

SENATE BILL 781

E2

7lr2734
CF 7lr2965

By: **Senator Lee**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Testing – HIV and Hepatitis C**

3 FOR the purpose of including hepatitis C as a disease for which a certain person charged
4 with causing a prohibited exposure to a victim may be tested under certain
5 circumstances; authorizing a certain judge to issue a search warrant to obtain a
6 certain sample from a person to be tested for the presence of HIV under certain
7 circumstances; requiring a certain application for a search warrant to meet certain
8 requirements; requiring a certain law enforcement officer to deliver a certain sample
9 to a local health official or certain health care provider to be tested for the presence
10 of HIV; requiring a certain test to be performed within a certain period of time;
11 requiring a local health official or certain health care provider to provide notice of a
12 certain test result to certain persons; establishing a certain disclosure restriction and
13 evidentiary limitation for a test result; requiring the Department of Health and
14 Mental Hygiene to adopt certain regulations; requiring a certain health care provider
15 to adopt certain procedures; defining a certain term; making conforming changes;
16 and generally relating to testing for HIV and hepatitis C.

17 BY repealing and reenacting, without amendments,
18 Article – Criminal Procedure
19 Section 11–107(a)
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2016 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Criminal Procedure
24 Section 11–107(e) and (f), 11–109, 11–110, 11–112(a), 11–113(a), and 11–117 to be
25 under the amended part “Part II. Right to HIV and Hepatitis C Testing”
26 Annotated Code of Maryland
27 (2008 Replacement Volume and 2016 Supplement)

28 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Criminal Procedure
Section 11–110.1
Annotated Code of Maryland
(2008 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Criminal Procedure

Part II. Right to HIV AND HEPATITIS C Testing.

11–107.

(a) In Part II of this subtitle the following words have the meanings indicated.

(e) (1) “Prohibited exposure” means a crime or delinquent act that may have
caused or resulted in exposure to **HIV OR HEPATITIS C**.

(2) “Prohibited exposure” includes:

(i) contact that occurs on penetration, however slight, between the
penis and the vulva or anus; and

(ii) contact between the mouth and the penis, vulva, or anus.

(f) (1) “Victim” means the victim of a prohibited exposure.

(2) “Victim” includes:

(i) a law enforcement officer who is exposed to **HIV OR HEPATITIS C** while acting in the performance of duty;

(ii) a paid or volunteer firefighter, an emergency medical technician,
or rescue squad member who is exposed to **HIV OR HEPATITIS C** while acting in the
performance of duty; and

(iii) a forensic scientist, working under the direction of a law
enforcement agency, who is exposed to **HIV OR HEPATITIS C** while acting in the
performance of duty.

11–109.

(a) In this section, “body fluids” has the meaning stated in § 18–338.1 of the
Health – General Article.

(b) Exposure to HIV OR HEPATITIS C between a victim and a person charged with a prohibited exposure occurs:

(1) by percutaneous or mucocutaneous contact with blood or body fluids;

(2) by contact for a prolonged period with blood or body fluids of an open wound, including dermatitis, exudative lesions, and chapped skin;

(3) by intact skin contact for a prolonged period with large amounts of blood or body fluids; or

(4) under any other condition or circumstance under which a person may be exposed to HIV OR HEPATITIS C.

11–110.

In addition to testing allowed under § 11–112 of this subtitle, the court may order a person charged with a prohibited exposure to give a blood sample to be tested for the presence of HIV OR HEPATITIS C if:

(1) the person is charged with a prohibited exposure within 1 year after the prohibited exposure occurred;

(2) a victim or victim's representative requests the testing in writing to the State's Attorney in the county where the prohibited exposure occurred; and

(3) the court finds probable cause to believe that a prohibited exposure occurred.

11–110.1.

(A) IN THIS SECTION, "HEALTH CARE PROVIDER" HAS THE MEANING STATED IN § 18–336 OF THE HEALTH – GENERAL ARTICLE.

(B) (1) A CIRCUIT COURT JUDGE OR A DISTRICT COURT JUDGE MAY ISSUE A SEARCH WARRANT TO OBTAIN A BUCCAL SWAB FROM A PERSON TO BE TESTED FOR THE PRESENCE OF HIV WHENEVER IT IS MADE TO APPEAR TO A JUDGE, BY APPLICATION AS DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION, THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PERSON HAS CAUSED PROHIBITED EXPOSURE TO A VICTIM.

(2) AN APPLICATION FOR A SEARCH WARRANT SHALL:

(I) BE MADE AS SOON AS POSSIBLE AFTER THE ALLEGED PROHIBITED EXPOSURE, AND IN NO EVENT LATER THAN 24 HOURS AFTER THE ALLEGED PROHIBITED EXPOSURE;

(II) MEET THE REQUIREMENTS UNDER § 1-203 OF THIS ARTICLE; AND

(III) BE SEALED.

(3) A SEARCH WARRANT ISSUED UNDER THIS SUBSECTION SHALL MEET THE REQUIREMENTS UNDER § 1-203 OF THIS ARTICLE.

(C) (1) A LAW ENFORCEMENT OFFICER WHO HAS OBTAINED A BUCCAL SWAB FROM A PERSON PURSUANT TO A SEARCH WARRANT ISSUED IN ACCORDANCE WITH THIS SECTION SHALL DELIVER THE BUCCAL SWAB TO A LOCAL HEALTH OFFICIAL OR HEALTH CARE PROVIDER TO BE TESTED FOR THE PRESENCE OF HIV.

(2) A TEST FOR THE PRESENCE OF HIV SHALL BE IMMEDIATELY PERFORMED ON THE SAMPLE.

(D) AFTER RECEIVING THE RESULTS OF A TEST CONDUCTED UNDER SUBSECTION (C) OF THIS SECTION, THE LOCAL HEALTH OFFICER OR HEALTH CARE PROVIDER IMMEDIATELY SHALL PROVIDE THE RESULTS TO:

(1) THE VICTIM OR VICTIM'S REPRESENTATIVE; AND

(2) THE PERSON FROM WHOM THE BUCCAL SWAB WAS TAKEN.

(E) THE RESULTS OF A TEST CONDUCTED UNDER SUBSECTION (C) OF THIS SECTION ARE:

(1) SUBJECT TO THE DISCLOSURE RESTRICTION IN § 11-114 OF THIS SUBTITLE; AND

(2) NOT ADMISSIBLE AS EVIDENCE OF GUILT OR INNOCENCE IN A CRIMINAL PROCEEDING ARISING OUT OF THE ALLEGED PROHIBITED EXPOSURE.

(F) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL ADOPT REGULATIONS TO CARRY OUT THE REQUIREMENTS OF THIS SECTION.

(G) A HEALTH CARE PROVIDER THAT OFFERS THE IMMEDIATE TESTING OF A SAMPLE UNDER SUBSECTION (C) OF THIS SECTION SHALL ADOPT PROCEDURES TO MEET THE REQUIREMENTS UNDER THIS SECTION.

1 11–112.

2 (a) Within 10 days of a written request of a victim or victim's representative to
3 the State's Attorney in the county where a prohibited exposure occurred, the court shall
4 order a test of a blood sample for HIV and any other identified causative agent of AIDS **OR**
5 **HEPATITIS C**.

6 11–113.

7 (a) (1) After conviction or a finding of a prohibited exposure, a finding of
8 probable cause under § 11–110(3) of this subtitle, or a granting of probation before
9 judgment under § 11–112 of this subtitle, the State's Attorney shall within 3 days notify
10 the local health officer of the written request by the victim or victim's representative for
11 testing.

12 (2) On receipt of a court order for testing issued under § 11–110(3) or §
13 11–112 of this subtitle, the local health officer or the local health officer's designee from any
14 other governmental unit shall:

15 (i) collect the blood sample within 7 days from the person who is
16 charged with, convicted of, or found to have committed a prohibited exposure;

17 (ii) test the blood sample; and

18 (iii) **IF THE TEST IS CONDUCTED FOR THE PRESENCE OF HIV**,
19 give pretest and posttest counseling to the victim or victim's representative and the person
20 subject to testing in accordance with Title 18, Subtitle 3, Part VI of the Health – General
21 Article.

22 11–117.

23 The Department of Health and Mental Hygiene shall adopt regulations to carry out
24 Part II of this subtitle, including regulations on:

25 (1) the confidentiality of HIV **OR HEPATITIS C** test results; and

26 (2) giving the victim or victim's representative counseling regarding HIV
27 disease **OR HEPATITIS C**, HIV **OR HEPATITIS C** testing, and referral for appropriate
28 health care and support services.

29 **SECTION 2. AND BE IT FURTHER ENACTED**, That this Act shall take effect
30 October 1, 2017.