

HOUSE BILL 1375

E2

(7lr2965)

ENROLLED BILL

— Judiciary/Judicial Proceedings —

Introduced by **Delegates Proctor, Dumais, Anderson, Atterbearn, Jackson, Jalisi, Jameson, Moon, Morhaim, Patterson, Queen, Sophocleus, Vallario, and C. Wilson**

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.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Testing – HIV and Hepatitis C**

3 FOR the purpose of including hepatitis C as a disease for which a certain person charged
4 with causing a prohibited exposure to a victim may be tested under certain
5 circumstances; authorizing a certain judge to issue ~~a search warrant~~ an emergency
6 order to obtain a certain sample from a person to be tested for the presence of HIV
7 under certain circumstances; requiring a certain application for ~~a search warrant~~ an
8 emergency order to meet certain requirements; ~~requiring~~ authorizing the Court of
9 Appeals to adopt certain rules; requiring a certain law enforcement officer to deliver
10 a certain sample to a local health official or certain health care provider to be tested
11 for the presence of HIV; requiring a certain test to be performed within a certain
12 period of time; requiring a local health official or certain health care provider to
13 provide notice of a certain test result to certain persons; establishing a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 disclosure restriction and evidentiary limitation for a test result; requiring the
2 Department of Health and Mental Hygiene to adopt certain regulations; requiring a
3 certain health care provider to adopt certain procedures; defining a certain term;
4 altering a certain definition; making conforming changes; and generally relating to
5 testing for HIV and hepatitis C.

6 BY repealing and reenacting, without amendments,
7 Article – Criminal Procedure
8 Section 11–107(a)
9 Annotated Code of Maryland
10 (2008 Replacement Volume and 2016 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article – Criminal Procedure
13 Section 11–107(e) and (f), 11–109, 11–110, 11–112(a), 11–113(a), and 11–117 to be
14 under the amended part “Part II. Right to HIV and Hepatitis C Testing”
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2016 Supplement)

17 BY adding to
18 Article – Criminal Procedure
19 Section 11–110.1
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2016 Supplement)

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

24 **Article – Criminal Procedure**

25 **Part II. Right to HIV AND HEPATITIS C Testing.**

26 11–107.

27 (a) In Part II of this subtitle the following words have the meanings indicated.

28 (e) (1) “Prohibited exposure” means a crime or delinquent act that may have
29 caused or resulted in exposure to **HIV OR HEPATITIS C**.

30 (2) “Prohibited exposure” includes:

31 (i) contact that occurs on penetration, however slight, between the
32 penis and the vulva or anus; and

33 (ii) contact between the mouth and the penis, vulva, or anus.

34 (f) (1) “Victim” means the victim of a prohibited exposure.

1 (2) "Victim" includes:

2 (i) a law enforcement officer who is exposed to HIV OR HEPATITIS
3 C while acting in the performance of duty;

4 (ii) a paid or volunteer firefighter, an emergency medical technician,
5 or rescue squad member who is exposed to HIV OR HEPATITIS C while acting in the
6 performance of duty; ~~and~~

7 (iii) a forensic scientist, working under the direction of a law
8 enforcement agency, who is exposed to HIV OR HEPATITIS C while acting in the
9 performance of duty; AND

10 (IV) AN INDIVIDUAL WHO IS LICENSED, CERTIFIED, OR
11 OTHERWISE AUTHORIZED TO PROVIDE HEALTH CARE UNDER THE HEALTH
12 OCCUPATIONS ARTICLE WHO IS EXPOSED TO HIV OR HEPATITIS C WHILE WORKING
13 UNDER THE DIRECTION OF A LAW ENFORCEMENT AGENCY OR WHILE PERFORMING
14 A SEXUAL ASSAULT MEDICAL EVIDENCE COLLECTION EXAMINATION.

15 11-109.

16 (a) In this section, "body fluids" has the meaning stated in § 18-338.1 of the
17 Health – General Article.

18 (b) Exposure to HIV OR HEPATITIS C between a victim and a person charged
19 with a prohibited exposure occurs:

20 (1) by percutaneous or mucocutaneous contact with blood or body fluids;

21 (2) by contact for a prolonged period with blood or body fluids of an open
22 wound, including dermatitis, exudative lesions, and chapped skin;

23 (3) by intact skin contact for a prolonged period with large amounts of blood
24 or body fluids; or

25 (4) under any other condition or circumstance under which a person may
26 be exposed to HIV OR HEPATITIS C.

27 11-110.

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

1 (1) the person is charged with a prohibited exposure within 1 year after the
2 prohibited exposure occurred;

3 (2) a victim or victim's representative requests the testing in writing to the
4 State's Attorney in the county where the prohibited exposure occurred; and

5 (3) the court finds probable cause to believe that a prohibited exposure
6 occurred.

7 **11-110.1.**

8 (A) IN THIS SECTION, "HEALTH CARE PROVIDER" HAS THE MEANING
9 STATED IN § 18-336 OF THE HEALTH - GENERAL ARTICLE.

10 (B) (1) A CIRCUIT COURT JUDGE OR A DISTRICT COURT JUDGE MAY
11 ~~ISSUE A SEARCH WARRANT~~ AN EMERGENCY ORDER TO OBTAIN ~~A~~ AN BUCCAL ORAL
12 SWAB FROM A PERSON TO BE TESTED FOR THE PRESENCE OF HIV WHENEVER IT IS
13 MADE TO APPEAR TO A JUDGE, BY APPLICATION AS DESCRIBED IN PARAGRAPH (2)
14 OF THIS SUBSECTION, THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT THE
15 PERSON HAS CAUSED PROHIBITED EXPOSURE TO A VICTIM.

16 (2) AN APPLICATION FOR ~~A SEARCH WARRANT~~ AN EMERGENCY
17 ORDER SHALL BE:

18 (I) ~~BE~~ MADE AS SOON AS POSSIBLE AFTER THE ALLEGED
19 PROHIBITED EXPOSURE, AND IN NO EVENT LATER THAN ~~24~~ 72 HOURS AFTER THE
20 ALLEGED PROHIBITED EXPOSURE;

21 (II) ~~MEET THE REQUIREMENTS UNDER § 1-203 OF THIS~~
22 ~~ARTICLE; AND~~ IN WRITING, SIGNED AND SWORN TO BY THE APPLICANT, AND
23 ACCOMPANIED BY AN AFFIDAVIT THAT SETS FORTH THE BASIS TO BELIEVE THAT
24 THE PERSON FROM WHOM AN ORAL SWAB IS REQUESTED HAS CAUSED A PROHIBITED
25 EXPOSURE TO A VICTIM;

26 (III) ~~BE~~ SEALED; AND

27 (IV) SUBJECT TO RULES DEVELOPED BY THE COURT OF
28 APPEALS.

29 (3) ~~A SEARCH WARRANT~~ AN EMERGENCY ORDER ISSUED UNDER THIS
30 SUBSECTION SHALL MEET THE REQUIREMENTS UNDER § 1-203 OF THIS ARTICLE.

31 (4) THE COURT OF APPEALS ~~SHALL~~ MAY ADOPT RULES TO CARRY
32 OUT THE REQUIREMENTS OF THIS SUBSECTION.

1 **(C) (1) A LAW ENFORCEMENT OFFICER WHO HAS OBTAINED A ~~BUCCAL~~**
2 **ORAL SWAB FROM A PERSON PURSUANT TO ~~A SEARCH WARRANT~~ AN EMERGENCY**
3 **ORDER ISSUED IN ACCORDANCE WITH THIS SECTION SHALL DELIVER THE ~~BUCCAL~~**
4 **ORAL SWAB TO A LOCAL HEALTH OFFICIAL OR HEALTH CARE PROVIDER TO BE**
5 **TESTED FOR THE PRESENCE OF HIV.**

6 **(2) A TEST FOR THE PRESENCE OF HIV SHALL BE IMMEDIATELY**
7 **PERFORMED ON THE SAMPLE.**

8 **(D) AFTER RECEIVING THE RESULTS OF A TEST CONDUCTED UNDER**
9 **SUBSECTION (C) OF THIS SECTION, THE LOCAL HEALTH OFFICER OR HEALTH CARE**
10 **PROVIDER IMMEDIATELY SHALL PROVIDE THE RESULTS TO:**

11 **(1) THE VICTIM OR VICTIM'S REPRESENTATIVE; AND**

12 **(2) THE PERSON FROM WHOM THE ~~BUCCAL~~ ORAL SWAB WAS TAKEN.**

13 **(E) THE RESULTS OF A TEST CONDUCTED UNDER SUBSECTION (C) OF THIS**
14 **SECTION ARE:**

15 **(1) SUBJECT TO THE DISCLOSURE RESTRICTION IN § 11-114 OF THIS**
16 **SUBTITLE; AND**

17 **(2) NOT ADMISSIBLE AS EVIDENCE OF GUILT OR INNOCENCE IN A**
18 **CRIMINAL PROCEEDING ARISING OUT OF THE ALLEGED PROHIBITED EXPOSURE.**

19 **(F) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL ADOPT**
20 **REGULATIONS TO CARRY OUT THE REQUIREMENTS OF SUBSECTIONS (C) THROUGH**
21 **(G) OF THIS SECTION.**

22 **(G) A HEALTH CARE PROVIDER THAT OFFERS THE IMMEDIATE TESTING OF**
23 **A SAMPLE UNDER SUBSECTION (C) OF THIS SECTION SHALL ADOPT PROCEDURES TO**
24 **MEET THE REQUIREMENTS UNDER THIS SECTION.**

25 11-112.

26 **(a) Within 10 days of a written request of a victim or victim's representative to**
27 **the State's Attorney in the county where a prohibited exposure occurred, the court shall**
28 **order a test of a blood sample for HIV and any other identified causative agent of AIDS OR**
29 **HEPATITIS C.**

30 11-113.

31 **(a) (1) After conviction or a finding of a prohibited exposure, a finding of**
32 **probable cause under § 11-110(3) of this subtitle, or a granting of probation before**

1 judgment under § 11–112 of this subtitle, the State’s Attorney shall within 3 days notify
 2 the local health officer of the written request by the victim or victim’s representative for
 3 testing.

4 (2) On receipt of a court order for testing issued under § 11–110(3) or §
 5 11–112 of this subtitle, the local health officer or the local health officer’s designee from any
 6 other governmental unit shall:

7 (i) collect the blood sample within 7 days from the person who is
 8 charged with, convicted of, or found to have committed a prohibited exposure;

9 (ii) test the blood sample; and

10 (iii) **IF THE TEST IS CONDUCTED FOR THE PRESENCE OF HIV,**
 11 give pretest and posttest counseling to the victim or victim’s representative and the person
 12 subject to testing in accordance with Title 18, Subtitle 3, Part VI of the Health – General
 13 Article.

14 11–117.

15 The Department of Health and Mental Hygiene shall adopt regulations to carry out
 16 Part II of this subtitle, including regulations on:

17 (1) the confidentiality of **HIV OR HEPATITIS C** test results; and

18 (2) giving the victim or victim’s representative counseling regarding HIV
 19 disease **OR HEPATITIS C**, **HIV OR HEPATITIS C** testing, and referral for appropriate
 20 health care and support services.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 22 October 1, 2017.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.