

# SENATE NO. 1215

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

9           (b) The court shall order the production of the medical, insurance, or other records and  
10 may 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  
17 records to produce immediately them for in camera inspection by the court. After conducting the  
18 inspection of the records and blood test results, the court shall notify the petitioner immediately of the  
19 presence or absence of an infectious disease in the blood or other bodily fluid of the offending person.  
20 The petitioner shall not disclose the identity of the offender, nor shall the petitioner disclose the results  
21 of 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,  
23 upon the conclusion of the proceedings. The clerk shall take all necessary steps to ensure the  
24 confidentiality of the sealed records. The court may allow publication of its decision if it has removed  
25 the names of the 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  
27 notice 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  
32 or an order disclosing or refusing to disclose the contents of the records to the petitioner is  
33 immediately 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  
35 any prevailing party in any action or proceeding under this act. In awarding attorney fees and expert  
36 witness expenses, the court shall take into account whether the offending party, prior to the  
37 commencement of the hearing, voluntarily produced all medical, insurance, or other records for the

38 court's in camera 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  
40 of 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  
42 offense. 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  
45 hospital, or agent, employee, administrator, doctor, official or other representative of a reporting  
46 institution shall be held jointly or severally liable either as an institution, or personally, for reporting in  
47 good faith pursuant to the requirements of this section. All parties, provided they have operated in  
48 good faith, shall otherwise be afforded total immunity from civil or criminal liability as a result of  
49 fulfilling the provisions of this section.