

# AIDS

## and the Law:

What you should know



Illinois General Assembly

**LRU**   
LEGISLATIVE RESEARCH UNIT

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A staff of researchers handles inquiries from legislators, legislative committees, and partisan staff. The staff's areas of expertise include law generally, science and technology, taxation, education, local government, economics and fiscal affairs, and the political and social history of Illinois.

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# Introduction

This booklet gives basic and essential information on AIDS. It is intended for members of the general public. Although AIDS is a difficult subject to discuss, responsible education about it is one of the best ways to control its spread.

As part of Illinois' response to AIDS, the General Assembly has enacted a number of laws to help fight or control this disease. Illinois was among the first states to enact such wide-ranging laws.

The information on AIDS and AIDS-related laws in this booklet was prepared by the staff of the Legislative Research Unit. As the central general research agency of the Illinois General Assembly, the LRU has written numerous reports for legislators on AIDS-related subjects. The first part of the booklet has general information about AIDS and its spread. The second part gives an overview of the numerous Illinois laws dealing with AIDS.

Patrick D. O'Grady  
Executive Director

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## **Extent and Cause of AIDS**

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AIDS (Acquired Immune Deficiency Syndrome) is a disease that gradually weakens a person's immune system. People with AIDS become less and less able to fight infections. Eventually they die of some infection that they cannot overcome.

The cause of AIDS is a virus that enters the bloodstream, and eventually other body fluids. It is called HIV (human immunodeficiency virus).

Infection with HIV (and thus the development of AIDS) **can** be prevented. This booklet gives current medical advice on how to do that.

Illinois has reported 33,902 of over 961,315 AIDS cases diagnosed since 1981 in the U.S. This is the sixth highest state total. But Illinois is still under-represented in AIDS cases, with an estimated 4.3% of the U.S. population but only about 3.5% of AIDS cases. The states with the most diagnosed cases are New York (18% of cases), California (15%), Florida (11%), Texas (7%), and New Jersey (5%). See Figure 1 on p. 2.

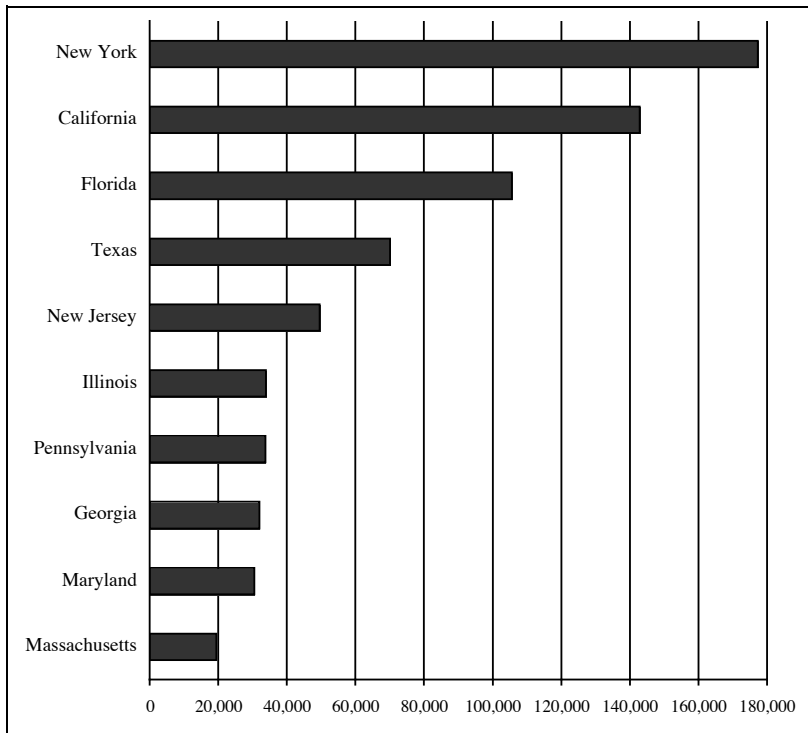
Over 555,760 (58%) of the people diagnosed with AIDS in the U.S. and its territories have died so far. Over 18,441 (54%) of people diagnosed with AIDS in Illinois have died. As discussed later, many people infected with HIV have not yet developed AIDS.

## **Transmission and Spread of HIV**

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HIV is spread by transfer of body fluids from an infected person into another person's bloodstream. The most common method of transfer in the U.S. is sexual acts with an infected person. The second most common is sharing of needles and syringes among drug users. Mothers can also transmit the virus to their children during pregnancy or near the time of birth.

Figure 1: States With Most AIDS Diagnoses



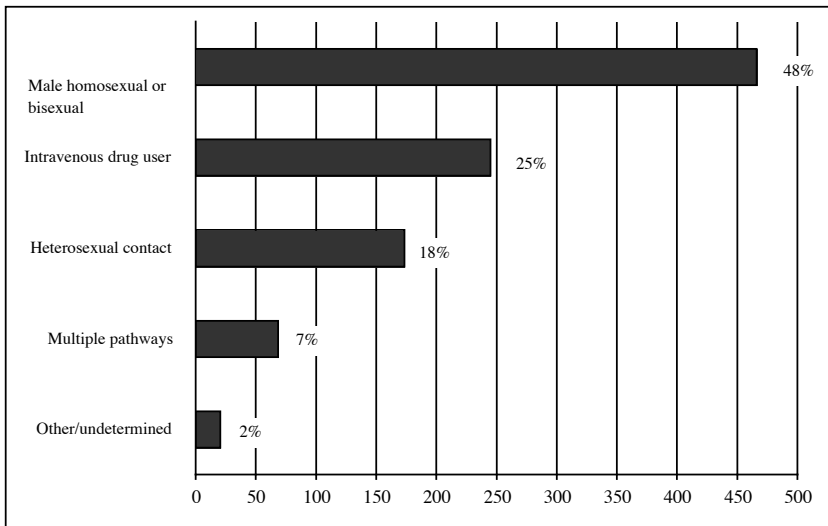
Unlike many diseases caused by viruses, AIDS is not spread by coughing, sneezing, or eating food from a kitchen where a carrier worked. It is not spread through casual contact in school, on the job, or at stores. Medical researchers are divided on whether AIDS can be transmitted by kissing. No one has become infected from such ordinary social contact as dry kisses, hugs, or handshakes. Open-mouth kissing is considered a low-risk activity for HIV transmission. The CDC recommends against open-mouth kissing with an infected partner. There is no evidence that AIDS has been transmitted by mosquitoes or other biting insects.

## Persons at Greatest Risk

U.S. adults and teenagers with AIDS have been classified by their likely source of the infection as follows:

- 48% are male homosexuals or bisexuals.
- 25% have taken illegal drugs by injection.
- 18% had heterosexual contact with a person who was at risk for HIV infection.
- 7% had more than one likely source of infection, such as homosexual male and injecting drug use.
- 2% received a contaminated blood transfusion, organ transplant, or artificial insemination, or had undetermined risk factors. (Testing for HIV antibodies began in the 1980s, reducing this risk.) See Figure 2 below.

Figure 2: U.S. Non-Child AIDS Cases by Transmission Category (numbers in thousands)



AIDS. Some 93% of these children were born to mothers with AIDS or HIV infection, or women at risk for those conditions. Many of the other 7% received contaminated blood transfusions or tissue transplants.

Overall, about 81% of U.S. AIDS patients are male. By racial or ethnic group, 42% are black, 40% are white, and 17% are Hispanic of any race. See Figure 3 on p. 5.

## **HIV Infection Versus AIDS**

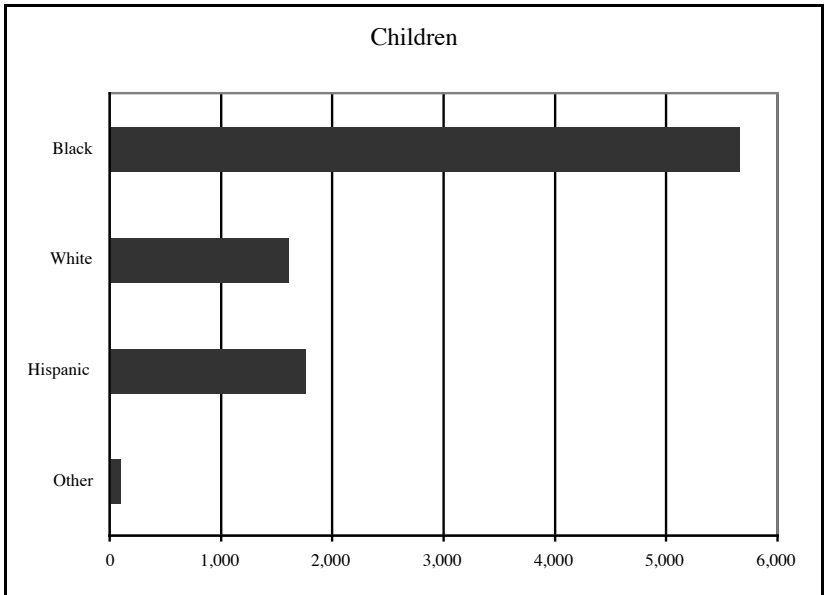
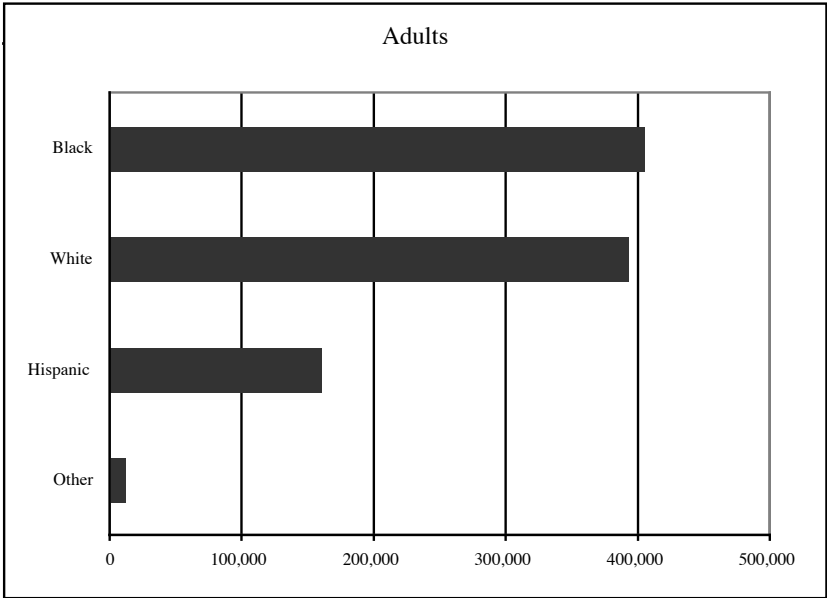
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The federal Centers for Disease Control and Prevention (CDC) reported that an estimated 1,039,000 to 1,185,000 persons in the U.S. were living with HIV or AIDS at the end of 2003. CDC also estimates that at least 40,000 persons become infected with HIV each year. (These numbers are speculative, since widespread testing for HIV has not been done.) Most of these people do not yet have AIDS. Indeed, it is estimated that between 24% and 27% of these persons remain undiagnosed and unaware of their HIV infection. They may look healthy and show no outward signs of infection, but can transmit the virus to others.

How many of these infected persons will develop AIDS is not known. There is a variable and often long incubation period from infection to development of AIDS, estimated by some scientists to last from under 2 years to perhaps over 15 years. Scientists project that within 10 years after infection, some 50% of untreated persons will have developed AIDS. The increased early use of antiviral medications has helped to delay the progression to AIDS and death for persons with HIV infection. But with the passage of time, the cumulative percentage of persons infected who develop AIDS is rising.



Figures 3 & 4: Cumulative U.S. AIDS Cases for Adults and Children Since 1981



## How to Reduce Your risk

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At present, the most dangerous activities for getting AIDS are (1) sexual intercourse of any kind with any person not known to be free of HIV infection, and (2) sharing of needles and syringes among drug users. As reported by the U.S. Surgeon General and CDC, there is **no** entirely safe way to do those things. People who insist on doing them can reduce the risks to themselves and others somewhat by (1) using latex condoms, and (2) sterilizing needles and syringes by washing and then soaking them in a chlorine bleach solution (soaking for  $\frac{1}{2}$  hour in a solution of 2 tablespoons of bleach per cup of water has been suggested).



The best ways to avoid becoming infected with the AIDS virus are to practice sexual abstinence or monogamy, and to avoid using intravenous drugs. The kind of sexual activity that has the lowest risk of infection is a long-term monogamous relationship.

## HIV Blood Tests

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The HIV screening test detects “antibodies” that a person’s immune system makes to HIV. Those antibodies do not form until weeks or even months after infection with HIV, so a person could have been recently infected but not show a positive test result. Positive results are checked with a more accurate but more expensive confirmatory test such as the Western blot.

If you have any reason to think you might have been infected with HIV, health officials recommend that you be tested. This is especially important for women who are pregnant or considering pregnancy. Testing is available from private doctors, local health departments, and community agencies, including some outreach testing sites.

The Illinois Department of Public Health (IDPH) has a state-wide network of over 50 HIV testing and counseling sites, staffed by trained counselors and health professionals. Testing at these sites is free of charge, strictly confidential, and anonymous if you prefer. Your test result will be released only to you, in a personal interview and counseling session. The Illinois AIDS hotline can give you the phone number of the nearest test site. The hotline number is:

(800) AID-AIDS  
(800) 243-2437

TTY: (800) 782-0423

People who learn that they are infected should be careful to avoid infecting others. Women considering pregnancy must realize that HIV can be transmitted to their children around the time of birth. In addition, evidence suggests that after exposure to the virus, contracting other illnesses and infections may increase the probability of, and speed up the development of, AIDS. An HIV-infected person can increase the chances of staying healthy by following good health practices and avoiding other infections.

## **Blood Donation**

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A person cannot get AIDS by donating blood. Blood collection centers use sterilized, disposable needles. They are used once and discarded. Since persons at high risk of carrying HIV are urged not to give blood, the need for blood from other donors is greater than ever.

People who have engaged in behaviors likely to transmit HIV should not donate blood. Blood banks do not accept donations from persons who admit a history of high-risk behavior, because the screening test cannot detect HIV infection until antibodies develop—perhaps months after an infection. Thus anyone who may have been infected should not give blood, but may want to be tested at one of the separate HIV-antibody testing and counseling sites.

## Laws on AIDS

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The Illinois General Assembly has enacted many laws on AIDS. They include a variety of measures aimed primarily at controlling the spread of the AIDS virus. Provisions include programs for use of HIV blood tests, development of a state-wide AIDS case registry and contact notification program, AIDS-related education in schools, strict confidentiality requirements, and funding for the care and treatment of AIDS patients, among other measures.

### *Testing*

Illinois law requires that all blood donated be tested for evidence of exposure to HIV, the AIDS virus. Potential donors are told that their blood will be tested. If results are positive, donors must be told in a personal and confidential manner. All blood shown to be positive must be disposed of unless used for medical research. An exception applies in medical emergencies; untested blood may be transfused if the time needed for an HIV test presents a serious risk to the life of a potential recipient.<sup>1</sup>

HIV tests are required of persons convicted of some sex-related crimes such as prostitution and rape.<sup>2</sup> Testing can also be required if persons are charged with some sex-related crimes, or if a judge at a preliminary hearing finds reasonable cause to believe that a person so charged is guilty.<sup>3</sup> Testing will also be done on persons convicted of illegal possession or sale of hypodermic needles and syringes.<sup>4</sup>

All hospitals licensed in Illinois must offer HIV testing at patient request, and provide counseling on the results.<sup>5</sup> (However, the state does not pay for these services.) A private physician may test a patient without specific consent from the patient, if the patient has already consented to medical treatment and the physician believes the test is needed for proper diagnosis and treatment.<sup>6</sup>

Another law related to HIV testing deals with sperm and tissue banks. The Illinois Department of Public Health must develop a registry of these establishments, and donors of sperm and tissue must be tested for HIV infection. Use of sperm and tissue from an infected or untested donor is prohibited. Again, an exception is allowed for medical emergencies if a doctor determines that the life of a patient would be jeopardized in the time necessary for testing.<sup>7</sup>

### *Confidentiality*

Unless state law provides otherwise, a person before being tested for HIV infection must have given written consent.<sup>8</sup> If the test is not legally required, the subject can be tested anonymously using a coded identifier.<sup>9</sup> Testing also cannot be done without making available to the subject information about the meaning of the results and the availability of further counseling and medical services.<sup>10</sup>

State law puts strict limits on the persons who can receive test results other than the person tested and a legal representative. Those who may receive results include persons designated by the recipient; IDPH; some health-care providers; and persons having a court order requiring receipt.<sup>11</sup> The local state's attorney will also be notified of positive test results if they are needed to prosecute for HIV transmission.<sup>12</sup> If the subject's consent for HIV-antibody testing is not required by law, the test need not be done anonymously.<sup>13</sup>

Confidentiality is further protected by a law prohibiting doctors, health service corporations, and insurance companies from disclosing the nature or details of medical services provided to patients. Exceptions allow disclosure of information to a patient, an insurer for which the patient has signed a release of information, or those required by law to be notified,<sup>14</sup> including informing the parents or guardians of a minor who tests positive for HIV.<sup>15</sup> A physician may (but is not required to) notify the spouse of a person infected with HIV if the patient refuses to do so.<sup>16</sup> IDPH and its representatives cannot disclose information and records on known or suspected cases of HIV infection or AIDS.<sup>17</sup> (See school notification on p. 10.)

## *AIDS Registry and Contact Notification*

IDPH is required to maintain a confidential HIV/AIDS registry, including Illinois HIV and AIDS cases. This registry allows health officials to conduct surveys of these related conditions and evaluate control and prevention measures. Cases in the registry are identified by code rather than by name.<sup>18</sup>

IDPH is also required to interview carriers of AIDS and other sexually transmitted diseases, and try to trace others they may have infected.<sup>19</sup> Infected persons are asked voluntarily to identify by name people they may have infected, so that they can be found for counseling and testing. An infected person who prefers to notify those persons directly may do so. If IDPH believes there may have been HIV transmission due to an invasive medical procedure, it is to check the medical records for names of other persons who may have been so infected. If the infected person does not notify those persons in a timely fashion, IDPH can take steps to notify and counsel them.<sup>20</sup>

## *AIDS and Schools*

State law requires AIDS-related instruction in public schools. Instruction on the transmission and prevention of AIDS is required in grades 6 to 12. Parents have the option of removing their children from this instruction if they wish.<sup>21</sup>



In addition, programs of comprehensive health education in all elementary and secondary schools must include the teaching of sexual abstinence until marriage.<sup>22</sup> Sex education courses must emphasize that sexual abstinence is the only completely effective way to avoid pregnancy and sexual transmission of AIDS and other diseases.<sup>23</sup>

Another law requires that IDPH or the local health department notify the principal of a school if one of its students has AIDS, ARC (AIDS-Related Complex, a less severe manifestation of

HIV infection), or HIV infection.<sup>24</sup> If the child is enrolled in a public school, the principal must disclose the identity of the student to the school superintendent. The principal may also disclose the identity of the child to the school nurse, the child's teachers, and school personnel who decide on placement and educational programs for the child.<sup>25</sup> Other school personnel may be notified that an infected child is enrolled in the school without revealing the child's identity to them.<sup>26</sup>

State law also prohibits willful intimidation of a child believed to have a chronic infectious disease. Persons injured or damaged can sue violators (or a minor violator's parents).<sup>27</sup> However, school boards must develop policies for managing children with such diseases.<sup>28</sup>

To ensure that school personnel are knowledgeable about AIDS, the law also requires the State Board of Education and IDPH jointly to develop standards for AIDS training and education of guidance counselors, nurses, and other personnel working with students.<sup>29</sup>

### ***Protection of Medical, Emergency, and Police Personnel***

Hospitals are required to notify police, paramedics, and ambulance personnel who may have come into contact with blood or bodily fluids while providing services to a patient diagnosed with AIDS. This notification cannot include the name of the patient, and any information received must be kept confidential.<sup>30</sup>

In addition, emergency medical technicians, paramedics, firefighters, law enforcement officers, and health-care providers who have accidental direct contact with a patient's body fluids can ask that an HIV-antibody test be done on the patient without the patient's consent.<sup>31</sup> If the test results are positive for HIV, the patient and potentially infected emergency or medical worker are to get counseling through IDPH.<sup>32</sup>

## *AIDS Education and Awareness Programs*

AIDS education is promoted by a law requiring IDPH to conduct an information campaign on AIDS for doctors, hospitals, other health facilities, public health departments, police, and the general public.<sup>33</sup> IDPH also has a statewide AIDS hotline:

(800) AID-AIDS  
(800) 243-2437

IDPH also must develop a public education program to reduce prenatal transmission of HIV, using materials in English and Spanish.<sup>34</sup> Medical providers caring for pregnant women must provide HIV information and testing as early in the pregnancy as possible.<sup>35</sup> IDPH must design a brochure describing inherited diseases and sexually transmitted diseases (including AIDS) to be given to persons applying for marriage licenses.<sup>36</sup> In addition, the Department of Corrections must provide all persons released from prison with information on its programs and services to determine whether they have been exposed to HIV.<sup>37</sup>

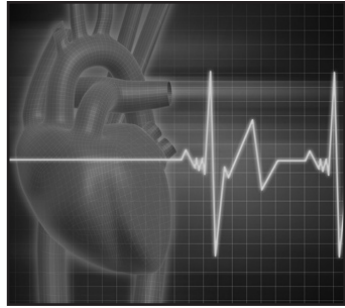
The Illinois Department of Human Services (DHS) must include AIDS education in its treatment of intravenous drug users. DHS and IDPH must cooperate in establishing programs for prevention and treatment of AIDS in drug users and their sexual partners.<sup>38</sup>

Another law requires IDPH to develop AIDS awareness and education programs, including programs for minority and other high-risk groups. These are to include educational videotapes for high-risk teenagers in English and Spanish languages.<sup>39</sup> The African-American HIV/AIDS Response Fund supports services for HIV/AIDS prevention, testing, and research in African-American communities.<sup>40</sup> Other programs and materials on HIV and AIDS are to be prepared for persons age 50 or older.<sup>41</sup>



### ***Blood and Organ Donations***

Each Illinois hospital or blood bank must allow a potential blood recipient to designate particular donors to provide blood for a planned medical procedure. Friends or relatives can donate blood for a person expecting surgery.<sup>42</sup> Another Illinois law allows organ transplantation from an HIV-infected donor to an HIV-infected recipient if the planned recipient is at immediate risk of death without a transplant.<sup>4</sup>



### ***Sexual Assault Victims***

Any hospital providing services to a sexual assault victim must include HIV prevention with the victim's consent.<sup>44</sup>

### ***HIV Transmission***

An HIV-infected person who knowingly engages in behavior that could result in transmitting HIV to another person commits a Class 2 felony. This law applies to a person who, while knowingly infected with HIV: (1) engages in intimate contact with another (defined as "exposure of the body of one person to a bodily fluid of another person in a manner that could result in the transmission of HIV"); (2) donates blood or tissue; or (3) provides another person with nonsterile injection equipment.<sup>45</sup>

### ***Public Assistance Programs***

The definition of "exceptional medical care" in the Public Aid Code has been expanded to include care required by patients with AIDS or a related condition, so they can be cared for in skilled nursing facilities.<sup>46</sup>

An Illinois law provides extended drug coverage for seniors and disabled persons who have HIV or AIDS and are eligible for Medicare Part D.<sup>47</sup> In addition, IDPH is to offer prescription drug counseling to all HIV or AIDS-infected persons.<sup>48</sup> The AIDS Drug Assistance Program (ADAP) provides help for low-income people;<sup>49</sup> its number is (800) 825-3518.

To help needy AIDS patients get AIDS-related drugs, another law requires the Department of Healthcare and Family Services to establish procedures to speed review of AIDS drugs that are under investigation by the U.S. Food and Drug Administration, for possible inclusion in the Department's formulary.<sup>50</sup>

### ***Insurance***

An insurance company or health services corporation may require applicants to be tested for HIV infection. The company must (1) give the applicant prior written notice of this requirement, (2) obtain written authorization from the applicant, and (3) keep all test results confidential. Notice of an adverse underwriting or coverage decision may be given to any properly interested party, but the test results can be disclosed only to a physician designated by the applicant.<sup>51</sup> Another Illinois law allows IDPH to provide for "continuation coverage" to HIV-infected persons who have been covered by group insurance, are eligible for an extension of its benefits, and meet income standards set by IDPH.<sup>52</sup> Finally, AIDS patients who have life insurance may be able to receive death benefits before death, either from the insurance company<sup>53</sup> or from an investor who buys the policy at a discount.

### ***Children***

The Guardianship Administrator for the Department of Children and Family Services (DCFS) may consent to an HIV test for a child taken into protective custody, or any child for whom the Administrator has been appointed as temporary custodian.<sup>54</sup>

At the request of a prospective adoptive parent, DCFS may test any child in its custody who is being placed in adoptive care.<sup>55</sup>

DCFS must give a child’s temporary caretaker any information it has on a positive test for HIV infection or other communicable disease or infection in that child.<sup>56</sup>

### *Prisoners*

To help prevent the spread of HIV by prisoners who have used intravenous drugs, the Illinois Department of Corrections, before releasing a prisoner who has a documented history of such drug use, may test for HIV infection—but only with the prisoner’s written informed consent. Pre-test and post-test counseling are required.<sup>57</sup>



### *“Infection Hazard” Warning*

IDPH must require the body of a person who died from AIDS or another infectious disease to be labeled an “infection hazard.” This must be done so persons coming into contact with the body, such as funeral directors or embalmers, can take needed precautions.<sup>58</sup>

## **For more information**

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For more information on AIDS you can contact a doctor, local health department, or IDPH. IDPH has two statewide toll-free numbers to answer questions, provide counseling and referrals,

and give the phone number of the nearest test site. Those numbers are:

(800) AID-AIDS  
(800) 243-2437

TTY: (800) 782-0423

The U.S. Public Health Service also has a toll-free AIDS number to provide information and answers on AIDS:

(800) 342-AIDS  
(800) 342-2437

## Notes

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The Illinois laws cited below can be found in the Illinois Compiled Statutes (ILCS)—the official code of Illinois laws. It is available in many libraries in print or on CD-ROM. Any part of it can be viewed at <http://www.ilga.gov/legislation/ilcs/ilcs.asp> (which is an unofficial version, but usually more current than printed and CD forms). A citation to it looks like this: 410 ILCS 305/11. In that citation, “410” is a chapter number, “305” is the number of a law within that chapter, and “11” is the number of a section within that law.

1. 210 ILCS 25/7-115.
2. 705 ILCS 405/5-710(9) and 730 ILCS 5/5-5-3(g).
3. 720 ILCS 5/12-18(e).
4. 730 ILCS 5/5-5-3(h).
5. 210 ILCS 85/6.10.
6. 410 ILCS 305/8.
7. 20 ILCS 2310/2310-330(b).
8. 410 ILCS 305/4.
9. 410 ILCS 305/6 and 305/11.
10. 410 ILCS 305/5.
11. 410 ILCS 305/9.
12. 730 ILCS 5/5-5-3(g) and (h).

13. 410 ILCS 305/6.
14. 410 ILCS 50/3(c) and (d).
15. 410 ILCS 305/9(k).
16. 410 ILCS 305/9(a).
17. 410 ILCS 305/9(d).
18. 410 ILCS 310/3 to 8.
19. 410 ILCS 325/3 to 10.
20. 410 ILCS 325/5.5.
21. 105 ILCS 110/3, and 105 ILCS 5/27-9.1 and 27-9.2.
22. 105 ILCS 110/3.
23. 105 ILCS 5/27-9.1(b).
24. 410 ILCS 315/2a, first paragraph.
25. 410 ILCS 315/2a, second paragraph.
26. 410 ILCS 315/2a, last paragraph.
27. 720 ILCS 5/12-7.2.
28. 105 ILCS 5/10-21.11 and 34-18.13.
29. 105 ILCS 5/10-22.39 and 34-18.8.
30. 210 ILCS 85/6.08.
31. 410 ILCS 305/7(b) and (c).
32. 410 ILCS 305/7(b).
33. 20 ILCS 2310/2310-315(2).
34. 20 ILCS 2310/2310-380.
35. 410 ILCS 335/10.
36. 20 ILCS 2310/2310-405.
37. 730 ILCS 5/3-14-1(d).
38. 20 ILCS 301/5-10(a)(4)(B).
39. 20 ILCS 2310/2310-315 and 2310/2310-320.
40. 410 ILCS 303/27.
41. 20 ILCS 2310/2310-322.
42. 210 ILCS 85/11.2 and 25/7-109.
43. 20 ILCS 2310/2310-330(c-5).
44. 410 ILCS 70/5.
45. 720 ILCS 5/12-16.2.
46. 305 ILCS 5/5-1.1(i).
47. 320 ILCS 25/4.
48. 20 ILCS 2310/2310-315.
49. 320 ILCS 25/4.
50. 305 ILCS 5/5-5.13.

51. 410 ILCS 50/3(c), second paragraph.
52. 410 ILCS 315/2d.
53. 215 ILCS 5/4, Class 1.(a).
54. 325 ILCS 5/5, fifth paragraph.
55. 20 ILCS 505/22.3.
56. 325 ILCS 5/5, first paragraph.
57. 730 ILCS 5/3-6-2(1).
58. 20 ILCS 2305/7.

# **AIDS Resources On-Line**

## *Federal Government*

U.S. Government HIV/AIDS information

<http://www.aids.gov/>

Centers for Disease Control and Prevention (CDC)

<http://www.cdc.gov/hiv/>

National Library of Medicine: HIV/AIDS information

<http://sis.nlm.nih.gov/hiv.html>

The White House Office of National AIDS Policy

<http://www.whitehouse.gov/onap/aids.html>

## *Selected State Governments*

Illinois Department of Public Health

<http://www.idph.state.il.us/aids/default.htm>

New York State Department of Health

<http://www.health.state.ny.us/diseases/aids/>

California Department of Public Health

<http://www.cdph.ca.gov/programs/AIDS/Pages/Default.aspx>

Florida Department of Health

[http://doh.state.fl.us/Disease\\_ctrl/aids/index.html](http://doh.state.fl.us/Disease_ctrl/aids/index.html)

Texas Department of State Health Services

<http://www.dshs.state.tx.us/hivstd/default.shtm>

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