

MANDATORY HIV/HBV/HCV TESTING OF PUPILS

House Bill 5523 (Substitute H-1) First Analysis (6-7-00)

**Sponsor: Rep. Mike Kowall
Committee: Health Policy**

THE APPARENT PROBLEM:

There has been a trend in recent years to allow a person who is exposed to the bodily fluids of others in the course of certain occupations to request the other party to be tested for HIV and hepatitis B or C (HBV or HCV). Public Act 419 of 1994 allows emergency first responders (who include police officers, fire fighters, and emergency medical workers) who are exposed to the body fluids of emergency patients in certain ways to request that health facilities test the patients for HIV. Public Act 420 of 1994 further allowed health facilities to test patients for HIV without the patient's consent at the request of an emergency first responder who had been exposed to the patient's body fluids in certain ways if the facility notified patients upon admission that such testing could be done under these circumstances without prior consent or counseling. Similar legislation, Public Act 565 of 1996, amended the Department of Corrections act to allow employees who were exposed in certain ways to the blood or body fluid of a prisoner to request that the prisoner be tested for HIV infection or HBV infection, or both. And, Public Act 57 of 1997 amended the Public Health Code to authorize certain police officers, fire fighters, motor carrier officers, state property security officers, local correctional officers or other county employees, court employees, and individuals making a lawful arrest (such as security guards) who were exposed in certain ways to the blood or body fluids of an arrestee, correctional facility inmate, parolee, or probationer to request that the arrestee, etc. be tested for HIV, HBV infection, or HCV infection, or all three infections.

More recently, some have raised the question of including teachers and school personnel in the lists of those professionals who should be allowed to request another party to undergo a test for HIV or hepatitis infections. Teachers and school employees often are exposed to the blood, saliva, vomit, and other bodily fluids of students, from the elementary grades through high school. Exposure occurs when a student becomes ill or suffers an injury. Teachers and school employees often are the first adults on the scene to

treat an injury or illness, even before the arrival of emergency first responders if the illness or injury is such that the services of those professionals are needed. Legislation has been requested to allow teachers and school employees to request that a student be tested for HIV or hepatitis infections, or both, if the teacher was exposed to the blood or bodily fluids of the student.

THE CONTENT OF THE BILL:

Currently, under Section 5204 of the Public Health Code, a police officer, firefighter, local correctional officer or other county employee, court employee, motor carrier officer, state property security officer, or an individual making a lawful arrest who is exposed in certain ways to the blood or body fluids of an arrestee, correctional facility inmate, parolee, or probationer can request that the arrestee, etc. be tested for HIV, HBV (hepatitis B) infection, or HCV (hepatitis C) infection, or all three infections. House Bill 5523 would amend the code to also allow an elementary or secondary school teacher or employee who had been exposed to the bodily fluids or blood of a pupil to request that the pupil submit to testing. If the pupil were a minor, consent to the testing would have to be given by a parent or legal guardian. Further, the bill would clarify that a test could be requested for either HIV, HBV, or HCV; all three tests; or any combination of the three tests.

(Note: Teachers exposed to the bodily fluids of a pupil would have to follow the same procedures for those engaged in the above occupations, and pupils would be subject to the same provisions that arrestees, parolees, and probationers are subject to. The current law that teachers and pupils would be added to is as follows:

The requesting party would have to have received training in the transmission of bloodborne diseases (under 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) and, while performing official duties or otherwise performing the duties of his or her employment, would have to have determined that he or she had sustained a percutaneous (that is, through the skin), mucous membrane, or open wound exposure to the blood or bodily fluid of the person in question.

Requests. Requests for testing have to be in writing and on a form provided by the Department of Community Health (DCH), and made not later than 72 hours after the exposure occurred. The request has to be dated and contain the following information: the name and address of the officer, employee, or person making the request; a description of his or her exposure to the blood or other bodily fluids of the proposed test subject; and a statement that the requester is subject to the Public Health Code's confidentiality requirements. The request form cannot contain information that could identify the proposed test subject by name, unless it is necessary to identify a person for the purpose of testing. An employer who receives such a request has to accept as fact the requester's description of his or her exposure.

Testing, payment. The testing is done by the local health department or by a health care provider designated by the local health department. The officer, employee, or arresting individual requesting the test is responsible for paying for the test if his or her employer or health care plan doesn't cover the cost of the test. The local health department (or designee) is authorized to charge the officer, employee, or arresting individual requesting the test the "reasonable and customary" charges of the test, and doesn't have to provide HIV counseling to the requester unless he or she also were tested for HIV by that local health department (or designee). However, an arrestee, correctional facility inmate, parolee, or probationer who refuses to undergo a requested test and who subsequently is tested under court order is responsible for the cost of implementing that order (including the cost of the test).

Test results, confidentiality, penalties. Notification of test results, whether positive or negative, has to be given on a form provided by the DCH to the requesting officer, employee, or arresting individual by the local health department (or designee) within

two days after it has received the test results. (The local health department or designee also has to notify the Department of Community Health of each positive HIV test.) Notification of test results has to be transmitted directly to the requesting officer or employee, unless he or she had requested that the test results be sent to his or her primary care physician (or other health professional designated by the requester). The notification has to contain a statement recommending that the requesting person undergo an HIV test, an HBV test, or an HCV test, or all three tests. Notification of test results cannot contain information that identifies the test subject, and information contained in the notice is confidential and subject to the health code's HIV confidentiality provisions and the confidentiality provisions for other communicable diseases and serious communicable diseases or infections other than HIV (e.g. HBV) found in rules promulgated under the code (see *BACKGROUND INFORMATION*, below). Anyone who receives confidential information under this provision is authorized to disclose the information to others only to the extent consistent with the authorized purpose for which it has been obtained. (The notification has to include an explanation of these confidentiality requirements.) A person who violates the confidentiality of the information is guilty of a misdemeanor, and is subject to other applicable penalties contained in the Public Health Code.

Test subjects. If the arrestee, correctional facility inmate, parolee, or probationer in question consents to the requested tests, either the requester's employer would transport the test subject to the local health department (or its designee) for testing or someone from the local health department (or its designee) would have to come to where the test subject is housed to take a blood or other body fluid sample for testing as soon as practicable after receiving the request for the test.

If the test subject refuses to undergo a requested test, the requester's employer can petition the circuit court to order a test for HIV, HBV, or HCV or all three. The petition has to contain substantially the same information as was contained in the original request by the affected officer, employee, or arresting individual, except that, unlike the original request, it has to contain the proposed test subject's name. The petition also has to state (a) the reasons for the requester's determination that the exposure described in the request could have transmitted HIV, HBV, or HCV along with the date and place the officer, employee, or arresting individual had received the required training in the transmission of bloodborne diseases; (b) the fact that the proposed

test subject had refused to undergo the requested test; (c) the type of relief sought; and (d) a request for a court hearing on the allegations in the petition.

As is currently the case in the health code for petitions regarding people who are alleged to be health threats to others, the court has to hold a hearing within 14 days after receiving the petition regarding HIV, HBV, or HCV infection testing. Upon finding that the employer has proven the allegations set forth in the petition (including, but not limited to the requesting party's description of his or her exposure to the blood or body fluids of the proposed test subject), the circuit court may order the proposed test subject to undergo testing for HIV, HBV, or HCV infection (or all three).

Other provisions. An individual who refuses to undergo a test for HIV infection, HBV infection, or HCV infection, or all three, is guilty of contempt. In addition, the Department of Community Health can promulgate rules to administer these provisions and is required to develop and distribute the required request forms. Further, a person or governmental entity who makes a good faith effort to comply with these provisions is immune from civil liability or criminal penalty based on compliance -- or failure to comply -- with the health code's HIV reporting requirements.

MCL 333.5204 and 333.5205

BACKGROUND INFORMATION:

Health code confidentiality provisions, penalties for violations. Article V of the Public Health Code addresses the prevention and control of diseases, infections, and disabilities, and, among other things, defines "serious communicable disease or infection" to mean a communicable disease or infection that is designated by departmental rule to be serious, and includes, but isn't limited to, HIV infection, AIDS, venereal disease, and tuberculosis. This article of the code makes information about certain of these diseases or infections confidential. Information ("all reports, records, and data pertaining to testing, care, treatment, reporting, research, and information pertaining to [legally required] partner notification") associated with HIV infection and AIDS is confidential under MCL 333.5131. (HIV and AIDS test results also are subject to the physician-patient privilege, except as otherwise provided by law.) Information about certain other diseases or infections designated by administrative rule also is confidential under rules promulgated by the Department of Community Health (formerly the Department of Public Health). By law (MCL 333.5111), these other

diseases or infections must include, but are not limited to, hepatitis B, venereal disease, and tuberculosis, and are not to apply to the "serious communicable diseases or infections" of HIV infection or AIDS. More specifically, Rule 325.181 says, in part, "Medical and epidemiological information which identifies an individual and which is gathered in connection with an investigation is confidential and is not open to public inspection without the individual's consent or the consent of the individual's guardian, unless public inspection is necessary to protect the public health as determined by a local health officer or the director . . . Medical and epidemiological information that is released to a legislative body shall not contain information that identifies a specific individual."

Violations of the health code's HIV and AIDS confidentiality provisions are misdemeanors punishable by imprisonment for up to one year, a fine of up to \$5,000, or both. In addition, violators are liable in civil actions for actual damages of up to \$1,000 plus costs and reasonable attorney fees.

Involuntary commitment of health threats. Public Act 490 of 1988 amended the Public Health Code to give health officers the authority to restrain people with "serious communicable diseases or infections" such as HIV infection, AIDS, venereal disease, or tuberculosis, including subjecting them to court-ordered commitment to an appropriate facility or emergency detention. More specifically, if the Department of Community Health or a local health department determines that someone is a carrier of a serious communicable disease or infection and a health threat to others, it can issue a warning to the carrier requiring his or her cooperation in efforts to prevent or control transmission of that serious communicable disease or infection. If the carrier fails or refuses to comply, the department can petition the probate court to order the carrier to do a number of things, including living part-time or full-time in a supervised setting or being committed to an appropriate facility for up to six months. To protect the public health in an emergency, the court can order the person to be temporarily detained.

Involuntary HIV testing. Currently, certain people in the judicial system or corrections facilities and certain patients can be tested for HIV infection without their prior written consent. Under Public Act 510 of 1988, which amended the Department of Corrections act, immediately upon arrival at a state correctional facility each prisoner is tested for HIV (the act also requires that prisoners be tested for HIV if they expose a corrections employee to their blood or body fluids in a manner that could transmit HIV, but then goes on to

say that if a prisoner refuses testing he or she will be considered by the department to be HIV positive). Public Acts 471 of 1988 and 72 of 1994 amended the Public Health Code to require the HIV and HBV testing of people arrested and charged with certain prostitution-related crimes or bound over to circuit court for certain sex crimes (gross indecency, prostitution, or criminal sexual assault, if the violation involved sexual penetration or the exposure of the victim to the defendant's body fluids) or convicted of certain sex crimes (gross indecency, solicitation, prostitution, criminal sexual assault) or for illegal IV drug use. In addition, Public Act 253 of 1995 requires the mandatory HIV testing of child molesters.

If a worker in a health facility is exposed in certain ways to the blood or body fluids of a patient in the facility, and the patient had been told when admitted that an HIV test might be done without his or her consent if a worker were so exposed, the patient may be tested for HIV without his or her prior written consent. Public Acts 419 and 420 of 1994 extended this involuntary HIV testing of patients to emergency patients when emergency first responders are exposed in certain ways to the emergency patient's blood or body fluids and requests that the patient be tested. Finally, Public Act 200 of 1994 amended the Public Health Code to require that pregnant women who went to a health care facility to give birth or for care immediately after having given birth outside of a health care facility be tested for VD, HIV, and HBV if the care giver had no record of results of these tests for the patient.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

In recent years, several laws have been rewritten to allow persons in certain occupations who sustain certain types of exposure to the bodily fluids and blood of other people to request that the other person undergo a test for HIV, HBV and HCV infections, or any combination of the three infections. It is argued that persons exposed to the bodily fluids of others face many long months of apprehension while waiting to see if they contracted an illness or infection, and may have to undergo prophylactic treatments. If a subject tested negative, the exposed individual may have less anxiety, or may be spared unnecessary and expensive prophylactic treatments, which are reported

to have side effects that can be debilitating. Though the exposed person may still need to be tested for an additional six months after exposure before an all clear can be sounded, the lowered anxiety levels take a far less toll on the person's health and well-being.

Teachers and other school employees are in constant contact with children. When a child becomes injured, whether a skinned knee from a playground fall, a sports injury, or accident, school personnel are usually the first adults on the scene. The same is true for illnesses. In such situations, the teacher or school employee may inadvertently become exposed to the blood or bodily fluids, such as saliva or vomit, of the student. This exposure is an unavoidable happenstance of a school employee's occupation. Therefore, teachers and school employees would like to enjoy the same protections afforded to other professionals who sustain workplace exposures. School personnel should be able to request that a pupil who exposed them to possible infections by HIV, HBV, and HBC be tested for HIV.

Response:

The bill would add the testing of pupils who expose a teacher or school employee to blood and bodily fluids to a section of law dealing with law enforcement officers and court employees exposed to the blood and bodily fluids of people who have been convicted of crimes and those arrested under suspicion of committing crimes. This would be an unfortunate association and is inappropriate to link pupils, who may be as young as five years old, with this population. Though teachers and school employees may have a greater risk of exposure than the general population, they have far less possible exposure than emergency first responders, law enforcement officers, corrections officers, and similar professions. Further, the people encountered by those professions that can request a subject to be tested most likely have a higher percentage of carriers of HIV and hepatitis infections than children in grades K-12. Following the argument put forth by supporters of the bill, all child care workers, coaches, umpires, referees, and the like should also be added to the list of those who can legally request, and even petition a court, to have another person involuntarily tested for HIV and hepatitis infections. A better approach would be to provide universal precaution training (in which every person is presumed to be a possible carrier) for exposure to bloodborne pathogens on a regular basis.

Against:

The bill raises serious confidentiality concerns for school-aged children and their families. In the case of HIV and AIDS infections, students are often unnecessarily stigmatized, avoided, taunted, bullied,

and at times, even beat up by other students. The bill would seem to add little protection to the confidential nature of having to undergo such tests.

Response:

Any testing of pupils under the bill would fall under confidentiality provisions and penalties already in statute and administrative rules.

Rebuttal:

Schools are like any small community: everyone knows what is going on and who is involved.

Since exposure would be taking place in a contained setting, it could be much more difficult to protect a child's confidentiality than in other situations covered under current law.

Against:

Some are concerned that the bill could result in triggering (against schoolchildren) sections of the code that allow the involuntary commitment of a person identified as a health threat to others.

Response:

That is unlikely; those provisions are triggered only when the Department of Community Health or a local health department detects dangerous behavior on the part of an infected person that would constitute a health emergency, and then only with a court order.

POSITIONS:

A representative of the Michigan Education Association testified in support of the bill. (6-6-00)

A representative of the Michigan Federation of Teachers & School Related Personnel indicated support for the bill. (6-6-00)

The Department of Community Health opposes the bill. (6-6-00)

A representative of the American Red Cross indicated opposition to the bill. (6-6-00)

Analyst: S. Stutzky

■ 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.