

**As Introduced**

**133rd General Assembly**

**Regular Session**

**2019-2020**

**H. B. No. 40**

**Representatives West, Galonski**

**Cosponsors: Representatives Boyd, Crawley, Skindell, Weinstein, Kent, Lepore-Hagan, Patterson, Miller, A., Seitz, Leland**

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**A BILL**

To amend sections 3701.24 and 3701.50 and to enact 1  
section 3701.2410 of the Revised Code regarding 2  
testing pregnant women for HIV, syphilis, and 3  
gonorrhea. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3701.24 and 3701.50 be amended 5  
and section 3701.2410 of the Revised Code be enacted to read as 6  
follows: 7

**Sec. 3701.24.** (A) As used in this section and sections 8  
3701.241 to ~~3701.249~~3701.2410 of the Revised Code: 9

(1) "AIDS" means the illness designated as acquired 10  
immunodeficiency syndrome. 11

(2) "HIV" means the human immunodeficiency virus 12  
identified as the causative agent of AIDS. 13

(3) "AIDS-related condition" means symptoms of illness 14  
related to HIV infection, including AIDS-related complex, that 15  
are confirmed by a positive HIV test. 16

(4) "HIV test" means any test for the antibody or antigen to HIV that has been approved by the director of health under division (B) of section 3701.241 of the Revised Code.

(5) "Health care facility" has the same meaning as in section 1751.01 of the Revised Code.

(6) "Director" means the director of health or any employee of the department of health acting on the director's behalf.

(7) "Physician" means a person who holds a current, valid ~~certificate~~ license issued under Chapter 4731. of the Revised Code authorizing the practice of medicine ~~or and surgery and or~~ osteopathic medicine and surgery.

(8) "Nurse" means a registered nurse or licensed practical nurse who holds a license ~~or certificate~~ issued under Chapter 4723. of the Revised Code.

(9) "Anonymous test" means an HIV test administered so that the individual to be tested can give informed consent to the test and receive the results by means of a code system that does not link the identity of the individual tested to the request for the test or the test results.

(10) "Confidential test" means an HIV test administered so that the identity of the individual tested is linked to the test but is held in confidence to the extent provided by sections 3701.24 to 3701.248 of the Revised Code.

(11) "Health care provider" means an individual who provides diagnostic, evaluative, or treatment services. Pursuant to Chapter 119. of the Revised Code, the director may adopt rules further defining the scope of the term "health care provider."

(12) "Significant exposure to body fluids" means a 46  
percutaneous or mucous membrane exposure of an individual to the 47  
blood, semen, vaginal secretions, or spinal, synovial, pleural, 48  
peritoneal, pericardial, or amniotic fluid of another 49  
individual. 50

(13) "Emergency medical services worker" means all of the 51  
following: 52

(a) A peace officer; 53

(b) An employee of an emergency medical service 54  
organization, as defined in section 4765.01 of the Revised Code; 55

(c) A firefighter employed by a political subdivision; 56

(d) A volunteer firefighter, emergency operator, or rescue 57  
operator; 58

(e) An employee of a private organization that renders 59  
rescue services, emergency medical services, or emergency 60  
medical transportation to accident victims and persons suffering 61  
serious illness or injury. 62

(14) "Peace officer" has the same meaning as in division 63  
(A) of section 109.71 of the Revised Code, except that it also 64  
includes a sheriff and the superintendent and troopers of the 65  
state highway patrol. 66

(B) Persons designated by rule adopted by the director 67  
under section 3701.241 of the Revised Code shall report promptly 68  
every case of AIDS, every AIDS-related condition, and every 69  
confirmed positive HIV test to the department of health on forms 70  
and in a manner prescribed by the director. In each county the 71  
director shall designate the health commissioner of a health 72  
district in the county to receive the reports. 73

(C) No person shall fail to comply with the reporting 74  
requirements established under division (B) of this section. 75

(D) Information reported under this section that 76  
identifies an individual is confidential and may be released 77  
only with the written consent of the individual except as the 78  
director determines necessary to ensure the accuracy of the 79  
information, as necessary to provide treatment to the 80  
individual, as ordered by a court pursuant to section 3701.243 81  
or 3701.247 of the Revised Code, or pursuant to a search warrant 82  
or a subpoena issued by or at the request of a grand jury, 83  
prosecuting attorney, city director of law or similar chief 84  
legal officer of a municipal corporation, or village solicitor, 85  
in connection with a criminal investigation or prosecution. 86  
Information that does not identify an individual may be released 87  
in summary, statistical, or aggregate form. 88

Sec. 3701.2410. (A) As used in this section, "licensed 89  
health care professional" includes all of the following: 90

(1) Physicians authorized under Chapter 4731. of the 91  
Revised Code to practice medicine and surgery or osteopathic 92  
medicine and surgery; 93

(2) Clinical nurse specialists, certified nurse-midwives, 94  
and certified nurse practitioners licensed under Chapter 4723. 95  
of the Revised Code; 96

(3) Physician assistants licensed under Chapter 4730. of 97  
the Revised Code. 98

(B) Subject to division (D) of this section, a licensed 99  
health care professional who provides prenatal care to a 100  
pregnant woman shall comply with both of the following regarding 101  
HIV testing: 102

(1) When the licensed health care professional first 103  
examines the woman related to her pregnancy, the professional 104  
shall cause an HIV test to be conducted unless the woman refuses 105  
the test. 106

(2) When the licensed health care professional first 107  
examines the woman related to her pregnancy during the third 108  
trimester of gestation, the professional shall conduct an 109  
assessment to determine whether any activities posing a risk of 110  
infection with HIV have occurred more recently than would have 111  
been detected by the most recent HIV test, if any, that was 112  
conducted during the pregnancy. In conducting the assessment, 113  
the licensed health care professional shall consider information 114  
available from the United States centers for disease control and 115  
prevention concerning risk factors for transmission. If the 116  
licensed health care professional determines that activities 117  
posing a risk of infection with HIV have occurred, or that no 118  
HIV test has been conducted during the pregnancy, the 119  
professional shall cause an HIV test to be conducted unless the 120  
woman refuses the test. 121

(C) Subject to division (D) of this section, a licensed 122  
health care professional who provides care to a pregnant woman 123  
at delivery shall determine whether the woman's medical records 124  
indicate that an HIV test was conducted during the third 125  
trimester of gestation. If it is determined that an HIV test was 126  
conducted during the third trimester, the licensed health care 127  
professional shall consider information available from the 128  
United States centers for disease control and prevention 129  
concerning risk factors for transmission of HIV and shall ask 130  
the woman whether any activities posing such a risk have 131  
occurred more recently than would have been detected by that 132  
test. If it is determined that no HIV test was conducted during 133

the third trimester, or that activities posing a risk of HIV 134  
infection have occurred more recently than would have been 135  
detected by the most recent HIV test, the licensed health care 136  
professional shall cause an HIV test to be conducted at the time 137  
of delivery unless the woman refuses the test. 138

(D) (1) Before an HIV test is conducted pursuant to 139  
division (B) or (C) of this section, the licensed health care 140  
professional shall inform the woman that the test will be 141  
conducted and of her right to refuse. 142

(2) If a woman's medical records indicate that another 143  
licensed health care professional has complied with the 144  
requirements of divisions (B) and (C) of this section for the 145  
pregnancy, the treating licensed health care professional is not 146  
required to comply with the requirements of those divisions. 147

(E) If the results of an HIV test conducted pursuant to 148  
this section are positive, the licensed health care professional 149  
shall provide post-test counseling to the woman in accordance 150  
with any rules adopted pursuant to section 3701.242 of the 151  
Revised Code. 152

(F) A licensed health care professional who causes an HIV 153  
test or assessment to be conducted pursuant to this section 154  
shall record that information in the woman's medical records. If 155  
a woman refuses an HIV test offered pursuant to this section, 156  
the professional shall record her refusal in her medical 157  
records. 158

(G) The director of health may adopt rules in accordance 159  
with Chapter 119. of the Revised Code as the director considers 160  
appropriate to implement this section. 161

**Sec. 3701.50.** ~~Every~~ (A) As used in this section, "licensed 162

health care professional" includes all of the following: 163

(1) Physicians authorized under Chapter 4731. of the 164  
Revised Code to practice medicine and surgery or osteopathic 165  
medicine and surgery; 166

(2) Clinical nurse specialists, certified nurse-midwives, 167  
and certified nurse practitioners licensed under Chapter 4723. 168  
of the Revised Code; 169

(3) Physician assistants licensed under Chapter 4730. of 170  
the Revised Code. 171

(B) (1) Except as provided in divisions (B) (2) and (3) of 172  
this section, every physician who attends any pregnant woman for 173  
conditions relating to pregnancy during the period of gestation 174  
shall take specimens of such woman at the time of first 175  
examination or within ten days thereof, and shall submit such 176  
specimens to an approved laboratory for standard syphilis and 177  
gonorrhoea tests. 178

(2) If, in the opinion of the physician attending such 179  
woman, her condition does not permit the taking of specimens for 180  
submission to an approved laboratory, then no specimens shall be 181  
taken prior to delivery. If no specimens are taken prior to 182  
delivery because of the woman's condition, then such specimens 183  
shall be taken as soon after delivery as the physician deems it 184  
advisable. 185

(3) The health commissioner of the city or general health 186  
district, wherein any person required to be tested for syphilis 187  
and gonorrhoea under division (B) (1) of this section or section 188  
3701.49 of the Revised Code resides, may waive ~~the those~~ 189  
requirements ~~of such sections~~ if the commissioner is satisfied 190  
by written affidavit or other written proof that the tests 191

required are contrary to the tenets or practices of the 192  
religious creed of which the person is an adherent, and that the 193  
public health and welfare would not be injuriously affected by 194  
such waiver. 195

(C) (1) A licensed health care professional who provides 196  
prenatal care to a pregnant woman during the third trimester of 197  
gestation shall conduct an assessment when the professional 198  
first examines the woman related to her pregnancy during that 199  
trimester to determine whether any activities posing a risk of 200  
infection with syphilis or gonorrhea have occurred more recently 201  
than would have been detected by the most recent syphilis and 202  
gonorrhea tests, if any, that were conducted during the 203  
pregnancy. In conducting the assessment, the licensed health 204  
care professional shall consider information available from the 205  
United States centers for disease control and prevention 206  
concerning risk factors for transmission of syphilis or 207  
gonorrhea. 208

If the licensed health care professional determines that 209  
activities posing a risk of syphilis or gonorrhea infection have 210  
occurred more recently than would have been detected by the most 211  
recent syphilis or gonorrhea tests, or that no syphilis and 212  
gonorrhea tests have been conducted during the pregnancy, the 213  
professional shall cause tests for syphilis and gonorrhea to be 214  
conducted unless the professional determines that the pregnant 215  
woman's condition does not permit the tests to be conducted or 216  
the woman refuses the tests. 217

If the third trimester assessment is not conducted because 218  
a licensed health care professional has determined that the 219  
woman's condition does not permit the tests to be conducted, the 220  
tests shall be conducted after delivery in accordance with 221



<u>division (B) (2) of this section.</u>	222
<u>(2) Before syphilis and gonorrhea tests are conducted</u>	223
<u>pursuant to division (C) (1) of this section, the licensed health</u>	224
<u>care professional shall inform the woman of the tests to be</u>	225
<u>conducted and her right to refuse.</u>	226
<u>(3) If a woman's medical records indicate that another</u>	227
<u>licensed health care professional has complied with the</u>	228
<u>requirements of division (C) (1) of this section for the</u>	229
<u>pregnancy, the treating licensed health care professional is not</u>	230
<u>required to comply with the requirements of that division.</u>	231
<u>(4) A licensed health care professional who causes tests</u>	232
<u>or an assessment to be conducted pursuant to division (C) (1) of</u>	233
<u>this section shall record that information in the woman's</u>	234
<u>medical records. If a woman refuses the tests, the refusal shall</u>	235
<u>be recorded in her medical records.</u>	236
<b>Section 2.</b> That existing sections 3701.24 and 3701.50 of	237
the Revised Code are hereby repealed.	238