

# MAINE STATE LEGISLATURE

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DATE: June 15, 1995

(Filing No. S- 269 )

**HUMAN RESOURCES**

Reported by: The Majority of the Committee.

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**STATE OF MAINE  
SENATE  
117TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " A " to S.P. 129, L.D. 321, Bill, "An Act to Implement the Recommendations of the Maine HIV Advisory Committee Concerning HIV Testing"

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 §19201, sub-§§1-A and 1-B** are enacted to read:

**1-A. Bona fide occupational exposure.** "Bona fide occupational exposure" means skin, eye, mucous membrane or parenteral contact of a person with the potentially infectious blood or other body fluids of another person that results from the performance of duties by the exposed person in the course of employment.

**1-B. Employer; employer of the person exposed.** "Employer" and "employer of the person exposed" include a self-employed person who is exposed to the potentially infectious blood or other body fluids of another person.

**Sec. 2. 5 MRSA §19201, sub-§4-A,** as enacted by PL 1987, c. 811, §1, is amended to read:

**4-A. HIV test.** "HIV test" means a test for the presence of an antibody to HIV or a test for an HIV antigen or other diagnostic determinants specific for HIV infection.

**Sec. 3. 5 MRSA §19201, sub-§5,** as repealed and replaced by PL 1987, c. 539, is amended to read:

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5. **HIV infection; HIV infection status.** "HIV infection" means the state wherein HIV has invaded the body and is being actively harbored by the body. "HIV infection status" means the results of an HIV test.

**Sec. 4. 5 MRSA §19203, sub-§2,** as repealed and replaced by PL 1987, c. 811, §3, is amended to read:

2. **Designated health care provider.** To a health care provider designated by the subject of the test in writing. When a patient has authorized disclosure of HIV test results to a person or organization providing health care, the patient's physieian health care provider may make these results available only to other health care providers working directly with the patient, and only for the purpose of providing direct medical or dental patient care. Any physieian health care provider who discloses HIV test results in good faith pursuant to this subsection ~~shall--be~~ is immune from any criminal or civil liability for the act of disclosing HIV test results to other health care providers;

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

1. **Individual tested.** Except as provided in this section and section 19203, subsections 4 and 5, no person may perform an HIV test without first obtaining the written informed consent of the person to be tested. Informed consent is not required for repeated HIV testing by health care providers to monitor the course of established infection. Anonymous test sites under section 19203-B, are exempt from the requirement that the informed consent be in writing.

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

4. **Occupational exposure.** Consent need not be obtained when a ~~health--care--provider,--an--employee--of--a--health--care faacility--or--a--patient--in--a--health--care--facility--is--exposed--to--the bleed--or--body--fluids--of--another--and--the~~ bona fide occupational exposure creates a significant risk of infection provided that a court order has been obtained under section 19203-C. The fact that an HIV test was given as a result of an accidental occupational exposure ~~in--a--health--care--faacility~~ and the results of that test ~~shall~~ may not appear in a ~~patient's--medical--recceord~~ any records of the person whose blood or body fluid is the source of the exposure. ~~Counseling--en--risk--reduction~~ Pretest and post-test counseling must be offered, ~~but--the--patient,~~ The subject of the test may choose not to be informed about the result of the test.

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Sec. 7. 5 MRSA §19203-C, sub-§1, as amended by PL 1989, c. 219, §1, is further amended to read:

1. ~~Petition.~~ Any person ~~described in subsection 1-A who has been accidentally exposed to blood or body fluid of a patient in a health care facility~~ who experiences a bona fide occupational exposure may petition the District Court with jurisdiction over the ~~health care facility~~ or other place where the ~~patient was being treated at the time of the accidental exposure~~ occurred to require the ~~patient~~ person whose blood or body fluid is the source of the exposure to submit to an HIV test provided that the following conditions have been met:

A. The exposure to blood or body fluids creates a significant risk of HIV infection, as defined by the Bureau of Health through the ~~promulgation~~ adoption of rules in accordance with the Maine Administrative Procedure Act, chapter 375;

B. The authorized representative of the ~~health care facility~~ employer of the person exposed has informed the ~~patient~~ person whose blood or body fluid is the source of the ~~accidental~~ occupational exposure and has sought to obtain written informed consent from the ~~patient~~ person whose blood or body fluid is the source of the exposure; and

C. Written informed consent was not given by the ~~patient~~ person whose blood or body fluid is the source of the exposure and the ~~patient~~ that person has ~~stated in writing the refusal~~ refused to be tested.

Sec. 8. 5 MRSA §19203-C, sub-§1-A, as enacted by PL 1989, c. 219, §2, is repealed.

Sec. 9. 5 MRSA §19203-C, sub-§3, ~~¶¶C and D~~, as enacted by PL 1987, c. 811, §6, are amended to read:

C. The report of the hearing proceedings shall ~~must~~ be sealed. No report of the hearing proceedings may be released to the public, except by permission of the ~~patient or the patient's~~ person whose blood or body fluid is the source of the exposure or that person's counsel and with the approval of the court.

D. The court may order a public hearing at the request of the ~~patient or the patient's~~ person whose blood or body fluid is the source of the exposure or that person's counsel.

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2           **Sec. 10. 5 MRSA §19203-C, sub-§§4 to 7**, as enacted by PL 1987,  
c. 811, §6, are amended to read:

4           **4. Determination.** The court may require the patient person  
whose blood or body fluid is the source of the exposure to obtain  
6 an HIV test only if the petitioner proves, by a preponderance of  
the evidence, that:

8           A. The exposure to blood or body fluids of the patient  
10 person created a significant risk of HIV infection as  
defined by the Bureau of Health through the ~~promulgation~~  
12 adoption of rules in accordance with the Maine  
Administrative Procedure Act, chapter 375;

14           B. An authorized representative of the ~~health-care-facility~~  
16 employer of the person exposed has informed the patient of  
the ~~accidental~~ occupational exposure and has sought to  
18 obtain written informed consent from the patient person  
whose blood or body fluid is the source of the exposure; and

20           C. Written informed consent was not given by the patient  
22 person whose blood or body fluid is the source of the  
exposure and the ~~patient~~ that person has ~~stated-in-writing~~  
24 the-refusal refused to be tested.

26           In determining whether to order the test, the court shall  
consider the balance of benefit and harm to both individuals if  
28 the test is ordered.

30           **5. Consent.** The court may not order a patient person whose  
blood or body fluid is the source of the exposure to obtain an  
32 HIV test unless the ~~health-care-worker-accidentally~~ employee  
exposed to the blood or body fluids of that patient person has  
34 consented to and obtained an HIV test immediately following that  
documented exposure.

36           **6. Costs.** The ~~health-care-facility-shall-be~~ employer of  
38 the person exposed is responsible for the petitioner's reasonable  
costs related to obtaining the results of an HIV test pursuant to  
40 this section, including the payment of the petitioner's  
attorneys' fees.

42           **7. Appeals.** A patient person required to undergo an HIV  
44 test may appeal the order to Superior Court. The appeal is  
limited to questions of law. Any findings of fact of the  
46 District Court may not be set aside unless clearly erroneous.

48           **Sec. 11. 5 MRSA §19203-C, sub-§8**, as enacted by PL 1987, c.  
50 811, §6, is repealed.

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2           **Sec. 12. 5 MRSA §19203-C, sub-§9**, as enacted by PL 1987, c.  
811, §6, is amended to read:

4           **9. Subsequent testing.** Subsequent testing arising out of  
6 the same incident of ~~accidental~~ occupational exposure shall must  
be conducted in accordance with this section.

8           **Sec. 13. 5 MRSA §19203-C, sub-§10** is enacted to read:

10           **10. Bureau of Health report.** The Bureau of Health shall  
12 report on an annual basis to the Maine HIV Advisory Committee the  
following information:

14           A. The number of incidents in which the Bureau of Health is  
16 requested to determine under subsection 1, paragraph A  
whether a bona fide occupational exposure has occurred; and

18           B. With regard to the incidents reported in paragraph A,  
20 the occupations represented, the nature or a description of  
the incidents and the number of incidents determined to be  
22 and not to be bona fide occupational exposures.

24           **Sec. 14. 5 MRSA §19203-D**, as enacted by PL 1987, c. 811, §6,  
is amended to read:

26           **§19203-D. Records**

28           When a medical record entry is made concerning information  
30 of a ~~patient's~~ person's HIV infection status, including the  
results of an HIV test, the following shall apply to the release  
of that information as a part of the medical record.

32           **1. Authorized release.** The patient person who is the  
34 subject of an HIV test, at or near the time the entry is made in  
the medical record, shall elect, in writing, whether to authorize  
36 the release of that portion of the medical record containing the  
HIV infection status information when ~~the patient's~~ that person's  
38 medical record has been requested. A new election may be made  
when a change in the ~~patient's~~ person's HIV infection status  
40 occurs or whenever the patient person makes a new election. The  
release form shall must clearly state whether or not the patient  
42 person has authorized the release of that information. The  
~~patient~~ person must be advised of the potential  
44 implications of authorizing the release of that information.

46           A. When release has been authorized, the custodian of the  
48 medical record may release, upon request, the ~~patient's~~  
person's medical record, including any HIV infection status  
information contained in the medical record. Release of HIV  
50 infection status information pursuant to this paragraph

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2 shall is not be a violation of any of the confidentiality provisions of this chapter.

4 B. When release has not been authorized, the custodian of the medical record may, upon request, release that portion of the medical record which that does not contain the HIV infection status information. Except as otherwise provided in this section, HIV infection status information may only be released only if the patient person has specifically authorized a separate release of that information. A general release form is insufficient.

12 **2. Authorized disclosure.** No A medical record containing results of an HIV test may not be disclosed, discoverable or compelled to be produced in any civil, criminal, administrative or other proceedings without the patient's consent of the person who is the subject of an HIV test, except in the following cases:

18 A. Proceedings held pursuant to the communicable disease laws, Title 22, chapter 251;

20 B. Proceedings held pursuant to the Adult Protective Services Act, Title 22, chapter 958-A;

22 C. Proceedings held pursuant to the child protection laws, Title 22, chapter 1071;

24 D. Proceedings held pursuant to the mental health laws, Title 34-B, chapter 3, subchapter IV, article III; and

26 E. Pursuant to a court order upon a showing of good cause, provided that the court order limits the use and disclosure of records and provides sanctions for misuse of records or sets forth other methods for assuring ensuring confidentiality.

28 **3. Utilization review; research.** Nothing in this section may be interpreted to prohibit reviews of medical records for utilization review purposes by duly authorized utilization review committees or peer review organizations. Qualified personnel conducting scientific research, management audits, financial audits or program evaluation with the use of medical records may not identify, directly or indirectly, any individual patient in any report of such research, audit, evaluation or otherwise disclose patient the identities of persons tested in any manner.

30 **4. Access by health care providers.** Nothing in this section may prohibit access to medical records by the patient's designated health care provider of the person who is the subject of an HIV test in accordance with section 19203, subsection 2.

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2           **5. Confidentiality policy.** Health care providers and  
4 others with patient access to medical records containing HIV  
6 infection status information shall have a written policy  
8 providing for confidentiality of all patient information  
consistent with this chapter. That policy shall must require, at  
a minimum, ~~termination--of--employment~~ action consistent with  
disciplinary procedures for violations of the confidentiality  
policy.

10           **Sec. 15. 5 MRSA §19204-A**, as amended by PL 1991, c. 803, §4,  
12 is further amended to read:

14           **§19204-A. Counseling**

16           Except as otherwise provided by this chapter, persons who  
18 ~~obtain--an~~ are the subjects of HIV test tests must be offered  
pretest and post-test counseling. Persons who are authorized by  
section 19203-C or 19203-E to receive test results after exposure  
20 must be offered counseling regarding the nature, reliability and  
significance of the HIV test and the confidential nature of the  
22 test. Persons offered counseling under this section may decline  
the offer by signing a waiver stating that counseling has been  
24 offered and is being declined.

26           **1. Pretest counseling.** "Pretest counseling" means must  
28 include:

30           A. ~~Personal~~ Face-to-face counseling that includes, at a  
minimum, a discussion of:

32                   (1) The nature and reliability of the test being  
34 proposed;

36                   (2) The person to whom the results of the test may be  
disclosed;

38                   (3) The purpose for which the test results may be  
40 used; and

42                   (4) Any reasonably foreseeable risks and benefits  
resulting from the test; and

44                   (5) Information on good HIV preventive practices and  
HIV risk reduction plans; and

46           B. A written memorandum summarizing the contents of the  
48 discussion concerning at least the topics listed in  
paragraph A, subparagraphs (1) to (5) given to the person  
50 being counseled. A written informed consent form may be



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2 used to satisfy the requirement for a written memorandum in  
3 this paragraph if it contains all the required information.  
4 A written consent form does not satisfy the requirement for  
5 personal counseling in paragraph A.

6 The provider of an HIV test may offer group pretest counseling,  
7 but individual counseling must be provided if the subject of the  
8 test requests it.

10 **2. Post-test counseling.** "Post-test counseling" means must  
11 include:

12 A. Personal counseling that includes, at a minimum, a  
13 discussion of:

14 (1) The test results and the reliability and  
15 significance of the test results;

16 (2) ~~The social and emotional consequences of the~~  
17 ~~information;~~

18 (3) Information on good preventive practices and risk  
19 reduction plans; and

20 (4) Referrals for medical care and ~~other~~ information  
21 and referrals for support services, including social,  
22 emotional support and legal services, as needed; and

23 B. A written memorandum summarizing the contents of the  
24 discussion given to the person being counseled; and

25 C. The offer of face-to-face counseling. If the subject of  
26 the test declines, the provider of the test may provide an  
27 alternative means of providing the information required by  
28 paragraph A.

29 **Sec. 16. 5 MRSA §19204-B,** as amended by PL 1989, c. 161, is  
30 further amended to read:

31 **§19204-B. Restrictions on requiring tests or results of tests**

32 **1. Employee testing.** ~~No health-care facility may require~~  
33 ~~that any~~ An employee or applicant for employment may not be  
34 required to submit to an HIV test or reveal whether the employee  
35 or applicant for employment has obtained an HIV test as a  
36 condition of employment or to maintain employment, except when  
37 based on a bona fide occupational qualification. ~~Enforcement of~~  
38 ~~this subsection is assigned to the~~ The Maine Human Rights  
39 Commission shall enforce this subsection.

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2 **2. Employee rights.** The employment status of any employee  
of-a-health-care-facility-shall may not be affected or changed:

4 A. If the employee declines to be tested pursuant to  
section 19203-A;

6 B. If the employee testifies or assists in any proceeding  
8 under this chapter;

10 C. If the employee asserts any other rights exercised in  
good faith pursuant to this chapter; or

12 D. Because of the result of any test taken pursuant to this  
14 chapter.

16 **Sec. 17. 5 MRSA §19204-C**, as enacted by PL 1991, c. 3, §1, is  
amended to read:

18 **§19204-C. Restrictions upon revealing HIV antibody test results**

20 No An insurer, nonprofit hospital or medical services  
22 organization ~~or~~ nonprofit health care plan or health maintenance  
24 organization may not request any person to reveal whether the  
person has obtained a test for the presence of antibodies to HIV  
26 or a test to measure the virus or to reveal the results of such  
tests taken prior to an application for insurance coverage.

28 **Sec. 18. 5 MRSA §19205, sub-§1**, as amended by PL 1989, c. 700,  
Pt.. A, §28, is further amended to read:

30 **1. Policy; services.** It shall--be is the policy of the  
32 State to provide to persons who test positive for HIV or have  
been diagnosed as having AIDS ~~or--AIDS-Related--Complex~~ the  
34 services of departments and agencies, including, but not limited  
to, the Department of Education, the Department of Mental Health  
36 and Mental Retardation, the Department of Human Services and the  
Department of Corrections.

38 **Sec. 19. 5 MRSA §19205, sub-§2**, as amended by PL 1989, c. 502,  
40 Pt. A, §22, is further amended to read:

42 **2. Coordination of services.** A person designated by the  
Commissioner of Human Services shall ~~insure~~ ensure coordination  
44 of new and existing services so as to meet the needs of persons  
with AIDS, ~~AIDS-Related-Complex-and-viral-positivity~~ HIV or AIDS  
46 and identify gaps in programs.

48 The committee established in section 12004-I, subsection 42,  
shall work with the person designated in this chapter to ~~insure~~

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ensure the coordination of services to meet the needs of persons with AIDS, AIDS-Related-Complex-and-viral-positivity HIV or AIDS.'

Further amend the bill by inserting at the end before the statement of fact the following:

**FISCAL NOTE**

This bill may increase the number of civil cases filed in the court system. The additional workload, administrative costs and indigent defense costs associated with the minimal number of new cases filed can be absorbed within the budgeted resources of the Judicial Department. The collection of additional filing fees may also increase General Fund revenue by minor amounts.'

**STATEMENT OF FACT**

This amendment is the majority report of the committee. It revises the definition of "bona fide occupational exposure" to match the federal definition. It removes the provision concerning HIV testing on donated body parts. It removes the provision that would have amended the disclosure provisions for other agencies. It removes the provisions that would have amended informed consent for insurance. It removes the provision of guardianship. It clarifies the provision on reporting concerning occupational exposure. It adds a waiver provision for a person who declines pretest and post-test counseling. It deletes two proposed additions to the pretest counseling discussion. It clarifies a provision in the post-test counseling section. It makes several changes that are language changes. It deletes the portion of the bill that would have increased the penalties for violating the provisions of the Maine Revised Statutes, Title 22, chapter 501, on HIV testing.

The amendment also adds a fiscal note to the bill.