



2009 ASSEMBLY BILL 750

February 15, 2010 – Introduced by Representatives TOLES, KESSLER and STASKUNAS.
Referred to Committee on Corrections and the Courts.

1 **AN ACT** *to amend* 146.81 (4), 252.11 (5m), 252.11 (7) and 252.15 (2) (a) 6.; and
2 *to create* 301.133 and 901.05 (4) of the statutes; **relating to:** mandatory
3 testing of prison inmates upon release for HIV or sexually transmitted diseases.

Analysis by the Legislative Reference Bureau

Under current law, a court may order a person to undergo testing to detect the presence of human immunodeficiency virus (HIV) and sexually transmitted diseases if the person is: 1) an adult charged with or convicted of sexual assault, sexual assault or sexual exploitation of a child, incest with a child, or, if the person works at a school, sexual assault of a student; or 2) a child alleged to have committed sexual assault, sexual assault or sexual exploitation of a child, or incest with a child. Current law also permits a court to order a person who is confined in a state prison or any other state, county, or municipal detention facility to be tested for the presence of communicable diseases if he or she assaults another prisoner or detainee or an officer, employee, or visitor at that facility by throwing or expelling blood, semen, vomit, saliva, urine, feces, or any other bodily substance at or toward the other person.

Under this bill, a person who is confined in a state prison will be required to be tested for the presence of HIV and sexually transmitted diseases before being released. If the person has reached the end of his or her sentence, the Department of Corrections (DOC) will provide one mandatory test and the results before releasing him or her and then will offer one test between six and seven months after his or her release. If the person is being released to extended supervision or parole,

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DOC will provide two tests. Each individual will be tested the first time and the results will be provided before being released to extended supervision or on parole. Then, as a condition of extended supervision or parole, the individual will be tested again generally between six and seven months after release from prison. The results of any test will be provided only to the person being released and to his or her spouse. DOC will also offer counseling and education to the individual who was tested or to his or her spouse.

For further information see the *state* 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.** 146.81 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is
2 amended to read:

3 146.81 (4) “Patient health care records” means all records related to the health
4 of a patient prepared by or under the supervision of a health care provider; and all
5 records made by an ambulance service provider, as defined in s. 256.01 (3), an
6 emergency medical technician, as defined in s. 256.01 (5), or a first responder, as
7 defined in s. 256.01 (9), in administering emergency care procedures to and handling
8 and transporting sick, disabled, or injured individuals. “Patient health care records”
9 includes billing statements and invoices for treatment or services provided by a
10 health care provider and includes health summary forms prepared under s. 302.388
11 (2). “Patient health care records” does not include those records subject to s. 51.30,
12 reports collected under s. 69.186, records of tests administered under s. 252.15 (2)
13 (a) 7., 301.133 (2), 343.305, 938.296 (4) or (5), or 968.38 (4) or (5), records related to
14 sales of pseudoephedrine products, as defined in s. 961.01 (20c), that are maintained
15 by pharmacies under s. 961.235, fetal monitor tracings, as defined under s. 146.817
16 (1), or a pupil’s physical health records maintained by a school under s. 118.125.

17 **SECTION 2.** 252.11 (5m) of the statutes is amended to read:

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1 252.11 (5m) A health care professional, as defined in s. 968.38 (1) (a), acting
2 under an order of a court under s. 938.296 (4) or (5) or 968.38 (4) or (5) or under the
3 direction of the department of corrections under s. 301.133 (2), may, without first
4 obtaining informed consent to the testing, subject an individual to a test or a series
5 of tests to ascertain whether that individual is infected with a sexually transmitted
6 disease. No sample used for performance of a test under this subsection may disclose
7 the name of the test subject.

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

9 252.11 (7) Reports, examinations and inspections and all records concerning
10 sexually transmitted diseases are confidential and not open to public inspection, and
11 may not be divulged except as may be necessary for the preservation of the public
12 health, in the course of commitment proceedings under sub. (5), or as provided under
13 s. 301.133 (4), 938.296 (4) or (5), or 968.38 (4) or (5). If a physician or advanced
14 practice nurse prescriber has reported a case of sexually transmitted disease to the
15 department under sub. (4), information regarding the presence of the disease and
16 treatment is not privileged when the patient, physician, or advanced practice nurse
17 prescriber is called upon to testify to the facts before any court of record.

18 **SECTION 4.** 252.15 (2) (a) 6. of the statutes is amended to read:

19 252.15 (2) (a) 6. A health care professional acting under an order of the court
20 under subd. 7. or s. 938.296 (4) or (5) or 968.38 (4) or (5) or under the direction of the
21 department of corrections under s. 301.133 (2), may, without first obtaining consent
22 to the testing, subject an individual to a test or a series of tests to detect the presence
23 of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV. No sample
24 used for laboratory test purposes under this subdivision may disclose the name of the

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1 test subject, and, notwithstanding sub. (4) (c), the test results may not be made part
2 of the individual's permanent medical record.

3 **SECTION 5.** 301.133 of the statutes is created to read:

4 **301.133 Testing for HIV infection and certain diseases in persons**
5 **under department supervision. (1)** In this section:

6 (a) "Health care professional" has the meaning given in s. 968.38 (1) (a).

7 (b) "HIV" means any strain of human immunodeficiency virus.

8 (c) "Sexually transmitted disease" has the meaning given in s. 252.11 (1).

9 **(2)** The department shall require a person being released from prison to
10 extended supervision or parole or being released from prison upon the completion of
11 his or her sentence to submit to testing, as described under sub. (3), to be
12 administered by a health care professional to detect the presence of HIV, antigen or
13 nonantigenic products of HIV, or an antibody to HIV or a sexually transmitted
14 disease. If the person is being released to extended supervision or parole, any test
15 scheduled under sub. (3) (a) during the period of extended supervision or parole shall
16 be a condition of extended supervision or parole, whichever is appropriate.

17 **(3)** The department shall provide the tests under sub. (2) at the following times:

18 (a) If the person is being released from prison to extended supervision or parole,
19 he or she shall be subject to 2 tests. The first test shall be administered as close to
20 the time of release as possible and still have the results before the person is released
21 to extended supervision or parole. The 2nd test shall be administered at one of the
22 following times:

23 1. No earlier than 180 days and no later than 210 days after the person is
24 released from prison.

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1 2. No earlier than 30 days before the end of the person's sentence if the person
2 is scheduled to complete his or her sentence within 210 days after his or her release.

3 (b) If the person is being released from prison upon the completion of his or her
4 sentence, he or she shall be subject to one test and shall have the option of a 2nd test.
5 The first test shall be administered as close to the time of release as possible and still
6 have the results before the person is released, and the 2nd test, if the person opts to
7 have it, shall be administered no earlier than 180 days and no later than 210 days
8 after the person is released.

9 (4) The health care professional who performs any test under sub. (2) shall
10 disclose the results to the person, to the person's spouse, and, notwithstanding s.
11 252.11 or 252.15, to no other person.

12 (5) The department shall provide a counseling and education program to any
13 person who undergoes a test under sub. (2), or to a spouse of a person who undergoes
14 a test under sub. (2). The department shall inform such person or spouse about the
15 option to participate. The counseling and education program shall include
16 information about the transmission of sexually transmitted diseases and HIV and
17 how to reduce the risks of transmitting sexually transmitted diseases and HIV.

18 **SECTION 6.** 901.05 (4) of the statutes is created to read:

19 901.05 (4) The results of a test under s. 301.133 (2) and the fact that a person
20 had to submit to such a test under s. 301.133 (2) are not admissible during the course
21 of a civil or criminal action or proceeding or an administrative proceeding.

22 **SECTION 7. Initial applicability.**

23 (1) This act first applies to persons released from prison on the effective date
24 of this subsection.

25 **SECTION 8. Effective date.**

