
A BILL FOR AN ACT

RELATING TO INFECTIOUS DISEASE TESTING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. An estimated twenty-five per cent of
2 individuals infected with human immunodeficiency virus (HIV) do
3 not know they are infected, because they have not been tested
4 for HIV. In 2006, the Centers for Disease Control and
5 Prevention recommended HIV screening as a routine part of
6 medical care. However, research and experience indicate that
7 the requirements for health care providers to obtain written
8 informed consent and to provide pre-test HIV counseling are
9 significant barriers to HIV testing. The purpose of this Act is
10 to remove these identified barriers yet continue to allow for an
11 individual to decline testing.

12 SECTION 2. Section 325-16, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§325-16 Informed consent for testing or disclosure.** (a)
15 A health care provider may subject a person's body fluids or
16 tissue to a test for the presence of human immunodeficiency
17 virus infection after:



- 1 (1) Orally explaining to the person that certain
2 personalized test results are maintained by the
3 department of health, according to strict
4 confidentiality protocols established by law;
- 5 (2) Orally advising the person that free and anonymous
6 human immunodeficiency virus testing is available
7 through the department of health and certain community
8 agencies;
- 9 (3) Providing the person reasonable opportunity to decline
10 the test; and
- 11 (4) Receiving the person's express oral consent to the
12 test.

13 A health care provider may, for the purpose of obtaining
14 consent to the test and in lieu of the oral-consent procedure
15 specified in this subsection, use a written form that, at a
16 minimum, provides equivalent information to that prescribed by
17 paragraphs (a) (1) and (a) (2); provided that the health care
18 provider shall allow the person reasonable opportunity to
19 decline consent by declining to sign the form.

20 [~~(a)~~] (b) No [health care provider₇] blood bank, plasma
21 center, or any other public or private agency, institution₇] or
22 individual (except a health care provider acting pursuant to



1 subsections (a) or (c), may subject a person's body fluids or
2 tissue to a test for the presence of human immunodeficiency
3 virus [~~HIV~~] infection unless the subject of the test [~~first~~
4 ~~provides~~]:

5 (1) Provides informed written consent pursuant to the
6 standards in section 671-3 to the testing[~~—Any~~
7 ~~person in this State whose body fluids or tissue are~~
8 ~~subject to a test for the presence of HIV infection~~
9 ~~shall be~~]; and

10 (2) Is afforded the opportunity to receive [HIV] human
11 immunodeficiency virus pre-test counseling by the
12 party ordering or requesting that the test be
13 performed [~~and shall be afforded the opportunity to~~
14 ~~obtain~~];

15 provided that the person tested shall be provided with the test
16 results[~~—The counseling provided shall be consistent with~~
17 ~~guidelines established by the department.~~] by the blood bank,
18 plasma center, agency, institution, or individual subjecting the
19 person to the test. The opportunity to receive counseling shall
20 be afforded both prior to obtaining a sample for [HIV] human
21 immunodeficiency virus testing, and upon disclosure of the test
22 results, regardless of the serostatus of the individual tested,



1 except that testing conducted pursuant to subsection [~~(b)(1)~~]
2 (c)(1) and (2) shall be exempted from the counseling
3 requirements of this subsection.

4 [~~(b)~~] (c) Consent to testing is not required for any of
5 the following:

6 (1) A health care provider or organ donor center that
7 procures, processes, distributes, or uses human body
8 parts donated for scientific purposes, without
9 obtaining consent, may test for the presence of [HIV
10 ~~in order~~] human immunodeficiency virus to assure
11 medical acceptability of the gift for the purpose
12 intended;

13 (2) The department of health, laboratories and research
14 facilities, health care providers, blood banks, plasma
15 centers, and educational institutions may subject any
16 body fluids or tissue to be used in research to a test
17 for [HIV] human immunodeficiency virus infection if
18 the test is performed in a manner by which the
19 identity of the test subject is not known and may not
20 be retrieved by the researcher;

21 (3) Anonymous testing carried out at [HIV] human
22 immunodeficiency virus test sites established by the



1 department of health; provided that informed oral
2 consent is obtained;

3 (4) Testing of body fluids or tissue ordered by a third
4 party, so long as that third party, including [~~but not~~
5 ~~limited to~~] an insurance company, employer, or school,
6 obtains the informed written consent of the person to
7 be tested authorizing the release of the test results
8 to the third party, and transmits a signed copy of the
9 written informed consent to the health care provider
10 prior to any release of the requested test results to
11 the third party[~~]~~. The health care provider shall
12 provide all positive and indeterminate human
13 immunodeficiency virus test results and offer post-
14 test counseling to those individuals with positive and
15 indeterminate human immunodeficiency virus test
16 results;

17 (5) Informed consent is not required where the patient is
18 unable to give consent and it is determined by the
19 patient's treating physician that the patient's [HIV]
20 human immunodeficiency virus status is necessary to
21 make a diagnosis or determine an appropriate course of
22 treatment for the patient. The patient shall be



1 informed in a timely manner that a test for the
2 presence of [~~HIV~~] human immunodeficiency virus has
3 been performed pursuant to this paragraph, and the
4 [~~patient shall be provided the opportunity to obtain~~
5 ~~the test results and appropriate counseling;~~] health
6 care provider shall provide all positive and
7 indeterminate human immunodeficiency virus test
8 results and offer appropriate post-test counseling to
9 those individuals with positive and indeterminate
10 human immunodeficiency virus test results;

- 11 (6) A treating physician may order [~~an HIV~~] a human
12 immunodeficiency virus test without the patient's
13 informed consent if the physician has determined that
14 the patient is incapable of giving consent prior to
15 the rendering of treatment and when there is reason to
16 believe that the safety of a health care worker may be
17 affected due to exposure to the blood or bodily fluids
18 of a patient suspected of possible [~~HIV~~] human
19 immunodeficiency virus infection. The availability
20 and quality of health care services shall not be
21 compromised based on the findings and testing
22 performed pursuant to this paragraph. The costs of



1 any testing performed shall be borne by the health
2 care provider and may not be claimed against the
3 patient or the patient's health care insurer. The
4 patient and the health care worker shall be informed
5 in a timely manner that a test for the presence of
6 [HIV] human immunodeficiency virus has been performed
7 pursuant to the provisions of this paragraph [~~and~~
8 ~~the patient and the health care worker shall be~~
9 ~~provided the opportunity to obtain the test results~~
10 ~~and appropriate counseling;]. The health care
11 provider shall provide all positive and indeterminate
12 human immunodeficiency virus test results and offer
13 appropriate post-test counseling to the individual
14 being tested and afford the health care worker the
15 opportunity to obtain the test results and appropriate
16 post-test counseling;~~

- 17 (7) A person who has been charged, or a juvenile who has
18 been charged, pursuant to section 707-730, 707-731,
19 707-732(1)(a), 707-733.6, or 707-741 shall be tested
20 to determine the person's [HIV] human immunodeficiency
21 virus status upon court order issued pursuant to
22 section 325-16.5. The test shall be performed



1 according to the protocols set forth in section
2 325-17; and

3 (8) A person who has been convicted, or a juvenile who has
4 been adjudicated, pursuant to section 707-730,
5 707-731, 707-732(1)(a), 707-733.6, or 707-741 shall be
6 tested to determine the person's [HIV] human
7 immunodeficiency virus status upon court order issued
8 pursuant to section 325-16.5. The test shall be
9 performed according to the protocols set forth in
10 section 325-17.

11 [~~(e) Confidentiality.~~] (d) The confidentiality of all
12 records held pursuant to this section is governed by section
13 325-101.

14 [~~(d) Civil penalty.~~] (e) Any person or institution who
15 wilfully violates any provision of this section shall be fined
16 not less than \$1,000 nor more than \$10,000 for each violation
17 plus reasonable court costs and attorney's fees as determined by
18 the court, which penalty and costs shall be paid to the person
19 whose records were released. This subsection shall not be
20 construed as limiting the right of any person or persons to
21 recover actual damages.



1 ~~[(e)]~~ (f) The department of health shall make available to
2 health care providers current information on accessing anonymous
3 human immunodeficiency virus testing for the purpose of
4 providing that information to patients.

5 (g) The department ~~[shall]~~ may adopt rules, pursuant to
6 chapter 91, to establish procedures and standards to implement
7 this section.

8 (h) As used in this section, "health care provider" means a
9 physician or surgeon licensed under chapter 453, a podiatrist
10 licensed under chapter 463E, a health care facility as defined
11 in section 323D-2, and their employees. "Health care provider"
12 shall not mean any nursing institution or nursing service
13 conducted by and for those who rely upon treatment by spiritual
14 means through prayer alone, or employees of such an institution
15 or service."

16 SECTION 3. Section 325-16.5, Hawaii Revised Statutes, is
17 amended by amending subsection (a) to read as follows:

18 "(a) Any sexual assault victim, or the parent or guardian
19 of a minor or incapacitated victim, shall be informed as soon as
20 practicable after the assault, of the availability of human
21 immunodeficiency virus ~~[-(HIV)]~~ testing for the victim, the
22 availability of counseling for the victim, and the right of the



1 victim to request that the person charged with an offense listed
2 in section [~~325-16(b)(7)~~] 325-16(c)(7), involving the victim, be
3 tested for [~~HIV~~] human immunodeficiency virus. The victim, or
4 the parent or guardian of a minor or incapacitated victim, and
5 the charged person shall be provided [~~HIV~~] human
6 immunodeficiency virus counseling prior to being tested, and
7 follow-up counseling at the time the results are presented to
8 the victim or the parent or guardian of a minor or incapacitated
9 victim and the charged person.

10 Any sexual assault victim, or the parent or guardian of a
11 minor or incapacitated victim, shall be informed as soon as
12 practicable after a conviction, of the availability of human
13 immunodeficiency virus [~~HIV~~] testing for the victim, the
14 availability of counseling for the victim, and the right of the
15 victim to demand that the person convicted of an offense listed
16 in section [~~325-16(b)(8)~~] 325-16(c)(8), involving the victim, be
17 tested for [~~HIV~~] human immunodeficiency virus. The victim, or
18 the parent or guardian of a minor or incapacitated victim, and
19 the convicted person shall be provided [~~HIV~~] human
20 immunodeficiency virus counseling prior to being tested, and
21 follow-up counseling at the time the results are presented to



1 the victim or the parent or guardian of a minor or incapacitated
2 victim and the convicted person."

3 SECTION 4. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 5. This Act shall take effect upon approval.



S.B. NO. 932
S.D. 2
H.D. 2
C.D. 1

Report Title:

Human Immunodeficiency Virus Testing; Health Care Providers

Description:

Allows a health care provider to test for HIV after certain verbal disclosures, after allowing the person receiving the test to decline the test, and after receiving the person's express oral consent. (CD1)

