

MAINE STATE LEGISLATURE

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

COMMITTEE AMENDMENT "A" to H.P. 1017, L.D. 1409, Bill, "An Act to Require Mandatory Testing of Persons Who Assault Police Officers"

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

'An Act to Require Mandatory Testing for Blood-borne Pathogens of Persons Who Are the Source of 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. 22 MRSA c. 250, sub-c. IV is enacted to read:

SUBCHAPTER IV

MANDATORY BLOOD-BORNE PATHOGEN TEST

§831. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. 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.

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2 2. Blood-borne pathogen test. "Blood-borne pathogen test"
3 means a test that indicates the presence of a specific
4 blood-borne transmissible infectious agent.

6 3. Employer; employer of the person exposed. "Employer" or
7 "employer of the person exposed" includes a self-employed person
8 who is exposed to the potentially infectious blood or other body
9 fluids of another person.

10 4. Informed consent. "Informed consent" means consent that
11 is:

12 A. Based on an actual understanding by the person to be
13 tested:

14 (1) That the test is being performed;

15 (2) Of the nature of the test;

16 (3) Of the persons to whom the results of that test
17 may be disclosed;

18 (4) Of the purpose for which the test results may be
19 used; and

20 (5) Of any reasonably foreseeable risks and benefits
21 resulting from the test; and

22 B. Wholly voluntary and free from express or implied
23 coercion.

24 5. Person. "Person" means any natural person, firm,
25 corporation, partnership or other organization, association or
26 group.

27 **§832. Judicial consent to blood-borne pathogen test**

28 1. Petition. Any person who experiences a bona fide
29 occupational exposure may petition the District Court with
30 jurisdiction over the facility or other place where the exposure
31 occurred to require the person whose blood or body fluid is the
32 source of the exposure to submit to a blood-borne pathogen test
33 and to require that the results of the test be provided to the
34 petitioner as long as the following conditions have been met:

35 A. The exposure to blood or body fluids creates a
36 significant risk of infection with a blood-borne pathogen,
37 as defined by the Bureau of Health through the adoption of
38 rules;

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

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

10
11 2. Prehearing duties of the court. Upon receipt by the
12 District Court of the petition, the court shall:

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

14
15 B. Cause a written notice of the petition and hearing to be
16 given, in accordance with the Maine Rules of Civil
17 Procedure, to the patient who is the subject of the
18 proceeding;

19 C. Appoint counsel, if requested, for any indigent client
20 not already represented; and

21 D. Furnish counsel with copies of the petition.

22
23 3. Hearing. The hearing is governed as follows.

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

27 B. The hearing is confidential and must be electronically
28 or stenographically recorded.

29 C. The report of the hearing proceedings must be sealed. A
30 report of the hearing proceedings may not be released to the
31 public, except by permission of the person whose blood or
32 body fluid is the source of the exposure or that person's
33 counsel and with the approval of the court.

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

37
38 4. Determination. The court shall require the person whose
39 blood or body fluid is the source of the exposure to obtain a
40 blood-borne pathogen test and shall require that the results of
41 the test be provided to the petitioner only if the petitioner
42 proves by a preponderance of the evidence that:

2 A. The exposure to blood or body fluids of the person
4 created a significant risk of infection with a blood-borne
pathogen as defined by the Bureau of Health through the
6 adoption of rules;

8 B. An authorized representative of the employer of the
10 person exposed has informed the patient of the occupational
12 exposure and has sought to obtain written informed consent
14 from the person whose blood or body fluid is the source of
16 the exposure; and

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

24 5. Consent. The court may not order a person whose blood
26 or body fluid is the source of the exposure to obtain a
28 blood-borne pathogen test unless the employee exposed to the
30 blood or body fluids of that person has consented to and obtained
32 a blood-borne pathogen test immediately following that documented
34 exposure.

36 6. Costs. The employer of the person exposed is
38 responsible for the petitioner's reasonable costs related to
40 obtaining the results of a blood-borne pathogen test pursuant to
42 this section, including the payment of the petitioner's
44 attorney's fees.

46 7. Appeals. A person required to undergo a blood-borne
48 pathogen test may appeal the order to Superior Court. The appeal
is limited to questions of law. Any findings of fact of the
District Court may not be set aside unless clearly erroneous.

8. Subsequent testing. Subsequent testing arising out of
the same incident of occupational exposure must be conducted in
accordance with this section.

§833. Confidentiality

No other disclosure of HIV test results may be made without
written authorization from both the person tested and the person
exposed.

§834. Counseling for HIV

If an HIV test, as defined in Title 5, section 19201, is
conducted as a result of a court order pursuant to section 832,

2 both the person tested and the person exposed must be offered
3 counseling pursuant to Title 5, section 19204-A.

4 **§835. Rulemaking**

6 Rules adopted by the Bureau of Health pursuant to this
7 subchapter are routine technical rules under Title 5, chapter
8 375, subchapter II-A.'

10 Further amend the bill by inserting at the end before the
11 summary the following:

14 **FISCAL NOTE**

16 The additional costs associated with mandatory testing for
17 communicable diseases can be absorbed by the Department of Public
18 Safety utilizing existing budgeted resources.

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

28 **SUMMARY**

30 This amendment replaces the original bill. It institutes a
31 judicial procedure by which a person, including a law enforcement
32 officer, experiencing a bona fide occupational exposure may
33 petition the court to order the person who was the source of the
34 exposure to submit to a blood-borne pathogen test to detect
35 diseases such as hepatitis and to order that the test results be
36 released to the petitioner. This procedure is consistent with
37 the procedure for HIV testing under the Maine Revised Statutes,
38 Title 5, section 19203-C. If an HIV test is conducted as a result
39 of a court order as provided in this amendment, both the person
40 tested and the petitioner must be offered counseling. The
amendment also adds a fiscal note to the bill.