

HOUSE BILL 509

J1, E4

2lr1238

By: **Delegates K. Kelly, Beitzel, Clippinger, Cluster, Dumais, Hough, McConkey, Myers, Parrott, Valentino-Smith, and Wilson**

Introduced and read first time: February 2, 2012

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 20, 2012

CHAPTER _____

1 AN ACT concerning

2 **Public Health – Inmates – HIV Testing**

3 FOR the purpose of authorizing certain courts to order certain inmates to furnish to
4 certain correctional institutions blood samples or cheek swabs to be tested for
5 the presence of human immunodeficiency virus (HIV) under certain
6 circumstances; requiring certain courts, before ordering a certain test, to hold
7 certain hearings under certain circumstances; requiring a certain correctional
8 employee or the correctional employee's representative and a certain inmate or
9 the inmate's representative to be notified of certain information; providing that
10 certain courts may admit only certain evidence at certain hearings; requiring a
11 certain written request of a correctional employee or the correctional employee's
12 representative to be filed by a certain State's Attorney with a certain court and
13 sealed by the court; requiring certain courts to hold certain hearings and issue
14 certain orders within certain time periods; defining a certain term; and
15 generally relating to HIV testing of inmates.

16 BY repealing and reenacting, with amendments,
17 Article – Health – General
18 Section 18–338
19 Annotated Code of Maryland
20 (2009 Replacement Volume and 2011 Supplement)

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

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.



Article – Health – General

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18–338.

(a) (1) In this section the following words have the meanings indicated.

(2) “Correctional institution” means a place of detention or correctional confinement operated by or for the State or a local government.

(3) “Correctional employee” means:

(i) A person who is employed by a correctional institution; or

(ii) A person who performs duties in a correctional institution by virtue of federal, State, or local government employment.

(4) “COURT” MEANS A DISTRICT OR CIRCUIT COURT OF THE STATE.

[(4)] (5) “Exposure” means, as between a correctional employee and an inmate:

(i) Percutaneous contact with blood, semen, or blood contaminated fluids;

(ii) Mucocutaneous contact with blood, semen, or blood contaminated fluids;

(iii) Open wound, including dermatitis, exudative lesions, or chapped skin, contact with blood, semen, or blood contaminated fluids; and

(iv) Intact skin contact with large amounts of blood, semen, or blood contaminated fluids for a prolonged period.

[(5)] (6) “Health care provider” means:

(i) Any person, including a physician or hospital, who is licensed or otherwise authorized in this State to provide health care services and is under contract with or operated by the correctional facility; or

(ii) An employee’s private physician.

(b) An inmate shall furnish to the correctional institution a blood sample or buccal (cheek) swab to be tested for the presence of human immunodeficiency virus (HIV) when:

1 (1) There has been an exposure involving the inmate;

2 (2) The exposure occurred in connection with the inmate's violation of
3 institutional regulations;

4 (3) The inmate has been found guilty of the violation of institutional
5 regulations described in paragraph (2) of this subsection;

6 (4) The correctional employee involved in the exposure has given
7 written notice of the exposure to the managing official of the correctional institution,
8 or the official's designee; and

9 (5) The exposure is confirmed by a health care provider.

10 (c) The correctional institution shall collect the blood sample from the
11 inmate, and shall have the sample tested for human immunodeficiency virus (HIV) by
12 a test and test procedure approved by the Department.

13 **(D) (1) IF THE INMATE REFUSES TO FURNISH TO THE CORRECTIONAL**
14 **INSTITUTION A BLOOD SAMPLE OR BUCCAL (CHEEK) SWAB TO BE TESTED FOR**
15 **THE PRESENCE OF HUMAN IMMUNODEFICIENCY VIRUS (HIV) AS REQUIRED**
16 **UNDER SUBSECTION (B) OF THIS SECTION, A COURT MAY ORDER THE INMATE TO**
17 **FURNISH THE BLOOD SAMPLE OR BUCCAL (CHEEK) SWAB IF:**

18 **(I) THE CORRECTIONAL EMPLOYEE INVOLVED IN THE**
19 **EXPOSURE OR THE CORRECTIONAL EMPLOYEE'S REPRESENTATIVE REQUESTS**
20 **THE TESTING IN WRITING TO THE STATE'S ATTORNEY IN THE COUNTY WHERE**
21 **THE EXPOSURE OCCURRED; AND**

22 **(II) THE COURT FINDS PROBABLE CAUSE TO BELIEVE THAT**
23 **THE EXPOSURE OCCURRED.**

24 **(2) BEFORE ORDERING A TEST UNDER PARAGRAPH (1) OF THIS**
25 **SUBSECTION AND SUBJECT TO THE PROVISIONS OF PARAGRAPH (6) OF THIS**
26 **SUBSECTION, THE COURT SHALL HOLD A HEARING AT WHICH THE**
27 **CORRECTIONAL EMPLOYEE OR THE CORRECTIONAL EMPLOYEE'S**
28 **REPRESENTATIVE AND THE INMATE OR THE INMATE'S REPRESENTATIVE HAVE**
29 **THE RIGHT TO BE PRESENT.**

30 **(3) THE CORRECTIONAL EMPLOYEE OR THE CORRECTIONAL**
31 **EMPLOYEE'S REPRESENTATIVE AND THE INMATE OR THE INMATE'S**
32 **REPRESENTATIVE SHALL BE NOTIFIED OF:**

33 **(I) THE DATE, TIME, AND LOCATION OF THE HEARING; AND**

1 **(II) THEIR RIGHT TO BE PRESENT AT THE HEARING.**

2 **(4) DURING THE HEARING, THE COURT MAY ADMIT INTO**
3 **EVIDENCE ONLY AFFIDAVITS, COUNTER-AFFIDAVITS, AND MEDICAL RECORDS**
4 **THAT:**

5 **(I) RELATE TO THE MATERIAL FACTS OF THE CASE; AND**

6 **(II) SUPPORT OR REBUT A FINDING OF PROBABLE CAUSE TO**
7 **ISSUE A COURT ORDER.**

8 **(5) THE WRITTEN REQUEST OF THE CORRECTIONAL EMPLOYEE**
9 **OR THE CORRECTIONAL EMPLOYEE'S REPRESENTATIVE SHALL BE:**

10 **(I) FILED BY THE STATE'S ATTORNEY WITH THE COURT;**
11 **AND**

12 **(II) SEALED BY THE COURT.**

13 **(6) EXCEPT FOR GOOD CAUSE, THE COURT SHALL:**

14 **(I) HOLD THE HEARING WITHIN ~~30~~ 15 DAYS AFTER THE**
15 **STATE'S ATTORNEY'S PRESENTMENT TO THE COURT OF THE WRITTEN REQUEST**
16 **OF THE CORRECTIONAL EMPLOYEE OR THE CORRECTIONAL EMPLOYEE'S**
17 **REPRESENTATIVE; AND**

18 **(II) ISSUE AN ORDER GRANTING OR DENYING THE REQUEST**
19 **WITHIN 3 DAYS AFTER THE CONCLUSION OF THE HEARING.**

20 **[(d)] (E)** The correctional employee shall be notified of the results of the test
21 for the presence of human immunodeficiency virus (HIV) conducted under the
22 provisions of this section.

23 **[(e)] (F)** The notification required under subsection **[(d)] (E)** of this section
24 shall:

25 (1) Be made within 48 hours of confirmation of the inmate's diagnosis;

26 (2) Include subsequent written confirmation of the possible exposure
27 to human immunodeficiency virus (HIV); and

28 (3) To the extent possible, be made in a manner that will protect the
29 confidentiality of the correctional employee and the inmate.

1 **[(f)] (G)** If the results of the blood sample test are positive for the presence
2 of human immunodeficiency virus (HIV), then the correctional employee and the
3 inmate shall be provided appropriate counseling.

4 **[(g)] (H)** All correctional institutions shall develop written procedures to
5 carry out the provisions of this section.

6 **[(h)] (I)** A health care provider acting in good faith to provide notification
7 in accordance with this section may not be held liable in any cause of action related to
8 a breach of patient confidentiality.

9 **[(i)] (J)** A health care provider acting in good faith to provide notification
10 in accordance with this section may not be held liable in any cause of action for:

11 (1) The failure to give the required notice, if the correctional employee
12 fails to properly initiate the notification procedures developed by the correctional
13 institution under subsection **[(g)] (H)** of this section; or

14 (2) The failure of the managing official of the correctional institution
15 within which the correctional employee is employed to subsequently notify the
16 correctional employee of the possible exposure to human immunodeficiency virus
17 (HIV).

18 **[(j)] (K)** A health care provider may not be held liable in any cause of action
19 related to obtaining a blood sample or performing and interpreting an approved HIV
20 test without the inmate’s informed consent.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2012.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.