



2009 ASSEMBLY BILL 659

January 20, 2010 - Introduced by Representatives SHILLING, RICHARDS, BENEDICT, BERCEAU, HEBL, PASCH, SINICKI, TURNER and ZEPNICK, cosponsored by Senators ROBSON and TAYLOR. Referred to Committee on Health and Healthcare Reform.

1 **AN ACT** *to repeal* 49.686 (1) (g), 252.15 (1) (ab), 252.15 (1) (d), 252.15 (1) (e),
2 252.15 (2) (title), 252.15 (2) (a) (intro.), 252.15 (2) (a) 4., 252.15 (2) (am), 252.15
3 (2) (b), 252.15 (2) (bm), 252.15 (3), 252.15 (4) (a), 252.15 (5) (a) 11., 252.15 (5) (a)
4 15. and 252.15 (5) (a) 18.; *to renumber* 252.15 (5) (a) 3., 252.15 (5) (a) 5. and
5 252.15 (5) (a) 8. and 9.; *to renumber and amend* 252.15 (2) (a) 1., 252.15 (2)
6 (a) 1g., 252.15 (2) (a) 2., 252.15 (2) (a) 3., 252.15 (2) (a) 6., 252.15 (2) (a) 7. a.,
7 252.15 (2) (a) 7. ai., 252.15 (2) (a) 7. ak., 252.15 (2) (a) 7. am., 252.15 (2) (a) 7.
8 ap., 252.15 (2) (a) 7. ar., 252.15 (2) (a) 7. at., 252.15 (2) (a) 7. av., 252.15 (2) (a)
9 7. b., 252.15 (2) (a) 7. c., 252.15 (2) (a) 7. d., 252.15 (2) (a) 7m., 252.15 (5) (title),
10 252.15 (5) (a) (intro.), 252.15 (5) (a) 1., 252.15 (5) (a) 2., 252.15 (5) (a) 4., 252.15
11 (5) (a) 6., 252.15 (5) (a) 7., 252.15 (5) (a) 10., 252.15 (5) (a) 12., 252.15 (5) (a) 13.,
12 252.15 (5) (a) 14., 252.15 (5) (a) 17., 252.15 (5) (a) 19., 252.15 (5) (a) 20., 252.15
13 (5) (b), 252.15 (5m) (intro.), 252.15 (5m) (a), 252.15 (5m) (b) and 252.15 (5m) (c);
14 *to amend* 48.371 (1) (a), 59.69 (15) (im), 60.63 (10m), 62.23 (7) (i) 9m., 101.02

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1 (19) (a), 103.15 (title), 103.15 (2) (a), 103.15 (2) (b), 103.15 (3), 118.125 (2m) (b),
2 146.81 (4), 149.12 (1) (intro.), 252.01 (8), 252.11 (5m), 252.11 (7), 252.12 (2) (a)
3 3. d., 252.12 (2) (a) 5., 252.12 (2) (a) 7., 252.13 (title), 252.13 (1m), 252.13 (1r)
4 (intro.), 252.13 (3), 252.13 (4), 252.13 (5), 252.14 (2) (intro.), 252.14 (3), 252.14
5 (4), 252.15 (title), 252.15 (1) (am), 252.15 (1) (em) (intro.), 252.15 (1) (fm), 252.15
6 (4) (intro.), 252.15 (4) (c), 252.15 (5m) (title), 252.15 (6), 252.15 (7) (title), 252.15
7 (7) (a), 252.15 (7) (b) (intro.), 252.15 (7) (b) 4., 252.15 (7) (b) 5., 252.15 (7) (c) 1.,
8 252.15 (7) (c) 2., 252.15 (7m), 252.15 (8), 252.15 (9), 256.15 (12) (a), 440.20 (4),
9 631.90 (1), 631.90 (2) (a), 631.90 (2) (b), 631.90 (2) (c), 631.90 (3) (a), 631.90 (3)
10 (b), 901.05 (2) (intro.), 938.296 (1) (d), 938.296 (2) (intro.), 938.296 (2) (b),
11 938.296 (4) (intro.), 938.296 (5) (intro.), 938.346 (1) (e), 938.371 (1) (a), 968.38
12 (1) (d), 968.38 (2) (intro.), 968.38 (2) (a), 968.38 (4) (intro.), 968.38 (5) (intro.),
13 973.017 (4) (b) 1. and 973.017 (4) (b) 2.; **to repeal and recreate** 252.15 (4) (b);
14 and **to create** 103.15 (1) (bm), 252.01 (2m), 252.12 (1) (b), 252.12 (4), 252.133
15 (title), 252.14 (2m), 252.15 (1) (ac), 252.15 (2m) (title), 252.15 (2m) (a), 252.15
16 (2m) (b) (intro.), 252.15 (2m) (b) 4., 252.15 (2m) (b) 5., 252.15 (2m) (c), 252.15
17 (2r), 252.15 (3m) (b) 1. to 7., 252.15 (3m) (c), 252.15 (3m) (d) (intro.), 252.15 (3m)
18 (e), 252.15 (3m) (f) 1., 252.15 (3m) (g), 252.15 (4) (bm), 252.15 (5g) (intro.) and
19 (a), 252.15 (5g) (a) 6., 252.15 (5g) (g) 3., 252.15 (5j) (title), 252.15 (5m) (d) 1.
20 (intro.), 252.15 (5m) (d) 2. and 3., 252.15 (5m) (e), 252.15 (7) (b) 5m., 252.15 (7r),
21 938.296 (1) (bm), 968.38 (1) (bc) and 973.017 (4) (a) 1m. of the statutes; **relating**
22 **to:** HIV testing, disclosure of HIV test results, and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, a person generally may not be subjected to a test for human immunodeficiency virus (HIV) unless he or she consents to the test. The results of

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an HIV test are generally confidential and may not be disclosed unless the test subject authorizes disclosure. Current law specifies certain circumstances under which another person may provide consent for HIV testing of an individual and disclosure of HIV test results. For example, if a person has designated a health care agent and has been found to be incapacitated, the person's health care agent may provide consent for HIV testing and disclosure of the test results. In addition, a parent may consent to HIV testing and disclosure of test results on behalf of a minor who is less than 14 years of age.

Current law provides several exceptions to the consent requirement for HIV testing. The exception for cases of so-called "significant exposure" provides that if a person working in certain occupations such as health care, corrections, or education, is exposed to the body fluid of another individual under circumstances that may allow for transmission of HIV, and a health care provider certifies that a significant exposure occurred, the person may have the individual tested for HIV without the individual's consent. If the individual is tested, the person who requested the test may obtain the results of the test. The individual may be informed of his or her own test results only if he or she consents to being informed.

Current law provides a number of additional exceptions to confidentiality of HIV test results. For example, under certain circumstances HIV test results may be disclosed without the test subject's consent to a health care provider, a jailer or corrections employee, a foster parent, and a victim of sexual assault, among others.

Current law specifies that if consent is required for HIV testing, it must be provided in writing on a form that includes an explanation regarding permitted disclosure of HIV test results. Authorization for disclosure of test results must also be provided in writing.

Current law also provides that a health care provider, blood bank, or blood or plasma center that performs an HIV test, must report positive HIV test results to the state epidemiologist. Current law allows a health care provider who has a record of an individual's positive HIV test results to report to the state epidemiologist the name of any person who had significant exposure to the test subject.

Current law provides a criminal penalty for intentionally violating prohibitions against disclosing HIV test results without the test subject's consent. Current law also allows civil damages for violating the prohibitions against disclosure and for violating consent requirements for HIV testing.

This bill changes the consent provisions for HIV testing. Under the bill, the following conditions must be satisfied before a health care provider, blood bank, blood center, or plasma center (test administrator) may perform an HIV test on a person: 1) the test administrator must notify the person that the person may decline to have the test performed and that the test will be performed unless the person declines; 2) the test administrator must offer the person certain information about HIV, HIV test results, reporting of test results, treatment options for HIV, and AIDS service organizations and the services they provide; 3) the test administrator must provide the person an opportunity to ask questions and to decline the test; 4) and the test administrator must verify that the person understands that a test will be performed and that the person's decision regarding testing is not coerced or

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involuntary. In addition, the bill provides that a health care provider may not deny treatment or services to a person who declines to have an HIV test performed, and requires a health care provider that administers HIV tests to notify potential HIV test subjects of this prohibition against denying treatment or services. The bill further provides that a health care provider may not require a person to authorize disclosure of HIV test results as a condition of administering an HIV test to the person. The bill eliminates the requirement that consent for an HIV test must be in writing. The bill requires the Department of Health Services to provide test administrators materials that include the information and notices that test administrators must provide or offer to potential test subjects.

Other changes in the bill include the following:

1. The bill specifies elements that must be included in an authorization to disclose HIV test results, including the name and signature of the person who authorizes the disclosure, specification of what information may be disclosed, the name of the person to whom the information may be disclosed, and the period in which disclosure is permitted.

2. The bill eliminates the condition that an individual who is tested for HIV in a case of significant exposure consent to being informed of his or her or test results before he or she may be notified of the test results.

3. The bill provides that a good samaritan who renders aid to an accident victim and has a significant exposure to body fluid of the victim may cause the victim to be tested for HIV without the victim's consent.

4. The bill specifies that if a minor is at least 14 years of age, the minor, and not his or her parent, has authority to consent to or decline an HIV test and authorize disclosure of his or her HIV test results.

5. The bill provides that a physician assistant has the same authority as a physician and certain nurses to certify that a significant exposure has occurred for purposes of requiring HIV testing without consent, to disclose to the state epidemiologist the name of a person who may have had a significant exposure to a person who has tested positive for HIV, to administer certain court-ordered HIV tests, and to receive certain HIV test results.

6. The bill provides that when a health care provider, blood bank, or blood or plasma center reports a positive HIV test result to the state epidemiologist, the report must include the mode of HIV transmission.

7. The bill increases the criminal fine and civil damages amounts for violating prohibitions against disclosing HIV test results without consent and increases the civil damages amounts for violating consent requirements for HIV testing.

8. The bill requires the Department of Health Services to designate AIDS service organizations, which are defined in the bill as nonprofit corporations or public agencies that provide, or arrange for the provision of, comprehensive services to prevent HIV infection and comprehensive health and social services for persons who have an HIV infection.

9. The bill eliminates a state law requirement for HIV testing of sperm and ova that are donated as anatomical gifts. Federal law requires HIV testing of all donated sperm and ova.

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10. The bill makes numerous changes that modernize and simplify references to HIV tests and reorganizes provisions relating to HIV testing and disclosure of HIV test results.

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.~~ (3m) (d) 15., including results included in a court report or
6 permanency plan. At the time that the HIV test results are provided, the agency
7 shall notify the foster parent, treatment foster parent, relative, or operator of the
8 group home or residential care center for children and youth of the confidentiality
9 requirements under s. 252.15 (6).

10 **SECTION 2.** 49.686 (1) (g) of the statutes is repealed.

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

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

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

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

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

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

16 **SECTION 6.** 101.02 (19) (a) of the statutes is amended to read:

17 101.02 **(19)** (a) The department shall, after consulting with the department of
18 health services, develop a report form to document ~~significant exposure to contact~~
19 with blood or body fluids that constitutes a significant exposure, for use under s.
20 252.15 ~~(2) (a) 7. ak (5g) (c)~~. The form shall contain the following language for use by
21 a person who may have ~~been significantly exposed~~ had a significant exposure:
22 “REMEMBER — WHEN YOU ARE INFORMED OF AN HIV TEST RESULT BY
23 USING THIS FORM, IT IS A VIOLATION OF THE LAW FOR YOU TO REVEAL
24 TO ANYONE ELSE THE IDENTITY OF THE PERSON WHO IS THE SUBJECT

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1 OF THAT TEST RESULT. (PENALTY: POSSIBLE JAIL AND UP TO \$10,000
2 \$50,000 FINE)”.

3 **SECTION 7.** 103.15 (title) of the statutes is amended to read:

4 **103.15 (title) Restrictions on use of ~~a~~ an HIV test for HIV.**

5 **SECTION 8.** 103.15 (1) (bm) of the statutes is created to read:

6 103.15 (1) (bm) “HIV test” has the meaning given in s. 252.01 (2m).

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

8 103.15 (2) (a) Solicit or require an HIV test as a condition of employment of any
9 employee or prospective employee ~~–a test for the presence of HIV, antigen or~~
10 ~~nonantigenic products of HIV or an antibody to HIV.~~

11 **SECTION 10.** 103.15 (2) (b) of the statutes is amended to read:

12 103.15 (2) (b) Affect the terms, conditions or privileges of employment or
13 terminate the employment of any employee who obtains ~~–a an HIV test for the~~
14 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV, as~~
15 defined in s. 252.01 (2m).

16 **SECTION 11.** 103.15 (3) of the statutes is amended to read:

17 103.15 (3) Any agreement by an employer or agent of the employer and an
18 employee or prospective employee offering employment or any pay or benefit to an
19 employee or prospective employee in return for taking ~~–a an HIV test for the presence~~
20 ~~of HIV, antigen or nonantigenic products of HIV or an antibody to HIV is prohibited,~~
21 except as provided under sub. (2) (intro.).

22 **SECTION 12.** 118.125 (2m) (b) of the statutes is amended to read:

23 118.125 (2m) (b) Any pupil record that concerns the results of ~~–a an HIV test~~
24 ~~for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to~~

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1 ~~HIV, as defined in s. 252.01 (2m), shall be treated as provided under s. 252.15. In this~~
2 ~~subsection, “HIV” has the meaning given in s. 252.01 (1m).~~

3 **SECTION 13.** 146.81 (4) of the statutes, as affected by 2009 Wisconsin Act 28,
4 is amended to read:

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

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

20 149.12 (1) (intro.) Except as provided in subs. (1m), (2), and (3), the authority
21 shall certify as eligible a person who is covered by Medicare because he or she is
22 disabled under 42 USC 423, a person who submits evidence that he or she has tested
23 ~~positive for the presence of HIV, antigen or nonantigenic products of HIV, or an~~
24 ~~antibody to HIV, a positive, validated HIV test result, as defined in s. 252.01 (8); a~~
25 person who is an eligible individual; and any person who receives and submits any

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1 of the following based wholly or partially on medical underwriting considerations
2 within 9 months prior to making application for coverage by the plan:

3 **SECTION 15.** 252.01 (2m) of the statutes is created to read:

4 252.01 (2m) "HIV test" means a test for the presence of HIV or an antibody to
5 HIV.

6 **SECTION 16.** 252.01 (8) of the statutes is amended to read:

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

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

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

18 **SECTION 18.** 252.11 (7) of the statutes is amended to read:

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

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1 not privileged when the patient, physician, or advanced practice nurse prescriber is
2 called upon to testify to the facts before any court of record.

3 **SECTION 19.** 252.12 (1) (b) of the statutes is created to read:

4 252.12 (1) (b) “AIDS service organizations” means nonprofit corporations or
5 public agencies that provide, or arrange for the provision of, comprehensive services
6 to prevent HIV infection and comprehensive health and social services for persons
7 who have HIV infection, and that are designated as such by the department under
8 sub. (4).

9 **SECTION 20.** 252.12 (2) (a) 3. d. of the statutes is amended to read:

10 252.12 (2) (a) 3. d. Locations for procuring additional information or obtaining
11 HIV testing services.

12 **SECTION 21.** 252.12 (2) (a) 5. of the statutes is amended to read:

13 252.12 (2) (a) 5. The department shall perform HIV tests ~~for the presence of~~
14 ~~HIV~~ and, if appropriate, tests for the presence of related infections and shall conduct
15 behavioral surveys among population groups determined by the department to be
16 highly at risk of becoming infected with or transmitting HIV and related infections.
17 Information obtained shall be used to develop targeted HIV infection and related
18 infection prevention efforts for these groups and to evaluate the state’s prevention
19 strategies.

20 **SECTION 22.** 252.12 (2) (a) 7. of the statutes is amended to read:

21 252.12 (2) (a) 7. The department shall distribute funding in each fiscal year to
22 contract with organizations to provide, at alternate testing sites, anonymous or
23 confidential counseling services for HIV and, laboratory HIV testing services ~~for the~~
24 ~~presence of HIV~~, and, if appropriate, laboratory testing services for the presence of
25 related viruses.

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1 **SECTION 23.** 252.12 (4) of the statutes is created to read:

2 252.12 (4) DESIGNATION OF AIDS SERVICE ORGANIZATIONS. The department shall
3 designate AIDS service organizations and specify the geographical area of the state
4 in which they are designated to provide services.

5 **SECTION 24.** 252.13 (title) of the statutes is amended to read:

6 **252.13** (title) **Blood HIV tests for HIV.**

7 **SECTION 25.** 252.13 (1m) of the statutes is amended to read:

8 252.13 (1m) Except as provided under sub. (3), any blood bank, blood center
9 or plasma center in this state that purchases or receives whole blood, blood plasma,
10 a blood product or a blood derivative shall, prior to its distribution or use and in
11 accordance with ~~informed consent under the requirements of conditions under s.~~
12 ~~252.15 (2) (b) (2m) (a),~~ subject that blood, plasma, product or derivative to ~~a~~ an HIV
13 ~~test or series of tests that the state epidemiologist finds medically significant and~~
14 ~~sufficiently reliable under sub. (1r) (a) to detect the presence of HIV, antigen or~~
15 ~~nonantigenic products of HIV or an antibody to HIV.~~ This subsection does not apply
16 to a blood bank that purchases or receives whole blood, blood plasma, a blood product
17 or a blood derivative from a blood bank, blood center or plasma center in this state
18 if the whole blood, blood plasma, blood product or blood derivative has previously
19 been subjected to ~~a~~ an HIV ~~test or series of tests that the state epidemiologist finds~~
20 ~~medically significant and sufficiently reliable under sub. (1r) (a) to detect the~~
21 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV.~~

22 **SECTION 26.** 252.13 (1r) (intro.) of the statutes is amended to read:

23 252.13 (1r) (intro.) For the purposes of this section, the state epidemiologist
24 shall make separate findings of medical significance and sufficient reliability for ~~a~~
25 an HIV ~~test or a series of HIV tests to detect the presence of HIV, antigen or~~

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1 ~~nonantigenic products of HIV or an antibody to HIV~~ for each of the following
2 purposes:

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

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

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

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

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

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

22 **SECTION 30.** 252.133 (title) of the statutes is created to read:

23 **252.133 (title) HIV testing for anatomical gifts.**

24 **SECTION 31.** 252.14 (2) (intro.) of the statutes is amended to read:

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1 252.14 (2) (intro.) No health care provider, peace officer, fire fighter,
2 correctional officer, state patrol officer, jailer or keeper of a jail or person designated
3 with custodial authority by the jailer or keeper, home health agency, inpatient health
4 care facility, or person who has access to a validated HIV test result may do any of
5 the following with respect to an individual who has acquired immunodeficiency
6 syndrome or has a positive, validated HIV test ~~for the presence of HIV, antigen or~~
7 ~~nonantigenic products of HIV or an antibody to HIV~~ result, solely because the
8 individual has HIV infection or an illness or medical condition that is caused by,
9 arises from, or is related to HIV infection:

10 **SECTION 32.** 252.14 (2m) of the statutes is created to read:

11 252.14 (2m) If a person declines to be subjected to an HIV test, a health care
12 provider may not use the fact that the person declined an HIV test as a basis for
13 denying services or treatment, other than an HIV test, to the person.

14 **SECTION 33.** 252.14 (3) of the statutes is amended to read:

15 252.14 (3) ~~A health care provider, home health agency, or inpatient health care~~
16 ~~facility that tests an individual for HIV infection shall provide counseling about HIV~~
17 ~~and referral for appropriate health care and support services as necessary.~~ A health
18 care provider, home health agency, or inpatient health care facility that treats an
19 individual who has an HIV infection or acquired immunodeficiency syndrome shall
20 develop and follow procedures that shall ensure continuity of care for the individual
21 in the event that his or her condition exceeds the scope of licensure or certification
22 of the provider, agency, or facility.

23 **SECTION 34.** 252.14 (4) of the statutes is amended to read:

24 252.14 (4) Any person violating sub. (2) is liable to the patient for actual
25 damages and costs, plus exemplary damages of up to \$5,000 \$10,000 for an

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1 intentional violation. In determining the amount of exemplary damages, a court
2 shall consider the ability of a health care provider who is an individual to pay
3 exemplary damages.

4 **SECTION 35.** 252.15 (title) of the statutes is amended to read:

5 **252.15 (title) Restrictions on use of ~~a~~ an HIV test for HIV.**

6 **SECTION 36.** 252.15 (1) (ab) of the statutes is repealed.

7 **SECTION 37.** 252.15 (1) (ac) of the statutes is created to read:

8 252.15 (1) (ac) “Authorized representative” means any of the following:

9 1. A health care agent, as defined under s. 155.01 (4), acting in accordance with
10 a power of attorney for health care that is in effect under s. 155.05 (2).

11 2. A person named by the court under ch. 48 or 54 or ch. 880, 2003 stats., having
12 the duty and authority of guardianship.

13 3. A parent or legal custodian of a person who is under 14 years of age.

14 4. For a person who is unable to communicate due to a medical condition, the
15 person’s closet living relative or another individual with whom the person has a
16 meaningful social and emotional relationship.

17 **SECTION 38.** 252.15 (1) (am) of the statutes is amended to read:

18 252.15 (1) (am) “Health care professional” means a physician or physician
19 assistant who is licensed under ch. 448 or a registered nurse or licensed practical
20 nurse who is licensed under ch. 441.

21 **SECTION 39.** 252.15 (1) (d) of the statutes is repealed.

22 **SECTION 40.** 252.15 (1) (e) of the statutes is repealed.

23 **SECTION 41.** 252.15 (1) (em) (intro.) of the statutes is amended to read:

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1 252.15 (1) (em) (intro.) ~~“Significantly exposed”~~ “Significant exposure” means
2 sustained a contact which ~~that~~ carries a potential for a transmission of HIV, by one
3 or more of the following:

4 **SECTION 42.** 252.15 (1) (fm) of the statutes is amended to read:

5 252.15 (1) (fm) “Universal Standard precautions” means measures that a
6 health care provider, an employee of a health care provider or other individual takes
7 in accordance with recommendations of the federal centers for disease control for the
8 health care provider, employee or other individual for prevention of HIV
9 transmission in health-care settings.

10 **SECTION 43.** 252.15 (2) (title) of the statutes is repealed.

11 **SECTION 44.** 252.15 (2) (a) (intro.) of the statutes is repealed.

12 **SECTION 45.** 252.15 (2) (a) 1. of the statutes is renumbered 252.133 (1) and
13 amended to read:

14 252.133 (1) Except as provided in ~~subd. 1g. sub. (2)~~, a health care provider, as
15 defined in s. 252.15 (1) (ar), who procures, processes, distributes, or uses a human
16 body part or human tissue that is the subject of an anatomical gift under s. 157.06
17 shall, ~~without obtaining consent to the testing,~~ have an HIV test for the presence of
18 HIV, antigen or nonantigenic products of HIV or an antibody to HIV performed on
19 the donor of the body part or tissue in order to assure medical acceptability of the gift
20 for the purpose intended. The health care provider shall use ~~as a~~ an HIV test for the
21 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV a test
22 ~~or series of tests that the state epidemiologist finds medically significant and~~
23 sufficiently reliable to detect the presence of HIV, antigen or nonantigenic products
24 of HIV or an antibody to HIV that yields a validated HIV test result. If the validated
25 HIV test result of the donor from the test or series of tests performed is positive, the

ASSEMBLY BILL 659**SECTION 45**

1 human body part or human tissue donated for use or proposed for donation may not
2 be used.

3 **SECTION 46.** 252.15 (2) (a) 1g. of the statutes is renumbered 252.133 (2) and
4 amended to read:

5 252.133 (2) If ~~a medical emergency~~, as determined by the attending physician
6 of a potential donee of a human body part or human tissue and including a threat to
7 ~~the preservation of life of the potential donee~~, a medical emergency exists under
8 which a human body part or human tissue that has been subjected to testing under
9 ~~subd. 1. sub. (1)~~ is unavailable, including a threat to the preservation of the the life
10 of the potential donee, the requirement of ~~subd. 1. sub. (1)~~ does not apply.

11 **SECTION 47.** 252.15 (2) (a) 2. of the statutes is renumbered 252.15 (2m) (b) 1.
12 and amended to read:

13 252.15 (2m) (b) 1. The HIV testing of any body fluid or tissue that is performed
14 by the department, a laboratory certified under 42 USC 263a, or a health care
15 provider, blood bank, blood center, or plasma center may, for the purpose of research
16 ~~and without first obtaining written consent to the testing~~, ~~subject any body fluids or~~
17 ~~tissues to a test for the presence of HIV, antigen or nonantigenic products of HIV or~~
18 ~~an antibody to HIV~~, if the testing is performed in a manner by which the identity of
19 the test subject is not known and may not be retrieved by the researcher.

20 **SECTION 48.** 252.15 (2) (a) 3. of the statutes is renumbered 252.15 (2m) (b) 2.
21 and amended to read:

22 252.15 (2m) (b) 2. ~~The medical director~~ HIV testing of a resident or patient of
23 a center for the developmentally disabled, as defined in s. 51.01 (3), or a mental
24 health institute, as defined in s. 51.01 (12), ~~may, without obtaining consent to the~~
25 ~~testing, subject a resident or patient of the center or institute to a test for the presence~~

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1 of HIV, antigen or nonantigenic products of HIV or an antibody to HIV if he or she
2 if the medical director of the center or institute determines that the conduct of the
3 resident or patient poses a significant risk of transmitting HIV to another resident
4 or patient of the center or institute and if the medical director provides the resident
5 or patient, or the resident's or patient's guardian, an explanation of the HIV test
6 result.

7 **SECTION 49.** 252.15 (2) (a) 4. of the statutes is repealed.

8 **SECTION 50.** 252.15 (2) (a) 6. of the statutes is renumbered 252.15 (2m) (b) 3.
9 and amended to read:

10 252.15 (2m) (b) 3. ~~A HIV testing by a health care professional acting under~~
11 ~~an order of the court under subd. 7. sub. (5j) or s. 938.296 (4) or (5) or 968.38 (4) or~~
12 ~~(5) may, without first obtaining consent to the testing, subject an individual to a test~~
13 ~~or a series of tests to detect the presence of HIV, antigen or nonantigenic products of~~
14 ~~HIV or an antibody to HIV. No sample used for laboratory test purposes under this~~
15 ~~subdivision may disclose the name of the HIV test subject, and, notwithstanding sub.~~
16 ~~(4) (e), the HIV test results may not be made part of the individual's permanent~~
17 ~~medical record.~~

18 **SECTION 51.** 252.15 (2) (a) 7. a. of the statutes is renumbered 252.15 (5g) (a) 1.
19 and amended to read:

20 252.15 (5g) (a) 1. ~~If all of the conditions under subd. 7. ai. to c. are met, an The~~
21 ~~person is an~~ emergency medical technician; first responder; fire fighter; peace officer;
22 correctional officer; person who is employed at a juvenile correctional facility, as
23 defined in s. 938.02 (10p), or a secured residential care center for children and youth,
24 as defined in s. 938.02 (15g); state patrol officer; jailer, keeper of a jail, or person

ASSEMBLY BILL 659**SECTION 51**

1 designated with custodial authority by the jailer or keeper, and the contact occurred
2 during the course of the person providing care or services to an the individual;

3 2. The person is a peace officer, correctional officer, state patrol officer, jailer,
4 or keeper of a jail, or person designated with custodial authority by the jailer or
5 keeper, and the contact occurred while the person was searching or arresting an the
6 individual or while controlling or transferring an the individual in custody;

7 3. The person is a health care provider or an employee of a health care provider,
8 and the contact occurred during the course of the person providing care or treatment
9 to an the individual or handling or processing specimens of body fluids or tissues of
10 an the individual;

11 4. The person is a staff member of a state crime laboratory, and the contact
12 occurred during the course of the person handling or processing specimens of body
13 fluids or tissues of an the individual;

14 5. The person is a social worker; or an employee of a school district, cooperative
15 educational service agency, charter school, private school, the Wisconsin
16 Educational Services Program for the Deaf and Hard of Hearing, or the Wisconsin
17 Center for the Blind and Visually Impaired, and the contact occurred while the
18 person was performing employment duties involving an the individual; ~~who is~~
19 ~~significantly exposed to the individual may subject the individual's blood to a test or~~
20 ~~a series of tests for the presence of HIV, antigen or nonantigenic products of HIV or~~
21 ~~an antibody to HIV and may receive disclosure of the results.~~

22 **SECTION 52.** 252.15 (2) (a) 7. ai. of the statutes is renumbered 252.15 (5g) (b)
23 and amended to read:

24 252.15 (5g) (b) ~~The affected person uses universal~~ If the contact occurs as
25 provided under par. (a) 1. to 5., the entity that employs or contracts with the person

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1 to provide the services described under par. (a) 1. to 5. requires, as a general policy,
2 that standard precautions, if any, against significant exposure, ~~and was using~~
3 ~~universal precautions at the time that he or she was significantly exposed~~ be taken
4 during provision of the services, except in those emergency circumstances in which
5 the time necessary for use of the ~~universal~~ standard precautions would endanger the
6 life of the individual.

7 **SECTION 53.** 252.15 (2) (a) 7. ak. of the statutes is renumbered 252.15 (5g) (c)
8 and amended to read:

9 252.15 (5g) (c) A physician, physician assistant, or advanced practice nurse
10 prescriber, based on information provided to the physician, physician assistant, or
11 advanced practice nurse prescriber, determines and certifies in writing that the
12 affected person has ~~been significantly exposed~~ had contact that constitutes a
13 significant exposure. The certification shall accompany the request for HIV testing
14 and disclosure. If the affected person ~~who is significantly exposed~~ is a physician,
15 physician assistant, or advanced practice nurse prescriber, he or she may not make
16 this determination or certification. The information that is provided to a physician,
17 physician assistant, or advanced practice nurse prescriber to document the
18 occurrence of the contact that constitutes a significant exposure and the physician's,
19 physician assistant's, or advanced practice nurse prescriber's certification that ~~an~~
20 affected the person has ~~been significantly exposed, under this subd. 7. ak. had~~
21 contact that constitutes a significant exposure, shall be provided on a report form
22 that is developed by the department of commerce under s. 101.02 (19) (a) or on a
23 report form that the department of commerce determines, under s. 101.02 (19) (b),
24 is substantially equivalent to the report form that is developed under s. 101.02 (19)
25 (a).

ASSEMBLY BILL 659**SECTION 54**

1 **SECTION 54.** 252.15 (2) (a) 7. am. of the statutes is renumbered 252.15 (5g) (d)
2 and amended to read:

3 252.15 (5g) (d) The affected person submits to ~~a~~ an HIV test for the presence
4 ~~of HIV, antigen or nonantigenic products of HIV or an antibody to HIV,~~ as soon as
5 feasible or within a time period established by the department after consulting
6 guidelines of the centers for disease control of the federal public health service,
7 whichever is earlier.

8 **SECTION 55.** 252.15 (2) (a) 7. ap. of the statutes is renumbered 252.15 (5g) (e)
9 and amended to read:

10 252.15 (5g) (e) Except as provided in ~~subd. 7. av. to c. sub. (5j),~~ the HIV test is
11 performed on blood of the individual that is drawn for a purpose other than HIV
12 testing for the presence of HIV, antigen or nonantigenic products of HIV or an
13 antibody to HIV.

14 **SECTION 56.** 252.15 (2) (a) 7. ar. of the statutes is renumbered 252.15 (5g) (f)
15 and amended to read:

16 252.15 (5g) (f) The individual, ~~if capable of consenting,~~ has been given an
17 opportunity to be tested with his or her consent subjected to an HIV test in
18 accordance with the conditions under sub. (2m) (a) and has not consented declined.

19 **SECTION 57.** 252.15 (2) (a) 7. at. of the statutes is renumbered 252.15 (5g) (g)
20 (intro.) and amended to read:

21 252.15 (5g) (g) (intro.) The individual has been informed that of all of the
22 following:

23 1. That an HIV test may be performed on his or her blood may be tested for the
24 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV; that,

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1 2. ~~That the HIV test results may be disclosed to no one, including that~~
2 individual, without his or her consent, except to the person who is certified to have
3 been significantly exposed; that, and the person's physician, physician assistant, or
4 nurse.

5 4. ~~That, if the person knows the identity of the individual, he or she the person~~
6 may not disclose the identity to any other person except for the purpose of having the
7 HIV test or series of tests performed; and that.

8 5. ~~That~~ a record may be kept of the HIV test results only if the record does not
9 reveal the individual's identity.

10 **SECTION 58.** 252.15 (2) (a) 7. av. of the statutes is renumbered 252.15 (5j) (a)
11 and amended to read:

12 252.15 **(5j)** (a) ~~If blood that is specified in subd. 7. ap. is unavailable, the person~~
13 ~~who is certified under subd. 7. ak. to have been significantly exposed~~ A person who
14 may cause an individual to be subjected to HIV testing under sub. (5g) may request
15 the district attorney to apply to the circuit court for his or her county to order the
16 individual to submit to ~~a~~ an HIV test or a series of tests for the presence of HIV,
17 ~~antigen or nonantigenic products of HIV or an antibody to HIV and to disclose the~~
18 ~~results to that person if no blood of the individual that was drawn for a purpose other~~
19 than HIV testing is available for HIV testing. ~~The~~ A person who is certified under
20 ~~subd. 7. ak. to have been significantly exposed~~ making a request to a district attorney
21 under this paragraph shall accompany the request with provide the district attorney
22 the certification under ~~subd. 7. ak~~ sub. (5g) (c).

23 **SECTION 59.** 252.15 (2) (a) 7. b. of the statutes is renumbered 252.15 (5j) (b) and
24 amended to read:

ASSEMBLY BILL 659**SECTION 59**

1 252.15 (5j) (b) Upon receipt of a request and certification under the
2 requirements of this subdivision par. (a), a district attorney shall, as soon as possible
3 so as to enable the court to provide timely notice, apply to the circuit court for his or
4 her county to order the individual to submit to ~~a~~ an HIV test ~~or a series of tests as~~
5 ~~specified in subd. 7. a., administered by a health care professional, and to disclose~~
6 ~~the results of the test or tests as specified in subd. 7. c.~~

7 **SECTION 60.** 252.15 (2) (a) 7. c. of the statutes is renumbered 252.15 (5j) (c) and
8 amended to read:

9 252.15 (5j) (c) The court shall set a time for a hearing on the matter under subd.
10 ~~7. a. this subsection~~ within 20 days after receipt of a request under subd. ~~7. b~~ par. (b).
11 The court shall give the district attorney and the individual from whom ~~a~~ an HIV
12 test is sought notice of the hearing at least 72 hours prior to the hearing. The
13 individual may have counsel at the hearing, and counsel may examine and
14 cross-examine witnesses. If the court finds probable cause to believe that the person
15 who requested a court order for testing has had contact with body fluid of the
16 individual has significantly exposed the affected person that constitutes a significant
17 exposure, the court shall, except as provided in subd. ~~7. d.~~ par. (d), order the
18 individual to submit to ~~a~~ an HIV test ~~or a series of tests for the presence of HIV,~~
19 ~~antigen or nonantigenic products of HIV or an antibody to HIV.~~ The court shall
20 require the health care professional who performs the test or series of tests to refrain
21 from disclosing the test results to the individual and to disclose the test results to the
22 affected person and his or her health care professional. No sample used for
23 laboratory test purposes under this subd. ~~7. c.~~ paragraph may disclose the name of
24 the HIV test subject.

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1 **SECTION 61.** 252.15 (2) (a) 7. d. of the statutes is renumbered 252.15 (5j) (d) and
2 amended to read:

3 252.15 **(5j)** (d) The court is not required to order ~~the~~ an individual to submit
4 to ~~a~~ an HIV test under ~~subd. 7. e. par. (c)~~ if the court finds substantial reason relating
5 to the life or health of the individual not to do so and states the reason on the record.

6 **SECTION 62.** 252.15 (2) (a) 7m. of the statutes is renumbered 252.15 (3m) (f) and
7 amended to read:

8 252.15 **(3m)** (f) ~~The test results of an HIV test of an individual that is performed~~
9 ~~under subd. 7. sub. (5g) or (5j) may be disclosed only to the individual, if he or she~~
10 ~~so consents, to anyone~~ the following:

11 2. Anyone authorized by the individual and to the affected subject of the test.

12 3. The person who was certified to have been significantly exposed. A record
13 ~~may be retained of the test results only if the record does not reveal the individual's~~
14 ~~identity. If the affected person knows the identity of the individual whose blood was~~
15 ~~tested, he or she may not disclose the identity to any other person except for the~~
16 ~~purpose of having the test or series of tests performed~~ had contact that constitutes
17 a significant exposure and to that person's physician, physician assistant, or nurse.

18 **SECTION 63.** 252.15 (2) (am) of the statutes is repealed.

19 **SECTION 64.** 252.15 (2) (b) of the statutes is repealed.

20 **SECTION 65.** 252.15 (2) (bm) of the statutes is repealed.

21 **SECTION 66.** 252.15 (2m) (title) of the statutes is created to read:

22 252.15 **(2m)** (title) CONSENT FOR HIV TESTING.

23 **SECTION 67.** 252.15 (2m) (a) of the statutes is created to read:

ASSEMBLY BILL 659**SECTION 67**

1 252.15 (2m) (a) Except as provided in par. (b), and subject to par. (c), a health
2 care provider, blood bank, blood center, or plasma center may not subject a person
3 to an HIV test unless all of the following conditions are satisfied:

4 1. The health care provider, blood bank, blood center, or plasma center notifies
5 the person or the person's authorized representative that the person or the person's
6 authorized representative may decline the HIV test and that the person will be
7 subjected to an HIV test unless the person or the person's authorized representative
8 declines the test.

9 2. The health care provider, blood bank, blood center, or plasma center offers
10 the person or the person's authorized representative a brief oral or written
11 explanation or description of HIV infection; HIV test results; requirements under
12 subs. (7) (b) and (7m) for reporting HIV test results; treatment options for a person
13 who has a positive HIV test result; and AIDS service organizations, as defined in s.
14 252.12 (1) (b), and the services they provide to persons who have a positive HIV test
15 result.

16 3. If a health care provider offers to perform an HIV test, the health care
17 provider notifies the person or the person's authorized representative that if the
18 person or the person's authorized representative declines to have an HIV test
19 performed, the health care provider may not use the fact that the person declined an
20 HIV test as a basis for denying services or treatment, other than an HIV test, to the
21 person.

22 4. The health care provider, blood bank, blood center, or plasma center provides
23 the person or the person's authorized representative an opportunity to ask questions
24 and to decline the HIV test.

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1 5. After complying with applicable conditions under subds. 1. to 4., the health
2 care provider, blood bank, blood center, or plasma center verifies that the person or
3 or the person's authorized representative understands that an HIV test will be
4 performed on the person and that the decision of the person or the person's
5 authorized representative regarding whether to have an HIV test performed is not
6 coerced or involuntary.

7 **SECTION 68.** 252.15 (2m) (b) (intro.) of the statutes is created to read:

8 252.15 **(2m)** (b) Paragraph (a) does not apply to any of the following:

9 **SECTION 69.** 252.15 (2m) (b) 4. of the statutes is created to read:

10 252.15 **(2m)** (b) 4. HIV testing in cases of significant exposure, as provided
11 under sub. (5g) or (5j).

12 **SECTION 70.** 252.15 (2m) (b) 5. of the statutes is created to read:

13 252.15 **(2m)** (b) 5. HIV testing of a donor of a human body part or human tissue
14 that is required under s. 252.133.

15 **SECTION 71.** 252.15 (2m) (c) of the statutes is created to read:

16 252.15 **(2m)** (c) If the subject of an HIV test is a minor who is 14 years of age
17 or older, a health care provider, blood bank, blood center, or plasma center shall
18 provide the notifications and offer the information under par. (a) 1. to 4. to the minor
19 or his or her authorized representative, and only the minor or his or authorized
20 representative may consent to or decline an HIV test under par. (a).

21 **SECTION 72.** 252.15 (2r) of the statutes is created to read:

22 252.15 **(2r)** PROHIBITION AGAINST CONDITIONING HIV TESTING ON DISCLOSURE. A
23 health care provider may not require a person to authorize disclosure of HIV test
24 results as a condition of administering an HIV test to the person.

25 **SECTION 73.** 252.15 (3) of the statutes is repealed.

ASSEMBLY BILL 659**SECTION 74**

1 **SECTION 74.** 252.15 (3m) (b) 1. to 7. of the statutes are created to read:

2 252.15 **(3m)** (b) 1. The name of the subject of the HIV test.

3 2. Specification of the information that may be disclosed.

4 3. The name of the person authorized to make the disclosure.

5 4. The name of the person to whom the disclosure is authorized.

6 5. The signature of the subject of the HIV test or the signature of the subject's
7 authorized representative.

8 6. The date the authorization is signed as provided under subd. 5.

9 7. The time period during which the authorization for disclosure is effective.

10 **SECTION 75.** 252.15 (3m) (c) of the statutes is created to read:

11 252.15 **(3m)** (c) If the subject of an HIV test is a minor who is 14 years of age
12 or older, only the minor or his or her authorized representative may exercise the test
13 subject's authority to disclose HIV test results under par. (a) or to authorize
14 disclosure of HIV test results under par. (b).

15 **SECTION 76.** 252.15 (3m) (d) (intro.) of the statutes is created to read:

16 252.15 **(3m)** (d) (intro.) Except as provided under par. (f), a person who is
17 neither the subject of an HIV test nor the subject's authorized representative may
18 without written authorization from the test subject or authorized representative
19 under par. (b) disclose the subject's HIV test results to the following persons under
20 the following circumstances:

21 **SECTION 77.** 252.15 (3m) (e) of the statutes is created to read:

22 252.15 **(3m)** (e) The health care professional who performs an HIV test under
23 sub. (5g) or (5j) on behalf of a person who has contact with body fluids of the test
24 subject that constitutes as significant exposure shall disclose the HIV test results to
25 the person and the person's physician, physician assistant, or nurse.

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1 **SECTION 78.** 252.15 (3m) (f) 1. of the statutes is created to read:

2 252.15 (3m) (f) 1. The subject of the test.

3 **SECTION 79.** 252.15 (3m) (g) of the statutes is created to read:

4 252.15 (3m) (g) A person who was certified to have had contact with body fluid
5 of an individual that constitutes a significant exposure and has the individual's blood
6 subjected to an HIV test under sub. (5g) or (5j) may not disclose the identity of the
7 test subject to any other person except for the purpose of having the HIV test
8 performed.

9 **SECTION 80.** 252.15 (4) (intro.) of the statutes is amended to read:

10 252.15 (4) RECORD MAINTENANCE. (intro.) A health care provider, blood bank,
11 blood center, or plasma center that obtains ~~from a person~~ a specimen of body fluids
12 or tissues from a person for the purpose of testing for the presence of HIV, antigen
13 or nonantigenic products of HIV or an antibody to an HIV test, or offers to subject
14 a person to an HIV test, shall maintain in the person's health care record all of the
15 following:

16 **SECTION 81.** 252.15 (4) (a) of the statutes is repealed.

17 **SECTION 82.** 252.15 (4) (b) of the statutes is repealed and recreated to read:

18 252.15 (4) (b) A record of whether the person or his or her authorized
19 representative consented to or declined the HIV test under sub. (2m) (a).

20 **SECTION 83.** 252.15 (4) (bm) of the statutes is created to read:

21 252.15 (4) (bm) A record of any authorization for disclosure of HIV test results
22 that the person or his or her authorized representative has made as provided under
23 sub. (3m) (b).

24 **SECTION 84.** 252.15 (4) (c) of the statutes is amended to read:

ASSEMBLY BILL 659**SECTION 84**

1 252.15 (4) (c) ~~Maintain a~~ A record of the test results obtained. ~~A record that~~
2 ~~is made under the circumstances described in sub. (2) (a) 7m. may not reveal the~~
3 ~~identity of the test subject~~ of an HIV test administered to the person, except that
4 results of an HIV test administered under sub. (5g) or (5j) or s. 938.296 (4) or (5) or
5 968.38 (4) or (5) that include the identity of the test subject may not be maintained
6 without the consent of the test subject.

7 **SECTION 85.** 252.15 (5) (title) of the statutes is renumbered 252.15 (3m) (title)
8 and amended to read:

9 252.15 (3m) (title) CONFIDENTIALITY AND DISCLOSURE OF HIV TEST RESULTS.

10 **SECTION 86.** 252.15 (5) (a) (intro.) of the statutes is renumbered 252.15 (3m)
11 (a) and amended to read:

12 252.15 (3m) (a) ~~An individual who is the~~ The subject of ~~a~~ an HIV test for the
13 ~~presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV or~~
14 ~~the individual's health care agent, if the individual has executed a power of attorney~~
15 ~~for health care instrument under ch. 155 and has been found to be incapacitated~~
16 ~~under s. 155.05 (2),~~ subject's authorized representative may disclose the results of
17 the individual's subject's test to anyone. ~~A~~

18 (b) Except as provided under par. (d) or (e), a person who is neither the
19 individual subject of the HIV test nor the individual's health care agent subject's
20 authorized representative may not, ~~unless he or she is specifically authorized by the~~
21 ~~individual to do so,~~ disclose the individual's subject's HIV test results ~~except to the~~
22 ~~following persons or under~~ unless the subject of the HIV test or his or her authorized
23 representative has signed authorization for the disclosure that contains all of the
24 following circumstances:

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1 **SECTION 87.** 252.15 (5) (a) 1. of the statutes is renumbered 252.15 (3m) (d) 1.
2 and amended to read:

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

7 **SECTION 88.** 252.15 (5) (a) 2. of the statutes is renumbered 252.15 (3m) (d) 2.
8 and amended to read:

9 252.15 **(3m)** (d) 2. To a health care provider who provides care to the test subject
10 of the HIV test, including those instances in which a health care provider provides
11 emergency care to the subject.

12 **SECTION 89.** 252.15 (5) (a) 3. of the statutes is renumbered 252.15 (3m) (d) 3.

13 **SECTION 90.** 252.15 (5) (a) 4. of the statutes is renumbered 252.15 (3m) (d) 4.,
14 and 252.15 (3m) (d) 4. (intro.), a. and b., as renumbered, are amended to read:

15 252.15 **(3m)** (d) 4. (intro.) To a blood bank, blood center, or plasma center that
16 ~~subjects a person to a~~ subjected the test subject to an HIV test under sub. (2) (a), for
17 any of the following purposes:

18 a. Determining the medical acceptability of blood or plasma secured from the
19 test subject of the HIV test.

20 b. Notifying the test subject of the HIV test of the test results.

21 **SECTION 91.** 252.15 (5) (a) 5. of the statutes is renumbered 252.15 (3m) (d) 5.

22 **SECTION 92.** 252.15 (5) (a) 6. of the statutes is renumbered 252.15 (3m) (d) 6.

23 and amended to read:

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1 252.15 (3m) (d) 6. To the state epidemiologist or his or her designee, or to a local
2 health officer or his or her designees, for the purpose of providing epidemiologic
3 surveillance or investigation or control of communicable disease.

4 **SECTION 93.** 252.15 (5) (a) 7. of the statutes is renumbered 252.15 (3m) (d) 7.
5 and amended to read:

6 252.15 (3m) (d) 7. To a funeral director, as defined under s. 445.01 (5) (a) 1. or
7 2. or (c) or to other persons who prepare the body of ~~a decedent~~ the subject of the HIV
8 test for burial or other disposition or to a person who performs an autopsy, or assists
9 in performing an autopsy, on the subject of the HIV test.

10 **SECTION 94.** 252.15 (5) (a) 8. and 9. of the statutes are renumbered 252.15 (3m)
11 (d) 8. and 9.

12 **SECTION 95.** 252.15 (5) (a) 10. of the statutes is renumbered 252.15 (3m) (d) 10.,
13 and 252.15 (3m) (d) 10. (intro.), a. and c., as renumbered, are amended to read:

14 252.15 (3m) (d) 10. (intro.) ~~To~~ Except as provided under par. (g), to a person who
15 conducts research, for the purpose of research, if the researcher:

16 a. Is affiliated with a health care provider under subd. ~~3~~ 2.

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

23 **SECTION 96.** 252.15 (5) (a) 11. of the statutes is repealed.

24 **SECTION 97.** 252.15 (5) (a) 12. of the statutes is renumbered 252.15 (3m) (d) 11.
25 and amended to read:

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1 252.15 (3m) (d) 11. To a coroner, medical examiner, or an appointed assistant
2 to a coroner or medical examiner, if one or more of the following ~~conditions exist~~
3 applies:

4 a. ~~The coroner, medical examiner, or an appointed assistant is investigating the~~
5 cause of death of the subject of the HIV test and possible HIV-infected status is
6 ~~relevant to the cause of death of a person whose death is under direct investigation~~
7 ~~by the coroner, medical examiner or appointed assistant.~~

8 b. The coroner, medical examiner, or appointed assistant is ~~significantly~~
9 ~~exposed to a person whose death is under direct investigation by the coroner, medical~~
10 ~~examiner, or appointed assistant~~ investigating the cause of death of the subject of the
11 HIV test and has contact with the body fluid of the subject of the HIV test that
12 constitutes a significant exposure, if a physician, physician assistant, or advanced
13 practice nurse prescriber, based on information provided to the physician, physician
14 assistant, or advanced practice nurse prescriber, determines and certifies in writing
15 that the coroner, medical examiner, or appointed assistant has been ~~significantly~~
16 ~~exposed~~ had a contact that constitutes a significant exposure and if the certification
17 accompanies the request for disclosure.

18 **SECTION 98.** 252.15 (5) (a) 13. of the statutes is renumbered 252.15 (3m) (d) 12.
19 and amended to read:

20 252.15 (3m) (d) 12. To a sheriff, jailer, or keeper of a prison, jail, or house of
21 correction or a person designated with custodial authority by the sheriff, jailer, or
22 keeper, for whom disclosure is necessitated in order to permit the assigning of a
23 private cell to a prisoner who has a positive HIV test result.

24 **SECTION 99.** 252.15 (5) (a) 14. of the statutes is renumbered 252.15 (3m) (d) 13.
25 and amended to read:

ASSEMBLY BILL 659**SECTION 99**

1 252.15 (3m) (d) 13. If the ~~test results of a test administered to an individual~~
2 are subject of the HIV test has a positive HIV test result and the individual is
3 deceased, by the ~~individual's subject's~~ attending physician, physician assistant, or
4 advanced practice nurse prescriber, to persons, if known to the physician, physician
5 assistant, or advanced practice nurse prescriber, with whom the individual ~~has~~
6 subject had sexual contact or ~~has~~ shared intravenous drug use paraphernalia.

7 **SECTION 100.** 252.15 (5) (a) 15. of the statutes is repealed.

8 **SECTION 101.** 252.15 (5) (a) 17. of the statutes is renumbered 252.15 (3m) (d)
9 14. and amended to read:

10 252.15 (3m) (d) 14. To ~~an alleged victim or victim, to a health care professional,~~
11 ~~upon request~~ a person under s. 938.296 (4) (a) to (e) as specified in s. 938.296 (4) (e)
12 ~~or; to a person under s. 938.296 (5) (a) to (e) as specified in s. 938.296 (5) (e) or; to a~~
13 person under s. 968.38 (4) (a) to (c) or (5) (e), who provides care to the alleged victim
14 ~~or victim and, if the alleged victim or victim is a minor, to the parent or guardian of~~
15 ~~the alleged victim or victim, as specified in s. 968.38 (4); or to a person under s.~~
16 ~~938.296 (4) or 968.38 (5) or (a) to (c) as specified in s. 968.38 (4) or (5).~~

17 **SECTION 102.** 252.15 (5) (a) 18. of the statutes is repealed.

18 **SECTION 103.** 252.15 (5) (a) 19. of the statutes is renumbered 252.15 (3m) (d)
19 15. and amended to read:

20 252.15 (3m) (d) 15. If the subject of the HIV test was administered to is a child
21 who has been placed in a foster home, treatment foster home, group home,
22 residential care center for children and youth, or juvenile correctional facility, as
23 defined in s. 938.02 (10p), including a placement under s. 48.205, 48.21, 938.205, or
24 938.21, or for whom placement in a foster home, treatment foster home, group home,
25 residential care center for children and youth, or juvenile correctional facility is

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

14 **SECTION 104.** 252.15 (5) (a) 20. of the statutes is renumbered 252.15 (3m) (d)
15 16. and amended to read:

16 252.15 (3m) (d) 16. ~~To a~~ If the subject of the HIV test is a prisoner, to the
17 prisoner's health care provider, the medical staff of a prison or jail in which a prisoner
18 is confined, the receiving institution intake staff at a prison or jail to which a prisoner
19 is being transferred or a person designated by a jailer to maintain prisoner medical
20 records, if the disclosure is made with respect to the prisoner's patient health care
21 records under s. 302.388, to the medical staff of a jail to whom the HIV results are
22 disclosed under s. 302.388 (2) (c) or (d), to the medical staff of a jail to which a prisoner
23 is being transferred, if the results are provided to the medical staff by the department
24 of corrections as part of the prisoner's medical file, to a health care provider to whom
25 the results are disclosed under s. 302.388 (2) (c) or (f) or the department of corrections

ASSEMBLY BILL 659**SECTION 104**

1 if the disclosure is made with respect to a prisoner's patient health care records under
2 s. 302.388 (4).

3 **SECTION 105.** 252.15 (5) (b) of the statutes is renumbered 252.15 (3m) (h) and
4 amended to read:

5 252.15 (3m) (h) A private pay patient may ~~deny access to~~ prohibit disclosure
6 of his or her HIV test results ~~granted~~ under par. (a) ~~(d)~~ 10. if he or she annually
7 submits to the maintainer of his or her HIV test results under sub. (4) (c) a signed,
8 written request that ~~denial be made~~ disclosure be prohibited.

9 **SECTION 106.** 252.15 (5g) (intro.) and (a) of the statutes are created to read:

10 252.15 (5g) SIGNIFICANT EXPOSURE. A person who has contact with body fluid
11 of an individual that constitutes a significant exposure may cause the individual to
12 be subjected to HIV testing and receive the results of the HIV test under sub. (3m)
13 (e) if all of the following apply:

14 (a) The contact occurred under one of the following circumstances:

15 **SECTION 107.** 252.15 (5g) (a) 6. of the statutes is created to read:

16 252.15 (5g) (a) 6. While the person rendered emergency care at the scene of an
17 emergency or accident, if the person is immune from civil liability for rendering the
18 care under s. 895.48 or 895.4802 (2).

19 **SECTION 108.** 252.15 (5g) (g) 3. of the statutes is created to read:

20 252.15 (5g) (g) 3. That, except as provided in subd. 2., the HIV test may not be
21 disclosed to any person.

22 **SECTION 109.** 252.15 (5j) (title) of the statutes is created to read:

23 252.15 (5j) (title) COURT ORDER FOR HIV TESTING.

24 **SECTION 110.** 252.15 (5m) (title) of the statutes is amended to read:

25 252.15 (5m) (title) AUTOPSIES; HIV TESTING OF CERTAIN CORPSES.

ASSEMBLY BILL 659**SECTION 111**

1 **SECTION 111.** 252.15 (5m) (intro.) of the statutes is renumbered 252.15 (5m) (d)
2 (intro.) and amended to read:

3 252.15 **(5m)** (d) (intro.) Notwithstanding s. 157.05, a corpse may be subjected
4 to ~~a~~ an HIV test for the presence of HIV, antigen or nonantigenic products of HIV
5 ~~or an antibody to HIV~~ and the test results disclosed to the a person who has been
6 ~~significantly exposed under any of~~ contact that constitutes a significant exposure
7 with body fluid of the corpse or an individual who subsequently dies, if all of the
8 following conditions apply:

9 **SECTION 112.** 252.15 (5m) (a) of the statutes is renumbered 252.15 (5m) (d) 1.
10 a. and amended to read:

11 252.15 **(5m)** (d) 1. a. ~~If a~~ While the person, including a person exempted from
12 civil liability under the conditions specified under s. 895.48, or 895.4802, ~~or~~ 895.4803,
13 ~~who (2) renders to the victim of an emergency or accident~~ emergency care during the
14 ~~course of which the emergency caregiver is significantly exposed to the~~ an emergency
15 or accident victim and the emergency or accident victim subsequently dies prior to
16 ~~testing for the presence of~~ performance of an HIV, antigen or nonantigenic products
17 of HIV, ~~or an antibody to HIV~~; if a physician or advanced practice nurse prescriber,
18 ~~based on information provided to the physician or advanced practice nurse~~
19 ~~prescriber, determines and certifies in writing that the emergency caregiver has~~
20 ~~been significantly exposed; and if the certification accompanies the request for~~
21 ~~testing and disclosure. Testing of a corpse under this paragraph shall be ordered by~~
22 ~~the coroner, medical examiner, or physician who certifies the victim's cause of death~~
23 ~~under s. 69.18 (2) (b), (c) or (d)~~ test on the victim.

24 **SECTION 113.** 252.15 (5m) (b) of the statutes is renumbered 252.15 (5m) (d) 1.
25 b. and amended to read:

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1 252.15 (5m) (d) 1. b. If The person is a funeral director, coroner, medical
2 examiner, or appointed assistant to a coroner or medical examiner who and the
3 contact occurs while the person prepares the corpse of a decedent for burial or other
4 disposition or ~~a~~ while the person who performs an autopsy or assists in performing
5 an autopsy is significantly exposed to on the corpse; if a physician or advanced
6 practice nurse prescriber, based on information provided to the physician or
7 advanced practice nurse prescriber, determines and certifies in writing that the
8 funeral director, coroner, medical examiner, or appointed assistant has been
9 significantly exposed; and if the certification accompanies the request for testing and
10 disclosure. ~~Testing of a corpse under this paragraph shall be ordered by the~~
11 ~~attending physician or advanced practice nurse prescriber of the funeral director,~~
12 ~~coroner, medical examiner, or appointed assistant who is so exposed.~~

13 **SECTION 114.** 252.15 (5m) (c) of the statutes is renumbered 252.15 (5m) (d) 1.
14 c. and amended to read:

15 252.15 (5m) (d) 1. c. If The person is a health care provider or an agent or
16 employee of a health care provider is significantly exposed to and the person has
17 contact with body fluid of the corpse, or to of a patient who dies subsequent to the
18 exposure contact and prior to testing for the presence performance of an HIV, antigen
19 or nonantigenic products of HIV, or an antibody to HIV; if a physician or advanced
20 practice nurse prescriber who is not the health care provider, based on information
21 provided to the physician or advanced practice nurse prescriber, determines and
22 certifies in writing that the health care provider, agent or employee has been
23 significantly exposed; and if the certification accompanies the request for testing and
24 disclosure. ~~Testing of a corpse under this paragraph shall be ordered by the~~

ASSEMBLY BILL 659**SECTION 114**

1 ~~physician or advanced practice nurse prescriber who certifies that the significant~~
2 ~~exposure has occurred test on the patient.~~

3 **SECTION 115.** 252.15 (5m) (d) 1. (intro.) of the statutes is created to read:

4 252.15 (5m) (d) 1. The contact occurs under any of the following circumstances:

5 **SECTION 116.** 252.15 (5m) (d) 2. and 3. of the statutes are created to read:

6 252.15 (5m) (d) 2. A physician, physician assistant, or advanced practice nurse
7 prescriber, based on information provided to the physician, physician assistant, or
8 advanced practice nurse prescriber, determines and certifies in writing that the
9 contact under subd. 1. constitutes a significant exposure. A health care provider who
10 as a contact under par. (d) 1. c. may not make the certification under this subdivision
11 for himself or herself.

12 3. The certification under subd. 2. accompanies the request for performance of
13 an HIV test and disclosure.

14 **SECTION 117.** 252.15 (5m) (e) of the statutes is created to read:

15 252.15 (5m) (e) If the conditions under par. (d) are satisfied, the following
16 person shall order an HIV test of the corpse:

17 1. If the contact occurs as provided under par. (d) 1. a., the coroner, medical
18 examiner, or physician who certifies the victim's cause of death under s. 69.18 (2) (b),
19 (c), or (d).

20 2. If the contact occurs as provided under par. (d) 1. b., the attending physician
21 or advanced practice nurse prescriber of the funeral director, coroner, medical
22 examiner, or appointed assistant.

23 3. If the contact occurs as provided under (d) 1. c., the physician or advanced
24 practice nurse prescriber who makes the certification under par. (d) 2.

25 **SECTION 118.** 252.15 (6) of the statutes is amended to read:

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1 252.15 (6) EXPANDED DISCLOSURE OF HIV TEST RESULTS PROHIBITED. No person
2 to whom the results of ~~a~~ an HIV test for the presence of HIV, antigen or nonantigenic
3 products of HIV or an antibody to HIV have been disclosed under sub. ~~(5) (a) (3m) (a),~~
4 (b), (d), or (e) or (5m) may disclose the test results except as authorized under sub.
5 ~~(5) (a) (3m) (a), (b), (d), or (e)~~ or (5m).

6 **SECTION 119.** 252.15 (7) (title) of the statutes is amended to read:

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

8 **SECTION 120.** 252.15 (7) (a) of the statutes is amended to read:

9 252.15 (7) (a) Notwithstanding ss. 227.01 (13) and 227.10 (1), for the purposes
10 of this subsection, the state epidemiologist shall determine, based on the
11 preponderance of available scientific evidence, the procedures necessary in this state
12 to obtain a validated HIV test result and the secretary shall so declare under s.
13 250.04 (1) or (2) (a). The state epidemiologist shall revise this determination if, in
14 his or her opinion, changed available scientific evidence warrants a revision, and the
15 secretary shall declare the revision under s. 250.04 (1) or (2) (a).

16 **SECTION 121.** 252.15 (7) (b) (intro.) of the statutes is amended to read:

17 252.15 (7) (b) (intro.) If a positive, validated HIV test result is obtained from
18 ~~a~~ an HIV test subject, the health care provider, blood bank, blood center, or plasma
19 center that maintains a record of the HIV test ~~results~~ result under sub. (4) (c) shall
20 report to the state epidemiologist the following information:

21 **SECTION 122.** 252.15 (7) (b) 4. of the statutes is amended to read:

22 252.15 (7) (b) 4. The date on which the HIV test was performed.

23 **SECTION 123.** 252.15 (7) (b) 5. of the statutes is amended to read:

24 252.15 (7) (b) 5. The HIV test result.

25 **SECTION 124.** 252.15 (7) (b) 5m. of the statutes is created to read:

ASSEMBLY BILL 659**SECTION 124**

1 252.15 (7) (b) 5m. The mode of transmission of HIV to the test subject.

2 **SECTION 125.** 252.15 (7) (c) 1. of the statutes is amended to read:

3 252.15 (7) (c) 1. Information with respect to the sexual orientation of the HIV
4 test subject.

5 **SECTION 126.** 252.15 (7) (c) 2. of the statutes is amended to read:

6 252.15 (7) (c) 2. The identity of persons with whom the HIV test subject may
7 have had sexual contact.

8 **SECTION 127.** 252.15 (7m) of the statutes is amended to read:

9 252.15 (7m) REPORTING OF PERSONS SIGNIFICANTLY EXPOSED. If a positive,
10 validated HIV test result is obtained from a test subject, the test subject's physician,
11 physician assistant, or advanced practice nurse prescriber who maintains a record
12 of the HIV test result under sub. (4) (c) may report to the state epidemiologist the
13 name of any person known to the physician, physician assistant, or advanced
14 practice nurse prescriber to have ~~been significantly exposed to~~ had contact with body
15 fluid of the test subject that constitutes a significant exposure, only after the
16 physician, physician assistant, or advanced practice nurse prescriber has done all of
17 the following:

18 (a) Counseled the HIV test subject to inform any person who has been
19 ~~significantly exposed to~~ had contact with body fluid of the test subject that
20 constitutes a significant exposure.

21 (b) Notified the HIV test subject that the name of any person known to the
22 physician, physician assistant, or advanced practice nurse prescriber to have ~~been~~
23 ~~significantly exposed to~~ had contact with body fluid of the test subject that
24 constitutes a significant exposure will be reported to the state epidemiologist.

25 **SECTION 128.** 252.15 (7r) of the statutes is created to read:

ASSEMBLY BILL 659**SECTION 128**

1 252.15 (7r) EXPLANATION OF HIV FOR TEST SUBJECTS. The department shall
2 provide to health care providers, blood banks, blood centers, and plasma centers a
3 brief explanation or description of all of the following that a health care provider,
4 blood bank, blood center, or plasma center may provide prospective HIV test subjects
5 under sub. (2m) (a) 3.:

6 (a) HIV infection.

7 (b) HIV test results.

8 (c) Requirements under subs. (7) (b) and (7m) for reporting HIV test results.

9 (d) Treatment options for a person who has a positive HIV test result.

10 (e) AIDS service organizations, as defined in s. 252.12 (1) (b) and the services
11 they provide to persons who have a positive HIV test result.

12 **SECTION 129.** 252.15 (8) of the statutes is amended to read:

13 252.15 (8) CIVIL LIABILITY. (a) Any person violating sub. ~~(2), (5) (a) (2m), (3m)~~
14 (b), (d), or (f), (5m), (6) or (7) (c) is liable to the subject of the test for actual damages,
15 costs and reasonable actual attorney fees, plus exemplary damages of up to \$1,000
16 \$2,000 for a negligent violation and up to ~~\$25,000~~ \$50,000 for an intentional
17 violation.

18 (b) The plaintiff in an action under par. (a) has the burden of proving by a
19 preponderance of the evidence that a violation occurred under sub. ~~(2), (5) (a) (2m),~~
20 (3m) (b), (d), or (f), (5m), (6) or (7) (c). A conviction under sub. ~~(2), (5) (a) (2m), (3m)~~
21 (b), (d), or (f), (5m), (6) or (7) (c) is not a condition precedent to bringing an action
22 under par. (a).

23 **SECTION 130.** 252.15 (9) of the statutes is amended to read:

24 252.15 (9) PENALTIES. Whoever intentionally discloses the results of ~~a blood~~
25 an HIV test in violation of sub. ~~(2) (a) 7m., (5) (a) (3m) (b) or (f) or (5m)~~ and thereby

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

10 **SECTION 131.** 256.15 (12) (a) of the statutes, as affected by 2009 Wisconsin Act
11 28, is amended to read:

12 256.15 (12) (a) All records made by an ambulance service provider, an
13 emergency medical technician or a first responder in administering emergency care
14 procedures to and handling and transporting sick, disabled or injured individuals
15 shall be maintained as confidential patient health care records subject to s. 252.15
16 ~~(5) (a) (intro.) (3m)~~, (6), (8) and (9), if applicable. Nothing in this paragraph or ss.
17 146.81 to 146.84 permits disclosure to an ambulance service provider, an emergency
18 medical technician or a first responder under s. 252.15 ~~(5) (a) (3m)~~, except under s.
19 252.15 ~~(5) (a) 11 (3m) (e)~~.

20 **SECTION 132.** 440.20 (4) of the statutes is amended to read:

21 440.20 (4) In addition to any grounds for discipline specified in chs. 440 to 480,
22 the department or appropriate examining board, affiliated credentialing board or
23 board in the department may reprimand the holder of a credential or deny, limit,
24 suspend or revoke the credential of any person who intentionally violates s. 252.14

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1 (2) or intentionally discloses the results of a blood test in violation of s. 252.15 (5) (a)
2 (3m) (b) or (f) or (5m).

3 **SECTION 133.** 631.90 (1) of the statutes is amended to read:

4 631.90 (1) In this section, "HIV test" means ~~any strain of human~~
5 ~~immunodeficiency virus, which causes acquired immunodeficiency syndrome~~ has
6 the meaning given in s. 252.01 (2m).

7 **SECTION 134.** 631.90 (2) (a) of the statutes is amended to read:

8 631.90 (2) (a) Require or request directly or indirectly any individual to reveal
9 whether the individual has obtained ~~a~~ an HIV test for the presence of HIV, antigen
10 ~~or nonantigenic products of HIV or an antibody to HIV~~ or what the results of this test,
11 if obtained by the individual, were.

12 **SECTION 135.** 631.90 (2) (b) of the statutes is amended to read:

13 631.90 (2) (b) Condition the provision of insurance coverage on whether an
14 individual has obtained ~~a~~ an HIV test for the presence of HIV, antigen or
15 nonantigenic products of HIV or an antibody to HIV or what the results of this test,
16 if obtained by the individual, were.

17 **SECTION 136.** 631.90 (2) (c) of the statutes is amended to read:

18 631.90 (2) (c) Consider in the determination of rates or any other aspect of
19 insurance coverage provided to an individual whether an individual has obtained ~~a~~
20 an HIV test for the presence of HIV, antigen or nonantigenic products of HIV or an
21 antibody to HIV or what the results of this test, if obtained by the individual, were.

22 **SECTION 137.** 631.90 (3) (a) of the statutes is amended to read:

23 631.90 (3) (a) Subsection (2) does not apply with regard to any an HIV test or
24 series of tests for use in the underwriting of individual life, accident and health
25 insurance policies ~~that the person designated by the secretary of health services as~~

ASSEMBLY BILL 659**SECTION 137**

1 the state epidemiologist finds medically significant and sufficiently reliable for the
2 presence of HIV, antigen or nonantigenic products of HIV or an antibody to HIV and
3 that the commissioner finds and designates by rule as sufficiently reliable for use in
4 the underwriting of individual life, accident and health insurance policies.

5 **SECTION 138.** 631.90 (3) (b) of the statutes is amended to read:

6 631.90 (3) (b) Paragraph (a) does not authorize the use of any an HIV test or
7 series of tests for the presence of HIV, antigen or nonantigenic products of HIV or an
8 antibody to HIV to discriminate in violation of s. 628.34 (3).

9 **SECTION 139.** 901.05 (2) (intro.) of the statutes is amended to read:

10 901.05 (2) (intro.) Except as provided in sub. (3), the results of ~~a test or tests~~
11 ~~for the presence of HIV, antigen or nonantigenic products of HIV or an antibody to~~
12 ~~HIV~~ an HIV test, as defined in s. 252.01 (2m), are not admissible during the course
13 of a civil or criminal action or proceeding or an administrative proceeding, as
14 evidence of a person's character or a trait of his or her character for the purpose of
15 proving that he or she acted in conformity with that character on a particular
16 occasion unless the evidence is admissible under s. 904.04 (1) or 904.05 (2) and unless
17 the following procedures are used:

18 **SECTION 140.** 938.296 (1) (bm) of the statutes is created to read:

19 938.296 (1) (bm) "HIV test" has the meaning given in s. 252.01 (2m).

20 **SECTION 141.** 938.296 (1) (d) of the statutes is amended to read:

21 938.296 (1) (d) ~~"Significantly exposed"~~ "Significant exposure" has the meaning
22 given in s. 252.15 (1) (em).

23 **SECTION 142.** 938.296 (2) (intro.) of the statutes is amended to read:

24 938.296 (2) **SEXUALLY TRANSMITTED DISEASE AND HIV TESTING.** (intro.) In a
25 proceeding under s. 938.12 or 938.13 (12) in which the juvenile is alleged to have

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1 violated s. 940.225, 948.02, 948.025, 948.05, 948.06, or 948.085 (2), the district
2 attorney or corporation counsel shall apply to the court for an order requiring the
3 juvenile to submit to ~~a~~ an HIV test and a test or a series of tests administered by
4 ~~a health care professional~~ to detect the presence of HIV, ~~antigen or nonantigenic~~
5 ~~products of HIV, an antibody to HIV or a sexually transmitted disease, each of which~~
6 tests shall be administered by a health care professional, and to disclose the results
7 of ~~that test or series of those~~ tests as specified in sub. (4) (a) to (e), if all of the following
8 apply:

9 **SECTION 143.** 938.296 (2) (b) of the statutes is amended to read:

10 938.296 (2) (b) The district attorney or corporation counsel has probable cause
11 to believe that ~~the juvenile has significantly exposed~~ the victim or alleged victim has
12 had contact with body fluid of the juvenile that constitutes a significant exposure.
13 If the juvenile is adjudicated delinquent, is found to be in need of protection or
14 services or is found not responsible by reason of mental disease or defect under s.
15 938.30 (5), this paragraph does not apply.

16 **SECTION 144.** 938.296 (4) (intro.) of the statutes is amended to read:

17 938.296 (4) DISCLOSURE OF SEXUALLY TRANSMITTED DISEASE AND HIV TEST
18 RESULTS. (intro.) On receipt of an application for an order under sub. (2), the court
19 shall set a time for a hearing on the application. If the juvenile has been found not
20 competent to proceed under s. 938.30 (5), the court may hold a hearing under this
21 subsection only if the court first determines that the probable cause finding can be
22 fairly made without the personal participation of the juvenile. If, after hearing, the
23 court finds probable cause to believe that ~~the juvenile has significantly exposed the~~
24 ~~victim or alleged victim~~ has had contact with body fluid of the juvenile that
25 constitutes a significant exposure, the court shall order the juvenile to submit to ~~a~~

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

8 **SECTION 145.** 938.296 (5) (intro.) of the statutes is amended to read:

9 **938.296 (5) DISCLOSURE OF COMMUNICABLE DISEASE TEST RESULTS.** (intro.) On
10 receipt of an application for an order under sub. (2m), the court shall set a time for
11 a hearing on the application. If the juvenile has been found not competent to proceed
12 under s. 938.30 (5), the court may hold a hearing under this subsection only if the
13 court first determines that the probable cause finding can be fairly made without the
14 personal participation of the juvenile. If, after hearing, the court finds probable
15 cause to believe that the act or alleged act of the juvenile that constitutes a violation
16 of s. 946.43 (2m) carried a potential for transmitting a communicable disease to the
17 victim or alleged victim and involved the juvenile's blood, semen, vomit, saliva, urine
18 or feces or other bodily substance of the juvenile, the court shall order the juvenile
19 to submit to a test or a series of tests administered by a health care professional to
20 detect the presence of any communicable disease that was potentially transmitted
21 by the act or alleged act of the juvenile. The court shall require the health care
22 professional who performs the test or series of tests to refrain, ~~notwithstanding s.~~
23 ~~252.15 (4) (e), if applicable,~~ from making the test results part of the juvenile's
24 permanent medical record and to disclose the results of the test to any of the
25 following:

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1 **SECTION 146.** 938.346 (1) (e) of the statutes is amended to read:

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

11 **SECTION 147.** 938.371 (1) (a) of the statutes is amended to read:

12 938.371 (1) (a) Results of ~~a~~ an HIV test or a series of tests, as defined in s.
13 252.01 (2m), of the juvenile to determine the presence of HIV, as defined in s. 968.38
14 (1) (b), antigen or nonantigenic products of HIV, or an antibody to HIV, as provided
15 under s. 252.15 (5) (a) 19. (3m) (d) 15., including results included in a court report
16 or permanency plan. At the time that the test results are provided, the agency shall
17 notify the foster parent, treatment foster parent, relative, or operator of the group
18 home, residential care center for children and youth, or juvenile correctional facility
19 of the confidentiality requirements under s. 252.15 (6).

20 **SECTION 148.** 968.38 (1) (bc) of the statutes is created to read:

21 968.38 (1) (bc) “HIV test” has the meaning given in s. 252.01 (2m).

22 **SECTION 149.** 968.38 (1) (d) of the statutes is amended to read:

23 968.38 (1) (d) “~~Significantly exposed~~” “Significant exposure” has the meaning
24 given in s. 252.15 (1) (em).

25 **SECTION 150.** 968.38 (2) (intro.) of the statutes is amended to read:

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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 to disclose the results of the test or
8 tests as specified in sub. (4) (a) to (c):

9 **SECTION 151.** 968.38 (2) (a) of the statutes is amended to read:

10 968.38 (2) (a) The district attorney has probable cause to believe that the
11 ~~defendant has significantly exposed the alleged victim or victim~~ has had contact with
12 body fluid of the defendant that constitutes a significant exposure. If the defendant
13 is convicted or found not guilty by reason of mental disease or defect, this paragraph
14 does not apply.

15 **SECTION 152.** 968.38 (4) (intro.) of the statutes is amended to read:

16 968.38 (4) (intro.) The court shall set a time for a hearing on the matter under
17 sub. (2) during the preliminary examination, if sub. (3) (a) applies; after the
18 defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b)
19 applies; after conviction or a finding of not guilty by reason of mental disease or
20 defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that
21 the defendant is not competent, if sub. (3) (d) applies. The court shall give the district
22 attorney and the defendant notice of the hearing at least 72 hours prior to the
23 hearing. The defendant may have counsel at the hearing, and counsel may examine
24 and cross-examine witnesses. If the court finds probable cause to believe that the
25 ~~defendant has significantly exposed the victim or alleged victim~~ has had contact with

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

11 **SECTION 153.** 968.38 (5) (intro.) of the statutes is amended to read:

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

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1 presence of any communicable disease that was potentially transmitted by the act
2 or alleged act of the defendant. The court shall require the health care professional
3 who performs the test to disclose the test results to the defendant. The court shall
4 require the health care professional who performs the test to refrain,
5 notwithstanding s. 252.15 (4) (c), if applicable, from making the test results part of
6 the defendant's permanent medical record and to disclose the results of the test to
7 any of the following:

8 **SECTION 154.** 973.017 (4) (a) 1m. of the statutes is created to read:

9 973.017 (4) (a) 1m. "HIV test" has the meaning given in s. 252.01 (2m).

10 **SECTION 155.** 973.017 (4) (b) 1. of the statutes is amended to read:

11 973.017 (4) (b) 1. At the time that he or she committed the serious sex crime,
12 the person convicted of committing the serious sex crime had a sexually transmitted
13 disease or acquired immunodeficiency syndrome or had had a positive HIV test for
14 the presence of HIV, antigen or nonantigenic products of HIV, or an antibody to HIV.

15 **SECTION 156.** 973.017 (4) (b) 2. of the statutes is amended to read:

16 973.017 (4) (b) 2. At the time that he or she committed the serious sex crime,
17 the person convicted of committing the serious sex crime knew that he or she had a
18 sexually transmitted disease or acquired immunodeficiency syndrome or that he or
19 she had had a positive HIV test for the presence of HIV, antigen or nonantigenic
20 products of HIV, or an antibody to HIV.

21 **SECTION 157. Initial applicability.**

22 (1) POSITIVE HIV TEST RESULT REPORTING. The treatment of section 252.15 (7)

23 (b) 5m. of the statutes, as created by this act, first applies to records of test results

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1 reported to the state epidemiologist on the first day of the 4th month beginning after
2 the effective date of this subsection.

3 (END)