

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2866 Session of
2004

INTRODUCED BY LEDERER, READSHAW, MANN, FLEAGLE, E. Z. TAYLOR,
CRAHALLA, DENLINGER, HORSEY, KELLER, REICHLEY, SCAVELLO,
TIGUE AND SCHRODER, SEPTEMBER 29, 2004

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 29, 2004

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for the offense of
3 resisting arrest or other law enforcement.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Section 5104 of Title 18 of the Pennsylvania
7 Consolidated Statutes is amended to read:

8 § 5104. Resisting arrest or other law enforcement.

9 (a) Offense defined.--A person commits a misdemeanor of the
10 second degree if, with the intent of preventing a public servant
11 from effecting a lawful arrest or discharging any other duty,
12 the person creates a substantial risk of bodily injury to the
13 public servant or anyone else, or employs means justifying or
14 requiring substantial force to overcome the resistance.

15 (b) Medical testing in arrests involving exposure to bodily
16 fluid.--

17 (1) (i) A public servant who has been subjected to the
18 bodily fluid of a person arrested for a violation of

1 subsection (a) may file a petition for an order to
2 perform an HIV-related test and allow access to the test
3 results under section 8 of the act of November 29, 1990
4 (P.L.585, No.148), known as the Confidentiality of HIV-
5 Related Information Act.

6 (ii) In reviewing a petition under this paragraph,
7 the court shall presume that there is a compelling need
8 to ascertain the HIV test result of the source individual
9 as required under section 8(b)(3) of the Confidentiality
10 of HIV-Related Information Act and shall order the test
11 and allow access to the test results if the court finds
12 that the requirements of section 8(b)(1) and (2) of the
13 Confidentiality of HIV-Related Information Act are
14 satisfied.

15 (2) (i) A public servant who has been subjected to the
16 bodily fluid of a person arrested for a violation of
17 subsection (a) may file a petition for an order to
18 perform a medical test and allow access to the test
19 results, where the purpose of the test is to determine
20 whether the person arrested possesses a disease, other
21 than the human immunodeficiency virus, communicable
22 through the bodily fluid involved.

23 (ii) No court may order the performance of the test
24 and allow access to the test result under this paragraph
25 unless the court finds that both of the following
26 conditions exist:

27 (A) The individual whose test is sought refused
28 to give consent or was not capable of providing
29 consent to the test and access.

30 (B) The public servant was exposed to a bodily

1 fluid of the individual whose test is sought and that
2 exposure presents a significant risk of exposure to a
3 communicable disease, other than the human
4 immunodeficiency virus.

5 (iii) The procedure for reviewing a petition filed
6 under this paragraph shall be the same as the procedure
7 set forth under section 8(d), (e) and (f) of the
8 Confidentiality of HIV-Related Information Act. A
9 petition filed under this paragraph may be included with
10 a petition under paragraph (1), provided that the
11 findings made under paragraph (1) shall not be conclusive
12 as to the findings required under this paragraph.

13 Section 2. This act shall take effect in 60 days.