

/* Georgia's AIDS statutes cover control of HIV; testing, confidentiality, and disclosure; criminal and inmate testing; donor testing; and real estate disclosures. */

15-11-35.1. Disposition of child committing delinquent act constituting AIDS transmitting crime; submission to HIV test; report of results.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1

(b) As part of any order of disposition regarding a child adjudged to have committed a delinquent act constituting an AIDS transmitting crime, the court may in its discretion and after conferring with the director of the health district, as such officer is provided for in Code Section 31-3-15, order that child to submit to an HIV test within 45 days following the adjudication of delinquency and shall mail the Department of Children and Youth Services a copy of such order within three days following the issuance thereof.

(c) The Department of Children and Youth Services, within 30 days following receipt of the copy of order under subsection (b) of this code section, shall arrange for the HIV test for the child ordered to submit thereto.

(d) If a child is required by this Code section to submit to an HIV test and is thereby determined to be infected with HIV, that determination and the name of the child shall be deemed to be AIDS confidential information and shall be reported to:

1) The Department of Children and Youth Services and the Department of Human Resources, the latter of which may disclose the name of the child if necessary to provide and shall provide counseling to each victim of that child's AIDS transmitting crime or to any parent or guardian of any victim who is a minor or Incompetent person, if the Department of Children and Youth Services believes the crime posed a reasonable risk of transmitting HIV to the victim;

(2) The court which ordered the HIV test; and

(3) Those persons in charge of any facility to which the child has been confined by order of the court. In addition to any other restrictions regarding the confinement of children, a child determined to be an HIV infected person may be confined in that facility separately from any other children in that facility other than those who have been determined to be infected with HIV if:

(A) That child is reasonably believed to be sexually active while confined;

(B) That child is reasonably believed to be sexually predatory either during or prior to detention; or

(C) The commissioner of children and youth services reasonably

determines that other circumstances or conditions exist which indicate that separate confinement would be warranted.

15-11-36. Disposition of unruly child.

If the child is found to be unruly, the court may make any disposition authorized for a delinquent child except that, if commitment to the Department of Children and Youth Services is ordered, the court shall first find that the child is not amenable to treatment or rehabilitation pursuant to paragraph (1), (2), or (3) of subsection (a) of Code Section 15-11-35.

ARTICLE 4 RECKLESS CONDUCT

16-5-60. Reckless conduct causing harm to or endangering the bodily safety of another conduct by HIV infected persons.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) A person who causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his act or omission will cause harm or endanger the safety of the other person and the disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation is guilty of a misdemeanor.

(c) A person who is an HIV infected person who, after obtaining knowledge of being infected with HIV:

(1) Knowingly engages in sexual intercourse or performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another person and the HIV infected person does not disclose to the other person the fact of that infected person's being an HIV infected person prior to that intercourse or sexual act;

(2) Knowingly allows another person to use a hypodermic needle, syringe, or both for the introduction of drugs or any other substance into or for the withdrawal of body fluids from the other person's body and the needle or syringe so used had been previously used by the HIV infected person for the introduction of drugs or any other substance into or for the withdrawal of body fluids from the HIV infected person's body and where that infected person does not disclose to the other person the fact of that infected person's being an HIV infected person prior to such use;

(3) Offers or consents to perform with another person an act of sexual intercourse for money without disclosing to that other person the fact of that infected person's being an HIV infected person prior to offering or consenting to perform that act of sexual intercourse;

(4) Solicits another person to perform or submit to an act of sodomy for money without disclosing to that other person the fact of that infected person's being an HIV infected person prior to soliciting that act of sodomy; or

(5) Donates blood, blood products, other body fluids, or any body organ or body part without previously disclosing the fact of that infected person's being an HIV infected person to the person drawing the blood or blood products or the person or entity collecting or storing the other body fluids, body organ, or body part,

is guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than ten years.

CRIMINAL PROCEDURE

17-10-15. AIDS transmitting crimes; requiring defendant to submit to HIV test; report of results.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) A victim or the parent or legal guardian of a minor or incompetent victim of a sexual offense as defined in Code Section 31-22-9.1 or other crime which involves significant exposure as defined by subsection (g) of this Code section may request that the agency responsible for prosecuting the alleged offense request that the person arrested for such offense submit to a test for the human immunodeficiency virus and consent to the release of the test results to the victim. If the person so arrested declines to submit to such a test, the judge of the superior court in which the criminal charge is pending, upon a showing of probable cause that the person arrested for the offense committed the alleged crime and that significant exposure occurred, may order the test to be performed in compliance with the rules adopted by the Department of Human Resources. The cost of the test shall be borne by the victim or by the arrested person, in the discretion of the court.

(c) Upon a verdict or plea of guilty or a plea of nolo contendere to any AIDS transmitting crime, the court in which that verdict is returned or plea entered shall require the defendant in such case to submit to an HIV test within 45 days following the date of such verdict or plea. The clerk of the court in such case shall mail, within three days following the date of that verdict or plea, a copy of that verdict or plea to the Department of Human Resources.

(d) The Department of Human Resources, within 30 days following receipt of the court's order under subsection (b) of this Code

section or within 30 days following receipt of the copy of the verdict or plea under subsection (c) of this Code section, shall arrange for the HIV test for the person required to submit thereto.

(e) Any person required under this Code section to submit to the HIV test who fails or refuses to submit to the test arranged pursuant to subsection (d) of this Code section shall be subject to such measures deemed necessary by the court in which the order was entered, verdict was returned, or plea was entered to require involuntary submission to the HIV test, and submission thereto may also be made a condition of suspending or probating any part of that person's sentence for the AIDS transmitting crime.

(f) If a person is required by this Code section to submit to an HIV test and is thereby determined to be infected with HIV, that determination and the name of the person shall be reported to:

(1) The Department of Human Resources, which shall disclose the name of the person as necessary to provide counseling to each victim of that person's AIDS transmitting crime if that crime is other than one specified in subparagraph (a)(3)(J) of Code Section 31-22-9.1 or to any parent or guardian of any such victim who is a minor or incompetent person;

(2) The court which ordered the HIV test, which court shall make that report a part of that person's criminal record. That report shall be sealed by the court; and

(3) The officer in charge of any penal institution or other facility in which the person has been confined by order or sentence of the court for purposes of enabling that officer to confine the person separately from those not infected with HIV.

(g) For the purpose of subsection (b) of this Code section, "significant exposure" means contact of the victim's ruptured or broken skin or mucous membranes with the blood or body fluids of the person arrested for such offense, 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.

(h) The state may not use the fact that a medical procedure or test was performed on a person under this Code section or use the results of the procedure or test in any criminal proceeding arising out of the alleged offense.

Domestic RELATIONS

19-3-35.1. AIDS brochures; listing of HIV test sites; acknowledgment of receipt.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term

in Code Section 31-22-9.1.

(b) The Department of Human Resources shall prepare a brochure describing AIDS, HIV, and the dangers, populations at risk, risk behaviors, and prevention measures relating thereto. That department shall also prepare a listing of sites at which confidential and anonymous HIV tests are provided without charge. That department shall further prepare a form for acknowledging that the brochures and listings have been received, as required by subsection (c) of this Code section. The brochures, listings, and forms prepared by the Department of Human Resources under this subsection shall be prepared and furnished to the office of each judge of the probate court no later than October 1, 1988.

(c) On and after October 1, 1988, each person who makes application for a marriage license shall receive from the office of the probate judge at the time of the application the AIDS brochure and listing of HIV test sites prepared and furnished pursuant to subsection (b) of this Code section. On and after October 1, 1988, no marriage license shall be issued unless both the proposed husband and the proposed wife sign a form acknowledging that both have received the brochure and listing.

EVIDENCE

24-9-40.1. Confidential nature of AIDS information. AIDS confidential information as defined in Code Section 31-22-9.1 and disclosed or discovered within the patient-physician relationship) shall be confidential and shall not be disclosed except as otherwise provided in Code Section 24-9-47.

24-9-47. Disclosure of AIDS confidential information.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) Except as otherwise provided in this Code Section:

(1) No person or legal entity which receives AIDS confidential information pursuant to this Code section or which is responsible for recording, reporting, or maintaining AIDS confidential information shall:

(A) Intentionally or knowingly disclose that information to another person or legal entity; or

(B) Be compelled by subpoena, court order, or other judicial process to disclose that information to another person or legal entity,; and

(2) No person or legal entity which receives AIDS confidential information which that person or legal entity knows was disclosed in violation of paragraph (1) of this subsection shall:

(A) Intentionally or knowingly disclose that information to an-

other person or legal entity; or

(B) Be compelled by subpoena, court order, or other judicial process to disclose that information to another person or legal entity.

(c) AIDS confidential information may be disclosed to the person identified by that information or, if that person is a minor or incompetent person, to that person's parent or legal guardian.

(d) AIDS confidential information may be disclosed to any person or legal entity designated to receive that information when that designation as made in writing by the person identified by that information or, if that person is a minor or incompetent person, by that person's parent or legal guardian;

(e) AIDS confidential information may be disclosed to any agency or department of the federal government, this state, or any political subdivision of this state if that information is authorized or required by law to be reported to that agency or department.

(f) The results of an HIV test may be disclosed to the person, or that person's designated representative, who ordered such tests of the body fluids or tissue of another person.

(g) When the patient of a physician has been determined to be infected with HIV and that patient's physician reasonably believes that the spouse or sexual partner or any child of the patient, spouse, or sexual partner is a person at risk of being infected with HIV by that patient, the physician may disclose to that spouse, sexual partner, or child that the patient has been determined to be infected with HIV, after first attempting to notify the patient that such disclosure is going to be made.

(h) (1) An administrator of an institution licensed as a hospital by the Department of Human Resources or a physician having a patient who has been determined to be infected with HIV may disclose to the Department of Human Resources:

(A) The name and address of that patient;

(B) That such patient has been determined to be infected with HIV; and

(C) The name and address of any other person whom the disclosing physician or administrator reasonably believes to be a person at risk of being infected with HIV by that patient.

(2) When mandatory and nonanonymous reporting of confirmed positive HIV tests to the Department of Human Resources is determined by that department to be reasonably necessary, that department shall establish by regulation a date on and after which such reporting shall be required. On and after the date so established, each health care provider, health care facility, or any other person or legal entity which orders an HIV test for another person shall report to the Department of Human Resources

the name and address of any person thereby determined to be infected with HIV. No such report shall be made regarding any confirmed positive HIV test provided at any anonymous HIV test site operated by or on behalf of the Department of Human Resources.

(3) The Department of Human Resources may disclose that a person has been reported, under paragraph (1) or (2) of this subsection, to have been determined to be infected with HIV to the board of health of the county in which that person resides or is located if reasonably necessary to protect the health and safety of that person or other persons who may have come in contact with the body fluids of the HIV infected person. The Department of Human Resources or county board of health to which information is disclosed pursuant to this paragraph or paragraph (1) or (2) of this subsection:

(A) May contact any person named in such disclosure as having been determined to be an HIV infected person for the purpose of counseling that person and requesting therefrom the name of any other person who may be a person at risk of being infected with HIV by that HIV infected person;

(B) May contact any other person reasonably believed to be a person at risk of being infected with HIV by that HIV infected person for the purposes of disclosing that such infected person has been determined to be infected with HIV and counseling such person to submit to an HIV test; and

(C) Shall contact and provide counseling to the spouse of an HIV infected person whose name is thus disclosed if both persons are reasonably likely to have engaged in sexual intercourse or any other act determined by the department likely to have resulted in the transmission of HIV between such persons within the preceding seven years and if that spouse may be located and contacted without undue difficulty.

(i) Any health care provider authorized to order an HIV test may disclose AIDS confidential information regarding a patient thereof ii that disclosure is made to a health care provider or health care facility which has provided, is providing, or will provide any health care services to that patient and as a result of such provision of service that health care provider or facility:

(1) Has personnel or patients who may be persons at risk of being infected with HIV by that patient, if that patient is an HIV infected person and such disclosure is reasonably necessary to protect any such personnel or patients from that risk; or

(2) Has a legitimate need for that information in order to provide that health care service to that patient.

(j) A health care provider or any other person or legal entity authorized but not required to disclose AIDS confidential

information pursuant to this Code section shall have no duty to make such disclosure and shall not be liable to the patient or any other person or legal entity for failing to make such disclosure. A health care provider or any other person or legal entity which discloses information as authorized or required by this Code section or as authorized or required by law or rules or regulations made pursuant thereto shall have no civil or criminal liability therefor.

(k) When any person or legal entity is authorized or required by this Code section or any other law to disclose AIDS confidential information to a person at risk of being infected with HIV and that person at risk is a minor or incompetent person, such disclosure may be made to any parent or legal guardian of the minor or incompetent person, to the minor or incompetent person, or to both the minor or incompetent person and any parent or legal guardian thereof.

(l) When an institutional care facility is the site at which a person is at risk of being infected with HIV and as a result of that risk a disclosure of AIDS confidential information to any person at risk at that site is authorized or required under this Code section or any other law, such disclosure may be made to the person at risk or to that institutional care facility's chief administrative or executive officer, or such officer's designee, in which case that officer or designee is authorized to make such disclosure to the person at risk.

(m) When a disclosure of AIDS confidential information is authorized or required by this Code section to be made to a physician, health care provider, or legal entity, that disclosure may be made to employees of that physician, health care provider, or legal entity who have been designated thereby to receive such information on behalf thereof; those designated employees may thereafter disclose to and provide for the disclosure of that information among such other employees of that physician, health care provider, or legal entity, but such disclosures among those employees are only authorized when reasonably necessary in the ordinary course of business to carry out the purposes for which that disclosure is authorized or required to be made to that physician, health care provider, or legal entity.

(n) Any disclosure of AIDS confidential information authorized or required by this Code section or any other law and any unauthorized disclosure of such information shall in no way destroy the confidential nature of that information except for the purpose for which the authorized or required disclosure is made.

(o) Any person or legal entity which violates subsection (b) of this Code section shall be guilty of a misdemeanor.

(p) Nothing in this Code section or any other law shall be

construed to authorize the disclosure of AIDS confidential information if that disclosure is prohibited by federal law, or regulations promulgated thereunder, nor shall anything in this Code section or any other law be construed to prohibit the disclosure of information which would be AIDS confidential information except that such information does not permit the identification of any person.

(q) A public safety agency or district attorney may obtain the results from an HIV test to which the person named in the request has submitted under Code Section 15-11-35.1, 17-10-15, 42-5-52.1, or 42-9-42.1 notwithstanding that the results may be contained in a sealed record.

(r) Any person or legal entity required by an order of a court to disclose AIDS confidential information in the custody or control of such person or legal entity shall disclose that information as required by that order.

(s) AIDS confidential information may be disclosed as medical information pursuant to Code Section 24-9-40, relating to the release of medical information, or pursuant to any other law which authorizes or requires the disclosure of medical information if:

(1) The person identified by that information:

(A) Has consented in writing to that disclosure; or

(B) Has been notified of the request for disclosure of that information at least ten days prior to the time the disclosure is to be made and does not object to such disclosure prior to the time specified for that disclosure in that notice; or

(2) A superior court in, an in camera hearing finds by clear and convincing evidence a compelling need for the information which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests. If the court determines that disclosure of that information is authorized under this paragraph, the court shall order that disclosure and impose appropriate safeguards against any unauthorized disclosure. The records of that hearing otherwise shall be under seal.

(t) (1) A superior court of this state may order a person or legal entity to disclose AIDS confidential information in its custody or control to:

(A) A prosecutor in connection with a prosecution for the alleged commission of reckless conduct under subsection (c) of Code Section 16-5-60;

(B) Any party in a civil cause of action; or
(C) A public safety agency or the Department of Human Resources if that agency or department has an employee thereof who has, in the course of that employment, come in contact with the body fluids of the person identified by the AIDS confidential information sought in such a manner reasonably likely to cause that employee to become an HIV infected person and provided the disclosure is necessary for the health and safety of that employee,

and for purposes of this subsection the term "petitioner for disclosure" means any person or legal entity specified in subparagraph (A), (B), or (C) of this paragraph.

2) An order may be issued against a person or legal entity responsible for recording, reporting, or maintaining AIDS confidential information to compel the disclosure of that information if the petitioner for disclosure demonstrates by clear and convincing evidence a compelling need for the information which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests.

(3) A petition seeking disclosure of AIDS confidential information under this subsection shall substitute a pseudonym for the true name of the person concerning whom the information is sought. The disclosure to the parties of that person's true name shall be communicated confidentially, in documents not filed with the court.

(4) Before granting any order under this subsection, the court shall provide the person concerning whom the information is sought with notice and a reasonable opportunity to participate in the proceedings if that person is not already a party.

(5) Court proceedings as to disclosure of AIDS confidential information under this subsection shall be conducted in camera unless the person concerning whom the information is sought agrees to a hearing in open court.

(6) Upon the issuance of an order that a person or legal entity be required to disclose AIDS confidential information regarding a person named in that order, that person or entity so ordered shall disclose to the ordering court any such information which is in the control or custody of that person or entity and which relates to the person named in the order for the court to make an in camera inspection thereof. If the court determines from that inspection that the person named in the order is an HIV infected person, the court shall disclose to the petitioner for disclosure

that determination and shall impose appropriate safeguards against unauthorized disclosure which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

(7) The record of the proceedings under this subsection shall be sealed by the court.

(8) An order may not be issued under this subsection against the Department of Human Resources, any county board of health, or any anonymous HIV test site operated by or on behalf of that department.

24-9-47 EVIDENCE 24-9-47 24-9-47 WITNESSES

(u) A health care provider, health care facility, or other person or legal entity who, in violation of this Code section, unintentionally discloses AI DS confidential information, notwithstanding the maintenance of procedures thereby which are reasonably adopted to avoid risk of such disclosure, shall not be civilly or criminally liable, unless such disclosure was due to gross negligence or wanton and willful misconduct.

(v) AIDS confidential information may be disclosed when that disclosure is otherwise authorized or required by Code Section 42-1-6, if AIDS or HIV infection is the communicable disease at issue, or when that disclosure is otherwise authorized or required by any law which specifically refers to 'AIDS confidential information,' 'HIV' test results,' or any similar language indicating a legislative intent to disclose information specifically relating to AIDS or HIV.

(w) A health care provider who has received AIDS confidential information regarding a patient from the patient's health care provider directly or indirectly under the provisions of subsection (i) of this Code section may disclose that information to a health care provider which has provided, is providing, or will provide any health care service to that patient and as a result of that provision of service that health care provider:

(1) Has personnel or patients who may be persons at risk of being infected with HIV by that patient, if that patient is an HIV infected person and such disclosure is reasonably necessary to protect any such personnel or patients from that risk; or
(2) Has a legitimate need for that information in order to provide that health care service to that patient.

(x) Neither the Department of Human Resources nor any county board of health shall disclose AIDS confidential information contained in its records unless such disclosure is authorized or required by this Code section or any other law, except that such information in those records shall not be a public record and shall not be subject to disclosure through subpoena, court order,

or other Judicial process.

(y) The protection against disclosure provided by Code Section 24-9-40.1 shall be waived and AIDS confidential information may be disclosed to the extent that the person identified by such information, his heirs, successors, assigns, or a beneficiary of such person, including but not limited to an executor, administrator, or personal representative of such person's estate:

(1) Files a claim or claims other entitlements under any insurance policy or benefit plan or is involved in any civil proceeding regarding such claim;

(2) Places such person's care and treatment, the nature and extent of his injuries, the extent of his damages, his medical condition, or the reasons for his death at issue in any civil or criminal proceeding; or

(3) Is involved in a dispute regarding coverage under any insurance policy or benefit plan.

(z) AIDS confidential information may be collected used, and disclosed by an insurer in accordance with the provisions of Chapter 39 of Title 33, relating to the collection, use, and disclosure of information gathered by insurance institutions.

(aa) In connection with any civil or criminal action in which AIDS confidential information is disclosed as authorized or required by this Code section, the party to whom that information is thereby disclosed may subpoena any person to authenticate such AIDS confidential information, establish a chain of custody relating thereto, or otherwise testify regarding that information, including but not limited to testifying regarding any notifications to the patient regarding results of an HIV test. The provisions of this subsection shall apply as to records, personnel, or both of the Department of Human Resources or a county board of health notwithstanding Code Section 50-18-72, but only as to test results obtained by a prosecutor under subsection (q) of this Code section and to be used thereby in a prosecution for reckless conduct under subsection (i) of Code Section 16-5-60.

(bb) AIDS confidential information may be disclosed as a part of any proceeding or procedure authorized or required pursuant to Chapter 3, 4, or 7 of Title 37, regarding a person who is alleged to be or who is mentally ill, mentally retarded, or alcoholic or drug dependent, or as a part of any proceeding or procedure authorized or required pursuant to Title 29, regarding the guardianship of a person or that person's estate, as follows:

(1) Any person who files or transmits a petition or other document which discloses AIDS confidential information in connection with any such proceeding or procedure shall provide a cover page which contains only the type of proceeding or

procedure, the court in which the proceeding or procedure is or will be pending, and the words "CONFIDENTIAL INFORMATION" without in any way otherwise disclosing thereon the name of any individual or that such petition or other document specifically contains AIDS confidential information;

(2) AIDS confidential information shall only be disclosed pursuant to this subsection after disclosure to and with the written consent of the person identified by that information, or that person's parent or guardian if that person is a minor or has previously been adjudicated as being incompetent or by order of court obtained in accordance with subparagraph (C) of paragraph (3) of this subsection;

(3) If any person files or transmits a petition or other document in connection with any such proceeding or procedure which disclosed AIDS confidential information without obtaining consent as provided in paragraph (2) of this subsection, the court receiving such information shall either obtain written consent as set forth in that paragraph (2) for any further use or disclosure of such information or:

(A) Return such petition or other document to the person who filed or transmitted same, with directions against further filing or transmittal of such information in connection with such proceeding,, or procedure except in compliance with this subsection;

(B) Delete or expunge all references to such AIDS confidential information from the particular petition or other document; or

(C) (i) If the court determines there is a compelling need for such information in connection with the particular proceeding or procedure, petition a superior court of competent jurisdiction for permission to obtain or disclose that information. If the person identified by the information is not yet represented by an attorney in the proceeding or procedure in connection with which the information is sought, the petitioning court shall appoint an attorney for such person. The petitioning court shall have both that person and that person's attorney personally served with notice of the petition and time and place of the superior court hearing thereon. Such hearing shall not be held sooner than 72 hours after service, unless the information is to be used in connection with an emergency guardianship proceeding under Chapter 5 of Title 29, in which event the hearing shall not be held sooner than 48 hours after service.

(ii) The superior court in which a petition is filed pursuant to division (i) of this subparagraph shall hold an in camera hearing on such petition. The purpose of the hearing shall be to determine whether there is clear and convincing evidence of a compelling need for the AIDS confidential information sought in connection with the particular proceeding or procedure which

cannot be accommodated by other means. In assessing compelling need the superior court shall weigh the public health, safety, or welfare needs or any other public or private need for the disclosure against the privacy interest of the person identified by the information and the public interest which may be disserved by disclosures which may deter voluntary HIV tests. If the court determines that disclosure of that information is authorized under this subparagraph, the court shall order that disclosure and impose appropriate safeguards against any unauthorized disclosure. The records of that hearing otherwise shall be under seal; and

(4) The court having jurisdiction over such proceeding or procedure, when it becomes apparent that AIDS confidential information will likely be or has been disclosed in connection with such proceeding or procedure, shall take such measures as the court determines appropriate to preserve the confidentiality of the disclosed information to the maximum extent possible. Such measures shall include, without being limited to, closing the proceeding or procedure to the public and sealing all or any part of the records of the proceeding or procedure containing AIDS confidential information. The records of any appeals taken from any such proceeding or procedure shall also be sealed. Furthermore, the court may consult with and obtain the advice of medical experts or other counsel or advisers as to the relevance and materiality of such information in such proceedings or procedures, so long as the identity of the person identified by such information is not thereby revealed.

31-17A-1 CONTROL OF HIV

CHAPTER 17A

CONTROL OF HIV

Sec.

31-17A-1. HIV deemed dangerous to public health.

31-17A-2. Examination of infected persons; administration of HIV test.

31-17A-3. Refusal to consent to test; procedure.

31-17A-1. HIV deemed dangerous to public health.

(a) Any term used in this chapter and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) HIV and the degenerative diseases associated with it are declared to be contagious, infectious, communicable, and extremely dangerous to the public health.

31-17A-2. Examination of infected persons; administration of HIV test.

The authorized agent or agents of the Department of Human Resources are directed and empowered, when in their judgment it

is necessary to protect the public health, to make examinations of persons infected or suspected of being infected with HIV and to administer an HIV test with the consent of the person being tested. In the event the person infected or suspected of being infected with HIV refuses to consent to the administration of an HIV test, the authorized agent or agents of the Department of Human Resources are authorized to petition the court for an order authorizing the administration of an HIV test pursuant to the procedure set forth in Code Section 31-17A-3.

31-17A-3, Refusal to consent to test; procedure.

(a) If a person refuses to consent to an HIV test, as provided in Code Section 31-17A-2, the Department of Human Resources may file a civil complaint with the superior court of the county of the residence of the person refusing the test. The complaint shall allege with specificity the basis for the allegations which the department believes support the conclusion that the person is infected with HIV, as well as the scope, nature, and threat to the public health created thereby, and the proposed plan to be adopted to protect the public health in the event the court orders the administration of the HIV test and the person is found to be an HIV infected person. The person against whom the complaint is filed shall be represented by counsel, and, in the event the person against whom the complaint is filed cannot afford counsel, counsel shall be appointed by the court.

(b) The superior court shall hear the complaint on an expedited basis without a jury. All proceedings before the court shall be sealed.

(c) If after consideration of the evidence, the court finds clear and convincing evidence that the person is reasonably likely to be infected with HIV and that there is a compelling need to protect the public health, the court may order the person to submit to an HIV test, shall retain jurisdiction to render such orders as are appropriate to effectuate that order, and, in the event the person so tested is determined to be infected with HIV, to require such procedures to protect the public health consistent with the least restrictive alternative which is available within the limits of state funds specifically appropriated therefor.

DEAD BODIES, ARTICLE 1 GENERAL PROVISIONS

31-21-3. Death of person with infectious or communicable disease; required reporting procedures; confidentiality; disclosure; penalties.

(a) For the purposes of this Code section, the term "infectious or communicable disease" shall include the following:

- (1) Infectious hepatitis;
- (2) Tuberculosis;
- (3) Any venereal disease enumerated in Code Section 31-17-1; or
- (4) Acquired immune deficiency syndrome (AIDS).

(b) (1) When a person who has been diagnosed as having an infectious or communicable disease dies in a hospital or other health care facility, the attending physician shall prepare a written notification describing such disease to accompany the body when it is picked up for disposition.

(2) When a person dies outside of a hospital or health care facility and without an attending physician, any family member or person making arrangements for the disposition of the dead body who knows that such dead person had been diagnosed as having an infectious or communicable disease at the time of death shall prepare a written notification describing such disease to accompany the body when it is picked up for disposition.

(3) Any person who picks up a dead body for disposition and who has been notified that the person had been diagnosed as having an infectious or communicable disease at the time of death pursuant to the provisions of paragraph (1) or (2) of this subsection shall present such notification accompanying the dead body to any embalmer, funeral director, or other person taking possession of the dead body.

(c) Information regarding a deceased's infectious or communicable disease and contained in a notification required to be prepared pursuant to subsection (b) of this Code section shall be privileged and confidential and may only be disclosed if:

- (1) That disclosure is required pursuant to Chapter 17 of this title;
- (2) That disclosure is required by federal law, but only to the extent so required;
- (3) That disclosure is made by a physician pursuant to Code Section 24-9-40 or any other law authorizing a physician to disclose otherwise privileged information;
- (4) That disclosure is for research purposes and does not reveal:
 - (A) The identity of the deceased; or
 - (B) Information which would reveal the identity of the deceased;
- (5) That disclosure involves information regarding sexual assault or sexual exploitation of a deceased child and is required to be reported pursuant to Code Section 19-7-5 or any other law requiring the reporting of such assault or exploitation

of a child, but only to the extent that such disclosure is so required to be reported;

(6) That disclosure involves information regarding a deceased minor and the disclosure is made to the parent or guardian of that minor; or

(7) That disclosure is made to the person who picks up the dead body or is made in the ordinary course of business to any employee or agent of any person or entity authorized or required under this Code' section to receive or report that information.

(d) Information privileged and confidential under this Code section may not be disclosed pursuant to discovery proceedings, subpoena, or court order.

(e) Any disclosure authorized by this Code section or any unauthorized disclosure of information or communications made privileged and confidential by this Code section shall not in any way abridge or destroy the confidential or privileged character thereof except for the purposes for which any authorized disclosure is made. Any person making a disclosure authorized by this chapter shall not be liable therefor, notwithstanding any contrary provisions of law.

(f) Any person having duties imposed upon that person pursuant to subsection (b) of this Code section who knowingly refuses or omits to perform such duties shall be guilty of a misdemeanor.

31-22-9.1. HIV tests - Who may perform test.

(a) As used in this Code section, the term:

(1) "AIDS" means Acquired Immunodeficiency Syndrome or AIDS Related Complex within the reporting criteria of the department.

(2) "AIDS confidential information" means information which discloses that a person:

(A) Has been diagnosed as having AIDS;

(B) Has been or is being treated for AIDS;

(C) Has been determined to be infected with HIV;

(D) Has submitted to an HIV test;

(E) Has had a positive or negative result from an HIV test;

(F) Has sought and received counseling regarding AIDS; or

(G) Has been determined to be a person at risk of being infected with AIDS,

and which permits the identification of that person.

(3) "AIDS transmitting crime" means any of the following offenses specified in Title 16:

(A) Rape;

(B) Sodomy;

(C) Aggravated sodomy;

(D) Child molestation;

(E) Aggravated child molestation;

(F) Prostitution;

(G) Solicitation of sodomy;
(H) Incest;
(I) Statutory rape; or
(J) Any offense involving a violation of Article 2 of Chapter 13 of Title 16, regarding controlled substances, if that offense involves heroin, cocaine, derivatives of either, or any other controlled substance in Schedule I, II, III, IV, or V and that other substance is commonly intravenously injected, as determined by the regulations of the department.

(4) "Body fluids" means blood, semen, or vaginal secretions.

(5) "Confirmed positive HIV test" means the results of at least two separate types of HIV tests, both of which indicate the presence of HIV in the substance tested thereby.

(6) "Counseling" means providing the person with information and explanations medically appropriate for that person which may include all or part of the following: accurate information regarding AIDS and HIV; an explanation of behaviors that reduce the risk of transmitting AIDS and HIV; an explanation of the confidentiality of information relating to AIDS diagnoses and HIV tests; an explanation of information regarding both social and medical implications of HIV tests; and disclosure of commonly recognized treatment or treatments for AIDS and HIV. The Department of Human Resources shall develop brochures or other documents which meet the requirements of this paragraph and, upon delivery of such a brochure or document or of another brochure or document approved by the Department of Human Resources to the person and referral of that person to the Department of Human Resources for further information and explanations, counseling shall be deemed to have been provided within the meaning of this paragraph.

(7) "Determined to be infected with HIV" means having a confirmed positive HIV test or having been clinically diagnosed as having AIDS.

(8) "Health care facility" means any:

(A) Institution or medical facility, as defined in Code Section 31-7-1;

(B) Facility for the mentally ill, mentally retarded, or alcoholic or drug dependent persons, as defined in Code Sections 37-3-1, 37-4-1, and 37-7-1, respectively;

(C) Medical, dental, osteopathic, or podiatric clinic;

(D) Hospice, as defined in Code Section 31-7-172;

(E) Clinical laboratory, as defined in Code Section 31-22-1; or

(F) Administrative, clerical, or support personnel of any legal entity specified in subparagraphs (A) through (E) of this paragraph.

(9) "Health care provider" means any of the following persons licensed or regulated by the state:

- (A) Physician or physician's assistant;
- (B) Osteopath;
- (C) Podiatrist;
- (D) Midwife;
- (E) Dentist, dental technician, or dental hygienist;
- (F) Respiratory care professional, certified respiratory therapy technician, or registered respiratory therapist;
- (G) Registered nurse;
- (H) Licensed practical nurse;
- (I) Emergency medical technician, paramedic, or cardiac technician;
- (J) Clinical laboratory director, supervisor, technician, or technologist;
- (K) Funeral director or embalmer;
- (L) Member of a hospice team, as defined in Code Section 31-7-172;
- (M) Nursing home administrator;
- (N) Professional counselor, social worker, or marriage and family therapist;
- (O) Psychologist;
- (P) Administrative, clerical, or support personnel, whether or not they are licensed or regulated by the state, of any person specified in subparagraphs (A) through (O) of this paragraph;
- (Q) Trainee, student, or intern, whether or not they are licensed or regulated by the state, of any persons listed in subparagraphs (A) through (O) of this paragraph; or
- (R) First responder, as defined in Chapter 11 of this title, although such person is not licensed or regulated by the state.
- (10) "HIV" means any type of Human Immunodeficiency Virus, Human T-Cell Lymphotropic Virus Types III or IV, Lymphadenopathy Associated Virus Types I or II, AIDS Related Virus, or any other identified causative agent of AIDS.
- (11) "HIV infected person" means a person who has been determined to be infected with HIV, whether or not that person has AIDS, or who has been clinically diagnosed as having AIDS.
- (12) "HIV test" means any antibody, antigen, viral particle, viral culture, or other test to indicate the presence of HIV in the human body, which test has been approved for such purposes by the regulations of the department.
- (13) "Institutional care facility" means any:
 - (A) Health care facility;
 - (B) Child welfare agency, as defined in Code Section 49-5-12;
 - (C) Group care facility, as defined in Code Section 49-5-3;
 - (D) Penal institution; or
 - (E) Military unit.
- (14) "Knowledge of being infected with HIV" means actual knowledge of:

- (A) A confirmed positive HIV test; or
- (B) A clinical diagnosis of AIDS.
- (15) "Law" means federal or state law.
- (16) "Legal entity" means a partnership, association, joint venture, trust, governmental entity, public or private corporation, health care facility, institutional care facility, or any other similar entity.
- (17) "Military unit" means the smallest organizational unit of the organized militia of the state, as defined in Code Section 38-2-2, or of any branch of the armed forces of the United States, which unit is commanded by a commissioned officer.
- (18) "Penal institution" means any jail, correctional institution, or similar facility for the detention of violators of state laws or local ordinances.
- (19) "Person" means a natural person.
- (20) "Person at risk of being infected with HIV" means any person who may have already come in contact with or who may in the future reasonably be expected to come in contact with the body fluids of an HIV infected person. ,
- (21) "Physician" means any person licensed to practice medicine under Chapter 34 of Title 43.
- (22) "Public safety agency" means that governmental unit which directly employs a public safety employee.
- (23) "Public safety employee" means an emergency medical technician, fireman, law enforcement officer, or prison guard, as such terms are defined in Code Section 45-9-81, relating to indemnification of such personnel for death or disability.
- (b) Notwithstanding the provisions of Code Section 31-21-10 and Code Section 31-22-11, no person or legal entity, other than an insurer authorized to transact business in this state, shall submit for an HIV test any human body fluid or tissue to any person or legal entity except to:
- (1) A clinical laboratory licensed under this chapter;
 - (2) A clinical laboratory exempt from licensure under Code Section 31-22-9; or
 - (3) A clinical laboratory licensed as such pursuant to the laws of any other state.
- (c) No person or legal entity may sell or offer for sale any HIV test that permits any person or legal entity, including the person whose body fluids are to be tested, to perform that test other than a person or legal entity specified in paragraphs (1) through (3) of subsection (b) of this Code section. (Code 1981, 31-22-9.1, enacted by Ga. L. 1988, p. 1799, 8; Ga. L. 1989, p. 14, 31.)

31-22-9.2. HIV tests - Report of positive results; counseling; violations; exception for insurance coverage;

exposure of health care provider.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for that term in Code Section 31-22-9.1.

(b) Each health care provider, health care facility, or any other person or legal entity which orders an HIV test for any person shall report each confirmed positive HIV test to the department along with the age, sex, race, and county of residence of the person having the confirmed positive HIV test but shall include in that report no other identifying characteristics regarding the HIV infected person unless otherwise authorized or required by law. The provisions of this subsection shall be automatically repealed on the beginning date specified by the department, pursuant to paragraph (2) of subsection (h) of Code Section 24-9-47, for the mandatory reporting by name of persons determined to be infected with HIV.

(c) Unless exempted under this Code section, each health care provider who orders an HIV test for any person shall do so only after counseling the person to be tested. Unless exempted under this subsection, the person to be tested shall have the opportunity to refuse the test. The provisions of this subsection shall not be required if the person is required to submit to an HIV test pursuant to Code Section 15-11-35.1, 17-10-15, 31-17A-3, 42-5-52.1, or 42-9-42.1. The provisions of this subsection shall not be required if the person is a minor or incompetent and the parent or guardian thereof permits the test after compliance with this subsection. The provisions of this subsection shall not be required if the person is unconscious, temporarily incompetent, or comatose and the next of kin permits the test after compliance with this subsection. The provisions of this subsection shall not apply to emergency or life-threatening situations. The provisions of this subsection shall not apply if the physician ordering the test is of the opinion that the person to be tested is in such a medical or emotional state that disclosure of the test would be injurious to the person's health. The provisions of this subsection shall only be required prior to drawing the body fluids required for the HIV test and shall not be required for each test performed upon that fluid sample.

(d) The health care provider ordering an HIV test shall provide medically appropriate counseling to the person tested with regard to the test results. Such medically appropriate counseling shall only be required when the last confirmatory test has been completed.

(e) The criminal penalty provided in Code Section 31-22-13 shall not apply to a violation of subsection (c), (d), or (g) of this Code section. The statute of limitations for any action alleging a violation of this Code section shall be two years from the date

of the alleged violation.

(f) The provisions of this Code section shall not apply to situations in which an HIV test is ordered or required in connection with insurance coverage, provided that the person to be tested or the appropriate representative of that person has agreed to have the test administered under such procedures as may be established by the Commissioner of Insurance after consultation with the Department of Human Resources.

(g) Notwithstanding the other provisions of this Code section, when exposure of a health care provider to any body fluids of a patient occurs in such a manner as to create any risk that such provider might become an HIV infected person if the patient were an HIV infected person, according to current infectious disease guidelines of the Centers for Disease Control or according to infectious disease standards of the health care facility where the exposure occurred, a health care provider otherwise authorized to order an HIV test shall be authorized to order any HIV test on such patient and obtain the results thereof:

(1) If the patient or the patient's representative, if the patient is a minor, otherwise incompetent, or unconscious, does not refuse the test after being notified that the test is to be ordered and after having been provided counseling and an opportunity to refuse the test; or

(2) If the patient or representative refuses the test, following compliance with paragraph (1) of this subsection, when at least one other health care provider who is otherwise authorized to order an HIV test concurs in writing to the testing, the patient is informed of the results of the test and is provided counseling with regard to those results, and the occurrence of that test is not made a part of the patient's medical records, where the test results are negative, without the patient's consent.

PENAL INSTITUTIONS

42-5-52.1. Submission to HIV test; separate housing for HIV infected persons.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for that term in Code Section 31-22-9.1

(b) Where any person is committed to the custody of the commissioner to serve time in any penal institution of this state on and after July 1, 1988, the department shall require that person to submit to an HIV test within 30 days after the person is so committed unless that person is in such custody because of having committed an AIDS transmitting crime and has already submitted to an HIV test pursuant to Code Section 17-10-15.

(c) No later than December 31, 1991, the department shall

require to submit to an HIV test each person who has been committed to the custody of the commissioner to serve time in a penal institution of this state and who remains in such custody, or who would be in such custody but for having been transferred to the custody of the Department of Human Resources under Code Section 42-5-52, if that person has not submitted to an HIV test following that person's most recent commitment to the custody of the commissioner and unless that person is in such custody because of having committed an AIDS transmitting crime and has already submitted to an HIV test pursuant to Code Section 17-10-15.

(d) Upon failure of an inmate to cooperate in HIV test procedures under this Code section, the commissioner may apply to the superior court for an order authorizing the use of such measures as are reasonably necessary to require submission to the HIV test. Nothing in this Code section shall be construed to limit the authority of the department to require inmates to submit to an HIV test.

(e) Any person determined by the department to be an HIV infected person, whether or not by the test required by this Code section, should be housed separately at existing institutions from any other persons not infected with HIV if:

(1) That person is reasonably believed to be sexually active while incarcerated;

(2) That person is reasonably believed to be sexually predatory either during or prior to incarceration; or

(3) The commissioner determines that other conditions or circumstances exist indicating that separate confinement would be in the best interest of the department and the inmate population, but neither the department nor any officials, employees, or agents thereof shall be civilly or criminally liable for failing or refusing to house HIV infected persons separately from any other persons who are not HIV infected persons.

42-1-6. Injury or contact by inmate presenting possible threat of transmission of communicable disease.

If any inmate of any state or county correctional institution, county or municipal jail, or other similar facility, while such inmate is in custody or in the process of being taken into custody, injures or has injured or contacts or has contacted a law enforcement officer, correctional officer, fireman, emergency medical technician, or other person in such a manner as to present a possible threat of transmission of a communicable disease to the person so injured or contacted, then the warden, jailer, or other official having charge of such inmate may take all reasonable steps to determine whether the inmate has a communicable disease capable of being transmitted by the injury

or contact involved. Such steps may include, but shall not be limited to, any appropriate medical examination of or collection of medical specimens from the inmate. In the event an inmate refuses to cooperate in any such procedures, the warden, jailer, or other official may apply to the superior court of the county for an order authorizing the use of any degree of force reasonably necessary to complete such procedures. Upon a showing of probable cause that the injury presents the threat of transmission of a communicable disease, the court shall issue an order authorizing the petitioner to use reasonable measures to perform any medical procedures reasonably necessary to ascertain whether a communicable disease has been transmitted. In addition to any other grounds sufficient to show probable cause for the issuance of such an order, such probable cause may be conclusively established by evidence of the injury or contact in question and a statement by a licensed physician that the nature of the injury or contact is such as to present a threat of transmission of a communicable disease if the inmate has such a disease. The cost of any procedures carried out under this Code section shall be borne by the jurisdiction having custody of the inmate.

42-1-7. Notification to transporting law enforcement agency of inmate's or patient's infectious or communicable disease.

(a) For the purposes of this Code section, the term "infectious or communicable disease" shall include infectious hepatitis, tuberculosis, influenza, measles, chicken pox, meningitis, HIV as defined in Code Section 31-22-9.1, or any venereal disease enumerated in Code Section 31-17-1.

(b) Notwithstanding any other provision of law, any state or county correctional institution, municipal or county detention facility, or any facility as defined in Code Section 37-3-1 shall notify any state or local law enforcement agency required to transport an inmate or patient if such inmate or patient has been diagnosed as having an infectious or communicable disease. Notification shall be limited to the fact that such inmate or patient has an infectious or communicable disease and whether such disease is airborne or transmissible by blood or other body fluids; provided, however, that the specific disease shall not be disclosed. The Department of Human Resources shall provide a guide for appropriate precautions to be taken by any person or persons transporting such inmate or patient and shall develop a form to be used for the purpose of ensuring that such precautions are taken.

(c) Information released or obtained pursuant to this Code section shall be privileged and confidential and shall only be released or obtained by the institutions, facilities, or agencies

who are parties to the transportation of the patient or inmate. Any person making an unauthorized disclosure of such information shall be guilty of a misdemeanor. (Code 1981, 42-1-7, enacted by Ga. L. 1991, p. 1319, 1.)

42-9-42.1. Use of HIV test results in granting relief from sentence; conditions.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for such term in Code Section 31-22-9.1.

(b) The board is authorized to obtain from any penal institution, with at least 60 days prior notice to that institution, and any such penal institution is authorized to provide the board with HIV test results regarding any person who applies or is eligible for clemency, a pardon, a parole, or other relief from a sentence or to require such person to submit to an HIV test and to consider the results of any such test in determining whether to grant clemency, a pardon, a parole, or other relief to such person. Test results obtained pursuant to the authority of this Code section may not be the sole basis for determining whether to grant or deny any such relief to such person, however. The board is further authorized to impose conditions upon any person to whom the board grants clemency, a pardon, a parole, or other relief and who is determined by an HIV test to be infected with HIV, which conditions may include without being limited to those designed to prevent the spread of HIV by that person.

44-1-16. Failure to disclose in real estate transaction that property was occupied by diseased person or was site of homicide. No cause of action shall arise against an owner of real property or the agent of such owner for the failure to disclose in any real estate transaction the fact or suspicion that such property:

(1) Is or was occupied by a person who was infected with a virus or any other disease which has been determined by medical evidence as being highly unlikely to be transmitted through the occupancy of a dwelling place presently or previously occupied by such an infected person; or

(2) Was the site of a homicide or other felony or a suicide; provided, however, an owner or the agent of such owner shall answer truthfully to the best of such owner's or agent's knowledge, any question concerning the provisions of paragraph (1) or (2) of this Code section.

44-5-151. HIV test of body part or donor; disposition if infected; notice to donor or physician; exception for certain blood testing; penalty for violations.

(a) Any term used in this Code section and defined in Code Section 31-22-9.1 shall have the meaning provided for that term in Code Section 31-22-9.1

(b) Each health care facility, health care provider, blood bank, tissue bank, sperm bank, or other similar legal entity which procures, processes, distributes, or uses any human body part determined by the Department of Human Resources to have a reasonable probability of transmitting HIV shall subject or have subjected such part, or the donor of such part, to an HIV test prior to making that body part available for use in the body of another human being. Any such body part thus determined to be infected with HIV and any body part the donor of which has thus been determined to be infected with HIV shall not be used in the body of another human being but shall be safely and promptly disposed of or made available for medical research, as provided in the regulations of the Department of Human Resources.

(c) When any body part or the donor thereof has been determined to be infected with HIV pursuant to subsection (b) of this Code section, the person or legal entity which ordered the HIV test of the body part or donor thereof shall:

(1) If the donor is alive and the records of that person or legal entity reflect where the donor can be located, provide personal and confidential notification of such determination to the donor; or

(2) If the donor is deceased, provide confidential notification of such determination to any known physician of the donor, which physician shall have the sole discretion whether the person who executed the gift of the body part or any person at risk of being infected with HIV by the donor should be notified by that physician of such determination.

(d) In a medical emergency constituting a serious threat to the life of a potential recipient of blood, if blood that has been subjected to the HIV test required under subsection (b) of this Code section is not available, the testing otherwise required under subsection (b) of this Code section shall not be required regarding such blood.

(e) Any person or legal entity which violates subsection (b) of this Code section shall be guilty of a misdemeanor.