

By Mr. Cox of Lowell, petition of John F. Cox relative to the confidentiality of HIV tests. Health Care.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT RELATIVE TO THE CONFIDENTIALITY OF HIV TESTS.

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. Section 70F of Chapter 111 of the General Laws,
2 as appearing in the 1989 Official Edition, is hereby stricken and
3 replaced with the following: —

4 a) No health care facility, as defined in section 70E, and no
5 physician or health care provider shall test any person for the
6 presence of HIV antibody or antigen without first obtaining his
7 or her written informed consent.

8 b) No health care facility, as defined in section 70E, and no
9 physician or health care provider shall identify the subject of a
10 test for the presence of HIV antibody or antigen without first
11 obtaining the subject's written informed consent.

12 c) No health care facility, as defined in section 70E, and no
13 physician or health care provider shall disclose the results of an
14 HIV antibody or antigen test to anyone other than the subject
15 thereof without first obtaining his or her written informed
16 consent, except under the following conditions:

17 (1) The subject's physician may disclose a positive HIV antibody
18 or antigen test result or, without disclosing the underlying test
19 result, disclose a risk of HIV infection, without the consent of the
20 subject of the test, to the subject's current sexual partner; provided
21 that: (i) the subject has informed the physician of the identity of
22 the current sexual partner of such subject; (ii) the physician, prior
23 to disclosure, advises the subject of the physician's intent to
24 disclose and makes a good faith effort to encourage the subject
25 to disclose such information to said sexual partner; and (iii) the

26 physician, in his or her professional judgment, reasonably believes
27 the current sexual partner to be unknowingly at risk of HIV
28 infection because of the subject's refusal after counseling to warn
29 the current sexual partner.

30 (2) The subject's physician may request the assistance of the
31 Massachusetts Department of Public Health in notification of a
32 current sexual partner who has been identified by the subject and
33 whom the physician, in his or her professional judgment,
34 reasonably believes to be unknowingly at risk of HIV infection.
35 If the physician so requests the department's assistance, said
36 physician may disclose to the department the identity of the
37 subject's said sexual partner, but shall not identify the subject of
38 the positive test. Prior to notifying the department, the physician
39 shall advise the subject of the physician's intent to notify the
40 department, and shall make a good faith effort to encourage the
41 subject to disclose either the positive test result or, without
42 disclosing the underlying test result, the risk of the HIV infection
43 associated therewith to said sexual partner.

44 Upon receiving such a request for assistance, the Department
45 shall make a good faith effort to notify said sexual partner of the
46 risk of HIV infection.

47 None of the information received by the Department pursuant
48 to the provisions of this section shall be deemed to be a public
49 record or obtainable through subpoena or court order.

50 (3) Any disclosure to the subject's sexual partner made pursuant
51 to subsection (1) or (2) shall contain sufficient information so as
52 to inform said sexual partner of his or her risk of HIV infection,
53 the availability of appropriate health care services, and means of
54 preventing or reducing the risk of transmission of the infection
55 and shall be made in a discrete manner so as to reasonably
56 safeguard the identity of said sexual partner.

57 (4) Nothing contained in subsection (1) or (2) shall be construed
58 so as to impose upon any physician a duty to inform, warn, or
59 counsel a subject's sexual partner about a positive test result or
60 the risk of HIV infection associated therewith.

61 d) For the purposes of this section "written informed consent"
62 shall mean a written consent form for the test, for each requested
63 release of the results of an individual's HIV antibody or antigen
64 test, or for the release of medical records containing such

65 information. The written consent form for the test shall contain
66 an explanation of the provisions for non-consensual disclosure of
67 a positive test result, as provided for in this section. The written
68 consent form for the release of the results of the HIV antibody
69 or antigen test shall state the purpose for which the information
70 is being requested and shall be distinguished from written consent
71 for the release of any other medical information.

72 For the purpose of this section "HIV antibody or antigen tests"
73 shall mean a licensed screening antibody or antigen test for the
74 human immunodeficiency virus, type I.

75 e) Nothing contained herein shall prohibit a health care facility,
76 as defined in Section 70E, physician, or health care provider from
77 reporting, pursuant to Massachusetts General Law, chapter 111,
78 section 6 and regulations promulgated thereunder, a subject's
79 positive HIV antibody or antigen test result to the Department
80 of Public Health in conjunction with reporting to the department
81 such subject's medical diagnosis of AIDS.

82 f) No employer shall require HIV antibody or antigen tests as
83 a condition for employment.

84 g) Whoever violates the provisions of this section shall be
85 deemed to have violated section 2 of chapter 93A.

86 h) The provisions contained herein relating to the prohibition
87 against non-consensual disclosures of HIV antibody or antigen
88 test results shall not apply to the medical diagnosis of AIDS or
89 AIDS Related Complex.

90 i) The Department of Public Health shall promulgate such
91 regulations as are necessary to implement the provisions of this
92 section.

1 SECTION 2. The fifth paragraph of Section 5 of Chapter 112
2 of the General Laws, as most recently amended by Chapter 351
3 of the Acts of 1986, is hereby amended by adding after subpart (h),
4 the following subpart: —

5 (i) Is guilty of refusing to treat a patient because the patient
6 is seropositive for the Human Immunodeficiency Virus or is
7 perceived as being in a high risk group for HIV, including a patient
8 who has received or is receiving treatment for drug dependency
9 pursuant to Section 5 of chapter 111E.

