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DESCRIPTION

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10/2/03

2003 HOUSE HUMAN SERVICES

HB 1221

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Deanna Holladay
Operator's Signature

10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1221

House Human Services Committee

☐ Conference Committee

Hearing Date January 22, 2003

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|------------|
| 2 | x | | 0.1 - 23.0 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Sharon Leifrau</i> | | | |

Rep. Grande appeared as prime-sponsor stating this bill will be rewritten and the purpose behind the bill is that when the police officers are making any type of arrest and are either bitten, spat on or urinated on, in the process of that we have not given them the opportunity to know if they have been exposed to a contagious disease. Only after the arrest, are they given that opportunity.

Chris Magnus, Fargo Police Chief appeared in support stating this creates a process to train people as to exposure and getting tested, treated and getting the other person to test, etc. Creates process of getting a hearing held within 24 hours and if probable cause, must be tested. There is a need for this.

Concerns of the committee stating testing is limited to HIV and Hepatitis viruses and wondered about terrorism activity where there is a live virus of some sort and lack of consent procedure.

Bob Benson, Bismarck PD representing the ND Fraternal Order of Police, appeared in support stating they support immediate testing.

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Page 2
House Human Services Committee
Bill/Resolution Number HB 1221
Hearing Date January 22, 2003

Mike Mullen, Assistant Attorney General appeared neutral on the on neutral stating there are a number of technical issues where the bill can be clarified and change the wording to make sure its broader.

Questions of the committee regarding adding consent forms in HIV to extend over to contagious diseases and concerns with confidentiality and the fact that 2 tests are required for HIV 6 months apart and then nothing may show up until the 2nd test.

Dr. Larry Schierly, State Edemiologist, appeared neutral with some support in rewriting the bill.

Closed the hearing.

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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1221

House Human Services Committee

☐ Conference Committee

Hearing Date January 27, 2003

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|-------------|
| 2 | | x | 30.2 - 61.5 |
| 3 | x | | 0.1 - 18.7 |
| Committee Clerk Signature <i>Sharon R. Crawford</i> | | | |

Minutes: Committee Work

Edward Erickson of the Attorney General's Office appeared neutral and to explain the bill and its changes.

Rep. Price had concerns that someone would be out on bail before processing could even start.

Rep. Porter asked about accidental exposure and what happens if a person fails to give consent.

Mr. Erickson stated that a Judge is on warrant issue all the time, all hours of the day or night.

Concerns of the committee regarding when a subject does not consent to testing and then have to deal with in court or to petition the court. Also concerned with religion reasons as being a refusal to be tested.

Mr. Erickson stated that this is a hog house amendment and basically is getting the testing done quickly, we must follow due process and protect the defendants rights also.

Rep. Porter is bothered with due process and the hoops we need to go through or fall through when we have a person who has been exposed through his line of duty and may have to wait and

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Diana H. Bell
Operator's Signature

1/2/03
Date

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House Human Services Committee

Bill/Resolution Number HB 1221

Hearing Date January 27, 2003

go home not knowing what diseases he may or may not be carrying and potentially expose their families, children, spouse, friends, relatives, whomever to something that at the time of the exposure if the physician felt that there was insignificant exposure, and that person does not consent to the drawing of their blood to test for that exposure, then I feel it should be in the bill that the physician makes that determination and can just draw the blood and have it tested. Also its a Class C felony if the individual reveals any medical information about that person, saying he's tested positive for HIV or Hepatitis positive and they say anything about it, its a Class C felony, they can't just go around blabbing it.

Rep. Devlin wondered about removing the due process section.

Response by Mr. Erickson is that it would make the law more difficult to enforce if we had a law that did not provide for the minimum due process required by the Court. The whole thing would be thrown out.

Adjourned for the day.

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1/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1221

House Human Services Committee

☐ Conference Committee

Hearing Date January 28, 2003

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|-----------|
| 3 | x | | 4.9 - 7.4 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Annam Reifrow</i> | | | |

Minutes: Committee Work

Received new amendment from Mr. Erickson of the Attorney General's Office.

Rep. Price noted the changes are on page 3.

Rep. Porter made a motion to move the amendments, second by Rep. Kreidt.

VOTE: 13 - 0 - 0 Amendment Passed

Rep. Pollert made a motion for DO PASS as Amended, second by Rep. Potter.

VOTE: 12 - 0 - 1 Rep. Uglem will carry the bill.

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10/2/03
Date

FISCAL NOTE
Requested by Legislative Council
01/13/2003

Bill/Resolution No.: HB 1221

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2001-2003 Biennium | | 2003-2005 Biennium | | 2005-2007 Biennium | |
|----------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

| 2001-2003 Biennium | | | 2003-2005 Biennium | | | 2005-2007 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

HB 1221 allows emergency medical services providers and other public employees who may have been exposed to a blood-borne disease while working with an arrestee or criminal, to have that person tested. The Health Department Laboratory will provide this testing for documented exposures at no cost utilizing existing staff and supplies.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

| | | | |
|---------------|----------------|----------------|------------|
| Name: | Kathy J. Albin | Agency: | Health |
| Phone Number: | 328.4542 | Date Prepared: | 01/14/2003 |

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30359.0102
Title.0200

Prepared by the Legislative Council staff for
House Human Services
January 28, 2003

VR
1/30/03
1 of 6

HOUSE AMENDMENTS TO HOUSE BILL NO. 1221 HS 1-31-03

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 23-07.3-01 and 23-07.3-02, subsections 1 and 10 of section 23-07.5-01, and subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code, relating to testing for contagious diseases; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.3-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.3-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Contagious disease" means ~~the interruption, cessation, or disorder of body functions, systems, or organs transmissible by association with the sick or their secretions or excretions, excluding the common cold a reportable condition or disease under section 23-07-01.~~
2. "Department" means the state department of health.
3. ~~"Emergency medical services provider"~~ Exposed individual means a human being who had a significant exposure with a test subject and who is ~~a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or other person an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including an individual rendering aid under chapter 32-03.1.~~
4. "Licensed facility" means a hospital, nursing home, dialysis center, or any entity licensed by the state to provide medical care.
5. "Significant exposure" means:
 - a. Contact of broken skin or mucous membrane with a patient's or other individual's blood or bodily fluids other than tears or perspiration;
 - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or
 - c. Exposure that occurs by any other method of transmission defined by the department as a significant exposure.
6. "Test subject" means the individual to be tested after a significant exposure with another individual.

SECTION 2. AMENDMENT. Section 23-07.3-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.3-02. Procedures following significant exposure - Penalty.

1. If an ~~emergency medical services provider~~ exposed individual has a significant exposure ~~in the process of caring for a patient with a test~~

Page No. 1

30359.0102

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subject, the emergency medical services provider exposed individual shall document that exposure. The documentation must be on forms approved by the department, and in the manner and time designated by the department conducted in accordance with the exposed individual's employer's occupational health program or through the exposed individual's health care provider.

2. Upon notification of a significant exposure, or upon receipt of the documentation described in subsection 1, the attending physician exposed individual, that individual's employer, or the exposed individual's health care provider shall request the patient test subject to consent to testing to determine the presence of any contagious disease that may be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. The patient test subject must be informed that the patient test subject may refuse to consent to the test and, if the patient test subject refuses, that the fact of the patient's refusal will be forwarded to the emergency medical services provider exposed individual. If the patient test subject consents to testing, the attending physician test subject shall test be tested for the presence of contagious disease diseases that may be transmitted by that exposure. The testing must be at the expense of the exposed individual or that individual's employer. If the test subject is convicted of a crime relating to the significant exposure or the significant exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, then a court may order the test subject to pay for the testing.
3. If a patient test subject who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained from the patient's next of kin or legal guardian in accordance with section 23-12-13. If a patient test subject who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received the patient, testing for the presence of any contagious disease that could be transmitted by that exposure must be conducted. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases.
4. The attending physician health care provider that conducted the test under this section shall report the results of the test to the department and to the emergency medical services provider exposed individual who reported the significant exposure. The physician health care provider shall use a case number instead of the patient's test subject's name in making a report to the emergency medical services provider exposed individual who requested the test to ensure the confidentiality of the patient's test subject's identity. All positive test results must be reported to the department in accordance with section 23-07-02.
5. A health care provider or an exposed individual who has had a significant exposure with a test subject may subject that individual's blood to a test for the presence of a contagious disease or diseases, without the test subject's consent if all of the following apply:
 - a. A sample of the test subject's blood has been drawn for other purposes and is available to be used to test for the presence of contagious disease.
 - b. The exposed individual's personal physician, based on information provided to the physician, determines and certifies in writing that the individual had a significant exposure. The determination of which

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tests are required must be made by a licensed physician with expertise in infectious diseases. The certification must accompany the request for testing and disclosure.

- c. The test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
 - d. Before testing, the test subject is informed, while competent and conscious, that the test subject's blood may be tested for the presence of contagious disease; that the test results may not be disclosed to anyone without the test subject's consent, except to the exposed individual and the department; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the identity to any other person, except for the purpose of having the test performed; and that a record of the test results may be placed in the test subject's medical record, and if not in the medical record, may be kept only if the record does not reveal the test subject's identity. A person who discloses the identity of an individual being tested is guilty of a class C felony. Each exposed individual who has had a significant exposure and to whom test results are disclosed shall first sign a document indicating the exposed individual's understanding that the exposed individual may not disclose the information and that disclosing the information is a class C felony.
6. If the test subject does not consent to testing or if consent has not been obtained in accordance with subsection 3, then an exposed individual may petition an appropriate district court for issuance of an order directing the test subject to be tested for the presence of one or more specified contagious diseases that could be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. Upon receiving the petition, the court may issue an order confining the test subject until the hearing or an order establishing reasonable security for that individual's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within three days of the date the court receives the petition. The record of a court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:
- a. The test subject has been requested to consent to the testing and has refused to be tested or if consent for testing has not been obtained under subsection 3;
 - b. The court finds probable cause to believe that the individual petitioning for the testing had a significant exposure with the test subject;
 - c. The petition substitutes a pseudonym for the true name of the test subject;
 - d. The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the test subject is not already a party to the proceeding;
 - e. The proceedings are conducted in camera unless the test subject agrees to a hearing in open court; and
 - f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the

Deanna Hallmark
Operator's Signature

10/2/03
Date

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information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

SECTION 3. AMENDMENT. Subsections 1 and 10 of section 23-07.5-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "Emergency medical services provider Exposed individual" means a human being who had a significant exposure with another individual who is subject to testing and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or other person an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person rendering aid under chapter 32-03.1.
10. "Universal precautions" means measures that a health care provider, emergency medical services provider technician, exposed individual, or a person an individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the federal centers for disease control and prevention concerning human immunodeficiency virus transmission in United States public health care settings service to prevent transmission of disease.

SECTION 4. AMENDMENT. Subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code are amended and reenacted as follows:

3. A health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and an exposed individual who has had a significant exposure with the patient another individual may subject the patient's that individual's blood to a test for the presence of the human immunodeficiency virus, without the patient's that individual's consent, if all of the following apply:
 - a. A blood sample of the patient's blood individual who is the test subject has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
 - b. The patient's exposed individual's personal physician, based on information provided to the physician, determines and certifies in writing that the individual has had a significant exposure. The certification must accompany the request for testing and disclosure.
 - c. The patient test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
 - d. Before testing, the patient test subject is informed, while competent and conscious, that the patient's test subject's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one including the patient without the patient's test subject's consent, except to the exposed individual who has had a significant exposure and the department; that if the exposed individual who has had a significant exposure knows the identity of the patient test subject, that the exposed individual may not disclose the identity to any other person, except for the purpose of having the test performed; and that a record of the test results may be placed in the individual's test subject's medical record, and if not in the medical record, may be kept only if the record does not reveal the patient's test subject's identity. A person who discloses the identity of a patient test subject under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C

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felony. Each exposed individual who has had a significant exposure and to whom test results are disclosed ~~must~~ shall first sign a document indicating ~~that the exposed~~ individual's understanding that the exposed individual may not disclose the information and that disclosing the information constitutes a class C felony.

5. If ~~a person~~ an individual who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If ~~a person~~ an individual who is the subject of a reported significant exposure dies without an opportunity to consent to testing ~~prior to admission to, or discharge or release from, the facility that received that person~~, collection of appropriate specimens and testing for the presence of bloodborne pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C infection must be conducted within twenty-four hours. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the person individual who experienced the significant exposure. If a facility that received the person individual who died fails to test for the presence of bloodborne pathogens as required under this subsection, the facility shall provide the physician providing care for the exposed ~~emergency medical services provider, individual or health care provider, or person who rendered aid~~ under chapter 22-03-4 testing results of any bloodborne pathogen present in any medical records of the dead person which are in the facility's control within twenty-four hours. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the person who died shall attempt to obtain testing results of bloodborne pathogens of the deceased within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the person individual who experienced the significant exposure.
6. Any testing done pursuant to subsection 3, 4, or 5 may be conducted in the most expedient manner possible. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate district court for issuance of an order directing the another individual, patient, or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the person test subject to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within ~~five~~ three days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:
- a. The other individual, patient, or provider has been requested to consent to testing and has refused to be tested and a sample of the ~~patient's or provider's test subject's~~ blood is not available to be used to test for the human immunodeficiency virus;
 - b. The court finds probable cause to believe that the person petitioning for the testing has had a significant exposure with the ~~person to be tested~~ test subject;

- 6086
- c. The petition substitutes a pseudonym for the true name of the person to be tested test subject;
 - d. The court provides the person to be tested test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
 - e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and
 - f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure."

Renumber accordingly

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12/03
Date

Date: January 28, 2003
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1221

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

DP as Amended

Motion Made By

Kreidt

Seconded By

Wieland

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------------|-----|----|---------------------|-----|----|
| Rep. Clara Sue Price - Chair | ✓ | | Rep. Sally Sandvig | ✓ | |
| Rep. Bill Devlin, Vice-Chair | | ✓ | Rep. Bill Amerman | ✓ | |
| Rep. Robin Weisz | | ✓ | Rep. Carol Niemeier | ✓ | |
| Rep. Vonnie Pietsch | ✓ | | Rep. Louise Potter | ✓ | |
| Rep. Gerald Uglem | ✓ | | | | |
| Rep. Chet Pollert | ✓ | | | | |
| Rep. Todd Porter | ✓ | | | | |
| Rep. Gary Kreidt | ✓ | | | | |
| Rep. Alon Wieland | ✓ | | | | |
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Total (Yes) 11 No 2

Absent 0

Floor Assignment Rep. Wieland

If the vote is on an amendment, briefly indicate intent:

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Dorena Holbrook

Date

1/2/03

REPORT OF STANDING COMMITTEE (410)
January 31, 2003 9:28 a.m.

Module No: HR-19-1419
Carrier: Wieland
Insert LC: 30359.0102 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1221: Human Services Committee (Rep. Price, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1221 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 23-07.3-01 and 23-07.3-02, subsections 1 and 10 of section 23-07.5-01, and subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code, relating to testing for contagious diseases; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.3-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.3-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Contagious disease" means the interruption, cessation, or disorder of body functions, systems, or organs transmissible by association with the sick or their secretions or excretions, excluding the common cold a reportable condition or disease under section 23-07-01.~~
2. "Department" means the state department of health.
3. ~~"Emergency medical services provider~~ Exposed individual means a human being who had a significant exposure with a test subject and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or other person an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including an individual rendering aid under chapter 32-03.1.
4. "Licensed facility" means a hospital, nursing home, dialysis center, or any entity licensed by the state to provide medical care.
5. "Significant exposure" means:
 - a. Contact of broken skin or mucous membrane with a patient's or other individual's blood or bodily fluids other than tears or perspiration;
 - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or
 - c. Exposure that occurs by any other method of transmission defined by the department as a significant exposure.
6. "Test subject" means the individual to be tested after a significant exposure with another individual.

SECTION 2. AMENDMENT. Section 23-07.3-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.3-02. Procedures following significant exposure - Penalty.

1. If an emergency medical services provider exposed individual has a significant exposure in the process of caring for a patient with a test subject, the emergency medical services provider exposed individual shall document that exposure. The documentation must be on forms approved by the department, and in the manner and time designated by the department conducted in accordance with the exposed individual's employer's occupational health program or through the exposed individual's health care provider.
2. Upon notification of a significant exposure, or upon receipt of the documentation described in subsection 1, the attending physician exposed individual, that individual's employer, or the exposed individual's health care provider shall request the patient test subject to consent to testing to determine the presence of any contagious disease that may be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. The patient test subject must be informed that the patient test subject may refuse to consent to the test and, if the patient test subject refuses, that the fact of the patient's refusal will be forwarded to the emergency medical services provider exposed individual. If the patient test subject consents to testing, the attending physician test subject shall test be tested for the presence of contagious disease diseases that may be transmitted by that exposure. The testing must be at the expense of the exposed individual or that individual's employer. If the test subject is convicted of a crime relating to the significant exposure or the significant exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, then a court may order the test subject to pay for the testing.
3. If a patient test subject who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained from the patient's next of kin or legal guardian in accordance with section 23-12-13. If a patient test subject who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received the patient, testing for the presence of any contagious disease that could be transmitted by that exposure must be conducted. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases.
4. The attending physician health care provider that conducted the test under this section shall report the results of the test to the department and to the emergency medical services provider exposed individual who reported the significant exposure. The physician health care provider shall use a case number instead of the patient's test subject's name in making a report to the emergency medical services provider exposed individual who requested the test to ensure the confidentiality of the patient's test subject's identity. All positive test results must be reported to the department in accordance with section 23-07-02.
5. A health care provider or an exposed individual who has had a significant exposure with a test subject may subject that individual's blood to a test for the presence of a contagious disease or diseases, without the test subject's consent if all of the following apply:

Dan Hall
Operator's Signature

10/2/03
Date

- a. A sample of the test subject's blood has been drawn for other purposes and is available to be used to test for the presence of contagious disease.
 - b. The exposed individual's personal physician, based on information provided to the physician, determines and certifies in writing that the individual had a significant exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. The certification must accompany the request for testing and disclosure.
 - c. The test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
 - d. Before testing, the test subject is informed, while competent and conscious, that the test subject's blood may be tested for the presence of contagious disease; that the test results may not be disclosed to anyone without the test subject's consent, except to the exposed individual and the department; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the identity to any other person, except for the purpose of having the test performed; and that a record of the test results may be placed in the test subject's medical record, and if not in the medical record, may be kept only if the record does not reveal the test subject's identity. A person who discloses the identity of an individual being tested is guilty of a class C felony. Each exposed individual who has had a significant exposure and to whom test results are disclosed shall first sign a document indicating the exposed individual's understanding that the exposed individual may not disclose the information and that disclosing the information is a class C felony.
6. If the test subject does not consent to testing or if consent has not been obtained in accordance with subsection 3, then an exposed individual may petition an appropriate district court for issuance of an order directing the test subject to be tested for the presence of one or more specified contagious diseases that could be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. Upon receiving the petition, the court may issue an order confining the test subject until the hearing or an order establishing reasonable security for that individual's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within three days of the date the court receives the petition. The record of a court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:
- a. The test subject has been requested to consent to the testing and has refused to be tested or if consent for testing has not been obtained under subsection 3;
 - b. The court finds probable cause to believe that the individual petitioning for the testing had a significant exposure with the test subject;

- c. The petition substitutes a pseudonym for the true name of the test subject;
- d. The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the test subject is not already a party to the proceeding;
- e. The proceedings are conducted in camera unless the test subject agrees to a hearing in open court; and
- f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

SECTION 3. AMENDMENT. Subsections 1 and 10 of section 23-07.5-01 of the North Dakota Century Code are amended and reenacted as follows:

- 1. "Emergency medical services provider Exposed individual" means a human being who had a significant exposure with another individual who is subject to testing and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or other person an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person rendering aid under chapter 32-03.1.
- 10. "Universal precautions" means measures that a health care provider, emergency medical services provider technician, exposed individual, or a person an individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the federal centers for disease control and prevention concerning human immunodeficiency virus transmission in United States public health care settings service to prevent transmission of disease.

SECTION 4. AMENDMENT. Subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code are amended and reenacted as follows:

- 3. A health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and an exposed individual who has had a significant exposure with the patient another individual may subject the patient's that individual's blood to a test for the presence of the human immunodeficiency virus, without the patient's that individual's consent, if all of the following apply:
 - a. A blood sample of the patient's blood individual who is the test subject has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
 - b. The patient's exposed individual's personal physician, based on information provided to the physician, determines and certifies in writing that the individual has had a significant exposure. The certification must accompany the request for testing and disclosure.
 - c. The patient test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.

- d. Before testing, the patient test subject is informed, while competent and conscious, that the patient test subject's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one ~~including the patient~~ without the patient's test subject's consent, except to the exposed individual who has had a significant exposure and the department; that if the exposed individual who has had a significant exposure knows the identity of the patient test subject, that the exposed individual may not disclose the identity to any other person, except for the purpose of having the test performed; and that a record of the test results may be placed in the individual's test subject's medical record, and if not in the medical record, may be kept only if the record does not reveal the patient's test subject's identity. A person who discloses the identity of a patient test subject under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C felony. Each exposed individual who ~~has~~ had a significant exposure and to whom test results are disclosed ~~must~~ shall first sign a document indicating that the exposed individual's understanding that the exposed individual may not disclose the information and that disclosing the information constitutes a class C felony.
5. If ~~a person~~ an individual who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If ~~a person~~ an individual who is the subject of reported significant exposure dies without an opportunity to consent to testing ~~prior to admission to, or discharge or release from, the facility that received that person~~, collection of appropriate specimens and testing for the presence of bloodborne pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C infection must be conducted within twenty-four hours. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the ~~person~~ individual who experienced the significant exposure. If a facility that received the ~~person~~ individual who died fails to test for the presence of bloodborne pathogens as required under this subsection, the facility shall provide the physician providing care for the ~~exposed emergency medical services provider, individual or health care provider, or person who rendered aid under chapter 32-03.1~~ testing results of any bloodborne pathogen present in any medical records of the dead person which are in the facility's control within twenty-four hours. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the person who died shall attempt to obtain testing results of bloodborne pathogens of the deceased within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the ~~person~~ individual who experienced the significant exposure.
6. Any testing done pursuant to subsection 3, 4, or 5 may be conducted in the most expedient manner possible. An individual who ~~has~~ had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate district court for issuance of an order directing the another individual, patient, or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn

REPORT OF STANDING COMMITTEE (410)
January 31, 2003 9:26 a.m.

Module No: HR-19-1419
Carrier: Wieland
Insert LC: 30359.0102 Title: .0200

blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the ~~person~~ test subject to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within ~~five~~ three days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:

- a. The other individual, patient, or provider has been requested to consent to testing and has refused to be tested and a sample of the ~~patient's or provider's~~ test subject's blood is not available to be used to test for the human immunodeficiency virus;
- b. The court finds probable cause to believe that the person petitioning for the testing ~~has~~ had a significant exposure with the ~~person-to-be tested~~ test subject;
- c. The petition substitutes a pseudonym for the true name of the ~~person to-be-tested~~ test subject;
- d. The court provides the ~~person-to-be-tested~~ test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
- e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and
- f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure."

Renumber accordingly

2003 SENATE HUMAN SERVICES

HB 1221

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Deanna G. Galt
Operator's Signature

10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. EHB 1221

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 5, 2003

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|-------------|
| 1 | | X | 1191 - 2263 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Donna Kramer, Clerk</i> | | | |

Minutes:

SENATOR JUDY LEE opened the public hearing on EHB 1221 relating to testing for contagious diseases; and to provide a penalty.

LT. PAUL D. LANEY, of the Fargo Police Department, testified in place of the chief, in support of EHB 1221. Asked committee to imagine a young police officer who is married with two children who went on a call for service. The call is a domestic violence situation. Due to injuries to the spouse, the arrest of the male is required. During the ensuing arrest, the subject becomes combative, he spits in the face of this officer, and during the struggle of being handcuffed he bites the officer, as well. The subject does not answer questions as to whether he has a contagious disease. This is a true story. ... For us, a big thing ... exposure to a contagious disease. ... (Meter # 1235 - 1421)

REPRESENTATIVE GRANDE introduced the bill. She brought the bill before the committee in behalf of the Fargo Police Department Chief and his request to do this. This bill is a complete

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10/2/03
Date

Page 2
Senate Human Services Committee
Bill/Resolution Number EHB 1221
Hearing Date March 5, 2003

hog house. ... Worked together with the Health Department, Police Department and various other agencies to make sure we had a very workable piece here. Referring to other contagious diseases ... exposure to police officers not in an arrest situation, this gives them the opportunity to find out. (Meter # 1577 - 1864)

SENATOR FAIRFIELD: What exactly does this do on top of what we have already done?

REPRESENTATIVE GRANDE: It is including some of the law enforcement. What we had focused on last time were the emergency personnel. ... Continued discussion regarding expanding to any one - Good Samaritan portion. ... (Meter #1735 - 1900)

SENATOR LEE: Bill more comprehensive. (Meter #1901 - 1945)

ARNOLD THOMAS, President of ND Healthcare, testified in support of the bill. When we first entered into the business of trying to help people determine if they had been exposed to contagious diseases a number of sessions ago, our focus was on hospital employees. ... Recognize more people involved - emergency medical technicians ... law enforcement. ... (Meter #2004 - 2100)

JOHN OLSON, representing the ND Peace Officers Association, testified in support of the bill. (Meter #2100 - 2123)

MIKE MULLEN, with the Attorney General's office, asked permission for a day to go through language to conforms with major HIPAA language.

SENATOR LEE: Closed public hearing at this time. (Meter # 2263)

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1438 and HB 1221

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 11, 2003

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|------------|
| 3 | X | | 4550 - end |
| | | X | 0 - 2050 |
| Committee Clerk Signature <i>Donna Kramer, Clerk</i> | | | |

Minutes:

SENATOR JUDY LEE opened the committee discussion on HB 1438 relating to the disclosure of health information and HB 1221 relating to testing for contagious diseases.

MIKE MULLEN, from the Attorney General's office, came to talk to the committee about the amendments to HB 1438. He had made changes to match up language with both bills. He used language to match the HIPAA rule and matches ND law.

SENATOR LEE asked the committee for questions and discussion on the amendments.

SENATOR BROWN made a motion to move the amendments for HB 1438.

SENATOR ERBELE seconded the motion.

Roll call was read. 6 yeas 0 nays. All in favor.

MIKE MULLEN further explained the "privacy rule" ... federal government created rule ...

indirect way to try to control parties ... statutory provision is simply to eliminate some of the paperwork ...

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10/2/03
Date

Page 2

Senate Human Services Committee

Bill/Resolution Number HB1438 and HB 1221

Hearing Date March 11, 2003

SENATOR LEE stated that the discussion we had about information concerning physician's decisions ... that didn't deal with a couple of pharmacists ... that it is not the pharmacists that are releasing information - it is the software vendors who had provided the software for the electronic billing ... transmitted from the pharmacy to Blue Cross or whomever and they can pick it off. This kind of thing would cover that. ... (Meter # 4550 -end)

SENATOR FISCHER stated that this has happened - example given. (Tape 3, Side B, Meter # 37 - 85)

SENATOR LEE quoted Mr. Jorde about information being peeled off without anybody knowing it and pharmacies will purchase the software programs for doing this work, and (Senator Lee said I don't know if any in ND do this) the pharmacies can pay a lower price for their software if the software company can peel off that information and sell it. "other little fingers in this loop" ... (Meter #86 - 160)

SENATOR FISCHER: Mentioned internet hub ... In HIPAA, do they provided for those kind of prohibitions? (Meter #161- 218)

MIKE MULLEN: Yes, to some extent ... Business Associate Agreement ... security rule ... safe guard medical information ... encryption ... (Meter # 261 - 496)

Continued committee discussion regarding suspicious mail ... credit cards ... (Meter # 497 - 600)

SENATOR LEE stated that Mr. Boeck from Protection & Advocacy left amendments that he wants to be here to discuss. ... Committee discussion to continue tomorrow morning at 8:30 am. (Meter # 601 - 1040)

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10/2/03
Date

Page 3

Senate Human Services Committee

Bill/Resolution Number HB1438 and HB 1221

Hearing Date March 11, 2003

MIKE MULLEN reviewed the proposed amendments to HB 1221 regarding law enforcements exposed to HIV. Amends some of the same sections related to testing individuals for HIV as related to HB 1438. ... Amend terminology so that it matched up ... reads same as HB 1438 ...

(Tape 3, Side B, Meter # 1305 - 1908)

SENATOR LEE: Asked for any questions and motion.

SENATOR FISCHER moved that we accept the amendments on HB 1221

SENATOR ERBELE seconded the motion.

Roll call was read. 6 yeas 0 nays.

SENATOR FISCHER made a motion to DO PASS AS AMENDED.

SENATOR ERBELE seconded the motion.

Roll call was read. 6 yeas 0 nays.

SENATOR BROWN will be the carrier. (Meter # 2050)

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Donna Ball
Operator's Signature

10/2/03
Date

30359.0201
Title.0300

Adopted by the Human Services Committee
March 11, 2003

JB
3-18-03

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1221

Page 6, line 23, replace "and" with an underscored comma and after "department" insert "and any other person authorized by law"

Page 6, line 29, overstrike "A person who discloses the identity of a"

Page 6, line 30, remove "test subject" and overstrike "under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C"

Page 6, line 31, overstrike "felony."

Page 7, line 18, after "subsection" insert "because the facility was not aware of the exposure or it was not reasonably possible to conduct testing"

Page 7, line 29, overstrike "may" and insert immediately thereafter "must" and overstrike "the most" and insert immediately thereafter "a reasonably"

Page 7, line 30, overstrike "possible" and remove the overstrike over "has"

Renumber accordingly

Date: 03-11-03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1221

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Accept Amendment

Motion Made By Sen. Fischer Seconded By Sen. Erbele

| Senators | Yes | No | Senators | Yes | No |
|-----------------------------------|-----|----|----------|-----|----|
| Senator Judy Lee - Chairman | ✓ | | | | |
| Senator Richard Brown - V. Chair. | ✓ | | | | |
| Senator Robert S. Erbele | ✓ | | | | |
| Senator Tom Fischer | ✓ | | | | |
| Senator April Fairfield | ✓ | | | | |
| Senator Michael Polovitz | ✓ | | | | |
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Total (Yes) 6 No 0

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

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10/2/03
Date

Date: 03-11-03
Roll Call Vote #: (2)

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1221

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30359.0201

Action Taken Do Pass

Motion Made By Sen. Fischer Seconded By Sen. Erbele

| Senators | Yes | No | Senators | Yes | No |
|-----------------------------------|-----|----|----------|-----|----|
| Senator Judy Lee - Chairman | ✓ | | | | |
| Senator Richard Brown - V. Chair. | ✓ | | | | |
| Senator Robert S. Erbele | ✓ | | | | |
| Senator Tom Fischer | ✓ | | | | |
| Senator April Fairfield | ✓ | | | | |
| Senator Michael Polovitz | ✓ | | | | |
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Total (Yes) 6 No 0

Absent _____

Floor Assignment Sen. ~~Fischer~~ Brown

If the vote is on an amendment, briefly indicate intent:

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Doreen Holbrook 10/2/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
March 24, 2003 3:55 p.m.

Module No: SR-52-5598
Carrier: Brown
Insert LC: 30359.0201 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1221, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1221 was placed on the Sixth order on the calendar.

Page 6, line 23, replace "and" with an underscored comma and after "department" insert ", and any other person authorized by law"

Page 6, line 29, overstrike "A person who discloses the identity of a"

Page 6, line 30, remove "test subject" and overstrike "under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C"

Page 6, line 31, overstrike "felony."

Page 7, line 18, after "subsection" insert "because the facility was not aware of the exposure or it was not reasonably possible to conduct testing"

Page 7, line 29, overstrike "may" and insert immediately thereafter "must" and overstrike "the most" and insert immediately thereafter "a reasonably"

Page 7, line 30, overstrike "possible" and remove the overstrike over "has"

Renumber accordingly

2003 TESTIMONY

HB 1221

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Deanna Hall
Operator's Signature

10/2/03
Date

PROPOSED AMENDMENTS TO HOUSE BILL 1221

Page 1, line 1, after "A Bill" replace the remainder of the bill with "for an Act to amend and reenact sections 23-07.3-01, 23-07.3-02, subsections 1 and 10 of section 23-07.5-01 and subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code relating to testing for contagious diseases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA

SECTION 1. AMENDMENT. Section 23-07.3-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.3-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Contagious disease" means the interruption, cessation, or disorder of body functions, systems, or organs transmissible by association with the sick or their secretions or excretions, excluding the common cold any reportable condition or disease under section 23-07-01 or rules adopted to implement that section.
2. "Department" means the state department of health.
3. "Emergency medical services provider Exposed individual" means a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or other any individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person rendering aid under chapter 32-03.1, who has had a significant exposure with a test subject.
4. "Licensed facility" means a hospital, nursing home, dialysis center, or any entity licensed by the state to provide medical care.
5. "Significant exposure" means:
 - a. Contact of broken skin or mucous membrane with a patient's or other individual's blood or bodily fluids other than tears or perspiration;
 - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or
 - c. Exposure that occurs by any other method of transmission defined by the department as a significant exposure.
6. "Test subject" means the individual to be tested after a significant exposure with another individual.

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Operator's Signature

10/2/03
Date

SECTION 2. AMENDMENT. Section 23-07.3-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.3-02. Procedures following significant exposure.

1. If an emergency medical services provider exposed individual has a significant exposure in the process of caring for a patient with a test subject, the emergency medical services provider exposed individual shall document that exposure. The documentation must be on forms approved by the department, and in the manner and time designated by the department conducted in accordance with the exposed individual's employer's occupational health program or through the exposed individual's health care provider.
2. Upon notification of a significant exposure, or upon receipt of the documentation described in subsection 1, the attending physician exposed individual, that individual's employer, or the exposed individual's health care provider shall request the patient test subject to consent to testing to determine the presence of any Contagious disease that may be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. The patient test subject must be informed that the patient he or she may refuse to consent to the test and, if the patient he or she refuses, that the fact of the patient's refusal will be forwarded to the emergency medical services provider exposed individual. If the patient test subject consents to testing, the attending physician test subject shall test be tested for the presence of contagious disease diseases that may be transmitted by that exposure. The testing must be at the expense of the exposed individual or that individual's employer. If the test subject is convicted of any crime relating to the significant exposure or the significant exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, then a court may order the test subject to pay for the testing.
3. If a patient test subject who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained from the patient's next of kin or legal guardian in accordance with section 23-12-13. If a patient test subject who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received the patient, testing for the presence of any contagious disease that could be transmitted by that exposure must be conducted. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases.
4. The attending physician health care provider that conducted the test under this section shall report the results of the test to the department and to the emergency medical services provider exposed individual who reported the significant exposure. The physician health care provider shall use a case number instead of the patient's test subject's name in making

a report to the emergency medical services provider exposed individual who requested the test to ensure the confidentiality of the patient's test subject's identity. All positive test results must be reported to the department in accordance with section 23-07-02.

5. If the test subject does not consent to testing or if consent has not been obtained in accordance with subsection 3, then an exposed individual may petition an appropriate district court for issuance of an order directing the test subject to be tested for the presence of one or more specified contagious diseases that could be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. Upon receiving the petition, the court may issue an order confining the test subject until the hearing or an order establishing reasonable security for that individual's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within three days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:

- a. The test subject has been requested to consent to the testing and has refused to be tested or if consent for testing has not been obtained under subsection 3;
- b. The court finds probable cause to believe that the individual petitioning for the testing has had a significant exposure with the test subject;
- c. The petition substitutes a pseudonym for the true name of the test subject;
- d. The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the test subject is not already a party to the proceeding;
- e. The proceedings are conducted in camera unless the test subject agrees to a hearing in open court; and
- f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

SECTION 3. AMENDMENT. Subsections 1 and 10 of section 23-07.5-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "Emergency medical services provider Exposed individual" means a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or other an individual trained and authorized by law or rule to render emergency

Deanna Hall
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medical assistance or treatment, including a person rendering aid under chapter 32-03.1, who has had a significant exposure with another individual who is subject to testing.

10. "Universal precautions" means measures that a health care provider, emergency medical services-provider ~~technician~~, ~~exposed individual~~, or a individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the federal centers for disease control and prevention concerning human immunodeficiency virus transmission in health care settings United States public health service to prevent transmission of disease.

SECTION 4. AMENDMENT. Subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code are amended and reenacted as follows:

3. A health care provider, emergency medical services-provider ~~exposed individual~~, or a person rendering aid under chapter 32-03.1 ~~who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and who has had a significant exposure with the patient~~ another individual may subject the ~~patient's~~ that individual's blood to a test for the presence of the human immunodeficiency virus, without the ~~patient's~~ that individual's consent, if all of the following apply:
- a. A sample of the ~~patient's~~ test subject's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
 - b. The ~~patient's~~ exposed individual's personal physician, based on information provided to the physician, determines and certifies in writing that the individual has had a significant exposure. The certification must accompany the request for testing and disclosure.
 - c. The ~~patient~~ test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
 - d. Before testing, the ~~patient~~ test subject is informed, while competent and conscious, that ~~the patient's~~ his or her blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one including the patient without the ~~patient's~~ test subject's consent, except to the ~~exposed individual who has had a significant exposure and the department;~~ exposed individual who has had a significant exposure knows the identity of the ~~patient~~ individual being tested, that the ~~exposed individual~~ exposed individual may not disclose the identity to any other person except for the purpose of having the test performed; and that a record of the test results may be placed in the individual's medical record, and if not in the medical record, may be kept only if the record does not reveal the ~~patient's~~ individual being tested's

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identity. A person who discloses the identity of a patient an individual being tested under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C felony. Each exposed individual who has had a significant exposure and to whom test results are disclosed must first sign a document indicating that individual's his or her understanding that the individual he or she may not disclose the information and that disclosing the information constitutes a class C felony.

5. If a person an individual who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If a person an individual who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received that person, collection of appropriate specimens and testing for the presence of bloodborne pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C infection must be conducted within twenty-four hours. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the person individual who experienced the significant exposure. If a facility that received the person individual who died fails to test for the presence of bloodborne pathogens as required under this subsection, the facility shall provide the physician providing care for the exposed emergency medical services provider individual, health care provider, or person who rendered aid under chapter 32-03.1 testing results of any bloodborne pathogen present in any medical records of the dead person which are in the facility's control within twenty-four hours. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the person who died shall attempt to obtain testing results of bloodborne pathogens of the deceased within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the person who experienced the significant exposure.
6. Any testing done pursuant to subsection 3, 4, or 5 may be conducted in the most expedient manner possible. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate district court for issuance of an order directing the individual, patient or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the person test subject until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within five three days of the date the court receives the petition. The record of any

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10/2/03

court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:

- a. The individual, patient or provider has been requested to consent to testing and has refused to be tested and a sample of the patient's or provider's test subject's blood is not available to be used to test for the human immunodeficiency virus;
- b. The court finds probable cause to believe that the person petitioning for the testing has had a significant exposure with the person test subject;
- c. The petition substitutes a pseudonym for the true name of the person individual to be tested;
- d. The court provides the person individual to be tested with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
- e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and
- f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure."

Renumber accordingly

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PROPOSED AMENDMENTS TO HOUSE BILL 1221

Page 1, line 1, after "A Bill" replace the remainder of the bill with "for an Act to amend and reenact sections 23-07.3-01, 23-07.3-02, subsections 1 and 10 of section 23-07.5-01 and subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code relating to testing for contagious diseases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA

SECTION 1. AMENDMENT. Section 23-07.3-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.3-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Contagious disease" means the interruption, cessation, or disorder of body functions, systems, or organs transmissible by association with the sick or their secretions or excretions, excluding the common cold any reportable condition or disease under section 23-07-01 or rules adopted to implement that section.~~
2. "Department" means the state department of health.
3. ~~"Emergency medical services provider~~ Exposed individual" means a firefighter, ~~peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or other any~~ individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person rendering aid under chapter 32-03.1, who has had a significant exposure with a test subject.
4. "Licensed facility" means a hospital, nursing home, dialysis center, or any entity licensed by the state to provide medical care.
5. "Significant exposure" means:
 - a. Contact of broken skin or mucous membrane with a patient's or other individual's blood or bodily fluids other than tears or perspiration;
 - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or
 - c. Exposure that occurs by any other method of transmission defined by the department as a significant exposure.
6. "Test subject" means the individual to be tested after a significant exposure with another individual.

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Donna G. Bell
Operator's Signature

10/2/03
Date

SECTION 2. AMENDMENT. Section 23-07.3-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.3-02. Procedures following significant exposure.

1. If an emergency medical services provider exposed individual has a significant exposure in the process of caring for a patient with a test subject, the emergency medical services provider exposed individual shall document that exposure. The documentation must be on forms approved by the department, and in the manner and time designated by the department conducted in accordance with the exposed individual's employer's occupational health program or through the exposed individual's health care provider.
2. Upon notification of a significant exposure, or upon receipt of the documentation described in subsection 1, the attending physician exposed individual, that individual's employer, or the exposed individual's health care provider shall request the patient test subject to consent to testing to determine the presence of any Contagious disease that may be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. The patient test subject must be informed that the patient he or she may refuse to consent to the test and, if the patient he or she refuses, that the fact of the patient's refusal will be forwarded to the emergency medical services provider exposed individual. If the patient test subject consents to testing, the attending physician test subject shall test be tested for the presence of contagious disease diseases that may be transmitted by that exposure. The testing must be at the expense of the exposed individual or that individual's employer. If the test subject is convicted of any crime relating to the significant exposure or the significant exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, then a court may order the test subject to pay for the testing.
3. If a patient test subject who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained from the patient's next of kin or legal guardian in accordance with section 23-12-13. If a patient test subject who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received the patient, testing for the presence of any contagious disease that could be transmitted by that exposure must be conducted. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases.
4. The attending physician health care provider that conducted the test under this section shall report the results of the test to the department and to the emergency medical services provider exposed individual who reported the significant exposure. The physician health care provider shall use a case number instead of the patient's test subject's name in making

a report to the emergency medical services provider exposed individual who requested the test to ensure the confidentiality of the patient's test subject's identity. All positive test results must be reported to the department in accordance with section 23-07-02.

5. A health care provider, exposed individual, or a person rendering aid under chapter 32-03.1 who has had a significant exposure with a test subject may subject that individual's blood to a test for the presence of a contagious disease or diseases, without the test subject's consent, if all of the following apply:

a. A sample of the test subject's blood has been drawn for other purposes and is available to be used to test for the presence of contagious disease.

b. The exposed individual's personal physician, based on information provided to the physician, determines and certifies in writing that the individual has had a significant exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. The certification must accompany the request for testing and disclosure.

c. The test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.

d. Before testing, the test subject is informed, while competent and conscious, that his or her blood may be tested for the presence of contagious disease; that the test results may be disclosed to no one without the test subject's consent, except to the exposed individual and the department; that if the exposed individual knows the identity of the individual being tested, the exposed individual may not disclose the identity to any other person except for the purpose of having the test performed; and that a record of the test results may be placed in the individual's medical record, and if not in the medical record, may be kept only if the record does not reveal the test subject's identity. A person who discloses the identity of an individual being tested is guilty of a class C felony. Each exposed individual who has had a significant exposure and to whom test results are disclosed must first sign a document indicating his or her understanding that he or she may not disclose the information and that disclosing the information constitutes a class C felony.

6. If the test subject does not consent to testing or if consent has not been obtained in accordance with subsection 3, then an exposed individual may petition an appropriate district court for issuance of an order directing the test subject to be tested for the presence of one or more specified contagious diseases that could be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. Upon receiving the

petition, the court may issue an order confining the test subject until the hearing or an order establishing reasonable security for that individual's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within three days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:

- a. The test subject has been requested to consent to the testing and has refused to be tested or if consent for testing has not been obtained under subsection 3;
- b. The court finds probable cause to believe that the individual petitioning for the testing has had a significant exposure with the test subject;
- c. The petition substitutes a pseudonym for the true name of the test subject;
- d. The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the test subject is not already a party to the proceeding;
- e. The proceedings are conducted in camera unless the test subject agrees to a hearing in open court; and
- f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

SECTION 3. AMENDMENT. Subsections 1 and 10 of section 23-07.5-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "Emergency medical services provider-Exposed individual" means a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or other an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person rendering aid under chapter 32-03.1, who has had a significant exposure with another individual who is subject to testing.
10. "Universal precautions" means measures that a health care provider, emergency medical services provider technician, exposed individual, or a individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the federal centers for disease control and prevention concerning human immunodeficiency virus transmission in health care settings United States public health service to prevent transmission of disease.

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Dorinda H. H. H.
Operator's Signature

10/2/03
Date

SECTION 4. AMENDMENT. Subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code are amended and reenacted as follows:

3. A health care provider, ~~emergency medical services provider~~ exposed individual, or a person rendering aid under chapter 32-03.1 who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and who has had a significant exposure with the patient ~~another individual~~ may subject the patient's ~~that individual's~~ blood to a test for the presence of the human immunodeficiency virus, without the patient's ~~that individual's~~ consent, if all of the following apply:
- a. A sample of the patient's ~~test subject's~~ blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
 - b. The patient's ~~exposed individual's~~ personal physician, based on information provided to the physician, determines and certifies in writing that the individual has had a significant exposure. The certification must accompany the request for testing and disclosure.
 - c. The patient ~~test subject~~ is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
 - d. Before testing, the patient ~~test subject~~ is informed, while competent and conscious, that the patient's ~~his or her~~ blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one including the patient without the patient's ~~test subject's~~ consent, except to the ~~exposed individual who has had a significant exposure and the department~~; that if the ~~exposed individual who has had a significant exposure~~ knows the identity of the patient ~~individual being tested~~, that the ~~exposed individual~~ may not disclose the identity to any other person except for the purpose of having the test performed; and that a record of the test results may be placed in the individual's medical record, and if not in the medical record, may be kept only if the record does not reveal the patient's ~~individual being tested's~~ identity. A person who discloses the identity of a patient ~~an individual being tested~~ under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C felony. Each ~~exposed individual~~ who has had a significant exposure and to whom test results are disclosed must first sign a document indicating that individual's ~~his or her~~ understanding that the individual ~~he or she~~ may not disclose the information and that disclosing the information constitutes a class C felony.
5. If a person ~~an individual~~ who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If a person ~~an individual~~ who is the subject of a

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reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received that person, collection of appropriate specimens and testing for the presence of bloodborne pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C infection must be conducted within twenty-four hours. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the person individual who experienced the significant exposure. If a facility that received the person individual who died fails to test for the presence of bloodborne pathogens as required under this subsection, the facility shall provide the physician providing care for the exposed emergency medical services provider individual, health care provider, or person who rendered aid under chapter 32-03.1 testing results of any bloodborne pathogen present in any medical records of the dead person which are in the facility's control within twenty-four hours. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the person who died shall attempt to obtain testing results of bloodborne pathogens of the deceased within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the person who experienced the significant exposure.

6. Any testing done pursuant to subsection 3, 4, or 5 may be conducted in the most expedient manner possible. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate district court for issuance of an order directing the individual, patient or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the person test subject until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within five three days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:
- a. The individual, patient or provider has been requested to consent to testing and has refused to be tested and a sample of the patient's or provider's test subject's blood is not available to be used to test for the human immunodeficiency virus;
 - b. The court finds probable cause to believe that the person petitioning for the testing has had a significant exposure with the person test subject;

- c. The petition substitutes a pseudonym for the true name of the person individual to be tested;
- d. The court provides the person individual to be tested with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
- e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and
- f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure."

Renumber accordingly

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