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House Bill 4172 (Substitute H-1 as passed by the House)
Sponsor: Representative Tom Meyer
House Committee: Health Policy
Senate Committee: Health Policy

Date Completed: 4-20-04

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 human immunodeficiency virus (HIV) or an HIV antibody, or acquired immunodeficiency syndrome (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

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.