

HOUSE BILL 89

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2000 Regular Session
0lr0903
CF 0lr0268

(PRE-FILED)

By: **Delegate Sophocleus**
Requested: November 15, 1999
Introduced and read first time: January 12, 2000
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Offenders - Contagious Disease or Virus Testing**

3 FOR the purpose of requiring certain individuals convicted of, charged with, or
4 granted probation before judgment for committing certain offenses to furnish
5 appropriate body fluid samples to be tested for the presence of certain
6 contagious diseases or viruses under certain circumstances; including certain
7 correctional officers among those who may request certain individuals to be
8 tested for the presence of certain contagious diseases or viruses and who are
9 eligible to receive certain notifications and make certain disclosures; requiring
10 the State Department of Health and Mental Hygiene to adopt regulations for
11 providing certain individuals with counseling on contagious diseases and
12 viruses; requiring certain additional law enforcement agencies to notify certain
13 individuals under certain circumstances; altering a certain definition of "body
14 fluids" to include saliva and sputum for the purpose of determining whether an
15 individual may be required to furnish body fluid samples; defining certain
16 terms; and generally relating to testing individuals convicted of, charged with,
17 or granted probation before judgment for committing certain offenses for the
18 presence of contagious diseases or viruses under certain circumstances.

19 BY repealing and reenacting, with amendments,
20 Article 27 - Crimes and Punishments
21 Section 855
22 Annotated Code of Maryland
23 (1996 Replacement Volume and 1999 Supplement)

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

26 **Article 27 - Crimes and Punishments**

27 855.

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

- 1 (2) "Agency" means any of the following:
- 2 (i) The Department of State Police;
- 3 (ii) The Baltimore City Police Department;
- 4 (iii) The police department, bureau, or force of any county;
- 5 (iv) The police department, bureau, or force of any incorporated city
6 or town;
- 7 (v) The office of the sheriff of any county;
- 8 (vi) The office of the State's Attorney of any county;
- 9 (vii) The office of the Attorney General;
- 10 (viii) The office of the State Prosecutor;
- 11 (ix) The Department of Juvenile Justice; [or]
- 12 (x) The police department, bureau, or force of any bicounty agency
13 or CONSTITUENT INSTITUTION OF the University of Maryland, MORGAN STATE
14 UNIVERSITY, ST. MARY'S COLLEGE, OR OF ANY INSTITUTION UNDER THE
15 JURISDICTION OF THE MARYLAND HIGHER EDUCATION COMMISSION;
- 16 (XI) THE MASS TRANSIT ADMINISTRATION POLICE FORCE OF THE
17 DEPARTMENT OF TRANSPORTATION, THE MARYLAND TRANSPORTATION AUTHORITY
18 POLICE FORCE, AND THE MARYLAND PORT ADMINISTRATION POLICE FORCE OF THE
19 DEPARTMENT OF TRANSPORTATION;
- 20 (XII) THE LAW ENFORCEMENT OFFICERS OF THE DEPARTMENT OF
21 NATURAL RESOURCES;
- 22 (XIII) THE INVESTIGATIVE SERVICES UNIT OF THE COMPTROLLER'S
23 OFFICE;
- 24 (XIV) THE CROFTON POLICE DEPARTMENT; OR
- 25 (XV) THE INTERNAL INVESTIGATIVE UNIT OF THE DEPARTMENT OF
26 PUBLIC SAFETY AND CORRECTIONAL SERVICES.
- 27 (3) (I) "Body fluids" [has the meaning stated in § 18-338.1 of the
28 Health - General Article] MEANS:
- 29 1. ANY FLUID CONTAINING VISIBLE BLOOD, SALIVA, SEMEN,
30 SPUTUM, OR VAGINAL SECRETIONS; OR
- 31 2. CEREBROSPINAL, SYNOVIAL, OR AMNIOTIC FLUID.

1 (II) "BODY FLUIDS" DOES NOT INCLUDE STOOL, NASAL
2 SECRETIONS, TEARS, URINE, OR VOMITUS.

3 (4) "Charged" means the filing of an indictment, information, or petition
4 alleging a delinquent act.

5 (5) "CONTAGIOUS DISEASE OR VIRUS" MEANS:

6 (I) ANY HUMAN IMMUNODEFICIENCY VIRUS (HIV) THAT CAUSES
7 ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS);

8 (II) MENINGOCOCCAL MENINGITIS;

9 (III) TUBERCULOSIS;

10 (IV) MONONUCLEOSIS;

11 (V) ANY FORM OF VIRAL HEPATITIS, INCLUDING HEPATITIS A, B, C,
12 D, E, F, AND G;

13 (VI) DIPHTHERIA;

14 (VII) PLAGUE;

15 (VIII) HEMORRHAGIC FEVERS; OR

16 (IX) RABIES.

17 [(5)] (6) "Convicted" means:

18 (i) In receipt of a verdict or finding of guilt in a criminal
19 proceeding;

20 (ii) Found to have committed a delinquent act in a juvenile
21 proceeding conducted in accordance with Title 3, Subtitle 8 of the Courts Article; or

22 (iii) Having accepted a plea of guilt or nolo contendere.

23 (7) (I) "CORRECTIONAL OFFICER" MEANS A MEMBER OF A
24 CORRECTIONAL UNIT WHO IS CHARGED WITH AND ACTUALLY PERFORMS THOSE
25 DUTIES THAT RELATE TO THE INVESTIGATION, CARE, CUSTODY, CONTROL, OR
26 SUPERVISION OF PERSONS CONFINED TO PLACES OF INCARCERATION.

27 (II) "CORRECTIONAL OFFICER" INCLUDES ANY SHERIFF, WARDEN,
28 SUPERINTENDENT, OR ANY OTHER PERSON HAVING AN EQUIVALENT TITLE.

29 [(6)] (8) "Department" means the Department of Health and Mental
30 Hygiene.

31 [(7)] (9) "Exposure" means, as between a victim and a person charged:

- 1 (i) Percutaneous contact with blood or body fluids;
- 2 (ii) Mucocutaneous contact with blood or body fluids;
- 3 (iii) Open wound, including dermatitis, exudative lesions, or
4 chapped skin, contact with blood or body fluids for a prolonged period;
- 5 (iv) Intact skin contact with large amounts of blood or body fluids
6 for a prolonged period; or
- 7 (v) Any other condition or circumstance under which a person may
8 be exposed to [HIV] A CONTAGIOUS DISEASE OR VIRUS.
- 9 [(8)] (10) "Health officer" has the meaning as stated in § 1-101(d) of the
10 Health - General Article.
- 11 [(9)] "HIV" means any human immunodeficiency virus that causes
12 Acquired Immune Deficiency Syndrome (AIDS).]
- 13 (11) "LAW ENFORCEMENT OFFICER" MEANS ANY PERSON WHO, IN AN
14 OFFICIAL CAPACITY, IS AUTHORIZED BY LAW TO MAKE ARRESTS AND WHO IS A
15 MEMBER OF ONE OF THE FOLLOWING LAW ENFORCEMENT AGENCIES:
- 16 (I) THE DEPARTMENT OF STATE POLICE;
- 17 (II) THE BALTIMORE CITY POLICE DEPARTMENT;
- 18 (III) THE POLICE DEPARTMENT, BUREAU, OR FORCE OF ANY
19 COUNTY;
- 20 (IV) THE POLICE DEPARTMENT, BUREAU, OR FORCE OF ANY
21 INCORPORATED CITY OR TOWN;
- 22 (V) THE OFFICE OF THE SHERIFF OF ANY COUNTY;
- 23 (VI) THE POLICE DEPARTMENT, BUREAU, OR FORCE OF ANY
24 BICOUNTY AGENCY OR CONSTITUENT INSTITUTION OF THE UNIVERSITY SYSTEM OF
25 MARYLAND, MORGAN STATE UNIVERSITY, ST. MARY'S COLLEGE, OR OF ANY
26 INSTITUTION UNDER THE JURISDICTION OF THE MARYLAND HIGHER EDUCATION
27 COMMISSION;
- 28 (VII) THE MASS TRANSIT ADMINISTRATION POLICE FORCE OF THE
29 DEPARTMENT OF TRANSPORTATION, THE MARYLAND TRANSPORTATION AUTHORITY
30 POLICE FORCE, AND THE MARYLAND PORT ADMINISTRATION POLICE FORCE OF THE
31 DEPARTMENT OF TRANSPORTATION;
- 32 (VIII) THE LAW ENFORCEMENT OFFICERS OF THE DEPARTMENT OF
33 NATURAL RESOURCES;
- 34 (IX) THE INVESTIGATIVE SERVICES UNIT OF THE COMPTROLLER'S
35 OFFICE;

1 (X) THE CROFTON POLICE DEPARTMENT; OR

2 (XI) THE INTERNAL INVESTIGATIVE UNIT OF THE DEPARTMENT OF
3 PUBLIC SAFETY AND CORRECTIONAL SERVICES.

4 [(10)] (12) "Offense" means:

5 (i) Any prohibited activity involving a sexual act that includes:

6 1. Contact between the penis and the vulva or the penis and
7 the anus, and for purposes of this subparagraph contact involving the penis occurs
8 upon penetration, however slight; or

9 2. Contact between the mouth and the penis, the mouth and
10 the vulva, or the mouth and the anus; or

11 (ii) Any other criminal offense or delinquent act the commission of
12 which may have caused or resulted in an exposure.

13 [(11)] (13) (i) "Victim" means the victim of an offense.

14 (ii) "Victim" includes:

15 1. The parent of a victim who is a minor;

16 2. The legal guardian of a victim;

17 3. The person authorized to give substituted consent for the
18 victim under § 5-605 of the Health - General Article;

19 4. A law enforcement officer acting in the performance of the
20 law enforcement officer's official duties at the time of the exposure;

21 5. A CORRECTIONAL OFFICER ACTING IN THE
22 PERFORMANCE OF THE CORRECTIONAL OFFICER'S DUTIES AT THE TIME OF
23 EXPOSURE; or

24 [5.] 6. A paid or volunteer firefighter, an emergency
25 medical technician, or rescue squadman while acting in the performance of duty.

26 (b) (1) Upon the written request of a victim to the office of the State's
27 Attorney in the jurisdiction where an offense occurred, the court shall order an
28 individual convicted of committing the offense or being granted probation before
29 judgment under § 641 of this article to furnish [a blood sample] APPROPRIATE BODY
30 FLUID SAMPLES to be tested for the presence of [HIV and any other identified
31 causative agent of the Acquired Immune Deficiency Syndrome (AIDS)] A
32 CONTAGIOUS DISEASE OR VIRUS.

33 (2) The written request shall be filed by the State's Attorney with the
34 court and sealed by the court.

1 (c) (1) If the individual is charged within 1 year after the offense occurred,
2 in addition to the provisions of subsection (b) of this section, upon the written request
3 of a victim to the office of the State's Attorney in the jurisdiction where an offense
4 occurred, the court may order, upon a finding of probable cause to believe that an
5 exposure occurred, an individual charged with the offense to furnish [a blood sample]
6 APPROPRIATE BODY FLUID SAMPLES to be tested for the presence of [HIV] A
7 CONTAGIOUS DISEASE OR VIRUS.

8 (2) (i) Prior to issuing any order for testing under the provisions of
9 paragraph (1) of this subsection, the court shall conduct a hearing at which both the
10 victim and the person charged have the right to be present.

11 (ii) Both the victim and the person charged shall be notified of:

12 1. The date, time, and location of the hearing; and

13 2. Their right to be present at the hearing.

14 (3) During the hearing only affidavits, counter-affidavits, and medical
15 records that relate to the material facts of the case used to support or rebut a finding
16 of probable cause for the issuance of a court order may be admissible.

17 (4) The written request of the victim shall be filed by the State's
18 Attorney with the court and sealed by the court.

19 (d) (1) After conviction, a granting of probation before judgment, or a
20 finding of probable cause by a court under subsection (b) or (c) of this section,
21 respectively, the State's Attorney shall promptly notify the local health officer of the
22 victim's written request for testing.

23 (2) Upon receipt of a court order for testing issued under subsection (b)
24 or (c) of this section, the local health officer or the local health officer's designee from
25 any other governmental entity shall:

26 (i) Promptly collect the [blood sample] BODY FLUID SAMPLES
27 from the convicted or charged individual;

28 (ii) Conduct the test on the [blood sample] BODY FLUID SAMPLES;
29 and

30 (iii) Provide pretest and posttest counseling to the victim and the
31 charged or convicted individual in accordance with the provisions of Title 18, Subtitle
32 3, Part VI of the Health - General Article.

33 (e) (1) After receiving the results of a test conducted under subsection (d) of
34 this section, the local health officer shall promptly notify the victim and the accused
35 or convicted individual of the test results.

36 (2) A local health officer may not disclose positive test results to a victim
37 or a charged or convicted individual without also providing, offering, or arranging for

1 the provision of appropriate counseling to the victim and the charged or convicted
2 individual.

3 (f) The Department shall adopt regulations to implement the provisions of
4 this section, including regulations regarding:

5 (1) The confidentiality of test results; and

6 (2) Providing victims with counseling regarding CONTAGIOUS DISEASE
7 OR VIRUS, INCLUDING HIV disease, HIV testing, and referral for appropriate health
8 care and support services.

9 (g) A victim of an offense described under this section shall be notified of the
10 provisions of this section by:

11 (1) An agency upon the filing with a court of a statement of charges or
12 indictment or information or petition alleging delinquency for the alleged commission
13 of an offense;

14 (2) A rape crisis program established under § 793 of this subtitle when
15 the program is contacted by the victim; or

16 (3) An intake officer who receives a complaint for the alleged commission
17 of an offense under § 3-810 of the Courts Article.

18 (h) (1) A victim who receives notification under subsection (e) of this section
19 may disclose the results of the test to any other individual or organization to protect
20 the health and safety of, or to seek compensation for:

21 (i) The victim;

22 (ii) The victim's sexual partner; or

23 (iii) The victim's family.

24 (2) Except as otherwise provided in this section, any person who receives
25 notification or disclosure of the results of the test under this subsection and
26 knowingly discloses the results of that test in violation of this section is guilty of a
27 misdemeanor and on conviction is subject to imprisonment of not more than 90 days
28 or a fine of not more than \$5,000 or both.

29 (i) The results of any test conducted under this section are not admissible as
30 evidence of either guilt or innocence in any criminal proceeding arising out of the
31 alleged offense.

32 (j) A State employee or agent or employee of the Department who acts in
33 compliance with the provisions of this section shall have the immunity from liability
34 described under § 5-522 of the Courts Article for actions taken pursuant to this
35 section.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2000.