

Chapter 666

(House Bill 509)

AN ACT concerning

Public Health – Inmates – HIV Testing

FOR the purpose of authorizing certain courts to order certain inmates to furnish to certain correctional institutions blood samples or cheek swabs to be tested for the presence of human immunodeficiency virus (HIV) under certain circumstances; requiring certain courts, before ordering a certain test, to hold certain hearings under certain circumstances; requiring a certain correctional employee or the correctional employee's representative and a certain inmate or the inmate's representative to be notified of certain information; providing that certain courts may admit only certain evidence at certain hearings; requiring a certain written request of a correctional employee or the correctional employee's representative to be filed by a certain State's Attorney with a certain court and sealed by the court; requiring certain courts to hold certain hearings and issue certain orders within certain time periods; defining a certain term; and generally relating to HIV testing of inmates.

BY repealing and reenacting, with amendments,
Article – Health – General
Section 18–338
Annotated Code of Maryland
(2009 Replacement Volume and 2011 Supplement)

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

Article – Health – General

18–338.

- (a) (1) In this section the following words have the meanings indicated.
- (2) “Correctional institution” means a place of detention or correctional confinement operated by or for the State or a local government.
- (3) “Correctional employee” means:
- (i) A person who is employed by a correctional institution; or

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

(4) “COURT” MEANS A DISTRICT OR CIRCUIT COURT OF THE STATE.

[(4)] (5) “Exposure” means, as between a correctional employee and an inmate:

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

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

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

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

[(5)] (6) “Health care provider” means:

(i) Any person, including a physician or hospital, who is licensed or otherwise authorized in this State to provide health care services and is under contract with or operated by the correctional facility; or

(ii) An employee’s private physician.

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

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

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

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

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

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

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

(D) (1) IF THE INMATE REFUSES TO FURNISH TO THE CORRECTIONAL INSTITUTION A BLOOD SAMPLE OR BUCCAL (CHEEK) SWAB TO BE TESTED FOR THE PRESENCE OF HUMAN IMMUNODEFICIENCY VIRUS (HIV) AS REQUIRED UNDER SUBSECTION (B) OF THIS SECTION, A COURT MAY ORDER THE INMATE TO FURNISH THE BLOOD SAMPLE OR BUCCAL (CHEEK) SWAB IF:

(I) THE CORRECTIONAL EMPLOYEE INVOLVED IN THE EXPOSURE OR THE CORRECTIONAL EMPLOYEE'S REPRESENTATIVE REQUESTS THE TESTING IN WRITING TO THE STATE'S ATTORNEY IN THE COUNTY WHERE THE EXPOSURE OCCURRED; AND

(II) THE COURT FINDS PROBABLE CAUSE TO BELIEVE THAT THE EXPOSURE OCCURRED.

(2) BEFORE ORDERING A TEST UNDER PARAGRAPH (1) OF THIS SUBSECTION AND SUBJECT TO THE PROVISIONS OF PARAGRAPH (6) OF THIS SUBSECTION, THE COURT SHALL HOLD A HEARING AT WHICH THE CORRECTIONAL EMPLOYEE OR THE CORRECTIONAL EMPLOYEE'S REPRESENTATIVE AND THE INMATE OR THE INMATE'S REPRESENTATIVE HAVE THE RIGHT TO BE PRESENT.

(3) THE CORRECTIONAL EMPLOYEE OR THE CORRECTIONAL EMPLOYEE'S REPRESENTATIVE AND THE INMATE OR THE INMATE'S REPRESENTATIVE SHALL BE NOTIFIED OF:

(I) THE DATE, TIME, AND LOCATION OF THE HEARING; AND

(II) THEIR RIGHT TO BE PRESENT AT THE HEARING.

(4) DURING THE HEARING, THE COURT MAY ADMIT INTO EVIDENCE ONLY AFFIDAVITS, COUNTER-AFFIDAVITS, AND MEDICAL RECORDS THAT:

(I) RELATE TO THE MATERIAL FACTS OF THE CASE; AND

(II) SUPPORT OR REBUT A FINDING OF PROBABLE CAUSE TO ISSUE A COURT ORDER.

(5) THE WRITTEN REQUEST OF THE CORRECTIONAL EMPLOYEE OR THE CORRECTIONAL EMPLOYEE'S REPRESENTATIVE SHALL BE:

(I) FILED BY THE STATE'S ATTORNEY WITH THE COURT;
AND

(II) SEALED BY THE COURT.

(6) EXCEPT FOR GOOD CAUSE, THE COURT SHALL:

(I) HOLD THE HEARING WITHIN ~~30~~ 15 DAYS AFTER THE STATE'S ATTORNEY'S PRESENTMENT TO THE COURT OF THE WRITTEN REQUEST OF THE CORRECTIONAL EMPLOYEE OR THE CORRECTIONAL EMPLOYEE'S REPRESENTATIVE; AND

(II) ISSUE AN ORDER GRANTING OR DENYING THE REQUEST WITHIN 3 DAYS AFTER THE CONCLUSION OF THE HEARING.

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

[(e)] (F) The notification required under subsection **[(d)] (E)** of this section shall:

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

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

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

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

[(g)] (H) All correctional institutions shall develop written procedures to carry out the provisions of this section.

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

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

Approved by the Governor, May 22, 2012.