

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Candaras, Gale (SEN)

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:
Candaras, Gale (SEN)	First Hampden and Hampshire
Angelo J. Puppolo, Jr.	12th Hampden
Christine E. Canavan	10th Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01215 OF .]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 111 of the General Laws is hereby amended by adding the following new
2 section:

3 Section 111N. (a) Notwithstanding the provisions of any general or special law to the contrary,
4 any person exposed to the blood or other bodily fluid of an offending person may petition the superior
5 court for an order compelling: (1) the production of medical, insurance, or other records to determine
6 the presence of any infectious disease, as defined by the department of public health, in the blood or
7 other bodily fluid of the offending person; and (2) the testing of the offender's blood for infectious
8 disease.

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

16 (c) The order of production shall direct the custodian of the medical, insurance, or other records
17 to produce immediately them for in camera inspection by the court. After conducting the inspection of

18 the records and blood test results, the court shall notify the petitioner immediately of the presence or
19 absence of an infectious disease in the blood or other bodily fluid of the offending person. The
20 petitioner shall not disclose the identity of the offender, nor shall the petitioner disclose the results of
21 the test to any person, except as otherwise necessary for the petitioner to receive medical treatment.

22 (d) The court shall seal the records of the proceedings, including any judicial decision, upon the
23 conclusion of the proceedings. The clerk shall take all necessary steps to ensure the confidentiality of
24 the sealed records. The court may allow publication of its decision if it has removed the names of the
25 petitioner and the offending person from the decision.

26 (e) The court may enter an order of production only after the offending person is given notice
27 and an opportunity to be heard in the matter. The hearing on the petition for the order may not
28 commence without the offender receiving notice of the hearing, or no earlier than 48 hours after the
29 offender receives the notice, unless the petitioner demonstrates delay will result in immediate and
30 irreparable harm to the petitioner's health or the infeasibility of providing notice to the offender.

31 (f) An order granting or denying the production of medical, insurance, or other records or an
32 order disclosing or refusing to disclose the contents of the records to the petitioner is immediately
33 subject to appeal and stays or injunctions pending appeal as authorized by law.

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

39 (h) The testing on the offender shall be performed under the direction of the department of
40 public health. The results of an infectious disease test performed on the offender pursuant to this
41 section shall not be admissible in any criminal or juvenile proceeding arising out of the alleged offense.
42 The identity of the offender subject to testing shall be kept confidential in accordance with the
43 provisions of section 70 of chapter 111.

44 (i) Notwithstanding the provisions of any general law or special law to the contrary, no hospital,
45 or agent, employee, administrator, doctor, official or other representative of a reporting institution shall
46 be held jointly or severally liable either as an institution, or personally, for reporting in good faith
47 pursuant to the requirements of this section. All parties, provided they have operated in good faith, shall
48 otherwise be afforded total immunity from civil or criminal liability as a result of fulfilling the provisions
49 of this section.