

CHAPTER 543

H.B. No. 1829

AN ACT

relating to the prevention and control of communicable diseases; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1.02, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.02. PURPOSE. The legislature recognizes that many of the public health laws of the state were enacted under public health conditions that are not relevant to contemporary society. It is the intent of the legislature to revise *and consolidate* the laws pertaining to identifying, reporting, preventing, and controlling communicable disease or conditions that are injurious or threaten the health of the people of Texas. While the legislature recognizes that it is the duty of the state to protect the public health, the legislature also recognizes that it is the responsibility of each person to *act* [~~conduct himself~~] responsibly to prevent and control communicable disease in this state.

SECTION 2. Section 1.04, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.04. DEFINITIONS. In this Act:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of health.
- (3) "Communicable disease" means an illness due to an infectious agent or its toxic products that arises through transmission of that agent or its products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.
- (4) "Department" means the Texas Department of Health.

(5) *“Financially responsible adult” means a parent, guardian, spouse, or any person whom the laws of this state hold responsible for the debts incurred as a result of hospitalization or treatment.*

(6) [(5)] *“Health authority” means a physician designated to administer state and local laws relating to public health under the Local Public Health Reorganization Act (Article 4436b, Vernon’s Texas Civil Statutes).*

(7) [(6)] *“Health professional” means an individual whose vocation or profession is indirectly or directly related to the maintenance of the health status of another individual or animal and whose duties require a specified amount of formal education together with, in many instances, a special examination, certificate or license, and membership in regional or national associations.*

(8) *“Local health department” means a department of health created by the governing body of an incorporated municipality or the commissioners court of a county under the Local Public Health Reorganization Act (Article 4436b, Vernon’s Texas Civil Statutes).*

(9) [(7)] *“Person” means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity.*

(10) *“Physician” means a person licensed by the Texas State Board of Medical Examiners to practice medicine in Texas.*

(11) *“Public health district” means a department of health created under the Local Public Health Reorganization Act (Article 4436b, Vernon’s Texas Civil Statutes).*

(12) *“Regional director” means the physician who is the chief administrative officer of a region as designated by the department under the Local Public Health Reorganization Act (Article 4436b, Vernon’s Texas Civil Statutes).*

(13) *“Report” means information that is required to be provided to the department in accordance with Section 3.04 of this Act.*

(14) [(8)] *“Reportable disease” means a disease or condition for which the board requires a report.*

(15) *“Resident of this state” means a person who is physically present and living voluntarily in this state with the intention of making a home within this state and whose stay is not for temporary purposes. The intent may be demonstrated by the presence of personal effects at a specific abode within this state, employment within this state, possession of documentation such as a Texas driver’s license, motor vehicle registration, or voter registration forms, or other pertinent evidence of that intent.*

(16) [(9)] *“School authority” means the superintendent of a public school system or the superintendent’s designee and the principal or other chief administrative officer of a private school located in the state.*

(17) *“Sexually transmitted disease” means an infection, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another during or as a result of sexual relations of whatever kind between two persons and that produces or might produce a disease in or otherwise impair the health of either person or might cause an infection or disease in a fetus in utero or a newborn.*

(18) *“Standard serological test for syphilis” means tests and procedures for the diagnosis or evaluation of syphilis as may be approved by the board.*

SECTION 3. Section 2.02(c), Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon’s Texas Civil Statutes), is amended to read as follows:

(c) The board has [the] general supervision and [general] control over all matters pertaining to protecting the health of all individuals within the state and shall exercise those powers to prevent the introduction of disease into the state and to impose control measures to prevent the spread of disease in the state.

SECTION 4. Section 2.03(b), Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon’s Texas Civil Statutes), is amended to read as follows:

(b) The department may seek, receive, and expend any funds received through appropriations, grants, *fees*, donations, or contributions from public or private sources for the purposes of identifying, reporting, preventing, or controlling those communicable diseases or conditions that have been determined to be injurious or to be a threat to the public health, subject to any limitations or conditions prescribed by the legislature.

SECTION 5. Section 3.01, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.01. PREVENTION. (a) The department may develop and maintain an ongoing program of health education for the prevention and control of communicable diseases.

(b) The department may contract for mass media productions, outdoor display advertising, newspaper advertising, literature, bulletins, ~~and~~ pamphlets, *posters, audiovisual displays, and other means of presentation* that are intended to increase the public awareness of individual actions needed to prevent and control communicable disease.

(c) The department shall furnish the State Board of Education with recommendations and suggestions for the health curriculum in the public schools of the state.

(d) The board shall develop the immunization requirements for the children in the state and shall:

(1) cooperate with the Texas Board of Human *Services* ~~[Resources]~~ in formulating and implementing the immunization requirements for children admitted to child-care facilities; and

(2) cooperate with the State Board of Education in formulating and implementing all immunization requirements for students admitted to public and private elementary or secondary schools.

(e) The Texas Animal Health Commission and The Texas A&M University Veterinary Diagnostic Laboratory shall each adopt by rule a memorandum of understanding with the department to exchange information on communicable diseases in animals.

SECTION 6. Section 3.02, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.02. CLASSIFICATION OF COMMUNICABLE DISEASE FOR REPORTING.

(a) The board shall identify and classify each communicable disease and health condition that must be reported under this Act. The classification must be based on the nature of the disease or condition and the severity of its impact on the public health.

(b) The board shall establish, maintain, and revise as necessary a list of reportable diseases *and conditions*.

(c) The board may establish registries for reportable and nonreportable communicable diseases and health conditions. Any information provided to the department of nonreportable communicable diseases or health conditions may be made only on a voluntary basis.

(d) Acquired immune deficiency syndrome and human immunodeficiency virus infection are reportable diseases or conditions under this Act. The board shall classify them as such and shall require them to be reported as provided by this Act.

SECTION 7. Section 3.03, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.03. REPORTING REQUIREMENTS. (a) Every physician, dentist, and veterinarian licensed to practice in this state shall report to the local health authority, after *the* ~~[his]~~ first professional encounter, each patient or animal *examined* ~~[he examines]~~ having or suspected of having a reportable disease. *If there is no local health authority appointed or if the physician is outside the jurisdiction of a local health authority, the report shall be made to the regional director.*

(b) The local school authorities shall report to the local health authority those children attending school who are suspected of having a reportable disease. *If there is no local health authority appointed or if the school is outside the jurisdiction of a local health authority, the report shall be made to the regional director.* The board shall adopt rules

establishing procedures for determining which children should be suspected and reported and procedures for their exclusion from school pending appropriate medical diagnosis or recovery.

(c) *Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence of a reportable disease or health condition as defined by the board shall notify the health authority or the regional director of the findings in accordance with this section and procedures adopted by the board.*

(d) *If the laboratory examination was requested by a physician, notice shall be sent to:*

(1) *the health authority for the jurisdiction where the physician's office is located, if the physician's office is within the jurisdiction of a public health district or local health department; or*

(2) *the regional director for the jurisdiction where the physician's office is located, if the physician's office is outside the jurisdiction of a public health district or local health department or if no health authority has been appointed.*

(e) *If the laboratory examination was not requested by a physician, notice shall be sent to:*

(1) *the health authority for the jurisdiction where the laboratory is located, if the laboratory is within the jurisdiction of a public health district or local health department; or*

(2) *the regional director for the jurisdiction where the laboratory is located, if the laboratory is outside the jurisdiction of a public health district or local health department or if no health authority has been appointed.*

(f) *If a case of a reportable disease or health condition has not been reported as required by Subsections (a), (b), and (c) [~~and (b)~~] of this section, [~~it is the duty of~~] the following persons *should* [~~to~~] notify the local health authority or the department *when a reportable disease or health condition is suspected* and [~~to~~] provide all information known to them concerning any person who has or is suspected of having a reportable disease or health condition:*

(1) *each professional, registered nurse;*

(2) [~~each medical laboratory director;~~

[~~(3)~~] *each administrator or director of a public or private temporary or permanent child-care facility [~~or day-care center~~];*

(3) [(4)] *each administrator or director of a nursing home, personal care home, maternity home, adult respite care center, or adult day-care center;*

(4) [(5)] *each administrator of a home health agency;*

(5) [(6)] [~~each superintendent or superintendent's designee of a public or private school;~~

[(7)] *each administrator or health official of a public or private institution of higher learning;*

(6) [(8)] *each owner or manager of a restaurant, dairy, or other food handling or food processing establishment or outlet;*

(7) [(9)] *each superintendent, manager, or health official of a public or private camp, home, or institution;*

(8) [(10)] *each parent, guardian, or householder;*

(9) [(11)] *each health professional; and*

(10) *each administrator or health official of a penal or correctional institution* [(12) *each chief executive officer of a hospital*].

SECTION 8. Section 3.04, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.04. GENERAL PROCEDURES FOR REPORTING COMMUNICABLE DISEASE. (a) ~~Reports required under Section 3.03 of this Act shall be made to the health authority in the jurisdiction in which the individual or animal who has or is suspected of having the disease or condition is found.~~

~~(b)~~ Each health authority or regional director shall keep a record of each case of a disease or condition reported to him.

(b) A health authority or regional director shall report to the department's central office diseases or conditions declared reportable by the board at least as frequently as the interval set by rule of the board.

(c) The board shall prescribe the form and method of reporting under this Act, which may be in writing, by telephone, by electronic data transmission, or by other means. The board may require the reports to contain any information necessary to achieve the purposes of this Act, including the name, address, age, sex, race, occupation, date of onset of the disease or condition, probable source of infection, the name of the attending physician or dentist, or other prescribed information pertaining to the reported case. If the commissioner determines that the procedure for reporting diseases or conditions would cause the information to be delayed unduly, the commissioner may authorize an alternate routing in particular cases.

SECTION 9. Section 3.05, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.05. REPORTS OF DEATH DUE TO A COMMUNICABLE DISEASE. (a) If a physician knows or suspects that an individual ~~he has~~ attended during the individual's last illness has died of a reportable disease or other ~~[a]~~ communicable ~~[or possibly epidemic]~~ disease that in the physician's judgment may be a threat to the public health, the physician shall immediately notify the health authority of the jurisdiction in which the death is pronounced or the department.

(b) If either the attending physician or the health authority requires further information concerning the cause of death of an individual in order to protect the public health, the physician or the health authority may request that an autopsy be performed with the consent of the survivors. If there are no survivors or consent for an autopsy is withheld by the survivors, the health authority shall order an autopsy to determine the cause of death. The results of the autopsy shall be reported to the department.

(c) If either a justice of the peace acting as coroner or a county medical examiner in the course of an inquest under Chapter 49, Code of Criminal Procedure, 1965, determines that an individual's cause of death was a reportable disease or other ~~[a]~~ communicable ~~[or possibly epidemic]~~ disease that in the coroner's or medical examiner's judgment may constitute a threat to the public health, the coroner or medical examiner shall immediately notify the health authority of the jurisdiction in which this finding was made or the department.

SECTION 10. Section 3.06, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.06. CONFIDENTIALITY OF REPORTS AND RECORDS. (a) Reports, records, and information relating to cases or suspected cases of diseases or health conditions furnished to the health authority or the department are confidential and may be used only for the purpose of this Act. Reports, records, and information relating to cases or suspected cases of diseases or health conditions ~~[disease]~~ are not public information under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973~~[-as amended]~~ (Article 6252-17a, Vernon's Texas Civil Statutes). *That information may not be released or made public on subpoena or otherwise, except:*

(1) the release of medical or epidemiological information for statistical purposes made so that no person can be identified;

(2) the release of medical or epidemiological information made with the consent of all persons identified in the information released;

(3) the release of medical or epidemiological information to medical personnel, appropriate state agencies, or county and district courts made to comply with this Act

and related rules concerning the control and treatment of communicable diseases and health conditions;

(4) the release of medical or epidemiological information to appropriate federal agencies, such as the United States Public Health Service Centers for Disease Control, limited to the name, address, age, sex, race, occupation, date of disease onset, probable source of infection, or other requested information relating to the case or suspected case of a communicable disease or health condition;

(5) the release of medical or epidemiological information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party; or

(6) in a case of sexually transmitted disease involving a minor not more than 12 years of age, the release of only the child's name, age, address, and name of the disease to appropriate agents as required by Chapter 34, Family Code, and no other information; provided, that if the information to be disclosed is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

(b) A state or public health district officer or employee, local health department officer or employee, or local health authority may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of a person examined or treated by the district, department, or authority for a reportable disease, or as to the existence or contents of any reports or information received from any person unless the person examined or treated for the disease or condition consents. ~~[Information contained in the reports of disease may be used for statistical and epidemiological studies that are public information as long as an individual is not identifiable.]~~

SECTION 11. Section 3.07, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.07. INVESTIGATIONS. (a) The department shall investigate the causes of communicable diseases and methods of prevention.

(b) ~~The~~ ~~[In special circumstances, the]~~ department may require special investigations of ~~[certain]~~ specified cases of disease so that it may evaluate the status in this state of diseases of an epidemic, endemic, or sporadic nature. On request, each health authority shall provide the data according to the written instructions of the department.

(c) The commissioner, the commissioner's designee, a health authority, or a health authority designee may enter at reasonable times and inspect within reasonable limits a public place or building, including a public conveyance, in the performance of his duty to prevent or control the entry into or spread in the state of communicable disease by enforcing the provisions of this Act or the rules of the board adopted under this Act. In this section, "a public place or building" means all or any portion of an area, a structure, or a conveyance, regardless of ownership, that is not used for private residential purposes.

(d) Persons authorized to conduct investigations under this section may take samples or specimens of materials present on the premises, including samples or specimens of soil, water, air, unprocessed or processed foodstuffs, manufactured items of clothing, pharmaceuticals, and household goods. If samples or specimens are taken, a corresponding sample shall be offered to the person in control of the premises for independent analysis. Persons securing the required samples and specimens may reimburse or offer to reimburse the owner for the materials taken, but the reimbursement may not exceed the actual monetary loss sustained by the owner.

(e) The department may investigate the existence of communicable diseases in the state to determine the nature and extent of the diseases and to formulate and evaluate the control measures employed to protect the public health. *On request, a person shall provide the department with records, data, and other information according to the written instructions of the department.* For the purpose of the investigation, the department may administer oaths, summon witnesses, and compel the witness's attendance and the production of documents. The department may seek the assistance of a county or district court to compel the production of documents and the witness's

attendance at a hearing for which the *documents are requested and the witness is summoned*. A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to appear at a hearing or proceeding under this section that is conducted outside the county in which the witness or deponent resides is entitled to receive a travel and per diem allowance to be set by rules adopted by the board. The allowance may not exceed the travel and per diem allowance authorized for state employees traveling in the state on official business.

(f) For the purpose of investigation or inspection, the commissioner, employees of the department, and health authorities have the right of entry onto any land or into any building, vehicle, watercraft, or aircraft and access to any individual, animal, or object that is in isolation, detention, restriction, or quarantine regardless of whether *that measure* ~~[the isolation, detention, restriction, or quarantine]~~ is instituted by the commissioner, employees of the department, or a health authority or is a voluntary *one* ~~[isolation, detention, restriction, or quarantine]~~ undertaken on instructions from a private physician.

SECTION 12. Article 3, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended by adding Section 3.08 to read as follows:

Sec. 3.08. NOTIFICATION OF EMERGENCY MEDICAL SERVICE EMPLOYEE, PEACE OFFICER, OR FIREFIGHTER. (a) The Texas Board of Health shall promulgate guidelines designating certain reportable disease for which this section requires notification. The Texas Board of Health shall also promulgate guidelines defining the conditions that constitute possible exposure to these certain reportable diseases.

(b) An emergency medical service personnel, peace officer, or firefighter shall be notified of a positive test result for any reportable disease listed in Texas Board of Health guidelines defined in Subsection (a) of this section if:

(1) a person was delivered to a hospital as defined by Section 1.03, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes), by the emergency medical service personnel, peace officer, or firefighter;

(2) the hospital has knowledge that the person has a reportable disease and has medical reason to believe that the person had the reportable disease at the time of admittance to the hospital; and

(3) the emergency medical service personnel, peace officer, or firefighter was exposed to the reportable disease during the course of duty.

(c) The hospital that admitted the person shall notify the local health authority of the possible exposure and the local health authority shall notify the director of the appropriate department of the entity that employs the emergency medical service personnel, peace officer, or firefighter of the possible exposure and the director shall notify the employee affected.

(d) Any person notified of a possible exposure under this section shall maintain the confidentiality of the information as provided by this Act.

(e) No person shall be liable for good faith compliance with this section.

(f) Nothing in this section creates a duty by the hospital to perform any test or tests beyond those which are necessary for the medical management of the person delivered by the hospital.

SECTION 13. Section 4.01(c), Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) As used in this section, the term "control measures" includes, but is not limited to:

- (1) immunization;
- (2) detention;
- (3) restriction;
- (4) disinfection;
- (5) decontamination;

- (6) isolation;
- (7) quarantine;
- (8) disinfection; ~~and~~
- (9) chemoprophylaxis; *and*
- (10) *preventive therapy.*

SECTION 14. Section 4.02, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.02. APPLICATION OF CONTROL MEASURES TO AN INDIVIDUAL. (a) *Every physician and every person who examines or treats an individual having a communicable disease shall instruct the individual in measures for preventing reinfection and the spread of that disease and of the necessity for treatment until cured or free from the infection.*

(b) If the department or health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease, the department or health authority may order the individual or the individual's parent, legal guardian, or managing conservator, if the individual is not of legal age, to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in the state. All orders must be in writing and be delivered personally *or by registered or certified mail* to the individual if the individual is of legal age or to the individual's parent, legal guardian, or managing conservator if the individual is not of legal age. ~~The [In the absence of clinical or subclinical disease, the]~~ order is not effective after the *individual [disease]* is no longer *infected with a communicable disease* or after the longest usual incubation period, *in the case of a [for the]* suspected disease.

(c) ~~(b)~~ An individual may be *subject to court orders for the control of communicable disease under Article 8 of this Act [quarantined]* if the individual or the individual's parent, legal guardian, or managing conservator, if the individual is not of legal age, fails or refuses to comply with the written orders of the department or health authority as required by Subsection (b) ~~[(a)]~~ of this section and the individual is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health. ~~[The board shall identify communicable diseases that present a threat to the public health if not immediately controlled. The department or health authority may request a magistrate to issue a warrant. Based on the affidavit of the department or a health authority that the individual is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health, the magistrate may issue a warrant ordering a peace officer to take the individual into custody and to transport the individual to a hospital or other facility considered suitable by the commissioner. A jail or other similar detention facility may not be used unless the facility is specifically equipped and staffed to provide disease control measures. The head of the hospital or other facility designated by the commissioner shall admit the individual and cooperate with the health authority and the department to implement control measures.~~

~~[(c)]~~ If the individual is not of legal age, the department or health authority issuing the warrant for detention shall immediately notify the individual's parent, legal guardian, or managing conservator by registered or certified mail or by personal service.

~~[(d)]~~ Without unnecessary delay, the individual or the parent, legal guardian, or managing conservator shall be taken before a magistrate of the county in which the individual is detained. The magistrate in clear language shall advise the individual or the parent, legal guardian, or managing conservator of the order that is alleged to have been violated. The individual or the parent, legal guardian, or managing conservator is entitled to representation by counsel should he so desire. The magistrate shall appoint counsel on request of an individual who cannot afford to retain private counsel. The county in which the individual resides shall pay all reasonable and necessary expenses of appointed counsel. If the individual is a nonresident of the state, the court shall certify the amount of the reasonable and necessary expenses of appointed counsel to the state comptroller of public accounts. The comptroller shall issue a warrant to the court appoint

~~ed attorney for the certified amount. On request by the department or health authority, a magistrate shall preside at the hospital or other facility where the individual is detained. The magistrate shall advise the individual that the individual will be released when he no longer presents a threat to the public health as determined by the health authority or the commissioner or on the granting of a writ of habeas corpus by a court of competent jurisdiction.]~~

(d) ~~[(e)]~~ Except as prescribed by this subsection, an individual *who is the subject of court orders under Article 8 of this Act* ~~[detained]~~ shall pay the expense of the required medical care and treatment. The medical expenses of an individual who is a resident of the state, is indigent and without the financial means to pay for part or all of the required medical care or treatment, and is not eligible for benefits under an insurance contract, group policy or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program or facility shall be paid by the county or hospital district of the individual's residence. The medical expenses of a nonresident individual who is indigent and without the financial means to pay for part or all of the required medical care and treatment may be paid by the state to the extent that the individual is not eligible for benefits that will pay the expenses under an insurance contract, group policy or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program. The provider of the medical care and treatment shall certify the reasonable amount of the required medical care to the state comptroller of public accounts. The comptroller shall issue a warrant to the provider of the medical care and treatment for the certified amount. The department may return a nonresident individual involuntarily hospitalized in this state to the program agency in the state in which the individual resides. The department may enter into reciprocal agreements with the proper agencies of other states to facilitate the return of individuals involuntarily hospitalized in this state.

~~[(f) An individual ordered admitted to a publicly supported hospital under this section may, at his option and at his own expense, choose to be hospitalized at a private or other proprietary hospital subject to the approval of the board or health authority.]~~

SECTION 15. Section 4.06(f), Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(f) A crew member, a passenger, or an individual on board the private carrier, common carrier, or private conveyance shall pay the expense of the control measures employed under the provision of Section 4.02 of this Act. The state may pay the expenses of an individual who is without the financial means to pay for part or all of the required medical care or treatment and who is not eligible for benefits under an insurance contract, group policy or prepaid health plan, or benefits provided by a federal, state, or local medical assistance program, as prescribed by ~~[Subsection (e) of]~~ Section 4.02(d) of this Act.

SECTION 16. Section 6.01(b), Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An offense under this section is a *Class B misdemeanor* ~~[felony of the third degree]~~.

SECTION 17. Section 6.02(b), Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) An offense under this section is a *Class B misdemeanor* ~~[felony of the third degree]~~.

SECTION 18. Section 6.04, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6.04. VIOLATION OF [COURT] ORDERS REQUIRING CERTAIN CONTROL MEASURES. (a) A person commits an offense if the person knowingly refuses to perform or to allow the performance of certain control measures ordered by a health authority or the department under Sections 4.02 through 4.06 of this Act.

(b) An offense under this section is a *Class B misdemeanor* ~~[felony of the third degree]~~.

SECTION 19. Article 6, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), is amended by adding Sections 6.09 and 6.10 to read as follows:

Sec. 6.09. FAILURE TO ADMINISTER PROPHYLAXIS. (a) A person commits an offense if the person is a physician or other person in attendance on a pregnant woman either during pregnancy or at delivery and fails to perform any duty required by Section 7.02 of this Act.

(b) An offense under this section is a Class B misdemeanor.

Sec. 6.10. FAILURE TO REPORT COMMUNICABLE DISEASE. (a) A person commits an offense if the person knowingly fails to report a reportable communicable disease or health condition as required under Article 3 of this Act.

(b) An offense under this section is a Class B misdemeanor.

SECTION 20. The Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes) is amended by adding Article 7 to read as follows:

ARTICLE 7. CONTROL OF SPECIFIC DISEASES

Sec. 7.01. SEROLOGIC TESTING DURING PREGNANCY. (a) Every physician or other person permitted by law to attend a pregnant woman during gestation or at the time of delivery of the infant resulting from the pregnancy shall, in the case of each woman attended, take or cause to be taken a sample of the blood of the woman at the time of first examination and visit and submit the sample to a laboratory approved under Section 7.04 of this Act for a standard serologic test for syphilis. The physician or person in attendance shall retain a report of each case for nine months and deliver the report to any successor in the case. The successor is presumed to have complied with this section.

(b) Within 24 hours of delivery, the physician or other person in attendance shall take or cause to be taken a sample of blood from the mother of the infant and submit the sample to a laboratory approved under Section 7.04 of this Act for a standard serologic test for syphilis. A sample of blood from the umbilical cord of the infant in lieu of the maternal blood may be submitted.

(c) Every physician or other person required to report births or fetal deaths shall state on each birth or fetal death certificate whether a blood test for syphilis was performed during the pregnancy and on the maternal blood or the umbilical cord blood of the newborn infant in accordance with Subsections (a) and (b) of this section.

Sec. 7.02. PROPHYLACTIC TREATMENT OF NEWBORNS. (a) Every physician, nurse, midwife, or other person in attendance at childbirth shall use or cause to be used prophylaxis approved by the board in order to prevent ophthalmia neonatorum. Each lay midwife shall administer such prophylaxis to each infant the lay midwife delivers under standing orders by a licensed physician or by any agent or employee of the Texas Department of Health under standing orders by a licensed physician working for the department.

(b) Subject to the availability of funds, the department shall furnish prophylaxis approved by the board free of charge to health-care providers if the newborn's financially responsible adult is unable to pay. Subject to the availability of funds, the department shall furnish prophylaxis approved by the Texas Board of Health to prevent ophthalmia neonatorum to each lay midwife identified under Section 3, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), subject to the restrictions of Section 3.06(d)(7)(A) of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). Such administration and possession of eye prophylaxis by a lay midwife does not constitute a violation of Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes).

(c) A charge may not be made by the health-care providers for prophylaxis that is received free from the department.

Sec. 7.03. CONTRACTS FOR SERVICES. The department may enter into contracts with physicians to provide services to persons who are infected or who are reasonably suspected of being infected with a sexually transmitted disease or tuberculosis if:

- (1) no local or regional health department services are available;
- (2) the person in need of examination or treatment is unable to pay for the services; and
- (3) there is an immediate need for examination or treatment of the person.

Sec. 7.04. LABORATORY PROFICIENCY CERTIFICATION AND NOTIFICATION PROCEDURES. (a) All state, county, city, and private laboratories that conduct standard serologic tests for syphilis on blood samples submitted to the laboratories under Section 7.01 of this Act must be approved by the department.

(b) For the purpose of approving laboratories, the board shall adopt rules establishing:

- (1) minimum standards of proficiency for laboratories conducting standard serologic tests;
- (2) procedures for the inspection and monitoring of laboratories conducting standard serologic tests;
- (3) criteria for issuance, suspension, and revocation of laboratory proficiency certification to perform standard serologic tests; and
- (4) criteria for approval and disapproval of serologic tests and procedures.

(c) Standard serologic tests for syphilis required by Section 7.01 of this Act shall be executed for and a report submitted to any physician without charge by a state, county, or city laboratory.

(d) The commissioner shall provide all county clerks with the names of the approved laboratories within their counties and shall notify them of any additions, suspensions, or revocations of proficiency approval.

SECTION 21. The Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes) is amended by adding Article 8 to read as follows:

**ARTICLE 8. COURT ORDERS FOR MANAGEMENT OF PERSONS
WITH COMMUNICABLE DISEASES**

**SUBCHAPTER A. PREREQUISITES FOR COURT ORDERS FOR MANAGEMENT
OF PERSONS WITH COMMUNICABLE DISEASES**

Sec. 8.01. COURT ORDERS FOR MANAGEMENT OF PERSONS WITH COMMUNICABLE DISEASES. (a) Under the provisions of this Act and upon a proper application, a judge may enter a temporary order for the management of a person with a communicable disease or an extended order for the management of a person with a communicable disease.

(b) A temporary order for the management of a person with a communicable disease authorizes examinations, treatment, and surveillance for a period not to exceed 90 days, but the order may specify any shorter period. The temporary order for the management of a person with a communicable disease may be entered only upon compliance with this Act.

(c) An extended order for the management of a person with a communicable disease authorizes examination, treatment, and surveillance for not more than 12 months. The extended order for the management of a person with a communicable disease may be entered only upon compliance with this Act.

Sec. 8.02. APPLICATION FOR COURT ORDERS FOR MANAGEMENT OF PERSONS WITH COMMUNICABLE DISEASES. (a) A sworn application for a court order for the management of a person with a communicable disease may be filed by any

city, county, or district attorney, at the request of the health authority or the department, with the district court in the county in which the person resides, in which the person is found, or in which the person is receiving health services by court order. However, upon request of the person or the person's attorney, the court may in its discretion for good cause shown transfer the application to the county of the person's residence, if not initially filed there. An affidavit of medical evaluation and a copy of the written orders issued under Section 4.02 of this Act must be filed with the application.

(b) The application must state whether temporary orders for the management of a person with a communicable disease or extended orders for the management of a person with a communicable disease are being sought.

(c) The application must be in writing and must state the following based on information and belief of the health authority or department:

(1) the name and address of the person, including the county of the person's residence in this state;

(2) that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and meets the criteria of this Act for court orders for the management of a person with a communicable disease; and

(3) that the person fails or refuses to comply with the written orders of the department or health authority under Section 4.02 of this Act.

(d) The application shall be styled using the person's initials and not the person's full name.

Sec. 8.03. AFFIDAVIT OF MEDICAL EVALUATION. (a) An affidavit of medical evaluation must be dated and signed by the commissioner or the commissioner's designee, or by a health authority with the concurrence of the commissioner or the commissioner's designee, and must state:

(1) the name and address of the examining physician, if applicable;

(2) the name and address of the person examined or to be examined;

(3) the date and place of the examination, if applicable;

(4) a brief diagnosis of the physical and mental condition of the person examined, if applicable;

(5) the period, if any, that the person examined has been under the care of the examining physician;

(6) an accurate description of the health treatment, if any, given by or administered under the direction of the examining physician; and

(7) the opinion of the health authority or department and the detailed basis for that opinion, including laboratory reports, that:

(A) the person examined is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health; and

(B) as a result of that communicable disease the person:

(i) is likely to cause serious harm to himself; or

(ii) will, if not examined, observed, or treated, continue to endanger public health.

(b) If the health authority or department finds that the person meets at least one of the criteria listed in Subsection (a)(7)(B) of this section, the affidavit must specify which of the criteria formed the basis for the opinion.

(c) If the certificate is to be offered in support of an application for a court order for extended management of a person with a communicable disease, the certificate must include, in addition to the requirements of Subsection (a) of this section, the opinion of the health authority or department and the detailed basis for that opinion that the condition of the person is expected to continue for more than 90 days.

(d) If the certificate is to be offered in support of a motion for an order of protective custody, the certificate must include, in addition to the requirements of

Subsection (a) of this section, the opinion of the health authority or department and the detailed basis for that opinion that the person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the person's behavior to the extent that the person cannot remain at liberty.

Sec. 8.04. RECOMMENDATION FOR TREATMENT. (a) The commissioner shall designate health care facilities throughout the state that are capable of providing services for the examination, observation, isolation, or treatment of persons having or suspected of having a communicable disease. However, the commissioner may not designate a nursing home or custodial care home required to be licensed under Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes). The health authority shall select a designated facility in the county where the application for a court order for the management of a person with a communicable disease is filed. If no facility is designated within the county, the commissioner shall select the facility.

(b) The court shall direct the facility selected by the health authority or the commissioner to file with the court a recommendation for treatment for the person before the date set for the hearing.

(c) Except in an emergency as determined by the court, a hearing on an application may not be held before the recommendation for treatment required by this section is filed.

(d) This section does not relieve a county of any of its responsibilities under other provisions of this Act or applicable law for providing health care services.

(e) The extent to which a designated facility must comply with this section shall be based on the commissioner's determination that the facility has sufficient resources to perform the necessary services.

(f) This section does not apply to a person for whom treatment in a private health facility is proposed.

SUBCHAPTER B. PREHEARING LIBERTY OR PROTECTIVE CUSTODY

Sec. 8.05. LIBERTY PENDING HEARING. Pending the hearing on an application for court order for the management of a person with a communicable disease, the person shall remain at liberty, unless the person is legally detained under an appropriate provision of this Act.

Sec. 8.06. PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for a court order for the management of a person with a communicable disease is pending. The motion may be filed by the city, county, or district attorney in behalf of the health authority or department. The motion must state that the health authority or department has reason to believe and does believe upon the basis of the conduct of the person, upon the circumstances under which the person is found, or upon the representations of a creditable person that the person meets the criteria provided by this section. The motion must be accompanied by an affidavit of medical evaluation.

(b) The judge of the court in which the application is pending may designate any magistrate to issue orders of protective custody under this Act in the absence of the judge.

(c) The judge or designated magistrate may issue an order of protective custody if the judge or designated magistrate determines:

(1) that the health authority or department has stated his opinion and the detailed basis for his opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health; and

(2) that the person fails or refuses to comply with the written orders of the health authority or the department under Section 4.02 of this Act.

(d) *Noncompliance with orders issued under Section 4.02 of this Act may be demonstrated by the person's behavior to the extent that the person cannot remain at liberty.*

(e) *The determination under Subsection (c) of this section may be made on the basis of the application and the affidavit. If the judge or designated magistrate concludes that a fair determination of the matter cannot be made on that information, the judge or designated magistrate may take further evidence. If the determination is made on the basis of the application and the affidavit, the judge or designated magistrate must determine that the conclusions of the health authority or the department are adequately supported by the information presented. The judge or designated magistrate may issue an order of protective custody if the person meets the requirements of this section even if the person is charged with a criminal offense, provided that the head of the facility designated to detain the person has consented to the proposed custody.*

(f) *The order of protective custody must direct a peace officer to take the person into protective custody and immediately transport the person to an appropriate in-patient health facility that has been designated by the commissioner as a suitable place and detain the person pending a probable cause hearing. If there is no appropriate in-patient health facility available, the person shall be transported to a facility deemed suitable by the health authority. The extent to which a designated health facility must comply with the provisions of this section shall be based on a determination by the commissioner that the facility has sufficient resources to perform the necessary services. A person may not be detained in a private health facility without first obtaining the consent of the head of the facility.*

Sec. 8.07. APPOINTMENT OF ATTORNEY; NOTICE OF PROBABLE CAUSE HEARING. (a) *When an order of protective custody is signed, the presiding judge or the designated magistrate shall simultaneously appoint an attorney, if there is no attorney representing the person.*

(b) *Within a reasonable period before the probable cause hearing, the court ordering protective custody shall provide to the person and the person's attorney a written notice that states:*

- (1) *that the person has been placed under an order of protective custody;*
- (2) *the reason the order was issued; and*

(3) *the time and place of a hearing to establish probable cause to believe that the person presents a substantial risk of serious harm to the person or others such that the person cannot be at liberty pending the hearing on a court order for the management of a person with a communicable disease, and to establish that the health authority or the department has stated an opinion and the detailed basis for the opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health.*

Sec. 8.08. PROBABLE CAUSE HEARING ON PROTECTIVE CUSTODY. (a) *A probable cause hearing shall be held within 72 hours of the time detention begins under the order for protective custody. However, if the 72-hour period ends on a Saturday or Sunday or a legal holiday, the probable cause hearing shall be held on the first succeeding business day. The probable cause hearing may be postponed for an additional period not to exceed 24 hours if an extreme emergency is declared by the presiding judge or magistrate based on extremely hazardous weather conditions that threaten the safety of the person or other essential parties to the hearing. The hearing shall be before a magistrate or, at the discretion of the presiding judge, before a master appointed by the presiding judge. The master shall receive reasonable compensation. At the hearing, the person and the person's attorney shall have an opportunity to appeal and present evidence to challenge the allegation that the person presents a substantial risk of serious harm to himself or others. The magistrate or master may consider evidence, including letters, affidavits, and other material, that may not be admissible or sufficient in a subsequent hearing. The state may*

prove its case on the health authority's or department's affidavit filed in support of the initial detention.

(b) If after the hearing the magistrate or master determines that no probable cause exists to believe that the person presents a substantial risk of serious harm to himself or others, the magistrate or master shall order the person's release. Arrangements shall be made for the return of the person to the location of the person's apprehension, to the person's place of residence within the state, or to some other suitable place. If after the hearing the magistrate or master determines that an adequate factual basis exists for probable cause to believe that the person presents a substantial risk of serious harm to himself or others such that the person cannot be at liberty pending the hearing on the application, the person's detention in protective custody shall continue subject to this Act. If the protective custody is to continue, the magistrate or master shall arrange for the person to be returned to the health facility or other suitable place along with copies of the affidavits and other material submitted as evidence and a Notification of Probable Cause Hearing which must read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the _____ day of _____, 19____, the undersigned hearing officer heard evidence concerning the need for protective custody of _____ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient and his or her attorney _____ have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on _____ (date of notice) _____

I have examined the affidavit of medical evaluation and _____ (other evidence considered) _____. Based upon this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or herself (yes _____ or no _____) or others (yes _____ or no _____) such that (s)he cannot be at liberty pending final hearing because (s)he is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and (s)he has failed or refused to comply with the orders of the health authority or the Texas Department of Health delivered on _____ date of service) _____

(c) A copy of the notification of probable cause hearing and the supporting evidence shall also be filed with the district court that entered the original order of protective custody.

Sec. 8.09. DETENTION IN PROTECTIVE CUSTODY; RELEASE FROM CUSTODY. (a) Except as provided by this section, the head of a facility in which a person is detained under an order for protective custody or the facility head's designee shall detain the person pending an order for a court order for the management of a person with a communicable disease issued under this Act.

(b) The person detained in protective custody shall be detained in an appropriate in-patient health facility that has been designated by the commissioner and selected by the health authority under Section 8.04 of this Act. A person may not be detained in protective custody in a nonmedical facility used for the detention of persons charged with or convicted of a crime unless there is an extreme emergency, and in no case may the person be confined in that nonmedical facility for more than 72 hours, excluding weekends, legal holidays, and extreme weather emergencies declared under this Act. A person detained in a nonmedical facility shall be kept separate from those persons charged with or convicted of a crime.

(c) If the person is detained during an emergency in a nonmedical facility, the health authority shall see that proper isolation methods are used and medical care is made available to the person held in protective custody.

(d) If the head of the facility in which the person is detained does not receive notice that a probable cause hearing has been held within 72 hours of the time detention begins under the order of protective custody, excluding weekends, legal holidays, and extreme weather emergencies, the head of the facility shall immediately release the person from custody.

(e) A person shall be discharged by the head of the facility in which the person has been detained if:

(1) a final order for a court order for the management of a person with a communicable disease has not been entered by the court before the expiration of 14 days, or before the expiration of 30 days from the date of the filing of the original application if an order of continuance has been granted; or

(2) the health authority or the commissioner determines that the person no longer meets the criteria for protective custody as specified in this Act.

SUBCHAPTER C. PROCEEDINGS FOR COURT ORDERS FOR MANAGEMENT OF PERSON WITH COMMUNICABLE DISEASE

Sec. 8.10. COURT IN WHICH PROCEEDINGS TO BE HELD. A proceeding under this Act shall be held in a district court of the county in which the person is found.

Sec. 8.11. SETTING ON APPLICATION FOR COURT ORDERS FOR MANAGEMENT OF PERSON WITH COMMUNICABLE DISEASE. When an application for a court order for the management of a person with a communicable disease is filed, the judge or magistrate designated under this Act shall set a date for a hearing. The hearing must be held within 14 days of the date on which the application is filed. If the person or the person's attorney objects, the hearing may not be held within the first three days following the date on which the application is filed. Upon proper motion by either party and for good cause shown or upon agreement of the parties, the court may grant one or more continuances of the hearing, provided that the hearing shall be held not later than 30 days after the date on which the original application is filed.

Sec. 8.12. NOTICE. (a) Immediately after the judge or the designated magistrate sets the date for the hearing, the person and the person's attorney shall receive written notice of the time and place of the hearing and a copy of the application. A copy of the application and notice shall be delivered in person or sent by certified mail to the person's parent if the person is a minor under the age of 18, to the person's duly appointed guardian if the person is the subject of a guardianship, or to the person's managing and possessory conservators, if either has been appointed. If the parent cannot be located and no guardian or conservator has been appointed, the court shall appoint a guardian ad litem for the minor.

(b) Within a reasonable time before the hearing on the application, the city, county, or district attorney shall provide the person's attorney with a statement including the following information, provided that the person's attorney has been unable to obtain the information and has requested the information from the city, county, or district attorney before 48 hours preceding the time set for the hearing:

(1) the provisions of this Act that will be relied upon at the hearing to establish that the person requires temporary or extended orders for the management of a person with a communicable disease;

(2) the names, addresses, and telephone numbers of the witnesses who may testify at the hearing;

(3) a brief description of the reasons why court-ordered temporary or extended orders are required; and

(4) a list of any acts of the person that the applicant will attempt to prove at the hearing.

(c) *At the hearing, the judge may admit evidence and testimony relating to matters not disclosed under this Act upon a determination that the admission would not deprive the person of a fair opportunity to contest the evidence or testimony.*

Sec. 8.13. APPOINTMENT OF ATTORNEY. (a) *Within 24 hours after the filing of an application for a court order for the management of a person with a communicable disease, the judge shall appoint an attorney to represent the person if the person does not already have an attorney.*

(b) *At the time of appointment of an attorney, the judge shall also appoint a sign interpreter if the person is hearing impaired or a language interpreter as required to ensure effective communication with the attorney in the person's primary language.*

(c) *The person's attorney shall be furnished with all records and papers in the cause and shall have access to all hospital and doctors' records in the cause.*

Sec. 8.14. MEDICAL TESTIMONY. (a) *At the hearing on an application for temporary orders for the management of a person with a communicable disease, the person and the person's attorney may waive in writing the right to cross-examine witnesses. If a waiver is made and filed with the court, the court may admit into evidence the affidavit of medical evaluation and make its findings on the basis of the affidavit. If admitted, the affidavit constitutes competent medical testimony and the court may make its findings on the basis of the affidavit.*

(b) *At a hearing on an application for extended orders for the management of a person with a communicable disease, the court may not make its findings solely on the basis of the affidavit of medical evaluation. The court shall proceed to hear testimony. An order for extended orders for the management of a person with a communicable disease may not be entered unless appropriate findings are made and supported by the testimony taken at the hearing. The testimony shall include competent medical testimony.*

(c) *This section does not preclude the court from considering the testimony of a nonphysician health professional in addition to medical testimony.*

Sec. 8.15. HEARING ON COURT ORDERS FOR MANAGEMENT OF PERSON WITH COMMUNICABLE DISEASE. (a) *The judge may hold the hearing on an application for a court order for the management of a person with a communicable disease at any suitable place within the county. The hearing should be held in a physical setting not likely to have a harmful effect on the public or the person. Upon demand of the person or the person's attorney, the hearing shall be held in the courthouse of the county. The health authority shall advise the court on appropriate control measures to prevent the transmission of the communicable disease alleged in the application.*

(b) *The person shall have the right to be present, but the person's presence may be waived by the person or the person's attorney.*

(c) *The hearing shall be public unless the person or the person's attorney requests that the hearing be closed and the court determines there is good cause for closing the hearing.*

(d) *The rules of evidence applicable in civil litigation govern the proceedings except where inconsistent with this Act.*

(e) *The hearing shall be on the record, and the state's burden of proof shall be to prove each element of the application criteria by clear and convincing evidence.*

Sec. 8.16. HEARING BEFORE JURY. (a) *The hearing for temporary orders for the management of a person with a communicable disease shall be before the court unless a trial by jury is requested by the person or the person's attorney. The hearing for extended orders for the management of a person with a communicable disease shall be before a jury unless a jury trial has been waived under this section. A jury fee may not be required.*

(b) *In a hearing before a jury, the jury shall determine whether or not the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and has refused or failed to follow*

the orders of the health authority, but may not make a finding about the type of services to be provided.

(c) Waiver of trial by jury must be in writing under oath and must be signed and sworn to by the person and by the person's attorney.

(d) Upon good cause shown, the court may permit a waiver of jury trial properly made and filed to be withdrawn if the waiver is withdrawn at least seven days before the scheduled time of the hearing, in order to permit a hearing before a jury.

Sec. 8.17. ORDER UPON HEARING ON APPLICATION FOR TEMPORARY ORDERS FOR MANAGEMENT OF PERSON WITH COMMUNICABLE DISEASE. *(a) If upon the hearing on an application for temporary orders for the management of a person with a communicable disease the judge or jury fails to find, on the basis of clear and convincing evidence, that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health, has refused or failed to follow the orders of the health authority, and meets the criteria for orders for the management of a person with a communicable disease, the court shall enter its order denying the application and shall order the immediate release of the person if the person is not at liberty.*

(b) Upon the hearing, the judge or the jury, if one has been requested, shall determine that the person requires court-ordered examination, observation, isolation, or treatment only if it finds on the basis of clear and convincing evidence that:

(1) the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and has failed or refused to follow the orders of the health authority or department; and

(2) as a result of the communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger the public health.

(c) If the judge or jury finds that the person meets at least one of the criteria provided by Subsection (b)(2) of this section, the judge or jury shall specify which of the criteria formed the basis of that decision.

(d) If upon the hearing the jury or judge determines that the person is infected with or is reasonably suspected of being infected with a communicable disease and has failed or refused to follow the orders of a health authority or the department and meets the criteria for orders for the management of a patient with a communicable disease, the judge shall dismiss the jury, if any. The judge may hear additional evidence regarding alternative settings for examination, observation, treatment, or isolation and shall enter an order that:

(1) commits the person to a health care facility for in-patient care; or

(2) requires the person to participate in communicable disease management programs other than in-patient care.

(e) In determining the setting for care, the judge shall consider the recommendation for the appropriate health care facility filed under this Act.

(f) An order entered under this section must specify a period not to exceed 90 days, but may specify any shorter period.

Sec. 8.18. ORDER UPON HEARING ON APPLICATION FOR EXTENDED ORDERS FOR MANAGEMENT OF PERSON WITH COMMUNICABLE DISEASE. *(a) If upon the hearing on an application for extended orders for the management of a person with a communicable disease the judge or jury fails to find, on the basis of clear and convincing evidence, that the person is infected with a communicable disease that presents a threat to the public health, has refused or failed to follow the orders of the health authority or the department issued under Section 4.02 of this Act, and meets the criteria for orders for the management of a person with a communicable disease, the court shall enter its order denying the application and shall order the immediate release of the person if the person is not at liberty.*

(b) Upon the hearing, the jury or the judge, if jury trial has been waived, shall determine that the person requires examination, observation, isolation, or treatment only if it finds, on the basis of clear and convincing evidence, that:

(1) the person is infected with a communicable disease that presents a threat to the public health and has failed to follow the orders of the health authority or department;

(2) as a result of that communicable disease, the person:

(A) is likely to cause serious harm to himself or herself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger the public health; and

(3) the condition of the person is expected to continue for more than 90 days.

(c) If the judge or jury finds that the person meets at least one of the criteria provided by Subsection (b)(2) of this section, the judge or jury shall specify which of the criteria formed the basis of that decision.

(d) If upon the hearing the judge or jury determines that the person is infected with a communicable disease that presents a threat to the public health, has refused or failed to follow the orders of a health authority or the department, and meets the criteria for extended orders for the management of a patient with a communicable disease, the judge shall dismiss the jury, if any. The judge may hear additional evidence regarding alternative settings for examination, observation, isolation, or treatment and shall enter an order that:

(1) commits the person to a health care facility for in-patient care; or

(2) requires the person to participate in communicable disease management programs other than in-patient care.

(e) In determining the setting for care, the judge shall consider the recommendation from the appropriate health care facility filed under Section 8.04 of this Act.

(f) An order entered under this section must specify a period not to exceed 12 months, but may specify any shorter period.

Sec. 8.19. OUT-PATIENT ORDERS FOR MANAGEMENT OF PERSON WITH COMMUNICABLE DISEASE. *(a) An order directing that a person participate in an out-patient communicable disease management program shall designate the health authority to monitor the person's compliance. The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority in implementing the orders of the court.*

(b) The health authority or department, with the cooperation of the head of the facility, shall submit to the court within two weeks of the date on which an order is entered a general program of treatment to be incorporated in the court's order.

(c) If the person ordered to participate in out-patient health services fails to comply with the terms of the court's order, the health authority or department shall inform the court of the failure to comply. The health authority or department shall also inform the court of any substantial changes in the general program of treatment that may occur before the order expires.

(d) The extent to which a designated facility must comply with this section shall be based on a determination by the commissioner that the facility has sufficient resources to perform the necessary services. A person may not be detained in a private health care facility without first obtaining the consent of the head of the facility.

Sec. 8.20. MODIFICATION OF OUT-PATIENT ORDERS FOR MANAGEMENT OF PERSON WITH COMMUNICABLE DISEASE; ORDER FOR TEMPORARY DETENTION. *(a) On its own motion or on the request of the health authority or department or any other interested person, the court that entered an order for out-patient health services may set a hearing to determine whether the order should be modified. This section applies only to changes in the general program of treatment that are substantial deviations in the original program incorporated in the court's order.*

(b) *If a hearing is scheduled to determine whether the order should be modified, the court shall appoint an attorney to represent the person. The person shall be given notice concerning matters to be considered at the hearing that complies with the requirements set out in this Act for notice preceding a hearing on an application for court orders for the management of a person with a communicable disease.*

(c) *If a hearing on modification is set, the court may issue an order for temporary detention pending the modification hearing if the court finds that there is probable cause to believe that the person meets the criteria of this Act and that detention in an in-patient health care facility is required to evaluate the appropriate setting for continued court-ordered care. The court's determination shall be based on a sworn request for temporary detention filed with the court by the health authority or department or the head of the out-patient facility stating his opinion and the detailed basis of that opinion that the person meets the criteria in this Act and that detention in an in-patient health care facility is required to evaluate the appropriate setting for continued court-ordered care. When an order for temporary detention is signed, the presiding judge shall simultaneously appoint an attorney for the person, if there is no attorney representing the person. Within 24 hours from the time detention begins, the court ordering temporary detention shall provide to the person and the person's attorney a written notice that the person has been placed under an order for temporary detention, the reasons the order was issued, and the time and place of the modification hearing. The order for temporary detention shall direct a peace officer to take the person into custody and immediately transport the person to an appropriate in-patient health care facility. If there is no appropriate in-patient health care facility available, the person shall be transported to a facility deemed suitable by the health authority. If an order for temporary detention is issued, the person may not be detained for more than 72 hours, excluding weekends, legal holidays, and extreme weather emergencies as provided for protective custody in this Act, pending the hearing on modification. If the head of the in-patient facility in which the person is detained does not receive notice that a modification hearing has been held within 72 hours of the time detention begins under an order for temporary detention, excluding weekends, legal holidays, and extreme weather emergencies authorizing the temporary detention to continue, the head of the in-patient facility shall immediately release the person from custody. If the person is released from custody because a hearing on modification has not been held within the required period, the person shall continue to be subject to the conditions of the out-patient orders for the management of a person with a communicable disease issued before the order for temporary detention if it has not already expired.*

(d) *A hearing on a request for modification of an out-patient order for the management of a person with a communicable disease shall be before the court without a jury. The person shall be represented by an attorney and receive proper notice, and the hearing shall be held under the requirements of this Act.*

(e) *At the hearing, the court may modify the order if it determines that the person continues to meet the applicable criteria for court orders for the management of a person with a communicable disease and that:*

- (1) *the person has not complied with the court's order; or*
- (2) *the person's condition has so deteriorated that out-patient health services are no longer appropriate.*

(f) *The court's determination with regard to modification shall be supported by an affidavit of medical evaluation prepared by the health authority or the department.*

(g) *If the findings required by this Act are made, the court may:*

- (1) *decline to modify the order and direct that the person continue to participate in out-patient health services under the terms of the order;*
- (2) *if a revised general program of treatment has been submitted to and accepted by the court, modify the order so as to incorporate that revised treatment program and to provide for continued out-patient health services under the modified order; or*

(3) *modify the order to provide for examination, observation, isolation, or treatment of the person at an appropriate facility for in-patient care.*

Sec. 8.21. MODIFICATION OF IN-PATIENT ORDERS FOR MANAGEMENT OF PERSON WITH COMMUNICABLE DISEASE. (a) *At the request of the health authority, the department, or the head of the facility to which a person has been committed for in-patient health services, the court that entered the order may consider whether the order should be modified to provide for out-patient care. The request must explain in detail why modification of the order is being requested and shall be accompanied by an affidavit by a physician based upon an examination conducted within the seven days preceding the request.*

(b) *The person shall be given notice of a request for modification of the order made under this section. If the person or any other interested individual demands a hearing on the request, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the person at the hearing. The hearing shall be before the court without a jury. The person shall be represented by an attorney and receive proper notice, and the hearing shall be held under the requirements of Section 8.15 of this Act.*

(c) *If a hearing is not demanded, the court may consider and make its decision on the basis of the request and the supporting affidavit.*

(d) *If the court determines that the order should be modified, it shall designate the health authority to monitor the person's compliance. The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority and shall submit to the court within two weeks of the entering of the modified order a general program of treatment to be incorporated in the order.*

(e) *The modified order may not be extended beyond the term of the original order.*

Sec. 8.22. RENEWAL OF EXTENDED ORDER FOR MANAGEMENT OF PERSON WITH COMMUNICABLE DISEASE. (a) *The court may renew and modify an original extended order for the management of a person with a communicable disease or an order under this section.*

(b) *An application for renewal of an extended order of the management of a person with a communicable disease may be filed by a city, county, or district attorney, as appropriate, at the request of the health authority or the department. An application must be accompanied by an affidavit of medical evaluation dated and signed by the health authority or the department based on examinations conducted within 30 days of the date of application. The application must explain in detail why renewal of the order is being requested. If the application requests renewal of an order committing the person to extended in-patient health services, it must further explain in detail why a less restrictive setting is not appropriate.*

(c) *When an application is filed, the court shall appoint an attorney to represent the person.*

(d) *The person, the person's attorney, or the court on its own motion may request a hearing on the application. If a hearing is requested, the application shall be treated as an original application for extended orders for the management of a person with a communicable disease.*

(e) *If a hearing is not requested on the application, the court may admit the affidavit of medical evaluation into evidence and enter an order based on the affidavit and the detailed request for renewal. In that case, the affidavit constitutes competent medical testimony.*

(f) *Before entering an order renewing extended orders for the management of a person with a communicable disease, the court shall make the findings required by this Act for an original extended order for the management of a person with a communicable disease, whether or not a hearing is held.*

(g) *If the required findings are made, the court may enter an order renewing an extended order for the management of a person with a communicable disease for a period not to exceed 12 months.*

(h) *If the preceding order provided for extended in-patient health services, the court, after renewing the order, may modify the order to provide for out-patient health services under the requirements of this Act.*

Sec. 8.23. REHEARING; REEXAMINATION AND HEARING. (a) *For good cause shown, the court may set aside any order for the management of a person with a communicable disease and grant a motion for rehearing. The court may, pending any rehearing, stay the order for management of a person with a communicable disease and release the person from custody if the court is satisfied that the person does not meet the criteria for protective custody under this Act. The judge may require an appearance bond in an amount to be determined by the court.*

(b) *Any person who is subject to an extended order for the management of a person with a communicable disease or any interested person on the person's behalf and with the person's consent may file a request in the court in the county in which the person is receiving those services for reexamination and hearing to determine whether the person continues to meet the criteria for the court orders. Upon the filing of a request for reexamination and hearing, the court may upon good cause shown require a reexamination of the person and schedule a hearing as provided by this section.*

(c) *Upon the filing of a request for reexamination and hearing, the judge may upon good cause shown notify the health authority or the department and the head of the facility providing health services to the person.*

(d) *Upon receipt of notice, the head of the facility shall cause the person to be examined. If the health authority or the department determines that the person no longer meets the criteria for court-ordered extended health services, the health authority or department shall direct the head of the facility to immediately discharge the person. If the health authority or department determines that the person continues to meet the criteria for extended orders for the management of a person with a communicable disease, an affidavit of medical evaluation shall be filed with the court within 10 days after the filing of the request for reexamination and hearing.*

(e) *At the expiration of the 10-day period, if an affidavit has been filed stating that the person continues to meet the criteria for extended orders for the management of a person with a communicable disease or if no affidavit has been filed and the person has not been discharged, the judge may set a time and place for the hearing on the request. At the time the hearing is set, the judge shall also appoint an attorney to represent the person, if the person is not already represented by counsel, and give notice of the hearing to the person and the person's attorney, to the health authority or the department, and to the head of the facility providing court-ordered health services. The judge shall appoint a physician who is not on the staff of the health care facility providing court-ordered services to the person, to examine the person and file an affidavit with the court setting out the person's diagnosis and recommended treatment. The court shall enter the necessary orders to ensure that the person may, if the person desires, be examined by a physician of the person's choosing at the person's expense.*

(f) *The hearing shall be before the court without a jury. The hearing shall comply with the requirements applicable to a hearing on an application for a court order for the management of a person with a communicable disease.*

(g) *If at the hearing the court finds by clear and convincing evidence that the person continues to meet the criteria for extended orders for the management of a patient with a communicable disease, the court shall dismiss the request. If the court does not make that finding, the court shall order the head of the facility to discharge the person.*

(h) *When a request for reexamination and hearing is filed before the expiration of six months after an extended order for management of a patient with a communica-*

ble disease or before the expiration of six months after the filing of a similar request, the judge is not required to order a reexamination or hearing.

Sec. 8.24. APPEAL. (a) All appeals from court orders for the management of a person with a communicable disease, including renewals or modifications of such orders, shall be filed in the court of appeals for the county in which the order was entered.

(b) Notice of appeal shall be filed within 10 days after the date the order is signed.

(c) When the notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the trial judge in whose court the cause is pending may stay the order and release the person from custody if the judge is satisfied that the person does not meet the criteria for protective custody under this Act. The judge may require an appearance bond in an amount to be determined by the court.

(e) Appeals under this section shall be advanced on the docket and given a preference setting over all other cases in the court of appeals and the supreme court. The courts may suspend all rules concerning the time for filing briefs and the docketing of cases.

SUBCHAPTER D. DESIGNATION OF FACILITY AND TRANSPORTATION

Sec. 8.25. DESIGNATION OF IN-PATIENT HEALTH CARE FACILITY. In the temporary or extended order for the management of a person with a communicable disease specifying in-patient care, the court shall commit the person to a health care facility that has been designated by the commissioner in accordance with Section 8.04 of this Act.

Sec. 8.26. COMMITMENT TO PRIVATE HEALTH CARE FACILITY. The court may order a person committed to a private health care facility at no expense to the state upon:

(1) an application signed by the person or the person's guardian or friend requesting that the person be placed in a designated private health care facility at the expense of the person or the applicant; and

(2) an agreement in writing by the head of the private health care facility to admit the person and to accept responsibility for the person in accordance with this Act.

Sec. 8.27. COMMITMENT TO AGENCY OF UNITED STATES. (a) Upon receiving written notice from an agency of the United States operating a health care facility stating that facilities are available and that the person is eligible for care or treatment therein, the court may order a person committed to the agency and may place the person in the custody of the agency for transportation to the health care facility.

(b) Any person admitted under order of a court to any health care facility operated by an agency of the United States inside or outside the state shall be subject to the rules and regulations of the agency.

(c) The head of the health care facility operated by that agency has the same authority and responsibility with respect to the person as the head of a facility.

(d) The appropriate courts of this state retain jurisdiction at any time to inquire into the medical condition of the person so committed and the necessity of the person's continued commitment.

Sec. 8.28. TRANSPORTATION OF PERSONS. (a) The court may authorize the sheriff or constable to transport the person to the designated health care facility.

(b) Every female shall be accompanied by a female attendant during conveyance to the health care facility.

(c) The health authority or department shall instruct the sheriff or constable on procedures that may be necessary in transporting the person to prevent the spread of the disease.

Sec. 8.29. WRIT OF COMMITMENT. The court shall direct the clerk of the court to issue a writ of commitment in duplicate directed to the individual authorized to transport the person, commanding him to take charge of the person and to transport the person to the designated health care facility.

Sec. 8.30. ACCEPTANCE OF PERSON ACKNOWLEDGED. The head of the health care facility, upon receiving a copy of the writ of commitment and admitting a person, shall give the individual transporting the person a written statement acknowledging acceptance of the person and of any personal property belonging to the person and shall file a copy of the statement with the clerk of the committing court.

SUBCHAPTER E. PASS, DISCHARGE, AND TERMINATION OF ORDER

Sec. 8.31. PERIODIC EXAMINATION REQUIRED. The head of a health care facility shall cause every person admitted under this Act to be examined by a physician as frequently as necessary, but not less often than once every seven days.

Sec. 8.32. PLAN FOR CONTINUING CARE. Before the discharge of a person, the health authority or department shall, in consultation with the person, develop a plan for continuing care for a person for whom it is determined the care is required.

Sec. 8.33. PASS FROM IN-PATIENT CARE. (a) The head of a facility to which a person has been admitted under a temporary order for extended in-patient management of a patient with a communicable disease may permit the person to leave the facility for a period not to exceed 72 hours under a pass. A pass may be subject to specified conditions. A pass may not be authorized without the concurrence of the health authority or the department.

(b) A person permitted to leave the facility under a pass may be taken into custody, detained, and returned to the facility if the person violates the conditions of the pass or if the person's condition deteriorates to such an extent that his continued absence from the facility is no longer appropriate.

(c) If the head of a facility has reason to believe that a person permitted to leave the facility under a pass should be taken into custody, detained, and returned to the facility, the head of the facility may secure the person's detention and return to the facility under Section 8.34 of this Act.

Sec. 8.34. RETURN TO IN-PATIENT CARE. (a) A peace officer shall take into custody, detain, and return to the facility as rapidly as possible a person whose return is authorized either by a certificate prepared under Subsection (b) of this section or a court order issued under Subsection (c) of this section.

(b) The head of a health care facility to which a person was admitted for court-ordered in-patient care, the health authority, or the department may sign a certificate authorizing the return of an identified person to the facility, if upon reasonable belief it is stated that:

- (1) the person is absent from the facility without authority; or
- (2) the person was permitted to leave the facility under a pass; and:
 - (A) the person has violated conditions imposed upon the pass; or
 - (B) the person's condition has deteriorated to such an extent that the person's continued absence from the facility is inappropriate.

(c) A magistrate may issue an order directing any peace officer to take a person into custody upon filing with the magistrate a certificate by the head of the facility to which the person was admitted that meets the requirements of Subsection (b) of this section.

(d) A peace officer may take a person into custody under this section without having in the officer's possession at the time the certificate or court order authorizing this action.

Sec. 8.35. DISCHARGE FROM COURT-ORDERED IN-PATIENT HEALTH SERVICES. (a) The head of a facility to which a person has been committed for temporary

or extended in-patient health services shall discharge the person upon expiration of the court order.

(b) At any time before the expiration of a temporary or extended order for the management of a patient with a communicable disease, the health authority or the department may direct the head of the facility to discharge the person if the health authority or the department determines that the person no longer meets the criteria for court-ordered health services. A discharge under this subsection terminates the court order.

(c) Before determining to discharge a person under Subsection (b) of this section, the health authority or department shall consider whether further court orders for the management of a person with a communicable disease on an out-patient basis or a modified order directing the person to participate in out-patient health services under Section 8.20 of this Act would be appropriate.

(d) Before the discharge of a person under this section, the health authority or the department shall prepare a certificate of discharge and file it with the court that entered the order and notify the head of the facility.

Sec. 8.36. TERMINATION OF ORDER FOR OUT-PATIENT HEALTH SERVICES.

(a) The head of a facility at which a person has been ordered to participate in temporary or extended out-patient health services shall discharge the person upon expiration of the court order.

(b) At any time before the expiration of an order for out-patient health services, the health authority or the department may direct the head of the facility to discharge the person if the health authority or department determines that the person no longer meets the criteria for court-ordered health services. A discharge under this subsection terminates the court order.

(c) Before the discharge of a person under this section, the health authority or department shall prepare a certificate of discharge and file it with the court that entered the order and notify the head of the facility.

SUBCHAPTER F. GENERAL ADMISSION AND TRANSFER PROCEDURES

Sec. 8.37. AUTHORIZATION FOR ADMISSION AND DETENTION. The head of a health care facility is authorized to admit and detain any person in accordance with the following procedures provided in this Act:

- (1) protective custody;
- (2) temporary orders for the management of a person with a communicable disease; and
- (3) extended orders for the management of a person with a communicable disease.

Sec. 8.38. TRANSFER TO AGENCY OF UNITED STATES. The health authority or department may authorize the head of a health care facility to transfer a person to an agency of the United States upon notice to the committing court and notification by the agency that facilities are available and that the person is eligible for care or treatment in the facility. However, the transfer of a person to an agency of the United States may be made only after an order approving the transfer has been entered by the judge of the committing court.

Sec. 8.39. TRANSFER OF RECORDS. The head of the in-patient health care facility from which a person is transferred shall send the person's appropriate medical records or a copy of the records to the head of the health care facility to which the person is transferred.

SUBCHAPTER G. RIGHTS OF PERSONS WITH COMMUNICABLE DISEASES

Sec. 8.40. RIGHTS AND RESPONSIBILITIES. (a) Each person receiving health services under this Act has the right:

- (1) to appropriate treatment for the person's illness in an appropriate setting consistent with the protection of the person and the community;

- (2) to be free from unnecessary or excessive medication;
- (3) to refuse to participate in research programs; and
- (4) to a humane treatment environment that affords reasonable protection from harm and appropriate privacy to the person with regard to personal needs.

(b) Each person receiving in-patient health services has the right to be informed orally, in simple nontechnical terms, of the rights under Subsection (a) of this section. In addition, each person shall be informed in writing of those rights in the person's primary language if possible. Those rights shall be communicated to each hearing impaired or visually impaired person through any means reasonably calculated to communicate those rights.

Sec. 8.41. **ADDITIONAL RIGHTS.** (a) Subject to the general rules and regulations of the in-patient health care facility and except to the extent that the head of the facility determines that it is necessary for the public health or the welfare of the person to impose restrictions, each person in an in-patient health care facility has the right:

- (1) to receive visitors;
- (2) to communicate with persons outside the facility; and
- (3) to communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the attorney general of this state.

(b) Any restriction imposed by the head of the facility on the exercise of those rights for the public health or the welfare of a particular person and the reasons for the restriction shall be made a part of the clinical record of the person. There may not be any restriction of communication between the person and an attorney if the attorney-client relationship is established.

Sec. 8.42. **CARE AND TREATMENT.** The head of an in-patient health care facility shall provide adequate medical care and treatment for each patient in accordance with the highest standards accepted in medical practice. The head of an in-patient health care facility shall be responsible for the detention of the patient and for providing suitable security to prevent the patient from transmitting the disease.

Sec. 8.43. **NO EFFECT ON GUARDIANSHIP.** No action taken or determination made under this Act and no provision of this Act shall affect any guardianship established in accordance with law.

Sec. 8.44. **WRIT OF HABEAS CORPUS.** This Act may not be construed to abridge the right of any person to a writ of habeas corpus.

Sec. 8.45. **PHYSICAL RESTRAINTS.** Physical restraint may not be applied to the body of a person unless prescribed by a physician, and if applied, the restraint shall be removed as soon as possible. Every use of physical restraint and the reasons for the use shall be made a part of the clinical record of the patient under the signature of the physician who prescribed the restraint.

Sec. 8.46. **DISCLOSURE OF INFORMATION.** Health care facility records that directly or indirectly identify a patient, former patient, or proposed patient are confidential unless disclosure is permitted by this Act or other state law.

SECTION 22. The Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes) is amended by adding Article 9 to read as follows:

**ARTICLE 9. TESTS FOR ACQUIRED IMMUNE DEFICIENCY SYNDROME
AND RELATED DISORDERS**

Sec. 9.01. **DEFINITIONS.** In this Act:

- (1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.
- (2) "HIV" means human immunodeficiency virus.
- (3) "Bona fide occupational qualification" means a qualification:

(A) *that is reasonably related to the satisfactory performance of the duties of a job; and*

(B) *for which there is a reasonable cause for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety.*

(4) *"Blood bank" means a blood bank, blood center, regional collection center, tissue bank, transfusion service, or other similar facility licensed by the Bureau of Biologics of the United States Food and Drug Administration, accredited for membership in the American Association of Blood Banks, or qualified for membership in the American Association of Tissue Banks.*

(5) *"Test result" means any statement or assertion that any identifiable individual is positive, negative, at risk, has or does not have a certain level of antigen or antibody, or any other statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS.*

Sec. 9.02. TESTS FOR AIDS AND RELATED DISORDERS. (a) *A person or entity may not require another person to undergo any medical procedure or test designed to show or help show whether a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless required under Subsection (c) of this section or unless the medical procedure or test is necessary:*

(1) *as a bona fide occupational qualification and there exists no less discriminatory means of satisfying the occupational qualification;*

(2) *to screen blood, blood products, bodily fluids, organs, or tissues for the purpose of determining suitability for donation;*

(3) *in relation to a particular person under this Act;*

(4) *to test residents and clients of residential facilities of the Texas Department of Mental Health and Mental Retardation, but only if:*

(A) *the test result would change the medical or social management of the person tested or others who associate with that person; and*

(B) *the test is conducted in accordance with guidelines that have been adopted by the residential facility or the Texas Department of Mental Health and Mental Retardation, and approved by the department;*

(5) *to manage accidental exposure to blood or other bodily fluids but only if the test is conducted in accordance with written infectious disease control protocols adopted by the health care agency or facility and is conducted in accordance with Subsection (d) of this section;*

(6) *a patient may be required to be tested for AIDS, for HIV infection, for antibodies to HIV, or for any other probable causative agent of AIDS if a medical procedure is to be performed on the patient that could expose health care personnel to AIDS or HIV infection, according to Texas Board of Health guidelines defining the conditions that constitute possible exposure to AIDS or HIV infection, if there is sufficient time to receive the test result before the procedure is conducted.*

(b) *An employer who alleges that a test is necessary as a bona fide occupational qualification has the burden of proving the allegation.*

(c) *The board may adopt emergency rules for mandatory testing for HIV infection if the commissioner files a certificate of necessity with the board that contains supportive findings of medical and scientific fact and that declares a sudden and imminent threat to public health. Rules adopted under this subsection must:*

(1) *provide for the narrowest application of HIV testing necessary for the protection of public health;*

(2) *provide procedures and guidelines to be followed by affected entities and state agencies that clearly specify the need and justification for the testing, specify methods to be used to assure confidentiality, and delineate responsibility and authority for carrying out the recommended actions;*

(3) *provide for counseling of persons with seropositive test results; and*

(4) provide for confidentiality regarding persons tested and their test results.

(d) Protocols adopted under Subsection (a)(5) of this section must clearly establish procedural guidelines that provide criteria for testing and that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested and must ensure the confidentiality of the person with the infection in accordance with this Act.

(e) When the prevalence rate of confirmed positive HIV infection is .83 percent, as reported under the Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes), the Texas Board of Health shall promulgate emergency rules for mandatory testing for HIV infection as a condition for obtaining a marriage license.

(f) This section does not provide a duty to test for AIDS and related disorders, and a cause of action does not arise under this section for the failure to test for AIDS and related disorders.

Sec. 9.03. CONFIDENTIALITY AND DISCLOSURE OF TEST RESULTS. (a) A test result is confidential. Except as provided by this section, any person, firm, corporation, physician, hospital, blood center, blood bank, laboratory, or other entity that possesses or has knowledge of the test result may not release or disclose a test result or allow a test result to become known.

(b) A test result may be released only to:

(1) the department under this Act;

(2) a local health authority if reporting is required under this Act;

(3) the Centers for Disease Control of the United States Public Health Service if reporting is required by federal law or regulation;

(4) the physician or other person authorized by law who ordered the test;

(5) a physician, nurse, or other health care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the patient's health and welfare;

(6) the person tested or a person legally authorized to consent to the test on the person's behalf; and

(7) the spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS and the physician who ordered the test makes the notification. This subdivision does not provide a duty to notify the spouse, and a cause of action does not arise under this subdivision for the failure to make that notification.

(c) This section does not prohibit the person tested or a person legally authorized to consent to the test on the person's behalf from:

(1) voluntarily releasing or disclosing that person's test results to persons or entities other than those provided by this section; or

(2) authorizing the release or disclosure of that person's test results to persons or entities other than those provided by this section.

(d) The authorization prescribed by Subsection (c)(2) of this section must be in writing and signed by the person tested or a person legally authorized to consent to the test on the person's behalf and must state the persons or entities or classification of persons or entities to whom the test results may be released or disclosed.

(e) If a report of a test result is used for statistical summary purposes only, the person or entity releasing or disclosing the test result may disclose or release the information without the written consent of the person tested only after any information that could identify the person is removed from the report.

(f) A blood bank may report positive blood test results indicating the name of a donor with a possible infectious disease to other blood banks. A blood bank that reports a donor's name to other blood banks under this subsection may not disclose the infectious disease that the donor has or is suspected of having. A blood bank

making a report as provided by this subsection is not considered to have breached a confidence arising out of any confidential relationship.

(g) A blood bank may provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.

(h) A blood bank may report blood test results to the hospitals where the blood was transfused, to the physician who transfused the infected blood, and to the recipient of the blood. A blood bank may also report blood test results for statistical purposes. A blood bank that reports test results under this subsection may not disclose the name of the donor or person tested or any other information that could result in disclosure of the donor's or person's name, including addresses, social security number, designated recipients, or replacement information.

(i) This section does not prohibit an employee of a health care facility from viewing test results while performing the employee's duties if the employee's job requires the employee to deal with permanent medical records and the employee learns of test results during reasonable health care facility practices. Test results that may be viewed under this subsection are confidential as provided by this Act.

Sec. 9.04. CIVIL LIABILITY. (a) Any person who is injured by a violation of Section 9.02 or 9.03 of this Act may bring a civil action for damages. In addition, any person may bring an action to restrain a violation or threatened violation of those sections.

(b) If it is found in a civil action that a person or entity has violated Section 9.02 of this Act, the person or entity is liable for:

- (1) actual damages;*
- (2) a civil penalty of not more than \$1,000; and*
- (3) court costs and reasonable attorney's fees incurred by the person bringing the action.*

(c) If it is found in a civil action that a person or entity has negligently released or disclosed a test result or allowed a test result to become known in violation of Section 9.03 of this Act, the person or entity is liable for:

- (1) actual damages;*
- (2) a civil penalty of not more than \$1,000; and*
- (3) court costs and reasonable attorney's fees incurred by the person bringing the action.*

(d) If it is found in a civil action that a person or entity has wilfully released or disclosed a test result or allowed a test result to become known in violation of Section 9.03 of this Act, the person or entity is liable for:

- (1) actual damages;*
- (2) a civil penalty of not less than \$1,000 nor more than \$5,000; and*
- (3) court costs and reasonable attorney's fees incurred by the person bringing the action.*

(e) Each release or disclosure made, or allowance of a test result to become known, in violation of this Act constitutes a separate offense.

(f) A defendant in a civil action brought under this section is not entitled to claim any privilege as a defense to the action.

Sec. 9.05. TESTS FOR AIDS AND RELATED DISORDERS; PENALTY. (a) A person or entity that requires a medical procedure or test in violation of Section 9.02 of this Act commits an offense.

(b) An offense under this section is a Class A misdemeanor.

Sec. 9.06. RELEASING OR DISCLOSING TEST RESULTS; PENALTY. (a) A person or entity that, with criminal negligence, releases or discloses a test result or other information or that allows a test result or other information to become known in violation of Section 9.03 of this Act commits an offense.

(b) *An offense under this section is a Class A misdemeanor.*

SECTION 23. Section 35.03(a), Family Code, is amended to read as follows:

(a) A minor may consent to the furnishing of hospital, medical, surgical, and dental care by a licensed physician or dentist if the minor:

(1) is on active duty with the armed services of the United States of America;

(2) is 16 years of age or older and resides separate and apart from his parents, managing conservator, or guardian, whether with or without the consent of the parents, managing conservator, or guardian and regardless of the duration of such residence, and is managing his own financial affairs, regardless of the source of the income;

(3) consents to the diagnosis and treatment of any infectious, contagious or communicable disease which is required by law or regulation adopted pursuant to law to be reported by the licensed physician or dentist to a local health officer or the Texas Department of Health and including all *sexually transmitted diseases* [~~within the scope by law or regulation of Section 1.03, Article 4445d, Vernon's Texas Civil Statutes~~];

(4) is unmarried and pregnant, and consents to hospital, medical, or surgical treatment, other than abortion, related to her pregnancy;

(5) is 18 years of age or older and consents to the donation of his blood and the penetration of tissue necessary to accomplish the donation; or

(6) consents to examination and treatment for drug addiction, drug dependency, or any other condition directly related to drug use.

SECTION 24. The following laws are repealed:

(1) Texas Venereal Disease Act (Article 4445d, Vernon's Texas Civil Statutes);

(2) Sections 4, 4A, 5, 6, and 7, Texas Tuberculosis Code (Article 4477-11, Vernon's Texas Civil Statutes);

(3) Sections 3, 4, 5, 6, 7, 9, and 10, Chapter 51, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-12, Vernon's Texas Civil Statutes); and

(4) Section 6.05, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes).

SECTION 25. An offense committed before the effective date of this Act under a law that is repealed by this Act is governed by the law in effect when the offense occurred, and the former law is continued in effect for that purpose.

SECTION 26. Subsection (d), Section 3.06, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), is amended by adding Subdivision (7) to read as follows:

(7)(A) *It is the policy of this state that the prevention of ophthalmia neonatorum in newborn infants is of paramount importance for the protection of the health of Texas children.*

(B) *Authority to delegate medical acts to a lay midwife registered under Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), is recognized as applicable to the possession of and administration of eye prophylaxis for the prevention of ophthalmia neonatorum.*

(C) *A physician who has issued such a standing delegation order is immune from liability in connection with acts performed pursuant to the standing delegation order as long as a lay midwife has provided proof of compliance with Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), prior to the issuance of the order.*

SECTION 27. Title 108, Revised Statutes, is amended by adding Article 6203c-12 to read as follows:

Art. 6203c-12. TESTING FOR COMMUNICABLE DISEASES. The Texas Department of Corrections is authorized to test inmates of correctional facilities for human immunodeficiency virus. If the department determines that an inmate has a positive test result, the inmate may be segregated from other inmates.

Ch. 543, § 28

70th LEGISLATURE—REGULAR SESSION

SECTION 28. This Act takes effect September 1, 1987.

SECTION 29. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 29, 1987, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1829 on May 31, 1987, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1829 on June 1, 1987, by the following vote: yeas 109, nays 37, 1 present, not voting. Passed by the Senate, with amendments, on May 30, 1987, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1829 on June 1, 1987, by a viva-voce vote.

Approved June 17, 1987.

Effective Sept. 1, 1987.