HOUSE DOCKET, NO. 3246 FILED ON: 1/18/2013

HOUSE . . . . . No. 1173

The Commonwealth of Massachusetts

PRESENTED BY:

James Arciero

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to the right to testing for commonly communicable infectious diseases.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James Arciero	*2nd Middlesex*
Gerald T. Leone	*Office of the Middlesex District Attorney* *15 Commonwealth Ave.* *Woburn, MA 01801*

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By Mr. Arciero of Westford, a petition (accompanied by bill, House, No. 1173) of James Arciero and Gerald T. Leone relative to the right to testing for commonly communicable infectious diseases for persons exposed to certain bodily substances. The Judiciary.

The Commonwealth of Massachusetts

An Act relative to the right to testing for commonly communicable infectious diseases.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1 - The General Laws are hereby amended by inserting after chapter 258E the following chapter –

CHAPTER 258F

Right to Testing For Commonly Communicable Infectious Diseases

Section 1. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"bodily substance", shall mean any human secretion, discharge or emission including, but not limited to, blood, saliva, vomit, mucous, semen, urine or feces;

"law enforcement officer", for purposes of this chapter, shall mean any State Police Trooper, or other state, city, town, college or university police officer; correction officers; sheriff's department officer; trial court employee; or civilian employee of such offices.

Section 2. Notwithstanding the provisions of any general or special law to the contrary:

(a) A court or justice authorized to issue warrants in criminal cases shall, upon complaint on oath by the attorney general or an assistant attorney general, the district attorney or an assistant district attorney, or law enforcement officer authorized to seek search warrants in a criminal case, issue an order for testing and examination of the subject identified in the testing order, including any follow-up testing and examination that is medically appropriate, for commonly communicable infectious diseases that the Department of Public Health has established through regulations can be transmitted through exposure to bodily substances and for which early identification of such diseases would improve the treatment options available to the person who was so exposed, where such testing and examination has been requested: by the person who was exposed to the bodily substances of the subject of the testing order; or by that person's guardian or next of kin; or if the person who was exposed is a minor, by that person's parent, guardian, or guardian ad litem; or if the person who was exposed is unable to make such a request and a guardian or next of kin is unavailable, by that person's treatment provider; and

26 i. Said court or justice finds probable cause to believe that the subject of the testing order
27 committed a crime involving sexual assault and/or battery upon the person for whom the request
28 is being made, and probable cause to believe that, during the commission of said crime, the
29 person for whom the request is being made was exposed to the bodily substances of the subject
30 of the testing order; or
31 ii. Said court or justice finds probable cause to believe that a law enforcement officer,
32 during the course of their performance of their official duties, was exposed to the bodily
33 substance of the subject of the testing order.
34 The applicant seeking an order for testing and examination shall appear personally before a
35 court or justice authorized to issue search warrants in criminal cases and shall submit an affidavit
36 which contains the facts, information, and circumstances upon which such person relies to
37 establish sufficient grounds for the issuance of the testing order. The clerk's office of the court
38 or justice from which the testing order issues shall maintain record of any application for, denial
39 of, or issuance of such an order for testing and examination. Such applications and records under
40 this chapter are not public record.
41 (b) If the subject of the testing order is in the custody of the County Sheriff or the
42 Department of Correction, or a juvenile facility, said custodian shall arrange for the testing. If
43 the subject of the testing order is not in the custody of the County Sheriff or the Department of
44 Correction, the subject of the testing order shall be tested and examined pursuant to regulation(s)
45 promulgated by the Department of Public Health pursuant to subsection (2)(A)(8). Testing and
46 examination may be accomplished by any medically appropriate means. Such testing and
47 examination shall occur not later than 48 hours from the time the testing order issues.
48 (c) The results of such testing and examination shall be made available
49 as soon as practicable to (1) the person who requested the testing order; and (2) the subject of
50 the testing order. The person who requested the testing order shall not disseminate the test
51 results except for the purpose of obtaining medical treatment. If the Court determines that other
52 persons were exposed to bodily fluids of the subject of the testing order, the Court may, upon
53 request, issue an order allowing for further dissemination of such test results to such persons
54 and/or their treatment providers.
55 (d) The testing and examination required by this chapter shall be conducted solely to screen
56 for and identify the need for treatment for the victim and not for evidentiary purposes. However,
57 nothing in this chapter shall be construed to abrogate, impair or limit powers of search and
58 seizure granted under other provisions of the General Laws or under the common law.
59 Section 3. The provisions of this chapter shall apply regardless of whether or
60 not, at the time of application, the suspect has been formally charged with a crime.
61 Section 4. The provisions of this section apply notwithstanding the provisions of any general
62 or special law to the contrary, including G. L. c. 111, § 70F.
63 Section 5. The Department of Public Health shall enact regulation(s):
64 a. providing for the identification of, and maintenance of, a list of "commonly
65 communicable infectious diseases", which diseases shall include the human immunodeficiency

66 virus, which diseases pose the greatest risk to the public health through transmission by bodily
67 substance transfer, and which diseases the treatment for which is benefited most through early
68 detection and treatment; and
69 b. providing for testing of suspects pursuant to Section 2.
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