



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4172 (Substitute H-1 as reported without amendment)

Sponsor: Representative Tom Meyer

House Committee: Health Policy

Senate Committee: Health Policy

Date Completed: 4-28-04

RATIONALE

The Public Health Code provides for courts to order individuals charged with or found guilty of certain crimes involving sexual activity or illegal intravenous drug use to be examined or tested for venereal disease, hepatitis B, the human immunodeficiency virus (HIV), and acquired immune deficiency syndrome (AIDS). The Code also sets forth various requirements for providing information about these health conditions to people charged with or convicted of such crimes. The victims of these crimes, the Department of Community Health (DCH), and the local health department may learn the results of such tests. In cases in which courts are required to order examination or testing, the Code specifies that the examination or testing must be performed by a licensed physician, the DCH, or a local health department. Reportedly, some local health departments say they no longer can continue to bear the costs of performing these tests. Some people believe that the individuals ordered to undergo the tests should pay for them.

In a related matter, it has been suggested that people charged with or convicted of certain sex crimes or intravenous drug use should be tested for, and given information about, hepatitis C, in addition to the other health conditions specified in the Code.

CONTENT

The bill would amend the Public Health Code to add hepatitis C to the diseases for which defendants arrested and charged with specified crimes must be examined and tested; and allow a court to order individuals convicted of certain crimes to pay for the required tests.

Hepatitis C

Under the Code, courts are permitted or required to order that individuals charged with certain crimes be examined or tested to determine whether they have venereal disease, hepatitis B, the HIV or an HIV antibody, or AIDS.

First, a court may order an individual charged with a violation of the Michigan Penal Code related to prostitution, or a similar local ordinance, to undergo testing. Examination or test results that indicate the presence of any of the diseases must be reported to the defendant, the Department of Community Health, and the appropriate local health department for partner notification.

If a defendant is bound over to circuit court or recorder's court for specific prostitution-related crimes, solicitation of a child for an immoral purpose, gross indecency, or criminal sexual conduct (CSC) or assault with intent to commit CSC, and the district court determines there is reason to believe the violation involved sexual penetration or exposure to the defendant's body fluid, the district court must order the defendant to be tested.

Upon conviction of a defendant, or the issuance by the family court of an order adjudicating a child under the juvenile code, for prostitution-related crimes, soliciting a child for an immoral purpose, gross indecency, CSC, or intravenous use of a controlled substance, the court must order the various examinations or tests. The court also must order the defendant or child to receive counseling regarding venereal

disease, hepatitis B infection, HIV infection, and AIDS.

In addition, the court must provide individuals charged with prostitution-related crimes, solicitation of a minor for an immoral purpose, gross indecency, CSC, or intravenous use of a controlled substance with information about venereal disease and HIV transmission. The court must recommend that people charged with any of those crimes seek additional information and counseling at a local health department testing and counseling center regarding venereal disease, hepatitis B, HIV, and AIDS.

The bill would add hepatitis C to these examination, testing, and information requirements.

Payment of Testing Costs

The bill would allow the court, upon conviction or adjudication, to order an individual who was examined or tested as described above to pay the actual and reasonable costs incurred by the licensed physician or local health department that administered the examination or test. The individual would have to pay within 30 days after the order was issued, or as otherwise provided by the court. The amount would have to be paid to the court clerk, who would have to transmit the appropriate amount to the physician or local health department.

If an individual were ordered to pay a combination of fines, costs, restitution, assessments, probation or parole supervision fees, or other payments upon conviction in addition to the examination or testing costs, the payments would have to be allocated as provided under the Probate Code, the Code of Criminal Procedure, and the Crime Victim's Rights Act. An individual who failed to pay within the specified time period would be guilty of a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of \$100.

(Under those statutes, if a person is subject to payment of victim payments and any combination of other fines, costs, assessments, probation or parole supervision fees, or other payments, 50% of the money must be applied to victim

payments, and the balance must be applied in the following order of priority:

- In cases involving prosecutions for violations of State law, payment of the "minimum state cost"; other costs; fines; probation or parole supervision fees; and assessments and other payments.
- In cases involving prosecutions for violations of local ordinances, payment of the minimum State cost; fines and other costs; and assessments and other payments.

The "minimum state cost" is the minimum cost a court must order a person convicted of an offense to pay, if the court orders the person to pay any combination of a fine, costs, or applicable assessments. The minimum State cost is \$60, if the defendant is convicted of a felony; \$45 if the defendant is convicted of a serious misdemeanor or a specified misdemeanor; and \$40 if the defendant is convicted of any other misdemeanor.

A "victim payment" is restitution ordered to be paid to the victim, or to the victim's estate, but not to a person who reimbursed the victim for his or her loss; or an assessment ordered for crime victim's rights services.)

MCL 333.5129

BACKGROUND

According to the Centers for Disease Control and Prevention (CDC), hepatitis C is a liver disease caused by a blood-borne virus typically transmitted through contact with the blood of an infected person. The CDC recommends that people who have injected illegal drugs, people who were treated for blood clotting problems before 1987, people who have received blood from a donor who later tested positive for the hepatitis C virus (HCV), people who received blood transfusions or organ transplants before July 1992, long-term dialysis patients, children born to women with hepatitis C, and health care workers who have been exposed to the HCV on the job (such as through a needle stick) should be tested for the virus.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate

Supporting Argument

Some of the local health departments that pay for the costs of the various tests or examinations cannot afford to do so any longer. The criminals should have to pay the examination and testing costs because, in addition to committing the original crime, they may have exposed others to their infections, diseases, or other adverse health conditions. Even when there is no victim, there is a possibility that a convicted individual could infect others within the State corrections system, and the State has a responsibility to protect the health of correctional officers and other prisoners.

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.

Supporting Argument

According to an article in the *Lansing State Journal* (4-23-04), hepatitis C is the leading cause of adult liver transplants in the United States, and is predicted to cause more deaths in the United States than AIDS by 2010. Since the law already allows, and in some cases requires, courts to order tests for health conditions passed through contact with bodily fluids, it would make sense to test for hepatitis C.

Response: It is unclear whether hepatitis C testing should be required in cases of crimes involving sexual activity. According to the CDC, hepatitis C testing is recommended for persons who have injected illegal drugs, but the need for testing those who have had sex with multiple partners, or even long-term steady sex partners of HCV-positive people, is uncertain. While the virus can be spread through sex, it is rare. While it might make sense to require testing for people who have been convicted of illegal intravenous drug use, which the CDC asserts accounts for 60% of all new hepatitis C infections, perhaps people convicted of crimes involving sexual activity should be excluded.

Legislative Analyst: Julie Koval

FISCAL IMPACT

To the extent that the bill would allow judges to require offenders to pay for the costs of the medical tests and examinations, it could provide savings to local governments and health departments that are currently incurring a portion of those costs. The bill also would potentially increase corrections costs to the State and local governments by creating a new penalty of up to 90 days' incarceration for failure to pay for testing costs. The new penalty also would include a fine of up to \$100, which would potentially provide additional penal fine revenue to public libraries.

Fiscal Analyst: Bethany Wicksall

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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.