

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 117

H.P. 81

House of Representatives, January 17, 1995

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

Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative CLUKEY of Houlton.
Cosponsored by Representatives: BAILEY of Township 27, LINDAHL of Northport,
O'NEAL of Limestone, WHEELER of Bridgewater, Senator: HARRIMAN of Cumberland.

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4 **Sec. 1. 5 MRSA §19203, sub-§10**, as repealed and replaced by PL 1991, c. 803, §1, is amended to read: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

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

16 **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.

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

20 **§19203-F. HIV test after exposure of a law enforcement officer**

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

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

26 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
3 been exposed to the blood or body fluids of a person in custody
4 may petition the District Court with jurisdiction over the person
5 in custody to require the person in custody to submit to HIV
6 testing if the following conditions have been met:

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

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

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

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

21 3. Prehearing duties of the court. Upon receipt of the
22 petition, the court shall:

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

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

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

29 D. Furnish counsel with copies of the petition.

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

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

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

50

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 further 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.

16 17 **STATEMENT OF FACT**

18
19 This bill creates a court procedure through which a law
20 enforcement officer who has been exposed to the blood or body
21 fluids of a person in custody may seek to have that person submit
22 to HIV testing.

23
24 If a law enforcement officer is exposed to the blood or body
25 fluids of a person in the law enforcement officer's custody, or
26 of a person the law enforcement officer is taking into custody or
27 attempting to take into custody, and the person in custody has
28 refused to consent to testing voluntarily, the law enforcement
29 officer may petition the court to have the court order the person
30 in custody to submit to HIV testing.

31
32 The law enforcement officer may not petition the court
33 unless the following conditions are met:

34
35 1. The law enforcement officer obtained an HIV test
36 immediately following that exposure;

37
38 2. The exposure as alleged creates a significant risk of
39 HIV infection as defined by the rules of the Department of Human
40 Services;

41
42 3. Written consent from the person in custody was properly
43 sought; and

44
45 4. Written informed consent was not given by the person in
46 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
 person in custody must be offered.