

REQUIRE CRIMINALS TO PAY FOR COURT-ORDERED HEALTH TESTS

**House Bill 4172 (Substitute H-1)
First Analysis (5-14-03)**

**Sponsor: Rep. Tom Meyer
Committee: Health Policy**

THE APPARENT PROBLEM:

The Public Health Code allows or requires courts to order individuals charged with or found guilty of certain crimes involving sexual activity or intravenous drug use be examined or tested for venereal disease, hepatitis B, HIV, and AIDS. The code also sets forth various requirements for providing information about these health conditions to persons charged with or convicted of such crimes. (These provisions are explained in detail under "Content of the Bill" below.) Under conditions set forth in the code, victims of such crimes (where there are victims), the Department of Community Health, and other specified parties may learn the results of such examinations and tests. In cases where courts are required to order examination or testing, the code specifies that the examination or testing is to be performed by a licensed physician, the Department of Community Health, or a local health department. According to committee testimony, much of the work is performed by local health departments, which until recently swallowed the costs. With the economic downturn, some local health departments have suggested that they can no longer afford to expend their limited resources on such examinations and tests. Reportedly some departments have begun to charge the individual who is required to undergo testing, but local prosecutors and advocates for victims of domestic violence worry that payment disputes delay the testing process and cause victims who want to know whether they have been exposed to a possibly fatal disease or virus further distress and suffering.

In a related matter, some people believe that persons charged with or convicted of crimes involving sexual activity or intravenous drug use should be tested for, and given information about, hepatitis C, in addition to other health conditions currently specified in the code. According to the Centers for Disease Control and Prevention, hepatitis C is "a liver disease caused by the hepatitis C virus (HCV), which is found in the blood of persons who have this disease. HCV is

spread by contact with the blood of an infected person."

Legislation has been introduced to allow a court to require individuals convicted of crimes involving sexual activity or intravenous drug use to pay for the costs of their health tests, and to add hepatitis C to the list of health conditions for which persons charged with or convicted of such crimes must be tested and given information.

THE CONTENT OF THE BILL:

The bill would amend the Public Health Code to require persons convicted of certain crimes to pay for the required health tests associated with those crimes (as explained below) and to add hepatitis C to the code's examination, testing, and reporting requirements.

Under the Public Health Code, courts are permitted or required to order that individuals charged with or found guilty of certain crimes undergo a variety of health examinations and tests. The section of the code that would be amended by the bill specifies three cases in which examinations or tests may or must be ordered. First, the court may order an individual charged with a violation of the state penal code's prostitution-related provisions or a violation of a local ordinance prohibiting such acts to be examined or tested for venereal disease, hepatitis B, HIV, and AIDS. (The state's "prostitution-related" prohibitions include prohibitions against all of the following: soliciting, accosting, or inviting to commit prostitution or another lewd or immoral act; admitting a person to a place for the purpose of prostitution; aiding and abetting in either of the previously mentioned crimes; engaging services for the purpose of prostitution; keeping a house of ill-fame; and pandering.) Second, if a defendant is transferred to circuit court or recorder's court for prostitution-related crimes or for solicitation of a

minor, gross indecency, rape, or intravenous drug use under the state's penal code, and the district court determines there is reason to believe the violation involved sexual penetration or exposure to a body fluid of the defendant, the district court must order the defendant to be tested for venereal disease and hepatitis B infection and for the presence of HIV or an antibody to HIV. Third, upon conviction of a defendant, or the issuance by the probate court of an order adjudicating a child to be within the provisions of section 2(a)(1) of Chapter XIIIA" of the state probate code (see below), for such crimes or for violations of local ordinances prohibiting similar conduct, the court with jurisdiction must order examinations or tests for venereal disease, hepatitis B, HIV and HIV-antibodies. (The relevant section of the probate code sets forth conditions under which children are to be tried, as children, in the family division of the circuit court or, as adults, in another court. Also, the code exempts individuals charged with and convicted of violations of state or local prohibitions on intravenous drug use from the venereal disease examination and testing requirements.)

The Public Health Code also contains various information requirements. For instance, the court must provide individuals charged with prostitution-related crimes or with solicitation of a minor, gross indecency, rape, or intravenous drug use under the penal code or a local ordinance with information about venereal disease and HIV transmission. Also, the court must recommend that persons charged with any of these crimes seek additional information and counseling at a local health department testing and counseling center regarding venereal disease, hepatitis B, HIV, and AIDS.

In the second and third case above—that is, where the court is required to order examination or testing--the act specifies that the tests are to be administered by a licensed physician, the Department of Community Health, or a local health department.

House Bill 4172 would amend the Public Health Code to add hepatitis C to the code's examination and testing and information provisions. That is, wherever the court currently is allowed or required to order examination or testing for, or provide information about, venereal disease, hepatitis B, HIV, HIV antibodies, or AIDS, the court would be allowed or required to order examination or testing for, or provide information about, hepatitis C, as well.

The bill would also allow a court, upon conviction or the issuance by the probate court of an order

adjudicating a child to be within the relevant provision of the probate code, to order a person who had been examined or tested under any of the provisions described above to pay the actual and reasonable costs of the test incurred by the licensed physician or local health department that administered the examination or test.

A person who was ordered to pay the costs and failed to pay within 30 days after the order was issued (or within a different period determined by the court) would be guilty of a misdemeanor punishable by imprisonment not exceeding 90 days, a fine not exceeding \$100, or both. The amount ordered to be paid would have to be paid to the clerk of the court, who would have to transmit the appropriate amount to the physician or local health department named in the order. If an individual was ordered to pay a combination of fines, costs, restitution, assessments, probation, or parole supervision fees, or other payments upon conviction in addition to the costs of the ordered test (or tests), the payments would be allocated as provided under the probate code, the criminal code, and the Crime Victim's Rights Act.

MCL 333.5129

FISCAL IMPLICATIONS:

The House Fiscal Agency has reported that the bill has fiscal implications to the state and to local governments. The bill would provide savings for testing and examination costs currently paid by state and local government. Any additional imprisonment costs resulting from the bill would be an increase to local correctional systems, which vary on a per diem basis from county to county. Additional revenue from fines would go to local libraries. (HFA committee analysis dated 4-29-03 on the bill as introduced.)

ARGUMENTS:

For:

The bill would allow courts to order persons convicted of crimes involving sexual activity and intravenous drug use to pay for the costs of examinations and tests for venereal disease, hepatitis B, hepatitis C, HIV, HIV-antibodies, and AIDS. The local health departments and physicians who currently pay for the costs of such examinations and tests simply cannot afford to foot the bill any longer. The convicted criminals should have to pay the examination and test costs because, in addition to committing the original crime, they may have

exposed others to their infections, diseases, and other health conditions, committing a further wrong against their victims. Even when there is no victim, there is a possibility that a convicted individual may infect others in the state corrections system, and the state has a responsibility to protect the health of corrections officers and the other convicted individuals with whom the potentially infected individual may come into contact.

The bill would give courts additional leverage by defining failure to pay the court-ordered costs within a 30-day period as a misdemeanor punishable by imprisonment and a fine, in addition to any other punishment that has been ordered. Also, the bill would ensure that any fines, costs, and other compensation that the person is required to pay under other state laws would be allocated as set forth in those laws.

Response:

It is unclear whether threatening a person who has already been convicted of a serious crime with further punishment of a \$100 fine or 90 days in prison would be effective. Also, some people might not be able to afford the costs of examination or test.

In a separate matter, it is unclear whether hepatitis C testing should be required in cases of crimes involving sexual activity. According to information available on the CDC's web site, hepatitis C is recommended for persons who have injected illegal drugs, but is generally not recommended for people who have had sex with multiple partners or even people who have had sex with an infected steady partner. According to the web site, "HCV [hepatitis C virus] can be spread by sex, but this is very rare." While it may make sense to require testing for persons who have been convicted of illegal intravenous drug use, perhaps an exemption should be made for persons convicted of crimes involving sexual activity.

Reply:

The bill would give courts additional leverage, whether or not some individuals would be willing to be charged with a misdemeanor rather than pay. Besides, the bill would allow the court to use its discretion in determining whether or not to order an individual to pay the examination and test costs. Further, if there is some risk that a victim of a crime involving sexual activity contracted hepatitis C from the perpetrator, the perpetrator should have to undergo—and pay for—the testing.

POSITIONS:

The Department of Community Health supports the bill. (5-13-03)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.