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**By: Senator Stone**

Introduced and read first time: January 18, 1996

Assigned to: Economic and Environmental Affairs

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A BILL ENTITLED

1 AN ACT concerning

2 **Law Enforcement Officers - HIV Testing of Individuals Arrested**

3 FOR the purpose of authorizing a court to order an individual who is arrested by a law  
4 enforcement officer to furnish a blood sample to be tested for the presence of  
5 human immunodeficiency virus if, based on a certain finding, the court believes that  
6 an exposure of certain bodily fluids between the law enforcement officer and the  
7 individual arrested occurred during the arrest; requiring the law enforcement  
8 officer to file a written request with a certain State's Attorney; requiring the State's  
9 Attorney to file the request with the court; requiring the court to conduct a certain  
10 hearing and make a certain finding before issuing an order under this Act; providing  
11 for notice of the hearing; specifying the type of evidence that may be admissible at  
12 the hearing; requiring the written request of the law enforcement officer to be  
13 sealed by the court; requiring the State's Attorney to notify the local health officer  
14 of the law enforcement officer's request for testing after a certain finding by the  
15 court; requiring the local health officer or the officer's designee to perform certain  
16 acts on receipt of an order issued under this Act; requiring the local health officer  
17 to perform certain acts after receiving the results of a test conducted under this Act;  
18 providing for the disclosure and admissibility of test results under certain  
19 circumstances; granting immunity from liability to a State employee or agent or  
20 employee of the Department of Health and Mental Hygiene who acts in compliance  
21 with the provisions of this Act; requiring the Department to adopt certain  
22 regulations; defining certain terms; and generally relating to the testing of  
23 individuals who are arrested by law enforcement officers for human  
24 immunodeficiency virus.

25 BY adding to

26 Article - Health - General

27 Section 18-338.2

28 Annotated Code of Maryland

29 (1994 Replacement Volume and 1995 Supplement)

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

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1           **Article - Health - General**

2 18-338.2.

3           (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
4 INDICATED.

5                   (2) "EXPOSURE" MEANS, AS BETWEEN A LAW ENFORCEMENT OFFICER  
6 AND AN INDIVIDUAL WHO IS ARRESTED BY THE LAW ENFORCEMENT OFFICER:

7                           (I) PERCUTANEOUS CONTACT WITH BLOOD, SEMEN, OR BLOOD  
8 CONTAMINATED FLUIDS;

9                           (II) MUCOCUTANEOUS CONTACT WITH BLOOD, SEMEN, OR BLOOD  
10 CONTAMINATED FLUIDS;

11                           (III) OPEN WOUND, INCLUDING DERMATITIS, EXUDATIVE LESIONS,  
12 OR CHAPPED SKIN, OR CONTACT WITH BLOOD, SEMEN, OR BLOOD CONTAMINATED  
13 FLUIDS; OR

14                           (IV) INTACT SKIN CONTACT WITH LARGE AMOUNTS OF BLOOD,  
15 SEMEN, OR BLOOD CONTAMINATED FLUID FOR A PROLONGED PERIOD OF TIME.

16                   (3) "HIV" MEANS THE HUMAN IMMUNODEFICIENCY VIRUS THAT  
17 CAUSES ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS).

18                   (4) "LAW ENFORCEMENT OFFICER" MEANS A MEMBER OF A POLICE  
19 FORCE OR OTHER AGENCY OF THE UNITED STATES, A STATE, A COUNTY, THE  
20 DISTRICT OF COLUMBIA, A MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION WHO  
21 IS AUTHORIZED BY LAW TO MAKE ARRESTS.

22           (B) (1) A COURT MAY ORDER AN INDIVIDUAL WHO IS ARRESTED BY A LAW  
23 ENFORCEMENT OFFICER TO FURNISH A BLOOD SAMPLE TO BE TESTED FOR THE  
24 PRESENCE OF HIV IF:

25                           (I) THE LAW ENFORCEMENT OFFICER WHO CONDUCTED OR  
26 ASSISTED WITH THE ARREST FILES A WRITTEN REQUEST WITH THE STATE'S  
27 ATTORNEY IN THE JURISDICTION WHERE THE ARREST OCCURRED;

28                           (II) THE STATE'S ATTORNEY FILES THE WRITTEN REQUEST OF THE  
29 LAW ENFORCEMENT OFFICER WITH THE COURT; AND

30                           (III) AFTER A HEARING CONDUCTED UNDER PARAGRAPH (2) OF  
31 THIS SUBSECTION, THE COURT FINDS PROBABLE CAUSE TO BELIEVE THAT AN  
32 EXPOSURE OCCURRED DURING THE ARREST.

33                   (2) (I) PRIOR TO ISSUING AN ORDER FOR TESTING UNDER  
34 PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL CONDUCT A HEARING AT  
35 WHICH BOTH THE LAW ENFORCEMENT OFFICER AND THE INDIVIDUAL ARRESTED  
36 HAVE THE RIGHT TO BE PRESENT.

37                           (II) BOTH THE LAW ENFORCEMENT OFFICER AND THE  
38 INDIVIDUAL ARRESTED SHALL BE NOTIFIED OF:

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1 1. THE DATE, TIME, AND LOCATION OF THE HEARING; AND

2 2. THEIR RIGHT TO BE PRESENT AT THE HEARING.

3 (III) DURING THE HEARING ONLY AFFIDAVITS,  
4 COUNTER-AFFIDAVITS, AND MEDICAL RECORDS THAT RELATE TO THE MATERIAL  
5 FACTS OF THE CASE USED TO SUPPORT OR REBUT A FINDING OF PROBABLE CAUSE  
6 FOR THE ISSUANCE OF A COURT ORDER MAY BE ADMISSIBLE.

7 (3) THE WRITTEN REQUEST OF THE LAW ENFORCEMENT OFFICER  
8 SHALL BE SEALED BY THE COURT.

9 (C) (1) AFTER A FINDING OF PROBABLE CAUSE BY A COURT UNDER  
10 SUBSECTION (B) OF THIS SECTION, THE STATE'S ATTORNEY SHALL PROMPTLY  
11 NOTIFY THE LOCAL HEALTH OFFICER OF THE LAW ENFORCEMENT OFFICER'S  
12 REQUEST FOR TESTING.

13 (2) ON RECEIPT OF A COURT ORDER FOR TESTING ISSUED UNDER  
14 SUBSECTION (B) OF THIS SECTION, THE LOCAL HEALTH OFFICER OR THE LOCAL  
15 HEALTH OFFICER'S DESIGNEE FROM ANY OTHER GOVERNMENTAL ENTITY SHALL:

16 (I) PROMPTLY COLLECT THE BLOOD SAMPLE FROM THE  
17 INDIVIDUAL ARRESTED;

18 (II) CONDUCT THE TEST ON THE BLOOD SAMPLE; AND

19 (III) PROVIDE PRETEST AND POSTTEST COUNSELING TO THE LAW  
20 ENFORCEMENT OFFICER AND THE INDIVIDUAL ARRESTED IN ACCORDANCE WITH  
21 THE PROVISIONS OF THIS PART.

22 (D) (1) AFTER RECEIVING THE RESULTS OF A TEST CONDUCTED UNDER  
23 SUBSECTION (C) OF THIS SECTION, THE LOCAL HEALTH OFFICER SHALL:

24 (I) NOTIFY THE LAW ENFORCEMENT OFFICER AND THE  
25 INDIVIDUAL ARRESTED OF THE TEST RESULTS WITHIN 48 HOURS OF  
26 CONFIRMATION OF THE RESULTS;

27 (II) SEND SUBSEQUENT WRITTEN CONFIRMATION OF THE  
28 POSSIBLE EXPOSURE TO HIV; AND

29 (III) TO THE EXTENT POSSIBLE, MAKE THE NOTICE IN A MANNER  
30 THAT WILL PROTECT THE CONFIDENTIALITY OF THE LAW ENFORCEMENT OFFICER  
31 AND THE INDIVIDUAL ARRESTED.

32 (2) A LOCAL HEALTH OFFICER MAY NOT DISCLOSE POSITIVE TEST  
33 RESULTS TO A LAW ENFORCEMENT OFFICER OR AN INDIVIDUAL ARRESTED  
34 WITHOUT ALSO PROVIDING, OFFERING, OR ARRANGING FOR THE PROVISION OF  
35 APPROPRIATE COUNSELING TO THE LAW ENFORCEMENT OFFICER AND THE  
36 INDIVIDUAL ARRESTED.

37 (E) (1) A LAW ENFORCEMENT OFFICER WHO RECEIVES NOTIFICATION  
38 UNDER SUBSECTION (D) OF THIS SECTION MAY ONLY DISCLOSE THE RESULTS OF  
39 THE TEST TO ANOTHER INDIVIDUAL TO PROTECT THE HEALTH AND SAFETY OF:

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1 (I) THE LAW ENFORCEMENT OFFICER;

2 (II) THE LAW ENFORCEMENT OFFICER'S SEXUAL PARTNER; OR

3 (III) THE LAW ENFORCEMENT OFFICER'S FAMILY.

4 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO  
5 RECEIVES NOTIFICATION OR DISCLOSURE OF THE RESULTS OF THE TEST UNDER  
6 THIS SUBSECTION AND KNOWINGLY DISCLOSES THE RESULTS OF THAT TEST IN  
7 VIOLATION OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION  
8 IS SUBJECT TO A FINE NOT EXCEEDING \$5,000 OR A TERM OF IMPRISONMENT NOT  
9 EXCEEDING 90 DAYS OR BOTH.

10 (F) THE RESULTS OF A TEST CONDUCTED UNDER THIS SECTION ARE NOT  
11 ADMISSIBLE AS EVIDENCE OF EITHER GUILT OR INNOCENCE IN A CRIMINAL  
12 PROCEEDING ARISING OUT OF THE ALLEGED OFFENSE FOR WHICH THE  
13 INDIVIDUAL WAS ARRESTED.

14 (G) A STATE EMPLOYEE OR AGENT OR EMPLOYEE OF THE DEPARTMENT  
15 WHO ACTS IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION SHALL HAVE  
16 THE IMMUNITY FROM LIABILITY DESCRIBED UNDER § 5-399.2 OF THE COURTS  
17 ARTICLE FOR ACTIONS TAKEN UNDER THIS SECTION.

18 (H) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THE  
19 PROVISIONS OF THIS SECTION, INCLUDING REGULATIONS CONCERNING:

20 (1) THE CONFIDENTIALITY OF TEST RESULTS; AND

21 (2) PROVIDING INDIVIDUALS WITH COUNSELING CONCERNING HIV  
22 DISEASE, HIV TESTING, AND REFERRAL FOR APPROPRIATE HEALTH CARE AND  
23 SUPPORT SERVICES.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 1996.