

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1994

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Legislative Document

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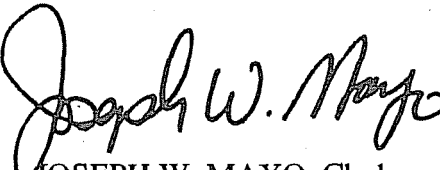
House of Representatives, January 6, 1994

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**An Act to Have Mandatory HIV Testing for Assailants of Law Enforcement Officers.**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26. Reference to the Committee on Judiciary suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative CARLETON of Wells.  
Cosponsored by Representative: BRUNO of Raymond.

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

2  
4       **Sec. 1. 5 MRSA §19203, sub-§10**, as repealed and replaced by PL 1991, c. 803, §1, is amended to read:

6           **10. Court ordered disclosure. To:**

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

10           B. A victim-witness advocate authorized by section 19203-E to receive test results of a person convicted of gross sexual assault who shall disclose those test results to a petitioner under section 19203-E; or

12           C. A law enforcement officer authorized by section 19203-F to receive results following an exposure.

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16       **Sec. 2. 5 MRSA §19203-A, sub-§6** is enacted to read:

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20           **6. Exposure of a law enforcement officer.** Consent need not be obtained when a law enforcement officer has been exposed to the blood or body fluids of a person in the law enforcement officer's custody or of a person whom the law enforcement officer was taking or attempting to take into custody and the exposure creates a significant risk of infection, provided that a court order has been obtained under section 19203-F. The fact that an HIV test was given as a result of the exposure and the results of that test may not appear in the medical record of the person in custody. Counseling on risk reduction must be offered, but the person in custody may choose not to be informed about the result of the test.

22  
24       **Sec. 3. 5 MRSA §19203-F** is enacted to read:

26       **§19203-F. HIV test after exposure of a law enforcement officer**

28           **1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

30           A. "Law enforcement officer" has the same meaning as set forth in Title 17-A, section 2, subsection 17.

32           B. "Person in custody" means the person who was in the law enforcement officer's custody, the person who the law enforcement officer was taking into custody or the person who the law enforcement officer was attempting to take into custody when that law enforcement officer was exposed to that person's blood or body fluids.

2           2. Petition. A law enforcement officer who allegedly has  
4           been exposed to the blood or body fluids of a person in custody  
6           may petition the District Court with jurisdiction over the person  
              in custody to require the person in custody to submit to HIV  
              testing if the following conditions have been met:

8           A. The law enforcement officer has consented to and  
10           obtained an HIV test immediately following the alleged  
12           exposure to the blood or body fluids of the person in  
              custody;

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

20           C. The authorized representative of the law enforcement  
22           officer or the court has sought to obtain written informed  
              consent from the person in custody; and

24           D. Written informed consent was not given by the person in  
              custody.

26           3. Prehearing duties of the court. Upon receipt of the  
28           petition, the court shall:

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

32           B. Give written notice of the petition and hearing, in  
34           accordance with the Maine Rules of Civil Procedure, to the  
              person in custody who is the subject of the proceeding;

36           C. Appoint counsel, if requested, for any indigent person  
              in custody not already represented; and

38           D. Furnish counsel with copies of the petition.

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

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

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

2 C. The report of the hearing proceedings must be sealed. A  
3 report of the hearing proceedings may not be released to the  
4 public, except by permission of the person in custody and  
5 with the approval of the court.

6 D. The court may order a public hearing at the request of  
7 the person in custody.

8  
9 5. Determination. If the law enforcement officer proves by  
10 a preponderance of the evidence the following, the court may  
11 require the person in custody to obtain HIV testing:

12  
13 A. The alleged exposure to blood or body fluids of the  
14 person in custody created a significant risk of HIV  
15 infection as defined by the Department of Human Services,  
16 Bureau of Health through the adoption of rules in accordance  
17 with the Maine Administrative Procedure Act;

18  
19 B. An authorized representative of the law enforcement  
20 officer or the court has sought to obtain written informed  
21 consent from the person in custody; and

22  
23 C. Written informed consent was not given by the person in  
24 custody.

25  
26 6. Consent. The court may not order a person in custody to  
27 obtain HIV Testing unless the law enforcement officer has  
28 consented to and obtained an HIV test immediately following the  
29 alleged exposure.

30  
31 7. Appeals. A person in custody who is required to undergo  
32 an HIV test may appeal the order to Superior Court. The appeal  
33 is limited to questions of law. Findings of fact of the District  
34 Court may not be set aside unless clearly erroneous.

35  
36 8. Reporting and counseling. The health care facility in  
37 which any person is tested pursuant to this section shall report  
38 to the Bureau of Health. The health care facility in which a  
39 person in custody required to undergo an HIV test is tested shall  
40 disclose the results of the person in custody's test to the law  
41 enforcement officer. The person in custody's HIV test results  
42 may not be disclosed to the law enforcement officer until the law  
43 enforcement officer has received counseling regarding the nature,  
44 reliability and significance of the HIV test and the confidential  
45 nature of the HIV test. All counseling must be provided by an  
46 HIV antibody counselor certified by the Department of Human  
47 Services. All tests conducted pursuant to this section must be  
48 accompanied by pretest and post-test counseling as defined in  
49 section 19204-A.

2 9. Subsequent testing. Subsequent testing arising out of  
3 the same incident of exposure must be conducted in accordance  
4 with this section. Other testing of the person in custody may  
5 not be required except as provided by this section.

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

8  
9 Except as otherwise provided by this chapter, persons who  
10 obtain an HIV test must be offered pretest and post-test  
11 counseling. Persons who are authorized by section 19203-C or  
12 19203-E or 19203-F to receive test results after exposure must be  
13 offered counseling regarding the nature, reliability and  
14 significance of the HIV test and the confidential nature of the  
15 test.

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### STATEMENT OF FACT

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21 This bill creates a court procedure through which a law  
22 enforcement officer who has been exposed to the blood or body  
23 fluids of a person in custody may seek to have that person submit  
24 to HIV testing.

24

25 If a law enforcement officer is exposed to the blood or body  
26 fluids of a person in the law enforcement officer's custody, or  
27 of a person the law enforcement officer is taking into custody or  
28 attempting to take into custody, the exposure may create a  
29 significant risk of HIV infection. If the person in custody has  
30 refused to consent to testing voluntarily, the law enforcement  
31 officer may petition the court to have the court order the person  
32 in custody to submit to HIV testing.

34

35 The law enforcement officer may not petition the court  
36 unless the following conditions are met:

36

37 1. The law enforcement officer obtained an HIV test  
38 immediately following that exposure;

40

41 2. The exposure as alleged creates a significant risk of  
42 HIV infection as defined by the rules of the Department of Human  
43 Services;

44

45 3. Written consent from the person in custody was properly  
46 sought; and

46

47 4. Written informed consent was not given by the person in  
48 custody.

2 The court must hold a hearing, and if it determines that the  
3 conditions are met, the court has discretion to order the person  
4 in custody to submit to HIV testing. The results are then given  
5 to the law enforcement officer. Pretest and post-test counseling  
6 are required for the law enforcement officer; counseling for the  
7 person in custody must be offered.

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11 This document has not yet been reviewed to determine the  
12 need for cross-reference, stylistic and other technical  
13 amendments to conform existing law to current drafting standards.  
14