

ENROLLED BILL

-- Education, Health, and Environmental Affairs/Health and Government Operations --

Introduced by **Senator McFadden (By Request - Baltimore City Administration)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Hospitals - HIV Testing - Public Safety Worker**

3 FOR the purpose of requiring certain individuals in a hospital to order tests to be
4 conducted in a certain manner and in accordance with certain recommendations
5 on blood samples or other body fluids of certain individuals for the presence of
6 antibodies to the human immunodeficiency virus (HIV) under certain
7 circumstances; requiring a public safety worker to give certain notice to a
8 certain medical director under a certain circumstance; requiring a certain public
9 safety worker to give informed consent and submit a certain sample to be tested
10 for HIV; requiring a certain medical director to act as a certain intermediary
11 between a certain public safety worker and a certain officer; requiring certain
12 individuals to disclose the results of HIV tests conducted under this Act in a
13 certain manner to certain individuals ~~and and; requiring certain first~~
14 ~~responders or public safety officers to be tested for a certain disease within a~~
15 ~~certain number of hours; providing for the disclosure or nondisclosure of certain~~
16 ~~information under certain circumstances; requiring a certain medical director to~~

1 ~~arrange or~~ provide counseling to certain individuals under certain
 2 circumstances; specifying the confidentiality of certain medical records and
 3 other information; providing for a certain limitation of liability for certain
 4 individuals under this Act; ~~requiring individuals in a hospital to make a certain~~
 5 ~~report to the Department of Health and Mental Hygiene concerning the~~
 6 ~~conducting of certain tests by the hospital; providing a certain criminal and civil~~
 7 ~~penalty for violations of certain provisions of this Act; requiring the Department~~
 8 ~~to submit a certain report to the Governor and the General Assembly on or~~
 9 ~~before a certain date each year;~~ defining a public safety worker; and generally
 10 relating to conducting tests on blood samples or other body fluids of individuals
 11 in a hospital for the presence of antibodies to HIV.

12 BY repealing and reenacting, with amendments,
 13 Article - Health - General
 14 Section 18-338.3
 15 Annotated Code of Maryland
 16 (2000 Replacement Volume and 2004 Supplement)

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

19 **Article - Health - General**

20 18-338.3.

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

22 (2) (i) "Body fluids" means:

23 1. Any fluid containing visible blood, semen, or vaginal
 24 secretions; or

25 2. Cerebrospinal fluid, synovial fluid, or amniotic fluid.

26 (ii) "Body fluids" does not include saliva, stool, nasal secretions,
 27 sputum, tears, urine, or vomitus.

28 (3) "Exposure" means as between a patient and a health care provider:

29 (i) Percutaneous contact with blood or body fluids;

30 (ii) Mucocutaneous contact with blood or body fluids;

31 (iii) Open wound, including dermatitis, exudative lesions, or
 32 chapped skin, contact with blood or body fluids for a prolonged period; or

33 (iv) Intact skin contact with large amounts of blood or body fluids
 34 for a prolonged period.

- 1 (4) "First responder" means an individual who:
- 2 (i) Is licensed or certified under § 13-516 of the Education Article;
- 3 and
- 4 (ii) Provides services to an individual before the individual is
- 5 admitted to a hospital.
- 6 (5) (i) "Health care provider" means an individual who is licensed,
- 7 certified, or otherwise authorized under the Health Occupations Article or this article
- 8 to provide health or medical care in:
- 9 1. The ordinary course of business or practice of a profession;
- 10 or
- 11 2. An approved education or training program.
- 12 (ii) "Health care provider" includes any agent or employee of a
- 13 hospital.
- 14 (iii) "Health care provider" does not include an individual who is
- 15 eligible to receive notification under the provisions of § 18-213 of this title, including
- 16 any law enforcement officer or any member of any fire department, ambulance
- 17 company, or rescue squad.
- 18 (6) "HIV" means the human immunodeficiency virus that causes
- 19 acquired immune deficiency syndrome.
- 20 (7) "Hospital" has the meaning stated in § 19-301 of this article.
- 21 (8) "PUBLIC SAFETY WORKER" MEANS:
- 22 (I) ANY CAREER OR VOLUNTEER MEMBER OF A FIRE, RESCUE OR
- 23 EMERGENCY MEDICAL SERVICES DEPARTMENT, COMPANY, SQUAD, OR AUXILIARY;
- 24 (II) ANY LAW ENFORCEMENT OFFICER; OR
- 25 (III) THE STATE FIRE MARSHAL OR A SWORN MEMBER OF THE
- 26 STATE FIRE MARSHAL'S OFFICE.
- 27 (b) Notwithstanding the provisions of § 18-338.1 of this subtitle, the
- 28 designated infectious disease/communicable disease officer of a hospital shall order a
- 29 test for the presence of antibodies to the human immunodeficiency virus (HIV) under
- 30 subsection (d) of this section when:
- 31 (1) There has been an exposure in a hospital between a patient and a
- 32 health care provider, [or] an exposure between the patient and a first responder, OR
- 33 AN EXPOSURE BETWEEN A PATIENT AND A PUBLIC SAFETY WORKER before
- 34 admission of the patient to a hospital, that, in accordance with the Centers for
- 35 Disease Control and Prevention recommendations, would warrant recommending or

1 offering chemoprophylaxis treatment for the health care provider, [or] first
2 responder, OR PUBLIC SAFETY WORKER;

3 (2) Informed consent, or substitute consent as required under §
4 18-338.1(c) of this title, of the patient to test a blood sample of the patient for the
5 presence of HIV was sought and the patient was unavailable or unable to consent;

6 (3) (i) In accordance with hospital procedures, the health care
7 provider involved in the exposure has given prompt notice of the exposure to the
8 designated hospital infectious disease/communicable disease officer where the
9 exposure occurred; or

10 (ii) 1. The first responder involved in the exposure has given
11 prompt notice to the medical director with jurisdiction over the first responder; [and]

12 2. THE PUBLIC SAFETY WORKER INVOLVED IN THE
13 EXPOSURE HAS GIVEN PROMPT NOTICE TO THE MEDICAL DIRECTOR WITH
14 JURISDICTION OVER THE PUBLIC SAFETY WORKER; AND

15 [2.] 3. The medical director has given prompt notice to the
16 designated hospital infectious disease/communicable disease officer where the patient
17 is admitted;

18 (4) The health care provider, [or] first responder, OR PUBLIC SAFETY
19 WORKER involved in the exposure has given informed consent and has submitted a
20 blood sample to be tested for the presence of HIV; and

21 (5) The designated hospital infectious disease/communicable disease
22 officer has made a determination, in accordance with the Centers for Disease Control
23 and Prevention recommendations, that the testing of blood samples or other body
24 fluids of the patient for the presence of antibodies to the human immunodeficiency
25 virus (HIV) would be helpful in managing the risk of disease and health outcome of
26 the health care provider, [or] first responder, OR PUBLIC SAFETY WORKER.

27 (c) If there has been an exposure between a first responder and an individual
28 OR A PUBLIC SAFETY WORKER AND AN INDIVIDUAL before the admission of the
29 individual to a hospital:

30 (1) The first responder OR PUBLIC SAFETY WORKER shall give notice to
31 the first responder's OR PUBLIC SAFETY WORKER'S medical director in accordance
32 with subsection (b)(3)(ii)1 AND 2 of this section;

33 (2) The medical director shall act as an intermediary at all times
34 between the first responder OR PUBLIC SAFETY WORKER and the designated hospital
35 infectious disease/communicable disease officer; and

36 (3) The medical director and the designated hospital infectious
37 disease/communicable disease officer shall ensure that all communications and
38 information related to the exposure of the first responder OR PUBLIC SAFETY
39 WORKER are confidential.

1 (d) If the requirements of subsections (b) and (c) of this section are satisfied,
2 the designated hospital infectious disease/communicable disease officer shall order
3 tests to be conducted for the presence of antibodies to the human immunodeficiency
4 virus (HIV) using a test procedure approved by the Department on:

5 (1) Blood samples already obtained from the patient; or

6 (2) Blood samples or other body fluids collected for the purpose of HIV
7 testing under this section.

8 (e) When the designated hospital infectious disease/communicable disease
9 officer obtains the results of an HIV test conducted in accordance with the provisions
10 of subsection (d) of this section, the designated hospital infectious
11 disease/communicable disease officer shall directly notify the patient of the results of
12 the HIV test and, to the extent possible, in a manner that will protect the
13 confidentiality of the health care provider, [or] the first responder, OR THE PUBLIC
14 SAFETY WORKER and the patient.

15 ~~(F) (1) A FIRST RESPONDER OR PUBLIC SAFETY WORKER SHALL BE TESTED,~~
16 ~~TO THE EXTENT PRACTICABLE, WITHIN 24 HOURS OF A REPORTED OCCUPATIONAL~~
17 ~~EXPOSURE.~~

18 ~~(2) IF THE RESULT OF THE HIV TEST CONDUCTED UNDER PARAGRAPH~~
19 ~~(1) OF THIS SUBSECTION IS:~~

20 ~~(H) HIV NEGATIVE, THE HIV TEST RESULTS FROM THE PATIENT~~
21 ~~MAY BE DISCLOSED TO THE EXPOSED FIRST RESPONDER OR PUBLIC SAFETY~~
22 ~~WORKER; OR~~

23 ~~(I) HIV POSITIVE, THE HIV TEST RESULTS FROM THE PATIENT~~
24 ~~MAY NOT BE DISCLOSED TO THE EXPOSED FIRST RESPONDER OR PUBLIC SAFETY~~
25 ~~WORKER.~~

26 ~~(F)~~ ~~(G)~~ ~~(f)~~ If the results of an HIV test conducted in accordance with the
27 provisions of subsection (d) of this section are positive, the designated hospital
28 infectious disease/communicable disease officer shall provide or arrange for the
29 provision of appropriate counseling and treatment recommendations to the health
30 care provider, [or] first responder, OR PUBLIC SAFETY WORKER and the patient.

31 ~~(g)~~ ~~(H)~~ ~~(g)~~ (1) Notwithstanding the provisions of Title 4, Subtitle 3 of this
32 article, the medical records, including any physician order for an HIV test or the
33 results of an HIV test conducted under this section, may not be documented in the
34 medical record of the patient, health care provider, [or] first responder, OR PUBLIC
35 SAFETY WORKER.

36 (2) The hospital where the exposure occurred shall maintain a separate
37 confidential record or incident report for all HIV tests conducted under this section.

38 (3) Each hospital shall adopt procedures for the confidential HIV testing
39 of blood samples or other body fluids used or collected for purposes of this section.

1 (4) Except as provided in paragraph (5) of this subsection, the medical
2 records, including any physician order for an HIV test or the results of any HIV test
3 conducted under this section, are:

4 (i) Confidential; and

5 (ii) Not discoverable or admissible in evidence in any criminal, civil,
6 or administrative action.

7 (5) If the identity of the patient or any other information that could be
8 readily associated with the identity of the patient is not disclosed, the results of an
9 HIV test conducted on a patient for purposes of this section may be introduced into
10 evidence in any criminal, civil, or administrative action including the adjudication of
11 a workers' compensation claim.

12 ~~(h)~~ ~~(I)~~ ~~(h)~~ The costs incurred in performing an HIV test on a patient in
13 accordance with the provisions of this section shall be paid by the hospital.

14 ~~(+)~~ ~~(I)~~ ~~(i)~~ Each hospital shall develop written procedures to implement
15 the provisions of this section.

16 ~~(+)~~ ~~(K)~~ ~~(j)~~ A health care provider, first responder, PUBLIC SAFETY
17 WORKER, or hospital or designee of a hospital acting in good faith to provide
18 notification or maintain the confidentiality of the results of a test conducted under
19 this section may not be held liable in any cause of action related to a breach of patient,
20 health care provider, [or] first responder, OR PUBLIC SAFETY WORKER
21 confidentiality.

22 ~~(L)~~ ~~A DESIGNATED HOSPITAL INFECTIOUS DISEASE/COMMUNICABLE DISEASE~~
23 ~~OFFICER SHALL REPORT TO THE DEPARTMENT, ON A FORM APPROVED BY THE~~
24 ~~DEPARTMENT, EACH TIME THE HOSPITAL CONDUCTS AN HIV TEST ON:~~

25 ~~(1)~~ ~~A PATIENT WHO WAS UNABLE TO GIVE INFORMED CONSENT TO~~
26 ~~CONDUCT THE HIV TEST IN ACCORDANCE WITH THIS SECTION;~~

27 ~~(2)~~ ~~A PATIENT WHOSE SURROGATE DECISION MAKER WAS UNABLE TO~~
28 ~~GIVE INFORMED CONSENT TO CONDUCT THE HIV TEST ON THE PATIENT IN~~
29 ~~ACCORDANCE WITH THIS SECTION; AND~~

30 ~~(3)~~ ~~A PATIENT WHO GAVE THE PATIENT'S INFORMED CONSENT TO~~
31 ~~CONDUCT THE HIV TEST ON THE PATIENT IN ACCORDANCE WITH THIS SECTION.~~

32 ~~(M)~~ ~~(1)~~ ~~EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON THAT~~
33 ~~RECEIVES NOTIFICATION OF THE RESULTS OF AN HIV TEST CONDUCTED UNDER~~
34 ~~THIS SECTION MAY NOT KNOWINGLY DISCLOSE THE RESULTS OF THE TEST.~~

35 ~~(2)~~ ~~A PERSON THAT VIOLATES THE PROVISIONS OF THIS SUBSECTION IS~~
36 ~~GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT~~
37 ~~NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING \$5,000 OR BOTH.~~

1 ~~(N) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE DEPARTMENT SHALL~~
2 ~~SUBMIT A REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE~~
3 ~~STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY SUMMARIZING BY~~
4 ~~COUNTY THE NUMBER OF PATIENTS:~~

5 ~~(1) WHO WERE UNABLE TO GIVE INFORMED CONSENT TO A HOSPITAL~~
6 ~~TO CONDUCT AN HIV TEST; AND~~

7 ~~(2) WHOSE SURROGATE DECISION MAKERS WERE UNABLE TO GIVE~~
8 ~~INFORMED CONSENT TO A HOSPITAL TO CONDUCT AN HIV TEST ON THE PATIENTS.~~

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