

Department of Legislative Services
 Maryland General Assembly
 2000 Session

FISCAL NOTE

House Bill 89 (Delegate Sophocleus)
 Judiciary

Criminal Offenders - Contagious Disease or Virus Testing

This bill significantly expands upon existing provisions whereby individuals convicted of, charged with, or granted probation before judgment for committing specified offenses are required to furnish body fluid samples for testing.

Fiscal Summary

State Effect: General fund expenditures would increase by \$2,411,600 in FY 2001 from additional grants from the Department of Health and Mental Hygiene (DHMH) to local health departments to cover the costs of additional laboratory testing as well as additional clinical medical costs arising from expanded disease sampling, counseling, and notifications. Future year estimates reflect annualization and inflation. Revenues would not be affected.

(in dollars)	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
GF Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditures	2,411,600	3,077,300	3,115,700	3,154,600	3,194,100
Net Effect	(\$2,411,600)	(\$3,077,300)	(\$3,115,700)	(\$3,154,600)	(\$3,194,100)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - =indeterminate effect

Local Effect: Minimal. It is assumed any local costs related to testing, including contractual staffing and commercial laboratory costs, would be borne by local health departments using grant funds provided by the DHMH.

Small Business Effect: Potential meaningful. To the extent that commercial laboratory testing of bodily fluid samples for contagious diseases or viruses are sent by the DHMH to laboratories that are small businesses, this bill could result in significant opportunities for those businesses.

Analysis

Bill Summary: Specifically, this bill: (1) expands the definition of “body fluids” for testing to include saliva and sputum; (2) requires the actual testing to be for “a contagious disease or virus,” as defined, from “appropriate body fluid samples;” (3) broadens the definition of “law enforcement officer” as covered under these provisions; (4) includes “correctional officers” under the definition of “victim;” (5) requires the DHMH to adopt regulations for providing victims with counseling on contagious diseases and viruses; and (6) expands the number of State and local agencies covered by attendant victim notification requirements.

As under existing provisions, the bill requires that when a victim contacts a State’s Attorney regarding an offense and upon a court order, the convicted person is required to furnish body fluid samples to be tested for the presence of a contagious disease or virus.

In addition, the bill also requires the DHMH to adopt regulations for providing victims with counseling on contagious diseases and viruses.

Current Law: Under applicable current law provisions, the term “body fluids” does not include saliva or sputum; thus a person spat upon by an individual convicted, charged, or granted probation before judgement would not be eligible to have the offending person tested for contagious diseases or viruses. In addition, correctional officers are not currently eligible to have a person tested for contagious diseases or viruses after they have come into contact with the body fluid of an individual convicted, charged, or granted probation before judgement.

Current law provides for the collection of only blood samples and counseling regarding HIV disease, HIV testing, and a referral for appropriate health care and support services.

Background: Prior to 1999, State law was limited to prohibiting a person from committing an assault either in the first degree, which involves causing serious physical injury to another, or in the second degree, which involves a causing a lesser degree of harm, on any employee of the Division of Correction (DOC), the Patuxent Institution, the Baltimore City Detention Center, or any county jail or detention center. The penalty for second degree assault is a fine of not more than \$2,500 or imprisonment for not more than ten years or both.

Chapter 345 of 1999 (SB 377) made it a misdemeanor for an inmate maliciously to cause or attempt to cause employees of the DOC or other State or local incarceration units to come into contact with seminal fluid, urine, feces, or blood, provided that contact with the blood is not the result of a physical injury resulting from physical body contact between the inmate and the employee. The list of employees referenced under this provision relating to assaults by inmates was expanded to include employees of a sheriff’s office. Violators are now

subject to maximum penalties of a fine of \$2,500 and/or imprisonment of ten years. Sentences must run consecutively to any sentence being served at the time of the offense and may not be suspended.

Until the enactment of Chapter 345, a sentence imposed for assaulting any employee of the DOC, the Patuxent Institution, the Baltimore City Detention Center, or any county jail or detention center could not be suspended and had to run consecutively to any sentence that was being served or that had been imposed but was not yet being served at the time of the sentencing.

Prisoners physically lashing out in such a manner as to transfer bodily fluids, either deliberately or inadvertently, has been a continuing problem for law enforcement personnel as well as correctional personnel.

State Fiscal Effect: General fund expenditures could increase by an estimated \$2,411,600 in fiscal 2001, which accounts for the bill's October 1, 2000, effective date. This estimate reflects the costs of contractual nursing hours, physician hours, and commercial laboratory testing for both the Community Public Health Administration and the AIDS Administration. It includes salaries, fringe benefits, ongoing sample collections, counseling, and laboratory tests for all the contagious diseases and viruses included under the bill, including HIV testing, for the expanded population of law enforcement and correctional officers. The information and assumptions used in calculating the estimate are stated below:

- Based on information provided by the Uniform Crime Reporting System and the DOC there are 48,969 arrests annually for crimes involving high risk behaviors for disease transmission (narcotics, rape, prostitution, or sex offenses);
- 7,345 (15%) of the 48,969 arrests would involve a law enforcement officer sustaining an injury resulting from the arrest and requesting testing;

- 1,133 correctional officers (15% of the State and local total of 7,550 correctional officers) would request testing based on an injury sustained in an inmate assault;
- 8,478 law enforcement and correctional officers would request testing, of which 4,239 cases would be approved by the courts;
- 12,717 hours of part-time contractual clinical nursing time (@ \$20.57 per hour) for the Community Public Health Administration statewide would compute to a full-time equivalent of 6.1 nurses annually;
- 4,239 hours of part-time contractual clinical physician time (@ \$40.50 per hour) for the Community Public Health Administration statewide would compute to a full-time equivalent of 2.0 physicians annually;
- commercial lab testing of bodily fluids for the Community Public Health Administration statewide is estimated to cost \$589.30 per case;
- 5,087 additional HIV tests requested by law enforcement and correctional personnel would be ordered to be done by the AIDS Administration; and
- 7,631 additional hours of contractual clinical nursing time (@ \$18.38 per hour) for the AIDS Administration statewide.

Contractual salaries and fringe benefits for nurses and physicians	\$529,078
Commercial laboratory costs	<u>1,882,494</u>
Total FY 2001 State Expenditures	\$ 2,411,572

Future year expenditures reflect (1) part-time contractual salaries with 2.4% annual increases; and (2) 1% annual increases in ongoing commercial laboratory test costs.

The DOC reports that this bill would have minimal effect upon its ongoing disease testing, including HIV and hepatitis as primary diseases, within State correctional facilities. It should also be noted that current law (Health General Article, §18-338) already provides

for HIV testing of inmates in State and local correctional facilities when there has been an “exposure involving an inmate.”

Local Fiscal Effect: It is assumed that 50% of all bodily fluid tests by the Community Public Health Administration (CPHA) for contagious diseases or viruses as well as counseling and notification by that administration would occur in Baltimore City and that 15% of cases would occur in each of Baltimore County and Prince George’s County. Based on incident levels as cited above, under this bill these three jurisdictions would need grant awards for contractual staff from CPHA in fiscal 2001 estimated to be as follows:

Baltimore City	\$216,630
Baltimore County	64,989
Prince George’s County	64,989

It is also assumed that all other subdivisions combined would need an additional \$86,652 for additional contractual staffing costs. All such staffing costs reflect sample collection and counseling costs per incident of three hours of clinical nursing time and one hour of clinical physician time. In addition, the AIDS Administration estimates that another \$210,387 for contractual staffing costs for local health departments statewide would be needed in fiscal 2001 from that administration for the additional tests, counseling, and notifications arising from the bill’s expanded HIV testing requirements. All these costs are reflected under State expenditures, above. While some local health departments could experience some operational or staffing costs above grant levels, such costs are anticipated to be minimal.

It is assumed that any other operational changes or costs resulting from this bill for local law enforcement, local detention centers, or the circuit courts could be handled with the existing budgeted resources of local governments.

Additional Information

Prior Introductions: None.

Cross File: Senate Bill 7 (Senator DeGrange) - Judicial Proceedings.

Information Source(s): Department of Health and Mental Hygiene (AIDS Administration and Community Public Health Administration), Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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