

/\* The HIV related laws for the state Idaho follow. Idaho addresses anatomical parts, criminal, victim, inmate, and premarital testing; and the criminality of knowingly exposing others or advertising cures. References are to the Idaho Code. \*/

#### DOMESTIC RELATIONS - CHAPTER 4 MARRIAGE LICENSES, CERTIFICATES, AND RECORDS

32-412A. Educational pamphlet and self administered confidential risk appraisal on possible AIDS exposure. - Before any county recorder may issue a marriage license, each male and female applicant therefor shall be provided with a confidential AIDS educational pamphlet prepared by the state department of health and welfare and provided to the county recorder by the department of health and welfare. The educational pamphlet shall contain information describing how AIDS can be contracted, what some of the symptoms of the disease are, what the effects of the disease are, and what can be done to prevent exposure to the disease.

Each applicant shall certify to the county recorder that he or she has read the educational pamphlet or has had the educational pamphlet read to them.

The confidential questionnaire shall be designed so that an answer to the various questions will indicate to the marriage license applicant his or her potential past exposure to situations, conditions, or procedures that are medically known to have caused AIDS.

The questionnaire shall state that the results of the questionnaire are confidential to the applicant, but that if any of the answers indicate that he or she is in the general population at risk for developing AIDS, he or she should contact a physician, or the district health department, or the state department of health and welfare.

#### CHAPTER 37 - Anatomical Tissue, Organ, Fluid Donations

39-3702. Exclusion or modification of warranties on anatomical tissue, organ, fluid donation services. - The procurement, processing, storage, distribution, or use of whole blood, plasma, blood products, blood derivatives, bodily tissue, tissue products, organs, parts of organs or products derived therefrom

for the purpose of injecting, transfusing or transplanting the same, or any of them, into the human body for any purpose whatsoever is declared to be the rendering of a service by any person or entity (except a paid blood, organ or tissue donor, or a blood, organ or tissue bank operated for profit) participating therein and does not constitute a sale. whether or not any consideration is given therefor, and the implied warranties of merchantability and fitness for a particular purpose shall not be applicable as to a defect that cannot be detected or removed by reasonable use of standard established scientific procedures or techniques, except such person or entity shall remain liable for his or its own negligence or willful misconduct only.

39-3703. Anatomical parts control. - No anatomical parts of human bodies, including whole blood, plasma, blood products, blood derivatives, body tissue, organs, parts of organs or products derived therefrom, and including semen, ova and embryos, shall be used for any purpose of injecting, transfusing or transplanting into a human body unless such anatomical parts or the donor have been examined for acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), or other manifestations of human immunodeficiency virus (HIV) infection, and a test is negative for the presence of HIV antibodies or antigens.

The director of the department of health and welfare shall promulgate rules to fully implement the requirements of this section.

39-4303A. Blood testing. - (a) A physician may pursuant to section 39-4303(c), Idaho Code, consent to ordering tests of a patient's or a deceased person's blood or other body fluids for the presence of blood-transmitted or body fluid-transmitted viruses or diseases without prior consent of the patient if:

(1) There has been or is likely to be a significant exposure to the patient's or a deceased person's blood or body fluids by a person providing emergency or medical services to such patient which may result in the transmittal of a virus or disease; and

(2) The patient is unconscious or incapable of giving informed consent and the physician is unable to obtain consent from the patient's parents, spouse, guardian or competent relative under the requirements of subsections (a) and (b) of section 39-4303, Idaho Code.

(b) The department of health and welfare shall promulgate rules and regulations identifying the blood-transmitted or body fluid-

transmitted viruses or diseases for which blood tests or body fluid tests can be ordered under this section and defining the term "significant exposure" as provided in this section.

(c) Results of tests conducted under this section which confirm the presence of a blood-transmitted or body fluid-transmitted virus or disease shall be reported to the director of the department of health and welfare in the name of the patient or deceased person. The department records containing such test results shall be used only by public health officials who must conduct investigations. The exposed person shall only be informed of the results of the test, and shall not be informed of the name of the patient or deceased person. Protocols shall be established by hospitals to maintain confidentiality while disseminating the necessary test result information to persons who may have a significant exposure to blood or other body fluids and to maintain records of such tests to preserve the confidentiality of the test results. Any person who willfully or maliciously discloses the results of a test conducted under this section, except pursuant to a written authorization by the person whose blood was tested or by the person's authorized representative, or as otherwise authorized by law, shall be guilty of a misdemeanor.

39-4304. Sufficiency of consent. - Consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures shall be valid in all respects if the person giving it is sufficiently aware of pertinent facts respecting the need for, the nature of and the significant risks ordinarily attendant upon such a patient receiving such care, as to permit the giving or withholding of such consent to be a reasonably informed decision. Any such consent shall be deemed valid and so informed if the physician or dentist to whom it is given or by whom it is secured has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances, by a like physician or dentist of good standing practicing in the same community. As used in this section, the term "in the same community" refers to that geographical area ordinarily served by the licensed general hospital at or nearest to which such consent is given.

## CHAPTER 6

### CONTROL OF VENEREAL DISEASES

39-601. Venereal diseases enumerated. - Syphilis, gonorrhoea, acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), other manifestations of HIV (human

immunodeficiency virus) infections, chancroid and hepatitis B virus (HBV) infections, hereinafter designated as venereal diseases, are hereby declared to be contagious, infectious, communicable and dangerous to public health; and it shall be unlawful for anyone infected with these diseases or any of them to knowingly expose another person to the infection of such diseases.

39-601A. Policy on expenditures. - It is the intent of the legislature that governmental authorities shall be required to provide those services authorized or mandated by law for treatment or testing for the diseases enumerated in section 39-601, Idaho Code, only to the extent of funding and available resources appropriated.

39-602. Report of venereal disease to health authorities. - Any physician or other person who makes a diagnosis of or treats a case of venereal disease, and any superintendent or manager of a hospital, dispensary or charitable or penal institution, in which there is a case of venereal disease, shall immediately make a report of such case to the department of health and welfare, according to such form and manner as the state board of health and welfare shall direct.

39-603. Examination, treatment, and quarantine - Repression of prostitution. - State, county and municipal health officers, or their authorized deputies, within their respective jurisdiction, are hereby directed and empowered, when in their judgment it is necessary to protect the public health, to make examinations, or have examinations made by competent physician, of persons reasonably suspected of being infected with venereal disease, and to require persons infected with venereal disease to report for treatment to a reputable physician and continue treatment until cured, or to submit to treatment provided at public expense until cured, and also, when in their judgment it is necessary to protect the public health, to isolate or quarantine persons affected with venereal disease. It shall be the duty of all local and state health officers to investigate sources of infection of

venereal diseases, to cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution.

39-604. Confined and imprisoned persons - Examination, treatment, and quarantine - Victims of sexual offenses - Access to offenders' test results, testing for HIV, counseling and referral services. - (1) All persons who shall be confined or imprisoned in any state prison facility in this state shall be examined for on admission, and again before release, and, if infected, treated for the diseases enumerated in section 39-601, Idaho Code, and this examination shall include a test for HIV antibodies or antigens. This examination is not intended to limit any usual or customary medical examinations that might be indicated during a person's imprisonment. Nothing herein contained shall be construed to interfere with the service of any sentence imposed by a court as a punishment for the commission of crime.

(2) All persons who shall be confined in any county or city jail may be examined for and, if infected, treated for the venereal diseases enumerated in section 39-601, Idaho Code, if such persons have, in the judgment of public health authorities and the jailer, been exposed to a disease enumerated in section 39-601, Idaho Code.

(3) All persons who shall be confined in any county or city jail and who are charged with sex offenses, drug related charges, prostitution or other charges as recommended by public health authorities shall be tested for the venereal diseases enumerated in section 39-601, Idaho Code.

(4) If a person is charged with a violation of the provisions of section 18-1506, 18-1508, 18-6101 or 18-6108, Idaho Code, and is tested as required in subsection (3) of this section, the results of the test shall be revealed to the court upon its request. Upon application to the court by the victim(s), or if the victim(s) is a minor, by the minor's parent, guardian, or legal custodian, the court may release the results of the test if the court determines the health or safety of the victim(s) may be threatened. The court may impose such conditions on the release of the test results as

the court deems necessary and just. Whenever a prisoner tests positive for HIV antibodies or antigens, the victim(s) of said prisoner shall be entitled to counseling regarding HIV, HIV testing in accordance with applicable law, and referral for appropriate health care and support services. Said counseling, HIV testing and referral services shall be provided to the victim(s) by the district health departments at no charge to the victim(s). Provided however, the requirement to provide referral services does not, in and of itself, obligate the district health departments to provide or otherwise pay for a victim's health care or support services. Any court, when releasing test results to a victim(s), or if the victim(s) is a minor, to the minor's parent, guardian, or legal custodian, shall explain or otherwise make the victim(s) or the victim's parent, guardian, or legal custodian, aware of the services to which the victim(s) is entitled as described herein.

(5) Responsibility for the examination, testing and treatment of persons confined in county or city jails shall be vested in the county or city that operates the jail. The county or city may contract with the district health departments or make other arrangements for the examination, testing and treatment services. The district health department or other provider may charge and collect for the costs of such examination and treatment, as follows:

(a) When the prisoner is a convicted felon awaiting transfer to the board of correction, or when the prisoner is a convicted felon being confined in jail pursuant to a contract with the board of correction, the board of correction shall reimburse such costs;

(b) When the prisoner is awaiting trial after an arrest by any state officer, the state agency employing such arresting officer shall reimburse such costs;

(c) When the prisoner is being held for any other authority or jurisdiction, including another state, the authority or jurisdiction responsible shall reimburse such costs unless otherwise provided for by contract.

39-605. Rules for carrying out law. - The state board of health and welfare is hereby empowered and directed to make

such rules as shall, in its judgment, be necessary for the carrying out of the provisions of this chapter, including rules providing for the control and treatment of persons isolated or quarantined under the provisions of section 39-603, Idaho Code, and such other rules, not in conflict with provisions of this chapter, concerning the control of venereal diseases, and concerning the care, treatment and quarantine of persons infected therewith, as it may from time to time deem advisable. All such rules so made shall be of force and binding upon all county and municipal health officers and other persons affected by this chapter, and shall have the force and effect of law. Such rules may be amended from time to time by the state board of health and welfare. All rules must be entered on the minutes of the state board of health and welfare and copies shall be furnished to all county and municipal health officers and to anyone else who may apply for same. Such rules shall be adopted and become effective in accordance with the provisions of chapter 52, title 67, Idaho Code.

39-606. Reports. - Reports to the director of the department of health and welfare of the existence of diseases included in this chapter shall be made by the name of the patient being treated for such disease. It is the intent of this chapter to observe all possible secrecy for the benefit of the sufferer so long as the said sufferer conforms to the requirements of this chapter. Confidential disease reports containing patient identification reported under this section shall only be used by public health officials who must conduct investigations and shall be subject to disclosure according to chapter 3, title 9, Idaho Code. Any person who willfully or maliciously discloses the content of any confidential public health record, as described herein to any third party, except pursuant to a written authorization by the person who is the subject of the record or by his or her guardian or conservator, or as otherwise authorized by law, shall be guilty of a misdemeanor.

39-607. Penalties for violations. - Any person who shall violate any lawful rule or regulation made by the state board of health and welfare, pursuant to the authority herein

granted, or who shall fail or refuse to obey any lawful order issued by any public health authority, pursuant to the authority granted in this chapter, or any person who, knowing that he or she is infected with syphilis, gonorrhea or chancroid, exposes another person to the infection of such disease, shall be deemed guilty of a misdemeanor, and shall be punished, on conviction thereof, by a fine of not more than three hundred dollars (\$300) or by imprisonment in the county jail for not more than six (6) months; or by both such fine and imprisonment.

39-608. Transfer of body fluid which may contain the HIV virus - Punishment - Definitions - Defenses. - (1) Any person who exposes another in any manner with the intent to infect or, knowing that he or she is or has been afflicted with acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), or other manifestations of human immunodeficiency virus (HIV) infection, transfers or attempts to transfer any of his or her body fluid, body tissue or organs to another person is guilty of a felony and shall be punished by imprisonment in the state prison for a period not to exceed fifteen (15) years, by fine not in excess of five thousand dollars (\$5,000), or by both such imprisonment and fine.

(2) Definitions. As used in this section:

(a) "Body fluid" means semen (irrespective of the presence of spermatozoa), blood, saliva, vaginal secretion, breast, milk, and urine.

(b) "Transfer" means engaging in sexual activity by genital-genital contact, oral-genital contact, anal-genital contact; or permitting the use of a hypodermic syringe, needle, or similar device without sterilization; or giving, whether or not for value, blood, semen, body tissue, or organs to a person, blood bank, hospital, or other medical care facility for purposes of transfer to another person.

(3) Defenses:

(a) Consent. It is an affirmative defense that the sexual activity took place between consenting adults after full disclosure by the accused of the risk of such activity.



(b) Medical advice. It is an affirmative defense that the transfer of body fluid, body tissue, or organs occurred after advice from a licensed physician that the accused was noninfectious.

39-609. Declaration of policy. - The legislature hereby declares that infection with human immunodeficiency virus, the virus which causes acquired immune deficiency syndrome (AIDS), is an infectious and communicable disease that endangers the population of this state. The legislature further declares that reporting of HIV infection to public health officials is essential to enable a better understanding of the disease, the scope of exposure, the impact on the community, and the means of control and that efforts to control the disease should include public education, counseling, and voluntary testing and that restrictive enforcement measures should be used only when necessary to protect the public health. It is hereby declared to be the policy of this state that an effective program of preventing AIDS must maintain the confidentiality of patient information and restrict the use of such information solely to public health requirements. This confidentiality is essential so that infected persons are encouraged to reveal their condition to persons who have a legitimate need to know in order that they may assist the patient. Conversely, there is a need for certain individuals to know of the patient's condition so that they may be protected from the disease or protect themselves and others closely associated with them or with the patient. The legislature believes that the balancing of the need to know by certain individuals in relationship to the need to maintain confidentiality to encourage reporting is essential to control the spread of the disease. This balancing cannot be fully codified in statutory law and must be left to the judgment and discretion of public health officials. If in the judgment of public health authorities an imminent danger to the public health exists due to an individual having a disease enumerated in section 39-601, Idaho Code, public health authorities shall take such action as is authorized in this chapter and as is necessary to prevent danger to the public health. Persons who have a legitimate need to know may include health care personnel, doctors, nurses, dentists, persons providing emergency medical services, morticians, lab technicians and school

authorities. This is not intended to limit the usual and customary exchange of information between health care providers.

39-610. Disclosure of HIV and HBV reporting information. -(1) Confidential public health record as described in section 39-606, Idaho Code, shall be subject to disclosure according to chapter 3, title 9, Idaho Code, shall not be discoverable, and shall not be compelled to be produced in any civil or administrative hearing.

(2) State or local health authorities may contact and advise those persons who, in the judgment of health authorities, have been exposed to the HIV (human immunodeficiency virus) or hepatitis B (HBV) infections.

(3) The department of health and welfare shall, in a manner established by rules and regulations, accept from persons involved in providing emergency or medical services reports of significant exposures to the blood or body fluids of a patient or deceased person. The department of health and welfare shall promulgate rules and regulations defining the term "significant exposure" as used in this section. Upon receipt of a report made pursuant to section 39-602, Idaho Code, confirming the presence of HIV or HBV virus in a patient or a deceased person, the director of the department of health and welfare, or his designee, shall immediately contact and advise any and all persons who, on the basis of information then or thereafter reported to the department, have had a significant exposure to the blood or body fluids of that infected patient or deceased person. The significantly exposed person shall be informed only that he may have been exposed to HIV or HBV, as the case may be, and thereafter advised of whatever prophylactic and testing procedures are appropriate. The significantly exposed person shall not be informed of the name of the infected patient or deceased person. Additionally, the department of health and welfare shall, to the greatest extent consistent with public health requirements, maintain the confidentiality of the identity of the significantly exposed person.

(4) Public health authorities may disclose personally identifying information in public health records, as described in section 39-606, Idaho Code to other local or state public

health agencies when the confidential information is necessary to carry out the duties of the agency in the investigation, control and surveillance of disease, as determined by the state board of health and welfare, or as otherwise authorized by law.

(5) Nothing in this chapter imposes liability or criminal sanction for disclosure or nondisclosure of the results of a blood test to detect HIV or HBV virus in accordance with any reporting requirements of the department of health and welfare.

39-701. Advertising treatments or cures unlawful. - It shall be unlawful for any person to publish or cause to be published, to deliver or distribute or cause to be delivered or distributed in any manner whatsoever, or to post, or display, or to permit to be posted, displayed, or to remain on any buildings, windows, or outhouses, or premises or other surface owned or controlled by him in the state of Idaho, or to have displayed in or on any window or place where the same could be read by passersby or the public, any advertisement, label, statement, print, or writing which refers to any person or persons from whom, or to any means by which, or to any office or place at which may be obtained any treatment or cure of syphilis, gonorrhoea, chancroid, lost manhood, sexual weakness, lost vitality, impotency, seminal emissions, gleet, varicocele, or self-abuse, whether described by such names, words, terms, or phrases, or by any other names, words, terms, or phrases, calculated or intended to convey to the reader the idea that any of said diseases, infirmities, disabilities, conditions, or habits are meant or referred to, or which refers to any medicine, article, device or preparation that may be used for the treatment, cure, or prevention of any of the diseases, infirmities, disabilities, conditions or habits mentioned in this chapter.

72-438. Occupational diseases. - Compensation shall be payable for disability or death of an employee resulting from the following occupational diseases:

(1) Poisoning by lead, mercury, arsenic, zinc, or manganese,

their preparations or compounds in any occupation involving direct contact therewith, handling thereof, or exposure thereto.

(2) Carbon monoxide poisoning or chlorine poisoning in any process or occupation involving direct exposure to carbon monoxide or chlorine in buildings, sheds, or inclosed places.

(3) Poisoning by methanol, carbon bisulphide, hydrocarbon distillates (naphthas and others) or halogenated hydrocarbons, or any preparations containing these chemicals or any of them, in any occupation involving direct contact therewith, handling thereof, or exposure thereto.

(4) Poisoning by benzol or by nitro, amido, or amino-derivatives of benzol (dinitro-benzol, anilin and others) or their preparations or compounds in any occupation involving direct contact therewith, handling thereof, or exposure thereto.

(5) Glanders in the care or handling of any equine animal or the carcass of any such animal.

(6) Radium poisoning by or disability due to radioactive properties of substances or to Roentgenray (X-ray) in any occupation involving direct contact therewith, handling thereof? or exposure thereto.

(7) Poisoning by or ulceration from chromic acid or bichromate of ammomum, potassium, or sodium or their preparations, or phosphorus preparations or compounds, in any occupation involving direct contact therewith, handling thereof, or exposure thereto.

(8) Ulceration due to tar, pitch, bitumen, mineral oil, or paraffin, or any compound product, or residue of any of these substances, in any occupation involving direct contact therewith, handling thereof? or exposure thereto.

(9) Dermatitis venenata, that is, infection or inflammation of the skin, furunculosis excepted, due to oils, cutting compounds, lubricants, liquids, fumes, gases, or vapors in any occupation involving direct contact therewith, handling thereof or exposure thereto.

(10) Anthrax occurring in any occupation involving the handling of or exposure to wool, hair, bristles, hides, skins, or bodies of animals either alive or dead.

(11) Silicosis in any occupation involving direct contact with, handling of, or exposure to dust of silicon dioxide (SiO<sub>2</sub>).

(12) Cardiovascular or pulmonary or respiratory diseases of a paid fireman, employed by a municipality, village or fire district as a regular member of a lawfully established fire department, caused by overexertion in times of stress or danger or by proximate exposure or by cumulative exposure over a period of four (4) years or more to heat, smoke, chemical fumes or other toxic gases arising directly out of and in the course of his employment.

(13) Acquired immunodeficiency syndrome (AIDS), AIDS related complexes (ARC), other manifestations of human immunodeficiency virus (HIV) infections, and hepatitis B virus (HBV) infections in any occupation involving exposure to human blood or body fluids.

Recognizing that additional toxic or harmful substances or matter are continually being discovered and used or misused, the above enumerated occupational diseases are not intended to be exclusive, but such additional diseases shall not include hazards which are common to the public in general and which are not within the meaning of section 72-102(18)(a), Idaho Code, and the diseases enumerated in subsection (12) pertaining to paid firemen shall not be subject to the limitations prescribed in section 72-439, Idaho Code.