

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 305 Session of 2017

INTRODUCED BY D. COSTA, MURT, CALTAGIRONE, DONATUCCI, BARRAR, SAINATO, BAKER, DUSH, NEILSON, IRVIN, MILLARD, GABLER, THOMAS, McNEILL, MULLERY, DeLUCA, MILNE, DEASY, KORTZ AND READSHAW, FEBRUARY 3, 2017

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 3, 2017

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

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) If 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 the exposure is
10 a significant exposure. No physician shall certify the
11 physician's own significant exposure or that of any of the
12 physician's employees. Requests must be made within 72 hours
13 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 specified 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) In the event of 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) In the event of 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 shall
4 apply:

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

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

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

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

18 Section 8. Court order.

19 * * *

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

30 * * *

1 Section 5. The amendment or addition of sections 2(e), 3,
2 6.1 and 8(c) of the act shall apply to a significant exposure
3 occurring on or after the effective date of this section.

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