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Senate Bills 1128, 1129, and 1130 (as introduced 10-22-14)  
Senate Bill 1137 (as introduced 11-6-14)  
Sponsor: Senator Roger Kahn, M.D. (S.B. 1128, 1130, & 1137)  
Senator John Pappageorge (S.B. 1129)  
Committee: Judiciary

Date Completed: 11-12-14

### **CONTENT**

**Senate Bill 1130 would amend Article 5 (Prevention and Control of Diseases and Disabilities) of the Public Health Code to do the following:**

- Include the Hepatitis C virus (HCV) in the definition of "serious communicable disease or infection".
- Include HCV in a provision that makes it a felony for a person who knows he or she has AIDS or HIV to engage in sexual penetration with another person without first informing that person of the diagnosis or infection.

**Senate Bill 1129 would amend the Code of Criminal Procedure to include HCV in the sentencing guideline for engaging in sexual penetration with an uninformed partner.**

**Senate Bill 1128 would amend the Corrections Code to do the following:**

- Require the Department of Corrections (DOC) to test a prisoner for HCV before he or she was released on parole or discharged after completing his or her sentence, unless the prisoner had already been diagnosed with the virus.
- Require the DOC to comply with requirements for reporting a serious communicable disease or infection, with regard to a prisoner who had HCV and was scheduled to be released or discharged.

**Senate Bill 1137 would amend the Corrections Code to do the following:**

- Include testing for, and the possible transmission of, HCV in provisions that require the testing of a prisoner for HIV upon arrival at a DOC reception center.
- Require the DOC to provide or arrange for a test for HCV infection upon the request of a DOC employee.
- Require the DOC to give an employee the equipment necessary to implement universal precautions to prevent the transmission of HCV, upon the employee's request.
- Include HCV testing in provisions requiring the DOC to test a prisoner for HIV or Hepatitis B virus (HBV) if a DOC employee sustains a percutaneous, mucous membrane, or open wound exposure to the prisoner's blood or body fluids.
- Include HCV education in a requirement that the DOC develop and implement a comprehensive AIDS education program.
- Require the DOC to report to the Department of Community Health (DCH) test results that indicated a person was HCV infected.

Senate Bills 1128, 1129, and 1137 are tie-barred to Senate Bill 1130.

### **Senate Bill 1130**

#### **Serious Communicable Disease**

Under Article 5 of the Public Health Code, "serious communicable disease or infection" is defined as a communicable disease or infection that is designated as serious by the Department of Community Health. The term includes, but is not limited to, HIV infection, AIDS, venereal disease, and tuberculosis. The bill would add Hepatitis C virus to that definition.

(As discussed in **BACKGROUND**, below, Article 5 contains various provisions that apply to serious communicable diseases, as well as people who are carriers of serious communicable diseases.)

#### **Failure to Inform**

Under Article 5, it is a felony for a person who knows that he or she has or has been diagnosed as having AIDS or AIDS-related complex, or who knows that he or she is HIV infected, to engage in sexual penetration with another person without having first informed the other person of the infection. Under the bill, that provision also would apply to a person who knew that he or she had been diagnosed as having the Hepatitis C virus.

(Under Michigan law, a felony for which no punishment is specially prescribed is punishable by up to four years' imprisonment and/or a maximum fine of \$5,000.)

### **Senate Bill 1129**

The bill would add Hepatitis C to the sentencing guideline for sexual penetration with an uninformed partner. Currently, that guideline refers to AIDS and the violation is designated as a Class F felony against a person, with a statutory maximum sentence of four years' imprisonment.

### **Senate Bill 1128**

Except as otherwise provided, the bill would require the DOC to take or cause to be taken a test or specimen of a prisoner before he or she was released on parole or discharged upon completion of his or her maximum sentence, and submit that specimen to a clinical laboratory for a test for the Hepatitis C virus. The Department would not have to do so, however, if the prisoner had already been diagnosed as having the HCV.

For a prisoner who was scheduled to be paroled or discharged who had the virus, the DOC would have to comply with the reporting of serious communicable diseases or infections requirements established in rules promulgated under Article 5 of the Public Health Code. (The reporting requirements are described below.)

### **Senate Bill 1137**

#### **Testing upon Arrival at DOC Reception Center**

The Corrections Code requires quarters for temporary confinement apart from those of regular inmates to be provided for convicted prisoners upon commitment at each of the State correctional facilities, which the DOC Director must designate as a reception center.

Immediately upon arrival at a DOC reception center, each incoming prisoner must undergo a test for HIV or an antibody to HIV, unless he or she had been tested under the Public Health Code within the three months immediately before arrival. If a prisoner receives a positive test result and is subsequently subject to DOC discipline for sexual misconduct that could transmit HIV, illegal intravenous use of controlled substances, or assaultive or predatory behavior that could transmit HIV, the Department must house the prisoner in administrative segregation, an inpatient health care unit, or a unit separate from the general prisoner population. A prisoner who receives a positive HIV test result may not work in a DOC-operated health facility. The deputy director of the DOC's correctional facilities administration must take steps to ensure that all prisoners who receive HIV testing also receive counseling regarding AIDS including, at a minimum, treatment, transmission, and protective measures.

The bill would include testing for, and the possible transmission of, HCV in the provisions described above.

The DOC must report each positive test result to the DCH, in compliance with Article 5 of the Public Health Code. The bill refers to reporting in compliance with Article 5 or as otherwise required for the reporting of serious communicable diseases or infections established in rules promulgated under Article 5.

#### Employee Testing & Precautions

Upon the request of a DOC employee, the Department of Corrections must provide or arrange for a test for HIV or an antibody to HIV for that employee, free of charge. The bill would include testing for HCV in that provision.

Upon an employee's request, the DOC must give him or her the equipment necessary to implement universal precautions to prevent transmission of HIV infection. The bill also would require the provision of equipment necessary to implement universal precautions to prevent the transmission of HCV infection.

The Code provides that, if a DOC employee sustains a percutaneous, mucous membrane, or open wound exposure to the blood or body fluids of a prisoner, the employee may request that the prisoner be tested for HIV and/or HBV. Upon receiving a request, the DOC must determine whether there is reasonable cause to believe that the exposure occurred and, if so, the DOC must test the prisoner for HIV and/or HBV. The Department may test the prisoner regardless of whether he or she consents. The DOC must notify the requesting employee of the test results within two days after obtaining them. The bill would include testing for HCV in those provisions.

#### Education Program

The Code requires the DOC, in conjunction with the DCH, to develop and implement a comprehensive AIDS education program designed specifically for correctional environments. The bill would require that the program cover AIDS and HCV education.

#### Reporting

The Code requires the DOC to report to the DCH each test result that indicates a person is HIV infected. The bill also would require the DOC to report to the DCH each test result that indicated a person was HCV infected as required for the reporting of serious communicable diseases or infections established in rules promulgated under Article 5 of the Public Health Code.

Proposed MCL 791.237a (S.B. 1128)

MCL 777.13k (S.B. 1129)  
333.5101 & 333.5210 (S.B. 1130)  
791.267 & 791.267b (S.B. 1137)

## **BACKGROUND**

### Hepatitis C<sup>1</sup>

Hepatitis C is a viral disease, contracted primarily through blood-to-blood contact, that affects the liver. For years after acquiring HCV, the carrier might have no symptoms. In some cases, the period without symptoms can last from 20 to 40 years. The virus can be acute or chronic in nature. In acute cases, which include 20% of the people infected, the virus will leave the person's body without medical intervention and have no long-term impact.

In chronic cases of HCV, the main long-term impact is cirrhosis of the liver. Approximately 60% of people who acquire the virus will develop a long-term (chronic) infection that may not cause any problems or may progress to varying degrees of liver damage. The remaining 20% of the people who contract HCV will suffer serious liver damage.

According to Hepatitis C statistics from the Centers for Disease Control, the HCV is distributed in the following percentages in the United States:

- 60% from injected drug use.
- 15% from sexual transmission.
- 10% from blood transfusion (mainly pre-1992, before the arrival of comprehensive blood screening).
- 5% from other health-related means.
- 10% from unknown means.

### DCH Rules & Standards

Part 5 of the Public Health Code authorizes the Department of Community Health to promulgate rules that, among other things, do the following:

- Establish requirements for reporting and other surveillance methods for measuring the occurrence of diseases and infections, which may require a licensed health professional or health facility to submit to the DCH or a local health department a report of the occurrence of a communicable disease or a serious communicable disease or infection.
- Designate communicable diseases or serious communicable diseases or infections for which local health departments are required to furnish care.
- Implement Part 5, including rules for the discovery, care, and reporting of an individual who has or is suspected of having a communicable disease or serious communicable disease or infection.

If a local health department knows that an individual who has a serious communicable disease or infection is in the health department's jurisdiction, it must immediately furnish the necessary care according to the requirement established by the DCH.

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<sup>1</sup> For more information about the Hepatitis C virus and its treatment, please see the Senate Fiscal Agency Issue Paper, "Implications for the State of Michigan of New Hepatitis C Treatments", by Ellyn Ackerman and John Maxwell, November 2014:  
<http://www.senate.michigan.gov/sfa/Publications/Issues/HepCTreatments/HepCTreatments.pdf>

Part 5 also authorizes the Department to establish minimum procedures and standards for health officers and others related to the discovery and care of an individual having or suspected of having a communicable disease or a serious communicable disease.

### Carriers

Part 5 defines "carrier" as an individual who serves as a potential source of infection and who harbors, or who the Department reasonably believes harbors, a specific infectious agent or a serious communicable disease or infection.

If a DCH representative or a local health officer determines that an individual is a carrier and is a health threat to others (as defined in Part 5), the representative or officer must issue a warning notice to the individual requiring him or her to cooperate with the DCH or local health department to prevent or control transmission of serious communicable diseases or infections. The warning notice also may require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify his or her status as a carrier.

If a DCH representative or a local health officer knows or has reasonable grounds to believe that an individual has failed or refused to comply with a warning notice, the DCH or local health department may petition the circuit court for an order. If the court, after a hearing, determines that the DCH or local health department has proven the allegations set forth in the petition, the court issue an order that the individual do any of the following:

- Participate in a designated education program, counseling program, and/or treatment program.
- Undergo medically accepted tests to verify the individual's status as a carrier or for diagnosis.
- Notify or appear before designated health officials for verification of status, testing, or other purposes consistent with monitoring.
- Cease and desist from conduct that constitutes a health threat to others.
- Live part- or full-time in a supervised setting, or be committed to an appropriate facility, for the period and under the conditions set by the court.

The court order may be appealed to the Court of Appeals.

### Promulgated Rules

The Michigan Administrative Code contains rules that apply to designated conditions, which include conditions designated as serious communicable diseases, serious infections, communicable diseases, infections, and noncommunicable diseases. Approximately 80 conditions are designated as serious communicable diseases, including AIDS, HIV, and Hepatitis A, B, C, D, and E.

Among other things, the rules set forth various reporting requirements concerning serious communicable diseases and other designated conditions. In particular, within 24 hours of diagnosis or discovery, physicians are required to report each case of a serious communicable disease to the appropriate health department (although separate reporting requirements apply to AIDS and HIV).

When a physician or a laboratory director suspects the presence of a designated condition, but does not have enough evidence to confirm its presence, the physician or lab director

must report the designated condition as suspect to the appropriate local health department. Upon confirming the designated condition, the physician or director must report the condition as confirmed.

The rules also permit certain individuals, including nurses, dentists, epidemiologists, and pharmacists, to report any designated condition to the appropriate local health department.

In addition, schools, child daycare centers, and camps are required to report to the local health department the occurrence of any serious communicable disease among those in attendance.

The local health department that has jurisdiction where an individual with a reportable condition lives or where an illness or infection is being or might be spread must initiate an investigation as necessary.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **Senate Bills 1128 & 1137**

The requirement that the Department of Corrections test prisoners for HCV upon their arrival or release, excluding those who have already tested positive for HCV, would add a slight annual increase in cost to the Department with the approximate cost at \$15 per test. There are approximately 930 prisoners who test positive for HCV upon arrival annually, with an average of 10,000 persons released every year from the corrections system. As this bill would apply to State correctional facilities, there would be no fiscal impact on local government.

### **Senate Bills 1129 & 1130**

For any additional felony sentences for convictions under the bills, in the short term, the marginal cost to State government would be approximately \$4,100 per prisoner per year. Over the long term, the marginal cost to State government would be approximately \$31,100 per additional prisoner per year. The expanded felony offense would increase cost to local courts and law enforcement to the extent that the bills resulted in an increase in caseload due to more felony violations.

Fiscal Analyst: John Maxwell

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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.