

HOUSE BILL NO. 1221

Introduced by

Representatives Grande, Hawken, Meier, Potter

Senators Christenson, J. Lee

- 1 A BILL for an Act to create and enact chapter 23-07.8 of the North Dakota Century Code,
2 relating to procedures for emergency medical services providers and other public employees to
3 require contagious disease testing; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 23-07.8 of the North Dakota Century Code is created and
6 enacted as follows:

7 **23-07.8-01. Definitions.** In this chapter, unless context otherwise requires, terms have
8 the same meaning as defined in sections 23-07.3-01 and 23-07.5-01.

9 **23-07.8-02. Procedures following an exposure by arrestee or criminal - Penalty.**

- 10 1. An emergency medical services provider, correctional facility employee, court
11 employee, or individual making a lawful arrest may proceed under this chapter
12 notwithstanding chapter 23-07.3 or 23-07.5 if that person has received training
13 approved by the department in the transmission of blood-borne diseases.
- 14 2. An emergency medical services provider, correctional facility employee, court
15 employee, or individual making a lawful arrest who has received the training
16 required under subsection 1 and who while in the scope of employment determines
17 that that individual has sustained a percutaneous, mucous membrane, or open
18 wound exposure to the blood or body fluids of an arrestee, inmate, parolee, or
19 probationer may request that the arrestee, inmate, parolee, or probationer be
20 tested for human immunodeficiency virus infection, hepatitis B virus infection,
21 hepatitis C virus infection, or all three infections pursuant to this section.
- 22 3. An employee who desires to make a request described in subsection 2 shall make
23 the request to the employer in writing on a form provided by the state department
24 of health no later than seventy-two hours after the exposure. The request form

1 must be dated and contain, at a minimum, the name and address of the employee
2 making the request and a description of the employee's exposure to the blood or
3 other body fluids of the arrestee, inmate, parolee, or probationer. The request form
4 must contain a statement that the requester is required by law to keep the identity
5 of the arrestee, inmate, parolee, or probationer confidential. The request form may
6 not contain information that would identify the arrestee, inmate, parolee, or
7 probationer by name, except if necessary to identify the individual for purposes of
8 testing under this section.

9 4. The employer shall accept the requester's description of the requester's exposure
10 to blood or other body fluids as described in subsection 2. The employer shall
11 have a health care provider test for human immunodeficiency virus infection,
12 hepatitis B virus infection, hepatitis C virus infection, or any combination of the
13 three infections. If the test subject consents to the performance of the tests named
14 in the request, the employer shall transport the test subject to the health care
15 provider or have a health care provider come to where the test subject is held to
16 take a blood or other body fluid sample for testing. If the test subject refuses to
17 consent to a test in the request, the employer shall proceed with the procedure in
18 section 23-07.8-03.

19 5. A health care provider that performs one or more tests under this section may
20 charge the requester a reasonable and customary charge for each test. The
21 requester is responsible for payment of the charges if the charges are not payable
22 by the requester's employer, pursuant to an agreement between the requester and
23 the employer, or by the requester's health care payment or benefits plan.

24 6. On a form provided by the department, a health care provider that performs a test
25 under this section shall notify the requester of the human immunodeficiency virus
26 test, hepatitis B virus test, or hepatitis C virus test results, whether positive or
27 negative, within two days after the test results are obtained by the health care
28 provider. The notification must be transmitted directly to the requester or, upon the
29 request of the requester, to the requester's primary care physician or to another
30 health professional designated by the requester. The notification required under
31 this subsection must include an explanation of the confidentiality requirements

required by law. The notification required under this section shall contain a statement recommending that the requester undergo a human immunodeficiency virus test, a hepatitis B virus test, or a hepatitis C virus test, or any combination of these tests.

7. The notice required under subsection 6 may not contain information that would identify the arrestee, inmate, parolee, or probationer, who tested positive or negative for human immunodeficiency virus, hepatitis B virus, or hepatitis C virus. The information contained in the notice is confidential and may be disclosed only to the extent consistent with the authorized purpose for which the information was obtained.

8. In addition to any other penalty provided by law, a person who discloses information in violation of this section is guilty of a class C felony.

9. A health care provider shall report to the department each test result obtained under this section that indicates an individual is infected with the human immunodeficiency virus.

10. A person that makes a good-faith effort to comply with subsections 1 through 6 is immune from civil liability or criminal penalty based on compliance with or failure to comply with those subsections.

27-07.8-03. Lack of consent procedure.

1. If an individual does not consent to testing, a requester may petition the court to order the test of an arrestee, inmate, parolee, or probationer for human immunodeficiency virus infection, hepatitis B virus infection, or hepatitis C virus infection, or any combination of these infections.

2. A petition must include substantially the same information contained in the request to the employer, the reasons for the petitioner's determination that the exposure described in the request could have transmitted human immunodeficiency virus, hepatitis B virus, or hepatitis C virus, or any combination of those viruses, along with the date and place the petitioner received the training in the transmission of blood-borne diseases, the fact that the arrestee, inmate, parolee, or probationer has refused to undergo tests, the type of relief sought, and a request for a hearing on the allegations in the petition. Upon receiving the petition, the court may issue

- 1 an order confining the individual to be tested until the hearing or an order
- 2 establishing reasonable security for that individual's attendance at the hearing.
- 3 This order may be modified or extended if testing is ordered. The court shall hold a
- 4 hearing on the petition within twenty-four hours after the court receives a petition.
- 5 The record of any court hearing conducted under this section is confidential.
- 6 3. Upon a finding by the court that the petitioner has proven the allegations set forth
- 7 in the petition, the court may issue an order requiring the proposed test subject to
- 8 undergo a test for human immunodeficiency virus infection, hepatitis B virus
- 9 infection, or hepatitis C virus infection, or any combination of these infections.
- 10 4. At minimum, the court shall order two tests at different times. The court shall order
- 11 the first sample for a test to be taken within ten days of the order and the second
- 12 sample for a test to be taken not earlier than five months nor later than six months
- 13 after exposure.