

SENATE BILL 781

E2

7lr2734
CF HB 1375

By: ~~Senator Lee~~ Senators Lee, Zirkin, Hough, Muse, Ready, Smith, Cassilly,
Norman, Brochin, Ramirez, and Kelley

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 14, 2017

CHAPTER _____

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~~ an emergency
6 order to obtain a certain sample from a person to be tested for the presence of HIV
7 under certain circumstances; requiring a certain application for ~~a search warrant~~ an
8 emergency order to meet certain requirements; requiring the Court of Appeals to
9 adopt certain rules; requiring a certain law enforcement officer to deliver a certain
10 sample to a local health official or certain health care provider to be tested for the
11 presence of HIV; requiring a certain test to be performed within a certain period of
12 time; requiring a local health official or certain health care provider to provide notice
13 of a certain test result to certain persons; establishing a certain disclosure restriction
14 and evidentiary limitation for a test result; requiring the Department of Health and
15 Mental Hygiene to adopt certain regulations; requiring a certain health care provider
16 to adopt certain procedures; defining a certain term; altering a certain definition;
17 making conforming changes; and generally relating to testing for HIV and hepatitis
18 C.

19 BY repealing and reenacting, without amendments,
20 Article – Criminal Procedure
21 Section 11–107(a)
22 Annotated Code of Maryland
23 (2008 Replacement Volume and 2016 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

BY adding to
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; AND

(IV) AN INDIVIDUAL WHO IS LICENSED, CERTIFIED, OR OTHERWISE AUTHORIZED TO PROVIDE HEALTH CARE UNDER THE HEALTH OCCUPATIONS ARTICLE WHO IS EXPOSED TO HIV OR HEPATITIS C WHILE WORKING UNDER THE DIRECTION OF A LAW ENFORCEMENT AGENCY OR WHILE PERFORMING A SEXUAL ASSAULT MEDICAL EVIDENCE COLLECTION EXAMINATION.

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~~ AN EMERGENCY ORDER TO OBTAIN A BUCCAL ORAL 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~~ AN EMERGENCY ORDER SHALL BE:

(I) ~~BE~~ MADE AS SOON AS POSSIBLE AFTER THE ALLEGED PROHIBITED EXPOSURE, AND IN NO EVENT LATER THAN ~~24~~ 72 HOURS AFTER THE ALLEGED PROHIBITED EXPOSURE;

(II) ~~MEET THE REQUIREMENTS UNDER § 1-203 OF THIS ARTICLE; AND~~ IN WRITING, SIGNED AND SWORN TO BY THE APPLICANT, AND ACCOMPANIED BY AN AFFIDAVIT THAT SETS FORTH THE BASIS TO BELIEVE THAT THE PERSON FROM WHOM AN ORAL SWAB IS REQUESTED HAS CAUSED A PROHIBITED EXPOSURE TO A VICTIM;

(III) ~~BE~~ SEALED; AND

(IV) SUBJECT TO RULES DEVELOPED BY THE COURT OF APPEALS.

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

(4) THE COURT OF APPEALS SHALL ADOPT RULES TO CARRY OUT THE REQUIREMENTS OF THIS SUBSECTION.

(C) (1) A LAW ENFORCEMENT OFFICER WHO HAS OBTAINED A ~~BUCCAL~~ ORAL SWAB FROM A PERSON PURSUANT TO ~~A SEARCH WARRANT~~ AN EMERGENCY ORDER ISSUED IN ACCORDANCE WITH THIS SECTION SHALL DELIVER THE ~~BUCCAL~~ ORAL 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~~ ORAL 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 SUBSECTIONS (C) THROUGH (G) 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.

11-112.

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

11-113.

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

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

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

(ii) test the blood sample; and

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

11–117.

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.