

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 509
Judiciary

(Delegate K. Kelly, *et al.*)

Education, Health, and Environmental Affairs

Public Health - Inmates - HIV Testing

This bill authorizes a court, under specified circumstances, to order an inmate to provide a sample to be tested for the presence of human immunodeficiency virus (HIV) following an exposure between the inmate and a correctional employee.

Fiscal Summary

State Effect: Any increase in District Court caseloads is expected to be minimal and can be handled with existing resources.

Local Effect: Any increase in State’s Attorneys and circuit court caseloads is expected to be minimal and can be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Current law defines “exposure” as specified contact between a correctional employee and an inmate with blood, semen, or blood-contaminated fluids.

Under current law, an inmate of a correctional institution must provide to the institution a blood sample or cheek swab to be tested for HIV when (1) there has been an exposure involving the inmate in connection with the inmate’s violation of institutional regulations; (2) the inmate has been found guilty of the violation; (3) the correctional employee involved in the exposure has given written notice of the exposure to the managing official of the institution or the official’s designee; and (4) the exposure is

confirmed by a health care provider. The correctional institution is required to collect the blood sample from the inmate and have the sample tested for HIV as approved by the Department of Health and Mental Hygiene.

The bill specifies that, if the inmate refuses to provide the sample for HIV testing, a court (meaning either a District Court or a circuit court) may order the inmate to provide the sample if (1) the correctional employee involved in the exposure (or the employee's representative) requests the testing in writing to the State's Attorney in the county where the exposure occurred; and (2) the court finds probable cause to believe that the exposure occurred. The written request is required to be filed with the court by the State's Attorney and sealed by the court.

The bill further specifies that, before ordering a test, the court must hold a hearing at which the correctional employee and the inmate (or their respective representatives) have the right to be present. The correctional employee and the inmate (or their respective representatives) must be notified of their right to be present as well as of the date, time, and location of the hearing. Except for good cause, the court is required to (1) hold the hearing within 15 days after the State's Attorney's presentment to the court of the written request; and (2) issue an order granting or denying the request within three days after the conclusion of the hearing. During the hearing, the court may admit into evidence only affidavits, counteraffidavits, and medical records that relate to the material facts of the case and either support or rebut a finding of probable cause to issue a court order.

Under current law, the correctional employee must be notified of the results of the HIV test within 48 hours of confirmation of the inmate's diagnosis. The notification to the employee must (1) include subsequent written confirmation of the possible exposure to HIV; and (2) to the extent possible, be made in a manner that will protect the confidentiality of both the employee and the inmate. If the results of the HIV test are positive, both the employee and the inmate must be given appropriate counseling.

Current law also requires all correctional institutions to develop written procedures to carry out existing provisions related to HIV testing of inmates. Under the bill, the institutions must develop written procedures to carry out the bill's provisions as well.

Background: As of 2008, Maryland had the third-largest percentage (2.5%) of inmates who either are HIV positive or have AIDS. New York reported the largest percentage (5.8%), followed by Florida (3.6%).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): U.S. Department of Justice; Carroll, Cecil, and Montgomery counties; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Maryland Association of County Health Officers; Department of Legislative Services

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Analysis by: Jennifer A. Ellick

Direct Inquiries to:
(410) 946-5510
(301) 970-5510