

SENATE BILL 781

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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.



1 Article – Criminal Procedure
2 Section 11–110.1
3 Annotated Code of Maryland
4 (2008 Replacement Volume and 2016 Supplement)

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

7 **Article – Criminal Procedure**

8 **Part II. Right to HIV AND HEPATITIS C Testing.**

9 11–107.

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

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

13 (2) “Prohibited exposure” includes:

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

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

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

18 (2) “Victim” includes:

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

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

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

27 11–109.

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

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

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

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

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

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

10 11–110.

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

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

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

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

20 11–110.1.

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

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

29 (2) AN APPLICATION FOR A SEARCH WARRANT SHALL:

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

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

6 **(III) BE SEALED.**

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

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

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

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

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

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

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

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

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

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

28 **(G) A HEALTH CARE PROVIDER THAT OFFERS THE IMMEDIATE TESTING OF**
29 **A SAMPLE UNDER SUBSECTION (C) OF THIS SECTION SHALL ADOPT PROCEDURES TO**
30 **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.