

**SENATE . . . . . No. 1071**

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The Commonwealth of Massachusetts

PRESENTED BY:

***Gale D. Candaras***

*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 infectious disease control..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Gale D. Candaras</i>	
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>

**SENATE . . . . . No. 1071**

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By Ms. Candaras, a petition (accompanied by bill, Senate, No. 1071) of Gale D. Candaras, Stephen L. DiNatale and Benjamin Swan for legislation relative to infectious disease control. Public Health.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 801 OF 2009-2010.]

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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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 127, Section 38B of the General Laws is hereby amended  
2 by adding the following new subsection after section (c):  
  
3           (d) (1) Notwithstanding any general or special law to the contrary, an officer or other  
4 employee, any volunteer or employee of a contractor in any such facility or any duly authorized  
5 officer or other employee of any such facility engaged in the transportation of a prisoner for any  
6 lawful purpose, or any duly authorized public safety officer employed by the Commonwealth or  
7 any political subdivision thereof acting in his professional capacity who is subjected to an assault  
8 or assault and battery by means of a bodily substance may petition the superior court for an  
9 order compelling: (1) the production of medical, insurance, or other records to determine the  
10 presence of any infectious disease, as defined by the department of public health, in the bodily

11 substance of the person in custody; and (2) the testing of that person's blood for infectious  
12 disease.

13 (2) The court shall order the production of the medical , insurance, or other  
14 records, and may order the testing of the person in custody's bodily substance: (1) if exposure to  
15 the bodily substance of the person in custody substantially threatens the health of the petitioner;  
16 (2) the exposure to the bodily substance is a direct result of conduct by the by the person in  
17 custody; (3) a reasonable suspicion exists to believe that the conduct is or may be a violation of  
18 state or federal criminal law, even if a criminal investigation or prosecution relating to the  
19 conduct has not been or will not be commenced in the matter.

20 (3) The order of production shall direct the custodian of the medical, insurance,  
21 or other records to produce immediately them for in camera inspection by the court. After  
22 conducting the inspection of the records and bodily substance test results, the court shall notify  
23 the petitioner immediately of the presence or absences of an infectious disease in the bodily  
24 substance of the person in custody. The petitioner shall not disclose the identity of the person in  
25 custody, nor shall the petitioner disclose the results of the test to any person, except as otherwise  
26 necessary for the petitioner to receive medical treatment.

27 (4) The court shall seal the records of the proceedings, including any judicial  
28 decision, upon the conclusion of the proceedings. The court may allow publication of its  
29 decisions if it has removed the names of the petitioner and the person in custody from the  
30 decision.

31 (5) The court may enter and order of production only after the person in  
32 custody is given notice and an opportunity to be heard in the matter. The hearing on the petition

33 for the order may not commence without the person in custody receiving notice of the hearing, or  
34 no earlier than 24 hours after the person receives the notice, unless the petitioner demonstrates  
35 that delay will result in immediate and irreparable harm to the petitioner's health, or the  
36 infeasibility of providing notice to the offender.

37           (6) An order granting or denying the production of medical, insurance, or other  
38 records or an order disclosing or refusing to disclose the contents of the records to the petitions  
39 immediately subject to appeal and stays or injunctions pending appeal as authorized by law.

40           (7) The court may award reasonable attorney fees, costs, and expert witness  
41 expenses to and prevailing party in any action or proceeding under this act. In awarding attorney  
42 fees and expert witness expenses, the court shall take into account whether the offending party,  
43 prior to the commencement of the hearing, voluntarily produced all medical, insurance, or other  
44 records for the court's in camera inspection to determine the presence of an infectious disease.

45           (8) The testing of the bodily substance of the person in custody shall be  
46 performed under the direction of the department of public health. The results of an infectious  
47 disease test performed on the person in custody pursuant to this section shall not be admissible in  
48 any criminal or juvenile proceeding arising out of the alleged offence. The identity of the person  
49 in custody shall be kept confidential in accordance with the provisions of section 70 of chapter  
50 111.

51           (9) Notwithstanding any general or special law to the contrary, no hospital, or  
52 agent, employee, administrator, doctor, official, or other representative of a reporting institution  
53 shall be held jointly or severally liable either as an institution, or personally, for in good faith  
54 pursuant to the requirements of this section. All parties, provided they have operated in good

55 faith, shall otherwise be afforded total immunity from civil or criminal liability as a result of  
56 fulfilling the provisions of this section.