



January 30, 2002

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## SENATE BILL No. 458

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DIGEST OF SB 458 (Updated January 28, 2002 8:23 PM - DI 104)

**Citations Affected:** IC 16-18; IC 16-41.

**Synopsis:** HIV testing of pregnant women. Requires that a pregnant woman be tested for HIV during pregnancy or at the time of delivery unless she refuses. Requires that a pregnant woman's refusal to consent to the test be documented in the woman's medical records. Requires a pregnant woman who refuses to consent to the test to acknowledge that she: (1) received the required counseling and information; (2) refuses to consent to the test. Specifies certain information regarding HIV testing, transmission, prevention, and treatment that must be provided to a pregnant woman. Requires that information regarding the HIV testing status of a pregnant woman be included on the confidential part of the birth or stillbirth certificate. Requires the results of the tests to be confidential. Requires the state department of health to distribute written materials explaining treatment options for individuals who have a positive HIV test. Repeals a provision concerning voluntary HIV testing for pregnant women and a provision containing an obsolete definition.

**Effective:** Upon passage; July 1, 2002.

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### Miller, Breaux

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January 14, 2002, read first time and referred to Committee on Health and Provider Services.  
January 29, 2002, amended, reported favorably — Do Pass.

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SB 458—LS 7284/DI 104+



January 30, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

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## SENATE BILL No. 458

A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 16-18-2-337.8 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2002]: **Sec. 337.8. "Standard serological test**  
4 **for HIV", for purposes of IC 16-41-6, has the meaning set forth in**  
5 **IC 16-41-6-0.5.**

6 SECTION 2. IC 16-41-6-0.5 IS ADDED TO THE INDIANA CODE  
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
8 1, 2002]: **Sec. 0.5. As used in this chapter, "standard serological test**  
9 **for HIV" means a test recognized by the state department as a**  
10 **standard serological test for the antibody or antigen to HIV.**

11 SECTION 3. IC 16-41-6-1 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) Except as  
13 provided in subsection (b), a person may not perform a screening or  
14 confirmatory test for the antibody or antigen to ~~the human~~  
15 ~~immunodeficiency virus~~ HIV without the consent of the individual to  
16 be tested or a representative as authorized under IC 16-36-1. A  
17 physician ordering the test or the physician's authorized representative

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1 shall document whether or not the individual has consented. **The test**  
 2 **for the antibody or antigen to HIV may not be performed on a**  
 3 **woman described in section 5, 6, or 7 of this chapter if the woman**  
 4 **refuses under section 8 of this chapter to consent to the test.**

5 (b) The test for the antibody or antigen to HIV may be performed if  
 6 one (1) of the following conditions exists:

7 (1) If ordered by a physician who has obtained a health care  
 8 consent under IC 16-36-1 or an implied consent under emergency  
 9 circumstances and the test is medically necessary to diagnose or  
 10 treat the patient's condition.

11 (2) Under a court order based on clear and convincing evidence  
 12 of a serious and present health threat to others posed by an  
 13 individual. A hearing held under this subsection shall be held in  
 14 camera at the request of the individual.

15 (3) If the test is done on blood collected or tested anonymously as  
 16 part of an epidemiologic survey under IC 16-41-2-3 or  
 17 IC 16-41-17-10(a)(5).

18 (4) The test is ordered under section 4 of this chapter.

19 (c) A court may order a person to undergo testing for HIV under  
 20 IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

21 SECTION 4. IC 16-41-6-4 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) Subject to  
 23 subsection (e), (f), if:

24 (1) the mother of a newborn infant has not had a test performed  
 25 under ~~IC 16-41-6-2.5~~ **section 5, 6, or 7 of this chapter;**

26 (2) the mother of a newborn infant has refused a test for the  
 27 newborn infant to detect ~~the human immunodeficiency virus~~ HIV  
 28 or the antibody or antigen to HIV; and

29 (3) a physician believes that testing the newborn infant is  
 30 medically necessary;

31 the physician **overseeing the care of the newborn infant** may order  
 32 a confidential test for the newborn infant in order to detect ~~the human~~  
 33 ~~immunodeficiency virus~~ HIV or the antibody or antigen to HIV. The  
 34 test must be ordered at the earliest feasible time not exceeding  
 35 forty-eight (48) hours after the birth of the infant.

36 (b) If the physician orders a test under subsection (a), the physician  
 37 must:

38 (1) notify the mother of the newborn infant of the test; and

39 (2) provide ~~human immunodeficiency virus~~ HIV information and  
 40 counseling to the mother. The information and counseling must  
 41 include the following:

42 (A) The purpose of the test.

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- 1 (B) The risks and benefits of the test.  
 2 (C) A description of the methods of HIV transmission.  
 3 (D) A discussion of risk reduction behavior modifications,  
 4 including methods to reduce the risk of perinatal HIV  
 5 transmission and HIV transmission through breast milk.  
 6 (E) Referral information to other HIV prevention, health care,  
 7 and psychosocial services.  
 8 (c) The confidentiality provisions of IC 16-41-2-3 apply to this  
 9 section.  
 10 (d) The results of the confidential test ordered under subsection (a)  
 11 must be released to the mother of the newborn infant.  
 12 (e) **If a test ordered under subsection (a) is positive, the**  
 13 **physician who ordered the test shall inform the mother of the**  
 14 **newborn infant of:**  
 15 (1) **all treatment options available to the newborn infant; and**  
 16 (2) **the prognostic implications of the disease.**  
 17 (f) If ~~the~~ a parent of the newborn infant objects in writing for  
 18 reasons pertaining to religious beliefs, the newborn infant is exempt  
 19 from the test under subsection (a).  
 20 (†) (g) The state department shall adopt rules under IC 4-22-2 to  
 21 carry out this section.  
 22 (h) **The results of a test performed under this section are**  
 23 **confidential.**  
 24 SECTION 5. IC 16-41-6-5 IS ADDED TO THE INDIANA CODE  
 25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 26 1, 2002]: **Sec. 5. (a) This section applies to:**  
 27 (1) **a physician licensed under IC 25-22.5; or**  
 28 (2) **an advanced practice nurse licensed under IC 25-23;**  
 29 **who provides prenatal care within the scope of the provider's**  
 30 **license.**  
 31 (b) **Subject to section 9 of this chapter, an individual described**  
 32 **in subsection (a) who:**  
 33 (1) **diagnoses the pregnancy of a woman; or**  
 34 (2) **is primarily responsible for providing prenatal care to a**  
 35 **pregnant woman;**  
 36 **shall order to be taken a sample of the pregnant woman's blood**  
 37 **and shall submit the sample to an approved laboratory for a**  
 38 **standard serological test for HIV.**  
 39 SECTION 6. IC 16-41-6-6 IS ADDED TO THE INDIANA CODE  
 40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 41 1, 2002]: **Sec. 6. (a) Subject to sections 8 and 9 of this chapter, an**  
 42 **individual other than a physician who is permitted by law to attend**



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1 a pregnant woman but who is not permitted by law to take blood  
 2 specimens shall request that a licensed physician order to be taken  
 3 a sample of the pregnant woman's blood.

4 (b) A licensed physician who orders a blood sample under  
 5 subsection (a) shall submit the sample to an approved laboratory  
 6 for a standard serological test for HIV.

7 SECTION 7. IC 16-41-6-7 IS ADDED TO THE INDIANA CODE  
 8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 9 1, 2002]: **Sec. 7. Subject to section 9 of this chapter, if, at the time  
 10 of delivery, there is no written evidence that a standard serological  
 11 test for HIV has been performed under section 5 or 6 of this  
 12 chapter, the individual in attendance at the delivery shall order to  
 13 be taken a sample of the woman's blood at the time of the delivery  
 14 and shall submit the sample to an approved laboratory for a  
 15 standard serological test for HIV.**

16 SECTION 8. IC 16-41-6-8 IS ADDED TO THE INDIANA CODE  
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 18 1, 2002]: **Sec. 8. A pregnant woman has a right to refuse a test  
 19 under section 5, 6, or 7 of this chapter.**

20 SECTION 9. IC 16-41-6-9 IS ADDED TO THE INDIANA CODE  
 21 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 22 1, 2002]: **Sec. 9. (a) This section applies to:**

- 23 (1) a physician or an advanced practice nurse who orders an  
 24 HIV test under section 5 of this chapter or to the physician's  
 25 or nurse's designee;  
 26 (2) an individual other than a physician permitted by law to  
 27 attend a pregnant woman who requests that a licensed  
 28 physician order to be taken a sample of a pregnant woman's  
 29 blood for an HIV test under section 6 of this chapter; and  
 30 (3) an individual who, in attendance at the delivery of a child,  
 31 orders an HIV test under section 7 of this chapter.

32 (b) An individual described in subsection (a) shall inform the  
 33 pregnant woman that:

- 34 (1) the individual is required by law to:  
 35 (A) if the individual is an individual described in  
 36 subsection (a)(1) or (a)(3), order an HIV test; or  
 37 (B) if the individual is an individual described in subsection  
 38 (a)(2), request that a licensed physician order an HIV test;  
 39 unless the pregnant woman refuses; and  
 40 (2) the pregnant woman has a right to refuse the test.

41 (c) An individual described in subsection (a) shall:

- 42 (1) provide the pregnant woman with a description of the

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1 methods of HIV transmission;

2 (2) discuss risk reduction behavior modifications with the  
3 pregnant woman, including methods to reduce the risk of  
4 perinatal HIV transmission and HIV transmission through  
5 breast milk;

6 (3) provide the pregnant woman with referral information to  
7 other HIV prevention, health care, and psychosocial services;  
8 and

9 (4) explain to the pregnant woman:

10 (A) the purpose of the test; and

11 (B) the risks and benefits of the test.

12 (d) An individual described in subsection (a) shall document in  
13 the pregnant woman's medical records that the pregnant woman  
14 received the information required under subsections (b) and (c).

15 (e) If a pregnant woman refuses to consent to an HIV test, the  
16 refusal must be noted in the pregnant woman's medical records.

17 (f) If a test ordered under section 5, 6, or 7 of this chapter is  
18 positive:

19 (1) an individual described in subsection (a) shall inform the  
20 pregnant woman of all treatment options available to the  
21 pregnant woman; and

22 (2) an individual described in subsection (a)(1) shall inform  
23 the pregnant woman of the prognostic implications of the  
24 disease.

25 (g) The provisions of IC 16-41-2-3 apply to a positive HIV test  
26 under section 5, 6, or 7 of this chapter.

27 (h) The results of a test performed under section 5, 6, or 7 are  
28 confidential.

29 (i) As a routine component of prenatal care, every individual  
30 described in subsection (a) is required to provide information and  
31 counseling regarding HIV and the standard serological test for  
32 HIV, and to offer and recommend the standard serological test for  
33 HIV.

34 (j) The individual described in subsection (a) shall obtain a  
35 statement, signed by the pregnant woman, acknowledging that she  
36 was counseled and provided the required information set forth in  
37 subsection (c) to ensure that an informed decision has been made.

38 (k) A pregnant woman who refuses a test under this section  
39 must do so in writing.

40 SECTION 10. IC 16-41-6-10 IS ADDED TO THE INDIANA  
41 CODE AS A NEW SECTION TO READ AS FOLLOWS  
42 [EFFECTIVE JULY 1, 2002]: Sec. 10. The state department shall

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1 require, on the confidential part of each birth certificate and  
2 stillbirth certificate retained by the state department, in addition  
3 to the information otherwise required to be included on the  
4 certificate, the following information:

- 5 (1) Whether a standard serological test for HIV was
- 6 performed on the woman who bore the child.
- 7 (2) If a standard serological test for HIV was performed:
- 8 (A) the date the blood specimen was taken; and
- 9 (B) whether the test was performed during pregnancy or
- 10 at the time of delivery.
- 11 (3) If a standard serological test for HIV was not performed,
- 12 the reason why the test was not performed.

13 SECTION 11. IC 16-41-6-11 IS ADDED TO THE INDIANA  
14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
15 [EFFECTIVE UPON PASSAGE]: **Sec. 11. The state department**  
16 **shall distribute to physicians and to other individuals who are**  
17 **allowed by law to attend a pregnant woman information available**  
18 **from the federal Centers for Disease Control and Prevention that**  
19 **explains the treatment options available to an individual who has**  
20 **a positive test for HIV.**

21 SECTION 12. THE FOLLOWING ARE REPEALED [EFFECTIVE  
22 JULY 1, 2002]: IC 16-18-2-290.5; IC 16-41-6-2.5.

23 SECTION 13. **An emergency is declared for this act.**

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SENATE MOTION

Mr. President: I move that Senator Breaux be added as second author of Senate Bill 458.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 458, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 5, line 25, delete "confidentiality".

Page 5, between lines 28 and 29, begin a new paragraph and insert:

**"(i) As a routine component of prenatal care, every individual described in subsection (a) is required to provide information and counseling regarding HIV and the standard serological test for HIV, and to offer and recommend the standard serological test for HIV.**

**(j) The individual described in subsection (a) shall obtain a statement, signed by the pregnant woman, acknowledging that she was counseled and provided the required information set forth in subsection (c) to ensure that an informed decision has been made.**

**(k) A pregnant woman who refuses a test under this section must do so in writing."**

Page 5, line 39, delete "on".

and when so amended that said bill do pass.

(Reference is to SB 458 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 9, Nays 0.

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