

H.B. 1 change to HIV testing/consent statute

R.C. 3701.242

(A) An HIV test may be performed by or on the order of a health care provider who, in the exercise of the provider's professional judgment, determines the test to be necessary for providing diagnosis and treatment to the individual to be tested, if the individual or the individual's parent or guardian has given consent to the provider for medical or other health care treatment. The health care provider shall inform the individual of the individual's right under division (D) of this section to an anonymous test.

(B) A minor may consent to be given an HIV test. The consent is not subject to disaffirmance because of minority. The parents or guardian of a minor giving consent under this division are not liable for payment and shall not be charged for an HIV test given to the minor without the consent of a parent or the guardian.

(C) The health care provider ordering an HIV test shall provide post-test counseling for an individual who receives an HIV-positive test result. The public health council may adopt rules, pursuant to recommendations from the director of health and in accordance with Chapter 119. of the Revised Code, specifying the information to be provided in post-test counseling.

(D) An individual shall have the right to an anonymous test. A health care facility or health care provider that does not provide anonymous testing shall refer an individual requesting an anonymous test to a site where it is available.

(E) Divisions (B) to (D) of this section do not apply to the performance of an HIV test in any of the following circumstances:

(1) When the test is performed in a medical emergency by a nurse or physician and the test results are medically necessary to avoid or minimize an immediate danger to the health or safety of the individual to be tested or another individual, except that post-test counseling shall be given to the individual if the individual receives an HIV-positive test result;

(2) When the test is performed for the purpose of research if the researcher does not know and cannot determine the identity of the individual tested;

(3) When the test is performed by a person who procures, processes, distributes, or uses a human body part from a deceased person donated for a purpose specified in Chapter 2108. of the Revised Code, if the test is medically necessary to ensure that the body part is acceptable for its intended purpose;

(4) When the test is performed on a person incarcerated in a correctional institution under the control of the department of rehabilitation and correction if the head of the institution has determined, based on good cause, that a test is necessary;

(5) When the test is performed in accordance with section 2907.27 of the Revised Code;

(6) When the test is performed on an individual after the infection control committee of a health care facility, or other body of a health care facility performing a similar function determines that a health care provider, emergency medical services worker, or peace officer, while rendering health or emergency care to an individual, has sustained a significant exposure to the body fluids of that individual, and the individual has refused to give consent for testing.

**H.B. 1 changes to HIV testing/consent statutes
from the LSC analysis of enacted bill**

(R.C. 3701.242)

The act modifies the laws governing the procedures to be followed before and after performing a test on a person for the human immunodeficiency virus (HIV). The table below compares the provisions of former law with the provisions of the act.

TOPIC	FORMER LAW	THE ACT
<p align="center">CONSENT</p>	<p>In order to perform an HIV test, the person or agency of state or local government ordering or performing the test had to obtain informed consent from the individual to be tested prior to the test.</p> <p>Consent to be tested was presumed to be valid and effective, and no evidence was admissible in a civil action to impeach, modify, or limit the consent.</p> <p>A minor may also consent to an HIV test; the parents or guardian of the minor are not liable for payment for the test. The consent is not subject to disaffirmance because of minority.</p>	<p>The act generally eliminates this requirement.</p> <p>The act eliminates this provision.</p> <p>Same as former law, but the act additionally specifies that the parents or guardian of the minor must not be charged for the test.</p>
<p align="center">INFORMATION GIVEN TO PERSON TO BE TESTED</p>	<p>The person or agency had to provide the individual to be tested, or the individual's guardian, with an explanation of the following: (1) the test and testing procedures, including the purposes and limitations of the test and the meaning of its results, (2) that the test was voluntary, (3) if the test was performed on an outpatient basis, that consent to be tested could be withdrawn at any time before the individual leaves the premises where blood was taken for the test, or, if the test was performed on an inpatient basis, within one hour after the blood was taken for the test, (4) that the individual or guardian could elect to have an anonymous test, and (5) the behaviors known to pose risks for transmission of HIV infection.</p>	<p>The act eliminates this requirement.</p>
<p align="center">COUNSELING</p>	<p>The person or government agency</p>	<p>The act eliminates this</p>

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	<p>ordering or performing an HIV test was to provide counseling to the individual tested when the individual was (1) told the result of the test or (2) informed of a diagnosis of AIDS or of an AIDS-related condition. The individual was to be given an explanation of the nature of AIDS and AIDS-related conditions, the relationship between the HIV test and those diseases, and a list of resources for further counseling or support. When necessary, the individual was to be referred for further counseling to help cope with the emotional consequences of learning the test result.</p>	<p>requirement and instead specifies that a health care provider ordering an HIV test must provide post-test counseling for an individual who receives an HIV-positive test result.</p>
ANONYMITY	<p>Any individual seeking an HIV test has the right to an anonymous HIV test upon request. A health care facility or health care provider that does not provide anonymous testing must refer the individual to a site where it is available.</p>	<p>The act retains this provision and requires a health care provider to inform the individual of this right when the provider orders an HIV test.</p>
EXCEPTIONS	<p>Generally, if the following circumstances exist, the consent, information to be given to the individual being tested, counseling, and anonymity provisions discussed above do not apply:</p> <p>(1) When the test is performed in a medical emergency by a nurse or physician and the test results are medically necessary to avoid or minimize an immediate danger to the health or safety of the individual to be tested or another individual. However, counseling was to be given to the tested person as soon as possible after the emergency is over.</p> <p>(2) When the test is performed for the purpose of research if the researcher does not know and cannot determine the identity of the tested individual.</p> <p>(3) When the test is performed by a</p>	<p>The act eliminates the exemption from the informed consent requirement for these circumstances, but retains the exemptions from the minor consent, counseling, and anonymity provisions.</p> <p>(1) The act retains this exception but specifies that the post-test counseling must be given if the individual receives an HIV-positive test result, rather than after the emergency.</p> <p>(2) No change.</p> <p>(3) No change.</p>

TOPIC	FORMER LAW	THE ACT
	<p>person who procures, processes, distributes, or uses a human body part from a deceased person donated as an anatomical gift, if the test is medically necessary to ensure that the body part is acceptable for its intended purpose.</p> <p>(4) When the test is performed on an individual incarcerated in a correctional institution under the control of the Department of Rehabilitation and Correction if the head of the institution has determined, based on good cause, that a test is necessary.</p> <p>(5) When the test was performed by or on the order of a physician who, in the exercise of his professional judgment, determined the test to be necessary for providing diagnosis and treatment to the individual to be tested, if the individual or the individual's parent or guardian consented to the medical treatment.</p> <p>(6) When the test is performed on a person after the infection control committee of a health care facility, or other similar body, determines that a health care provider, emergency medical services worker, or peace officer, while rendering health or emergency care to the individual, has sustained a significant exposure to the body fluids of that individual, and the individual has refused to give consent for testing.</p> <p>(7) When the test was ordered by a court in connection with a criminal investigation.</p>	<p>(4) No change.</p> <p>(5) The act instead permits any health care provider, rather than only a physician, to order or perform an HIV test. The act also specifies that the health care provider may perform or order the test if the individual, or individual's parent or guardian, consents to medical <i>or other health care</i> treatment. This provision replaces the informed consent requirement eliminated by the act.</p> <p>(6) No change.</p> <p>(7) The act eliminates this provision.</p>