

SENATE No. 01071

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 bill:

An Act relative to infectious disease control..

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Gale D. Candaras

First Hampden and Hampshire

Stephen L. DiNatale

3rd Worcester

Benjamin Swan

11th Hampden

SENATE No. 01071

By Ms. Candaras, petition (accompanied by bill, Senate, No. 1071) of Swan, DiNatale and Candaras for legislation relative to infectious disease control [Joint Committee on Public Health].

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

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

1 SECTION 1. Chapter 127, Section 38B of the General Laws is hereby amended by
2 adding the following new subsection after section (c):

3 (d) (1) Notwithstanding any general or special law to the contrary, an officer or other
4 employee, any volunteer or employee of a contractor in any such facility or any duly authorized
5 officer or other employee of any such facility engaged in the transportation of a prisoner for any
6 lawful purpose, or any duly authorized public safety officer employed by the Commonwealth or
7 any political subdivision thereof acting in his professional capacity who is subjected to an assault
8 or assault and battery by means of a bodily substance may petition the superior court for an
9 order compelling: (1) the production of medical, insurance, or other records to determine the

10 presence of any infectious disease, as defined by the department of public health, in the bodily
11 substance of the person in custody; and (2) the testing of that person's blood for infectious
12 disease.

13 (2) The court shall order the production of the medical , insurance, or other records,
14 and may order the testing of the person in custody's bodily substance: (1) if exposure to the
15 bodily substance of the person in custody substantially threatens the health of the petitioner; (2)
16 the exposure to the bodily substance is a direct result of conduct by the by the person in custody;
17 (3) a reasonable suspicion exists to believe that the conduct is or may be a violation of state or
18 federal criminal law, even if a criminal investigation or prosecution relating to the conduct has
19 not been or will not be commenced in the matter.

20 (3) The order of production shall direct the custodian of the medical, insurance, or
21 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 decision,
28 upon the conclusion of the proceedings. The court may allow publication of its decisions if it has
29 removed the names of the petitioner and the person in custody from the decision.

30 (5) The court may enter and order of production only after the person in custody is
31 given notice and an opportunity to be heard in the matter. The hearing on the petition for the

32 order may not commence without the person in custody receiving notice of the hearing, or no
33 earlier than 24 hours after the person receives the notice, unless the petitioner demonstrates that
34 delay will result in immediate and irreparable harm to the petitioner's health, or the infeasibility
35 of providing notice to the offender.

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

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

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

49 (9) Notwithstanding any general or special law to the contrary, no hospital, or agent,
50 employee, administrator, doctor, official, or other representative of a reporting institution shall be
51 held jointly or severally liable either as an institution, or personally, for in good faith pursuant to
52 the requirements of this section. All parties, provided they have operated in good faith, shall

53 otherwise be afforded total immunity from civil or criminal liability as a result of fulfilling the
54 provisions of this section.