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SFA

BILL ANALYSIS

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House Bill 4230 (Substitute H-3 as passed by the House)
Sponsor: Representative David N. Galloway
House Committee: Health Policy
Senate Committee: Health Policy and Senior Citizens

Date Completed: 5-21-97

CONTENT

The bill would amend the Public Health Code to provide for HIV, HBV, or HCV infection testing of a prisoner, arrestee, parolee, or probationer, if it were determined that a law enforcement officer, fire fighter, local corrections officer, county employee, court employee, or an “individual making a lawful arrest” (or an “arresting individual”) 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, the circuit court could order the person to be tested, after considering the recommendation of a review panel. The bill would take effect January 1, 1998.

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, or an individual making a lawful arrest, exposed to the blood or body fluids of an inmate, parolee, arrestee, or probationer. An “individual making a lawful arrest” or an “arresting individual” would be a private security police officer authorized to make a warrantless arrest under the Private Security Guard Act; or a private person, merchant, agent of a merchant, employee of a merchant, or independent contractor providing security for a merchant authorized to make an arrest under the Code of Criminal Procedure. In addition to testing for HIV and HBV, the bill would allow requests for testing for HCV (hepatitis C virus).

Employee Request for Testing

The bill provides that a police officer, a fire fighter, a local correctional officer or other county employee, a court employee, or an individual making a lawful arrest who, while performing his or her official duties or otherwise performing the duties of his or her employment, 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, HBV infection, or HCV infection, or all three. 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. A person 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 person 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, except if necessary to identify the individual for purposes of testing.

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 employer would have to have the test 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 test or 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 family division of the circuit court (family 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, employee, or arresting individual requesting the test for the reasonable and customary charges of the test. The requester 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, employee, or arresting individual, and the employer, or by the officer's, employee's, or arresting individual's health care payment or benefits plan. The testing agency would not be required to provide HIV counseling to an officer, employee, or arresting individual 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, employee, or arresting individual for HIV.

The testing agency, on a form provided by the Department of Community Health, would have to notify the requesting officer, employee, or arresting individual of the HIV, HBV, or HCV 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, employee, or arresting individual or, upon request of the officer, employee, or arresting individual, to his or her primary care physician or to another health professional. The notification would have to contain a statement recommending that the officer, employee, or arresting individual undergo an HIV, HBV, or HCV test, or all three.

The notification also 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, HBV, or HCV; 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. In addition to the penalties prescribed in the rules and in the Code, a person who disclosed information in violation of these 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.

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, employee, or arresting individual under the bill, the officer's, employee's, or arresting individual's employer could petition the family division of the circuit 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, employee's, or arresting individual'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, employee's, or arresting individual's determination that the exposure described in the request could have transmitted HIV, HBV, or HCV, along with the date and place he or she 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 family court that the employer had proven the allegations in the petition, including the requesting officer's, employee's, or arresting individual's description of his or her exposure to the blood or body fluids of the proposed test subject, the court could issue an order requiring the proposed test subject to undergo a test for HIV, HBV, or HCV infection, or all three.

The family 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 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, HBV, or HCV infection, or all three, or that the individual not be tested for any of the infections, and document the reasons for the recommendation.

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

MCL 333.5131 et al.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would have an indeterminate impact on State and local spending. There are currently no

data on the incidence of occupational exposures to blood or other body fluids; thus, it is not possible to determine the level of demand for the testing allowed for under the bill. 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. If demand were high (requests numbering in the thousands), then additional resources would be required to cover the increased costs to the State laboratory, as there is no mechanism for the State laboratory to recover its costs. The average cost of an HIV screening test, including reagents, supplies, and personnel costs, is approximately \$5, and of a Hepatitis B test is approximately \$15.

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.