

# HOUSE BILL 980

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By: **Delegates Nathan–Pulliam, Benson, Kullen, Mizeur, and Tarrant**

Introduced and read first time: February 9, 2007

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **HIV Testing, Education, and Treatment for Inmates**

3 FOR the purpose of requiring inmates in a correctional institution to be tested for the  
4 presence of human immunodeficiency virus (HIV) at certain times; requiring the  
5 correctional institution to test the inmates for HIV by a certain test and test  
6 procedure; requiring certain inmates to be notified of certain test results in a  
7 certain manner; requiring the correctional institution to provide certain  
8 education and treatment to inmates who test positive for HIV; requiring the  
9 Division of Correction, in consultation with the Department of Health and  
10 Mental Hygiene, to establish certain education programs; requiring all  
11 correctional institutions to develop certain written procedures; providing that  
12 certain health care providers may not be held liable for certain actions; defining  
13 certain terms; and generally relating to HIV testing, education, and treatment  
14 of inmates.

15 BY renumbering

16 Article – Health – General

17 Section 18–338.1, 18–338.2, and 18–338.3, respectively

18 to be Section 18–338.2, 18–338.3, and 18–338.4, respectively

19 Annotated Code of Maryland

20 (2005 Replacement Volume and 2006 Supplement)

21 BY repealing and reenacting, without amendments,

22 Article – Health – General

23 Section 18–338

24 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2005 Replacement Volume and 2006 Supplement)

2 BY adding to

3 Article – Health – General

4 Section 18–338.1

5 Annotated Code of Maryland

6 (2005 Replacement Volume and 2006 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article – Health – General

9 Section 18–338.2(b) and 18–338.4(b)

10 Annotated Code of Maryland

11 (2005 Replacement Volume and 2006 Supplement)

12 (As enacted by Section 1 of this Act)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
14 MARYLAND, That Section(s) 18–338.1, 18–338.2, and 18–338.3, respectively, of  
15 Article – Health – General of the Annotated Code of Maryland be renumbered to be  
16 Section(s) 18–338.2, 18–338.3, and 18–338.4, respectively.

17 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
18 read as follows:

19 **Article – Health – General**

20 18–338.

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

22 (2) “Correctional institution” means a place of detention or  
23 correctional confinement operated by or for the State or a local government.

24 (3) “Correctional employee” means:

25 (i) A person who is employed by a correctional institution; or

26 (ii) A person who performs duties in a correctional institution by  
27 virtue of federal, State, or local government employment.

28 (4) “Exposure” means, as between a correctional employee and an  
29 inmate:

1 (i) Percutaneous contact with blood, semen, or blood  
2 contaminated fluids;

3 (ii) Mucocutaneous contact with blood, semen, or blood  
4 contaminated fluids;

5 (iii) Open wound, including dermatitis, exudative lesions, or  
6 chapped skin, contact with blood, semen, or blood contaminated fluids; and

7 (iv) Intact skin contact with large amounts of blood, semen, or  
8 blood contaminated fluids for a prolonged period.

9 (5) "Health care provider" means any person, including a physician or  
10 hospital, who is licensed or otherwise authorized in this State to provide health care  
11 services and is under contract with or operated by the correctional facility.

12 (b) An inmate shall furnish to the correctional institution a blood sample to  
13 be tested for the presence of human immunodeficiency virus (HIV) when:

14 (1) There has been an exposure involving the inmate;

15 (2) The exposure occurred in connection with the inmate's violation of  
16 institutional regulations;

17 (3) The inmate has been found guilty of the violation of institutional  
18 regulations described in paragraph (2) of this subsection;

19 (4) The correctional employee involved in the exposure has given  
20 written notice of the exposure to the managing official of the correctional institution,  
21 or the official's designee; and

22 (5) The exposure is confirmed by a health care provider.

23 (c) The correctional institution shall collect the blood sample from the  
24 inmate, and shall have the sample tested for human immunodeficiency virus (HIV) by  
25 a test and test procedure approved by the Department.

26 (d) The correctional employee shall be notified of the results of the test for  
27 the presence of human immunodeficiency virus (HIV) conducted under the provisions  
28 of this section.

29 (e) The notification required under subsection (d) of this section shall:

1 (1) Be made within 48 hours of confirmation of the inmate's diagnosis;

2 (2) Include subsequent written confirmation of the possible exposure  
3 to human immunodeficiency virus (HIV); and

4 (3) To the extent possible, be made in a manner that will protect the  
5 confidentiality of the correctional employee and the inmate.

6 (f) If the results of the blood sample test are positive for the presence of  
7 human immunodeficiency virus (HIV), then the correctional employee and the inmate  
8 shall be provided appropriate counseling.

9 (g) All correctional institutions shall develop written procedures to carry out  
10 the provisions of this section.

11 (h) A health care provider acting in good faith to provide notification in  
12 accordance with this section may not be held liable in any cause of action related to a  
13 breach of patient confidentiality.

14 (i) A health care provider acting in good faith to provide notification in  
15 accordance with this section may not be held liable in any cause of action for:

16 (1) The failure to give the required notice, if the correctional employee  
17 fails to properly initiate the notification procedures developed by the correctional  
18 institution under subsection (g) of this section; or

19 (2) The failure of the managing official of the correctional institution  
20 within which the correctional employee is employed to subsequently notify the  
21 correctional employee of the possible exposure to human immunodeficiency virus  
22 (HIV).

23 (j) A health care provider may not be held liable in any cause of action  
24 related to obtaining a blood sample or performing and interpreting an approved HIV  
25 test without the inmate's informed consent.

26 **18-338.1.**

27 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
28 MEANINGS INDICATED.

29 (2) "AIDS" MEANS ACQUIRED IMMUNODEFICIENCY SYNDROME.

1           (3)    “CORRECTIONAL INSTITUTION” HAS THE MEANING STATED IN  
2   § 18-338 OF THIS SUBTITLE.

3           (4)    “HEALTH CARE PROVIDER” HAS THE MEANING STATED IN §  
4   18-338 OF THIS SUBTITLE.

5           (5)    “HIV” MEANS HUMAN IMMUNODEFICIENCY VIRUS.

6           (B)    AN INMATE IN A CORRECTIONAL INSTITUTION SHALL BE TESTED  
7   FOR THE PRESENCE OF HIV:

8           (1)    WITHIN 30 DAYS AFTER THE DAY ON WHICH THE INMATE IS  
9   COMMITTED;

10          (2)    NO LESS THAN 60 DAYS BEFORE THE INMATE’S PRESUMPTIVE  
11   RELEASE DATE; AND

12          (3)    AS PROVIDED IN § 18-338 OF THIS SUBTITLE.

13          (C)    A CORRECTIONAL INSTITUTION SHALL TEST AN INMATE FOR HIV  
14   BY A TEST AND A TEST PROCEDURE APPROVED BY THE DEPARTMENT.

15          (D)    (1)   THE INMATE SHALL BE NOTIFIED OF THE RESULTS OF THE  
16   TEST FOR THE PRESENCE OF HIV CONDUCTED UNDER THE PROVISIONS OF THIS  
17   SECTION.

18          (2)    THE NOTIFICATION REQUIRED UNDER PARAGRAPH (1) OF  
19   THIS SUBSECTION SHALL:

20                (I)    BE MADE WITHIN 48 HOURS OF CONFIRMATION OF THE  
21   INMATE’S DIAGNOSIS; AND

22                (II)   TO THE EXTENT POSSIBLE, BE MADE IN A MANNER THAT  
23   WILL PROTECT THE CONFIDENTIALITY OF THE INMATE.

24          (E)    IF AN INMATE TESTS POSITIVE FOR HIV UNDER SUBSECTION (C) OF  
25   THIS SECTION, OR IS OTHERWISE KNOWN BY THE CORRECTIONAL INSTITUTION  
26   TO HAVE TESTED POSITIVE FOR HIV, THE CORRECTIONAL INSTITUTION SHALL  
27   PROVIDE TO THE INMATE:

1           **(1) EDUCATION ON HIV INFECTION AS PROVIDED IN SUBSECTION**  
2 **(F) OF THIS SECTION; AND**

3           **(2) TREATMENT FOR HIV INFECTION THAT INCLUDES EXTENSIVE**  
4 **COUNSELING AND THAT IS BASED ON THE VIRAL LOAD AND CD4 RATIO**  
5 **INDICATED IN THE POSITIVE TEST.**

6           **(F) (1) THE DIVISION OF CORRECTION, IN CONSULTATION WITH THE**  
7 **DEPARTMENT, SHALL ESTABLISH EDUCATION PROGRAMS TO INFORM INMATES**  
8 **ABOUT HIV.**

9           **(2) THE PROGRAMS SHALL ADDRESS ISSUES RELATED TO HIV**  
10 **THAT ARE RELEVANT TO INMATES WHILE CONFINED AND AFTER THE INMATES**  
11 **ARE RELEASED.**

12           **(3) THE DEPARTMENT SHALL DESIGN THE PROGRAMS IN A**  
13 **MANNER THAT:**

14                   **(I) INCLUDES RELEVANT CULTURAL AND OTHER**  
15 **DIFFERENCES AMONG INMATES; AND**

16                   **(II) PROVIDES EDUCATION ON THE TRANSMISSION OF HIV**  
17 **THROUGH SEXUAL ENCOUNTERS, INCLUDING EDUCATION ON HOW TO PREVENT**  
18 **THE TRANSMISSION OF HIV.**

19           **(G) ALL CORRECTIONAL INSTITUTIONS SHALL DEVELOP WRITTEN**  
20 **PROCEDURES TO CARRY OUT THE PROVISIONS OF THIS SECTION.**

21           **(H) A HEALTH CARE PROVIDER MAY NOT BE HELD LIABLE IN ANY CAUSE**  
22 **OF ACTION RELATED TO TESTING FOR HIV OR PERFORMING AND**  
23 **INTERPRETING AN APPROVED HIV TEST WITHOUT THE INFORMED CONSENT OF**  
24 **THE INMATE.**

25 18-338.2.

26           (b) Except as provided in § [18-338.3] ~~18-338.4~~ of this subtitle, a physician,  
27 nurse, or designee of a health care facility shall, at the request of an exposed health  
28 care provider, seek the informed consent of a patient to test a blood sample of the  
29 patient for the presence of HIV when:

1           (1)     There has been an exposure between the patient and the health  
2 care provider;

3           (2)     The health care provider involved in the exposure has given  
4 prompt written notice of the exposure, in accordance with the standards of the health  
5 care facility, to the chief executive officer or the chief executive officer's designee of the  
6 health care facility where the exposure occurred;

7           (3)     The exposure occurred based on the judgment of a physician who is  
8 not the health care provider involved in the exposure; and

9           (4)     The health care provider involved in the exposure has given  
10 informed consent and has submitted a blood sample to be tested for the presence of  
11 HIV in accordance with the provisions of subsection (d) of this section.

12 18-338.4.

13           (b)     Notwithstanding the provisions of § [18-338.1] **18-338.2** of this subtitle,  
14 the designated infectious disease/communicable disease officer of a hospital shall order  
15 a test for the presence of antibodies to the human immunodeficiency virus (HIV) under  
16 subsection (d) of this section when:

17           (1)     There has been an exposure in a hospital between a patient and a  
18 health care provider, an exposure between the patient and a first responder, or an  
19 exposure between a patient and a public safety worker before admission of the patient  
20 to a hospital, that, in accordance with the Centers for Disease Control and Prevention  
21 recommendations, would warrant recommending or offering chemoprophylaxis  
22 treatment for the health care provider, first responder, or public safety worker;

23           (2)     (i)     Informed consent, or substitute consent as required under §  
24 [18-338.1(c)] **18-338.2(C)** of this subtitle, of the patient to test a blood sample of the  
25 patient for the presence of HIV was sought and the patient was unavailable or unable  
26 to consent; or

27           (ii)    Informed consent, or substitute consent as required under §  
28 [18-338.1(c)] **18-338.2(C)** of this title, of the patient to test a blood sample already  
29 obtained from the patient for the presence of HIV was sought, the patient refused, and  
30 the patient was informed of the provisions of this subsection;

31           (3)     (i)     In accordance with hospital procedures, the health care  
32 provider involved in the exposure has given prompt notice of the exposure to the

1 designated hospital infectious disease/communicable disease officer where the  
2 exposure occurred; or

3 (ii) 1. A. The first responder involved in the exposure  
4 has given prompt notice to the medical director with jurisdiction over the first  
5 responder; or

6 B. The public safety worker involved in the exposure has  
7 given prompt notice to the medical director with jurisdiction over the public safety  
8 worker; and

9 2. The medical director has given prompt notice to the  
10 designated hospital infectious disease/communicable disease officer where the patient  
11 is admitted;

12 (4) The health care provider, first responder, or public safety worker  
13 involved in the exposure has given informed consent and has submitted a blood  
14 sample to be tested for the presence of HIV; and

15 (5) The designated hospital infectious disease/communicable disease  
16 officer has made a determination, in accordance with the Centers for Disease Control  
17 and Prevention recommendations, that the testing of blood samples or other body  
18 fluids of the patient for the presence of antibodies to the human immunodeficiency  
19 virus (HIV) would be helpful in managing the risk of disease and health outcome of  
20 the health care provider, first responder, or public safety worker.

21 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2007.