SENATE DOCKET, NO. 209 FILED ON: 1/18/2011

SENATE . . . . . No. 1071

The Commonwealth of Massachusetts

PRESENTED BY:

Gale D. Candaras

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 infectious disease control..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Gale D. Candaras	☐ *[District]* ☐
Stephen L. DiNatale	*3rd Worcester*
Benjamin Swan	*11th Hampden*

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By Ms. Candaras, a petition (accompanied by bill, Senate, No. 1071) of Gale D. Candaras, Stephen L. DiNatale and Benjamin Swan for legislation relative to infectious disease control. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *801* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to infectious disease control..

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. Chapter 127, Section 38B of the General Laws is hereby amended by adding the following new subsection after section (c):

(d) (1) Notwithstanding any general or special law to the contrary, an officer or other employee, any volunteer or employee of a contractor in any such facility or any duly authorized officer or other employee of any such facility engaged in the transportation of a prisoner for any lawful purpose, or any duly authorized public safety officer employed by the Commonwealth or any political subdivision thereof acting in his professional capacity who is subjected to an assault or assault and battery by means of a bodily substance may petition the superior court for an order compelling: (1) the production of medical, insurance, or other records to determine the presence of any infectious disease, as defined by the department of public health, in the bodily substance of the person in custody; and (2) the testing of that person's blood for infectious disease.

(2) The court shall order the production of the medical , insurance, or other records, and may order the testing of the person in custody's bodily substance: (1) if exposure to the bodily substance of the person in custody substantially threatens the health of the petitioner; (2) the exposure to the bodily substance is a direct result of conduct by the by the person in custody; (3) a reasonable suspicion exists to believe that the conduct is or may be a violation of

18 state or federal criminal law, even if a criminal investigation or prosecution relating to the
19 conduct has not been or will not be commenced in the matter.

20 (3) The order of production shall direct the custodian of the medical, insurance,
21 or other records to produce immediately them for in camera inspection by the court. After
22 conducting the inspection of the records and bodily substance test results, the court shall notify
23 the petitioner immediately of the presence or absences of an infectious disease in the bodily
24 substance of the person in custody. The petitioner shall not disclose the identity of the person in
25 custody, nor shall the petitioner disclose the results of the test to any person, except as otherwise
26 necessary for the petitioner to receive medical treatment.

27 (4) The court shall seal the records of the proceedings, including any judicial
28 decision, upon the conclusion of the proceedings. The court may allow publication of its
29 decisions if it has removed the names of the petitioner and the person in custody from the
30 decision.

31 (5) The court may enter and order of production only after the person in
32 custody is given notice and an opportunity to be heard in the matter. The hearing on the petition
33 for the order may not commence without the person in custody receiving notice of the hearing, or
34 no earlier than 24 hours after the person receives the notice, unless the petitioner demonstrates
35 that delay will result in immediate and irreparable harm to the petitioner's health, or the
36 infeasibility of providing notice to the offender.

37 (6) An order granting or denying the production of medical, insurance, or other
38 records or an order disclosing or refusing to disclose the contents of the records to the petitions
39 immediately subject to appeal and stays or injunctions pending appeal as authorized by law.

40 (7) The court may award reasonable attorney fees, costs, and expert witness
41 expenses to and prevailing party in any action or proceeding under this act. In awarding attorney
42 fees and expert witness expenses, the court shall take into account whether the offending party,
43 prior to the commencement of the hearing, voluntarily produced all medical, insurance, or other
44 records for the court's in camera inspection to determine the presence of an infectious disease.

45 (8) The testing of the bodily substance of the person in custody shall be
46 performed under the direction of the department of public health. The results of an infectious
47 disease test performed on the person in custody pursuant to this section shall not be admissible in
48 any criminal of juvenile proceeding arising out of the alleged offence. The identity of the person
49 in custody shall be kept confidential in accordance with the provisions of section 70 of chapter
50 111.

51 (9)Notwithstanding any general or special law to the contrary, no hospital, or
52 agent, employee, administrator, doctor, official, or other representative of a reporting intuition
53 shall be held jointly or severally liable either as an institution, or personally, for in good faith

54 pursuant to the requirements of this section. All parties, provided they have operated in good
55 faith, shall otherwise be afforded total immunity from civil or criminal liability as a result of
56 fulfilling the provisions of this section.