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04/10/2003 at 01:37 PM, BOB INZER, CLERK OF COURTS

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT

OFFICE OF THE CHIEF JUDGE

ADMINISTRATIVE ORDER NO. 2003-05

IN RE: DISCLOSURE OF INMATES' HIV TEST RESULTS

WHEREAS, Florida Statute §960.003(1) indicates that it is the intent of the legislature to allow a victim of a criminal offense which involves the transmission of body fluids to know at the "earliest possible opportunity" whether the person has tested positive for human immunodeficiency virus (HIV) infection.

WHEREAS, Florida Statute §960.003 (1) further indicates that it is the intent of the legislature not to deny victims access to HIV test results in order to prevent "unnecessary mental anguish in persons who have already suffered trauma."

WHEREAS, the legislature has acknowledged that it is recognized in the medical field that "early diagnosis is a critical factor in the treatment of HIV infection" and that both the victim and the accused benefit from prompt disclosure of HIV test results. §960.003(1), Fla. Stat.

WHEREAS, the legislature has expressly authorized HIV testing (upon a court order that *shall* be entered) and disclosure of the test results under the direction of the Florida Department of Children and Families to the victim, to the public health agencies, and to the employees and officers of the Sheriff's Office who are responsible for the care and custody of inmates who have been either convicted of or charged with certain enumerated offences listed under §775.0877(1)(a)-(n) (e.g., battery), §960.003(2), (3) and §775.0877, Fla. Stat.

WHEREAS, the legislature also authorizes an officer, firefighter or ambulance driver, paramedic, or emergency technician acting within the scope of employment who comes into contact with a person in such a way that significant exposure to body fluids has occurred, to request that the

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person be screened for sexually transmissible disease. If the person is unwilling to voluntarily submit, the person so exposed is authorized to seek a court order, directing the person to submit to screening where there was significant exposure and the screening is medically necessary to determine the course of treatment. §384.287, Fla. Stat.

WHEREAS, disclosure must be immediate, consistent with the legislative intent stated in Fla. Stat. §960.003(1), to prevent unnecessary mental anguish experienced by both the victim and the victim's family.

WHEREAS, due to the overwhelming case load in this Circuit, it is often difficult for the Circuit Court to enter an order immediately to authorize prompt testing and disclosure as intended by the legislature, so this standing Administrative Order is intended to prevent such delays.

WHEREAS, this Administrative Order is further designed to harmonize the competing interests of the inmates' due process rights and expectations of privacy with society's special need to protect persons responsible for the care and custody of inmates carrying infectious diseases, thus allowing immediate testing and disclosure of the inmate's blood test results in the least intrusive way by means of this standing Administrative Order, within the parameters of the case law, legislative intent, and statutory authority. Fosman v. State, 664,So.2d 1163 (Fla. 4th DCA 1995).

NOW THEREFORE, by the authority vested in me as Chief Judge of the Second Judicial Circuit and pursuant to the Florida Rules of Judicial Administration, it is

ORDERED:

1. That this Administrative Order shall be deemed to take effect as an Order authorizing immediate blood testing and prompt disclosure of blood test results under the circumstances set forth below.

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2. *Testing of Inmates Charged/Convicted of Offenses Enumerated in Section 775.0877 (1):*

That whenever any medical personnel, through or during the course of an inmate's medical treatment, or any employee, agent, representative, contractor, or officer of the Sheriff's Office who is or has been responsible for the care and custody of an inmate, is exposed to the transmission of body fluids by an inmate who has been convicted or charged with an offense enumerated under Florida Statute §775.0877(1)(a)-(n), this Administrative Order shall take effect so that there will already be deemed to have been a court order entered in this Second Judicial Circuit, directing the offender to immediately undergo HIV testing and the test results to be disclosed promptly to such persons affected or impacted by exposure. §§775.0877(2), 960.003(3)(a), Fla. Stat. Testing and disclosure shall be immediate, consistent with the legislative intent stated in §960.003(1) to prevent unnecessary mental anguish.

3. *Testing of All Other Persons:*

That whenever an officer (i.e., a full-time, part-time or auxiliary law enforcement officer, correctional officer or correctional probation officer), a firefighter or public health agency personnel, acting within the scope of employment, comes into contact with a person in such a way that significant exposure to body fluids has occurred, sufficient to warrant a reasonably cautious person to be concerned for the health and safety of his - and his family's - health regarding infection, it shall be deemed that a voluntary submission to immediate testing for a sexually transmissible disease and prompt disclosure of the results has been made. §384.287, Fla. Stat.

That, in the alternative, if the infected person is unwilling to voluntarily submit to testing, then the exposed person may use this Administrative Order as the standing Order in effect, directing the person to submit to immediate testing and prompt disclosure where there was significant exposure and the screening is medically necessary to determine the course of treatment. §§384.287, 960.003(1), (3), Fla. Stat. This immediate testing and disclosure is consistent with the policy and intent expressed by the legislature in §960.003(1) to prevent extreme mental anguish.

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4. *Disclosure of Test Results of Inmates who have Previously been Tested:*

That all inmates who have already been tested for infectious disease, including hepatitis (and including those inmates tested for HIV pursuant to §775.0877), shall have their test results disclosed immediately to all medical personnel who have treated or examined them and to all employees, agents, representatives, contractors, and officers of the Sheriff's Office who are or have been responsible for their care and custody. §§951.27, 960.003, Fla. Stat. Even though no court order is necessary pursuant to §951.27, this Administrative Order shall be deemed as an Order in effect, directing such immediate testing and disclosure.

5. *General:*

That nothing herein prohibits such exposed persons referred to above from seeking a court order that specifically addresses the individual circumstances in any given situation.

6. That this Administrative Order shall take effect immediately and remain in effect until further Order of the Court, and all terms and conditions set forth in this Administrative Order shall apply unless otherwise ordered by the Court.

7. That this Administrative Order shall be recorded in the Official Records of Franklin, Gadsden, Jefferson, Leon, Liberty and Wakulla Counties in the State of Florida.

DONE AND ORDERED in Chambers in Tallahassee, Leon County, Florida, this 4th day of April, 2003.

WILLIAM L. GARY
CHIEF JUDGE

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cc: All Circuit and County Judges
State Attorney
Public Defender
Second Circuit Clerks of Court
Second Circuit Sheriffs
Tallahassee Bar Association
Jefferson County Bar Association
Florida Department of Children and Families
Department of Corrections
Department of Juvenile Justice
Emergency Management Agencies
Second Circuit Ambulance and Medical Providers

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