

Legislative Analysis



FELONY DISCLOSURE LAW

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House Bills 6020 (H-5) and 6021 (H-5) as reported from committee

Sponsor: Rep. Jon Hoadley

Committee: Health Policy

Complete to 12-6-18

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bills 6020 and 6021 would amend the Public Health Code to split the so-called “felony disclosure law” into three offenses, one of which would be a misdemeanor. House Bill 6021 would make a complementary change to the sentencing guidelines chapter of the Code of Criminal Procedure. The bill package was requested by the Division of HIV and STD Programs within the Michigan Department of Health and Human Services (DHHS).¹ Each bill would take effect 90 days after its enactment.

FISCAL IMPACT: House Bill 6020 would have an indeterminate fiscal impact on the state and on local units of government. (See **Fiscal Information**, below, for further discussion.)

THE CONTENT OF THE BILLS:

House Bill 6020 would amend the “Felony Disclosure Law,” which currently makes it a felony for a person who knows that he or she has been diagnosed with AIDS or AIDS-related complex (ARC) [a term no longer in use] or who knows he or she is HIV-infected to engage in sexual penetration with another person without first informing that person of his or her AIDS, ARC, or HIV status.

The bill would remove reference to AIDS and ARC and instead separate the offense into three potential offenses, depending on the intent of the person with HIV and the result of the sexual contact. All three offenses would occur when a person knows that he or she has HIV and engages in anal or vaginal intercourse without informing that person that he or she has HIV.

If the infected person did so with the specific intent that the uninfected person contract HIV, the infected person would be guilty of a felony.

If the infected person did so, and transmitted HIV to an uninfected person that caused the person to become HIV positive, the infected person would be considered to have acted with reckless disregard and would be guilty of a felony.

If the infected person did so with reckless disregard, but did not transmit HIV, the infected person would be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,000, or both.

¹ House Fiscal Agency summary of House Bills 6016 to 6023:
<http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-6016-12B24552.pdf>

The bill would state that a person who knows that he or she has HIV who is adherent with the treatment plan of an attending physician and has been medically suppressed per accepted medical standards is not acting with reckless disregard.

MCL 333.5210

House Bill 6021 would divide the felony described as “AIDS – sexual penetration with uninformed partner,” which is punishable by a statutory maximum of 4 years, into two offenses in the sentencing guidelines in the Code of Criminal Procedure. The offenses would mirror the two felony offenses described in HB 6020—one in which the person acted with specific intent to infect, and one in which the person acted with reckless disregard and the uninfected person became HIV-positive.

House Bill 6021 is tie-barred to HB 6020, meaning that it could not take effect unless HB 6020 were also enacted.

MCL 777.13k

FISCAL INFORMATION:

House Bill 6020 would have an indeterminate fiscal impact on the state and on local units of government, and would depend on the number of persons convicted under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 6021 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

Proponents argued that the bills would do a better job of incentivizing rather than punishing responsible behavior than current law. Currently, the so-called “felony disclosure law” makes it a felony for a person who knows that he or she is HIV-positive to engage in sexual penetration with another person without first informing that person of the HIV-status. Supporters say that this incentivizes willful ignorance—or refusing to be tested (and treated), because only knowledge of HIV status triggers the penalty. In other words, as one of the bill sponsors stated, “the only way to ensure that you are never charged under this law is to make sure you are never tested.”

Response:

Others replied that the possible outcomes caused by violation—a chronic condition, even assuming that HIV medications continue to work—demands the more severe penalty. After all, does a misdemeanor conviction and a \$1,000 fine truly balance with a lifetime incurable condition?

Rebuttal:

The bill would retain the felony designation and penalty when a person does not warn his or her partner and actually transmits HIV or intends to transmit HIV. It would lower the offense to a misdemeanor when a person does not warn the partner but does not transmit HIV. Moreover, the bill states that a person who is medically suppressed and compliant with a physician's care would not be considered to be acting with reckless disregard. Proponents argue that this would penalize bad results and intent, but lower probable punishment, as there has been no evidence of transmission of HIV by a person with a suppressed viral load.²

POSITIONS:

The following organizations indicated support for HBs 6020 and 6021:

Michigan Primary Care Association (12-5-18)
Gilead Sciences (12-5-18)

The Michigan Association of Health Plans indicated support for HB 6020. (12-5-18)

Representatives of the following organizations testified in support of the bills as introduced (5-23-18):

Michigan Department of Health and Human Services
Michigan State Medical Society

The following organizations indicated support for the bills as introduced (5-23-18):

ACLU of Michigan
Community AIDS Resource and Education Services
Michigan AIDS Council
American College of Obstetricians and Gynecologists
Michigan Academy of Family Physicians

The Michigan Coalition for HIV Health and Safety indicated support for HB 6020 as introduced. (5-23-18)

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

² <https://www.who.int/hiv/mediacentre/news/viral-supression-hiv-transmission/en/>