

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
115TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 359, L.D. 513, Bill, "An Act Requiring the Provision of Information to Victims of Gross Sexual Assault"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following;

'Sec. 1. 5 MRSA §19203, sub-§10, as repealed and replaced by PL 1987, c. 811, §3, is repealed and the following enacted in its place:

10. Court ordered disclosure. To:

A. A person authorized by section 19203-C to receive test results following an accidental exposure; or

B. A petitioner authorized by section 19203-E to receive test results of a person convicted of gross sexual assault.

Sec. 2. 5 MRSA §19203-A, sub-§5 is enacted to read:

5. Exposure from gross sexual assault. Consent need not be obtained when a victim of gross sexual assault has been exposed to the blood or body fluids of the convicted offender and the exposure creates a significant risk of infection, provided that a court order has been obtained under section 19203-E. The fact that an HIV test was given as a result of the exposure and the results of that test may not appear in a convicted offender's medical record. Counseling on risk reduction must be offered, but the convicted offender may choose not to be informed about the result of the test.

Sec. 3. 5 MRSA §19203-E is enacted to read:

2  
4 §19203-E. HIV test after conviction for sexual assault

6 1. Definitions. As used in this section, unless the  
8 context otherwise indicates, the following terms have the  
10 following meanings.

12 A. "Convicted offender" means the person convicted for a  
14 gross sexual assault, or, in the case of a juvenile, the  
16 person who has been adjudicated as having committed the  
18 juvenile crime of gross sexual assault.

20 B. "Petitioner" means a person who is the victim of gross  
22 sexual assault who allegedly has been exposed to the blood  
24 or body fluids of the convicted offender and who files a  
petition with the District Court under subsection 2.

26 2. Petition. A person who is the victim of gross sexual  
28 assault who allegedly has been exposed to the blood or body  
30 fluids of the convicted offender may petition the District Court  
32 with jurisdiction over the convicted offender to require the  
34 convicted offender to submit to an HIV test, provided that the  
36 following conditions have been met:

38 A. The petitioner has consented to and obtained an HIV test  
40 within 6 weeks following the alleged exposure to the blood  
42 or body fluids of the convicted offender;

44 B. The exposure to blood or body fluids as alleged creates  
46 a significant risk of HIV infection, as defined by the  
48 Department of Human Services, Bureau of Health through the  
adoption of rules in accordance with the Maine  
Administrative Procedure Act;

C. The authorized representative of the petitioner, the  
prosecuting attorney or the court has sought to obtain  
written informed consent from the convicted offender; and

D. Written informed consent was not given by the convicted  
offender.

44 3. Prehearing duties of the court. Upon receipt of the  
46 petition, the court shall:

48 A. Schedule a hearing to be held as soon as practicable;

B. Cause a written notice of the petition and hearing to be  
given, in accordance with the Maine Rules of Civil

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Procedure, to the convicted offender who is the subject of the proceeding;

C. Appoint counsel, if requested, for any indigent client not already represented; and

D. Furnish counsel with copies of the petition.

4. Hearing. The hearing is governed by the following.

A. The hearing must be conducted in accordance with the Maine Rules of Evidence and in an informal manner consistent with orderly procedure.

B. The hearing must be confidential and be electronically or stenographically recorded.

C. The report of the hearing proceedings must be sealed. No report of the hearing proceedings may be released to the public, except by permission of the convicted offender or the convicted offender's counsel and with the approval of the court.

D. The court may order a public hearing at the request of the convicted offender or the convicted offender's counsel.

5. Determination. The court may require the convicted offender to obtain an HIV test only if the petitioner proves by a preponderance of the evidence that:

A. The alleged exposure to blood or body fluids of the convicted offender created a significant risk of HIV infection as defined by the Department of Human Services, Bureau of Health through the adoption of rules in accordance with the Maine Administrative Procedure Act;

B. An authorized representative of the petitioner, the prosecuting attorney or the court has sought to obtain written informed consent from the convicted offender; and

C. Written informed consent was not given by the convicted offender.

6. Consent. The court may not order a convicted offender to obtain an HIV test unless the petitioner has consented to and obtained an HIV test within 6 weeks following the gross sexual assault.

2        7. Appeals. A convicted offender who is required to  
3        undergo an HIV test may appeal the order to Superior Court. The  
4        appeal is limited to questions of law. Any findings of fact of  
5        the District Court may not be set aside unless clearly erroneous.

6        8. Reporting to bureau and counseling. The health care  
7        facility in which any person is tested pursuant to this section  
8        shall report to the Bureau of Health. All tests conducted  
9        pursuant to this section must be accompanied by pretest and  
10       posttest counseling as defined in section 19204-A.

12       9. Subsequent testing. Subsequent testing arising out of  
13       the same incident of exposure must be conducted in accordance  
14       with this section. Other testing of the convicted offender may  
15       not be required except as provided by this section.

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#### FISCAL NOTE

20       The Department of Corrections can absorb the costs  
21       associated with HIV testing of gross sexual assault prisoners  
22       within its budgeted resources.

24       The additional workload and administrative costs associated  
25       with conducting hearings and providing court-appointed counsel to  
26       indigent defendants can be absorbed within the budgeted resources  
27       of the Judicial Department.

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#### STATEMENT OF FACT

32       This amendment replaces the bill, but carries out the  
33       original intent of the bill, which is to provide for HIV testing  
34       of offenders convicted of gross sexual assault upon the request  
35       of the victim and if there was a significant risk of infection.  
36       The original bill provided for testing of all Class A gross  
37       sexual assault offenders. This amendment applies to only gross  
38       sexual assaults in which it is alleged that there was exposure to  
39       blood or body fluids, and the exposure created a significant risk  
40       of HIV infection.

42       This amendment is based on the current provisions providing  
43       for testing of a patient without that patient's consent if a  
44       health care or emergency worker has been exposed to the patient's  
45       blood or body fluids and the exposure creates a significant risk  
46       of infection of HIV.

COMMITTEE AMENDMENT "A" to H.P. 359, L.D. 513

2 Once a person is convicted of gross sexual assault, the  
3 victim may petition the appropriate District Court to order the  
4 offender to undergo HIV testing if the offender has refused to be  
5 tested voluntarily. The same procedure applies for offenders who  
6 are juveniles and have been adjudicated as having committed gross  
7 sexual assault. A prerequisite to the request for testing is  
8 that the victim must have been tested for HIV within the first 6  
9 weeks following the gross sexual assault. This is in recognition  
10 of the fact that the only accurate way for the victim to  
11 determine if the victim is infected is for the victim to be  
12 tested over time.

13  
14 Upon receipt of the petition, the District Court will hold a  
15 hearing to determine if requiring the offender to undergo testing  
16 is appropriate under the circumstances. The requirements are  
17 that the victim has undergone testing, the exposure to blood or  
18 body fluids created a significant risk of infection and the  
19 offender has refused to consent to testing. The results of the  
20 test of the offender can then be released to the victim. The  
21 offender may choose not to be informed about the test results.  
22 All confidentiality and counseling requirements apply to all  
23 tests and test results.

24 The Department of Human Services, Bureau of Health is  
25 currently authorized to release test results regarding the  
26 offender to the victim in limited circumstances in which a public  
27 health risk exists, and under the partner notification program.

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29 The Department of Corrections prepared the following  
30 correctional impact statement on the original bill pursuant to  
31 the Maine Revised Statutes, Title 34-A, section 1402:

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33 "The cost to the Department of Corrections to test for HIV  
34 for all Gross Sexual Assault prisoners, if the law was in effect  
35 today, would be \$1,188 per year. The Department would absorb the  
36 cost.

37  
38 The formula used to arrive at that amount is as follows: 22  
39 gross sexual assault prisoners in the system at this time x 2  
40 test per year x \$27 (\$15 lab cost + \$12 for a half hour of a  
41 nurses time to draw the blood and counsel) = \$1,188 per year.  
42 Again, the Department would be able to absorb the cost."

Reported by the Majority of the Committee on Judiciary  
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House  
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