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SEX CRIMES: TEST FOR VENEREAL DISEASE, HEPATITIS B

House Bill 4049 as enrolled
Revised Second Analysis (5-9-94)

Sponsor: Rep. Floyd Clack
House Committee: Public Health
Senate Committee: Judiciary

THE APPARENT PROBLEM:

Currently, under the Public Health Code, local public health departments may have people who are arrested and charged with certain prostitution-related crimes tested for venereal disease (VD). In 1989, the legislature added a new section to the health code to require that people charged with certain sex- and intravenous (IV) drug-related crimes be given information on human immunodeficiency virus (HIV) transmission and be offered counseling and testing for HIV. People convicted of these crimes must be tested and counseled for HIV infection (unless the court decides otherwise and documents its reasons), and victims may be given the HIV test results. Defendants convicted of these crimes who test positive for HIV are referred for appropriate medical care. However, even though people at risk for HIV infection due to sex-related crimes often also are at risk for VD, the health code doesn't require testing for either VD or hepatitis B. Legislation has been introduced that would require testing and counseling not only for HIV but also for VD and hepatitis B in the case of certain sex- and drug-related crimes.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to require testing and counseling for venereal disease and hepatitis B in addition to the code's existing requirements for HIV testing and counseling for people arrested, charged, or convicted of certain sex- and IV drug-related crimes. The bill also would add a new category of people required to be tested, namely, defendants bound over to circuit court or recorder's court, and would exempt IV drug users from the bill's venereal disease testing requirements.

People arrested or charged. Currently, local health departments can order people who are arrested and charged with certain prostitution-related crimes to be tested for venereal disease. The bill would transfer this authority to order tests from local public health departments to the courts, and would allow courts to order people who had been arrested and charged with these prostitution-related crimes to be tested not only for VD but also for hepatitis B and for HIV. Positive examination or test results would have to be reported to the defendant, as well as to the Department of Public Health and the local health department for partner notification.

Also, currently, when someone is arrested and charged with certain sex- and IV drug-related crimes, the judge or magistrate responsible for setting conditions for the defendant's release pending trial is required to give the defendant certain information on HIV transmission and to recommend that the defendant get additional information and counseling about HIV. The bill would require judges and magistrates to give defendants certain information on VD as well as HIV, and would require them to recommend that defendants get additional information and counseling on VD and hepatitis B in addition to that on HIV.

Defendants bound over to circuit court or recorder's court. The bill would add a new subsection to the health code regarding defendants charged with certain sex-related crimes (including gross indecency, certain prostitution crimes, and rape) in which the district court had reason to believe involved sexual penetration or exposure to the defendant's body fluids. When defendants in such

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cases were bound over to circuit court or recorder's court, the district court would be required to order counseling and confidential examination or testing of the defendants for VD, hepatitis B, and HIV.

Convictions. Currently, people convicted of certain sex- and IV drug-related crimes are required to be tested for HIV, though in the case of some of the prostitution-related crimes, the court can decide, with documentation, that testing is inappropriate. The bill would require that convicted defendants be tested not only for HIV but also for venereal disease and hepatitis B.

Victims. Currently, victims or people with whom a defendant had had sexual penetration can give the courts permission to give them the defendant's HIV test results. The bill would add "sexual contact" and exposure to a defendant's body fluid during the course of the crime to the circumstances under which a victim could receive not only HIV test results but also VD or hepatitis B test results.

The bill would define "sexual contact" to "[include] the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification." "Victim" would include, but not be limited to, a victim of criminal sexual conduct.

Treatment referrals. Currently, someone counseled or tested under this section of the code that tests positive for HIV must be referred for appropriate medical care. The bill would add this requirement for those counseled or tested for VD or hepatitis.

IV drug users. The bill would specifically exempt illegal IV drug users from the bill's venereal disease testing and counseling requirements.

MCL 333.5129

FISCAL IMPLICATIONS:

The Department of Public Health reports that the bill would result in additional costs to the state for the required counseling and testing, but indicates that at this time there is no reliable way to estimate these costs, since they would depend in part on how uniformly the currently required tests are being done and partly on how many people would be

arrested, charged, bound over, and convicted each year. However, fiscal impact is likely to be greater on local public health departments, because it is the local departments that actually do the testing, sending the test samples into the department for laboratory work. (4-7-94)

ARGUMENTS:

For:

The bill is basically a victims' rights bill. A number of diseases and infections are spread through contact with blood and other body fluids, including venereal diseases, hepatitis B, and the human immunodeficiency virus (HIV). When certain crimes are committed that involve exposure to, or an exchange of, body fluids, the victims of these crimes are at risk for being infected by one or more of these diseases. Current law addresses the problem of victims' exposure to HIV through sex-related crimes, but ignores their possible exposure to venereal disease and hepatitis B. Current law also "captures" only people arrested for, charged with, or convicted of certain sex-related crimes, but doesn't include a group of people -- those bound over to circuit court or recorder's court -- who aren't tested unless convicted of a crime, though they should be, if their crime involves sexual penetration or exposure of others to the defendant's body fluids. The bill would close this testing loophole, as well as allowing or requiring testing both for HIV and VD in situations where one or the other currently is allowed or required. This makes sense, since both are sexually transmitted diseases. In addition, the bill would add testing for hepatitis B, which is a blood-borne disease transmitted through transfusions or the sharing of infected hypodermic needles, as in illegal IV drug use. Not only should tests for these diseases and infections be required, but victims of crimes in which these diseases and infections can be transmitted should have access to the test results of the perpetrators.

Against:

The Department of Public Health has pointed out that current laws requiring testing are, for a number of reasons, not being uniformly implemented by the courts. Among the reasons for this lack of uniform testing include an overburdened court and criminal justice system, lack of coordination between local public health and local court systems, and lack of sanctions for failure to implement current law. Given that current testing requirements are not

being carried out, there is little reason to believe that additional testing would be enforced. Moreover, without additional funding for the courts and local public health departments, the bill could simply result in an increase in the burden on both systems. One result could be that, for example, local health departments might have to give up doing something else to take up this additional cost.

Response:

Just because existing law isn't being enforced is no reason why people arrested, charged, bound over, or convicted of certain sex crimes shouldn't be tested for VD and hepatitis B (in addition to HIV) and their victims informed of the test results. If additional funding is needed, then the appropriate agencies should request this additional funding from the legislature.

Against:

Requiring testing prior to conviction raises serious constitutional issues and should not be required.

Response:

The reason why testing should be done when people were arrested or charged with prostitution offenses or bound over to circuit court for violations involving sexual penetration is because legal proceedings often take a long time. During this time, however, victims of sexual assaults or involved in prostitution offenses could go untreated for diseases that are best treated as early as possible.