive HIV test result.

12 **SECTION 83.** 252.15 (5) (a) 14. of the statutes is amended to read:

13 252.15 (5) (a) 14. If the test results of ~~a~~ an HIV test administered to an
14 individual are positive and the individual is deceased, by the individual's attending
15 physician or advanced practice nurse prescriber, to persons, if known to the
16 physician or advanced practice nurse prescriber, with whom the individual has had
17 sexual contact or has shared intravenous drug use paraphernalia.

18 **SECTION 84.** 252.15 (5) (a) 15. of the statutes is amended to read:

19 252.15 (5) (a) 15. To anyone who provides consent for the HIV testing under
20 sub. (2) (a) 4. b., except that disclosure may be made under this subdivision only
21 during a period in which the HIV test subject is adjudicated incompetent in this
22 state, is under 14 years of age, or is unable to communicate due to a medical
23 condition.

24 **SECTION 85.** 252.15 (5) (a) 19. of the statutes is amended to read:

ASSEMBLY BILL 969

1 252.15 (5) (a) 19. If the HIV test was administered to a child who has been
2 placed in a foster home, treatment foster home, group home, residential care center
3 for children and youth, or juvenile correctional facility, as defined in s. 938.02 (10p),
4 including a placement under s. 48.205, 48.21, 938.205, or 938.21, or for whom
5 placement in a foster home, treatment foster home, group home, residential care
6 center for children and youth, or juvenile correctional facility is recommended under
7 s. 48.33 (4), 48.425 (1) (g), 48.837 (4) (c), or 938.33 (3) or (4), to an agency directed by
8 a court to prepare a court report under s. 48.33 (1), 48.424 (4) (b), 48.425 (3), 48.831
9 (2), 48.837 (4) (c), or 938.33 (1), to an agency responsible for preparing a court report
10 under s. 48.365 (2g), 48.425 (1), 48.831 (2), 48.837 (4) (c), or 938.365 (2g), to an agency
11 responsible for preparing a permanency plan under s. 48.355 (2e), 48.38, 48.43 (1)
12 (c) or (5) (c), 48.63 (4) or (5) (c), 48.831 (4) (e), 938.355 (2e), or 938.38 regarding the
13 child, or to an agency that placed the child or arranged for the placement of the child
14 in any of those placements and, by any of those agencies, to any other of those
15 agencies and, by the agency that placed the child or arranged for the placement of
16 the child in any of those placements, to the child's foster parent or treatment foster
17 parent or the operator of the group home, residential care center for children and
18 youth, or juvenile correctional facility in which the child is placed, as provided in s.
19 48.371 or 938.371.

20 **SECTION 86.** 252.15 (5) (a) 20. of the statutes is amended to read:

21 252.15 (5) (a) 20. To a prisoner's health care provider, the medical staff of a
22 prison or jail in which a prisoner is confined, the receiving institution intake staff at
23 a prison or jail to which a prisoner is being transferred, or a person designated by a
24 jailer to maintain prisoner medical records, if the disclosure is made with respect to
25 the prisoner's patient health care records under s. 302.388, to the medical staff of a

ASSEMBLY BILL 969**SECTION 86**

1 jail to whom the HIV test results are disclosed under s. 302.388 (2) (c) or (d), to the
2 medical staff of a jail to which a prisoner is being transferred, if the test results are
3 provided to the medical staff by the department of corrections as part of the prisoner's
4 medical file, to a health care provider to whom the test results are disclosed under
5 s. 302.388 (2) (c) or (f), or to the department of corrections if the disclosure is made
6 with respect to a prisoner's patient health care records under s. 302.388 (4).

7 **SECTION 87.** 252.15 (5) (a) 21. of the statutes is created to read:

8 252.15 (5) (a) 21. To a local health officer, as specified under sub. (7m) (b) or s.
9 252.03, 252.05, 252.06, 252.12, or 252.21 (1).

10 **SECTION 88.** 252.15 (5) (b) of the statutes is amended to read:

11 252.15 (5) (b) A private pay patient may deny access to disclosure of his or her
12 HIV test results granted under par. (a) 10. if he or she annually submits to the
13 maintainer of his or her HIV test results under sub. (4) (c) a signed, written request
14 that denial be made.

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

16 252.15 (5m) AUTOPSIES; HIV TESTING OF CERTAIN CORPSES. (intro.)
17 Notwithstanding s. 157.05, a corpse may be subjected to ~~a~~ an HIV test ~~for the~~
18 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and~~
19 ~~the test results disclosed to the~~ a person who has been significantly exposed under
20 any of the following conditions:

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

22 252.15 (5m) (a) If a person, including a person exempted from civil liability
23 under the conditions specified under s. 895.48, 895.4802, or 895.4803, who renders
24 to the victim of an emergency or accident emergency care during the course of which
25 the emergency caregiver is significantly exposed to the emergency or accident victim

ASSEMBLY BILL 969

1 and the emergency or accident victim subsequently dies prior to testing for the
2 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV;
3 performance of an HIV test on the victim; if a physician or advanced practice nurse
4 prescriber, based on information provided to the physician or advanced practice
5 nurse prescriber, determines and certifies in writing that the emergency caregiver
6 has been significantly exposed; and if the certification accompanies the request for
7 testing performance of an HIV test and disclosure. ~~Testing of a corpse under this~~
8 ~~paragraph shall be ordered by the~~ The coroner, medical examiner, or physician who
9 certifies the victim's cause of death under s. 69.18 (2) (b), (c), or (d) shall order
10 performance of an HIV test of the corpse.

11 **SECTION 91.** 252.15 (5m) (b) of the statutes is amended to read:

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

23 **SECTION 92.** 252.15 (5m) (c) of the statutes is amended to read:

24 252.15 (5m) (c) If a health care provider or an agent or employee of a health
25 care provider is significantly exposed to the corpse or to a patient who dies

ASSEMBLY BILL 969

1 subsequent to the exposure and prior to testing for the presence of HIV, antigen or
2 nonantigenic products of HIV, or an antibody to HIV performance of an HIV test; if
3 a physician or advanced practice nurse prescriber who is not the health care provider,
4 based on information provided to the physician or advanced practice nurse
5 prescriber, determines and certifies in writing that the health care provider, agent
6 or employee has been significantly exposed; and if the certification accompanies the
7 request for testing and disclosure. ~~Testing of a corpse under this paragraph shall be~~
8 ~~ordered by the~~ The physician or advanced practice nurse prescriber who certifies
9 that the significant exposure has occurred shall order performance of an HIV test of
10 the corpse.

11 **SECTION 93.** 252.15 (6) of the statutes is amended to read:

12 252.15 (6) EXPANDED DISCLOSURE OF HIV TEST RESULTS PROHIBITED. No person
13 to whom the results of a an HIV test for the presence of HIV, antigen or nonantigenic
14 ~~products of HIV or an antibody to HIV~~ have been disclosed under sub. (5) (a) or (5m)
15 may disclose the test results except as authorized under sub. (5) (a) or (5m).

16 **SECTION 94.** 252.15 (7) (title) of the statutes is amended to read:

17 252.15 (7) (title) REPORTING OF POSITIVE HIV TEST RESULTS.

18 **SECTION 95.** 252.15 (7) (a) of the statutes is amended to read:

19 252.15 (7) (a) Notwithstanding ss. 227.01 (13) and 227.10 (1), for the purposes
20 of this subsection, the state epidemiologist shall determine, based on the
21 preponderance of available scientific evidence, the procedures necessary in this state
22 to obtain a validated HIV test result and the secretary shall so declare under s.
23 250.04 (1) or (2) (a). The state epidemiologist shall revise this determination if, in
24 his or her opinion, changed available scientific evidence warrants a revision, and the
25 secretary shall declare the revision under s. 250.04 (1) or (2) (a).

ASSEMBLY BILL 969

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

2 252.15 (7) (b) (intro.) If a positive, validated HIV test result is obtained from
3 a test subject, the health care provider, blood bank, blood center or plasma center
4 that maintains a record of the test results result under sub. (4) (c) shall report to the
5 state epidemiologist the following information:

6 **SECTION 97.** 252.15 (7) (b) 3. of the statutes is amended to read:

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

9 **SECTION 98.** 252.15 (7) (b) 4. of the statutes is amended to read:

10 252.15 (7) (b) 4. The date on which the HIV test was performed.

11 **SECTION 99.** 252.15 (7) (b) 5. of the statutes is amended to read:

12 252.15 (7) (b) 5. The HIV test result.

13 **SECTION 100.** 252.15 (7) (b) 5m. of the statutes is created to read:

14 252.15 (7) (b) 5m. The mode of transmission to the test subject of HIV.

15 **SECTION 101.** 252.15 (7) (c) 1. of the statutes is amended to read:

16 252.15 (7) (c) 1. Information with respect to the sexual orientation of the HIV
17 test subject.

18 **SECTION 102.** 252.15 (7) (c) 2. of the statutes is amended to read:

19 252.15 (7) (c) 2. The identity of persons with whom the HIV test subject may
20 have had sexual contact.

21 **SECTION 103.** 252.15 (7m) of the statutes is renumbered 252.15 (7m) (ag) and
22 amended to read:

23 252.15 (7m) (ag) ~~REPORTING OF PERSONS~~ PERSONS SIGNIFICANTLY EXPOSED;
24 REPORTING; INFORMING. (intro.) If a positive, validated HIV test result is obtained from
25 ~~a~~ an HIV test subject, the test subject's physician or advanced practice nurse

ASSEMBLY BILL 969

1 prescriber who maintains a record of the test result under sub. (4) (c) may report to
2 the state epidemiologist the name of any person known to the physician or advanced
3 ~~practice nurse prescriber~~ likely to have been significantly exposed to the test subject,
4 only after the physician or advanced practice nurse prescriber has done all of the
5 following:

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

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

13 **SECTION 104.** 252.15 (7m) (bg) of the statutes is created to read:

14 252.15 (7m) (bg) A local health officer who, under s. 252.03, 252.05, 252.06,
15 252.12, or 252.21 (1), or as a designee of the state epidemiologist under par. (ag) 2.,
16 has received information that a positive, validated HIV test result has been obtained
17 from a test subject and that a person is likely to have been significantly exposed to
18 the test subject or is likely to have been so exposed, may, notwithstanding subs. (3)
19 and (5) (a) (intro.), notify that person that a positive, validated test result has been
20 obtained from the test subject.

21 **SECTION 105.** 252.15 (8) (a) of the statutes is amended to read:

22 252.15 (8) (a) Any person violating sub. (2), (5) (a), (5m), (6) or (7) (c) is liable
23 to the subject of the HIV test for actual damages, costs and reasonable actual
24 attorney fees, plus exemplary damages of up to \$1,000 \$2,000 for a negligent
25 violation and up to \$25,000 \$50,000 for an intentional violation.

ASSEMBLY BILL 969

1 **SECTION 106.** 252.15 (9) of the statutes is amended to read:

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

13 **SECTION 107.** 631.90 (1) of the statutes is amended to read:

14 631.90 (1) In this section, “HIV test” ~~means any strain of human~~
15 ~~immunodeficiency virus, which causes acquired immunodeficiency syndrome~~ has
16 the meaning given in s. 252.01 (2m).

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

18 631.90 (2) (a) Require or request directly or indirectly any individual to reveal
19 whether the individual has obtained ~~a~~ an HIV test for the presence of HIV, antigen
20 ~~or nonantigenic products of HIV or an antibody to HIV~~ or what the results of this test,
21 if obtained by the individual, were.

22 **SECTION 109.** 631.90 (2) (b) of the statutes is amended to read:

23 631.90 (2) (b) Condition the provision of insurance coverage on whether an
24 individual has obtained ~~a~~ an HIV test for the presence of HIV, antigen or

ASSEMBLY BILL 969

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

3 **SECTION 110.** 631.90 (2) (c) of the statutes is amended to read:

4 631.90 (2) (c) Consider in the determination of rates or any other aspect of
5 insurance coverage provided to an individual whether an individual has obtained
6 ~~a an HIV test for the presence of HIV, antigen or nonantigenic products of HIV or~~
7 ~~an antibody to HIV or what the results of this test, if obtained by the individual, were.~~

8 **SECTION 111.** 631.90 (3) (a) of the statutes is amended to read:

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

17 **SECTION 112.** 631.90 (3) (b) of the statutes is amended to read:

18 631.90 (3) (b) Paragraph (a) does not authorize the use of any an HIV test or
19 ~~series of tests for the presence of HIV, antigen or nonantigenic products of HIV or an~~
20 ~~antibody to HIV to discriminate in violation of s. 628.34 (3).~~

21 **SECTION 113.** 901.05 (2) (intro.) of the statutes is amended to read:

22 901.05 (2) (intro.) Except as provided in sub. (3), the results of ~~a test or tests~~
23 ~~for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to~~
24 ~~HIV~~ an HIV test, as defined in s. 252.01 (2m), are not admissible during the course
25 of a civil or criminal action or proceeding or an administrative proceeding, as

ASSEMBLY BILL 969

1 evidence of a person's character or a trait of his or her character for the purpose of
2 proving that he or she acted in conformity with that character on a particular
3 occasion unless the evidence is admissible under s. 904.04 (1) or 904.05 (2) and unless
4 the following procedures are used:

5 **SECTION 114.** 938.296 (1) (bm) of the statutes is created to read:

6 938.296 (1) (bm) "HIV test" has the meaning given in s. 252.01 (2m).

7 **SECTION 115.** 938.296 (2) (intro.) of the statutes is amended to read:

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

18 **SECTION 116.** 938.296 (4) (intro.) of the statutes is amended to read:

19 938.296 (4) DISCLOSURE OF SEXUALLY TRANSMITTED DISEASE AND HIV TEST
20 RESULTS. (intro.) On receipt of an application for an order under sub. (2), the court
21 shall set a time for a hearing on the application. If the juvenile has been found not
22 competent to proceed under s. 938.30 (5), the court may hold a hearing under this
23 subsection only if the court first determines that the probable cause finding can be
24 fairly made without the personal participation of the juvenile. If, after hearing, the
25 court finds probable cause to believe that the juvenile has significantly exposed the

ASSEMBLY BILL 969

1 victim or alleged victim, the court shall order the juvenile to submit to ~~a~~ an HIV test
2 ~~or and a test or series of tests administered by a health care professional~~ to detect
3 the presence of HIV, ~~antigen or nonantigenic products of HIV, an antibody to HIV or~~
4 a sexually transmitted disease. The tests shall be administered by a health care
5 professional. The court shall require the health care professional who performs the
6 ~~test or series of tests to refrain, notwithstanding s. 252.15 (4) (c),~~ from making the
7 test results part of the juvenile's permanent medical record and, notwithstanding s.
8 252.15 (3) and (5) (a) (intro.), to disclose the results of the test tests to any of the
9 following:

10 **SECTION 117.** 938.296 (5) (intro.) of the statutes is amended to read:

11 938.296 (5) DISCLOSURE OF COMMUNICABLE DISEASE TEST RESULTS. (intro.) On
12 receipt of an application for an order under sub. (2m), the court shall set a time for
13 a hearing on the application. If the juvenile has been found not competent to proceed
14 under s. 938.30 (5), the court may hold a hearing under this subsection only if the
15 court first determines that the probable cause finding can be fairly made without the
16 personal participation of the juvenile. If, after hearing, the court finds probable
17 cause to believe that the act or alleged act of the juvenile that constitutes a violation
18 of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the
19 victim or alleged victim and involved the juvenile's blood, semen, vomit, saliva, urine
20 or feces or other bodily substance of the juvenile, the court shall order the juvenile
21 to submit to a test or a series of tests administered by a health care professional to
22 detect the presence of any communicable disease that was potentially transmitted
23 by the act or alleged act of the juvenile. The court shall require the health care
24 professional who performs the test or series of tests to refrain, ~~notwithstanding s.~~
25 ~~252.15 (4) (c), if applicable,~~ from making the test results part of the juvenile's

ASSEMBLY BILL 969

1 permanent medical record and, notwithstanding s. 252.15 (3) and (5) (a) (intro.), to
2 disclose the results of the test to any of the following:

3 **SECTION 118.** 938.346 (1) (e) of the statutes is amended to read:

4 938.346 (1) (e) The procedure under s. 938.296 under which the victim, if an
5 adult, or the parent, guardian or legal custodian of the victim, if the victim is a child,
6 may request an order requiring a juvenile who is alleged to have violated s. 940.225,
7 948.02, 948.025, 948.05, 948.06, or 948.085 (2) to submit to ~~a~~ an HIV test or, as
8 defined in s. 252.01 (2m), and a test or a series of tests to detect the presence of HIV,
9 as defined in s. 252.01 (1m), antigen or nonantigenic products of HIV, an antibody
10 to HIV or a sexually transmitted disease, as defined in s. 252.11 (1), and to have the
11 results of that test or series of the tests disclosed as provided in s. 938.296 (4) (a) to
12 (e).

13 **SECTION 119.** 938.371 (1) (a) of the statutes is amended to read:

14 938.371 (1) (a) ~~Results~~ Notwithstanding s. 252.15 (3) and (5) (a) (intro.), results
15 of ~~a~~ an HIV test or a series of tests, as defined in s. 252.01 (2m), of the juvenile to
16 ~~determine the presence of HIV, as defined in s. 968.38 (1) (b), antigen or nonantigenic~~
17 ~~products of HIV, or an antibody to HIV~~, under s. 252.15 (5) (a) 19., including results
18 included in a court report or permanency plan. At the time that the HIV test results
19 are provided, the agency shall notify the foster parent, treatment foster parent,
20 relative, or operator of the group home, residential care center for children and
21 youth, or juvenile correctional facility of the confidentiality requirements under s.
22 252.15 (6).

23 **SECTION 120.** 968.38 (1) (bc) of the statutes is created to read:

24 968.38 (1) (bc) "HIV test" has the meaning given in s. 252.01 (2m).

25 **SECTION 121.** 968.38 (2) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 969

1 968.38 (2) (intro.) In a criminal action under s. 940.225, 948.02, 948.025,
2 948.05, 948.06, 948.085, or 948.095, if all of the following apply, the district attorney
3 shall apply to the circuit court for his or her county to order the defendant to submit
4 to ~~a~~ an HIV test or and to a test or a series of tests administered by a health care
5 professional to detect the presence of HIV, ~~antigen or nonantigenic products of HIV,~~
6 ~~an antibody to HIV or a sexually transmitted disease, each of which tests shall be~~
7 administered by a health care professional, and, notwithstanding s. 252.15 (3) (a),
8 to disclose the results of the test or tests as specified in sub. (4) (a) to (c):

9 **SECTION 122.** 968.38 (4) (intro.) of the statutes is amended to read:

10 968.38 (4) (intro.) The court shall set a time for a hearing on the matter under
11 sub. (2) during the preliminary examination, if sub. (3) (a) applies; after the
12 defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b)
13 applies; after conviction or a finding of not guilty by reason of mental disease or
14 defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that
15 the defendant is not competent, if sub. (3) (d) applies. The court shall give the district
16 attorney and the defendant notice of the hearing at least 72 hours prior to the
17 hearing. The defendant may have counsel at the hearing, and counsel may examine
18 and cross-examine witnesses. If the court finds probable cause to believe that the
19 defendant has significantly exposed the victim or alleged victim, the court shall order
20 the defendant to submit to ~~a~~ an HIV test and to a test or a series of tests administered
21 by a health care professional to detect the presence of HIV, ~~antigen or nonantigenic~~
22 ~~products of HIV, an antibody to HIV or a sexually transmitted disease. The tests~~
23 shall be performed by a health care professional. The court shall require the health
24 care professional who performs the test to disclose the test results to the defendant.
25 ~~The court shall require the health care professional who performs the test, to refrain,~~

ASSEMBLY BILL 969

1 ~~notwithstanding s. 252.15 (4) (e)~~, from making the test results part of the defendant's
2 permanent medical record, and, notwithstanding s. 252.15 (3) (a) and (5) (a) (intro.),
3 to disclose the results of the test to any of the following:

4 **SECTION 123.** 968.38 (5) (intro.) of the statutes is amended to read:

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

