

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 781

(Senator Lee, *et al.*)

Judicial Proceedings

Judiciary

Criminal Procedure - Testing - HIV and Hepatitis C

This bill adds hepatitis C to § 11-107 of the Criminal Procedure Article as a disease for which a person charged with causing a prohibited exposure to a victim may be tested. The court is authorized to order a person charged with a prohibited exposure to give a blood sample to be tested for the presence of hepatitis C. The court is required to order a test of a blood sample for hepatitis C within 10 days of a victim or victim's representative's written request to the State's Attorney in the county where a prohibited exposure occurred. The bill also contains provisions regarding emergency court orders to use oral swabs to test for the presence of HIV in prohibited exposure cases. Finally, the bill expands the definition of a "victim" of a prohibited exposure to include a health care provider who is exposed to HIV or hepatitis C while working under the direction of a law enforcement agency or while performing a sexual assault medical evidence collection examination.

Fiscal Summary

State Effect: The bill can be implemented with existing budgeted resources, as discussed below. Revenues are not affected.

Local Effect: Minimal impact on local health departments (LHDs), as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A circuit court or District Court judge is authorized to issue an emergency court order to obtain an oral swab from a person to be tested for the presence of HIV

whenever it is made to appear to a judge, by application as described, that there is probable cause to believe that the person has caused prohibited exposure to a victim. The application for an emergency court order must (1) be made as soon as possible after the alleged prohibited exposure, and no later than 72 hours after the alleged prohibited exposure; (2) meet specified statutory requirements; and (3) be sealed. The Court of Appeals must adopt rules to carry out the requirements under the bill for applications for and issuance of emergency court orders.

A law enforcement officer who has obtained an oral swab from a person pursuant to an emergency court order must deliver the swab to a local health official or health care provider to be tested for the presence of HIV. A test for the presence of HIV must be immediately performed on the swab, and the local health officer or health care provider must immediately provide the results to (1) the victim or victim's representative and (2) the person from whom the oral swab was taken. Test results obtained pursuant to an emergency court order are not admissible as evidence of guilt or innocence in a criminal proceeding arising out of the alleged prohibited exposure.

DHMH must adopt specified regulations under the bill.

Current Law: "Prohibited exposure" means a crime or delinquent act that may have caused or resulted in exposure to HIV.

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

- the person is charged with a prohibited exposure within one year after the prohibited exposure occurred;
- a victim or victim's representative requests the testing in writing to the State's Attorney in the county where the prohibited exposure occurred; and
- the court finds probable cause to believe that a prohibited exposure occurred.

Before ordering a test, the court must hold a hearing at which both the victim or victim's representative and the person charged with a prohibited exposure have the right to be present. The victim or victim's representative and the person charged with a prohibited exposure must be notified of the date, time, and location of the hearing; and their right to be present at the hearing. During the hearing, a court may admit into evidence only affidavits, counter-affidavits, and medical records that relate to the material facts of the case and support or rebut a finding of probable cause to issue a court order. The court must hold the hearing and issue its order within specified timelines.

Within 10 days of a written request of a victim or victim's representative to the State's Attorney in the county where a prohibited exposure occurred, the court shall order a test of a blood sample for HIV and any other identified causative agent of AIDS. The written request must be filed by the State's Attorney with the court and sealed by the court.

After conviction or a finding of a prohibited exposure, a finding of probable cause or a granting of probation before judgment under specified provisions, the State's Attorney must, within three days, notify the local health officer of the written request by the victim or victim's representative for testing.

On receipt of a court order for testing, the local health officer or the local health officer's designee from any other governmental unit must:

- collect the blood sample within seven days from the person who is charged with, convicted of, or found to have committed a prohibited exposure;
- test the blood sample; and
- give pretest and posttest counseling to the victim or victim's representative and the person subject to testing in accordance with specified provisions.

After receiving the results of a test, the local health officer must promptly send notice of the test results to the victim or victim's representative and the person charged with, convicted of, or found to have committed a prohibited exposure.

The local health officer may not disclose positive test results to a victim or victim's representative or a person charged with, convicted of, or found to have committed a prohibited exposure without also giving, offering, or arranging for appropriate counseling to the victim or victim's representative and the person.

The results of a test are not admissible as evidence of guilt or innocence in a criminal proceeding arising out of the alleged prohibited exposure.

Specified entities must notify a victim of prohibited exposure or the victim's representative of their rights to HIV testing, including a sexual assault crisis center, and specified law enforcement entities on the filing of a charging document or delinquency petition for the alleged prohibited exposure.

Background: Post-exposure prophylaxis (PEP) is the taking of antiretroviral medicines after being potentially exposed to HIV in order to prevent becoming infected. The World Health Organization (WHO) advises that PEP should be offered and initiated as early as possible for all individuals with an exposure that has the potential for HIV transmission, and ideally within 72 hours. According to WHO, if PEP is started soon after exposure, it can reduce the risk of HIV infection by more than 80%.

State/Local Expenditures: The Laboratories Division of DHMH advises that it provides HIV and hepatitis C testing for LHDs free of charge and can provide testing requested pursuant to the bill with existing staff, reagents, and supplies. The Prevention and Health Promotion Administration in DHMH can also handle the bill's requirements with existing resources. DHMH advises that LHDs estimate that the bill has minimal fiscal impact on their departments.

Additional Information

Prior Introductions: None.

Cross File: HB 1375 (Delegate Proctor, *et al.*) - Judiciary.

Information Source(s): Baltimore City; Harford and Montgomery counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Health and Mental Hygiene; Department of State Police; World Health Organization; Department of Legislative Services

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