

# HOUSE . . . . . No. 1173

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## The Commonwealth of Massachusetts

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PRESENTED BY:

*James Arciero*

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*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 adoption of the accompanying bill:

An Act relative to the right to testing for commonly communicable infectious diseases.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>1/18/2013</i>
<i>Gerald T. Leone</i>	<i>Office of the Middlesex District Attorney 15 Commonwealth Ave. Woburn, MA 01801</i>	

# HOUSE . . . . . No. 1173

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By Mr. Arciero of Westford, a petition (accompanied by bill, House, No. 1173) of James Arciero and Gerald T. Leone relative to the right to testing for commonly communicable infectious diseases for persons exposed to certain bodily substances. The Judiciary.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Thirteen  
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An Act relative to the right to testing for commonly communicable infectious diseases.

*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 - The General Laws are hereby amended by inserting after chapter 258E the  
2 following chapter –

3           CHAPTER 258F

4           Right to Testing For Commonly Communicable Infectious Diseases

5           Section 1. As used in this chapter, the following words shall, unless the context clearly  
6 requires otherwise, have the following meanings:

7           “bodily substance”, shall mean any human secretion, discharge or emission including, but  
8 not limited to, blood, saliva, vomit, mucous, semen, urine or feces;

9           “law enforcement officer”, for purposes of this chapter, shall mean any State Police  
10 Trooper, or other state, city, town, college or university police officer; correction officers;  
11 sheriff’s department officer; trial court employee; or civilian employee of such offices.

12          Section 2. Notwithstanding the provisions of any general or special law to the contrary:

13          (a) A court or justice authorized to issue warrants in criminal cases shall, upon  
14 complaint on oath by the attorney general or an assistant attorney general, the district attorney or  
15 an assistant district attorney, or law enforcement officer authorized to seek search warrants in a  
16 criminal case, issue an order for testing and examination of the subject identified in the testing  
17 order, including any follow-up testing and examination that is medically appropriate, for  
18 commonly communicable infectious diseases that the Department of Public Health has

19 established through regulations can be transmitted through exposure to bodily substances and for  
20 which early identification of such diseases would improve the treatment options available to the  
21 person who was so exposed, where such testing and examination has been requested: by the  
22 person who was exposed to the bodily substances of the subject of the testing order; or by that  
23 person's guardian or next of kin; or if the person who was exposed is a minor, by that person's  
24 parent, guardian, or guardian ad litem; or if the person who was exposed is unable to make such  
25 a request and a guardian or next of kin is unavailable, by that person's treatment provider; and

26 i. Said court or justice finds probable cause to believe that the subject of the testing  
27 order committed a crime involving sexual assault and/or battery upon the person for whom the  
28 request is being made, and probable cause to believe that, during the commission of said crime,  
29 the person for whom the request is being made was exposed to the bodily substances of the  
30 subject of the testing order; or

31 ii. Said court or justice finds probable cause to believe that a law enforcement  
32 officer, during the course of their performance of their official duties, was exposed to the bodily  
33 substance of the subject of the testing order.

34 The applicant seeking an order for testing and examination shall appear personally before  
35 a court or justice authorized to issue search warrants in criminal cases and shall submit an  
36 affidavit which contains the facts, information, and circumstances upon which such person relies  
37 to establish sufficient grounds for the issuance of the testing order. The clerk's office of the  
38 court or justice from which the testing order issues shall maintain record of any application for,  
39 denial of, or issuance of such an order for testing and examination. Such applications and  
40 records under this chapter are not public record.

41 (b) If the subject of the testing order is in the custody of the County Sheriff or the  
42 Department of Correction, or a juvenile facility, said custodian shall arrange for the testing. If  
43 the subject of the testing order is not in the custody of the County Sheriff or the Department of  
44 Correction, the subject of the testing order shall be tested and examined pursuant to regulation(s)  
45 promulgated by the Department of Public Health pursuant to subsection (2)(A)(8). Testing and  
46 examination may be accomplished by any medically appropriate means. Such testing and  
47 examination shall occur not later than 48 hours from the time the testing order issues.

48 (c) The results of such testing and examination shall be made available  
49 as soon as practicable to (1) the person who requested the testing order; and (2) the  
50 subject of the testing order. The person who requested the testing order shall not disseminate the  
51 test results except for the purpose of obtaining medical treatment. If the Court determines that  
52 other persons were exposed to bodily fluids of the subject of the testing order, the Court may,  
53 upon request, issue an order allowing for further dissemination of such test results to such  
54 persons and/or their treatment providers.

(d) The testing and examination required by this chapter shall be conducted solely to screen for and identify the need for treatment for the victim and not for evidentiary purposes. However, nothing in this chapter shall be construed to abrogate, impair or limit powers of search and seizure granted under other provisions of the General Laws or under the common law.

Section 3. The provisions of this chapter shall apply regardless of whether or not, at the time of application, the suspect has been formally charged with a crime.

Section 4. The provisions of this section apply notwithstanding the provisions of any general or special law to the contrary, including G. L. c. 111, § 70F.

Section 5. The Department of Public Health shall enact regulation(s):

a. providing for the identification of, and maintenance of, a list of “commonly communicable infectious diseases”, which diseases shall include the human immunodeficiency virus, which diseases pose the greatest risk to the public health through transmission by bodily substance transfer, and which diseases the treatment for which is benefited most through early detection and treatment; and

b. providing for testing of suspects pursuant to Section 2.