



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

**MANDATORY HIV TESTING
OF CHILD MOLESTERS**

**House Bill 4362 as introduced
First Analysis (5-18-95)**

**Sponsor: Rep. Thomas C. Mathieu
Committee: Health Policy**

THE APPARENT PROBLEM:

Currently, the Public Health Code imposes a number of medical testing and counseling requirements on people arrested and charged with, bound over to circuit court for, or convicted of, certain sex or illegal intravenous (IV) drug crimes. The health code allows courts to order that people arrested and charged with certain prostitution-related crimes be tested for venereal disease (VD), hepatitis B (HbV) infection, human immunodeficiency virus (HIV), or acquired immunodeficiency syndrome (AIDS). As a condition of release pending trial, judges and magistrates must give people arrested or charged with gross indecency, solicitation, prostitution, criminal sexual assault, or illegal IV drug use information on VD and HIV transmission, and recommend that the defendant voluntarily get additional information and counseling for VD, HbV, HIV, and AIDS. District courts are required to order that defendants bound over to circuit (or recorder's) court for gross indecency, prostitution, or criminal sexual assault be tested and counseled for VD, HbV, and HIV if the court determines that there is reason to believe that the violation involved sexual penetration or exposure to the defendant's body fluids. Finally, courts also are required to order VD, HbV, and HIV testing and counseling of defendants convicted of gross indecency, solicitation, prostitution, criminal sexual assault, or illegal IV drug use. Victims of crimes involving sexual penetration or exposure to defendants' body fluids may obtain these test results, either directly from the testing agency (by consenting to the court's giving their name, address, and telephone number to the testing agency, which then is required to contact the victim with the test results) or from the court records after sentencing or disposition.

At the request of the 61st District Court in Grand Rapids, legislation has been introduced that would require HIV testing for child molesting offenses.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to add child molesters to the code's existing VD, HbV, and HIV information, counseling, and testing requirements under the following circumstances: (1) As a condition of release pending trial, when arrested and charged with child molesting; (2) when bound over to circuit (or recorder's) court for child molesting, if there was reason to believe that the violation involved sexual penetration or exposure to the defendant's body fluids; and (3) when convicted for child molesting. The bill's provisions would apply to anyone who violated section 145a of the Michigan Penal Code, which makes it a misdemeanor (punishable by imprisonment in the county jail for not more than 1 year) to "accost, entice, or solicit" a child under the age of 16 to induce or force him or her "to commit an immoral act, or to submit to an act of sexual intercourse, or an act of gross indecency, or any other act of depravity or delinquency."

The bill also would allow the parents or guardians of minors (or otherwise incapacitated people) who were sexually molested to obtain results of tests done under this section of the code, either by consenting to have the child's name, address, or telephone number be given by the court to the testing agency or by allowing the parents access to otherwise confidential court records.

MCL 333.5129

BACKGROUND INFORMATION:

Mandatory testing. The 1978 revision of the Public Health Code allowed local health departments to require people arrested and charged with certain prostitution crimes to be tested for venereal disease. Public Act 471 of 1988 (enrolled House Bill 4008) amended the health code to require court-ordered HIV testing for people convicted of certain sex crimes and illegal IV drug use, and to require that

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judges or magistrates responsible for setting conditions of release pending trial for people arrested and charged with certain crimes at high risk for transmitting HIV (gross indecency, certain prostitution and prostitution-related offenses, and illegal IV drug use) recommend that the defendants voluntarily get AIDS counseling at local public health department testing centers. Public Act 72 of 1994 (enrolled House Bill 4049) again amended this section of the health code. It transferred to the courts the authority to require people arrested and charged with prostitution crimes to be tested for VD, and allowed courts to require, in addition, testing for hepatitis B and HIV. It added a new category of people subject to mandatory HIV, VD, and HbV testing, namely, defendants bound over to circuit court for certain sex crimes involving sexual penetration or exposure to the defendant's body fluids. People convicted of certain sex crimes and illegal IV drug use were required, in addition to HIV testing, to be tested for VD and HbV.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, there would be minimal indeterminate costs to the state Department of Public Health and to local governments. (5-16-95)

ARGUMENTS:

For:

The bill would simply correct an oversight in earlier legislation that had broadened both HIV and VD testing of people arrested and charged, bound over to circuit court, or convicted of certain sex crimes. Currently, HIV testing is ordered on people who solicit adults, but not on those who solicit children. What is more, a plea of "child molestation" apparently can be -- and occasionally is -- used as to plea bargain down from a criminal sexual conduct charge, which does require HIV testing at the time of the preliminary examination. Clearly, child molesters should be subject to the same testing requirements as other sex offenders, especially if plea bargaining can be used to reduce a charge that currently does require HIV testing to one that does not.

POSITIONS:

The 61st District Court (in Grand Rapids) has written in support of the bill. (5-16-95)