SENATE DOCKET, NO. 1025 FILED ON: 1/17/2013

SENATE . . . . . No. 1024

The Commonwealth of Massachusetts

PRESENTED BY:

John Hart, Jr.

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 to protect crime victims exposed to the AIDS virus and infectious hepatitis.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John Hart, Jr.	*First Suffolk*
Bradley H. Jones, Jr.	*20th Middlesex*
Bruce E. Tarr	*First Essex and Middlesex*
Martin J. Walsh	*13th Suffolk*

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SENATE . . . . . No. 1024

By Mr. Hart, a petition (accompanied by bill, Senate, No. 1024) of John Hart, Jr., Bradley H. Jones, Jr., Bruce E. Tarr and Martin J. Walsh for legislation to protect crime victims exposed to the AIDS virus and infectious hepatitis. Public Health.

The Commonwealth of Massachusetts

An Act to protect crime victims exposed to the AIDS virus and infectious hepatitis.

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.Section 3 of chapter 258B is hereby amended by adding the following subsection:-

(x) a victim of a designated offense, as defined in section 42B of chapter 276, shall be informed of the victim's right to petition the court to have the defendant submit to an HIV testor a test for infectious hepatitis under said section 42B of said chapter 276.

SECTION 2.Chapter 276 of the General Laws is hereby amended by inserting after section 42A the following section:-

Section 42B.(a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Designated offense", assault by means of hypodermic syringe or needle under section 15C of chapter 265; rape under section 22 of said chapter 265; rape of a child under 16 with force under section 22A of said chapter 265; aggravated rape of a child under 16 with force under section 22B of said chapter 265; a repeat offense under section 22C of said chapter 265; rape and abuse of a child under section 23 of said chapter 265; aggravated rape and abuse of a child under section 23A of said chapter 265; a repeat offense under section 23B of said chapter 265; drugging persons for sexual intercourse under section 3 of said chapter 272; incestuous marriage or intercourse under section 17 of said chapter 272; unnatural and lascivious acts under section 35 of said chapter 272; unnatural and lascivious acts with a child under 16 under section 35A of said chapter 272;

"Hepatitis test", a licensed screening test for the HBV and HBC antibody or antigen, conducted by a facility licensed by the department of public health;

22 “HIV test”, a licensed screening test for the human T-cell lymphotrophic virus type
23 IIIantibody or antigen, conducted by a facility licensed by the department of public health.

24 (b) Notwithstanding section 70F of chapter 111 or any other general or special law to the
25 contrary, when a defendant has been charged by a complaint or an indictment with a designated
26 offense the court shall, upon request of the victim, order the defendant to submit toan HIV test,
27 hepatitis test, or both; provided, however, that the testing shall only be ordered if the result
28 would provide a medical benefit or a psychological benefit to the victim and the testing occurs
29 within 12 months of the date of the offense that is charged in the complaint or indictment.

30 Medical benefit shall include, but not be limited to, a situation when: (i) adecision is
31 pending about beginning, continuing or discontinuing a medical intervention for the victim; and
32 (ii) the result of an HIV test or hepatitis testof the accused could affect that decision and could
33 provide relevant information beyond that which would be provided from testing of the victim.

34 Upon a finding by the court that testing the defendant would provide a medical benefit to
35 the victim or a psychological benefit to the victim, the court shall order the defendant to submit
36 to an HIV test, a hepatitis test or both.

37 (c) Notwithstanding section 70F of chapter 111 or any other general or special law to the
38 contrary, when a defendant has been charged by a complaint or an indictment with an offense,
39 that is not a designated offense, the court shall upon request of the victim, order the defendant to
40 submit to an HIV test, a hepatitis test, or both after the conclusion of a hearing where the court
41 has determined that: (i) there is probable cause to believe that the defendant committed the
42 offense; (ii) there is probable cause to believe that blood, semen or any other bodily fluid capable
43 of transmitting the human immunodeficiency virus has been transferred from the defendant to
44 the victim; (iii) the HIV test or hepatitis test result would provide a medical benefit or a
45 psychological benefit to the victim; and (iv) the testing will occur within 12 months of the date
46 of the offense that is charged in the complaint or indictment.

47 Medical benefit shall include, but not be limited to, a situation when: (i) a decision is
48 pending about beginning, continuing or discontinuing a medical intervention for the victim; and
49 (ii) the result of an HIV test or hepatitis test of the accused could affect that decision and could
50 provide relevant information beyond that which would be provided from testing of the victim.

51 (d) Upon order of the court, test results obtained under this section shall be sent by the
52 testing facility to the court. The court shall make sure the test results are provided to the
53 defendant and the victim; provided, however, no positive test results shall be disclosed to the
54 victim or the accused without also providing or offering professional counseling services. The
55 court shall disclose the test results, if the defendant is incarcerated or detained, to the officer in
56 charge and the chief medical officer of the facility in which the defendant is incarcerated or
57 detained. The test results shall thereafter be impounded. No health care facility shall be liable for
58 the release of HIV or hepatitis test results under this section.