

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DATE: 5-8-97

(Filing No. H-404)

MAJORITY
JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1000, L.D. 1392, Bill, "An Act to Require the Release of the Results of an HIV Test to an Emergency Services Worker Who Was Possibly Exposed"

Amend the bill by striking out the title and substituting the following:

'An Act to Require the Release of the Results of an HIV Test to a Person Who Has Experienced a Bona Fide Occupational Exposure'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 5 MRSA §19203-C, sub-§1, as amended by PL 1995, c. 404, §7, is further amended to read:

1. **Petition.** Any person who experiences a bona fide occupational exposure may petition the District Court with jurisdiction over the facility or other place where the exposure occurred to require the person whose blood or body fluid is the source of the exposure to submit to an HIV test and to require that the results of the test be provided to the petitioner 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 adoption of rules in accordance with the Maine Administrative Procedure Act, chapter 375;

COMMITTEE AMENDMENT

2 B. The authorized representative of the employer of the
person exposed has informed the person whose blood or body
4 fluid is the source of the occupational exposure and has
sought to obtain written informed consent from the person
6 whose blood or body fluid is the source of the exposure; and

8 C. Written informed consent was not given by the person
whose blood or body fluid is the source of the exposure and
10 that person has refused to be tested.

12 **Sec. 2. 5 MRSA §19203-C, sub-§4,** as amended by PL 1995, c.
404, §10, is further amended to read:

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

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

24 B. An authorized representative of the employer of the
26 person exposed has informed the patient of the occupational
exposure and has sought to obtain written informed consent
28 from the person whose blood or body fluid is the source of
the exposure; and

30 C. Written informed consent was not given by the person
32 whose blood or body fluid is the source of the exposure and
that person has refused to be tested.

34 ~~In determining whether to order the test, the court shall~~
36 ~~consider the balance of benefit and harm to both individuals if~~
the test is ordered.'

38 Further amend the bill by inserting at the end before the
40 summary the following:

42 **FISCAL NOTE**

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

SUMMARY

2
4 This amendment is the majority report. It deletes the
6 definition of "emergency services worker" and the provisions
8 entitling emergency services workers to require a person whose
10 blood or bodily fluid is the source of a bona fide occupational
12 exposure to submit to an HIV test and to receive the results of
14 the test.

16 It replaces those provisions with language clarifying that
18 anyone, including those who would be included in the definition
20 in the original bill of "emergency services worker," who
22 experiences a bona fide occupational exposure is entitled to
24 receive the results of a court-ordered HIV test on a person whose
26 blood or bodily fluid is the source of a bona fide occupational
exposure, pursuant to the judicial consent procedures of the
Maine Revised Statutes, Title 5, section 19203-C.

28 This amendment removes the discretion that the court has
under current law by requiring the court to order the test and
release of the results as long as the petitioner establishes by a
preponderance of the evidence all of the prerequisites set forth
in Section 2 of the amendment. Finally, the amendment repeals
the provision whereby the court must consider the balance of
benefit and harm to each individual before ordering the test.

This amendment also adds a fiscal note to the bill.