

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 1253
Judiciary

(Delegate Schuler)

Judicial Proceedings

HIV Testing - Prohibited Exposure - Forensic Scientists

This bill adds a forensic scientist, working under the direction of a law enforcement agency, who is exposed to HIV while acting in the performance of duty to the definition of a “victim” under provisions providing a right to HIV testing.

Fiscal Summary

State Effect: None. Adding forensic scientists to provisions relating to the right to HIV testing should not measurably affect State finances or operations.

Local Effect: None. The bill should not measurably affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law: Chapter 252 of 2005 established time limits relating to HIV testing of persons charged with crimes or delinquent acts that may have caused or resulted in exposure to HIV. Before ordering an HIV test for a person charged with prohibited exposure, the court must hold a hearing at which both the victim and the person charged with prohibited exposure must be present. Except for a showing of good cause, the court must hold a hearing within 30 days of the State’s Attorney’s presentment of the victim’s written request and issue an order within three days of the conclusion of the hearing.

In the case of a person who has been convicted of or given probation before judgment for a crime that includes a prohibited exposure, the court in the county where the prohibited

exposure occurred must order a test for HIV within 10 days of a victim's written request to the State's Attorney.

After a conviction or a finding of a prohibited exposure, a finding of probable cause to believe that a prohibited exposure has occurred, or the granting of probation before judgment, the State's Attorney must within three days, notify the local health officer of the victim's written request for testing.

The local health officer must collect the blood sample of the person who is charged with, convicted of, or found to have committed a prohibited exposure within seven days of receipt of a court order for testing.

Chapter 300 of 2005 added a "public safety worker" to the list of individuals set forth in the Health-General Article who may require a hospital to order an HIV test, under specified circumstances, if there has been an "exposure" between a patient and specified individuals. A public safety worker includes: (1) any career or volunteer member of a fire, rescue, or emergency medical services department, company, squad, or auxiliary; (2) any law enforcement officer; or (3) the State Fire Marshal or a sworn member of the Fire Marshal's office.

Chapter 330 of 2005 requires a hospital to order an HIV test if there has been an exposure between a patient and public safety worker before the patient is admitted to a hospital. The Act further requires a hospital to order an HIV test after the exposure of a health care provider, first responder, or public safety worker if: (1) informed or substitute consent of the patient to test a blood sample already obtained from the patient was sought and the patient refused; and (2) the patient has been informed that the hospital has the authority to test the sample without the patient's consent. Hospitals must attempt to directly notify a patient of the results of the HIV test.

Chapter 330 also required the Department of Health and Mental Hygiene and the Maryland Institute for Emergency Medical Services Systems to develop regulations to establish procedures to collect information on exposures and refusals to consent by patients. That information was required to be reported to the Governor and the General Assembly annually beginning on December 1, 2005 and ending December 1, 2008.

An individual who has HIV may not knowingly transfer or attempt to transfer the virus to another individual. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$2,500.

An individual who has an infectious disease that endangers public health may not willfully: (1) be in a public place without taking proper precautions against exposing

other individuals to the disease; or (2) transfer to another individual any article that has been exposed to the disease without thoroughly disinfecting the article. A violator is guilty of a misdemeanor subject to maximum penalties of imprisonment for one year and/or a fine of \$500.

Background: HIV, the virus that causes AIDS, progressively destroys the body's ability to fight infections and certain cancers. The National Institute of Allergy and Infectious Diseases reports that it is rare for a health care provider to give a patient, or a patient to give a provider, HIV by accidentally sticking him or her with a contaminated needle or other medical instrument.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

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