

§19203-C. Judicial consent to HIV test

1. Petition. Any person who experiences a bona fide occupational exposure may petition the District Court with jurisdiction over the facility or other place where the exposure occurred to require the person whose blood or body fluid is the source of the exposure to submit to an HIV test and to require that the results of the test be provided to the petitioner provided that the following conditions have been met:

A. The exposure to blood or body fluids creates a significant risk of HIV infection, as defined by the Bureau of Health through the adoption of rules in accordance with the Maine Administrative Procedure Act, chapter 375; [PL 1995, c. 404, §7 (AMD).]

B. The authorized representative of the employer of the person exposed has informed the person whose blood or body fluid is the source of the occupational exposure and has sought to obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and [PL 1995, c. 404, §7 (AMD).]

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested, or, in the event of an occupational exposure in a health care setting when the source patient was not present and could not be contacted or was incapacitated, the individual contacted for authorization to test the source patient's blood or tissue sample denied the authorization. [PL 1999, c. 429, §4 (AMD).]

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1-A. Persons authorized.

[PL 1995, c. 404, §8 (RP).]

2. Prehearing duties of the court. Upon receipt by the District Court of the petition, the court shall:

A. Schedule a hearing to be held as soon as practicable; [PL 1987, c. 811, §6 (NEW).]

B. Cause a written notice of the petition and hearing to be given, in accordance with the Maine Rules of Civil Procedure, to the patient who is the subject of the proceeding; [PL 1987, c. 811, §6 (NEW).]

C. Appoint counsel, if requested, for any indigent client not already represented; and [PL 1987, c. 811, §6 (NEW).]

D. Furnish counsel with copies of the petition. [PL 1987, c. 811, §6 (NEW).]

[PL 1987, c. 811, §6 (NEW).]

3. Hearing. The hearing shall be governed as follows.

A. The hearing shall be conducted in accordance with the Maine Rules of Evidence and in an informal manner consistent with orderly procedure. [PL 1987, c. 811, §6 (NEW).]

B. The hearing shall be confidential and be electronically or stenographically recorded. [PL 1987, c. 811, §6 (NEW).]

C. The report of the hearing proceedings must be sealed. No report of the hearing proceedings may be released to the public, except by permission of the person whose blood or body fluid is the source of the exposure or that person's counsel and with the approval of the court. [PL 1995, c. 404, §9 (AMD).]

D. The court may order a public hearing at the request of the person whose blood or body fluid is the source of the exposure or that person's counsel. [PL 1995, c. 404, §9 (AMD).]

[PL 1995, c. 404, §9 (AMD).]

4. Determination. The court shall require the person whose blood or body fluid is the source of the exposure to obtain an HIV test if the petitioner proves, by a preponderance of the evidence, that:

A. The exposure to blood or body fluids of the person created a significant risk of HIV infection as defined by the Bureau of Health through the adoption of rules in accordance with the Maine Administrative Procedure Act, chapter 375; [PL 1995, c. 404, §10 (AMD).]

B. An authorized representative of the employer of the person exposed has informed the patient of the occupational exposure and has sought to obtain written informed consent from the person whose blood or body fluid is the source of the exposure; and [PL 1995, c. 404, §10 (AMD).]

C. Written informed consent was not given by the person whose blood or body fluid is the source of the exposure and that person has refused to be tested. [PL 1995, c. 404, §10 (AMD).]
[PL 1997, c. 331, §2 (AMD).]

5. Consent. The court may not order a person whose blood or body fluid is the source of the exposure to obtain an HIV test unless the employee exposed to the blood or body fluids of that person has consented to and obtained an HIV test immediately following that documented exposure.
[PL 1995, c. 404, §10 (AMD).]

6. Costs. The employer of the person exposed is responsible for the petitioner's reasonable costs related to obtaining the results of an HIV test pursuant to this section, including the payment of the petitioner's attorneys' fees.
[PL 1995, c. 404, §10 (AMD).]

7. Appeals. A person required to undergo an HIV test may appeal the order to Superior Court. The appeal is limited to questions of law. Any findings of fact of the District Court may not be set aside unless clearly erroneous.
[PL 1995, c. 404, §10 (AMD).]

8. Reporting to bureau and counseling.

[PL 1995, c. 404, §11 (RP).]

9. Subsequent testing. Subsequent testing arising out of the same incident of occupational exposure must be conducted in accordance with this section.
[PL 1995, c. 404, §12 (AMD).]

10. Bureau of Health report. The Bureau of Health shall report on an annual basis to the Maine HIV Advisory Committee the following information:

A. The number of incidents in which the Bureau of Health is requested to determine under subsection 1, paragraph A whether a bona fide occupational exposure has occurred; and [PL 1995, c. 404, §13 (NEW).]

B. With regard to the incidents reported in paragraph A, the occupations represented, the nature or a description of the incidents and the number of incidents determined to be and not to be bona fide occupational exposures. [PL 1995, c. 404, §13 (NEW).]
[PL 1995, c. 404, §13 (NEW).]

SECTION HISTORY

PL 1987, c. 811, §6 (NEW). PL 1989, c. 219, §§1,2 (AMD). PL 1995, c. 404, §§7-13 (AMD).
PL 1997, c. 331, §§1,2 (AMD). PL 1999, c. 429, §4 (AMD).

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