

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

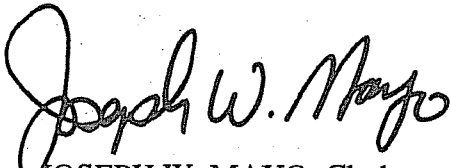
No. 1002

H.P. 744

House of Representatives, March 23, 1993

An Act to Amend State Law Regarding HIV Testing.

Reference to the Committee on Human Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative TOWNSEND of Eastport.
Cosponsored by Representatives: BAILEY of Township 27, DRISCOLL of Calais, GOULD of Greenville, PENDEXTER of Scarborough, QUINT of Paris, RUHLIN of Brewer.

Be it enacted by the People of the State of Maine as follows:

2
3 **Sec. 1. 5 MRSA §19203, sub-§10, ¶A**, as enacted by PL 1991, c.
4 803, §1, is repealed.

6 **Sec. 2. 5 MRSA §19203-A, sub-§1**, as amended by PL 1987, c.
7 811, §4, is further amended to read:

8 **1. Individual tested.** Except as provided in this section
9 and section 19203, subsections 4 and 5, no person may perform an
10 HIV test without first obtaining the ~~written~~ informed consent of
11 the person to be tested. ~~Anonymous test sites under section~~
12 ~~19203-B, are exempt from the requirement that the informed~~
13 ~~consent be in writing.~~

14
15 **Sec. 3. 5 MRSA §19203-A, sub-§§3 and 4**, as enacted by PL 1987,
16 c. 811, §5, are amended to read:

17 **3. Access to medical care.** No A health care provider may
18 not deny any person medical treatment or care solely for refusal
19 to give consent for an HIV test. No A health care provider may
20 not request a person's written consent to an HIV test as a
21 precondition to the provision of health care. ~~All written~~
22 ~~consent to testing shall be in accordance with section 19201,~~
23 ~~subsection 5-A.~~ Nothing in this section may ~~prohibit~~ prohibits a
24 health care provider from recommending an HIV test for diagnostic
25 or treatment purposes. No A physician or other health care
26 provider may not be civilly liable for failing to have an HIV
27 test performed for diagnostic or treatment purposes if the test
28 was recommended and refused in writing by the patient.

29 **4. Accidental exposure in health care facility.** Consent
30 need not be obtained when a health care provider, an employee of
31 a health care facility or a patient in a health care facility is
32 exposed to the blood or body fluids of another and the exposure
33 creates a significant risk of infection ~~provided that a court~~
34 ~~order has been obtained under section 19203-C.~~ The patient, or
35 the patient's legal representative if the patient is not legally
36 competent, must be informed of the testing as soon as practicable
37 after testing occurs. The fact that an HIV test was given as a
38 result of an accidental exposure in a health care facility and
39 the results of that test shall may not appear in a patient's
40 medical record. Counseling on risk reduction must be offered,
41 but the patient may choose not to be informed about the result of
42 the test.

43
44 **Sec. 4. 5 MRSA §19203-C**, as amended by PL 1989, c. 219, §§1
45 and 2, is repealed.
46
47
48

2 Sec. 5. 5 MRSA §19203-D, first ¶, as enacted by PL 1987, c.
811, §6, is repealed.

4 Sec. 6. 5 MRSA §19203-D, sub-§1, as enacted by PL 1987, c.
811, §6, is repealed.

6 Sec. 7. 5 MRSA §19204-A, first ¶, as amended by PL 1991, c.
8 803, §4, is further amended to read:

10 ~~Except as otherwise provided by this chapter, persons~~
 12 Persons who obtain an HIV test must be offered pretest and
 14 post-test counseling, except that, at the discretion of the
 16 person recommending the test, counseling may be waived for an
 18 individual who is at low risk for contracting HIV. The
 20 determination of whether an individual is at low risk is within
the discretion of the person recommending the test. Persons who
 are authorized by section 19203-C or 19203-E to receive test
 results after exposure must may be offered counseling regarding
 the nature, reliability and significance of the HIV test and the
 confidential nature of the test.

22 STATEMENT OF FACT

24 The bill makes the following changes.

26 1. The bill deletes the requirement that consent for an HIV
 28 test be in writing.

30 2. Current law allows testing of a source in the case of
 32 accidental exposure only when consent of the source is obtained
 34 or when a court order is obtained. This bill changes the law by
 allowing testing without prior informed consent when an
 36 accidental exposure has occurred. The purpose of this change is
 to protect employees and patients of health care facilities. The
 bill specifies that the patient must be informed of the testing
 as soon as practicable after the HIV test.

38 3. Current law contains special requirements regarding
 40 medical records containing information on HIV. The bill requires
 that a record containing HIV status is governed by the same
 42 confidentiality provisions as other medical records.

44 4. Current law requires that persons who obtain an HIV test
 46 be offered pretest and post-test counseling. This bill permits
 the waiver of counseling for an individual that is determined by
 the person recommending the test to be at low risk for
 48 contracting HIV.