

JUVENILES: REQUIRE HIV TESTS

House Bill 4734 as enrolled
Second Analysis (3-6-94)

Sponsor: Rep. Glenn Oxender
House Committee: Public Health
Senate Committee: Health Policy &
Senior Citizens

THE APPARENT PROBLEM:

States receive federal grant money under the federal Anti-Drug Abuse Act of 1988 for state and local law enforcement. In order to receive this federal money, however, states must comply with certain federal grant program guidelines. Section 1804 of the federal Crime Control Act of 1990 requires each state to enact and enforce laws which require HIV testing of convicted sex offenders in order to receive their full grant award. Section 1804 also requires that ten percent of a state's formula grant be withheld if that state fails to put into effect -- as well as actually enforce -- the elements of the HIV testing standards created by the section. The funds withheld from states not in compliance will be distributed to states which do comply.

Guidance regarding this testing requirement was first issued by the Bureau of Justice Assistance in April 1992. One of the requirements is that states mandate HIV testing at the request of any victim of a sexual assault for which the person to be tested was convicted in state court, where the term "convicted" includes "adjudicated under juvenile proceedings." The penalty provision will take effect beginning in fiscal year 1993-94. There is no waiver procedure in the federal statute, so the Bureau of Justice Assistance will be unable to waive or postpone to a later year the reduction in funds of any state not complying by the fiscal year 1994 deadline for compliance. Any federal funds withheld from noncomplying states must be allocated equally among complying states. So, in addition to qualifying for continued full formula grant funding under the act, states enacting and enforcing their own laws meeting the HIV testing requirements become eligible to share in the money withheld from noncomplying states.

According to federal guidelines for the anti-drug abuse formula grant program, the fiscal year 1993-94 federal grant awards for states which cannot demonstrate compliance with their grant application

will equal ninety percent of their total allocation. If a state comes into compliance during the fiscal year, it will receive a supplemental award for the ten percent of its withheld allocation. Funds withheld from states which do not implement Section 1804 by the end of fiscal year 1993-94 will be distributed equally among states that complied during that year.

Michigan's statute requiring HIV (human immunodeficiency virus) testing of sexual offenders (Public Act 471 of 1988, enrolled House Bill 4008) refers to defendants "convicted" for gross indecency, criminal sexual assault, and prostitution-related offenses. The statute also allowed courts discretion in deciding whether to test defendants convicted for any of three prostitution-related offenses ("aiding and abetting," maintaining houses of ill repute, and pandering). However, in Michigan, juveniles determined under the juvenile code to have committed serious crimes -- including first degree criminal sexual assault -- are not "convicted" but "adjudicated." Therefore, to avoid the loss of federal grant money under the Anti-Drug Abuse Act, legislation is needed to include "adjudicated juveniles" in the section of the Public Health Code requiring HIV testing of sexual offenders.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to add juveniles adjudicated under the juvenile code to the sections requiring that sexual offenders be tested for HIV, and to require that their victims be notified of the test results should the victim so request. If the adjudicated juvenile was placed in the custody of a relative or "a public or private agency, institution, or facility," the probate court would transmit a copy of the juvenile's HIV test results to the relative or the director of the agency (institution, or facility). (The test results of

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convicted defendants sent to prison are sent to the Department of Corrections.) People or agencies who received test results or medical information under this section of the health code would be held to the same confidentiality (and disclosure) requirements that already exist in the health code for serious communicable diseases (including HIV infection and AIDS).

it may not be necessary to completely eliminate the court's discretion.

The bill also would eliminate the courts' discretion in deciding whether or not to test for HIV offenders convicted of certain prostitution-related offenses (namely, "aiding and abetting," keeping a "house of ill repute," and pandering).

MCL 333.5129

FISCAL IMPLICATIONS:

The Office of Drug Control Policy reports that by placing Michigan in compliance with the federal law, the bill not only would result in the state receiving the \$1.2 million of its federal grant award that would otherwise be withheld, but also would permit Michigan to share in the (currently unknown amount of) money withheld from other states which were not in compliance by the end of fiscal year 1993-94. (1-25-94)

ARGUMENTS:

For:

Without the bill, the state stands to lose \$1.2 million in federal anti-drug abuse grant money. Federal law requires that, in order to receive full anti-drug abuse grant funding, states require all those convicted of sexual crimes be tested for HIV upon the request of the victim of the crime, and includes "adjudicated" juveniles among those so convicted. Since the Public Health Code only refers to "convicted defendants," the bill is needed to meet the federal requirements -- and to forestall the loss to the state of \$1.2 million in federal funds.

Against:

The bill would delete the existing discretion allowed courts in deciding whether or not to require defendants convicted of certain prostitution-related crimes that do not (or at least do not necessarily) involve sexual penetration and that, therefore, do not put the defendant at risk for HIV infection due to the crime. While the existing discretion may be too broad, in that it does not limit testing exemptions only to non-penetration sexual crimes,