

/\*Arizona's statutes address the issues of testing and confidentiality; disclosure; education; inmate testing; insurance procedures and accelerated benefits; blood, etc., donation testing and notification; disability, including on-the-job exposure; communicable disease control; and victim's rights.\*/  
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## Criminal Code

13-1415. Human immunodeficiency virus testing; victim's rights: petition; definition

- A. A victim or the parent or guardian of a minor victim of a sexual offense or other crime which involved significant exposure as defined by this section, may request the agency responsible for prosecuting the offense to request the person arrested to submit to a test for the human immunodeficiency virus and to consent to the release of the test result to the victim.
- B. If a person is convicted of an offense as prescribed pursuant to subsection A, the prosecuting attorney, if requested by the victim, or, if the victim is a minor, by the parent or guardian of the minor, shall petition the court for an order requiring that the person be tested by the state department of corrections or the department of health services for the presence of the human immunodeficiency virus. The court shall determine if sufficient evidence exists that indicates that significant exposure occurred. If the court makes this finding it shall order that the test be performed in compliance with rules adopted by the department of health services.
- C. The department of health services shall notify the victim and the person tested of the results of the test conducted pursuant to subsection B and shall counsel them regarding the health implications of the results.
- D. Notwithstanding any other law, test results shall be released only to the victim of the crime and the department of health services.
- E. For the purposes of this section, "significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with a person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

## Educational Code

15-716. Instruction on acquired immune deficiency syndrome; department assistance

- A. Each common, high and unified school district shall provide instruction

to kindergarten programs through the twelfth grade on acquired immune deficiency syndrome and the human immunodeficiency virus.

B. Each district is free to develop its own course of study for each grade. At a minimum, instruction shall:

1. Be appropriate to the grade level in which it is offered.
2. Be medically accurate.
3. Promote abstinence.
4. Discourage drug abuse.
5. Dispel myths regarding transmission of the human immunodeficiency virus.

C. No district shall include in its course of study instruction which:

1. Promotes a homosexual lifestyle.
2. Portrays homosexuality as a positive alternative life-style.
3. Suggests that some methods of sex are safe methods of homosexual sex.

D. At the request of a school district, the department of health services in conjunction with the department of education shall review instruction materials to determine their medical accuracy.

E. At the request of a school district, the department of education shall provide the following assistance:

1. A suggested course of study.
2. Teacher training.
3. A list of available films and other teaching aids.

F. At the request of a parent, a pupil shall be excused from instruction on the acquired immune deficiency syndrome and the human immunodeficiency virus as provided in subsection A of this section. The school district shall notify all parents of their ability to withdraw their child from the instruction.

## INSURANCE CODE

20-448.01 Required insurance procedures relating to HIV information; confidentiality; violations; penalties; definitions

A. In this section unless the context otherwise requires:

1. "Confidential HIV-related information" means information concerning whether a person has had an HIV-related test or has HIV infection, HIV-related illness or acquired immune deficiency syndrome and includes information which identifies or reasonably permits identification of that person or the person's contacts.

2. "HIV" means the human immunodeficiency virus.

3. "HIV-related test" means a laboratory test or series of tests for the virus, components of the virus or antibodies to the virus thought to indicate the presence of HIV infection.

4. "Protected person" means a person who takes an HIV-related test or who has been diagnosed as having HIV infection, acquired immune deficiency syndrome or HIV-related illness.

5. "Person" includes all entities subject to regulation under title 20, the employees, contractors and agents thereof, and anyone performing insurance related tasks for such entities, employees, contractors or agents.

B. Except as otherwise specifically authorized or required by this state or by federal law, no person may require the performance of, or perform an HIV-related test without first receiving the specific written informed consent of the subject of the test who has capacity to consent or, if the subject lacks capacity to consent, of a person authorized pursuant to law to consent for that person. Written consent shall be in a form as prescribed by the director.

C. No person who obtains confidential HIV-related information in the course of processing insurance information or insurance applications or pursuant to a release of confidential HIV-related information may disclose or be compelled to disclose that information except to the following:

1. The protected person or, if the protected person lacks capacity to consent, a person authorized pursuant to law to consent for the protected person.

2. A person to whom disclosure is authorized in writing pursuant to a release as set forth in subsection E of this section, including but not limited to a physician designated by the insured or a medical information exchange for insurers operated under procedures intended to ensure confidentiality, provided that in the case of a medical information exchange:

(a) The insurer will not report that blood tests of an applicant showed the presence of the AIDS virus antibodies, but only that unspecified blood test results were abnormal.

(b) Reports must use a general code that also covers results of tests for many diseases or conditions, such as abnormal blood counts that are not related to HIV, AIDS, AIDS related complex or similar diseases.

3. A government agency specifically authorized by law to receive the information. The agency is authorized to redisclose the information only pursuant to this section or as otherwise permitted by law.

4. A person regulated by this title to which disclosure is ordered by a court or administrative body pursuant to 36~65.

5. The industrial commission or parties to an industrial commission claim pursuant to the provisions of 23-908, subsection C and 231043.02.

D. Test results and application responses may be shared with the underwriting departments of the insurer and reinsurers, or to those contractually retained medical personnel, laboratories, and insurance affiliates, excluding agents and brokers, which are involved in underwriting decisions regarding the individual's application if disclosure is reasonably necessary to make the underwriting decision regarding such application, and claims information may be shared with claims personnel and attorneys reviewing claims if disclosure is reasonably necessary to process and resolve claims.

E. A release of confidential HIV-related information pursuant to subsection C paragraph 2 of this section shall be signed by the protected person or, if the protected person lacks capacity to consent, a person authorized pursuant to law to consent for the protected person. A release shall be dated and shall specify to whom disclosure is authorized, the purpose for disclosure and the time period during which the release is effective. A general authorization for the release of medical or other information is not a release of confidential HIV-related information unless the authorization specifically indicates its purpose as a general authorization and an authorization for the release of confidential HIV-related information and complies with the requirements of this section.

F. A person to whom confidential HIV-related information is disclosed pursuant to this section shall not disclose the information to another person except as authorized by this section. This subsection does not apply to the protected person or a person who is authorized pursuant to law to consent for the protected person.

G. If a disclosure of confidential HIV-related information is made pursuant to the provisions of a written release as permitted by subsection C, paragraph 2 of this section, the disclosure shall be accompanied by a statement in writing which warns that the information is from confidential records which are protected by state law that prohibits further disclosure of the information without the specific written consent of the person to whom it pertains or as otherwise permitted by law.

H. The person making a disclosure in accordance with subsection C, paragraphs 3, 4 and 5, and subsection G of this section shall keep a record of

all disclosures for the time period prescribed by the director. On request, a protected person or his legal representative shall have access to the record.

I. Except as otherwise provided pursuant to this section or subject to an order or search warrant issued pursuant to 36~65, no person who receives confidential HIV-related information pursuant to a release of confidential HIV-related information may disclose that information to another person or legal entity or be compelled by subpoena, order, search warrant or other judicial process to disclose that information to another person or legal entity.

J. The director shall adopt rules to implement the allowable tests and testing procedures, written consent to perform a human immunodeficiency virus related test, procedures for confidentiality and disclosure of medical information and procedures for gathering underwriting information and may adopt additional rules reasonable and necessary to implement this section.

K. Notwithstanding any other provision of law to the contrary, nothing in this section shall be interpreted to restrict the director's authority to full access to records of any entity subject to regulation under title 20, including but not limited to all records containing confidential HIV-related information. The director may only redisclose confidential HIV-related information in accordance with this section.

L. A protected person, whose rights provided in this section have been violated by a person or entity described in subsection A, paragraph 5 of this section, has those individual remedies specified in 202118 against such a person or entity.

20-1136. Accelerated payments of certain benefits in life insurance policies

A. Notwithstanding any other provision of this title, any policy of life insurance may provide, in accordance with the provisions of subsection B, for the acceleration of death benefits in advance of the time such benefits would otherwise be payable upon the occurrence of a terminal illness, a catastrophic illness, or eligibility for long-term care.

B. The director may adopt rules regarding advertising, disclosure, benefit levels, benefit eligibility, nonforfeiture, and reserves for the accelerated payment of death benefits set forth under subsection A.

LABOR CODE

23-1043.02. Human immunodeficiency virus; establishing exposure; definition

A. A claim for a condition, infection, disease or disability involving or related to the human immunodeficiency virus or acquired immune deficiency syndrome shall include the occurrence of a significant exposure as defined in this section and, except as provided in subsection B of this section, shall be processed and determined under the provisions of this chapter and applicable principles of law.

B. Notwithstanding any other law, an employee who satisfies the following conditions presents a prima facie claim for a condition, infection, disease or disability involving or related to the human immunodeficiency virus or acquired immune deficiency syndrome if the medical evidence shows to a reasonable degree of medical probability that the employee sustained a significant exposure within the meaning of this section:

1. The employee's regular course of employment involves handling or exposure to blood or body fluids, other than tears, saliva or perspiration, including health care providers as defined in title 36, chapter 6, article 4, forensic laboratory workers, fire fighters, law enforcement officers, emergency medical technicians, paramedics and correctional officers.

2. Within ten calendar days after a possible significant exposure which arises out of and in the course of his employment, the employee reports in writing to the employer the details of the exposure. The employer shall notify its insurance carrier or claims processor of the report. Failure of the employer to notify the insurance carrier is not a defense to a claim by the employee.

3. The employee has blood drawn within ten days after the possible significant exposure, the blood is tested for the human immunodeficiency virus by antibody testing within thirty days after the exposure and the test results are negative.

4. The employee is tested or diagnosed, according to clinical standards established by the centers for disease control of the United States public health service, as positive for the presence of the human immunodeficiency virus within eighteen months after the date of the possible significant exposure.

C. On presentation or showing of a prima facie claim under this section, the employer may produce specific, relevant and probative evidence to dispute the underlying facts, to contest whether the exposure was significant as defined in this section, or to establish an alternative significant exposure involving the presence of the human immunodeficiency virus.

D. A person alleged to be a source of a significant exposure shall not be compelled by subpoena or other court order to release confidential human immunodeficiency virus related information either by document or by oral testimony. Evidence of the alleged source's human immunodeficiency virus

status may be introduced by either party if the alleged source knowingly and willingly consents to the release of that information.

E. Notwithstanding title 36, chapter 6, article 4, medical information regarding the employee obtained by a physician or surgeon is subject to the provisions of 23-908, subsection C.

F. The commission by rule shall prescribe requirements and forms regarding employee notification of the requirements of this section and the proper documentation of a significant exposure.

G. For the purposes of this section, "significant exposure" means contact of an employee's ruptured or broken skin or mucous membrane with a person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus. For purposes of filing a claim under this section, significant exposure does not include sexual activity or illegal drug use.

#### MEDICINE AND SURGERY CODE

13-1457. Acquired Immune deficiency syndrome; disclosure of patient information; Immunity; definition

A. Notwithstanding 32-1401, it is not an act of unprofessional conduct for a doctor of medicine to report to the department of health services the name of a patient's spouse or sex partner or a person with whom the patient has shared hypodermic needles or syringes if the doctor of medicine knows that the patient has contracted or tests positive for the human immunodeficiency virus and that the patient has not or will not notify these people and refer them to testing. Before making the report to the department of health services, the doctor of medicine shall first consult with the patient and ask the patient to release this information voluntarily.

B. It is not an act of unprofessional conduct for a doctor of medicine who knows or has reason to believe that a significant exposure has occurred between a patient who has contracted or tests positive for the human immunodeficiency virus and a health care or public safety employee to inform the employee of the exposure. Before informing the employee, the doctor of medicine shall consult with the patient and ask the patient to release this information voluntarily. If the patient does not release this information the doctor of medicine may do so in a manner that does not identify the patient.

C. This section does not impose a duty to disclose information. A doctor of medicine is not civilly or criminally liable for either disclosing or not

disclosing information.

D. If a doctor of medicine decides to make a disclosure pursuant to this section, he may request that the department of health services make the disclosure on his behalf.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

## HEALTH CODE

### 32-1483. Notification to donors

Pursuant to rules promulgated by the director of the department of health services, all federally registered blood banks, blood centers and plasma centers in this state shall notify blood donors of any test results with significant evidence suggestive of syphilis, HIV or hepatitis B.

### 32-1860. Acquired Immune deficiency syndrome; disclosure of patient information; Immunity; definition

A. Notwithstanding 32-1354, it is not an act of unprofessional conduct for a physician to report to the department of health services the name of a patient's spouse or sex partner or a person with whom the patient has shared hypodermic needles or syringes if the physician knows that the patient has contracted or tests positive for the human immunodeficiency virus and that the patient has not or will not notify these people and refer them to testing. Before making the report to the department of health services, the physician shall first consult with the patient and ask the patient to release this information voluntarily.

B. It is not an act of unprofessional conduct for a physician who knows or has reason to believe that a significant exposure has occurred between a patient infected with the human immunodeficiency virus and a health care or public safety employee to inform the employee of the exposure. Before informing the employee, the physician shall consult with the patient and ask the patient to release this information voluntarily. If the patient does not release this information the physician may do so in a manner that does not identify the patient.

C. This section does not impose a duty to disclose information. A



physician is not civilly or criminally liable for either disclosing or not disclosing information.

D. If a physician decides to make a disclosure pursuant to this section, he may request that the department of health services make the disclosure on his behalf.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or body fluids, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in transmission of the human immunodeficiency virus.

## Public Health and Safety Code

36-136. Powers and duties of director; compensation of personnel -

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H. The director shall, by rule:

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15. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

## DISEASE INFORMATION

36-661. Definitions

In this article, unless the context otherwise requires:

1. "Acquired immune deficiency syndrome" has the same meaning as defined by the centers for disease control of the United States public health service.
2. "Capacity to consent" means a person's ability, determined without regard to the person's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure and to make an informed decision concerning that service, treatment or procedure.
3. "Child" means an unemancipated person under eighteen years of age.

4. "Communicable disease" means a contagious, epidemic or infectious disease required to be reported to the local board of health or the department pursuant to chapters 1 and 6 of this title.
5. "Confidential communicable disease related information" means information regarding a communicable disease in the possession of a person who provides health services or who obtains the information pursuant to the release of confidential communicable disease related information.
6. "Confidential HIV-related information" means information concerning whether a person has had an HIV-related test or has HIV infection, HIV-related illness or acquired immune deficiency syndrome and includes information which identifies or reasonably permits identification of that person or the person's contacts.
7. "Contact" means a spouse or sex partner of a protected person, a person who has shared hypodermic needles or syringes with a protected person or a person otherwise exposed to a protected person with a communicable disease in a manner that poses an epidemiologically significant risk of transmission of that disease.
8. "Department" means the department of health services.
9. "Director" means the director of the department of health services.
10. "Health care provider" means a physician, nurse or other person involved in providing medical, nursing, counseling or other health care or mental health services.
11. "Health facility" means a health care institution as defined in 36401, a blood bank, blood center, milk bank, sperm bank, organ or tissue bank or clinical laboratory or a health care services organization holding a certificate of authority pursuant to 201054.
12. "Health service" means public or private care, treatment, clinical laboratory tests, counseling or educational service for adults or children and acute, chronic, custodial, residential, outpatient, home or other health care or activities related to the detection, reporting, prevention and control of communicable or preventable diseases.
13. "HIV" means the human immunodeficiency virus.
14. "HIV infection" means infection with the human immunodeficiency virus or a related virus identified as a probable causative agent of acquired immune deficiency syndrome.
15. "HIV-related illness" means an illness that may result from or be associated with HIV infection.

16. "HIV-related test" means a laboratory test or series of tests for the virus, components of the virus or antibodies to the virus thought to indicate the presence of HIV infection.

17. "Protected person" means a person who takes an HIV-related test or who has been diagnosed as having HIV infection, acquired immune deficiency syndrome, HIV related illness or another communicable disease.

18. "Release of confidential communicable disease related information" means a written authorization for disclosure of confidential communicable disease related information.

### 36-662. Access to records

In conducting an investigation of a reportable communicable disease the department of health services and local health departments may inspect and copy medical or laboratory records in the possession of or maintained by a health care provider or health care facility which are related to the diagnosis, treatment and control of the specific communicable disease case reported. Requests for records shall be made in writing by the appropriate officer of the department of health services or local health department and shall specify the communicable disease case and the patient under investigation.

### 36-663. HIV-related testing; restrictions; exceptions

Except as otherwise specifically authorized or required by this state or by federal law, no person may order the performance of an HIV-related test without first receiving the specific written informed consent of the subject of the test who has capacity to consent or, if the subject lacks capacity to consent, of a person authorized pursuant to law to consent to health care for that person. Written consent shall be in a form as prescribed by the department except for entities complying with the form prescribed by 20-448.01. If the test is performed on an anonymous basis the consent may be oral.

B. This section does not apply to the performance of an HIV-related test:

1. By a health care provider or health facility in relation to the procuring, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or other body fluids, for use in medical research or therapy or for transplantation to other persons.

2. For the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved

by the researcher.

3. On a deceased person, if the test is conducted in order to determine the cause of death or for epidemiologic or public health purposes.

4. In the course of providing necessary emergency medical treatment to a patient who lacks capacity to consent to HIV-related testing and for whom no person authorized pursuant to law to consent to health care for that person can be identified on a timely basis if the testing is necessary for the diagnosis and treatment of the emergency condition. The attending physician shall document the existence of an emergency medical condition, the necessity of the HIV-related testing to diagnose and treat the emergency condition and the patient's lack of capacity.

5. On a patient who lacks capacity to consent and for whom no person authorized pursuant to law to consent to health care for that person can be identified on a timely basis if the HIV-related testing is directly related to and necessary for the diagnosis and treatment of the person's medical condition. HIV-related testing shall be performed under these circumstances only on written certification by the attending physician and a consulting physician that the HIV-related testing is directly related to and necessary for the diagnosis *and treatment of* the patient's medical condition.

#### 36-664. Confidentiality; exceptions

A. No person who obtains confidential communicable disease related information in the course of providing a health service or pursuant to a release of confidential communicable disease related information may disclose or be compelled to disclose that information except to the following:

1. The protected person or, if the protected person lacks capacity to consent, a person authorized pursuant to law to consent to health care for the person.

2. A person to whom disclosure is authorized pursuant to subsection D of this section or as otherwise allowed by law.

3. An agent or employee of a health facility or health care provider if the agent or employee is authorized to access medical records, the health facility or health care provider itself is authorized to obtain the communicable disease related information and the agent or employee provides health care to the protected individual or maintains or processes medical records for billing or reimbursement.

4. A health care provider or health facility if knowledge of the communicable disease related information is necessary to provide appropriate care or treatment to the protected person or the person's child.

5. A health facility or health care provider, in relation to the procurement, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or other body fluids, for use in medical education, research or therapy or for transplantation to another person.

6. A health facility, or an organization, committee or individual designated by the health facility, engaged in the review of professional practices, including the review of the quality, utilization or necessity of medical care, or an accreditation or oversight review organization responsible for the review of professional practices at a health facility. Confidential communicable disease related information disclosed to these organizations, committees or individuals shall include only that information necessary for the authorized review and shall not include information directly identifying the protected person.

7. A federal, state, county or local health officer if disclosure is mandated by federal or state law.

8. A government agency specifically authorized by law to receive the information. The agency is authorized to redisclose the information only pursuant to this article or as otherwise permitted by law.

9. A person, health care provider or health care facility to which disclosure is ordered by a court or administrative body pursuant to 36-665.

10. The department of economic security in conjunction with the placement of children for adoption.

11. The industrial commission or parties to an industrial commission claim pursuant to the provisions of 23-908, subsection C and 23-1043.02.

12. Insurance entities pursuant to 20-448.01.

B. Pursuant to a written release as prescribed by subsection D of this section, a state, county or local health officer may disclose confidential communicable disease related information if the disclosure is any of the following:

1. Specifically authorized or required by federal or state law.

2. Made pursuant to a release of confidential communicable disease related information.

3. Made to a contact of the protected person.

4. For the purposes of research.

C. The director may authorize the release of information that identifies the protected person to the national center for health statistics of the United

States public health service for the purposes of conducting a search of the national death index.

D. A disclosure of information pursuant to subsection B of this section shall be made without identifying the protected person.

E. A release of confidential communicable disease related information shall be signed by the protected person or, if the protected person lacks capacity to consent, a person authorized pursuant to law to consent to health care for the person. A release shall be dated and shall specify to whom disclosure is authorized, the purpose for disclosure and the time period during which the release is effective. A general authorization for the release of medical or other information, including confidential communicable disease related information, is not a release of confidential HIV-related information unless the authorization specifically indicates its purpose as a general authorization and an authorization for the release of confidential HI V-related information and complies with the requirements of this section.

F. A person to whom confidential communicable disease related information is disclosed pursuant to this section shall not disclose the information to another person except as authorized by this section. This subsection does not apply to the protected person or a person who is authorized pursuant to law to consent to health care for the protected person.

G. If a disclosure of confidential communicable disease related information is made pursuant to a release, the disclosure shall be accompanied by a statement in writing which warns that the information is from confidential records which are protected by state law that prohibits further disclosure of the information without the specific written consent of the person to whom it pertains or as otherwise permitted by law.

H. The person making a disclosure pursuant to a release of confidential communicable disease related information shall keep a record of all disclosures. On request, a protected person or his legal representative shall have access to the record.

I. A provider of a health service in possession of confidential communicable disease related information relating to a recipient of its service may disclose that information to an authorized employee or agent of a federal, state or local government agency which supervises or monitors the provider or administers the program under which the service is provided or to the private entity that accredits the provider. An authorized employee or agent includes only an employee or agent who, in the ordinary course of business of the government agency or entity, has access to records relating to the care or treatment of the protected person. The information shall not disclose the protected person's name.

J. This section does not prohibit the listing of communicable disease related information, including acquired immune deficiency syndrome, HIV-related illness or HIV infection, in a certificate of death, autopsy report or other related document prepared pursuant to law to document the cause of death. This section does not modify a law or rule relating to access to death certificates, autopsy reports or other related documents.

K. If a person in possession of confidential HIV-related information reasonably believes that an identifiable third party is at risk of HIV infection that person may report that risk to the department. The report shall be in writing and include the name and address of the identifiable third party and the name and address of the person making the report. The department shall contact the person at risk pursuant to rules adopted by the department. The department employee making the initial contact shall have expertise in counseling persons who have been exposed to or tested positive for HIV or acquired immune deficiency syndrome.

L. Except as otherwise provided pursuant to this article or subject to an order or search warrant issued pursuant to 36-665, no person who receives confidential HIV-related information in the course of providing a health service or pursuant to a release of confidential HIV-related information may disclose that information to another person or legal entity or be compelled by subpoena, order, search warrant or other judicial process to disclose that information to another person or legal entity.

M. Nothing in this section or 36-663, 36-66, 36-667 and 36-668 of this chapter shall apply to persons or entities subject to regulation under title 20.1

#### 36-665. Order for disclosure of confidential communicable disease related information

A. Notwithstanding any other law, no court or administrative body may issue an order for the disclosure of or a search warrant for confidential communicable disease related information, except as provided by this section. An administrative body includes any administrative law judge or hearing officer presiding over matters relating to the administrative body.

B. An order for disclosure of or a search warrant for confidential communicable disease related information may be issued on an application showing any one of the following:

1. A compelling need for disclosure of the information for the adjudication of a criminal, civil or administrative proceeding.
2. A clear and imminent danger to a person whose life or health may

unknowingly be at significant risk as a result of contact with the person to whom the information pertains.

3. If the application is filed by a state, county or local health officer, a clear and imminent danger to the public health.

4. That the applicant is lawfully entitled to the disclosure and the disclosure is consistent with the provisions of this article.

5. A clear and imminent danger to a person or to public health or a compelling need requiring disclosure of the confidential communicable disease information.

C. On receiving an application pursuant to this section, the court or administrative body shall enter an order directing that the file be sealed and not made available to any person, except to the extent necessary to conduct a proceeding in connection with the determination of whether to grant or deny the application, including an appeal. The court or administrative body shall also order that all subsequent proceedings in connection with the application be conducted in camera and, if appropriate to prevent the unauthorized disclosure of confidential communicable disease related information, that pleadings, papers, affidavits, judgments, orders, briefs and memoranda of law which are part of the application or the decision not state the name of the person concerning whom confidential communicable disease related information is sought.

D. The person concerning whom the information is sought and a person holding records from whom disclosure is sought shall be given adequate notice of the application in a manner which does not disclose to any other person the identity of the person and may file a written response to the application or appear in person for the limited purpose of providing evidence on the criteria for the issuance of an order pursuant to this section.

E. The court or administrative body may grant an order without notice and an opportunity to be heard if an ex parte application by a public health officer shows that a clear and imminent danger to a person whose life or health may unknowingly be at risk requires an immediate order and that notice to the individual about whom the information is sought is not reasonable under the circumstances.

F. Service of a subpoena is not required for actions brought pursuant to subsections D and E.

G. In assessing compelling need and clear and imminent danger, the court or administrative body shall provide written findings of fact, including scientific or medical findings, citing specific evidence in the record which supports each finding, and shall weigh the need for disclosure against the privacy interest of the protected person and the public interest which may be



disserved by disclosure which deters future testing or treatment or which may lead to discrimination.

H. An order authorizing disclosure of or a search warrant for confidential communicable disease related information shall:

1. Limit disclosure to that information which is necessary to fulfill the purpose for which the order is granted.
2. Limit disclosure to those persons whose need for the information is the basis for the order, and specifically prohibit redisclosure by persons to any other persons, whether or not they are parties to the action.
3. To the extent possible consistent with this section, conform to the provisions of this article.
4. Include other measures as deemed necessary to limit disclosures not authorized by the order.

I. Notwithstanding any other law, a court or administrative body shall not order the department, a county health department or a local health department to release confidential HIV-related information in its possession.

### 36-666. Violation; classification; immunity

A. A person who knowingly does the following is guilty of a class 3 misdemeanor:<sup>1</sup>

1. Performs, or permits or procures the performance of, an HIV-related test in violation of this article.
2. Discloses, compels another person to disclose or procures the disclosure of confidential communicable disease related information in violation of this article.

B. A person, health care facility or health care provider disclosing confidential communicable disease related information pursuant to or required by this article is immune from civil or criminal liability if the person, health care facility or health care provider acted in good faith and without malice.

C. A health care facility or health care provider, including a physician, the physician's employer or the health care facility or health care provider with which the physician is associated, is immune from civil or criminal liability for failing to disclose confidential communicable disease related information to a contact or a person authorized pursuant to law to consent to health care for a protected person if the health care facility or health care provider acted in good faith and without malice.

D. For the purposes of this section, good faith and the absence of malice are presumed unless the presumption is overcome by a demonstration of clear and convincing evidence to the contrary.

#### 36-667. Civil penalty

A. The department may impose a civil penalty of not more than five thousand dollars if a person does the following in violation of this article:

1. Performs, or permits or procures the performance of, an HIV-related test in violation of this article.
2. Discloses, compels another person to disclose or procures the disclosure of confidential communicable disease related information in violation of this article.

B. The director shall transmit all monies collected pursuant to this section to the state treasurer for deposit in the state general fund.

#### 36-668. Private right of action

A protected person may bring an action in superior court for legal and equitable relief on his own behalf against a person who violates this article.

#### 36-669. Human immunodeficiency testing of prisoners

The state department of corrections in consultation with the department of health services may require that a prisoner be tested for the human immunodeficiency virus if the department of corrections has reasonable grounds to believe that the person is infected with the human immunodeficiency virus and is a health threat to others.