

# HOUSE BILL 978

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By: **Delegates Lam, Hill, Jalisi, and Morhaim**

Introduced and read first time: February 13, 2015

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **HIV Testing – Informed Consent and Pretest Requirements – Modification**

3 FOR the purpose of altering certain requirements health care providers must meet before  
4 obtaining certain samples for the purpose of HIV testing; requiring a health care  
5 provider to make available certain materials and certain language assistance to  
6 certain individuals; prohibiting a certain refusal to undergo a certain HIV test from  
7 being used as the sole basis by an institution or a laboratory to deny services or  
8 treatment; and generally relating to HIV testing procedures and requirements for  
9 health care providers.

10 BY repealing and reenacting, with amendments,  
11 Article – Health – General  
12 Section 18–336  
13 Annotated Code of Maryland  
14 (2009 Replacement Volume and 2014 Supplement)

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

17 **Article – Health – General**

18 18–336.

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

20 (2) “HIV” means the human immunodeficiency virus that causes acquired  
21 immune deficiency syndrome.

22 (3) “Health care facility” has the same meaning stated in § 18–338.2 of this  
23 subtitle.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (4) "Health care provider" means a physician, nurse, or designee of a health  
2 care facility.

3 (b) (1) Except as provided in Title 11, Subtitle 1, Part II of the Criminal  
4 Procedure Article or § 18–338.3 of this subtitle, before obtaining a fluid or tissue sample  
5 from the body of an individual for the purpose of testing the fluid or tissue for the presence  
6 of HIV infection, a health care provider shall:

7 [(1) Obtain informed consent from the individual after:

8 (i) Informing the individual that an HIV test will be administered;  
9 and

10 (ii) Advising the individual of the right to refuse the HIV test  
11 without penalty;

12 (2) Document in the medical record the provision of informed consent; and

13 (3) Provide the individual with pretest counseling as provided in  
14 regulations adopted by the Department.

15 (c) Pretest counseling may be provided in writing, verbally, by video, or a  
16 combination of these strategies as appropriate based on the individual's informational  
17 needs and testing history.

18 (d) (1) If the HIV test is ordered at a location that is not a health care facility,  
19 informed consent shall be in writing and signed by the individual on an informed consent  
20 for HIV testing document that is approved by the Department.

21 (2) The informed consent for HIV testing document shall be distinct and  
22 separate from all other consent forms.

23 (3) A patient identifying number obtained from an anonymous and  
24 confidential test site which is approved by the Department may be evidence of a patient's  
25 informed consent in lieu of a patient's signature.]

26 (I) OBTAIN GENERAL INFORMED CONSENT FROM AN  
27 INDIVIDUAL TO PROVIDE MEDICAL CARE TO THE INDIVIDUAL;

28 (II) INFORM THE INDIVIDUAL ORALLY OR IN WRITING THAT HIV  
29 TESTING WILL BE PERFORMED ON A SPECIMEN OBTAINED FROM THE INDIVIDUAL  
30 UNLESS THE INDIVIDUAL REFUSES HIV TESTING;

31 (III) PROVIDE THE INDIVIDUAL ORAL OR WRITTEN  
32 INFORMATION THAT INCLUDES AN EXPLANATION OF HIV INFECTION AND THE  
33 MEANING OF POSITIVE AND NEGATIVE TEST RESULTS;

1 (IV) OFFER THE INDIVIDUAL AN OPPORTUNITY TO ASK  
2 QUESTIONS AND DECLINE HIV TESTING; AND

3 (V) IF THE INDIVIDUAL REFUSES HIV TESTING, DOCUMENT IN  
4 THE MEDICAL RECORD THE INDIVIDUAL'S DECISION.

5 (2) A HEALTH CARE PROVIDER SHALL:

6 (I) MAKE AVAILABLE TO INDIVIDUALS FOR WHOM HIV  
7 TESTING IS PERFORMED EASILY UNDERSTOOD INFORMATIONAL MATERIALS IN THE  
8 LANGUAGES OF THE COMMONLY ENCOUNTERED POPULATIONS WITHIN THE  
9 SERVICE AREA OF THE HEALTH CARE PROVIDER; AND

10 (II) PROVIDE LANGUAGE ASSISTANCE TO INDIVIDUALS FOR  
11 WHOM HIV TESTING IS PERFORMED WHO HAVE LIMITED ENGLISH PROFICIENCY  
12 THROUGH THE USE OF COMPETENT INTERPRETERS OR BILINGUAL STAFF.

13 [(e)] (C) [Refusal to consent to the] AN INDIVIDUAL'S REFUSAL TO UNDERGO  
14 AN HIV antibody test or a positive test result may not be used as the sole basis by an  
15 institution or laboratory to deny services or treatment.

16 [(f)] (D) If the individual is unable to give informed consent, substitute consent  
17 may be given under § 5-605 of this article.

18 [(g)] (E) A physician or physician's designee who obtains a result from an HIV  
19 antibody test conducted in accordance with the provisions of subsection (b) of this section  
20 shall:

21 (1) Notify the individual from whom the fluid or tissue sample was  
22 obtained of the result; and

23 (2) If the test is positive:

24 (i) Provide a referral for treatment and supportive services;

25 (ii) Counsel the individual to inform all sexual and needle-sharing  
26 partners of the individual's positive HIV status;

27 (iii) Offer to assist in notifying the individual's sexual and  
28 needle-sharing partners or refer the individual to the local health officer to assist the  
29 individual with notifying the individual's sexual and needle-sharing partners; and

30 (iv) If necessary, take action appropriate to comply with § 18-337 of  
31 this subtitle.

1           **[(h)] (F)**       Local health officers shall make available to health care providers in  
2 their jurisdiction information on referral resources for an individual with an HIV positive  
3 status, including counseling, testing, needs assessment, treatment, and support services.

4           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2015.