

76-10-1311 Mandatory testing -- Retention of offender medical file -- Civil liability.

- (1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and mentally ill, or been found guilty for violation of Section 76-10-1302, 76-10-1303, or 76-10-1313 shall be required to submit to a mandatory test to determine if the offender is an HIV positive individual. The mandatory test shall be required and conducted prior to sentencing.
- (2) If the mandatory test has not been conducted prior to sentencing, and the convicted offender is already confined in a county jail or state prison, such person shall be tested while in confinement.
- (3) The local law enforcement agency shall cause the blood specimen of the offender as defined in Subsection (1) confined in county jail to be taken and tested.
- (4) The Department of Corrections shall cause the blood specimen of the offender defined in Subsection (1) confined in any state prison to be taken and tested.
- (5) The local law enforcement agency shall collect and retain in the offender's medical file the following data:
 - (a) the HIV infection test results;
 - (b) a copy of the written notice as provided in Section 76-10-1312;
 - (c) photographic identification; and
 - (d) fingerprint identification.
- (6) The local law enforcement agency shall classify the medical file as a private record pursuant to Subsection 63G-2-302(1)(b) or a controlled record pursuant to Section 63G-2-304.
- (7) The person tested shall be responsible for the costs of testing, unless the person is indigent. The costs will then be paid by the local law enforcement agency or the Department of Corrections from the General Fund.
- (8)
 - (a) The laboratory performing testing shall report test results to only designated officials in the Department of Corrections, the Department of Health, and the local law enforcement agency submitting the blood specimen.
 - (b) Each department or agency shall designate those officials by written policy.
 - (c) Designated officials may release information identifying an offender under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under Subsection 63G-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.
- (9)
 - (a) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly liable except when disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202.
 - (b) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly or criminally liable, except when disclosure constitutes a knowing violation of Section 63G-2-801.
- (10) When the medical file is released as provided in Section 63G-2-803, the local law enforcement agency, the Department of Corrections, or the Department of Health or its officers or employees are not liable for damages for release of the medical file.

Amended by Chapter 382, 2008 General Session