



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 4362 (as reported without amendment)
 Sponsor: Representative Thomas C. Mathieu
 House Committee: Health Policy
 Senate Committee: Health Policy and Senior Citizens

Date Completed: 11-17-95

RATIONALE

Since 1988, the Public Health Code has imposed a number of medical testing, counseling, and information requirements on people arrested for and charged with, bound over to circuit court for, or convicted of certain sex or illegal intravenous drug crimes that are specified in the Michigan Penal Code. Specifically, as a condition of release pending trial, the court must order a person arrested for and charged with gross indecency, solicitation, prostitution, pandering, various degrees of criminal sexual conduct, or illegal intravenous use of a controlled substance to *receive information and counseling* regarding venereal disease (VD), hepatitis B (HbV), human immunodeficiency virus (HIV), and acquired immunodeficiency syndrome (AIDS). The court must order a person to be *examined or tested* for VD, HbV, and HIV or an antibody to HIV and to receive counseling, if the person is bound over to circuit court for any of the crimes listed above and there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant, or if the person is convicted of any of those offenses.

It has been pointed out that the information, counseling, and testing requirements do not apply to a person who is arrested for and charged with a violation of Section 145a of the Michigan Penal Code; Section 145a makes it a misdemeanor to accost, entice, or solicit a child under age 16 with intent to induce or force the child to commit an immoral act or submit to sexual intercourse, gross indecency, or any other act of depravity or delinquency. Some people have suggested that imposing information, counseling, and testing requirements on persons charged with sex or drug crimes involving adults, but not on those charged with various child molestation offenses under Section 145a, is an oversight that should be corrected.

CONTENT

The bill would amend the Public Health Code to provide that persons arrested for and charged with, bound over to circuit court for, or convicted of a violation of Section 145a of the Michigan Penal Code, would be subject to the Public Health Code's current information, counseling, and testing requirements that are imposed on persons who commit certain sex and/or intravenous drug use crimes.

In addition, if the victim with whom the defendant engaged in sexual penetration or contact or who was exposed to body fluid during the course of the crime consents, the court currently must provide the tester or testing agency with the name, address, and telephone number of the victim. After the defendant has been examined or tested the tester or testing agency must give the results to the victim. The bill provides that if the victim were a minor or were otherwise incapacitated, the victim's parent or guardian could give the required consent.

The bill would take effect January 1, 1996.

MCL 333.5129

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Currently, information, counseling, and testing requirements for various sex and drug offenses must be ordered for persons if the victim is an adult; however, if the defendant has committed various sexual offenses against a child, the requirements do not apply. In other words, the same conduct might be punishable as criminal

sexual conduct or child molestation, if the victim is a child, but the defendant is not subject to the information, counseling, and testing requirements if he or she is charged with (or pleads down to) child molestation. Clearly, the victim's age should not be the decisive factor in determining whether a defendant should be subject to the requirements. The bill would correct an oversight in the Public Health Code, which previously has been amended to include information, counseling, and testing requirements for persons who commit certain sex crimes as prohibited in the Michigan Penal Code, but not for persons arrested and charged with child molestation offenses.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would result in an indeterminate increase in State and local health department expenditures for HIV and venereal disease testing, counseling, and partner notification activities. Data on the numbers of individuals, statewide, who are arrested or bound over for, or convicted of child molesting are not available. Therefore, it is not possible to provide a total cost estimate for the bill. The HIV, VD, and HbV screening costs, counseling exam, and handling cost per individual would be approximately \$70. The cost of contact notification of an individual who tested positive would be \$250. These individual cost estimates do not include administrative, travel, or pre- and post-test counseling costs for persons who are negative on the initial screening.

Fiscal Analyst: P. Graham

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.