

1 AN ACT concerning public health.

2 WHEREAS, The majority of children who are infected with  
3 human immunodeficiency virus (HIV) acquire the virus from their  
4 mothers during pregnancy; and

5 WHEREAS, More than one million Americans are infected with  
6 HIV, and 40,000 new cases of HIV occur each year; and

7 WHEREAS, More than one-quarter of persons with HIV do not  
8 know they are infected and contribute to up to 70% of new cases  
9 of HIV each year; and

10 WHEREAS, Pregnant women, particularly women of color, are  
11 at high risk for acquiring HIV, but often do not know they  
12 carry the risk of transmitting the virus to their newborns; and

13 WHEREAS, More than 99% of mother-to-newborn transmissions  
14 of HIV can be prevented if a pregnant woman is tested for HIV  
15 and treated with medications before the birth of her child; and

16 WHEREAS, National recommendations for preventing  
17 mother-to-newborn HIV infection from authorities, including  
18 the Institute of Medicine, the Centers for Disease Control and  
19 Prevention, the American College of Obstetricians and  
20 Gynecologists, the American Academy of Pediatrics, the  
21 Presidential Advisory Council on HIV/AIDS, and the National

1 Congress of Black Women, indicate that the most effective way  
2 to prevent mother-to-newborn HIV transmission is through  
3 routine prenatal testing of all pregnant women with the right  
4 to refuse; and

5 WHEREAS, Nearly 300 babies have been born with HIV in  
6 Illinois since 1994 since it was demonstrated that prenatal HIV  
7 testing and treatment can prevent mother-to-newborn HIV  
8 infection; and

9 WHEREAS, The earlier in a pregnancy a woman is identified  
10 as having HIV, the greater the opportunity to provide her with  
11 more effective care for herself and prevent transmission of HIV  
12 to her newborn; therefore

13 **Be it enacted by the People of the State of Illinois,**  
14 **represented in the General Assembly:**

15 Section 5. The Perinatal HIV Prevention Act is amended by  
16 changing Sections 10 and 15 as follows:

17 (410 ILCS 335/10)

18 Sec. 10. HIV counseling and offer of HIV testing required.

19 (a) Every health care professional who provides health care  
20 services to a pregnant woman shall provide the woman with HIV  
21 counseling and recommend HIV testing, unless she declines in

1 writing or she has already received an HIV test during  
2 pregnancy. ~~HIV testing shall be provided with the woman's~~  
3 ~~consent.~~ A health care professional shall provide the  
4 counseling and provide ~~recommend~~ the testing as early in the  
5 woman's pregnancy as possible. For women at continued risk of  
6 exposure to HIV infection in the judgment of the health care  
7 professional, a repeat test should be recommended late in  
8 pregnancy or at the time of labor and delivery. The health care  
9 professional shall inform the pregnant woman that, should she  
10 refuse HIV testing during pregnancy, her newborn infant will be  
11 tested for HIV. The counseling, offer of testing, and whether  
12 the woman accepted or declined testing ~~recommendation of~~  
13 ~~testing~~ shall be documented in the woman's medical record.

14 (b) Every health care professional or facility that cares  
15 for a pregnant woman during labor or delivery shall provide the  
16 woman with HIV counseling and ~~recommend~~ HIV testing unless she  
17 refuses in writing. ~~HIV testing shall be provided with the~~  
18 ~~woman's consent.~~ No counseling or ~~offer of~~ testing is required  
19 if already provided during the woman's pregnancy. The  
20 counseling, whether the woman accepted or declined testing, and  
21 offer of testing shall be documented in the woman's medical  
22 record. The health care facility shall adopt a policy that  
23 provides that as soon as possible within medical standards  
24 after the infant's birth, the mother's HIV test result, if  
25 available, shall be noted in the newborn infant's medical  
26 record. It shall also be noted in the newborn infant's medical

1 record if the mother's HIV test result is not available because  
2 she has not been tested or has declined testing. Any testing or  
3 test results shall be documented in accordance with the AIDS  
4 Confidentiality Act.

5 (c) Every health care professional or facility caring for a  
6 newborn infant shall, upon delivery or as soon as possible  
7 within medical standards after the infant's birth, provide  
8 counseling to the parent or guardian of the infant and perform  
9 rapid HIV testing on the infant, when the HIV status of the  
10 infant's mother is unknown.

11 (d) The counseling required under this Section must be  
12 provided in accordance with the AIDS Confidentiality Act and  
13 must include the following:

14 (1) For the health of the pregnant woman, the  
15 requirement that HIV testing be performed unless it is  
16 declined in writing.

17 (2) A woman's right to decline testing and how to do so  
18 and the voluntary nature of the testing and the benefits of  
19 HIV testing, including the prevention of transmission.

20 (3) ~~(2)~~ The benefit of HIV testing for the newborn  
21 infant, including interventions to prevent HIV  
22 transmission.

23 (4) ~~(3)~~ The side effects of interventions to prevent  
24 HIV transmission.

25 (5) ~~(4)~~ The statutory confidentiality provisions that  
26 relate to HIV and acquired immune deficiency syndrome

1 ("AIDS") testing.

2 (e) Notwithstanding any other provision of law, including,  
3 but not limited to the AIDS Confidentiality Act, consent for  
4 HIV testing of a pregnant woman is established when:

5 (1) the pregnant woman signs a general consent for  
6 prenatal or medical care that includes:

7 (A) specific information regarding HIV testing;

8 and

9 (B) the option to decline such testing in writing;

10 and

11 (2) the counseling as set forth in subsection (d) of  
12 this Section and the AIDS Confidentiality Act has been  
13 provided; and

14 (3) the pregnant woman has not declined the testing in  
15 writing.

16 ~~All counseling and testing must be performed in accordance with~~  
17 ~~the standards set forth in the AIDS Confidentiality Act,~~  
18 ~~including the written informed consent provisions of Sections~~  
19 ~~4, 7, and 8 of that Act, with the exception of the requirement~~  
20 ~~of consent for testing of newborn infants.~~

21 Consent for testing of a newborn infant shall be presumed  
22 when a health care professional or health care facility seeks  
23 to perform a test on a newborn infant whose mother's HIV status  
24 is not known, provided that the counseling required under  
25 subsection (d) of this Section and the AIDS Confidentiality Act  
26 has taken place.

1 (f) The Illinois Department of Public Health shall adopt  
2 necessary rules to implement this Act.

3 (Source: P.A. 93-566, eff. 8-20-03; 94-910, eff. 6-23-06.)

4 (410 ILCS 335/15)

5 Sec. 15. Reporting.

6 (a) A health care facility shall adopt a policy that  
7 provides that a report of a preliminarily HIV-positive woman  
8 and a report of a preliminarily HIV-exposed newborn infant  
9 identified by a rapid HIV test conducted during labor and  
10 delivery or after delivery shall be made to the Department's  
11 Perinatal HIV Hotline within 24 hours after birth. Section 15  
12 of the AIDS Confidentiality Act applies to reporting under this  
13 Act, except that the immunities set forth in that Section do  
14 not apply in cases of willful or wanton misconduct.

15 (b) The Department shall adopt rules specifying the  
16 information required in reporting the preliminarily  
17 HIV-positive woman and preliminarily HIV-exposed newborn  
18 infant and the method of reporting. In adopting the rules, the  
19 Department shall consider the need for information,  
20 protections for the privacy and confidentiality of the infant  
21 and parents, the need to provide access to care and follow-up  
22 services to the infant, and procedures for destruction of  
23 records maintained by the Department if, through subsequent HIV  
24 testing, the woman or newborn infant is found to be  
25 HIV-negative.

1 (c) The confidentiality provisions of the AIDS  
2 Confidentiality Act shall apply to the reports of cases of  
3 perinatal HIV made pursuant to this Section.

4 (d) Health care facilities shall monthly report aggregate  
5 statistics to the Department that include the number of  
6 infected women who presented with known HIV status, the number  
7 of pregnant women rapidly tested for HIV in labor and delivery,  
8 the number of newborn infants rapidly tested for HIV-exposure,  
9 the number of preliminarily HIV-positive pregnant women and  
10 preliminarily HIV-exposed newborn infants identified, the  
11 number of families referred to case management, and other  
12 information the Department determines is necessary to measure  
13 progress under the provisions of this Act. Health care  
14 facilities must report the confirmatory test result when it  
15 becomes available for each preliminarily positive rapid HIV  
16 test performed on the woman and newborn.

17 (e) The Department or its authorized representative shall  
18 provide case management services to the preliminarily positive  
19 pregnant woman or the parent or guardian of the preliminarily  
20 positive newborn infant to ensure access to treatment and care  
21 and other services as appropriate if the parent or guardian has  
22 consented to the services.

23 (f) Every health care facility caring for a newborn infant  
24 whose mother had been diagnosed HIV positive prior to labor and  
25 delivery shall report a case of perinatal HIV exposure in  
26 accordance with the HIV/AIDS Registry Act, the Illinois

1 Sexually Transmissible Disease Control Act, and rules to be  
2 developed by the Department. If after 18 months from the date  
3 that the report was submitted, a newborn infant is determined  
4 to not have HIV or AIDS, the Department shall remove the  
5 newborn infant's name from all reports, records, and files  
6 collected or created under this subsection (f).

7 (Source: P.A. 94-910, eff. 6-23-06.)