

By Mr. Mara of Brockton, petition of Francis G. Mara, Shannon P. O'Brien and Susan F. Rourke relative to the confidentiality of HIV tests and the protection of public health. Health Care.

**The Commonwealth of Massachusetts**

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

AN ACT CONCERNING THE CONFIDENTIALITY OF HIV TESTS AND THE PROTECTION OF PUBLIC HEALTH.

*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 six of chapter one hundred eleven of the  
2 General Laws, as appearing in the 1988 Official Edition, is hereby  
3 amended by striking the second sentence thereof and instituting  
4 the following new sentence in its place: — The department also  
5 shall have the power to define, and shall from time to time so  
6 define, what diseases shall be included within the term venereal  
7 diseases in the provisions of the laws relative to public health;  
8 provided, however, that the human immunodeficiency virus shall  
9 be included within such definition.

1 SECTION 2. Section seventy F of chapter one hundred and  
2 eleven of the General Laws, as appearing in the 1988 Official  
3 Edition, is hereby amended by striking the first paragraph thereof  
4 and inserting in its place the following paragraphs: —

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

9 Except as provided in this section or in regulations promulgated  
10 pursuant to section six of this chapter, no health care facility, as  
11 defined in section seventy E, and no physician or health care  
12 provider shall identify the subject of a test for the presence of HIV  
13 antibody or antigen without first obtaining the subject's written  
14 informed consent.

15 Except as provided in this section or in regulations promulgated  
16 pursuant to section six of this chapter, no health care facility, as  
17 defined in section seventy E, and no physician or health care  
18 provider shall disclose the results of an HIV antibody or antigen  
19 test to anyone other than the subject thereof without first  
20 obtaining his or her written informed consent.

21 A physician may disclose the result of an HIV antibody or  
22 antigen test and the identity of the subject thereof without the  
23 subject's written informed consent to a health care provider under  
24 the following circumstances:

25 (1) when the test subject refuses to provide his or her written  
26 informed consent for the disclosure, and

27 (2) where a physician, in the exercise of his or her reasonable  
28 professional judgement, believes that there is a reasonable risk of  
29 HIV infection for said health care provider through exposure to  
30 the blood of the test subject during a medical or surgical  
31 procedure.

32 A physician also may disclose an HIV antibody or antigen test  
33 result and identify the subject thereof without the subject's written  
34 informed consent if the test subject experiences a medical  
35 emergency and the test subject's physician believes that such  
36 disclosure may be necessary to protect the subject's life or health.

37 A physician also may disclose to a subject's spouse an HIV  
38 antibody or antigen test result and identify the subject thereof  
39 without the subject's written informed consent.

40 Nothing in this section shall be construed to impose upon any  
41 physician an affirmative duty to inform or warn any third person  
42 of a risk of HIV infection.

43 Nothing contained herein shall prohibit a health care facility,  
44 as defined in section seventy E, a physician or health care provider  
45 from reporting, pursuant to section six of this chapter and the  
46 regulations promulgated thereunder, a subject's positive HIV  
47 antibody or antigen test result to the department in conjunction  
48 with reporting to the department such subject's medical diagnosis  
49 of AIDS.

50 The provisions contained herein relating to the prohibition  
51 against nonconsensual disclosure of HIV antibody or antigen test  
52 results shall not apply to the medical diagnosis of AIDS or AIDS  
53 Related Complex.