
By: **Delegates Lee, Goldwater, Barkley, Benson, Bronrott, Conroy, Cryor, Doory, Dumais, Frush, Gaines, Glassman, Gutierrez, Heller, Howard, Hubbard, Jameson, Jones, Kaiser, Kelley, King, Krysiak, Love, Madaleno, Mandel, Marriott, Mayer, McComas, McHale, Menes, Moe, Montgomery, Murray, Nathan-Pulliam, Pendergrass, Petzold, Quinter, Shank, Shewell, Simmons, Smigiel, Stern, Taylor, Trueschler, and Walkup**

Introduced and read first time: February 10, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - HIV Testing - Time Limits**

3 FOR the purpose of establishing a certain time limit in which a court, except for good
4 cause, must hold a hearing after the court is presented with a certain victim's
5 request for a hearing on whether a person charged with a crime or delinquent
6 act that may have caused or resulted in exposure of the victim to HIV must be
7 tested for HIV; establishing a certain time limit in which a court, except for good
8 cause, must issue a certain order after the conclusion of a certain hearing;
9 establishing a certain time limit in which a court, after the court is presented
10 with a victim's request, must order a test for HIV of a certain person who has
11 been convicted or otherwise adjudicated of a certain criminal or delinquent act;
12 establishing a certain time limit in which a State's Attorney must notify a local
13 health officer of a certain request; establishing a certain time limit in which a
14 local health officer or the local health officer's designee must collect a certain
15 blood sample from a certain person; and generally relating to HIV testing of
16 persons charged with a crime or delinquent act that may have caused or
17 resulted in exposure to HIV.

18 BY repealing and reenacting, without amendments,
19 Article - Criminal Procedure
20 Section 11-107, 11-108, 11-109, and 11-110
21 Annotated Code of Maryland
22 (2001 Volume and 2004 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Criminal Procedure
25 Section 11-111, 11-112, and 11-113
26 Annotated Code of Maryland

1 (2001 Volume and 2004 Supplement)

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

4 **Article - Criminal Procedure**

5 11-107.

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

7 (b) "Charged" means to be the subject of an indictment, an information, or a
8 petition alleging a delinquent act.

9 (c) "Health officer" has the meaning stated in § 1-101 of the Health - General
10 Article.

11 (d) "HIV" means any human immunodeficiency virus that causes Acquired
12 Immune Deficiency Syndrome (AIDS).

13 (e) (1) "Prohibited exposure" means a crime or delinquent act that may have
14 caused or resulted in exposure to HIV.

15 (2) "Prohibited exposure" includes:

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

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

19 (f) (1) "Victim" means the victim of a prohibited exposure.

20 (2) "Victim" includes:

21 (i) a law enforcement officer who is exposed to HIV while acting in
22 the performance of duty; and

23 (ii) a paid or volunteer firefighter, an emergency medical
24 technician, or rescue squad member who is exposed to HIV while acting in the
25 performance of duty.

26 (g) "Victim's representative" means:

27 (1) the parent of a victim who is a minor;

28 (2) the legal guardian of a victim; or

29 (3) the person authorized to give consent for the victim under § 5-605 of
30 the Health - General Article.

1 11-108.

2 For the purposes of Part II of this subtitle, a person is convicted when in a
3 criminal proceeding the person:

4 (1) is found guilty; or

5 (2) enters a plea of guilty or nolo contendere and the plea is accepted by
6 the court.

7 11-109.

8 (a) In this section, "body fluids" has the meaning stated in § 18-338.1 of the
9 Health - General Article.

10 (b) Exposure to HIV between a victim and a person charged with a prohibited
11 exposure occurs:

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

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

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

17 (4) under any other condition or circumstance under which a person may
18 be exposed to HIV.

19 11-110.

20 In addition to testing allowed under § 11-112 of this subtitle, the court may
21 order a person charged with a prohibited exposure to give a blood sample to be tested
22 for the presence of HIV if:

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

25 (2) a victim or victim's representative requests the testing in writing to
26 the State's Attorney in the county where the prohibited exposure occurred; and

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

29 11-111.

30 (a) (1) Before ordering a test under § 11-110 of this subtitle AND SUBJECT
31 TO THE PROVISIONS OF SUBSECTION (D) OF THIS SECTION, the court shall hold a
32 hearing at which both the victim or victim's representative and the person charged
33 with a prohibited exposure have the right to be present.

1 (2) The victim or victim's representative and the person charged with a
2 prohibited exposure shall be notified of:

3 (i) the date, time, and location of the hearing; and

4 (ii) their right to be present at the hearing.

5 (b) During the hearing, a court may admit into evidence only affidavits,
6 counter-affidavits, and medical records that:

7 (1) relate to the material facts of the case; and

8 (2) support or rebut a finding of probable cause to issue a court order.

9 (c) The written request of the victim or victim's representative shall be filed
10 by the State's Attorney with the court and sealed by the court.

11 (D) EXCEPT FOR GOOD CAUSE, THE COURT SHALL:

12 (1) HOLD THE HEARING WITHIN 30 DAYS OF THE STATE'S ATTORNEY'S
13 PRESENTMENT OF THE VICTIM'S WRITTEN REQUEST TO THE COURT; AND

14 (2) ISSUE AN ORDER GRANTING OR DENYING THE REQUEST WITHIN 3
15 DAYS OF THE CONCLUSION OF THE HEARING.

16 11-112.

17 (a) [On the] WITHIN 10 DAYS OF A written request of a victim or victim's
18 representative to the State's Attorney in the county where a prohibited exposure
19 occurred, the court shall order a test of a blood sample for HIV and any other
20 identified causative agent of AIDS.

21 (b) The blood sample shall be given by:

22 (1) a person who has been convicted of a crime that includes a prohibited
23 exposure;

24 (2) a person who has been granted probation before judgment under §
25 6-220 of this article in a case involving a prohibited exposure; or

26 (3) a child respondent who has been found to have committed a
27 delinquent act that includes a prohibited exposure.

28 (c) The written request shall be filed by the State's Attorney with the court
29 and sealed by the court.

30 11-113.

31 (a) (1) After conviction or a finding of a prohibited exposure, a finding of
32 probable cause under § 11-110(3) of this subtitle, or a granting of probation before
33 judgment under § 11-112 of this subtitle, the State's Attorney shall [promptly]

1 WITHIN 3 DAYS notify the local health officer of the written request by the victim or
2 victim's representative for testing.

3 (2) On receipt of a court order for testing issued under § 11-110(3) or §
4 11-112 of this subtitle, the local health officer or the local health officer's designee
5 from any other governmental unit shall:

6 (i) [promptly] collect the blood sample WITHIN 7 DAYS from the
7 person who is charged with, convicted of, or found to have committed a prohibited
8 exposure;

9 (ii) test the blood sample; and

10 (iii) give pretest and posttest counseling to the victim or victim's
11 representative and the person subject to testing in accordance with Title 18, Subtitle
12 3, Part VI of the Health - General Article.

13 (b) (1) After receiving the results of a test conducted under subsection (a) of
14 this section, the local health officer shall promptly send notice of the test results to:

15 (i) the victim or victim's representative; and

16 (ii) the person charged with, convicted of, or found to have
17 committed a prohibited exposure.

18 (2) The local health officer may not disclose positive test results to a
19 victim or victim's representative or a person charged with, convicted of, or found to
20 have committed a prohibited exposure without also giving, offering, or arranging for
21 appropriate counseling to:

22 (i) the victim or victim's representative; and

23 (ii) the person.

24 (c) The following shall notify a victim of prohibited exposure or the victim's
25 representative of the provisions of Part II of this subtitle:

26 (1) a sexual assault crisis program established under § 11-923 of this
27 title when a victim or victim's representative contacts the program;

28 (2) an intake officer who receives a complaint for the alleged prohibited
29 exposure under § 3-8A-10 of the Courts Article; or

30 (3) on the filing of a charging document or delinquency petition for the
31 alleged prohibited exposure:

32 (i) the Department of State Police;

33 (ii) the Police Department of Baltimore City;

34 (iii) the police unit of a county;

- 1 (iv) the police unit of a municipal corporation;
- 2 (v) the office of the sheriff of a county;
- 3 (vi) the office of the State's Attorney of a county;
- 4 (vii) the office of the Attorney General;
- 5 (viii) the office of the State Prosecutor;
- 6 (ix) the Department of Juvenile Services; or
- 7 (x) the police unit of a bicounty unit or the University of Maryland.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2005.