



**House
Legislative
Analysis
Section**

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CRIMES: HIV, VD TESTS

**House Bill 5012 as passed by the House
Second Analysis (1-8-93)**

**Sponsor: Rep. Floyd Clack
Committee: Public Health**

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 requiring 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). With their consent, the test results are given to the victims of these crimes. People who test positive for HIV are referred for appropriate medical care. However, even though people in these circumstances often also are at risk for VD, the code does not require VD testing in those cases where HIV testing is required.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to add VD testing, counseling, disclosure, and treatment referral to the part of the code governing HIV testing, counseling, disclosure, and treatment referral of people arrested for, charged with, or convicted of certain sex-related crimes.

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 HIV. Positive HIV 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.

When someone is arrested and charged with certain prostitution, solicitation, gross indecency, rape, or illegal IV (intravenous) drug crimes, the judge or magistrate responsible for setting the person's conditions of release pending trial is required to give the individual information on HIV transmission and recommend additional information and counseling about HIV. The bill would add the same requirements for venereal disease.

Defendants bound over to circuit court. When defendants charged with certain gross indecency or rape crimes were bound over to circuit court, and the district court had probable cause to believe that the violation involved sexual penetration, the district court would be required to order counseling and confidential testing for VD and HIV. The same requirements would be imposed in the case of certain prostitution-related crimes, unless the court decided and documented that examining or testing the defendant would be inappropriate.

Convictions. People convicted of certain crimes of gross indecency, prostitution, rape, or illegal IV drug use are subjected to mandatory testing for HIV (in the case of some of the prostitution-related crimes, the court could determine, with documentation, that testing was inappropriate). The bill would add the same requirements for venereal disease.

Victims. Victims or people with whom a defendant had had sexual penetration can give the courts permission to give them HIV test results. The bill also would allow victims to consent to receiving VD test results.

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Confidentiality. Currently, the law says that HIV test results from defendants or convicts are confidential but may be disclosed to certain people: the defendant, the local health department, the DPH, the victim, or anyone else "required to be informed of the results under" the "victim notification" section of the law.

The bill would say that examination or test results were confidential, but would make disclosure of test results to the listed people mandatory, rather than permissive. The bill also would delete the language regarding those "required" to be informed, and instead substitute language referring to people who had "requested" to be informed.

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.

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

MCL 333.5129

FISCAL IMPLICATIONS:

The Department of Public Health says that the bill might require the department to provide local health departments or jails with testing resources, but provides no estimate of the cost. (1-3-92)

ARGUMENTS:

For:

Since prostitutes and their customers are at high risk for contracting VD and HIV infection, they should be tested when arrested and charged with prostitution-related crimes. Similarly, the suspects and defendants -- and their victims -- in certain sex- and drug-related crimes (the bill refers to gross indecency, prostitution, and criminal sexual conduct) are at high risk for both HIV infection and VD, and as a matter of public health ought to be tested, particularly when the crime involves sexual penetration.

POSITIONS:

There are no positions on the bill.