

SENATE No. 1197

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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 protection of victim's rights and the public health.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Michael O. Moore</i>	<i>Second Worcester</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Paul Tucker</i>	<i>7th Essex</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>

SENATE No. 1197

By Mr. Moore, a petition (accompanied by bill, Senate, No. 1197) of Michael O. Moore, Timothy R. Whelan, Chris Walsh, Paul Tucker and others for legislation to the protect victim's rights and the public health. Public Health.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1058 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to the protection of victim's rights and the 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 The General Laws are hereby amended by inserting after chapter 258E the following
2 chapter:-

3 CHAPTER 258F.

4 RIGHT TO TESTING FOR COMMONLY COMMUNICABLE INFECTIOUS
5 DISEASES

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

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

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

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

14 (a) A court or justice authorized to issue warrants in criminal cases shall, upon complaint
15 on oath by the attorney general or an assistant attorney general, the district attorney or an
16 assistant district attorney, or law enforcement officer authorized to seek search warrants in a
17 criminal case, issue an order for testing and examination of the subject identified in the testing
18 order, including any follow-up testing and examination that is medically appropriate, for
19 commonly communicable infectious diseases that the department of public health has established
20 through regulations can be transmitted through exposure to bodily substances and for which
21 early identification of such diseases would improve the treatment options available to the person
22 who was so exposed, where such testing and examination has been requested: by the person who
23 was exposed to the bodily substances of the subject of the testing order; or by that person’s
24 guardian or next of kin; or if the person who was exposed is a minor, by that person’s parent,
25 guardian, or guardian ad litem; or if the person who was exposed is unable to make such a
26 request and a guardian or next of kin is unavailable, by that person’s treatment provider; and

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

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

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

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

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

54 order allowing for further dissemination of such test results to such persons and/or their
55 treatment providers.

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

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

62 Section 4. The provisions of this section apply notwithstanding the provisions of any
63 general or special law to the contrary, including section 70F of chapter 111.

64 Section 5. The department of public health shall enact regulation(s):

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

70 b. providing for testing of suspects pursuant to section 2.