

AN ACT concerning HIV testing.

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

Section 5. The Children and Family Services Act is amended by changing Section 22.3 as follows:

(20 ILCS 505/22.3) (from Ch. 23, par. 5022.3)

Sec. 22.3. To provide human immunodeficiency virus (HIV) testing for any child in the custody of the Department being placed in adoptive care, upon the request of the child's prospective adoptive parent. Such testing test shall consist of a test approved by the Illinois Department of Public Health to determine the presence of HIV infection, based upon the recommendations of the United States Centers for Disease Control and Prevention ~~an enzyme linked immunosorbent assay (ELISA) test to determine the presence of antibodies to HIV, or such other test as may be approved by the Illinois Department of Public Health;~~ in the event of a positive result, a the Western Blot Assay or a more reliable supplemental confirmatory test based upon recommendations of the United States Centers for Disease Control and Prevention shall also be administered. The prospective adoptive parent requesting the test shall be confidentially notified of the test result, and if the test is positive, the Department shall provide the prospective

adoptive parents and child with treatment and counseling, as appropriate. The Department shall report positive HIV test results to the Illinois Department of Public Health.

(Source: P.A. 86-904.)

Section 10. The Communicable Disease Prevention Act is amended by changing Section 2a as follows:

(410 ILCS 315/2a) (from Ch. 111 1/2, par. 22.12a)

Sec. 2a. Whenever a child of school age is reported to the Illinois Department of Public Health or a local health department as having been diagnosed as having acquired immune deficiency syndrome (AIDS) or human immunodeficiency virus (HIV) based upon case definitions established by the United States Centers for Disease Control and Prevention ~~AIDS-related complex (ARC)~~ or as having been shown to have been exposed to human immunodeficiency virus (HIV) or any other identified causative agent of AIDS by testing positive on a ~~Western Blot Assay or more~~ reliable test based upon recommendations of the United States Centers for Disease Control and Prevention, such department shall give prompt and confidential notice of the identity of the child to the principal of the school in which the child is enrolled. If the child is enrolled in a public school, the principal shall disclose the identity of the child to the superintendent of the school district in which the child resides.

The principal may, as necessary, disclose the identity of an infected child to:

(1) the school nurse at that school;

(2) the classroom teachers in whose classes the child is enrolled; and

(3) those persons who, pursuant to federal or state law, are required to decide the placement or educational program of the child.

In addition, the principal may inform such other persons as may be necessary that an infected child is enrolled at that school, so long as the child's identity is not revealed.

(Source: P.A. 85-1399.)

Section 15. The Criminal Code of 1961 is amended by changing Section 12-18 as follows:

(720 ILCS 5/12-18) (from Ch. 38, par. 12-18)

Sec. 12-18. General Provisions.

(a) No person accused of violating Sections 12-13, 12-14, 12-15 or 12-16 of this Code shall be presumed to be incapable of committing an offense prohibited by Sections 12-13, 12-14, 12-14.1, 12-15 or 12-16 of this Code because of age, physical condition or relationship to the victim, except as otherwise provided in subsection (c) of this Section. Nothing in this Section shall be construed to modify or abrogate the affirmative defense of infancy under Section 6-1 of this Code

or the provisions of Section 5-805 of the Juvenile Court Act of 1987.

(b) Any medical examination or procedure which is conducted by a physician, nurse, medical or hospital personnel, parent, or caretaker for purposes and in a manner consistent with reasonable medical standards is not an offense under Sections 12-13, 12-14, 12-14.1, 12-15 and 12-16 of this Code.

(c) (Blank).

(d) (Blank).

(e) After a finding at a preliminary hearing that there is probable cause to believe that an accused has committed a violation of Section 12-13, 12-14, or 12-14.1 of this Code, or after an indictment is returned charging an accused with a violation of Section 12-13, 12-14, or 12-14.1 of this Code, or after a finding that a defendant charged with a violation of Section 12-13, 12-14, or 12-14.1 of this Code is unfit to stand trial pursuant to Section 104-16 of the Code of Criminal Procedure of 1963 where the finding is made prior to preliminary hearing, at the request of the person who was the victim of the violation of Section 12-13, 12-14, or 12-14.1, the prosecuting State's attorney shall seek an order from the court to compel the accused to be tested within 48 hours for any sexually transmissible disease, including a test for infection with human immunodeficiency virus (HIV). The medical tests shall be performed only by appropriately licensed medical practitioners. Such testing shall consist of a test approved by

~~the Illinois Department of Public Health to determine the presence of HIV infection, based upon recommendations of the United States Centers for Disease Control and Prevention~~ The test for infection with human immunodeficiency virus (HIV) shall consist of an enzyme linked immunosorbent assay (ELISA) test, or such other test as may be approved by the Illinois Department of Public Health; in the event of a positive result, a the Western Blot Assay or a more reliable supplemental confirmatory test based upon recommendations of the United States Centers for Disease Control and Prevention shall be administered. The results of the tests and any follow-up tests shall be kept strictly confidential by all medical personnel involved in the testing and must be personally delivered in a sealed envelope to the victim, to the defendant, to the State's Attorney, and to the judge who entered the order, for the judge's inspection in camera. The judge shall provide to the victim a referral to the Illinois Department of Public Health HIV/AIDS toll-free hotline for counseling and information in connection with the test result. Acting in accordance with the best interests of the victim and the public, the judge shall have the discretion to determine to whom, if anyone, the result of the testing may be revealed; however, in no case shall the identity of the victim be disclosed. The court shall order that the cost of the tests shall be paid by the county, and shall be taxed as costs against the accused if convicted.

(f) Whenever any law enforcement officer has reasonable

cause to believe that a person has been delivered a controlled substance without his or her consent, the law enforcement officer shall advise the victim about seeking medical treatment and preserving evidence.

(g) Every hospital providing emergency hospital services to an alleged sexual assault survivor, when there is reasonable cause to believe that a person has been delivered a controlled substance without his or her consent, shall designate personnel to provide:

(1) An explanation to the victim about the nature and effects of commonly used controlled substances and how such controlled substances are administered.

(2) An offer to the victim of testing for the presence of such controlled substances.

(3) A disclosure to the victim that all controlled substances or alcohol ingested by the victim will be disclosed by the test.

(4) A statement that the test is completely voluntary.

(5) A form for written authorization for sample analysis of all controlled substances and alcohol ingested by the victim.

A physician licensed to practice medicine in all its branches may agree to be a designated person under this subsection.

No sample analysis may be performed unless the victim returns a signed written authorization within 30 days after the

sample was collected.

Any medical treatment or care under this subsection shall be only in accordance with the order of a physician licensed to practice medicine in all of its branches. Any testing under this subsection shall be only in accordance with the order of a licensed individual authorized to order the testing.

(Source: P.A. 94-397, eff. 1-1-06; 95-926, eff. 8-26-08.)

Section 20. The Unified Code of Corrections is amended by changing Sections 3-6-2, 3-8-2, and 3-10-2 as follows:

(730 ILCS 5/3-6-2) (from Ch. 38, par. 1003-6-2)

Sec. 3-6-2. Institutions and Facility Administration.

(a) Each institution and facility of the Department shall be administered by a chief administrative officer appointed by the Director. A chief administrative officer shall be responsible for all persons assigned to the institution or facility. The chief administrative officer shall administer the programs of the Department for the custody and treatment of such persons.

(b) The chief administrative officer shall have such assistants as the Department may assign.

(c) The Director or Assistant Director shall have the emergency powers to temporarily transfer individuals without formal procedures to any State, county, municipal or regional correctional or detention institution or facility in the State,

subject to the acceptance of such receiving institution or facility, or to designate any reasonably secure place in the State as such an institution or facility and to make transfers thereto. However, transfers made under emergency powers shall be reviewed as soon as practicable under Article 8, and shall be subject to Section 5-905 of the Juvenile Court Act of 1987. This Section shall not apply to transfers to the Department of Human Services which are provided for under Section 3-8-5 or Section 3-10-5.

(d) The Department shall provide educational programs for all committed persons so that all persons have an opportunity to attain the achievement level equivalent to the completion of the twelfth grade in the public school system in this State. Other higher levels of attainment shall be encouraged and professional instruction shall be maintained wherever possible. The Department may establish programs of mandatory education and may establish rules and regulations for the administration of such programs. A person committed to the Department who, during the period of his or her incarceration, participates in an educational program provided by or through the Department and through that program is awarded or earns the number of hours of credit required for the award of an associate, baccalaureate, or higher degree from a community college, college, or university located in Illinois shall reimburse the State, through the Department, for the costs incurred by the State in providing that person during his or



her incarceration with the education that qualifies him or her for the award of that degree. The costs for which reimbursement is required under this subsection shall be determined and computed by the Department under rules and regulations that it shall establish for that purpose. However, interest at the rate of 6% per annum shall be charged on the balance of those costs from time to time remaining unpaid, from the date of the person's parole, mandatory supervised release, or release constituting a final termination of his or her commitment to the Department until paid.

(d-5) A person committed to the Department is entitled to confidential testing for infection with human immunodeficiency virus (HIV) and to counseling in connection with such testing, with no copay to the committed person. A person committed to the Department who has tested positive for infection with HIV is entitled to medical care while incarcerated, counseling, and referrals to support services, in connection with that positive test result. Implementation of this subsection (d-5) is subject to appropriation.

(e) A person committed to the Department who becomes in need of medical or surgical treatment but is incapable of giving consent thereto shall receive such medical or surgical treatment by the chief administrative officer consenting on the person's behalf. Before the chief administrative officer consents, he or she shall obtain the advice of one or more physicians licensed to practice medicine in all its branches in

this State. If such physician or physicians advise:

(1) that immediate medical or surgical treatment is required relative to a condition threatening to cause death, damage or impairment to bodily functions, or disfigurement; and

(2) that the person is not capable of giving consent to such treatment; the chief administrative officer may give consent for such medical or surgical treatment, and such consent shall be deemed to be the consent of the person for all purposes, including, but not limited to, the authority of a physician to give such treatment.

(e-5) If a physician providing medical care to a committed person on behalf of the Department advises the chief administrative officer that the committed person's mental or physical health has deteriorated as a result of the cessation of ingestion of food or liquid to the point where medical or surgical treatment is required to prevent death, damage, or impairment to bodily functions, the chief administrative officer may authorize such medical or surgical treatment.

(f) In the event that the person requires medical care and treatment at a place other than the institution or facility, the person may be removed therefrom under conditions prescribed by the Department. The Department shall require the committed person receiving medical or dental services on a non-emergency basis to pay a \$2 co-payment to the Department for each visit for medical or dental services. The amount of each co-payment

shall be deducted from the committed person's individual account. A committed person who has a chronic illness, as defined by Department rules and regulations, shall be exempt from the \$2 co-payment for treatment of the chronic illness. A committed person shall not be subject to a \$2 co-payment for follow-up visits ordered by a physician, who is employed by, or contracts with, the Department. A committed person who is indigent is exempt from the \$2 co-payment and is entitled to receive medical or dental services on the same basis as a committed person who is financially able to afford the co-payment. Notwithstanding any other provision in this subsection (f) to the contrary, any person committed to any facility operated by the Department of Juvenile Justice, as set forth in Section 3-2.5-15 of this Code, is exempt from the co-payment requirement for the duration of confinement in those facilities.

(g) Any person having sole custody of a child at the time of commitment or any woman giving birth to a child after her commitment, may arrange through the Department of Children and Family Services for suitable placement of the child outside of the Department of Corrections. The Director of the Department of Corrections may determine that there are special reasons why the child should continue in the custody of the mother until the child is 6 years old.

(h) The Department may provide Family Responsibility Services which may consist of, but not be limited to the

following:

- (1) family advocacy counseling;
  - (2) parent self-help group;
  - (3) parenting skills training;
  - (4) parent and child overnight program;
  - (5) parent and child reunification counseling, either separately or together, preceding the inmate's release;
- and

(6) a prerelease reunification staffing involving the family advocate, the inmate and the child's counselor, or both and the inmate.

(i) Prior to the release of any inmate who has a documented history of intravenous drug use, and upon the receipt of that inmate's written informed consent, the Department shall provide for the testing of such inmate for infection with human immunodeficiency virus (HIV) and any other identified causative agent of acquired immunodeficiency syndrome (AIDS). The testing provided under this subsection shall consist of a test approved by the Illinois Department of Public Health to determine the presence of HIV infection, based upon recommendations of the United States Centers for Disease Control and Prevention ~~an enzyme-linked immunosorbent assay (ELISA) test or such other test as may be approved by the Illinois Department of Public Health.~~ If the test result is positive, a reliable supplemental ~~the Western Blot Assay or more reliable confirmatory~~ test based upon recommendations of

the United States Centers for Disease Control and Prevention shall be administered. All inmates tested in accordance with the provisions of this subsection shall be provided with pre-test information and post-test counseling. Notwithstanding any provision of this subsection to the contrary, the Department shall not be required to conduct the testing and counseling required by this subsection unless sufficient funds to cover all costs of such testing and counseling are appropriated for that purpose by the General Assembly.

(j) Any person convicted of a sex offense as defined in the Sex Offender Management Board Act shall be required to receive a sex offender evaluation prior to release into the community from the Department of Corrections. The sex offender evaluation shall be conducted in conformance with the standards and guidelines developed under the Sex Offender Management Board Act and by an evaluator approved by the Board.

(k) Any minor committed to the Department of Juvenile Justice for a sex offense as defined by the Sex Offender Management Board Act shall be required to undergo sex offender treatment by a treatment provider approved by the Board and conducted in conformance with the Sex Offender Management Board Act.

(l) Prior to the release of any inmate, the Department must provide the inmate with the option of testing for infection with human immunodeficiency virus (HIV), as well as counseling in connection with such testing, with no copayment for the

test. At the same time, the Department shall require each such inmate to sign a form stating that the inmate has been informed of his or her rights with respect to the testing required to be offered under this subsection (1) and providing the inmate with an opportunity to indicate either that he or she wants to be tested or that he or she does not want to be tested. The Department, in consultation with the Department of Public Health, shall prescribe the contents of the form. The testing provided under this subsection (1) shall consist of a test approved by the Illinois Department of Public Health to determine the presence of HIV infection, based upon recommendations of the United States Centers for Disease Control and Prevention ~~an enzyme-linked immunosorbent assay (ELISA) test or any other test approved by the Department of Public Health~~. If the test result is positive, a ~~the Western Blot Assay or more~~ reliable supplemental ~~confirmatory~~ test based upon recommendations of the United States Centers for Disease Control and Prevention shall be administered.

Prior to the release of an inmate who the Department knows has tested positive for infection with HIV, the Department in a timely manner shall offer the inmate transitional case management, including referrals to other support services.

Implementation of this subsection (1) is subject to appropriation.

(m) The chief administrative officer of each institution or facility of the Department shall make a room in the institution

or facility available for addiction recovery services to be provided to committed persons on a voluntary basis. The services shall be provided for one hour once a week at a time specified by the chief administrative officer of the institution or facility if the following conditions are met:

(1) the addiction recovery service contacts the chief administrative officer to arrange the meeting;

(2) the committed person may attend the meeting for addiction recovery services only if the committed person uses pre-existing free time already available to the committed person;

(3) all disciplinary and other rules of the institution or facility remain in effect;

(4) the committed person is not given any additional privileges to attend addiction recovery services;

(5) if the addiction recovery service does not arrange for scheduling a meeting for that week, no addiction recovery services shall be provided to the committed person in the institution or facility for that week;

(6) the number of committed persons who may attend an addiction recovery meeting shall not exceed 40 during any session held at the correctional institution or facility;

(7) a volunteer seeking to provide addiction recovery services under this subsection (m) must submit an application to the Department of Corrections under existing Department rules and the Department must review

the application within 60 days after submission of the application to the Department; and

(8) each institution and facility of the Department shall manage the addiction recovery services program according to its own processes and procedures.

For the purposes of this subsection (m), "addiction recovery services" means recovery services for alcoholics and addicts provided by volunteers of recovery support services recognized by the Department of Human Services.

(Source: P.A. 96-284, eff. 1-1-10.)

(730 ILCS 5/3-8-2) (from Ch. 38, par. 1003-8-2)

Sec. 3-8-2. Social Evaluation; physical examination; HIV/AIDS.

(a) A social evaluation shall be made of a committed person's medical, psychological, educational and vocational condition and history, including the use of alcohol and other drugs, the circumstances of his offense, and such other information as the Department may determine. The committed person shall be assigned to an institution or facility in so far as practicable in accordance with the social evaluation. Recommendations shall be made for medical, dental, psychiatric, psychological and social service treatment.

(b) A record of the social evaluation shall be entered in the committed person's master record file and shall be forwarded to the institution or facility to which the person is



assigned.

(c) Upon admission to a correctional institution each committed person shall be given a physical examination. If he is suspected of having a communicable disease that in the judgment of the Department medical personnel requires medical isolation, the committed person shall remain in medical isolation until it is no longer deemed medically necessary.

(d) Upon arrival at an inmate's final destination, the Department must provide the committed person with appropriate written information and counseling concerning HIV and AIDS. The Department shall develop the written materials in consultation with the Department of Public Health. At the same time, the Department also must offer the committed person the option of being tested, with no copayment, for infection with human immunodeficiency virus (HIV). The Department shall require each committed person to sign a form stating that the committed person has been informed of his or her rights with respect to the testing required to be offered under this subsection (d) and providing the committed person with an opportunity to indicate either that he or she wants to be tested or that he or she does not want to be tested. The Department, in consultation with the Department of Public Health, shall prescribe the contents of the form. The testing provided under this subsection (d) shall consist of a test approved by the Illinois Department of Public Health to determine the presence of HIV infection, based upon recommendations of the United States

~~Centers for Disease Control and Prevention an enzyme-linked immunosorbent assay (ELISA) test or any other test approved by the Department of Public Health.~~ If the test result is positive, a ~~the Western Blot Assay or more~~ reliable supplemental confirmatory test based upon recommendations of the United States Centers for Disease Control and Prevention shall be administered. Implementation of this subsection (d) is subject to appropriation.

(Source: P.A. 94-629, eff. 1-1-06.)

(730 ILCS 5/3-10-2) (from Ch. 38, par. 1003-10-2)

Sec. 3-10-2. Examination of Persons Committed to the Department of Juvenile Justice.

(a) A person committed to the Department of Juvenile Justice shall be examined in regard to his medical, psychological, social, educational and vocational condition and history, including the use of alcohol and other drugs, the circumstances of his offense and any other information as the Department of Juvenile Justice may determine.

(a-5) Upon admission of a person committed to the Department of Juvenile Justice, the Department of Juvenile Justice must provide the person with appropriate written information and counseling concerning HIV and AIDS. The Department of Juvenile Justice shall develop the written materials in consultation with the Department of Public Health. At the same time, the Department of Juvenile Justice also must

offer the person the option of being tested, at no charge to the person, for infection with human immunodeficiency virus (HIV) or any other identified causative agent of acquired immunodeficiency syndrome (AIDS). The Department of Juvenile Justice shall require each person committed to the Department of Juvenile Justice to sign a form stating that the person has been informed of his or her rights with respect to the testing required to be offered under this subsection (a-5) and providing the person with an opportunity to indicate either that he or she wants to be tested or that he or she does not want to be tested. The Department of Juvenile Justice, in consultation with the Department of Public Health, shall prescribe the contents of the form. The testing provided under this subsection (a-5) shall consist of a test approved by the Illinois Department of Public Health to determine the presence of HIV infection, based upon recommendations of the United States Centers for Disease Control and Prevention ~~an enzyme linked immunosorbent assay (ELISA) test or any other test approved by the Department of Public Health.~~ If the test result is positive, a ~~the Western Blot Assay or more~~ reliable supplemental confirmatory test based upon recommendations of the United States Centers for Disease Control and Prevention shall be administered.

Also upon admission of a person committed to the Department of Juvenile Justice, the Department of Juvenile Justice must inform the person of the Department's obligation to provide the

person with medical care.

Implementation of this subsection (a-5) is subject to appropriation.

(b) Based on its examination, the Department of Juvenile Justice may exercise the following powers in developing a treatment program of any person committed to the Department of Juvenile Justice:

(1) Require participation by him in vocational, physical, educational and corrective training and activities to return him to the community.

(2) Place him in any institution or facility of the Department of Juvenile Justice.

(3) Order replacement or referral to the Parole and Pardon Board as often as it deems desirable. The Department of Juvenile Justice shall refer the person to the Parole and Pardon Board as required under Section 3-3-4.

(4) Enter into agreements with the Secretary of Human Services and the Director of Children and Family Services, with courts having probation officers, and with private agencies or institutions for separate care or special treatment of persons subject to the control of the Department of Juvenile Justice.

(c) The Department of Juvenile Justice shall make periodic reexamination of all persons under the control of the Department of Juvenile Justice to determine whether existing orders in individual cases should be modified or continued.

This examination shall be made with respect to every person at least once annually.

(d) A record of the treatment decision including any modification thereof and the reason therefor, shall be part of the committed person's master record file.

(e) The Department of Juvenile Justice shall by certified mail, return receipt requested, notify the parent, guardian or nearest relative of any person committed to the Department of Juvenile Justice of his physical location and any change thereof.

(Source: P.A. 94-629, eff. 1-1-06; 94-696, eff. 6-1-06.)

Section 25. The County Jail Act is amended by changing Section 17.10 as follows:

(730 ILCS 125/17.10)

Sec. 17.10. Requirements in connection with HIV/AIDS.

(a) In each county other than Cook, during the medical admissions exam, the warden of the jail, a correctional officer at the jail, or a member of the jail medical staff must provide the prisoner with appropriate written information concerning human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS). The Department of Public Health and community-based organizations certified to provide HIV/AIDS testing must provide these informational materials to the warden at no cost to the county. The warden, a correctional

officer, or a member of the jail medical staff must inform the prisoner of the option of being tested for infection with HIV by a certified local community-based agency or other available medical provider at no charge to the prisoner.

(b) In Cook County, during the medical admissions exam, an employee of the Cook County Bureau of Health Services must provide the prisoner with appropriate written information concerning human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) and must also provide the prisoner with option of testing for infection with HIV or any other identified causative agent of AIDS, as well as counseling in connection with such testing. The Department of Public Health and community-based organizations certified to provide HIV/AIDS testing must provide these informational materials to the Bureau at no cost to the county. The testing provided under this subsection (b) shall be conducted by the Cook County Bureau of Health Services and shall consist of a test approved by the Illinois Department of Public Health to determine the presence of HIV infection, based upon recommendations of the United States Centers for Disease Control and Prevention ~~an enzyme-linked immunosorbent assay (ELISA) test or any other test approved by the Department of Public Health~~. If the test result is positive, a ~~the Western Blot Assay or more~~ reliable supplemental confirmatory test based upon recommendations of the United States Centers for Disease Control and Prevention shall be administered.

(c) In each county, the warden of the jail must make appropriate written information concerning HIV/AIDS available to every visitor to the jail. This information must include information concerning persons or entities to contact for local counseling and testing. The Department of Public Health and community-based organizations certified to provide HIV/AIDS testing must provide these informational materials to the warden at no cost to the office of the county sheriff.

(d) Implementation of this Section is subject to appropriation.

(Source: P.A. 94-629, eff. 1-1-06.)

Section 99. Effective date. This Act takes effect upon becoming law.