
By: **Senator McFadden (By Request - Baltimore City Administration)**

Introduced and read first time: January 31, 2005

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

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 provide counseling to certain
14 individuals under certain circumstances; specifying the confidentiality of
15 certain medical records and other information; providing for a certain limitation
16 of liability for certain individuals under this Act; defining a public safety worker;
17 and generally relating to conducting tests on blood samples or other body fluids
18 of individuals in a hospital for the presence of antibodies to HIV.

19 BY repealing and reenacting, with amendments,
20 Article - Health - General
21 Section 18-338.3
22 Annotated Code of Maryland
23 (2000 Replacement Volume and 2004 Supplement)

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

26 **Article - Health - General**

27 18-338.3.

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

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

- 1
2 secretions; or
- 3
- 4 1. Any fluid containing visible blood, semen, or vaginal
5 sputum, tears, urine, or vomitus.
- 6 (ii) "Body fluids" does not include saliva, stool, nasal secretions,
7 sputum, tears, urine, or vomitus.
- 8 (3) "Exposure" means as between a patient and a health care provider:
- 9 (i) Percutaneous contact with blood or body fluids;
10 (ii) Mucocutaneous contact with blood or body fluids;
11 (iii) Open wound, including dermatitis, exudative lesions, or
12 chapped skin, contact with blood or body fluids for a prolonged period; or
- 13 (iv) Intact skin contact with large amounts of blood or body fluids
14 for a prolonged period.
- 15 (4) "First responder" means an individual who:
- 16 (i) Is licensed or certified under § 13-516 of the Education Article;
17 and
- 18 (ii) Provides services to an individual before the individual is
19 admitted to a hospital.
- 20 (5) (i) "Health care provider" means an individual who is licensed,
21 certified, or otherwise authorized under the Health Occupations Article or this article
22 to provide health or medical care in:
- 23 1. The ordinary course of business or practice of a profession;
24 or
- 25 2. An approved education or training program.
- 26 (ii) "Health care provider" includes any agent or employee of a
27 hospital.
- 28 (iii) "Health care provider" does not include an individual who is
29 eligible to receive notification under the provisions of § 18-213 of this title, including
30 any law enforcement officer or any member of any fire department, ambulance
31 company, or rescue squad.
- 32 (6) "HIV" means the human immunodeficiency virus that causes
33 acquired immune deficiency syndrome.
- 34 (7) "Hospital" has the meaning stated in § 19-301 of this article.
- 35 (8) "PUBLIC SAFETY WORKER" MEANS:

1 (I) ANY CAREER OR VOLUNTEER MEMBER OF A FIRE, RESCUE OR
2 EMERGENCY MEDICAL SERVICES DEPARTMENT, COMPANY, SQUAD, OR AUXILIARY;

3 (II) ANY LAW ENFORCEMENT OFFICER; OR

4 (III) THE STATE FIRE MARSHAL OR A SWORN MEMBER OF THE
5 STATE FIRE MARSHAL'S OFFICE.

6 (b) Notwithstanding the provisions of § 18-338.1 of this subtitle, the
7 designated infectious disease/communicable disease officer of a hospital shall order a
8 test for the presence of antibodies to the human immunodeficiency virus (HIV) under
9 subsection (d) of this section when:

10 (1) There has been an exposure in a hospital between a patient and a
11 health care provider, [or] an exposure between the patient and a first responder, OR
12 AN EXPOSURE BETWEEN A PATIENT AND A PUBLIC SAFETY WORKER before
13 admission of the patient to a hospital, that, in accordance with the Centers for
14 Disease Control and Prevention recommendations, would warrant recommending or
15 offering chemoprophylaxis treatment for the health care provider, [or] first
16 responder, OR PUBLIC SAFETY WORKER;

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

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

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

26 2. THE PUBLIC SAFETY WORKER INVOLVED IN THE
27 EXPOSURE HAS GIVEN PROMPT NOTICE TO THE MEDICAL DIRECTOR WITH
28 JURISDICTION OVER THE PUBLIC SAFETY WORKER; AND

29 [2.] 3. The medical director has given prompt notice to the
30 designated hospital infectious disease/communicable disease officer where the patient
31 is admitted;

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

35 (5) The designated hospital infectious disease/communicable disease
36 officer has made a determination, in accordance with the Centers for Disease Control
37 and Prevention recommendations, that the testing of blood samples or other body
38 fluids of the patient for the presence of antibodies to the human immunodeficiency

1 virus (HIV) would be helpful in managing the risk of disease and health outcome of
2 the health care provider, [or] first responder, OR PUBLIC SAFETY WORKER.

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (i) Confidential; and

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

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

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

18 (i) Each hospital shall develop written procedures to implement the
19 provisions of this section.

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

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