

/\* NORTH DAKOTA statutes follow. \*/

12.1-20-17. Transfer of body fluid that may contain the human immunodeficiency Virus - Definitions - Defenses - Penalty.

1. As used in this section, unless the context otherwise requires:

a. "Body fluid" means semen, irrespective of the presence of spermatozoa; blood; or vaginal secretion.

b. "Transfer" means to engage in sexual activity by genital-genital contact, oral-genital contact, or anal-genital contact, or to permit the reuse of a hypodermic syringe, needle, or similar device without sterilization.

2. A person who, knowing that that person is or has been afflicted with acquired immune deficiency syndrome, afflicted with acquired immune deficiency syndrome related complexes, or infected with the human immunodeficiency virus, willfully transfers any of that person's body fluid to another person is guilty of a class A felony.

3. It is an affirmative defense to a prosecution under this section that if the transfer was by sexual activity, the sexual activity took place between consenting adults after full disclosure of the risk of such activity and with the use of an appropriate prophylactic device.

23-06.2-11.1. Anatomical parts testing - Exception. No anatomical parts of human bodies, including whole blood, plasma, blood products, blood derivatives, semen, body tissue, organs, and parts of organs or products derived from parts of organs may be used for injection, transfusion, or transplantation into a human body unless the anatomical parts or the donor have been examined for the presence of antibodies to or antigens of the human immunodeficiency virus and the test is negative for the presence of such antibodies or antigens. The testing requirement of this section does not apply if, in a medical emergency constituting a serious threat to the life of a potential anatomical part recipient, a required anatomical part that has been subjected to the testing required under this section is not available. The state department of health and consolidated laboratories may adopt rules to implement the requirements of this section.

23-06.2-12. Application. This chapter applies to a document of gift or refusal to make a gift signed by the donor before, on, or after July 12, 1989.

CHAPTER 23-07

## REPORTABLE DISEASES

23-07-01. Powers of state department of health and consolidated laboratories. The state department of health and consolidated laboratories shall designate the diseases or conditions that must be reported. Such diseases or conditions may include contagious, infectious, sexually transmitted, or chronic diseases or any illness or injury which may have a significant impact on public health.

23-07-01.2. Rules. The department may adopt rules under chapter 28-32 for the efficient enforcement of this chapter.

23-07-02. Who to report reportable diseases. Except as otherwise provided by section 23-07-02.1, the following persons shall report to the nearest health officer having jurisdiction any reportable disease coming to their knowledge:

1. All physicians.
2. All persons who treat or administer to the sick by whatever method.
3. Householders.
4. Keepers of hotels, boardinghouses, or lodginghouses.
5. Nurses.
6. Schoolteachers.
7. All other persons treating, nursing, lodging, caring for, or having knowledge of the existence of any reportable disease.

If the person reporting is the attending physician, the physician shall report not less than twice a week, in the form and manner directed by the state department of health and consolidated laboratories, the condition of the person afflicted and the state of the disease.

23-07-02.1. Reports of human immunodeficiency virus infection

Penalty. Every attending physician treating an individual known by the physician to have a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, shall make a report on that individual to the state department of health and consolidated laboratories. All persons, other than an attending physician, treating an individual known to have human immunodeficiency virus infection in a hospital, clinic, sanitarium, penal institution, or other private or public institution shall make a report on that individual to an official designated by the respective facility to receive reports of significant infectious diseases within the facility. The designated official shall, if satisfied that the report is valid, make a report to the department on each individual having a

diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, unless the diagnosed individual's attending physician has made such a report. The reports required under this section must contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or designated official making the report. Failure by a facility to designate an official to whom reports must be made is an infraction. Any person who in good faith complies with this section is immune from civil and criminal liability for any action taken in compliance with this section.

23-07-02.2. Confidentiality of reports. A report required by section 23-07-02.1 and held by the state department of health and consolidated laboratories is strictly confidential information. The information may not be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except that:

1. Release may be made of medical or epidemiologic information for statistical purposes in a manner such that no individual person can be identified;

2. Release may be made of medical or epidemiologic information to the extent necessary to enforce section 23-07-02.1 and this section and related rules concerning the treatment, control, and investigation of human immunodeficiency virus infection by public health officials; or

3. Release may be made of medical or epidemiologic information to medical personnel to the extent necessary to protect the health or life of any individual.

No officer or employee of the state department of health and consolidated laboratories may be examined in any judicial, executive, legislative, or other proceeding regarding the existence or content of any individual's report retained by the department under section 23-07-02.1.

23-07-03. Report of cases of sexually transmitted disease. The superintendent of a hospital, dispensary, or charitable or penal institution, in which there is a case of sexually transmitted disease, or the superintendent's designee, shall report such case to the nearest health officer having jurisdiction. The report must be made in the form and manner directed by the state department of health and consolidated laboratories.

23-07-04. Report of reportable disease by township board of health. Each township board of health shall report to the county superintendent of public health all cases of reportable diseases

occurring within its jurisdiction. Such reports must be made on blanks furnished by the county superintendent of public health at the expense of the county board of health.

23-07-05. Local health officers to report reportable disease to state department of health and consolidated laboratories. At such time as may be required by the state department of health and consolidated laboratories, each local health officer shall submit to such department, on blanks furnished by the department for that purpose, a summarized report of the reportable diseases reported to him during the week. When no cases have been reported during the week, the report must be made with the notation "No cases reported".

23-07-06. Contagious or infectious diseases - Power of local board of health to quarantine. Whenever a local board of health knows that a case of a contagious or infectious disease exists within its jurisdiction, the board immediately shall examine the facts of the case and may adopt such quarantine and sanitary measures as in its judgment tend to prevent the spread of such disease. The board immediately may cause any person infected with such disease to be removed to a separate house if, in the opinion of the health officer, such person can be removed without danger to that person's health. If the infected person cannot be removed without danger to that person's health, the local board shall make such quarantine regulations as it deems proper with reference to the house within which such infected person is, and may cause the persons in the neighborhood to be removed, and may take such other measures as it deems necessary for the safety of the inhabitants within its jurisdiction. Quarantine measures adopted under this section must be in compliance with chapter 23-07.6.

23-07-07. Sexually transmitted diseases - Additional powers and duties of health officers. The state health officer, and each district, county, and city health officer within the officer's jurisdiction, when necessary for the protection of public health, shall:

1. Make examination of any person reasonably suspected of being infected with a sexually transmitted disease and detain that person until the results of the examination are known.
2. Require any person infected with a sexually transmitted disease to report for treatment to a reputable physician and to continue such treatment until cured or, if incurable, continue indefinitely such treatment as recommended by the physician.
3. Investigate sources of infection of sexually transmitted diseases.

4. 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, including providing proper officials with all relevant information available concerning individuals who are infected with the human immunodeficiency virus and who are engaged in prostitution.

23-07-07.5. Testing of inmates and convicted individuals for exposure to the human immunodeficiency virus - Reporting - Liability.

1. The following individuals must be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus:

a. Every individual convicted of a crime who is imprisoned for fifteen days or more in a grade one or grade two jail, a regional correctional facility, or the state penitentiary;

b. Every individual, whether imprisoned or not, who is convicted of a sexual offense under chapter 12.1-20, except for those convicted of violating sections 12.1-20-10, 12.1-20-12.1, and 12.1-20-13; and

c. Every individual, whether imprisoned or not, who is convicted of an offense involving the use of a controlled substance, as defined in chapter 19-03.1, and the offense involved the use of paraphernalia, including any type of syringe or hypodermic needle, that creates an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus.

2. The results of any positive or reactive test must be reported to the state department of health and consolidated laboratories in the manner prescribed by the department. Subsection 1 does not require the testing of an individual before sentencing or the testing of an individual held in a jail or correctional facility awaiting transfer to the state penitentiary.

3. A licensed physician, nurse, technician, or employee of a hospital or clinic who draws blood from any person for the purpose of conducting a test required by this section is not liable in any civil action for damages arising out of such action except for an act or omission that constitutes gross negligence.

23-07-08. Persons in prison examined and treated for sexually transmitted diseases. Every person convicted of a crime who is imprisoned fifteen days or more in a state, county, or city prison must be examined for sexually transmitted disease and, if infected, must be treated therefor by the health officer within whose jurisdiction the person is imprisoned.

23-07-09. Sexually transmitted diseases - Persons isolated in prison - Exceptions. The prison authorities of any state, county, or city prison shall make available to the health officers such portion of the prison as may be necessary for a clinic or hospital wherein the following persons may be isolated and treated:

1. Persons who are imprisoned in the prison and who are infected with a sexually transmitted disease.
2. Persons who are suffering with a sexually transmitted disease at the time of the expiration of their term of imprisonment.
3. Persons isolated or quarantined by the health officer when no other suitable place for isolation or quarantine is available.

In lieu of such isolation, any of such persons, in the discretion of the health officer, may be required to report for treatment to a licensed physician. This section may not be construed to interfere with the service of any sentence imposed by a court as punishment for the commission of crime.

23-07-15. Removal of person afflicted with contagious or infectious disease - Removal of person who died of such disease - Prohibited. No person, unless he has a permit from the local board of health or state department of health and consolidated laboratories, may remove or cause to be removed from without this state into this state, or from one building to another within this state, or from or to any railroad car or motor vehicle, any person afflicted with a contagious or infectious disease, or the body of any person who died of any such disease.

23-07-16. Child having contagious or infectious disease prohibited from attending school - Exception. Except as provided by section 23-07-16.1, no principal, superintendent, or teacher of any school, and no parent or guardian of any minor child, may permit any child having any significant contagious or infectious disease, or any child residing in any house in which any such disease exists or has recently existed, to attend any public or private school until permitted to do so under the regulations of the local board of health.

23-07-16.1. School district to adopt policy relating to significant contagious diseases. Each school district shall adopt a policy governing the disposition of children attending school within the school district, employees of the school district, or independent contractors under contract with the school district

who are diagnosed as having a significant contagious disease. The state department of health and consolidated laboratories shall, with advice from the superintendent of public instruction, adopt rules establishing guidelines for the policy. The guidelines may include methods and procedures relating to a determination of whether and under what conditions a child with a significant contagious disease may not continue attending school or whether and under what conditions an employee or an independent contractor with a significant contagious disease may not continue in a work assignment.

23-07-18. Physician to report death from contagious or infectious disease to local board of health. Each practicing physician in this state shall report to the local board of health within the jurisdiction of which the death occurred, in writing, the death of any of his patients who has died of any contagious or infectious disease. The report must be made within twenty-four hours after such death and must state the specific name and character of the disease.

23-07-20.1. Disclosure of records. To protect the integrity of disease control records, to ensure their proper use, and to ensure efficient and proper administration of the department's disease control function, it is unlawful for any person to permit inspection of or to disclose information contained in disease control records, including results of laboratory tests, or to copy or issue a copy of all or part of any such record except as authorized by rules.

23-07-21. Penalties. Except as otherwise provided in this section, a person is guilty of an infraction:

1. Who violates or fails to obey any provision of this chapter, any lawful rule made by the state department of health and consolidated laboratories, or any order issued by any state, district, county, or municipal health officer;
2. Who violates any quarantine law or regulation, or who leaves a quarantined area without being discharged; or
3. Who, knowing that the person is infected with a sexually transmitted disease, willfully exposes another person to infection.

Any person required to make a report under section 23-07-02.1 who releases or makes public confidential information or otherwise breaches the confidentiality requirements of section 23-07-02.2 is guilty of a class C felony.

Chapter 23-07.3

NOTIFICATION OF EXPOSURE TO INFECTIOUS DISEASES

23-07.3-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Contagious disease" means the interruption, cessation, or disorder of body functions, systems, or organs transmissible by association with the sick or their secretions or excretions, excluding the common cold.
2. "Department" means the state department of health and consolidated laboratories.
3. "Emergency medical services provider" means a firefighter, law enforcement officer, or other person trained and authorized by law or rule to render emergency medical assistance or treatment.
4. "Licensed facility" means a hospital, nursing home, dialysis center, or any entity licensed,, by the state to provide medical care.
5. "Significant exposure means:
  - a. Contact of broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration;
  - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or
  - c. Exposure that occurs by any other method of transmission defined by the department as a significant exposure.

23-07.3-02. Procedures following significant exposure.

1. If an emergency medical services provider has a significant exposure in the process of caring for a patient, the emergency medical services provider shall document that exposure. The documentation must be on forms approved by the department, and in the manner and time designated by the department.
2. Upon notification of a significant exposure, or upon receipt of the documentation described in subsection 1, the attending physician shall request the patient to consent to testing to determine the presence of any contagious disease. The patient must be - informed that the patient may refuse to consent to the test and, if the patient refuses, that the fact of the patient's refusal will be forwarded to the emergency medical services provider. If the patient consents to testing, the attending physician shall test for the presence of contagious disease.
3. If a patient who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained from the patient's next of kin or legal guardian. If a patient who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received the patient, testing for the presence of any contagious disease must be conducted.



4. The attending physician that conducted the test under this section shall report the results of the test to the department and to the emergency medical services provider who reported the significant exposure. The physician shall use a case number instead of the patient's name in making a report to the emergency medical services provider who requested the test to ensure the confidentiality of the patient's identity.

23-07.3-03. Penalty. A person authorized to receive information that is confidential under this chapter, other than the individual identified in the information, who releases or makes public that confidential information is guilty of a class C felony.

#### CHAPTER 23-07.4

##### HUMAN IMMUNODEFICIENCY VIRUS INFECTION HEALTH PROCEDURES

23-07.4-01. Public health procedures for persons with human immunodeficiency virus infection. Subject to this chapter, the state health officer or a designee of the state health officer may examine or cause to be examined a person reasonably believed to be infected with or to have been exposed to the human immunodeficiency virus.

1. Orders or restrictive measures directed to a person with human immunodeficiency virus infection must be used as the last resort when other measures to protect the public health have failed, including all reasonable efforts, which must be documented, to obtain the voluntary cooperation of the person who may be subject to the order or measure. The orders and measures must be applied serially with the least intrusive measures used first. The burden of proof is on the state health officer or a designee of the state health officer to show that specified grounds exist for the issuance of the orders or restrictive measures and that the terms and conditions imposed are no more restrictive than necessary to protect the public health.

2. When the state health officer or a designee of the state health officer knows or has reason to believe, because of medical or epidemiological information, that a person within that official's jurisdiction has human immunodeficiency virus infection and is a danger to the public health, that official may issue an order, according to the following priority, to:

a. Require the person to be examined and tested to determine whether the person has human immunodeficiency virus infection;

b. Require a person with human immunodeficiency virus infection to report to a qualified physician or health worker for counseling on the disease and for information on how to avoid infecting others; or

c. Direct a person with human immunodeficiency virus infection

t cease and desist from specified conduct that endangers the health of others, but only if that official has determined that clear and convincing evidence exists to believe that the person has been ordered to report for counseling as provided in subdivision b and continues to demonstrate behavior that endangers the health of others.

3. If a person violates an order issued under subdivision c of subsection 2 and it is shown that the person is a danger to others, the state health officer or a designee of the state health officer may enforce the order by imposing such restrictions upon the person as are necessary to prevent the specific conduct that endangers the health of others. Restrictions must be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed ninety days, during which the order remains effective, the terms of the restrictions, and any other conditions as may be necessary to protect the public health. Restrictions must be imposed in the least restrictive manner necessary to protect the public health.

4. Upon issuance of any order under subsection 2 or 3, the state health officer or a designee of the state health officer shall promptly, personally, and confidentially notify the person who is the subject of the order, stating the grounds and provisions of the order and the right to contest the order, the right to be present at a judicial hearing in the district court serving the county in which the person resides to review the order, and the right to be represented by counsel during the hearing. If the person who is the subject of the order refuses to comply with the order and refuses to cooperate voluntarily with the state health officer or a designee of the state health officer, the state health officer or designee may petition the district court serving the county in which the person resides for an order of compliance. The state health officer or designee shall request the state's attorney in the county in which the person resides to file the petition in the district court. If an order of compliance is requested the court shall hear the matter within ten days after the request. Notice of the place, date, and time of the court hearing must be made by personal service or, if the person is not available, must be mailed to the person who is the subject of the order by certified mail at the person's last known address. Proof of mailing by the state health officer or designee is sufficient notice under this section. The burden of proof is on the state health officer or designee to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed in the order are no more restrictive than necessary to protect the public health. Upon

conclusion of' the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order. If the court dismisses the order, the fact that the order was issued must be expunged from the records of the state department of health and consolidated laboratories. If the court affirms or modifies the order and the person subject to the order is infected with the human immunodeficiency virus, the court shall require the person to disclose the names and addresses, if known, of persons with whom the person has had contact that poses an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus. Failure to comply with court-ordered disclosure constitutes contempt of court.

5. A person who is the subject of an order authorized under this section is entitled to representation by legal counsel during any hearing to review the issuance of the order.

#### 23-07.4.02. Emergency public health procedures

1. When the procedures under section 23-07.4-01 have been exhausted or cannot be satisfied and the state health officer or designee knows or has reason to believe, because of medical or epidemiological information, that a person within that official's jurisdiction has human immunodeficiency virus infection and that the person continues to engage in behavior that presents an imminent danger to the public health, the state health officer or designee may bring an action in the district court serving the county in which the person resides to enjoin the person from engaging in or continuing to engage in such behavior. The state health officer or designee shall request the state's attorney to file the action in district court.

2. In addition to issuance of an injunction order requested under subsection 1, the court may issue other appropriate orders including an order to take the person into custody, for a period not to exceed ninety days and place the person in a facility designated or approved by the state health officer. A custody order issued for the purpose of counseling and testing to determine whether the person has human immunodeficiency virus infection must provide for the immediate release from custody and from the facility for any person whose confirmed test results are negative and may provide for counseling or other appropriate measures to be imposed on any person whose confirmed test results are positive. The person who is the subject of the order must be given prompt, personal, and confidential notice of the order stating the grounds and provisions of the order and notifying the person of the right to contest the order, the right to be present at a judicial hearing in the district court serving the county in which the person resides to review the order, and the right to be represented by counsel during the hearing. If the person contests

testing or treatment, no invasive medical procedures may be carried out before a hearing is held under subsection 3.

3. Any order issued by the district court under subsection 2 is subject to review in a court hearing. Prompt, personal, and confidential notice of the place, date, and time of the court hearing and of the person's right to be present at the hearing and the right to representation by counsel during the hearing must be given to the person who is the subject of the court order. The hearing must be conducted by the court within forty-eight hours after the order is issued. The burden of proof is on the state health officer or designee to show by clear and convincing evidence that grounds exist for the order issued by the court under subsection 2 and that the terms and conditions imposed in the order are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order. If the court dismisses the order, the fact that the order was issued must be expunged from the records of the state department of health and consolidated laboratories. If the court affirms or modifies the order and the person subject to the order is infected with the human immunodeficiency virus, the court shall require the person to disclose the names and addresses, if known, of persons with whom the person subject to the order has had contact that poses an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus. Failure to comply with court-ordered disclosure constitutes contempt of court.

4. A person who is the subject of an order authorized under this section is entitled to representation by legal counsel during any hearing to review the issuance of the order.

## CHAPTER 23-07.5

### HUMAN IMMUNODEFICIENCY VIRUS TESTING

23-07.5-0 I. Definitions. In this chapter, unless the context otherwise requires:

1. "Emergency medical services provider" means a firefighter, peace officer, or other person trained and authorized by law or rule to render emergency medical assistance or treatment.
2. "Health care provider" means any person licensed, certified, or otherwise authorized by the law of this state to provide health care services.
3. "Health care services" means any services included in the furnishing to any individual of hospitalization, or medical or dental care, or any services incident to the furnishing of that care or hospitalization, as well as the furnishing to any person of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.

4. "Human immunodeficiency virus" means any identified causative agent of acquired immune deficiency syndrome.
5. "Human immunodeficiency virus infection" means the pathological state produced by a human body in response to the presence of the human immunodeficiency virus.
6. "Informed consent form" means a printed document on which an individual may signify that individual's informed consent for testing for the presence of an antibody to the human immunodeficiency virus or authorize the disclosure of any test results obtained.
7. "Informed consent for testing or disclosure" means written consent on an informed consent form by an individual to the administration of a test to that individual for the presence of an antibody to the human immunodeficiency virus or to the disclosure to a specified person of the results of a test administered to the consenting individual.
8. "Personal physician" means the physician designated by a patient as the patient's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician, and
9. "Significant exposure" means:
  - a. Contact of broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration;
  - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or
  - c. Exposure that occurs by any other method of transmission defined by the state department of health and consolidated laboratories as a significant exposure.
10. "Universal precautions" means measures that a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1, takes in accordance with recommendations of the federal centers for disease control and prevention concerning human immunodeficiency virus transmission in health care settings.

23-07.5-02. Informed consent for testing or disclosure -  
Exception.

1. Except when testing and disclosure is otherwise provided for by law, a health care provider, blood bank, blood center, or plasma center may not subject a person to a test for the presence of an antibody to the human immunodeficiency virus unless the subject of the test, the parent or legal guardian or custodian of a minor who is the subject of the test, or the legal guardian of

an incapacitated person who is the subject of the test, first provides informed consent for testing or disclosure as provided under subsection 2.

2. A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of an antibody to the human immunodeficiency virus under subsection 1 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential test subject who is incapacitated, with an informed consent form and shall obtain the appropriate individual's signature on the form. The form must contain:

a. The name of the potential test subject who is giving consent and whose test results may be disclosed and, where appropriate, the name of the individual providing consent on behalf of the potential test subject.

b. A statement of explanation that the test results may be disclosed as provided under subsection 1 of section 23-07.5-05 and either a listing of the persons or circumstances specified under subsection 1 of section 23-07.5-05 or a statement that the listing is available upon request.

c. Spaces specifically designated for the following purposes:

(1) The signature of the person providing informed consent for the testing and the date on which the consent is signed; and

(2) The name of any person to whom the test results may be disclosed, if any; the date on which the consent to disclosure is signed; and the time period during which the consent to disclosure is effective.

3. A health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and who has had a significant exposure with the patient may subject the patient's blood to a test for the presence of the human immunodeficiency virus, without the patient's consent, if all of the following apply:

a. A sample of the patient's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.

b. The patient's personal physician, based on information provided to the physician, determines and certifies in writing that the individual has had a significant exposure. The certification must accompany the request for testing and disclosure.

c. The patient is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.

d. Before testing, the patient is informed, while competent and

conscious, that the patient's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one including the patient without the patient's consent, except to the individual who has had a significant exposure; that if the individual who has had a significant exposure knows the identity of the patient, that individual may not disclose the identity to any other person except for the purpose of having the test performed; and that a record of the test results may be placed in the individual's medical record, and if not in the medical record, may be kept only if the record does not reveal the patient's identity. A person who discloses the identity of a patient under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C felony. Each individual who has had a significant exposure and to whom test results are disclosed must first sign a document indicating that individual's understanding that the individual may not disclose the information and that disclosing the information constitutes a class C felony.

4. A patient who has received care from a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 and who has had a significant exposure with the provider may subject the provider's blood to a test for the presence of the human immunodeficiency virus, without the provider's consent, if all of the following apply:

a. A sample of the provider's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.

b. A physician, based on information provided to the physician, determines and certifies in writing that the patient has had a significant exposure. The certification must accompany the request for testing and disclosure.

c. The provider is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.

d. Before testing, the provider is informed, while competent and conscious, that the provider's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one including the provider without the provider's consent, except to the patient who has had a significant exposure; that if the patient who has had a significant exposure knows the identity of the provider, that patient may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the provider's identity. A person who discloses the identity of the provider or otherwise breaches the confidentiality requirements of this subsection is guilty of a

class C felony. Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating that patient's understanding that the patient may not disclose the information and that disclosing the information constitutes a class C felony.

5. If a person who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If a person who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received that person, testing for the presence of any contagious disease must be conducted.

6. Any testing done pursuant to subsection 3, 4. or 5 may be conducted in the most expedient manner possible. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate district court for issuance of an order directing the patient or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. The court shall hold a hearing on the petition within five days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:

a. The patient or provider has been requested to consent to testing and has refused to be tested and a sample of the patient's or provider's blood is not available to be used to test for the human immunodeficiency virus;

b. The court finds clear and imminent danger to the public health or the health of the person petitioning for the testing and the person has demonstrated a compelling need for the test which cannot be accommodated by other means;

c. The petition substitutes a pseudonym for the true name of the person to be tested;

d. The court provides the person to be tested with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;

e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court: and

f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

7. A person may request two tests after a significant exposure.



The first test may be requested within ten days after a significant exposure, and the second test may be requested not earlier than five months, nor later than six months, after a significant exposure. The tested person must provide a blood sample within twenty-four hours after the first request and within seventy-two hours after the second request, subject to the provisions of this chapter.

8. A health care provider who subjects a patient to a significant exposure must notify the patient of the exposure. A health care provider witnessing a significant exposure may report the exposure pursuant to any appropriate facility or employer guidelines that the provider may be subject. The knowing failure to inform a patient of a significant exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.

23-07.5-03. Written consent to disclosure. An individual who is tested for the presence of an antibody to the human immunodeficiency virus, that individual's parent or legal guardian or custodian in the case of a minor, or that individual's legal guardian in the case of an incapacitated individual, may authorize in writing a health care provider, blood bank, blood center, or plasma center to disclose the test results to any person at any time after providing informed consent for disclosure. A record of this consent must be maintained by the health care provider, blood bank, blood center, or plasma center authorized to disclose test results.

23-07.5-04. Record maintenance. A health care provider, blood bank, blood center, or plasma center that obtains a specimen of body fluids or tissues for the purpose of testing for the presence of an antibody to the human immunodeficiency virus shall:

1. Obtain from the subject, the subject's parent or legal guardian or custodian if the subject is a minor or the subject's legal guardian if the subject is incapacitated, informed consent for testing or disclosure, unless testing and procedures for disclosure are otherwise provided by law.
2. Maintain a record of the consent received under subsection 1.
3. Maintain a record of the test results obtained.

23.07.5-05. Confidentiality of test results.

1. Except as provided in this section, the results of a test for the presence of an antibody to the human immunodeficiency virus may be disclosed only to the following persons:

- a. The subject of the test, in the case of a minor the parent or legal guardian or custodian of the subject of the test, in the case of an incapacitated person the legal guardian of the subject of the test. In the event the subject of a test is placed in a foster home, or is to be adopted, the parent, legal guardian or custodian, as the case may be, may disclose the results of the test to the foster parents or potential adoptive parents.
- b. The test subject's health care provider, including those instances in which a health care provider provides emergency care to the subject.
- c. An agent or employee of the test subject's health care provider under subdivision b who provides patient care or handles or processes specimens of body fluids or tissues.
- d. A blood bank, blood center, or plasma center that subjects a person to a test under subsection 2 of section 23-07.5-02 for any of the following purposes:
  - (1) Determining the medical acceptability of blood or plasma secured from the test subject.
  - (2) Notifying the test subject of the test results.
  - (3) Investigating human immunodeficiency virus infections in blood or plasma.
- e. A health care provider who procures, processes, distributes, or uses a human body part donated for a purpose specified under chapter 23-06.2 for the purpose of assuring medical acceptability of the gift for the purpose intended.
- f. The state health officer or the state health officer's designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.
- g. An embalmer licensed under chapter 43-10.
- h. A health care facility staff committee or accreditation or health care services review organization for the purposes of conducting program monitoring and evaluation and health care services reviews.
- i. A person who conducts research, for the purpose of research, if the researcher:
  - (1) Is affiliated with the test subject's health care provider under subdivision c;
  - (2) Has obtained permission to perform the research from an institutional review board; and
  - (3) Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose for which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

- j. A person who receives test results under section 23-07.7-02.
2. The results of a test may be disclosed under a lawful order of a court of record.
3. The individual who is tested may authorize disclosure to any person.

23-07.5-06. Expanded disclosure of test results prohibited. A person to whom the results of a test for the presence of an antibody to the human immunodeficiency virus have been disclosed under subsection 1 of section 23-07.5-05 may not disclose the test results except as provided under that subsection.

23-07.5-07. Civil liability. Any person who violates section 23-07.5-02, subsection 1 of section 23-07.5-05, or section 23-07.5-06 is liable to the subject of the test for actual damages and costs plus exemplary damages. The plaintiff in an action under this section has the burden of proving by preponderance of the evidence that a violation occurred under section 23-07.5-02, subsection 1 of section 23-07.5-05, or section 23-07.5-06. A conviction for violation of this chapter is not a condition precedent to bringing an action under this section.

23-07.5-08. Penalty. A person who intentionally discloses the results of a blood test in violation of subsection 1 of section 23-07.5-05 and thereby causes bodily or psychological harm to the subject of the test is guilty of a class C felony.

#### CHAPTER 23-07.7

##### COURT-ORDERED TESTING FOR SEXUALLY TRANSMITTED DISEASES

23-07.7-01. Court-ordered sexual offense medical testing. The court may order any defendant charged with a sex offense under chapter 12.1-20 and any alleged juvenile offender with respect to whom a petition has been filed in a juvenile court alleging violation of chapter 12.1-20 to undergo medical testing to determine whether the defendant or alleged juvenile offender has any sexually transmitted diseases, including a test for infection with the human immunodeficiency virus or any other identified positive agent of acquired immunodeficiency syndrome. The court may not order a defendant charged with violating section 12.1-20-10, 12.1-20-12.1, or 12.1-20-13 or an alleged juvenile offender with respect to whom a petition has been filed in a juvenile court alleging violation of section 12.1-20-10, 12.1-20-12.1, or 12.1-20-18 to undergo the testing authorized by this section. The court may order the testing only if the court receives a petition from the alleged

victim of the offense or from the prosecuting attorney if the alleged victim has made a written request to the prosecuting attorney to petition the court for an order authorized under this section. On receipt of a petition, the court shall determine, without a hearing, if probable cause exists to believe that a possible transfer of a sexually transmitted disease or human immunodeficiency virus took place between the defendant or alleged juvenile offender and the alleged victim. If the court determines probable cause exists, the court shall order the defendant or alleged juvenile offender to submit to testing and that a copy of the test results be released to the defendant's or alleged juvenile offender's physician and each requesting victim's physician. The physicians for the defendant or alleged juvenile offender and requesting victim must be specifically named in the court order, and the court order must be served on the physicians before any test.

23-07.7-02. Testing procedures - Results of test - Penalty.

1. If testing is ordered by a court under section 23-07.7-01, only a health care provider, blood bank, blood center, or plasma center may obtain a specimen of bodily fluids or tissues for the purpose of testing.

2. The court shall order that the specimen be transmitted to a licensed medical laboratory and that tests be conducted for medically accepted indications of exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, and sexually transmitted diseases for which medically approved testing is readily and economically available as determined by the court.

3. Notwithstanding section 23-07.503, the laboratory shall send a copy of the test results to the physicians designated in the court order, who shall then release the test results to the defendant or alleged juvenile offender and each requesting victim as designated in the court order. The court order must be served on the physicians before any test. The laboratory also shall send a copy of test results that indicate exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, or other sexually transmitted diseases to the state department of health and consolidated laboratories.

4. Every copy of the test results must include the following disclaimer: The testing was conducted in a medically approved manner, but tests cannot determine exposure to or infection by acquired immunodeficiency syndrome or other sexually transmitted diseases with absolute accuracy. Anyone receiving this test result should continue to monitor their own health and should

consult a physician as appropriate.

5. The court shall order all persons, other than the test subject, who receive test results pursuant to section 23-07.7-01, to maintain the confidentiality of personal identifying data relating to the test results except for disclosure that may be necessary to obtain medical or psychological care or advice. A person who intentionally discloses the results of any test in violation of this subsection and thereby causes bodily or psychological harm to the subject of the test is guilty of a class C felony.

6. The specimens and the results of tests ordered pursuant to section 23-U7.7-01 are not admissible evidence in any civil, criminal, or juvenile proceeding.

7. Any person who performs testing, transmits test results, or discloses information pursuant to this chapter is immune from civil liability for any action undertaken in accordance with this chapter, except for an act or omission that constitutes gross negligence.

8. The county in which the alleged violation of chapter 12.1-20 occurred shall pay for the testing. A defendant who is convicted of the offense shall reimburse the county for the costs of testing.