

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1059 Session of 2015

INTRODUCED BY D. COSTA, MILLARD, KINSEY, DeLUCA, MASSER,  
DIAMOND, BOBACK, THOMAS, DONATUCCI, COHEN, IRVIN,  
CALTAGIRONE, McNEILL, READSHAW, REGAN, SCHWEYER, GRELL,  
GABLER, MAHONEY AND GIBBONS, APRIL 24, 2015

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 24, 2015

AN ACT

1 Amending the act of November 29, 1990 (P.L.585, No.148),  
2 entitled "An act providing for confidentiality of certain  
3 records; providing for the authorized sharing of certain  
4 information; providing for written consent prior to an HIV-  
5 related test, with certain exceptions; providing for civil  
6 immunity for certain licensed physicians; providing for  
7 protective procedures and equipment; and creating a civil  
8 cause of action," further providing for legislative intent  
9 and for definitions; providing for certification of  
10 significant exposure of inmate's blood or bodily fluid; and  
11 further providing for court order.

12 The General Assembly of the Commonwealth of Pennsylvania  
13 hereby enacts as follows:

14 Section 1. Section 2 of the act of November 29, 1990  
15 (P.L.585, No.148), known as the Confidentiality of HIV-Related  
16 Information Act, is amended by adding a subsection to read:

17 Section 2. Legislative intent.

18 \* \* \*

19 (e) Intent with respect to corrections staff.--It is the  
20 intent of the General Assembly to provide a mechanism for  
21 corrections staff members who experience a significant exposure

1 of an inmate's blood and/or bodily fluids to learn of the  
2 inmate's status regarding infection of HIV, hepatitis B or  
3 hepatitis C. This knowledge will enable a corrections staff  
4 member to make informed decisions with respect to modes and  
5 duration of therapy as well as measures to reduce the likelihood  
6 of transmitting infection to others.

7 Section 2. The definitions of "available blood" and  
8 "significant exposure" in section 3 of the act are amended and  
9 the section is amended by adding definitions to read:

10 Section 3. Definitions.

11 The following words and phrases when used in this act shall  
12 have the meanings given to them in this section unless the  
13 context clearly indicates otherwise:

14 \* \* \*

15 "Available blood." The term means:

16 (1) Blood that is in the possession of the institutional  
17 health care provider or the source patient's physician  
18 pursuant to a valid authorization.

19 (2) For purposes of section 6.1, blood that is in  
20 possession of a correctional facility pursuant to medical  
21 care provided to the inmate prior to significant exposure, as  
22 defined in paragraph (2) of the definition of "significant  
23 exposure" in this section.

24 \* \* \*

25 "Correctional facility." A State or a county correctional  
26 institution. The term includes a community corrections facility  
27 or community corrections center as defined in 61 Pa.C.S. § 5001  
28 (relating to definitions).

29 "Corrections staff member." An individual who provides  
30 health care, occupational or other services to inmates at a

1 correctional facility. The term includes an individual who is:

2 (1) paid by the Commonwealth or a county;

3 (2) paid by a private entity which has a contract with  
4 the Commonwealth or a county; or

5 (3) a volunteer.

6 \* \* \*

7 "Significant exposure." The term means:

8 (1) Direct contact with blood or body fluids of a  
9 patient in a manner which, according to the most current  
10 guidelines of the Centers for Disease Control, is capable of  
11 transmitting human immunodeficiency virus, including, but not  
12 limited to, a percutaneous injury (e.g., a needle stick or  
13 cut with a sharp object), contact of mucous membranes or  
14 contact of skin (especially when the exposed skin is chapped,  
15 abraded or afflicted with dermatitis) or if the contact is  
16 prolonged or involves an extensive area.

17 (2) For purposes of section 6.1, direct contact with  
18 blood or bodily fluids of an inmate in a correctional  
19 facility in a manner which:

20 (i) according to the most current guidelines of the  
21 Centers for Disease Control, is capable of transmitting  
22 HIV, including, but not limited to, a percutaneous  
23 injury, that is, a needle stick or cut with a sharp  
24 object, contact with mucous membranes or contact of skin,  
25 especially when the skin is chapped, abraded or afflicted  
26 with dermatitis, or if the contact is prolonged or  
27 involves an extensive area; or

28 (ii) is capable of transmitting hepatitis B virus or  
29 hepatitis C virus.

30 \* \* \*

1 Section 3. The act is amended by adding a section to read:  
2 Section 6.1. Certification of significant exposure of inmate's  
3 blood or bodily fluid.

4 (a) Physician's evaluation of significant exposure.--

5 (1) Whenever a corrections staff member experiences an  
6 exposure to an inmate's blood or bodily fluids during the  
7 course of rendering health care, occupational services or  
8 other services, the individual may request an evaluation of  
9 the exposure, by a physician, to determine if it is a  
10 significant exposure as defined in this act. No physician  
11 shall certify the physician's own significant exposure or  
12 that of any of the physician's employees. Requests must be  
13 made within 72 hours of the exposure.

14 (2) Within 72 hours of the request, the physician shall  
15 make written certification of the significance of the  
16 exposure.

17 (3) If the physician determines that the individual has  
18 experienced a significant exposure, the physician shall offer  
19 the exposed individual the opportunity to undergo testing for  
20 HIV, following the procedure outlined in section 5.

21 (b) Use of available blood.--In the event that the inmate  
22 does not consent to a testing of the inmate's blood for HIV,  
23 hepatitis B or hepatitis C after the occurrence of the  
24 significant exposure to a corrections staff member, the  
25 correctional facility shall test the inmate's available blood  
26 for HIV, hepatitis B and hepatitis C if all of the following  
27 conditions are met:

28 (1) The corrections staff member requests that the  
29 inmate's blood be tested for HIV, hepatitis B or hepatitis C.

30 (2) A significant exposure to the inmate's blood has

1 been documented by a physician in accordance with subsection  
2 (a).

3 (3) A physician documented that the results of tests on  
4 the inmate's blood are needed to treat the individual as  
5 recommended by the most current guidelines of the United  
6 States Public Health Service.

7 (4) The individual provides a blood sample within 72  
8 hours, or as soon as practicable, whichever is sooner.

9 (c) If inmate consents to testing of blood.--The inmate  
10 shall be given the opportunity to consent to a testing of the  
11 inmate's blood after a significant exposure.

12 (d) Test results.--The following are authorized to receive  
13 the results of the testing on the inmate's blood after a  
14 significant exposure occurs:

15 (1) The corrections staff member.

16 (2) The inmate.

17 (3) The attorney for the Commonwealth, if the  
18 significant exposure is alleged to be a violation of an  
19 offense set forth in 18 Pa.C.S. (relating to crimes and  
20 offenses).

21 (4) The physician set forth in subsection (b) and any  
22 other physician or health care provider who is involved with  
23 treatment of the individual or inmate.

24 (5) With respect to a positive test for HIV, the  
25 department and local boards and departments of health, as  
26 authorized by the act of April 23, 1956 (1955 P.L.1510,  
27 No.500), known as the Disease Prevention and Control Law of  
28 1955.

29 (6) With respect to a positive test for HIV, the  
30 department and persons authorized to gather, transmit or

1 receive vital statistics under the act of June 29, 1953  
2 (P.L.304, No.66), known as the Vital Statistics Law of 1953.

3 (e) Immunity for good faith conduct.--The following apply:

4 (1) The physician who certifies that a significant  
5 exposure has occurred as provided in this section shall not  
6 be subject to civil liability if acting in the good faith and  
7 reasonable belief that the documentation of significant  
8 exposure was appropriate and consistent with this section.

9 (2) Physicians, health care providers and employees of a  
10 correctional facility shall be immune for acts committed in  
11 good faith to implement the provisions of this section.

12 (f) Construction.--This section shall not be construed to  
13 preclude or limit any other testing of an inmate's blood that is  
14 otherwise lawfully permitted by search warrant, court order,  
15 statute or common law.

16 Section 4. Section 8(c) of the act is amended to read:

17 Section 8. Court order.

18 \* \* \*

19 (c) Compelling need.--In assessing compelling need for  
20 subsections (a) and (b), the court shall weigh the need for  
21 disclosure against the privacy interest of the individual and  
22 the public interests which may be harmed by disclosure. In the  
23 event the court determines that a corrections staff member is  
24 seeking access to confidential HIV-related information due to a  
25 significant exposure to an inmate's blood under paragraph (2) of  
26 the definition of "significant exposure" in section 3, there  
27 shall be a presumption of compelling need. The presumption may  
28 be overcome by clear and convincing evidence.

29 \* \* \*

30 Section 5. The amendment or addition of sections 2(e), 3,

1 6.1 and 8(c) of the act shall apply to a significant exposure  
2 occurring on or after the effective date of this section.

3 Section 6. This act shall take effect in 60 days.