

JAN 22 2008

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# A BILL FOR AN ACT

RELATING TO HEALTH.

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

1           SECTION 1. The National Centers for Disease Control and  
2 Prevention (CDC) issued new recommendations revising the current  
3 HIV testing procedures in health care settings. According to  
4 the CDC, human immunodeficiency virus (HIV) infection and  
5 acquired immunodeficiency syndrome (AIDS) remain leading causes  
6 of illness and death in the United States. Advances in medical  
7 technology and treatment have enabled survival rates to improve  
8 dramatically. However, progress in effecting earlier diagnosis  
9 has been insufficient. Early detection and diagnosis is  
10 essential to reducing the spread of HIV and AIDS.

11           The CDC advocates routine voluntary HIV screening as a  
12 normal part of medical practice, similar to screening for other  
13 treatable conditions. Screening is a basic public health tool  
14 used to identify unrecognized health conditions so treatment can  
15 be offered before symptoms develop and, for communicable  
16 diseases, so interventions can be implemented to reduce the  
17 likelihood of continued transmission.



1           The purpose of this Act is to effectuate the CDC's  
2 recommendations to increase HIV screening of patients in health-  
3 care settings and to foster earlier detection of HIV infection  
4 by amending the informed written consent and pre-test counseling  
5 requirements to provide for voluntary HIV testing as a routine  
6 part of the clinical care of individuals who have been notified  
7 that the testing will be performed and have been given the  
8 option to decline the testing.

9           SECTION 2. Section 325-16, Hawaii Revised Statutes, is  
10 amended by amending subsections (a) and (b) to read as follows:

11           "(a) No [~~health care provider,~~] blood bank, plasma center,  
12 or any other public or private agency, institution, or  
13 individual may subject a person's body fluids or tissue to a  
14 test for the presence of human immunodeficiency virus (HIV)  
15 infection unless the subject of the test first provides informed  
16 written consent to the testing. Any person in this State whose  
17 body fluids or tissue are subject to a test for the presence of  
18 HIV infection shall be afforded the opportunity to receive HIV  
19 counseling by the party ordering or requesting that the test be  
20 performed and shall be afforded the opportunity to obtain the  
21 test results. The counseling provided shall be consistent with  
22 guidelines established by the department. The opportunity to



1 receive counseling shall be afforded both prior to obtaining a  
2 sample for HIV testing and upon disclosure of the test results,  
3 regardless of the serostatus of the individual tested, except  
4 that testing conducted pursuant to subsection (b) (1) ~~and~~, (2),  
5 and (3) shall be exempted from the counseling requirements of  
6 this subsection.

7 (b) ~~[Consent]~~ Informed written consent to testing is not  
8 required for any of the following:

9 (1) All health care providers in the public and private  
10 sectors, including those working in hospital emergency  
11 departments, urgent care clinics, inpatient services,  
12 substance abuse treatment clinics, public health  
13 clinics, community clinics, correctional health-care  
14 facilities, and primary care settings, may test for  
15 the presence of HIV; provided that the individual  
16 being tested is notified of the testing, voluntarily  
17 and without coercion agreed to the testing, has the  
18 option to decline the testing, and the testing is a  
19 routine part of clinical care in the health care  
20 setting.

21 ~~[(1)]~~ (2) A health care provider or organ donor center that  
22 procures, processes, distributes, or uses human body



1 parts donated for scientific purposes, without  
2 obtaining consent, may test for the presence of HIV in  
3 order to assure medical acceptability of the gift for  
4 the purpose intended;

5 [~~(2)~~] (3) The department, laboratories and research  
6 facilities, health care providers, blood banks, plasma  
7 centers, and educational institutions may subject any  
8 body fluids or tissue to be used in research to a test  
9 for HIV infection if the test is performed in a manner  
10 by which the identity of the test subject is not known  
11 and may not be retrieved by the researcher;

12 [~~(3)~~] (4) Anonymous testing carried out at HIV test sites  
13 established by the department; provided that informed  
14 oral consent is obtained;

15 [~~(4)~~] (5) Testing of body fluids or tissue ordered by a  
16 third party, so long as that third party, including  
17 but not limited to an insurance company, employer, or  
18 school, obtains the informed written consent of the  
19 person to be tested authorizing the release of the  
20 test results to the third party, and transmits a  
21 signed copy of the written informed consent to the



1 health provider prior to any release of the requested  
2 test results to the third party;

3 ~~[(5)]~~ (6) Informed consent is not required where the  
4 patient is unable to give consent and it is determined  
5 by the patient's treating physician that the patient's  
6 HIV status is necessary to make a diagnosis or  
7 determine an appropriate course of treatment for the  
8 patient. The patient shall be informed in a timely  
9 manner that a test for the presence of HIV has been  
10 performed pursuant to this paragraph, and the patient  
11 shall be provided the opportunity to obtain the test  
12 results and appropriate counseling;

13 ~~[(6)]~~ (7) A treating physician may order an HIV test  
14 without the patient's informed consent if the  
15 physician has determined that the patient is incapable  
16 of giving consent prior to the rendering of treatment  
17 and when there is reason to believe that the safety of  
18 a health care worker may be affected due to exposure  
19 to the blood or bodily fluids of a patient suspected  
20 of possible HIV infection. The availability and  
21 quality of health care services shall not be  
22 compromised based on the findings and testing



1 performed pursuant to this paragraph. The costs of  
2 any testing performed shall be borne by the health  
3 care provider and may not be claimed against the  
4 patient or the patient's health care insurer. The  
5 patient and the health care worker shall be informed  
6 in a timely manner that a test for the presence of HIV  
7 has been performed pursuant to the provisions of this  
8 paragraph, and the patient and the health care worker  
9 shall be provided the opportunity to obtain the test  
10 results and appropriate counseling;

11 [~~(7)~~] (8) A person who has been charged, or a juvenile who  
12 has been charged, pursuant to section 707-730,  
13 707-731, 707-732(1)(a), 707-733.6, or 707-741 shall be  
14 tested to determine the person's HIV status upon court  
15 order issued pursuant to section 325-16.5. The test  
16 shall be performed according to the protocols set  
17 forth in section 325-17; and

18 [~~(8)~~] (9) A person who has been convicted, or a juvenile  
19 who has been adjudicated, pursuant to section 707-730,  
20 707-731, 707-732(1)(a), 707-733.6, or 707-741 shall be  
21 tested to determine the person's HIV status upon court  
22 order issued pursuant to section 325-16.5. The test



1 shall be performed according to the protocols set  
2 forth in section 325-17."

3 SECTION 3. There is appropriated out of the general  
4 revenues of the State of Hawaii the sum of \$ or so  
5 much thereof as may be necessary for fiscal year 2008-2009 for  
6 the screening and early detection of HIV infection.

7 The sum appropriated shall be expended by the department of  
8 health for the purposes of this Act.

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

11 SECTION 5. This Act shall take effect upon its approval;  
12 provided that section 3 shall take effect on July 1, 2008.

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INTRODUCED BY: Ronald H. Baker  
David Y. Ige



**Report Title:**

HIV Testing; Appropriation

**Description:**

Amends the informed written consent and pre-test counseling requirements to provide for voluntary HIV testing as a routine part of clinical care. Makes an appropriation.

