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BILL



ANALYSIS

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House Bill 5488 (Substitute H-2 as passed by the House)
House Bill 5881 (as passed by the House)
Sponsor: Representative David N. Galloway
House Committee: Health Policy
Senate Committee: Health Policy and Senior Citizens

Date Completed: 11-18-96

CONTENT

House Bill 5488 (H-2) would amend the Public Health Code, and House Bill 5881 would amend the Department of Corrections law, to provide for HIV or HBV infection testing of a prisoner, arrestee, parolee, or probationer, if it were determined that an employee of the Department of Corrections (DOC), law enforcement officer, fire fighter, local corrections officer, county employee, or court employee had sustained a percutaneous (skin), mucous membrane, or open wound exposure to the blood or body fluid of the prisoner, arrestee, parolee, or probationer. If a proposed test subject did not consent to testing, a probate court could order the person to be tested, after considering the recommendation of a review panel. House Bill 5488 (H-2) would take effect January 1, 1997. Following is a detailed description of each bill.

House Bill 5488 (H-2)

Currently, under the Public Health Code, a police officer, fire fighter, licensed medical first responder, emergency medical technician, emergency medical technician specialist, or paramedic, or another individual who assists an emergency patient who is subsequently transported to a health facility or who transports an emergency patient to a health facility, and who sustains a percutaneous, mucous membrane, or open wound exposure to the patient's blood or body fluids, may request that the patient be tested for HIV (human immunodeficiency virus) infection or HBV (hepatitis B virus) infection, or both.

Further, the Code prescribes a form for the request; and specifies requirements for a health

facility that receives a request. The bill would establish similar requirements in the Code for certain public employees exposed to the blood or body fluids of an inmate, parolee, arrestee, or probationer.

Employee Request for Testing

The bill provides that a police officer, a fire fighter, a local correctional officer or other county employee, or a court employee who, while performing his or her official duties, determined that he or she had sustained a percutaneous, mucous membrane, or open wound exposure to the blood or body fluids of an arrestee, correctional facility inmate, parolee, or probationer, could request that the person be tested for HIV infection or HBV infection, or both. The requesting party would have to have received training in the transmission of bloodborne diseases under the rules governing exposure to bloodborne diseases in the workplace promulgated by the Occupational Health Standards Commission or incorporated by reference under the Michigan Occupational Safety and Health Act. An officer or employee who desired to make a request would have to make the request to his or her employer on a form provided by the Department of Community Health as soon as possible, but not later than 72 hours, after the exposure occurred. The request form would have to be dated and contain, at a minimum, the name and address of the officer or employee making the request and a description of his or her exposure. The request form also would have to contain a statement that the requester was subject to the Code's confidentiality requirements. The request form could not contain information that would identify the arrestee, correctional facility inmate, parolee, or probationer by name.

An employer that received a request would have to accept as fact the requester's description of his or her exposure to blood or other body fluids. The test for HIV infection or HBV infection, or both, would have to be performed by the local health department or by a health care provider designated by the local health department. If the test subject consented to the performance of the tests named in the request, the requester's employer would have to transport the test subject to the local health department or designated health care provider for testing, or a representative of the local health department or designated health care provider would have to come to where the test subject was housed to take a blood or other body fluid sample for testing, as soon as practicable after the local health department received the request for testing from the employer. If the test subject refused to undergo a test specified in the request, the requester's employer could proceed with a petition to the probate court to compel the test subject to undergo the tests (as described below).

A local health department or a health care provider designated by the local health department that performed a test could charge the officer or employee requesting the test for the reasonable and customary charges of the test. The requestor would be responsible for the payment of the charges if they were not payable by his or her employer, pursuant to an agreement between the officer or employee and the employer, or by the officer's or employee's health care payment or benefits plan. The testing agency would not be required to provide HIV counseling to an officer or employee who requested that an arrestee, correctional facility inmate, parolee, or probationer be tested for HIV, unless the local health department or health care provider tested the officer or employee for HIV.

The testing agency, on a form provided by the Department of Community Health, would have to notify the requesting officer or employee of the HIV or HBV test results, as applicable, whether positive or negative, within two days after the results were obtained. The notification would have to be transmitted directly to the officer or employee or, upon request of the requesting officer or employee, to his or her primary care physician or to another health professional designated by the officer or employee. The notification would have to include an explanation of the confidentiality requirements as follows: the notice could not contain information that would identify the

arrestee, correctional facility inmate, parolee, or probationer who tested positive or negative for HIV or HBV; and the information contained in the notice would be confidential and subject to the bill's provisions and the rules promulgated under the Code. A person who received confidential information could disclose it to others only to the extent consistent with the authorized purpose for which the information was obtained.

The Department of Community Health could promulgate rules to administer the bill's provisions. The Department would have to develop and distribute the forms required under the bill.

Mandatory Testing

If a test subject refused to undergo a test requested by an officer or employee under the bill, the officer's or employee's employer could petition the probate court for the county in which the employer was located for an order to require the test. The petition would have to state all of the following:

- Substantially the same information contained in the request made to an officer's or employee's employer (as described above), except that the petition would have to contain the name of the arrestee, inmate, parolee, or probationer who was the proposed test subject.
- The reasons for the officer's or employee's determination that the exposure described in the request could have transmitted HIV or HBV, along with the date and place the officer or employee received training in the transmission of bloodborne diseases.
- The fact that the test subject had refused to undergo the requested test.
- The type of relief sought.
- A request for a court hearing on the allegations in the petition.

Upon a finding by the probate court that the employer had proven the allegations in the petition, including the requesting officer's or employee's description of his or her exposure to the blood or body fluids of the proposed test subject, the probate court could issue an order requiring the proposed test subject to undergo a test for HIV infection or HBV infection, or both.

The probate court could not issue an order unless it first considered the recommendation of a review panel appointed by the court to review the need for

testing the proposed test subject. The review panel would consist of three physicians appointed by the court from a list of physicians submitted by the Department. At least two of the physicians would have to have training and experience in the diagnosis and treatment of serious communicable diseases and infections; however, upon the motion of the individual who was the subject of the order, the court could appoint as one member of the review panel a physician who was selected by that individual. The commitment review panel would have to review the record of the proceeding; interview the individual who was the subject of the order, or document the reasons why the individual was not interviewed; and recommend either that the individual be tested for HIV infection or HBV infection, or both, or that the individual not be tested for either infection, and document the reasons for the recommendation.

The bill provides that the cost of implementing an order issued by the probate court would have to be borne by the test subject. A person who refused to undergo a test for HIV or HBV infection would be guilty of contempt.

Confidentiality/Immunity

In addition to the penalties prescribed in the rules and in the Code, a person who disclosed information in violation of the confidentiality requirements would be guilty of a misdemeanor. A local health department or designated health care provider would have to report to the Department each test result obtained that indicated that an individual was HIV infected. A person or governmental entity that made a good faith effort to comply with the bill's provisions would be immune from civil liability or criminal penalty based on compliance with the provisions, or the failure to comply.

House Bill 5881

Currently, all incoming State correctional prisoners are tested for HIV, and the Department of Corrections is required to report each positive test result to the Department of Community Health. If a DOC employee is exposed to the blood or body fluid of a prisoner in a manner that could transmit HIV, the prisoner either is tested for HIV or, if the prisoner refuses testing, is considered HIV positive by the Department. Upon employee request, the DOC must provide or arrange for an HIV test for the employee free of charge.

Regarding employee exposure, the bill instead would allow DOC employees who sustained a percutaneous, mucous membrane, or open wound exposure to the blood or body fluid of a prisoner to request that the prisoner be tested for HIV infection or HBV infection, or both. Requests would have to be made to the DOC on a form provided by the Department within 72 hours after the exposure had occurred. (The Department would be required to develop and distribute these forms.) The form would have to be dated and contain at least the name and address of the employee making the request, a description of his or her exposure to the blood or other bodily fluids of the prisoner, and a statement that the requester was subject to the confidentiality requirements of the Public Health Code. The request form could not contain information that would identify the prisoner.

When the DOC received a request from an employee for the testing of a prisoner, it would have to determine whether or not there was reasonable cause to believe that the exposure described in the request had occurred; and if it was a percutaneous, mucous membrane, or open wound exposure pursuant to administrative rules. If the DOC determined that the exposure had occurred, it would be required to test the prisoner for HIV infection, HBV infection, or both, as indicated in the request. The DOC could test a prisoner under the bill whether or not the prisoner consented to the test and would not be required either to give the prisoner an opportunity for a hearing or to obtain a court order before administering the test.

The DOC would have to notify the requesting employee of the test results, whether positive or negative, within two days after obtaining the results. (The DOC also would be required to notify the Department of Community Health of each positive HIV test result.) The notification to the employee would have to be transmitted directly to the employee, unless he or she had requested that the results be sent to his or her primary care physician or to another designated health professional. The notice could not contain information that would identify the prisoner; information contained in the notice would be confidential and subject to the bill's provisions and the confidentiality provisions of the Public Health Code and rules promulgated under the Code. Anyone who disclosed information in violation of the bill would be guilty of a misdemeanor, in

addition to being subject to penalties prescribed in the Code or in administrative rules. Anyone receiving confidential information under the bill could disclose it to others only to the extent consistent with the authorized purpose for which the information was obtained.

The DOC would not be required to test a prisoner if it received a request and determined either that there was not reasonable cause to believe the requester's description of his or her exposure, or that the exposure was not percutaneous, mucous membrane, or open wound. The DOC would be required to state on the request form the reason for its determination, and would have to transmit a copy of the completed request form to the requesting employee within two days after the date it made its negative determination. Unless the DOC tested the employee for HIV, it would not have to provide him or her with HIV counseling.

MCL 333.5131 et al. (H.B. 5488)
791.267 et al. (H.B. 5881)

Legislative Analyst: G. Towne

FISCAL IMPACT

House Bill 5488 (H-2)

Based on the assumption that there would be low demand for the testing allowed under the bill, the bill would have no fiscal impact on the State or local units of government. Assuming low demand, the cost to local health departments for administering the tests would be recouped through charges to the individual requesting the test; and local transportation and State laboratory costs would be absorbed within existing capacity.

House Bill 5881

The bill is likely to have little or no fiscal impact on the Department of Corrections. Currently, all incoming prisoners are tested for HIV, and when employees are exposed to the blood or body fluids of a prisoner in a manner that could transmit HIV, the prisoner either is tested or if the prisoner refuses, is considered HIV positive. In addition, upon request, employees are able to receive an HIV test free of charge.

Fiscal Analyst: P. Graham (H.B. 5488)
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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.