

Vermont

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April 8, 2011

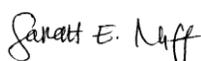
To the Reader:

The *Compendium of State HIV Testing Laws* describes key state HIV testing laws and policies. Each state's HIV testing laws are unique and many have undergone revision or supplementation since the release of the [CDC's 2006 HIV testing recommendations](#). The *Compendium* is designed to help clinicians understand HIV testing laws and to implement sound HIV testing policies. It should not, however, be used as an official legal document.

The NCCC provides clinical consultation for healthcare providers as part of the HRSA [AIDS Education and Training Centers](#) program. Clinicians with questions about HIV testing are encouraged to call the *National HIV Telephone Consultation Service (Warmline)* at (800) 933-3413. The Warmline also provides advice on HIV management, including antiretroviral treatment. Other NCCC consultation services include: the National Clinicians' Post-Exposure Prophylaxis Hotline ([PEPLINE](#)) at (888) 448-4911 for advice on managing occupational exposures to HIV and hepatitis; and the National Perinatal Consultation and Referral Service ([Perinatal HIV Hotline](#)) at (888) 448-8765 for consultation on preventing mother-to-child transmission of HIV.

We update the *Compendium* periodically, but it is beyond the scope of the project to perform updates and verification concurrent with all changes. We encourage readers to send updates (with citations when possible) and comments to Sarah Neff at neffs@nccc.ucsf.edu.

Thank you,



Sarah E. Neff, MPH
Director of Research and Evaluation

&



Ronald H. Goldschmidt, MD
Director

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The Warmline, PEPLINE, and Perinatal Hotline are part of the National HIV/AIDS Clinicians' Consultation Center (NCCC) based at San Francisco General Hospital/ UCSF. The NCCC is a component of the **AIDS Education and Training Centers (AETC) Program** funded by the Ryan White CARE Act of the **Health Resources and Services Administration (HRSA)** HIV/AIDS Bureau in partnership with the **Centers for Disease Control and Prevention (CDC)**.

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Definitions and Helpful Resources

April 8, 2011

Definitions Commonly Used Nationally

- **Anonymous Testing** – Patient’s name is not recorded with test results.
- **Confidential** – Patient’s name is recorded with test results.
- **HIV Prevention Counseling** – Refers to an interactive process of assessing risk, recognizing specific behaviors that increase the risk for acquiring or transmitting HIV and developing a plan to take specific steps to reduce risks.¹
 - **Pre-test counseling** can include: (1) discussing HIV, risk factors and prevention methods; (2) explaining the meaning of positive and negative test results and their implications; (3) assessing the patient’s personal and social supports; (4) determining the patient’s readiness to cope with test results; (5) discussing disclosure of test results to others; and (6) advising the patient if reporting positive test results to health authorities is required.
 - **Post-test counseling** can include: (1) informing the patient of the results and meaning of the test results; (2) providing education about avoiding risks of sexual and injection drug exposures; and, for patients who test positive, (3) assessing the impact of test results for the patient and family; (3) explaining treatment options; (4) discussing partner counseling and disclosure of test results to others; and (5) initiating a support and treatment plan.
- **General Consent** – Consent for HIV screening is included in the general medical consent.
- **HIV** – Human Immunodeficiency Virus.
- **Informed Consent** – A process of communication between patient and provider through which an informed patient can choose whether to undergo HIV testing or decline to do so. Elements of informed consent typically include providing oral or written information regarding HIV, the risks and benefits of testing, the implications of HIV test results, how test results will be communicated, and the opportunity to ask questions.¹
- **Name-based reporting** – Cases are reported by patient name (required in all states except HI and VT).
- **Opt-in** – Patients typically are provided pre-HIV test counseling and must consent specifically to an HIV-antibody test, either orally or in writing.²
- **Opt-out** – Performing HIV screening after notifying the patient that: the test will be performed; and the patient may elect to decline or defer testing. Assent is inferred unless the patient declines testing.¹
- **Routine Testing** – HIV screening that is performed routinely during health-care encounters.
- **Rapid Testing** – Testing with any of the six FDA-approved rapid HIV tests that produce results in 30 minutes or less.³
- **Specific Consent** – Consent for the HIV screening is separate from the general medical consent.

Helpful Resources

CDC Recommendations and Guidelines: <http://www.cdc.gov/hiv/topics/testing/guideline.htm>

Emergency Department Implementation Guide: <http://edhivtestguide.org/>

Prenatal HIV Testing Website: <http://www.cdc.gov/hiv/topics/perinatal/1test2lives/>

For questions or comments about the compendium, contact NCCC: neffs@nccc.ucsf.edu

Clinicians with questions about HIV testing can call the Warmline at 800-933-3413.

¹ Revised Recommendations for HIV Testing of Adults, Adolescents, and Pregnant Women in Health-Care Settings. MMWR Recomm Rep. 2006 Sep 22;55(RR-14):1-17; quiz CE1-4. <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5514a1.htm>

² <http://www.cdc.gov/mmwr/PDF/wk/mm5145.pdf>

³ <http://www.cdc.gov/hiv/topics/testing/resources/factsheets/rt-lab.htm>

Vermont

A Quick Reference Guide for Clinicians to Vermont HIV Testing Laws

April 8, 2011

This Quick Reference Guide for clinicians is a summary of relevant Vermont state HIV testing laws. Note that if a section in this Quick Reference Guide reads “no specific provisions were found,” provisions actually might exist for this topic within the state’s statutes, codes, or rules and regulations, but probably are not essential to clinicians.

For a more complete synopsis of Vermont HIV testing laws, please refer to the section of the Compendium that follows this Quick Reference Guide.

Informed Consent

- No specific provisions regarding consent were found.

Counseling

- No specific provisions regarding counseling were found.

Provisos of Testing

- **Anonymous**
 - No specific provisions regarding anonymous testing were found.
- **Rapid**
 - No specific provisions regarding rapid testing were found.
- **Routine**
 - No specific provisions regarding routine testing were found.

Disclosure

- No specific provisions regarding the notification of partners or contacts were found.

Minor/Adolescent Testing

- Persons 12 years of age or older may consent to STD testing, HIV not explicitly included.

Vermont

Perinatal Quick Reference Guide:

A Guide to Vermont Perinatal HIV Testing Laws for Clinicians

April 8, 2011

This Perinatal Quick Reference Guide for clinicians is a summary of relevant Vermont perinatal state HIV testing laws. Note that if a section in this Quick Reference Guide reads “no specific provisions were found,” provisions actually might exist for this topic within the state’s statutes, codes, or rules and regulations, but probably are not essential to clinicians.

For a more complete synopsis of Vermont HIV testing laws, please refer to the corresponding section of the *State HIV Testing Laws Compendium* (www.nccc.ucsf.edu), “Testing of pregnant women and/or newborns.”

Prenatal

- **Initial visit**
 - No specific provisions regarding initial visit prenatal testing were found.
- **Third trimester**
 - No specific provisions regarding third trimester prenatal testing were found.

Labor & Delivery

- No specific provisions regarding labor & delivery testing were found.

Neonatal

- No specific provisions regarding neonatal testing were found.

Other

- N/A

Vermont State Policies Relating to HIV Testing, 2011

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Vermont Statutes Annotated [VSA]

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	Policy Category	Type	Section Code(s)
RESTRICTIONS/ MANDATES	Restrictions on use of HIV test	Testing prohibited for employment/hiring purposes	21 VSA § 495 3 VSA § 961
		Testing prohibited for potential or current students	18 VSA § 1127
		Testing prohibited for unrelated treatment or service	18 VSA § 1128
	Mandatory testing within the criminal justice system	Potential transmission to victims	13 VSA § 3256
	Mandatory testing outside of the criminal justice system	Occupational exposure – health care worker, public safety personnel, or emergency personnel if source patient and worker consent	18 VSA § 1141
PRE-TESTING	Mandatory offering of HIV/AIDS information and/or testing	Must provide information about HIV and testing if testing for insurance purposes	8 VSA § 4724
	Informed consent	Written consent required for insurance testing	8 VSA § 4724
		Informed consent required to test source patient in occupational exposure	18 VSA § 1141
	Counseling requirements	Counseling provided on request of victims of sex offenses	13 VSA § 3256
Anonymous testing	No related laws found		
TESTING	Disclosure/confidentiality	Court orders may allow access to confidential test results	12 VSA § 1705

		Disclosure without notification is permitted to other states' infectious disease surveillance programs for the sole purpose of comparing the details of case reports for duplicates; least identifying information first, name used as last resort	18 VSA § 1001(b)
		Occupational exposure – health care provider must inform source patient and worker of confidentiality provisions	18 VSA § 1141
	Reporting	Name-based reporting	18 VSA § 1001
OTHER	Testing of pregnant women and/or newborns	No related laws found	
	Testing of minors/adolescents	Minors over 12 years of age can consent to STD treatment, HIV not included	18 VSA § 1091 18 VSA § 4226
	Rapid HIV testing	No related laws found	
	Training and education of health care providers	No related laws found	

Recommended Resources

The State of Vermont Legislature

<http://www.leg.state.vt.us/>

Vermont Department of Health – Rules and Regulations

<http://healthvermont.gov/regs/index.aspx>

Vermont Department of Health

<http://www.healthyvermonters.info/>

Title 3: Executive

VT Title 3 Code §	Code Language
§ 961	<p>Employers [also listed as 3 VSA § 1026]</p> <p>It shall be an unfair labor practice for an employer:</p> <p>(1) To interfere with, restrain or coerce employees in the exercise of their rights guaranteed by section 903 of this title, or by any other law, rule or regulation.</p> <p>(2) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it; provided that an employer shall not be prohibited from permitting employees to confer with the employer during working hours without loss of time or pay.</p> <p>(3) By discrimination in regard to hire and tenure of employment or any term or condition of employment to encourage or discourage membership in any employee organization.</p> <p>(4) To discharge or otherwise discriminate against an employee because the employee has filed charges or complaints or given testimony under this chapter.</p> <p>(5) To refuse to bargain collectively with representatives of the employees subject to the provisions of subchapter 3 of this chapter.</p> <p>(6) To discriminate against an employee on account of race, color, creed, religion, age, disability, sex, sexual orientation or national origin.</p> <p>(7) To request or require an applicant, prospective employee or employee to have an HIV-related blood test as a condition of employment.</p> <p>(8) To discriminate against an applicant, prospective employee or employee on the basis of a person's having a positive test result from an HIV-related blood test.</p>

Title 8: Banking and Insurance

VT Title 8 Code §	Code Language
§ 4724	<p>Unfair methods of competition or unfair or deceptive acts or practices defined</p> <p>The following are hereby defined as unfair methods of competition or unfair or deceptive acts or practices in the business of insurance:</p> <p>(20) HIV-related tests. -- Failing to comply with the provisions of this subdivision regarding HIV-related tests. "HIV-related test" means a test approved by the United States Food and Drug Administration and the commissioner, used to determine the existence of HIV antibodies or antigens in the blood, urine or oral mucosal transudate (OMT).</p> <p>(A) No person shall request or require that a person reveal having taken HIV-related tests in the past.</p> <p>(B) (i) No person shall request or require that an individual submit to an HIV-related test unless he or she has first obtained the individual's written informed consent to the test. Before written, informed consent may be granted, the individual shall be informed, by means of a printed information statement which shall have been read aloud to the individual by any agent of the insurer at the time of application or later and then given to the individual for review and retention, of the following:</p> <p>(I) an explanation of the test or tests to be given, including: the tests' relationship to AIDS, the insurer's purpose in seeking the test, potential uses and disclosures of the results, limitations on the accuracy of and the meaning of the test's results, the importance of seeking counseling about the individual's test results after those results are received, and the availability of information from and the telephone numbers of the Vermont AIDS hotline and the Centers for Disease Control and Prevention; and</p> <p>(II) an explanation that the individual is free to consult, at personal expense, with a personal physician or counselor or the state health department, or obtain an anonymous test at the individual's choice and personal expense, before deciding whether to consent to testing and that such delay will not affect the status of any application or policy; and</p> <p>(III) a summary of the individual's rights under this subdivision (20), including subdivisions (F)-(K); and</p> <p>(IV) an explanation that the person requesting or requiring the test, not the individual or the individual's health care provider, will be billed for the test, that the individual has a choice to receive the test results directly or to designate in writing prior to the administration of the test any other person through whom to receive the results, and any HIV positive test result from a test performed pursuant to this subdivision (20) shall be reported to the Vermont department of health pursuant to 18 V.S.A. § 1001.</p> <p>(ii) In addition, before drawing blood or obtaining a sample of the urine or OMT for the HIV-related test or tests, the person doing so shall give the individual to be tested an informed consent form containing the information required by the provisions of this subdivision (B), and shall then obtain the individual's written informed consent. If an OMT test is</p>

VT Title 8 Code §	Code Language
	<p>administered in the presence of the agent or broker, the individual's written informed consent need only be obtained prior to administering the test, in accordance with the provisions of this subdivision (B).</p> <p>(C) (i) The forms for informed consent, information disclosure, and test results disclosure used for HIV-related testing shall be filed with and approved by the commissioner pursuant to section 3541 of this title; and (ii) Any testing procedure shall be filed and approved by the commissioner in consultation with the commissioner of the department of health.</p> <p>(D) No laboratory may be used by an insurer or insurance support organization for the processing of HIV-related tests unless it is approved by the Vermont department of health. Any requests for approval under this subdivision shall be acted upon within 120 days. The department may approve a laboratory without on-site inspection or additional proficiency data if the laboratory has been certified under the Clinical Laboratory Improvement Act, 42 U.S.C. § 263a or if it meets the requirements of the federal Health Care Financing Administration under the Clinical Laboratory Improvement Amendments.</p> <p>(E) The test protocol shall be considered positive only if test results are two positive ELISA tests, and a Western Blot test confirms the results of the two ELISA tests, or upon approval of any equally or more reliable confirmatory test or test protocol which has been approved by the commissioner and the United States Food and Drug Administration. If the result of any test performed on a sample of urine or OMT is positive or indeterminate, the insurer shall provide to the individual, no later than 30 days following the date of the first urine or OMT test results, the opportunity to retest once, and the individual shall have the option to provide either a blood sample, a urine sample or an OMT sample for that retest. This retest shall be in addition to the opportunities for retest provided in subdivisions (F) and (G) of this subdivision (20).</p> <p>(F) If an individual has at least two positive ELISA tests but an indeterminate Western Blot test result, the Western Blot test may be repeated on the same sample. If the Western Blot test result is indeterminate, the insurer may delay action on the application, but no change in preexisting coverage, benefits or rates under any separate policy or policies held by the individual may be based upon such indeterminacy. If action on an application is delayed due to indeterminacy as described herein, the insurer shall provide the individual the opportunity to retest once after six but not later than eight months following the date of the first indeterminate test result. If the retest Western Blot test result is again indeterminate or is negative, the test result shall be considered as negative, and a new application for coverage shall not be denied by the insurer based upon the results of either test. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing a retest which had forwarded to a medical information bureau reports based upon</p>

VT Title 8 Code §	Code Language
	<p>the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.</p> <p>(G) (i) Upon the written request of an individual for a retest, an insurer shall retest, at the insurer's expense, any individual who was denied insurance, or offered insurance on any other than a standard basis, because of the positive results of an HIV-related test:</p> <p>(I) once within the three-year period following the date of the most recent test; and</p> <p>(II) in any event, upon the approval by the commissioner of an alternative test or test protocol for the presence of HIV antibodies or antigens.</p> <p>(ii) If such retest is negative, a new application for coverage shall not be denied by the insurer based upon the results of the initial test. Any underwriting decision granting a substandard classification or exclusion based on the individual's prior HIV-related test results shall be reversed, and the company performing a retest which had forwarded to a medical information bureau reports based upon the individual's prior HIV-related test results shall request the medical information bureau to remove any abnormal codes listed due to such prior test results.</p> <p>(H) An insurer, on the basis of the individual's written informed consent as specified in subdivision (B) of this subdivision, if necessary to make underwriting decisions regarding the particular individual's application, may disclose the results of an individual's HIV-related test results to its reinsurers, or to those contractually retained medical personnel, laboratories, insurance support organizations, and insurance affiliates (but not agents or brokers) that are involved in underwriting decisions regarding the individual's particular application. Other than the disclosures permitted by this subdivision, the entities listed herein, including the insurer, shall not further disclose to anyone individually-identified HIV-related test result information without a separately obtained written authorization from the individual; provided, however, that if an individual's test result is positive or indeterminate, then an insurer may report a code to the medical information bureau provided that a nonspecific test result code is used which does not indicate that the individual was subjected to HIV-related testing.</p> <p>(I) An insurer, reinsurer, contractually retained medical personnel, laboratories, medical information bureau or other national data bank, insurance affiliate, or insurance support organizations that are obligated to not disclose any individually-identifiable records of HIV-related tests pursuant to this subdivision (20) shall have no duty to disclose this information to any person except in compliance with a court order or as provided in subdivision (B) or (H) nor shall it have any liability to any person for refusing or failing to disclose such information.</p> <p>(J) Any individual who sustains damage as a result of the unauthorized negligent or knowing disclosure of that individual's individually-identifiable HIV-related test result information in violation of subdivision (H) of this subdivision (20) may bring an action for appropriate relief in superior court</p>

VT Title 8 Code §	Code Language
	<p>against any person making such a disclosure. The court may award costs and reasonable attorney's fees to the individual who prevails in an action brought under this subdivision.</p> <p>(K) In addition to any other remedy or sanction provided by law, after notice and opportunity for hearing the commissioner may assess an administrative penalty in an amount not to exceed \$ 2,000.00 for each violation against any person who violates any provision of this subdivision (20) or subdivision (7)(C) of this section.</p>

Title 12: Court Procedure

VT Title 12 Code §	Code Language
§ 1705	<p>HIV-related testing information</p> <p>(a) No court of this state shall issue an order requiring the disclosure of individually-identifiable HIV-related testing or counseling information unless the court finds that the person seeking the information has demonstrated a compelling need for it that cannot be accommodated by other means. In assessing compelling need the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters future testing or which may lead to discrimination.</p> <p>(b) Pleadings pertaining to disclosure of HIV-related testing and counseling information shall substitute a pseudonym for the true name of the subject of the test. The subject's true name shall be communicated confidentially to the court and those parties who have a compelling need to know the subject's true name. All documents filed with the court which identify the subject's true name shall not be disclosed to any person other than those parties who have a compelling need to know the subject's true name and the subject of the test. All such documents shall be sealed upon the conclusion of proceedings under this section.</p> <p>(c) Before granting any such order, the court shall provide the individual whose test information is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party.</p> <p>(d) Court proceedings as to disclosure of counseling and testing information shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.</p> <p>(e) Upon issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.</p>

Title 13: Crimes and Criminal Procedure
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VT Title 13 Code §	Code Language
§ 3256	<p>Testing for infectious diseases</p> <p>(a) The victim of an offense involving a sexual act may obtain an order from the district or family court in which the offender was convicted of the offense, or was adjudicated delinquent, requiring that the offender be tested for the presence of the etiologic agent for acquired immune deficiency syndrome (AIDS) and other sexually-transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis. If requested by the victim, the state's attorney shall petition the court on behalf of the victim for an order under this section. For the purposes of this section, "offender" includes a juvenile adjudicated a delinquent.</p> <p>(b) For purposes of this section, "sexual act" means a criminal offense:</p> <ol style="list-style-type: none"> (1) where the underlying conduct of the offender constitutes a sexual act as defined in section 3251 of this title; and (2) which creates a risk of transmission of the etiologic agent for AIDS to the victim as determined by the federal Centers for Disease Control and Prevention. <p>(c) If the court determines that the offender was convicted or adjudicated of a crime involving a sexual act with the victim, the court shall order the test to be administered by the department of health in accordance with applicable law. If appropriate under the circumstances, the court may include in its order a requirement for follow-up testing of the offender. An order for follow-up testing shall be terminated if the offender's conviction is overturned. A sample taken pursuant to this section shall be used solely for purposes of this section. All costs of testing the offender shall, if not otherwise funded, be paid by the department of public safety.</p> <p>(d) The results of the offender's test shall be disclosed only to the offender and the victim.</p> <p>(e) If an offender who is subject to an order pursuant to subsection (c) of this section refuses to comply with the order, the victim, or state's attorney on behalf of the victim, may seek a civil contempt order pursuant to chapter 5 of Title 12.</p> <p>(f) After arraignment, a defendant who is charged with an offense involving a sexual act may offer to be tested for the presence of the etiologic agent for acquired immune deficiency syndrome (AIDS) and other sexually-transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis. Such testing shall follow the same procedures set forth for testing an offender who is subject to an order pursuant to subsection (c) of this section. The defendant's offer to be tested after arraignment shall not be used as evidence at the defendant's trial. If the defendant is subsequently convicted of an offense involving a sexual act, the court may consider the offender's offer for testing as a mitigating factor.</p>

VT Title 13 Code §	Code Language
	<p>(g) Upon request of the victim at any time after the commission of a crime involving a sexual act under subsection (b) of this section, the state shall provide any of the following services to the victim:</p> <ul style="list-style-type: none">(1) counseling regarding human immunodeficiency virus (HIV);(2) testing, which shall remain confidential unless otherwise provided by law, for HIV and other sexually-transmitted diseases, including gonorrhea, herpes, chlamydia, and syphilis;(3) counseling by a medically-trained professional on the accuracy of the testing, and the risk of transmitting HIV and other sexually-transmitted diseases to the victim as a result of the crime involving a sexual act; and(4) prophylaxis treatment, crisis counseling, and support services. <p>(h) A victim who so requests shall receive monthly follow-up HIV testing for six months after the initial test.</p> <p>(i) The state shall provide funding for HIV or AIDS, or both, and sexual assault cross-training between sexual assault programs and HIV and AIDS service organizations.</p> <p>(j) The record of the court proceedings and test results pursuant to this section shall be sealed.</p> <p>(k) The court administrator's office shall develop and distribute forms to implement this section in connection with a criminal conviction or adjudication of delinquency.</p> <p>(l) The center for crime victims services shall be the primary coordinating agent for the services to be provided in subsections (g), (h) and (i) of this section.</p>

Title 18: Health

VT Title 18 Code §	Code Language
§ 1001	<p>Reports to commissioner of health</p> <p>(a) When a physician, health care provider, nurse practitioner, nurse, physician's assistant, school health official has reason to believe that a person is sick or has died of a diagnosed or suspected disease, identified by the department of health as a reportable disease and dangerous to the public health or if a laboratory director has evidence of such sickness or disease, he or she shall transmit within 24 hours a report thereof and identify the name and address of the patient and the name of the patient's physician to the commissioner of health or designee. In the case of HIV, "reason to believe" shall mean personal knowledge of a positive HIV test result. The commissioner with the approval of the secretary of human services shall by regulation establish a list of those diseases dangerous to the public health that shall be reportable. Nonmedical community-based organizations shall be exempt from this reporting requirement. All information collected pursuant to this section and in support of investigations and studies undertaken by the commissioner for the purpose of determining the nature or cause of any disease outbreak shall be privileged and confidential. The health department shall, by rule, require that any person required to report under this section has in place a procedure that ensures confidentiality. In addition, in relation to the reporting of HIV and AIDS, the health department shall, by rule:</p> <ul style="list-style-type: none"> (1) develop procedures, in collaboration with individuals living with HIV or AIDS and with representatives of the Vermont AIDS service organizations, to ensure confidentiality of all information collected pursuant to this section; and (2) develop procedures for backing up encrypted, individually identifying information, including procedures for storage, location, and transfer of data. <p>(b) (1) Public health records that relate to the human immunodeficiency virus (HIV) or to acquired immune deficiency syndrome (AIDS) that contain any personally identifying information, or any information that may indirectly identify a person and was developed or acquired by state or local public health agencies shall be confidential and shall only be disclosed, following notice to the individual subject of the public health record, or the individual's legal representative and pursuant to a written authorization voluntarily executed by the individual or the individual's legal representative. Except as provided in subdivision (2) of this subsection notice and authorization is required prior to all disclosures, including disclosures, including disclosures to other states, the federal government, and other programs, departments, or agencies of state government.</p> <p>(2) Notwithstanding the provisions of subdivision (1) of this subsection, disclosure without notification shall be permitted to other states' infectious disease surveillance programs for the sole purpose of comparing the details of case reports identified as possibly duplicative, provided such information shall be shared using the least identifying information first so that the individual's name shall be used only as a last resort.</p>

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	<p>(c) A disclosure made pursuant to subsection (b) of this section shall include only the information necessary for the purpose for which the disclosure is made. The disclosure shall be made only on agreement that the information shall remain confidential and shall not be further disclosed without additional notice to the individual and written authorization by the individual subject as required by subsection (b) of this section.</p> <p>(d) A confidential public health record shall not be:</p> <ol style="list-style-type: none"> (1) Disclosed or discoverable in any civil, criminal, administrative or other proceeding. (2) Used to determine issues relating to employment or insurance for any individual. (3) Used for any purpose other than public health surveillance, and epidemiological follow-up. <p>(e) Any person who:</p> <ol style="list-style-type: none"> (1) willfully or maliciously discloses the content of any confidential public health record without written authorization or as authorized by law or in violation of subsections (b), (c), or (e)(d) shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$25,000.00, and costs and attorney fees as determined by the court, compensatory and punitive damages, or equitable relief, including restraint of prohibited acts, costs, reasonable attorney's fees, and other appropriate relief. (2) negligently discloses the content of any confidential public health record without written authorization or as authorized by law or in violation of subsections (b), (c), or (d) of this section shall be subject to a civil penalty in an amount not to exceed \$2,500.00 plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the confidential information. (3) willfully, maliciously, or negligently discloses the results of an HIV test to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply without written authorization or as authorized by law or in violation of subsections (b), (c), or (d) of this section that results in economic, bodily, or psychological harm to the subject of the test is guilty of a misdemeanor, punishable by imprisonment for a period not to exceed one year or a fine not to exceed \$25,000.00, or both. (4) commits any act described in subdivision (1), (2), or (3) of this subsection shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm that is a proximate result of the act. Each disclosure made in violation of this chapter is a separate and actionable offense. Nothing in this section limits or expands the right of an injured subject to recover damages under any other applicable law. <p>(f) Except as provided in subdivision (a)(2) of this section, the department is prohibited from collecting, processing, or storing any individually identifying information concerning HIV/AIDS on any networked computer or server, or any laptop computer or other portable electronic device. On rare</p>

VT Title 18 Code §	Code Language
	<p>occasion, not as common practice, the department may accept HIV/AIDS individually identifying information electronically. Once that information is collected, the department shall, in a timely manner, transfer the information in compliance with this subsection.</p> <p>(g) Health care providers must, prior to performing an HIV test, inform the individual to be tested that a positive result will require reporting of the result and the individual's name to the department, and that there are testing sites that provide anonymous testing that are not required to report positive results. The department shall develop and make widely available a model notification form.</p> <p>(h) Nothing in this section shall affect the ongoing availability of anonymous testing for HIV. Anonymous HIV testing results shall not be required to be reported under this section.</p> <p>(i) No later than November 1, 2007, the department shall conduct an information and security audit in relation to the information collected pursuant to this section, including evaluation of the systems and procedures it developed to implement this section and an examination of adequacy of penalties for disclosure by state personnel. No later than January 15, 2008, the department shall report to the senate committee on health and welfare and the house committee on human services concerning options available, and the costs those options would be expected to entail, for maximizing protection of the information collected pursuant to this section. That report shall also include the department's recommendations on whether the general assembly should impose or enhance criminal penalties on health care providers for unauthorized disclosures of medical information. The department shall solicit input from AIDS service organizations and the community advisory group regarding the success of the department's security measures and their examination of adequacy of penalties as they apply to HIV/AIDS and include this input in the report to the legislature.</p> <p>(j) No later than January 1, 2008, the department shall plan and commence a public campaign designed to educate the general public about the value of obtaining an HIV test.</p> <p>(k) The commissioner shall maintain a separate database of reports received pursuant to subsection 1141(i) of this title for the purpose of tracking the number of tests performed pursuant to subchapter 5, chapter 21 of this title and such other information as the department of health determines to be necessary and appropriate. The database shall not include any information that personally identifies a patient.</p>
§ 1091	<p>Venereal diseases; definitions</p> <p>In this subchapter, unless the context requires otherwise:</p> <p>(1) "Authoritative source" means a physician licensed in the state, superintendent of a state institution or private hospital, medical officers of</p>

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	<p>the armed forces of the state or United States, state and territorial health officers and personnel of the health department designated by the board of health.</p> <p>(2) "Venereal disease" means syphilis, gonorrhea, and any other sexually transmitted disease which the department finds to be of significance and amenable to control. (Amended 1967, No. 7, § 1; 1979, No. 60, § 6.)</p>
§ 1127	<p>Discrimination and testing prohibited</p> <p>(a) No school district or educational institution shall request or require any applicant, prospective or current student to have an HIV-related blood test nor shall any school district or educational institution discriminate against an applicant, prospective or current student on the basis of a person's having a positive test result from an HIV-related blood test.</p> <p>(b) A person aggrieved by a violation of this section or the attorney general on behalf of such a person may bring an action for injunctive relief and damages in the superior court of the county in which the violation is alleged to have occurred. The court may award costs and reasonable attorney's fees to an aggrieved person who prevails in an action brought under this subsection.</p>
§ 1128	<p>Access to health services and testing</p> <p>(a) No health care provider or facility shall request or require any applicant for care or services or any client or patient to have an HIV-related blood test as a condition for receiving unrelated treatment or service nor shall any such provider or facility discriminate against any applicant, client or patient on the basis of a person's having a positive test result from an HIV-related blood test. Nothing in this section shall preclude health care providers or facilities from recommending testing for medically appropriate diagnostic purposes or from administering to clients or patients who consent to have an HIV-related blood test.</p> <p>(b) Failure of a health care provider to comply with any provision of this section shall constitute grounds for disciplinary action or any other regulatory action authorized by law. Failure of a health care facility to comply with any provision of this section shall constitute grounds for modification, suspension or revocation of the facility's license, authority to operate, or any other regulatory action authorized by law. Any such regulatory action shall be taken in accordance with the disciplinary, licensing or other procedures established by law for the board or agency having jurisdiction over the health care provider or facility.</p> <p>(c) A person aggrieved by a violation of this section or the attorney general on behalf of such a person may bring an action for injunctive relief and damages in the superior court of the county in which the violation is alleged to have occurred. The court may award costs and reasonable attorney's fees to an aggrieved person who prevails in an action brought under this</p>

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	subsection.
SUBCHAPTER 5: COMMUNICABLE DISEASE TESTING	
§ 1140	<p>DEFINITIONS</p> <p>As used in this subchapter:</p> <p>(1) "Bloodborne pathogen" means a pathogenic microorganism that is present in human blood and can cause disease in humans. Such pathogens include hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).</p> <p>(2) "Emergency personnel" shall have the same meaning as in section 3171 of Title 20, but shall also include members of a ski patrol trained through the National Ski Patrol or substantially similar program.</p> <p>(3) "Employer" means the organization on whose behalf a worker is employed or volunteering when rendering health services to a source patient pursuant to this subchapter.</p> <p>(4) "Health care provider" shall have the same meaning as in subdivision 9432(8) of this title.</p> <p>(5) "Health care worker" means any individual or employee of a health care provider who provides medical or other health services in the course of the worker's employment.</p> <p>(6) "Health services" means activities and functions that are directly related to care, treatment, or diagnosis of a patient, including emergency medical treatment.</p> <p>(7) "Manner sufficient to transmit" means consistent with current guidelines of the Centers for Disease Control, as determined by a physician licensed to practice medicine in Vermont.</p> <p>(8) "Public safety personnel" means an individual employed or volunteering for a fire department, police department, or ambulance service.</p> <p>(9) "Source patient" means an individual who, in the course of receiving health services, may have exposed a health care worker, public safety personnel, or emergency personnel to blood or bodily fluids in a manner sufficient to transmit a bloodborne disease.</p> <p>(9) "Worker" means emergency personnel, health care worker, or public safety personnel.</p>
§ 1141	<p>COMMUNICABLE DISEASE TESTING</p> <p>(a) A health care provider may order a test for bloodborne pathogens if a</p>

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	<p>health care worker, public safety personnel, or emergency personnel has been exposed to the blood or bodily fluids of the source patient in a manner sufficient to transmit a bloodborne pathogen-related illness to the affected worker while engaged in rendering health services to the source patient, and provided that:</p> <p>(1) the source patient: (A) has provided informed consent, as defined in subsection 9701(16) of this title; or (B) is deceased;</p> <p>(2) the worker has provided a blood sample and consented to testing for bloodborne pathogens and a physician has documented that bloodborne pathogen test results are needed for beginning, continuing, modifying, or discontinuing medical treatment for the worker;</p> <p>(3) a physician with specialty training in infectious diseases has confirmed that the worker has been exposed to the blood or bodily fluids of the source patient in a manner sufficient to transmit a bloodborne pathogen-related illness;</p> <p>(4) a health care provider has informed the worker of the confidentiality requirements in subsection (c) of this section and the penalties for unauthorized disclosure of source patient information under subsection (e) of this section; and</p> <p>(5) a health care provider has informed the source patient of the purpose and confidentiality provisions in subsections (b) and (c) of this section, respectively, if applicable.</p> <p>(b) Bloodborne pathogen test results of a source patient obtained under subsection (a) of this section are for diagnostic purposes and to determine the need for treatment or medical care specific to a bloodborne pathogen-related illness of a worker. Test results may not be used as evidence in any criminal or civil proceedings.</p> <p>(c) The result of a test ordered pursuant to subsection (a) of this section is protected health information subject to the "Standards for Privacy of Individually Identifiable Health Information" established under the Health Insurance Portability and Accountability Act of 1996 and contained in 45 C.F.R., Parts 160 and 164, and any subsequent amendments. Test results shall be confidential except that the worker who sustained the exposure, the health care provider who ordered the test, and the source patient, upon his or her request, shall be informed of the test results. Test results reported to the worker and documented in his or her medical record shall not include any personally identifying information relative to the source patient. Test results shall be transmitted to the commissioner of health pursuant to subsection (i) of this section.</p> <p>(d) Prior to laboratory testing of a source patient's blood sample for</p>

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	<p>bloodborne pathogens, personal identifiers shall be removed from the sample.</p> <p>(e) Unauthorized disclosures of test results obtained under this section shall be subject to the penalties provided under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. subsections 1320d-5 and 1320d-6, and may be considered unprofessional conduct under applicable licensing, certification, and registration laws.</p> <p>(f) The results of rapid testing technologies shall be considered preliminary and may be released in accordance with the manufacturer’s instructions as approved by the federal Food and Drug Administration. Corroborating or confirmatory testing must be conducted as follow-up to a positive preliminary test.</p> <p>(g) The health care provider who requested the test shall provide the source patient and the worker an opportunity to receive follow-up testing and shall provide information on options for counseling, as appropriate.</p> <p>(h) Records pertaining to testing performed pursuant to this section shall not be recorded in the source patient’s medical record unless authorized by the source patient and shall not be maintained in the location where the test is ordered or performed for more than 60 days.</p> <p>(i) A laboratory having personal knowledge of a test result under this section shall transmit within 24 hours a report thereof to the department of health pursuant to subsection 1001(k) of this title.</p> <p>(j) The employer of any worker exposed to blood or bodily fluids while rendering health services to a source patient during the performance of normal job duties shall maintain an incident report with information regarding the exposure that is relevant to a workers’ compensation claim. The employer shall not be provided or have access to information personally identifying the source patient.</p> <p>(k) The costs of all diagnostic tests authorized by these provisions shall be borne by the employer of the worker.</p> <p>(l) Notwithstanding any other law to the contrary, a health care provider who orders a test in accordance with this section shall not be subject to civil or criminal liability for ordering the test. Nothing in this subsection shall be construed to establish immunity for the failure to exercise due care in the performance or analysis of the test.</p> <p>(m) A health care provider’s duties under this section are not continuing but limited to testing and services performed under this section.</p>
§ 4226	<p>Minors; treatment; consent</p> <p>(a) If a minor twelve years of age or older is suspected either (1) to be dependent upon regulated drugs as defined in section</p>

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	<p>4201 of this title, or (2) to have venereal disease or (3) to be an alcoholic as defined in section 8401 of this title, and the finding of such dependency or disease or alcoholism is verified by a licensed physician, the minor may give (1) his consent to medical treatment and hospitalization and, (2) in the case of a drug dependent or alcoholic person, non-medical inpatient or outpatient treatment at a program approved by the agency of human services to provide treatment for drug dependency or alcoholism if deemed necessary by the examining physician for diagnosis or treatment of such dependency or disease or alcoholism.</p> <p>Consent under this section shall not be subject to disaffirmance due to minority of the person consenting. The consent of the parent or legal guardian of a minor consenting under this section shall not be necessary to authorize care as described above.</p> <p>(b) The parent, parents or legal guardian shall be notified by the physician if the condition of a minor child requires immediate hospitalization as the result of drug usage, alcoholism or for the treatment of a venereal disease. (Added 1971, No. 76; amended 1975, No. 143 (Adj. Sess.).)</p>

Title 21: Labor

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§ 495	<p>Unlawful employment practice</p> <p>(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, ancestry, place of birth, age, or physical or mental condition:</p> <p>(1) For any employer, employment agency or labor organization to discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, place of birth, or age or against a qualified individual with a disability;</p> <p>(2) For any person seeking employees or for any employment agency or labor organization to cause to be printed, published or circulated any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon race, color, religion, ancestry, national origin, sex, sexual orientation, place of birth, age or disability;</p> <p>(3) For any employment agency to fail or refuse to classify properly or refer for employment or to otherwise discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, place of birth, or age or against a qualified individual with a disability;</p> <p>(4) For any labor organization, because of race, color, religion ancestry, national origin, sex, sexual orientation, place of birth, or age to discriminate against any individual or against a qualified individual with a disability or to limit, segregate or qualify its membership;</p> <p>(5) For any employer, employment agency, or labor organization to discharge or in any other manner discriminate against any employee because such employee has lodged a complaint of discriminatory acts or practices or has cooperated with the attorney general or a state's attorney in an investigation of such practices, or is about to lodge a complaint or cooperate in an investigation, or because such employer believes that such employee may lodge a complaint or cooperate with the attorney general or state's attorney in an investigation of discriminatory acts or practices;</p> <p>(6) For any employer, employment agency, labor organization or person seeking employees to discriminate against, indicate a preference or limitation, refuse properly to classify or refer, or to limit or segregate membership, on the basis of a person's having a positive test result from an HIV-related blood test;</p> <p>(7) For any employer, employment agency, labor organization or person seeking employees to request or require an applicant, prospective employee, employee, prospective member, or member to have an HIV-related blood test as a condition of employment or membership, classification, placement, or referral;</p> <p>(8) For any employer, employment agency, labor organization or person seeking employees to discriminate between employees on the basis of sex by paying wages to employees of one sex at a rate less than the rate paid to employees of the other sex for equal work that requires equal skill,</p>

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	<p>effort, and responsibility, and is performed under similar working conditions. An employer who is paying wages in violation of this section shall not reduce the wage rate of any other employee in order to comply with this subsection. An employer may pay different wage rates under this subsection when the differential wages are made pursuant to:</p> <ul style="list-style-type: none"> (A) A seniority system. (B) A merit system. (C) A system in which earnings are based on quantity or quality of production. (D) Any factor other than sex. <p>(b) The provisions of this section shall not be construed to limit the rights of employers to discharge employees for good cause shown.</p> <p>(c) The provisions of this section prohibiting discrimination on the basis of age shall apply for the benefit of persons 18 years of age or older.</p> <p>(d) (1) An employee shall not have a cause of action in negligence for any injury occurring to the employee on the account of an employer complying with subdivisions (a)(6) and (7) of this section. (2) A person shall not have a cause of action in negligence for any injury occurring to the person on the account of an employer complying with subdivisions (a)(6) and (7) of this section.</p> <p>(e) The provisions of this section prohibiting discrimination on the basis of sexual orientation shall not be construed to prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to persons of the same religion or denomination or from taking any action with respect to matters of employment which is calculated by the organization to promote the religious principles for which it is established or maintained.</p> <p>(f) The provisions of this section prohibiting discrimination on the basis of sexual orientation shall not be construed to change the definition of family or dependent in an employee benefit plan.</p>