

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1410

2005 HOUSE HUMAN SERVICES

HB 1410


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1410

House Human Services Committee

☐ Conference Committee

1. Hearing Date January 24, 2005

Tape Number	Side A	Side B	Meter #
1	x		2965-5450
Committee Clerk Signature 			

Minutes:

**Chairman Price** opened hearing on HB 1410.

**Rep. Grande:** I bring to you today HB 1410. Similar legislation was acted on last session. This bill is to improve the protections available to public safety and health personnel to exposure to the most dangerous blood pathogens such as HIV. The process for mandated testing is still to slow. Several important changes to the existing law need to be changed. We are asking for accelerated testing for these public personnel.

**Captain Jeff Williams:**

See Attached testimony.

**Officer Sara Cruz, Investigator, Glenn Hanson.**

**Sara Cruz:** In Jan. 2004, a male had fallen broken front teeth, he was fighting us when we were trying to put him into the ambulance, He bite me while we were attempting to get him into the ambulance. I had to go to the hospital and it was over 24 hours that I was uncertain of whether I

had been exposed to HIV. I could not tell my fiancé, family or friends and it is an extremely stressful time until you find out the results of the test.

Glenn Hanson, Narcotics Investigator with the Fargo Police Dept. In May of 2004, I was stuck with a needle from an intravenous drug user while making an arrest. Immediately, I had to go to get tested, and was basically in limbo for several hours. Through some glitch, the person that was arrested did not get immediately tested and I was within 2 hours into the 24 hour window before I was informed that he was not positive. When you come in contact with some of these people, they may be bleeding, they might spit on you and the last thing they will do is give you permission to test their blood. Please consider our request to make them test these people right away, for the health and safety of the police and EMT workers.

**Larry Scherle, Dept. Health Service.**

It is very tough to turn these tests around with in 24 - 48 hours. Treatment is expensive and has side effects.

**Rep. Kaldor:** How do this relate to any incidences of false/positive results.

**L. Scherele:** Beside the blood tests, there is follow up and screening tests. Important to the provider and also to determine if the test is compatible.

**Rep. Nelson:** As far as where the labs are located, what about the hospitals/State Health Dept.

**L. Scherele:** The State Lab. is the only one that I know of.

**Rep. Nelson:** How do you handle 24 hour testing if it happens on a Friday nite at 10PM?

**L. Scherele:** We work with the time frame.

**Rep. Sandvig:** What can we do to have a quicker turn around time frame.

**L. Scherele:** I am not sure you could do anything. What ever can be done in the Health Care community would be greatly appreciated.

**Rep. Sandvig:** How is the process different from this Health Care worker.

**L. Scherele:** No different, same process goes on, they get the blood tested, or if the person does not consent to testing for HIV. You know, informed consent is required.

**Rep. Kaldor:** Is there been any thought given to the possibility of having a lab located on the eastern side of the state.

**L. Scherele:** As long as they can be certified I have no problem with that. Logistically the Health Dept. could not do it. But if there is a private entity that would want to set this up, we would not have any problem with it. We are not in the competition of HIV testing.

**Rep. Devlin:** We have amendments that have been proposed and I move to accept them as presented.

**Rep. Nelson:** Second

Voice Vote: 10-1-1

**Rep. Devlin:** Do Pass as Amended.

**Rep. Uglem:** Second

Vote: 10-1-1

**Carrier:** Rep. Porter

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1410

House Human Services Committee

☐ Conference Committee

Hearing Date February 14, 2005

Tape Number	Side A	Side B	Meter #
<i>BROKEN</i>			
Committee Clerk Signature <i>Nelson</i>			

Minutes:

Chairman Price: Opened discussion on HB 1410.

**Rep. Devlin:** We have amendments that have been proposed and I move to accept them as presented.

**Rep. Nelson:** Second

Voice Vote: 10-1-1

**Rep. Devlin:** Do Pass as Amended.

**Rep. Uglem:** Second

Vote: 10-1-1

Carrier: Rep. Nelson

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1410

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 23-07.5-01, 23-07.5-02, 23-07.5-04, 23-07.5-06, 23-07.5-07, and 23-07.5-08 of the North Dakota Century Code, relating to testing for exposure to bloodborne pathogens; and to repeal chapter 23-07.3 of the North Dakota Century Code, relating to notification of exposure to infectious diseases.

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

**SECTION 1. AMENDMENT.** Section 23-07.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Bloodborne pathogen" means a microorganism that is present in human blood or in other bodily fluid or tissue which can cause a disease in humans, including the hepatitis B virus, the hepatitis C virus, and the human immunodeficiency virus, and for which testing is recommended by the United States public health service.
2. "Exposed individual" means a human being who had a significant exposure with another individual who is subject to testing and who is a an individual, including a patient, health care provider, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person an individual rendering aid under chapter 32-03.1, who is exposed to a bloodborne pathogen.
3. "Exposure" means a percutaneous injury, including a needle stick or cut with a sharp object; contact with blood, body fluid, or tissue of a mucous membrane or nonintact skin, including exposed skin that is chapped, abraded, or afflicted with dermatitis; or contact with other body fluids that are potentially infectious as determined under guidelines of the United States public health service.
2. ~~"Health care provider" means any person licensed, certified, or otherwise authorized by the law of this state to provide health care services.~~
3. 4. "Health care services" means any services included in the furnishing to any an individual of hospitalization, or medical or dental care, or any services incident to the furnishing of that care or hospitalization, as well as the furnishing to any person an individual of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.
4. ~~"Human immunodeficiency virus" means any identified causative agent of acquired immune deficiency syndrome.~~
5. ~~"Human immunodeficiency virus infection" means the pathological state produced by a human body in response to the presence of the human immunodeficiency virus~~ "Health care provider" means an individual licensed, certified, or otherwise authorized by the law of this state to provide health care and includes personnel at the state crime laboratory or

any commercial or research laboratory that handles blood, body fluid, or tissues.

6. "Informed consent for testing" means the written permission of an individual to be tested for the presence of the human immunodeficiency virus that the individual to be tested for bloodborne pathogens has been informed of the nature of the testing; the reason for the testing; the relevant risks, benefits, and potential alternatives for testing; and the individual has granted permission to be tested.
7. "Informed consent form" means a printed document on which an individual may signify that individual's permission to be tested for the presence of the human immunodeficiency virus. "Personal representative" means any person who has authority under law to act on behalf of an individual or deceased individual in making decisions related to health care or health information.
8. "Personal physician" means the physician designated by a patient or individual who has had a significant exposure as the patient's or individual's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician. "Test subject" means the individual who is the source of the blood, other bodily fluids, or tissue that caused the exposure.
9. "Significant exposure" means:
  - a. Contact of broken skin or mucous membrane with a patient'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 state department of health as a significant exposure.
10. "Universal precautions" means measures that a health care provider, emergency medical technician, exposed individual, or an individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the United States public health service to prevent transmission of disease.

**SECTION 2. AMENDMENT.** Section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-02. Informed consent for testing - Exception.**

1. Except when testing is otherwise provided for permitted by law, a health care provider, blood bank, blood center, or plasma center may not subject ~~a person~~ an individual who is the source of an exposure to a test for the ~~presence of the human immunodeficiency virus~~ bloodborne pathogens unless the subject of the test, ~~the parent or legal guardian or custodian of the subject's personal representative if the subject is a minor who is the subject of the test, or the legal guardian of an is incapacitated person who is the subject of the test,~~ first provides informed consent for testing as provided under subsection 2.



2. ~~A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of the human immunodeficiency virus under subsection 1 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential test subject who is incapacitated, with an informed consent form and shall obtain the appropriate individual's signature on the form. The form must contain:~~
  - a. ~~The name of the potential test subject who is giving consent for testing and whose test results may be disclosed and, when appropriate, the name of the individual providing consent on behalf of the potential test subject.~~
  - b. ~~A statement of explanation that the test results may be disclosed as authorized by law.~~
  - c. ~~Space specifically designated for the signature of the person providing informed consent for the testing and the date on which the consent is signed.~~
3. ~~A health care provider or an exposed individual who had a significant exposure with another individual may subject~~ If an individual who is the source of an exposure has had blood drawn that is available for testing and the individual has refused to grant consent to have that individual's blood tested for bloodborne pathogens, that individual's blood may be subjected to a test for the presence of the human immunodeficiency virus bloodborne pathogens, without that individual's consent, if all of the following apply:
  - a. ~~A blood sample of the 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 personal physician of the individual exposed, a physician or other qualified health care provider based on available information provided to the physician, determines and certifies in writing that the individual had a significant an exposure. 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 and before testing, the test subject is informed, while competent and conscious, that the test subject's blood may be tested for the presence of human immunodeficiency virus bloodborne pathogens; that the test results may not be disclosed to no one without the test subject's consent authorization, except to the exposed individual, the individual's health care provider, the department, and any other person as authorized by law; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the identity to any other person of the test subject except for the purpose of having the test performed; and that a record of the test results may be placed kept in the test subject's exposed 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. Each exposed individual who had a significant an exposure and to whom test results are disclosed must first sign be given a document indicating the exposed individual's understanding that the exposed individual may not disclose the patient's test subject's identity and that disclosing the this information constitutes a class C felony.~~

4. ~~A patient who has received care from a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 and who has had a significant exposure with the provider may subject the provider's blood to a test for the presence of the human immunodeficiency virus, without the provider's consent, if all of the following apply:~~
- a. ~~A sample of the provider'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. ~~A physician, based on information provided to the physician, determines and certifies in writing that the patient has had a significant exposure. The certification must accompany the request for testing and disclosure.~~
  - c. ~~The provider or a person rendering aid under chapter 32-03.1 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 provider is informed, while competent and conscious, that the provider's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to the provider, the individual who has had a significant exposure, and any other person as authorized by law; that if the patient who has had a significant exposure knows the identity of the provider, that patient may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the provider's identity. Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating the patient's understanding that the patient may not disclose the provider's identity and that disclosing the information constitutes a class C felony.~~
5. 3. If an individual who is the subject of a significant an 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 from the individual's personal representative.~~ If an individual who is the subject of a significant an exposure dies without an opportunity to consent to testing, 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 as soon as reasonably possible.~~ 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 individual who experienced the significant exposure. If a facility that received the individual who died fails to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct testing, the facility shall provide the physician providing care for the exposed individual or health care provider testing results of any bloodborne pathogen present in any medical records of the ~~dead person deceased individual~~ which are in the facility's control ~~within twenty-four hours as soon as reasonably possible.~~ 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 deceased individual~~ shall attempt to obtain testing results of bloodborne pathogens of the deceased ~~within twenty-four hours individual as soon as reasonably possible~~ from the facility where it is

believed results exist. The test results must be provided to the physician providing care for the individual who experienced the significant exposure.

6. 4. A test for bloodborne pathogens must be conducted according to recommendations of the United States public health service. Any testing done pursuant to subsection 2 or 3, 4, or 5 must be conducted in a reasonably expedient manner. ~~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~~ The district court for issuance of in the county where the alleged exposure occurred or in which the individual to be tested resides shall issue an order directing ~~another the individual, patient, or provider with whom the individual had a significant~~ who was the source of an 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 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 three days of the date the court receives the petition bloodborne pathogens. An affidavit from a physician or other qualified health care provider showing that an exposure has occurred is prima facie evidence of those facts. The affidavit may not be excluded as hearsay if the affidavit is based on evidence generally relied on by a health care provider, including statements from the provider's patient. The record of any court hearing conducted under this subsection is confidential. The court ~~may~~ shall 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 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~~ individual petitioning for the testing had ~~a significant~~ an 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 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~~ individuals who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.
7. ~~An exposed individual may request two tests of the test subject after a significant exposure. Each test may be requested as soon as practicable, consistent with the recommendations of the United States public health service, but in no event later than nine months after a significant exposure. The test subject must provide a blood sample within twenty four hours after the first request and within seventy two hours after the second request, subject to the provisions of this chapter.~~

5. If the court issues an order for testing, the court may order the confinement of the test subject until blood is drawn for testing or issue an order establishing reasonable security for the individual's attendance at the test site. This order may be modified or extended.
6. A health care provider who subjects ~~a patient~~ an individual to ~~a significant~~ an exposure must notify the ~~patient~~ individual of the exposure. A health care provider witnessing ~~a significant~~ an exposure may report the exposure pursuant to any appropriate facility or employer guidelines to which the provider may be subject. The knowing failure to inform ~~a patient~~ an individual of ~~a significant~~ an exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.
7. The exposed individual shall pay the expense of testing but if the exposure occurs at an employee's workplace, the worker's employer shall pay the expense of testing. If the individual to be tested is convicted of a crime relating to the exposure or the exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, a court may order the individual to be tested to pay for the testing.

**SECTION 3. AMENDMENT.** Section 23-07.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-04. Record maintenance.** A health care provider, ~~blood bank, blood center, or plasma center that~~ who collects a specimen of body fluids or tissues for the purpose of testing for the presence of ~~an antibody to the human immunodeficiency virus~~ bloodborne pathogens caused by an exposure shall:

1. ~~Obtain~~ obtain from the test subject; ~~the subject's parent, legal guardian, or custodian if the subject is a minor; or the test subject's legal guardian~~ personal representative if the subject is a minor or is incapacitated, informed consent for testing; unless testing is otherwise authorized by law.
2. ~~Maintain a record of the consent received under subsection 1.~~
3. ~~Maintain~~ In addition, the health care provider shall maintain a record of the test results obtained.

**SECTION 4. AMENDMENT.** Section 23-07.5-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-06. Expanded disclosure of test results prohibited.** ~~A person~~

1. The results of a test for bloodborne pathogens may be disclosed only to the individual who was tested; to an exposed individual for whom a test was conducted; and to the exposed individual's health care provider as provided by this chapter, and as permitted under title 45, Code of Federal Regulations, part 164, section 512.
2. ~~An exposed individual to whom the results of a test for the human immunodeficiency virus~~ bloodborne pathogens have been disclosed under this chapter may not disclose the test results except as authorized by law.

**SECTION 5. AMENDMENT.** Section 23-07.5-07 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-07. Civil liability.** ~~Any person~~ An individual who knowingly violates section 23-07.5-06 is liable to the subject of the test for actual damages and costs plus

exemplary damages. A conviction for violation of this chapter is not a condition precedent to bringing an action under this section.

**SECTION 6. AMENDMENT.** Section 23-07.5-08 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-08. Penalty.** <sup>A person</sup> ~~A person~~ ~~An individual~~ who knowingly discloses the results of a blood test in violation of this chapter is guilty of a class C felony, if the offense is committed with intent to disclose the identity of the individual who was tested.

**SECTION 7. REPEAL.** Chapter 23-07.3 of the North Dakota Century Code is repealed."

Renumber accordingly

**House Amendments to HB 1410 - Human Services Committee 02/14/2005**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 23-07.5-01, 23-07.5-02, 23-07.5-04, 23-07.5-06, and 23-07.5-07 of the North Dakota Century Code, relating to testing for exposure to bloodborne pathogens; and to repeal chapter 23-07.3 of the North Dakota Century Code, relating to notification of exposure to infectious diseases.

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

**SECTION 1. AMENDMENT.** Section 23-07.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Bloodborne pathogen" means a microorganism that is present in human blood or in other bodily fluid or tissue which can cause a disease in humans, including the hepatitis B virus, the hepatitis C virus, and the human immunodeficiency virus, and for which testing is recommended by the United States public health service.
2. "Exposed individual" means ~~a human being who had a significant exposure with another individual who is subject to testing and who is a~~ an individual, including a patient, health care provider, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including ~~a person~~ an individual rendering aid under chapter 32-03.1, who is exposed to a bloodborne pathogen.
3. "Exposure" means a percutaneous injury, including a needle stick or cut with a sharp object; contact with blood, body fluid, or tissue of a mucous membrane or nonintact skin, including exposed skin that is chapped, abraded, or afflicted with dermatitis; or contact with other body fluids that are potentially infectious as determined under guidelines of the United States public health service.
2. ~~"Health care provider" means any person licensed, certified, or otherwise authorized by the law of this state to provide health care services.~~
3. 4. "Health care services" means any services included in the furnishing to any an individual of hospitalization, or medical or dental care, or any services incident to the furnishing of that care or hospitalization, as well as the furnishing to ~~any person~~ an individual of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.
4. ~~"Human immunodeficiency virus" means any identified causative agent of acquired immune deficiency syndrome.~~
5. ~~"Human immunodeficiency virus infection" means the pathological state produced by a human body in response to the presence of the human immunodeficiency virus~~ "Health care provider" means an individual licensed, certified, or otherwise authorized by the law of this state to provide health care and includes personnel at the state crime laboratory or any commercial or research laboratory that handles blood, body fluid, or tissues.

6. ~~"Informed consent for testing" means the written permission of an individual to be tested for the presence of the human immunodeficiency virus that the individual to be tested for bloodborne pathogens has been informed of the nature of the testing; the reason for the testing; the relevant risks, benefits, and potential alternatives for testing; and the individual has granted permission to be tested.~~
7. ~~"Informed consent form" means a printed document on which an individual may signify that individual's permission to be tested for the presence of the human immunodeficiency virus~~ "Personal representative" means any person who has authority under law to act on behalf of an individual or deceased individual in making decisions related to health care or health information.
8. ~~"Personal physician" means the physician designated by a patient or individual who has had a significant exposure as the patient's or individual's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician~~ "Test subject" means the individual who is the source of the blood, other bodily fluids, or tissue that caused the exposure.
9. ~~"Significant exposure" means:~~
  - a. ~~Contact of broken skin or mucous membrane with a patient'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 state department of health as a significant exposure.~~
10. ~~"Universal precautions" means measures that a health care provider, emergency medical technician, exposed individual, or an individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the United States public health service to prevent transmission of disease.~~

**SECTION 2. AMENDMENT.** Section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-02. Informed consent for testing - Exception.**

1. Except when testing is otherwise ~~provided for~~ permitted by law, a health care provider, blood bank, blood center, or plasma center may not subject ~~a person~~ an individual who is the source of an exposure to a test for the presence of the human immunodeficiency virus bloodborne pathogens unless the subject of the test, ~~the parent or legal guardian or custodian of the subject's personal representative if the subject is a minor who is the subject of the test, or the legal guardian of an~~ is ~~is the subject of the test, first provides informed consent for testing as provided under subsection 2.~~
2. ~~A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of the human immunodeficiency virus under subsection 1 shall provide the potential test~~

~~subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential test subject who is incapacitated, with an informed consent form and shall obtain the appropriate individual's signature on the form. The form must contain:~~

- ~~a. The name of the potential test subject who is giving consent for testing and whose test results may be disclosed and, when appropriate, the name of the individual providing consent on behalf of the potential test subject.~~
  - ~~b. A statement of explanation that the test results may be disclosed as authorized by law.~~
  - ~~c. Space specifically designated for the signature of the person providing informed consent for the testing and the date on which the consent is signed.~~
3. ~~A health care provider or an exposed individual who had a significant exposure with another individual may subject~~ If an individual who is the source of an exposure has had blood drawn that is available for testing and the individual has refused to grant consent to have that individual's blood tested for bloodborne pathogens, that individual's blood may be subjected to a test for the presence of the human immunodeficiency virus bloodborne pathogens, without that individual's consent, if all of the following apply:
  - ~~a. A blood sample of the 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 personal physician of the individual exposed, a physician or other qualified health care provider based on available information provided to the physician, determines and certifies in writing that the individual had a significant an exposure. 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 and before testing, the test subject is informed, while competent and conscious, that the test subject's blood may be tested for the presence of human immunodeficiency virus bloodborne pathogens; that the test results may not be disclosed to no one without the test subject's consent authorization, except to the exposed individual, the individual's health care provider, the department, and any other person as authorized by law; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the identity to any other person of the test subject except for the purpose of having the test performed; and that a record of the test results may be placed kept in the test subject's exposed 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. Each exposed individual who had a significant an exposure and to whom test results are disclosed must first sign be given a document indicating the exposed individual's understanding that the exposed individual may not disclose the patient's test subject's identity and that disclosing the this information constitutes a class C felony.~~
4. ~~A patient who has received care from a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1~~



~~and who has had a significant exposure with the provider may subject the provider's blood to a test for the presence of the human immunodeficiency virus, without the provider's consent, if all of the following apply:~~

- ~~a. A sample of the provider'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. A physician, based on information provided to the physician, determines and certifies in writing that the patient has had a significant exposure. The certification must accompany the request for testing and disclosure.~~
- ~~c. The provider or a person rendering aid under chapter 32-03.1 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 provider is informed, while competent and conscious, that the provider's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to the provider, the individual who has had a significant exposure, and any other person as authorized by law; that if the patient who has had a significant exposure knows the identity of the provider, that patient may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the provider's identity. Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating the patient's understanding that the patient may not disclose the provider's identity and that disclosing the information constitutes a class C felony.~~

5. 3. If an individual who is the subject of ~~a significant~~ an 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 from the individual's personal representative.~~ If an individual who is the subject of ~~a significant~~ an exposure dies without an opportunity to consent to testing, 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 as soon as reasonably possible.~~ as soon as reasonably possible. ~~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 individual who experienced the ~~significant~~ exposure. If a facility that received the individual who died fails to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct testing, the facility shall provide the physician providing care for the exposed individual or health care provider testing results of any bloodborne pathogen present in any medical records of the ~~dead person deceased individual~~ deceased individual which are in the facility's control ~~within twenty-four hours as soon as reasonably possible.~~ within twenty-four hours as soon as reasonably possible. 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 deceased individual~~ deceased individual shall attempt to obtain testing results of bloodborne pathogens of the deceased ~~within twenty-four hours individual as soon as reasonably possible~~ individual as soon as reasonably possible from the facility where it is believed results exist. The test results must be provided to the physician providing care for the individual who experienced the ~~significant~~ exposure.

6. 4. A test for bloodborne pathogens must be conducted according to recommendations of the United States public health service. Any testing done pursuant to subsection 2 or 3, 4, or 5 must be conducted in a reasonably expedient manner. 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 The district court for issuance of in the county where the alleged exposure occurred or in which the individual to be tested resides shall issue an order directing another the individual, patient, or provider with whom the individual had a significant who was the source of an 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 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 three days of the date the court receives the petition bloodborne pathogens. An affidavit from a physician or other qualified health care provider showing that an exposure has occurred is prima facie evidence of those facts. The affidavit may not be excluded as hearsay if the affidavit is based on evidence generally relied on by a health care provider, including statements from the provider's patient. The record of any court hearing conducted under this subsection is confidential. The court may shall 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 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~~ individual petitioning for the testing had a significant an exposure with the test subject;
  - e. b. The petition substitutes a pseudonym for the true name of the test subject;
  - d. c. The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
  - e. d. The proceedings are conducted in camera ~~unless the subject of the test agrees to a hearing in open court;~~ and
  - f. e. The court imposes appropriate safeguards against unauthorized disclosure which must specify the ~~persons~~ individuals who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.
7. ~~An exposed individual may request two tests of the test subject after a significant exposure. Each test may be requested as soon as practicable, consistent with the recommendations of the United States public health service, but in no event later than nine months after a significant exposure. The test subject must provide a blood sample within twenty-four hours after the first request and within seventy-two hours after the second request, subject to the provisions of this chapter.~~
5. If the court issues an order for testing, the court may order the confinement of the test subject until blood is drawn for testing or issue an order

establishing reasonable security for the individual's attendance at the test site. This order may be modified or extended.

6. A health care provider who subjects ~~a patient~~ an individual to ~~a significant~~ an exposure must notify the ~~patient~~ individual of the exposure. A health care provider witnessing ~~a significant~~ an exposure may report the exposure pursuant to any appropriate facility or employer guidelines to which the provider may be subject. The knowing failure to inform ~~a patient~~ an individual of ~~a significant~~ an exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.
7. The exposed individual shall pay the expense of testing but if the exposure occurs at an employee's workplace, the worker's employer shall pay the expense of testing. If the individual to be tested is convicted of a crime relating to the exposure or the exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, a court may order the individual to be tested to pay for the testing.

**SECTION 3. AMENDMENT.** Section 23-07.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-04. Record maintenance.** A health care provider, ~~blood bank, blood center, or plasma center that~~ who collects a specimen of body fluids or tissues for the purpose of testing for the presence of ~~an antibody to the human immunodeficiency virus~~ bloodborne pathogens caused by an exposure shall:

- ~~1. Obtain~~ obtain from the test subject; ~~the subject's parent, legal guardian, or custodian if the subject is a minor; or the test subject's legal guardian~~ personal representative if the subject is a minor or is incapacitated, informed consent for testing; unless testing is otherwise authorized by law.
- ~~2. Maintain a record of the consent received under subsection 1.~~
- ~~3. Maintain~~ In addition, the health care provider shall maintain a record of the test results obtained.

**SECTION 4. AMENDMENT.** Section 23-07.5-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-06. Expanded disclosure of test results prohibited.** ~~A person~~

1. The results of a test for bloodborne pathogens may be disclosed only to the individual who was tested; to an exposed individual for whom a test was conducted; and to the exposed individual's health care provider as provided by this chapter, and as permitted under title 45, Code of Federal Regulations, part 164, section 512.
2. An exposed individual to whom the results of a test for the human immunodeficiency virus bloodborne pathogens have been disclosed under this chapter may not disclose the test results except as authorized by law.

**SECTION 5. AMENDMENT.** Section 23-07.5-07 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-07. Civil liability.** ~~Any person~~ An individual who knowingly violates section 23-07.5-06 is liable to the subject of the test for actual damages and costs plus exemplary damages. A conviction for violation of this chapter is not a condition precedent to bringing an action under this section.

**SECTION 6. REPEAL.** Chapter 23-07.3 of the North Dakota Century Code is repealed."

Renumber accordingly

Date: 2/14/05

Roll Call Vote #: /

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1410

House Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Rep Devlin Seconded By Rep Uglem

Representatives	Yes	No	Representatives	Yes	No
Chairman C.S.Price	✓		Rep.L. Kaldor	✓	
V Chrm.G. Kreidt	✓		Rep.L. Potter	✓	
Rep. V. Pietsch	✓		Rep.S. Sandvig	✓	
Rep.J.O. Nelson	✓				
Rep.W.R. Devlin	✓				
Rep.T. Porter	AB				
Rep.G. Uglem	✓				
Rep C. Damschen	✓				
Rep.R. Weisz		✓			

Total (yes) 10 No 1

Absent 1

Floor Assignment Rep Porter Nelson

on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

HB 1410: Human Services Committee (Rep. Price, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1410 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 23-07.5-01, 23-07.5-02, 23-07.5-04, 23-07.5-06, and 23-07.5-07 of the North Dakota Century Code, relating to testing for exposure to bloodborne pathogens; and to repeal chapter 23-07.3 of the North Dakota Century Code, relating to notification of exposure to infectious diseases.

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

**SECTION 1. AMENDMENT.** Section 23-07.5-01 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Bloodborne pathogen" means a microorganism that is present in human blood or in other bodily fluid or tissue which can cause a disease in humans, including the hepatitis B virus, the hepatitis C virus, and the human immunodeficiency virus, and for which testing is recommended by the United States public health service.
2. "Exposed individual" means ~~a human being who had a significant exposure with another individual who is subject to testing and who is a~~ an individual, including a patient, health care provider, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including ~~a person~~ an individual rendering aid under chapter 32-03.1, who is exposed to a bloodborne pathogen.
3. "Exposure" means a percutaneous injury, including a needle stick or cut with a sharp object; contact with blood, body fluid, or tissue of a mucous membrane or nonintact skin, including exposed skin that is chapped, abraded, or afflicted with dermatitis; or contact with other body fluids that are potentially infectious as determined under guidelines of the United States public health service.
2. ~~"Health care provider" means any person licensed, certified, or otherwise authorized by the law of this state to provide health care services.~~
3. 4. "Health care services" means any services included in the furnishing to ~~any~~ an individual of hospitalization, or medical or dental care, or any services incident to the furnishing of that care or hospitalization, as well as the furnishing to ~~any person~~ an individual of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.
4. ~~"Human immunodeficiency virus" means any identified causative agent of acquired immune deficiency syndrome.~~
5. ~~"Human immunodeficiency virus infection" means the pathological state produced by a human body in response to the presence of the human immunodeficiency virus~~ "Health care provider" means an individual

licensed, certified, or otherwise authorized by the law of this state to provide health care and includes personnel at the state crime laboratory or any commercial or research laboratory that handles blood, body fluid, or tissues.

6. "Informed consent for testing" means the written permission of an individual to be tested for the presence of the human immunodeficiency virus that the individual to be tested for bloodborne pathogens has been informed of the nature of the testing; the reason for the testing; the relevant risks, benefits, and potential alternatives for testing; and the individual has granted permission to be tested.
7. "Informed consent form" means a printed document on which an individual may signify that individual's permission to be tested for the presence of the human immunodeficiency virus "Personal representative" means any person who has authority under law to act on behalf of an individual or deceased individual in making decisions related to health care or health information.
8. "Personal physician" means the physician designated by a patient or individual who has had a significant exposure as the patient's or individual's primary physician or if no physician has been designated or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician. The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician "Test subject" means the individual who is the source of the blood, other bodily fluids, or tissue that caused the exposure.
9. "Significant exposure" means:
  - a. Contact of broken skin or mucous membrane with a patient'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 state department of health as a significant exposure.
10. "Universal precautions" means measures that a health care provider, emergency medical technician, exposed individual, or an individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the United States public health service to prevent transmission of disease.

**SECTION 2. AMENDMENT.** Section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-02. Informed consent for testing - Exception.**

1. Except when testing is otherwise provided for permitted by law, a health care provider, blood bank, blood center, or plasma center may not subject a person an individual who is the source of an exposure to a test for the presence of the human immunodeficiency virus bloodborne pathogens unless the subject of the test, the parent or legal guardian or custodian of

~~the subject's personal representative if the subject is a minor who is the subject of the test, or the legal guardian of an is incapacitated person who is the subject of the test, first provides informed consent for testing as provided under subsection 2.~~

2. ~~A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of the human immunodeficiency virus under subsection 1 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential test subject who is incapacitated, with an informed consent form and shall obtain the appropriate individual's signature on the form. The form must contain:~~
  - a. ~~The name of the potential test subject who is giving consent for testing and whose test results may be disclosed and, when appropriate, the name of the individual providing consent on behalf of the potential test subject.~~
  - b. ~~A statement of explanation that the test results may be disclosed as authorized by law.~~
  - e. ~~Space specifically designated for the signature of the person providing informed consent for the testing and the date on which the consent is signed.~~
3. ~~A health care provider or an exposed individual who had a significant exposure with another individual may subject~~ If an individual who is the source of an exposure has had blood drawn that is available for testing and the individual has refused to grant consent to have that individual's blood tested for bloodborne pathogens, that individual's blood may be subjected to a test for the presence of the human immunodeficiency virus bloodborne pathogens, without that individual's consent, if all of the following apply:
  - a. ~~A blood sample of the 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 personal physician of the individual exposed, a physician or other qualified health care provider based on available information provided to the physician, determines and certifies in writing that the individual had a significant an exposure. The certification must accompany the request for testing and disclosure.~~
  - e. ~~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 and before testing, the test subject is informed, while competent and conscious, that the test subject's blood may be tested for the presence of human immunodeficiency virus bloodborne pathogens; that the test results may not be disclosed to no one without the test subject's consent authorization, except to the exposed individual, the individual's health care provider, the department, and any other person as authorized by law; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the identity to any other person of the test~~



~~subject~~ except for the purpose of having the test performed; and that a record of the test results may be ~~placed~~kept in the ~~test subject's exposed 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. Each exposed individual who had a significant an exposure and to whom test results are disclosed must first sign ~~be given~~ a document indicating the exposed individual's understanding that the exposed individual may not disclose the ~~patient's~~test subject's identity and that disclosing ~~the~~this information constitutes a class C felony.

4. ~~A patient who has received care from a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 and who has had a significant exposure with the provider may subject the provider's blood to a test for the presence of the human immunodeficiency virus, without the provider's consent, if all of the following apply:~~

- a. ~~A sample of the provider'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. ~~A physician, based on information provided to the physician, determines and certifies in writing that the patient has had a significant exposure. The certification must accompany the request for testing and disclosure.~~
- c. ~~The provider or a person rendering aid under chapter 32-03.1 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 provider is informed, while competent and conscious, that the provider's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to the provider, the individual who has had a significant exposure, and any other person as authorized by law; that if the patient who has had a significant exposure knows the identity of the provider, that patient may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the provider's identity. Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating the patient's understanding that the patient may not disclose the provider's identity and that disclosing the information constitutes a class C felony.~~

5. 3. ~~If an individual who is the subject of a significant an 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 from the individual's personal representative. If an individual who is the subject of a significant an exposure dies without an opportunity to consent to testing, 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 as soon as reasonably possible. 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 individual who experienced~~

the ~~significant~~ exposure. If a facility that received the individual who died fails to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct testing, the facility shall provide the physician providing care for the exposed individual or health care provider testing results of any bloodborne pathogen present in any medical records of the ~~dead person~~ deceased individual which are in the facility's control ~~within twenty-four hours~~ as soon as reasonably possible. 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~~ deceased individual shall attempt to obtain testing results of bloodborne pathogens of the deceased ~~within twenty-four hours~~ individual as soon as reasonably possible from the facility where it is believed results exist. The test results must be provided to the physician providing care for the individual who experienced the ~~significant~~ exposure.

6. 4. A test for bloodborne pathogens must be conducted according to recommendations of the United States public health service. Any testing done pursuant to subsection 2 or 3, 4, or 5 must be conducted in a reasonably expedient manner. 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 The district court for issuance of in the county where the alleged exposure occurred or in which the individual to be tested resides shall issue an order directing another the individual, patient, or provider with whom the individual had a significant who was the source of an 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 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 three days of the date the court receives the petition bloodborne pathogens. An affidavit from a physician or other qualified health care provider showing that an exposure has occurred is prima facie evidence of those facts. The affidavit may not be excluded as hearsay if the affidavit is based on evidence generally relied on by a health care provider, including statements from the provider's patient. The record of any court hearing conducted under this subsection is confidential. The court may shall 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 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 individual petitioning for the testing had a significant an exposure with the test subject;~~
  - e. b. The petition substitutes a pseudonym for the true name of the test subject;

- d. c. The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
  - e. d. The proceedings are conducted in camera ~~unless the subject of the test agrees to a hearing in open court~~; and
  - f. e. The court imposes appropriate safeguards against unauthorized disclosure which must specify the ~~persons~~ individuals who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.
7. ~~An exposed individual may request two tests of the test subject after a significant exposure. Each test may be requested as soon as practicable, consistent with the recommendations of the United States public health service, but in no event later than nine months after a significant exposure. The test subject must provide a blood sample within twenty four hours after the first request and within seventy two hours after the second request, subject to the provisions of this chapter.~~
5. If the court issues an order for testing, the court may order the confinement of the test subject until blood is drawn for testing or issue an order establishing reasonable security for the individual's attendance at the test site. This order may be modified or extended.
8. 6. A health care provider who subjects ~~a patient~~ an individual to ~~a significant~~ an exposure must notify the ~~patient~~ individual of the exposure. A health care provider witnessing ~~a significant~~ an exposure may report the exposure pursuant to any appropriate facility or employer guidelines to which the provider may be subject. The knowing failure to inform ~~a patient~~ an individual of ~~a significant~~ an exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.
7. The exposed individual shall pay the expense of testing but if the exposure occurs at an employee's workplace, the worker's employer shall pay the expense of testing. If the individual to be tested is convicted of a crime relating to the exposure or the exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, a court may order the individual to be tested to pay for the testing.

**SECTION 3. AMENDMENT.** Section 23-07.5-04 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-04. Record maintenance.** A health care provider, ~~blood bank, blood center, or plasma center that~~ who collects a specimen of body fluids or tissues for the purpose of testing for the presence of ~~an antibody to the human immunodeficiency virus~~ bloodborne pathogens caused by an exposure shall:

- 1. ~~Obtain~~ obtain from the test subject; ~~the subject's parent, legal guardian, or custodian if the subject is a minor; or the test subject's legal guardian~~ personal representative if the subject is a minor or is incapacitated, informed consent for testing; unless testing is otherwise authorized by law.
- 2. ~~Maintain a record of the consent received under subsection 1.~~

3. ~~Maintain~~ In addition, the health care provider shall maintain a record of the test results obtained.

**SECTION 4. AMENDMENT.** Section 23-07.5-06 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-06. Expanded disclosure of test results prohibited.** ~~A person~~

1. The results of a test for bloodborne pathogens may be disclosed only to the individual who was tested; to an exposed individual for whom a test was conducted; and to the exposed individual's health care provider as provided by this chapter, and as permitted under title 45, Code of Federal Regulations, part 164, section 512.
2. An exposed individual to whom the results of a test for the human immunodeficiency virus bloodborne pathogens have been disclosed under this chapter may not disclose the test results except as authorized by law.

**SECTION 5. AMENDMENT.** Section 23-07.5-07 of the North Dakota Century Code is amended and reenacted as follows:

**23-07.5-07. Civil liability.** ~~Any person~~ An individual who knowingly violates section 23-07.5-06 is liable to the subject of the test for actual damages and costs plus exemplary damages. A conviction for violation of this chapter is not a condition precedent to bringing an action under this section.

**SECTION 6. REPEAL.** Chapter 23-07.3 of the North Dakota Century Code is repealed."

Renumber accordingly

2005 SENATE HUMAN SERVICES

HB 1410

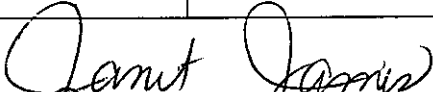
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1410

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 7, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 37.1
Committee Clerk Signature 			

Minutes:

**Senator Judy Lee**, Chairman of the Senate Human Services Committee opened the hearing on HB 1410 relating to testing for exposure to blood borne pathogens and to notification of exposure to infectious diseases.

All members of the committee were present.

**Representative Bette Grande** of District 41 cosponsor of HB 1410 introduced the bill as being drastically changed since it was submitted. She stated she was fine with the amendments that WSI will propose as they have three sections that cross reference and need to correspond. She further stated that last session HIV testing had been approved, these changes have not helped to get the testing accomplished in a timely manner. The hope is to reduce the 48 hour time frame for testing so the exposed individual can become aware of the possible risks and can start treatment if required.

**Mike Mullen** with the Attorney General's Office testified in a neutral position of HB 1410. See written testimony (Attachment #1). He also stated it was important to keep in mind that the exposure of bodily fluids or blood creates a risk, there has actually only been a small number of documented cases of transmission of diseases. Due to the use of universal precautions, the risk has been reduced. After the bill was in the House, Representative Todd Porter, who is involved with health care, asked the Attorney General's office to look into the bill beyond just the HIV risk. There is a higher risk to transmit hepatitis than HIV.

**Senator Judy Lee** relayed information about a bill that was adopted last session regarding testing after possible exposure to a disease by a "good samaritan" and if HB 1410 ties into that.

**Mike Mullen** explained that it is included in the bill on Page 1, Line 13 as stated in Chapter 32-03.1 of the Century Code.

**Senator John Warner** asked if there might be any complications with criminal proceedings.

**Mike Mullen** responded that it was a good question and that the blood specimen could not be used for DNA or other proposes in the criminal proceeding. This bill will give the specific right to let an exposed person to have another individual tested and to receive the results so they know if they are at risk and need treatment. There would need to be two different court orders for these two different reasons.

**Grant Benjamin** with the City of Fargo Police Department testified in support of HB 1410. See written testimony (attachment #2). He stating there has been four law enforcement personnel in their department exposed to bloodborne pathogens. It has been understood in their department that if a person does non consent to a second blood sample to be used for diagnosis of a disease, the first blood sample drawn for DUI or similar reason may then be used for this purpose of

disease diagnosis. The department also has a concern to be able to share information between officers about a individual regarding the possible transmission of diseases. They would like to see an amendment added to the bill to allow this while not causing conflict with the privacy act.

**Richard Griffin**, with the Fargo Police Department testified in support of HB 1410 stating that things have getting worse. His personal experience has been an increased number of instances of exposure. He further presented his own personal story of the possibility of exposure by a suicidal female and the consequences that would have involved not only himself but his family as well.

**Kirby Kruger**, (24.9) director of the Division of Disease Control for the North Dakota Department of Health testified in support of HB 1410. See written testimony (attachment #3).

**Senator Dick Dever** asked how long after an exposure to a disease would there be evidence of that disease.

**Kirby Kruger** stated it could take up to six months before the antibodies could be detectable.

**Jodi Bjorson**, (28.0) General Counsel for Workforce Safety and Insurance (WSI) testified in neutral position on HB 1410. See written testimony (attachment #4). Her testimony included amendments that had been approved by Mike Mullen.

**Dave Peske** (31.0) representing the North Dakota Medical Association testified in support of HB 1410. He stated that SB 2259 has been heard in the House committee and asked them to hold off action until HB 1410 was heard by the Senate Committee. The same changes have been requested in both bills.

**Senator Lee** asked if the amendments proposed by WSI for HB 1410 were also included in SB 2259 and if both will move forward or just one of the bills.



**Dave Peske** responded that the amendments were not presented for SB 2259 and that if HB 1410 moves forward with all involved approving, then SB 2259 will be killed.

**Mike Mullen** wanted to thank the Department of Health, the Medical Association and the MeritCare attorneys for their contributions and review of the amendments.

**Senator Dever** asked if a suspected individual with a possible disease is not apprehended, can their medical records be accessed.

**Mike Mullen** that it becomes a little tricky under the privacy law and is difficult to obtain that information. There is a provision under the HIPAA Privacy rule that provides that with respect to an inmate, a health care provider may disclose identifiable health information to the medical director or warden of a correctional facility. They can then use their professional judgment and disclose the information to other correctional officers on a need to know basis, so protection can be provided for themselves and other inmates. He will further research regarding law enforcement officers dealing with individuals in the criminal justice system, who are not inmates and find out if some language can be developed to address that issue.

**Senator Lee** asked for opposing testimony and hearing non closed the hearing.

**Senator Stanley Lyson** made a motion to adopt the amendments as proposed by WSI.

**Senator Richard Brown** second the motion.

Roll call vote to adopt amendments as proposed by WSI for HB 1410 was taken indicating 5 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

**Senator Lee** closed the meeting on HB 1410.

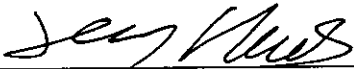

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1410

Senate Human Services Committee

☐ Conference Committee

Hearing Date March 15, 2005

Tape Number	Side A	Side B	Meter #
1		X	1-840
Committee Clerk Signature  			

Minutes: **Chairman Lee** opened the meeting to discuss HB 1410. All Senators were present.

**Senator Brown** made a Do Pass recommendation on Mike Mullen's amendment. Seconded by **Senator Dever**. The vote was 5-0-0.

**Senator Brown** made a Do Pass as Amended recommendation on the bill. Seconded by **Senator Dever**.

Discussion:

**Senator Dever**- Does his amendment cover the concerns of the officers that appeared before our committee?

**Chairman Lee**- Yes.

The vote was 5-0-0 on HB 1410 as amended. **Senator Dever** is the carrier of the bill.

**Chairman Lee** closed the meeting on HB 1410.

PROPOSED AMENDMENTS TO ENGROSSED HB NO. 1410

Page 1, line 2, remove "and" and after "23-07.5-07" insert, ", paragraph 1 of subdivision b of subsection 10 of section 65-01-02, and sections 65-01-15 and 65-01-15.1"

Page 8, line 25, replace "The" with "Except as provided in subdivision b of subsection 10 of section 65-01-02, the"

Page 9, after line 30, insert the following:

**"SECTION 6. AMENDMENT.** Paragraph 1 of subdivision b of subsection 10 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

(1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the bureau organization may pay for preventive treatment for significant exposures documented by emergency medical services providers under chapter 23-07.3, for significant exposures for the employees of licensed facilities as defined by chapter 23-07.3, a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.

**SECTION 7. AMENDMENT.** Section 65-01-15 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-15. Yearly documentation required for firefighter and law enforcement officer.** Except for benefits for an exposure to infectious disease a bloodborne pathogen as defined by sections 23-07.3-01 and 23-07.3-02 section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under section 65-01-15.1, unless the full-time paid firefighter or law enforcement officer provides yearly documentation from a physician which indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years. Any full-time paid firefighter or law enforcement officer employed on June 30, 1995, is not subject to this section until July 1, 1997.

**SECTION 8. AMENDMENT.** Section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-15.1. Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers.**

Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or an exposure to infectious disease a bloodborne pathogen as defined by sections 23-07.3-01 and 23-07.3-02 section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. An employer shall require a

medical examination upon employment, for any employee subject to this section. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and papanicolaou smear for women. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section. For purposes of this section, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends."

Renumber accordingly

Date: 3-7-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1410

Senate Human Services

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Can Do Pass Amendment of WSI

Motion Made By Sen. Lyson Seconded By Sen. Brown

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner	✓	
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown	✓				
Sen. Stanley Lyson	✓				

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Amendment from Fargo police Dept. WSI

AMENDMENT TO ENGROSSED HOUSE BILL 1410

Page 9, line 24, after "as" insert "permitted under subsection 3, or as otherwise", and after line 24 insert:

"3. If the test results are disclosed under this chapter to a law enforcement officer who was exposed to a bloodborne pathogen, the officer may disclose the test results to any other law enforcement officer who has direct physical contact with the test subject, if in the professional judgment of the officer the disclosure (a) is necessary for the health and safety of the other officer, and (b) is limited to the minimum amount of information needed to protect the health and safety of that officer."

Renumber accordingly

COMMENT: Although not required by the HIPAA privacy rule, this amendment is based on 45 C.F.R. § 164.512(k)(5) relating to disclosure of the protected health information of an inmate to a correctional officer, and the "minimum necessary disclosure" requirement of 45 C.F.R. § 164.502(b)(1),<sup>1</sup> which provides:

1. *When using or disclosing protected health information or when requesting protected health information from another covered entity, a covered entity must make reasonable efforts to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.*

No amendment is added regarding a health care provider because protected health information may be disclosed to a provider for the "treatment" of an individual, which would include the nature of the disease or condition of the individual.

This amendment does not conflict with the HIPAA privacy rule because a law enforcement agency such as the Highway Patrol, a sheriff's department, or a local police department is not a "covered entity" under the privacy rule, and, therefore, members of such an agency's workforce are not covered by the privacy rule. The state may establish appropriate rules for the privacy of the test information.

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<sup>1</sup> [NOTE: Under the HIPAA privacy rule, the "minimum necessary requirement" does not apply to a disclosure for treatment, pursuant to an authorization, when disclosure is required by law, and in certain other situations.]

Date: 3-15-05  
Roll Call Vote #: \_\_\_\_\_

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. H B 1410

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass amendment (from Mike Miller 3/8)

Motion Made By Sen Brown Seconded By Sen Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner	✓	
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown	✓				
Sen. Stanley Lyson	✓				

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 3-15-05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1410

Senate Human Services Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass amendment

Motion Made By Sen Brown Seconded By Sen Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee - Chairman	✓		Sen. John Warner	✓	
Sen. Dick Dever - Vice Chairman	✓				
Sen. Richard Brown	✓				
Sen. Stanley Lyson	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Dever

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



**REPORT OF STANDING COMMITTEE**

HB 1410, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1410 was placed on the Sixth order on the calendar.

Page 1, line 2, after "23-07.5-07" insert ", paragraph 1 of subdivision b of subsection 10 of section 65-01-02, and sections 65-01-15 and 65-01-15.1"

Page 8, line 25, replace "but" with ". However."

Page 8, line 27, after "testing" insert "unless otherwise provided by subdivision b of subsection 10 of section 65-01-02"

Page 9, line 24, after "as" insert "permitted under subsection 3, or as otherwise"

Page 9, after line 24, insert:

"3. If the test results are disclosed under this chapter to a law enforcement officer who was exposed to a bloodborne pathogen, the officer may disclose the test results to any other law enforcement officer who has direct physical contact with the test subject, if in the professional judgment of the officer the disclosure is necessary for the health and safety of the other officer and the disclosure is limited to the minimum amount of information needed to protect the health and safety of that officer."

Page 9, after line 30, insert:

**"SECTION 6. AMENDMENT.** Paragraph 1 of subdivision b of subsection 10 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the ~~bureau organization~~ may pay for preventive treatment for ~~significant exposures documented by emergency medical services providers under chapter 23-07.3, for significant exposures for the employees of licensed facilities as defined by chapter 23-07.3, a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment who is exposed to a bloodborne pathogen as defined in section 23-07.5-01 occurring in the course of employment and for exposure to rabies occurring in the course of employment.~~

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**65-01-15. Yearly documentation required for firefighter and law enforcement officer.** Except for benefits for an exposure to infectious disease a bloodborne pathogen as defined by sections 23-07.3-01 and 23-07.3-02 section 23-07.5-01 occurring in the course of employment, a full-time paid firefighter or law enforcement officer who uses tobacco is not eligible for the benefits provided under section 65-01-15.1, unless the full-time paid firefighter or law enforcement officer

provides yearly documentation from a physician which indicates that the full-time paid firefighter or law enforcement officer has not used tobacco for the preceding two years. ~~Any full-time paid firefighter or law enforcement officer employed on June 30, 1995, is not subject to this section until July 1, 1997.~~

**SECTION 8. AMENDMENT.** Section 65-01-15.1 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-15.1. Presumption of compensability for certain conditions of full-time paid firefighters and law enforcement officers.** Any condition or impairment of health of a full-time paid firefighter or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or an exposure to infectious disease a bloodborne pathogen as defined by sections 23-07.3-01 and 23-07.3-02 section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this section, an occupational cancer is one which arises out of employment as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid firefighter. A full-time paid firefighter or law enforcement officer is not eligible for the benefit provided under this section unless that full-time paid firefighter or law enforcement officer has completed five years of continuous service and has successfully passed a medical examination which fails to reveal any evidence of such a condition. An employer shall require a medical examination upon employment, for any employee subject to this section. After the initial medical examination, an employer shall require at least a periodic medical examination as follows: for one to ten years of service, every five years; for eleven to twenty years of service, every three years; and for twenty-one or more years of service, every year. The periodic medical examination, at a minimum, must consist of a general medical history of the individual and the individual's family; an occupational history including contact with and an exposure to hazardous materials, toxic products, contagious and infectious diseases, and to physical hazards; a physical examination including measurement of height, weight, and blood pressure; and laboratory and diagnostic procedures including a nonfasting total blood cholesterol test and papanicolaou smear for women. If the medical examination reveals that an employee falls into a recognized risk group, the employee must be referred to a qualified health professional for future medical examination. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section. For purposes of this section, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends."

Renumber accordingly

**2005 TESTIMONY**

HB 1410

*Testimony for*

**House Bill No. 1410**

*By the Fargo Police Department*

Re: A proposed amendment to Subsection 6 of section 23-07.5-02 of the North Dakota Century Code, relating to blood tests on exposure to the human immunodeficiency virus.

Presenters – Captain Jeff Williams  
Investigator Glenn Hanson  
Officer Sara Cruze

Four times since April, 2004 officers of the Fargo Police Department have suffered a significant exposure to the blood or body fluids of a suspect in the course of their duties. In two of those incidents, the source person was an intravenous drug user.

Presently, state statute allows for testing of the source person if they consent, or after a hearing in District Court, if they refuse consent.

House Bill 1410 attempts to correct two problems we see with the present statute: the time it takes to get a court ruling and the penalties for revealing the name of the source person.

Testing of the source person

When a significant exposure occurs and the source person does not consent to testing, the law allows District Court up to three days to hold a hearing from the time of filing the request. If the exposure occurs on the weekend, that time can be longer, up to five days.

Treatment must begin immediately, within 24 to 48 hours to be effective.

Besides the anguish of being exposed to a potential fatal disease, the treatment can have unpleasant side effects.

HB 1410 provides public safety officers a method to have the source person tested within a few hours. Officers would be able to get a court order, signed by a judge, to compel testing of the source person. Reasonable safeguards are included to protect the source person.

#### Disclosure of the source person

Presently there are significant civil and criminal penalties for revealing the name of a source person tested under the statute. This does not allow law enforcement and public safety workers to warn co-workers about persons who have a contagious disease that are known to be violent, may resist arrest, or may carry sharps, such as needles used to inject drugs. Law enforcement and other public safety professionals often cannot avoid dealing with such persons.

HB 1410 allows public safety personnel an exception to the penalties for disclosure if such disclosure is to protect co-workers who come in contact with such persons. It does not protect public safety personnel from malicious disclosure of the name or test results of a source person.

#### Summary

Law enforcement and Public Safety personnel often come in contact with persons who have communicable diseases. HB 1410 allows them to protect themselves by providing the means to test a source person in the event of a significant exposure. It also allows Public Safety personnel the chance to warn co-workers about persons who carry such a disease, so that they can take necessary precautions to protect themselves from exposure. It also provides reasonable protections to the source person.

*Testimonies of exposure incidents by Investigator Glenn Hanson and Officer Sara Cruze.*

#5

## 2005 N.D. Legislative Issue Human Immunodeficiency Virus (HIV) Testing

Although legislation approved by the last session of the N.D. Legislature improved the protections available to public safety and health personnel exposed to dangerous blood borne pathogens, such as HIV, the process for mandated testing of the source person is still too cumbersome and slow. Several important changes to the existing law need to be made to assure police, fire, EMS, and other medical personnel receive rapid and appropriate treatment in the event of a serious communicable disease exposure.

### **Current law:**

#### **23-07.5-02 Informed Consent for testing – Exception.**

This section provides for ways of testing of a source person's blood, when a blood-borne pathogens exposure occurs to a health or public safety employee.

Sections 1 & 2 allows the source person to volunteer to provide a blood sample for testing for HIV through an informed consent process.

Sections 3 & 4 allows the source person to be tested without consent, if blood is drawn for another reason, once an exposure has occurred.

Section 6 outlines a procedure to petition District Court if the source person does not consent and no blood is available for testing. District Court must hold a hearing within three days of receiving the petition ,

### **Discussion:**

Section 3, 4 and 6 place an unreasonable burden upon the health or public safety worker who was subject to the exposure to learn whether the source person has a serious communicable disease, such as HIV, which could have been transmitted to them.

The treatment for such an exposure must begin quickly to be effective, which places an additional burden on the person who was subject to the exposure. Requiring the exposed person to petition District Court to authorize a blood test is often difficult or impossible to do within the 48-hour window for treatment to begin.

The threat of contacting a serious contagious disease is a very stressful incident to the exposed individual. Health and public safety employees should have an exception that compels the source person to submit to testing within a short period of time, with reasonable precautions taken to protect the source person's identity (which are already in the statute). This change would allow health and public safety employees, who are the victim of the exposure through their employment, to know the results of that exposure and to receive proper care and treatment in a timely manner. Currently, instead of protecting the exposed person, North Dakota has one of the strictest statutes in the country in terms of protecting the *source* person.

## **Engrossed House Bill 1410**

Engrossed HB 1410 incorporates the substance of two other bills, SB 2252, and SB 2259, which amend the same chapter of the century code, NDCC ch. 23-07.5, which relates to the testing of an individual whose blood, tissue, or bodily fluid has caused an exposure of another individual.

These situations arise in connection with --

- Needle stick injuries of health care providers or patients,
- Emergency medical personnel and good Samaritans treating persons injured in an accident,
- Law enforcement officers providing assistance to accident victims, or coming in contact with a citizen who have been arrested or has been in a fight, and
- Correctional officers who have been exposed by an inmate.

Each of these bills made some change in the law requiring an individual to have blood drawn and tested for HIV, if his or her blood or other bodily fluids have caused an "exposure" of another individual.

Because these bills amend the same sections of the Century Code, and because the Legislative Assembly has made other changes to this law in recent sessions, the substance of these bills has been combined into a single measure. In addition, other changes to simplify and clarify the law regarding tests for the presence of blood-borne pathogens are all combined Engrossed House Bill 1410.

Engrossed House Bill 1410 clarifies and simplifies when a person who has "exposed" another individual to their blood and other bodily fluids must submit to a test for blood-borne pathogens. The key elements of the Engrossed House Bill 1410:

1. 1<sup>st</sup>, Engrossed House Bill 1410 broadens the law to explicitly permit testing for blood-borne pathogens, such as hepatitis B and C, in addition to HIV.

[Engrossed bill, Page 1, lines 9 – 12.]

2. 2<sup>nd</sup>, Engrossed House Bill 1410 repeals redundant or awkwardly worded requirements. In addition, the authority to test for the presence of a blood-borne pathogen is simplified.

3. 3<sup>rd</sup>, Engrossed House Bill 1410 simplifies the law because it will apply only in the case of a person who is seeking to have another individual's blood tested because the second individual has caused an exposure. [Engrossed bill, Page 3, line 20.]

Thus, the requirements of this law will not apply to routine, voluntary, consensual test of blood in the normal course of health care treatment that involves diagnostic testing of blood for cholesterol and other substances – that also includes testing for HIV and other blood-borne pathogens. There is no need to apply the requirements of this law relating to compelled testing after an "exposure" to routine medical care.

4. 4<sup>th</sup> – Engrossed House Bill 1410 incorporates SB 2259, which removes a specific statutory "informed consent form." [See repeal of subsection (1), Engrossed House Bill, Page 3, lines 26 – 31, and Page 4, lines 1 – 7.]

All health care providers have their own standard "informed consent forms," and there is a whole body of health care law relating to when informed consent is required in connection with diagnostic testing. (This chapter, which is related to "compelled testing" after one person has exposed a second individual, doesn't need to address that topic.)



5<sup>th</sup> – Engrossed House Bill 1410 incorporates SB 2252 regarding testing of staff of state crime lab and other labs. [Crime lab staff is added to the definition of health care provider -- Engrossed House Bill, Page 2, lines 12 – 15.]

6<sup>th</sup> As suggested by the Attorney General, Engrossed House Bill 1410 does not remove "notice" to the test subject of a judicial proceeding on whether the individual should be compelled to have blood drawn and tested for blood-borne pathogens. Giving notice to the test subject will not necessarily speed up the judicial process, which involves a simple question: "Did John Doe cause an exposure to William Smith?" Removing notice also raises questions about fairness. *[Engrossed House Bill, Page 7, lines 28 – 30, subdivision (c)]*

7<sup>th</sup> -- As introduced HB 1410 removes the authority to confine the test subject until the test is completed. Engrossed House Bill 1410 does not repeal that authority, which is important to assure that the test subject is available for testing, but moves its location. *[Engrossed House Bill, Page 8, lines 13 – 16, new subsection 5.]*

8<sup>th</sup> – As introduced HB 1410 combined judge's duty to find probable cause to believe an exposure has occurred, with the physician's responsibility for giving his or her **opinion** as to whether an exposure has occurred. Engrossed House Bill 1410 clarifies the separate responsibilities of the judge and the physician. *[Engrossed House Bill, page 7, lines 25 – 26 (the renumbered subdivision (b)), and, with respect to the physician's testimony, new text in subsection (4) on page 7, lines 15 – 19.]*

9<sup>th</sup> – The engrossed bill removed the 3-day time for scheduling a hearing on whether there is sufficient proof of an "exposure" for a court to order an individual to be tested. *[Amendment, page 7, lines 13 and 14.]*

10<sup>th</sup>, Engrossed Bill 1410 repeals chapter 23-07.3, *[Engrossed Bill, Page 10, lines 1 & 2]*, which related to testing for infectious diseases, because all of the authority necessary for such testing – with one exception – is now contained in chapter 23-07.5, which is

amended and reenacted by this measure. The only remaining provision of chapter 23-07.3 that is needed, which relates to payment for testing, is transferred to section 23-07.5-02(7).  
*[Engrossed Bill, Page 8, lines 25 – 30.]*

Finally, concern was expressed that there is a need to speed up the judicial process because it is important to begin prophylaxis promptly after an exposure to blood or other bodily tissues. This is correct, but it is also true that if a Law enforcement officer, health care provider, or good Samaritan, or anyone else has been exposed to blood or other bodily fluids, that individual can initiate prophylaxis within 24 hours after exposure and cease treatment if the test results show that the person who caused the exposure tests negative for blood-borne pathogens.

Also, today there are rapid tests in which the results can be known within 20 or 30 minutes. These tests give a preliminary indication as to whether the test subject is positive for HIV or other blood-borne pathogens.

## Biohazard Risks

There are reports of police officers said to have contracted AIDS from their work. In May 1993 the US Federal Bureau of Investigations reported that there had been **seven [7] cases** of police officers contracting AIDS through their work over 10 years (Bigbee 1993). Let us begin by noting that this is a surprisingly small number of cases over a 10-year period in the entire United States. Let us next observe that there was some controversy about whether these cases were all to be considered job-related. Nevertheless, it is clearly possible to become infected with HIV as a result of police work.

Since there is no cure for AIDS, and no vaccine that prevents the disease, the best defense a police officer has against this infection is prevention. Latex gloves should be worn, whenever possible, any time that contact with blood or blood-contaminated evidence is foreseen. This is especially important if there are any skin breaks on the hands.

Any open sores or cuts that a police officer has sustained must be kept covered with an occlusive dressing while on duty. Needles should be handled with extreme care, and needles or syringes must be transported in a sharps container that can effectively prevent the needle from penetrating through the container. Sharp edges must be avoided and sharp exhibits handled with extreme care, particularly when contaminated with fresh blood. Where possible, such exhibits should be picked up with instruments rather than by hand.

Latex gloves and a barrier mask should be used if resuscitation attempts are undertaken, and latex gloves must always be worn when rendering first aid. It is important to bear in mind, however, that the risk of becoming infected with HIV from resuscitation procedures is very remote.

There are also some traditional techniques in policing that must be avoided. "Pat down" searches are dangerous to the police officer. There are numerous cases of police officers suffering needle stick injuries from this type of procedure. Also dangerous is searching containers, bags or even pockets by rummaging through them. All containers must be emptied into a flat surface and their contents examined in plain view. Similarly sweep searches under car seats and between seats and backs of couches and chairs must not be performed. It is preferable to dismantle furniture rather than have police officers putting their hands blindly in places where needles and syringes may be hidden. Latex gloves do not protect from needlestick injury.

Eye protection and face masks may be appropriate in circumstances where spatter of body fluid such as saliva or blood can reasonably be foreseen. There must be a system in place for the safe disposal of personal protective equipment. There must be a facility for police officers to wash their hands. Given the fact that few patrol cars

have running water and sinks; prepackaged washing solutions for cleaning skin should be provided. Lastly, the question of what should be done for a police officer who, in spite of all the best precautions, suffers a percutaneous exposure to HIV should be asked. After appropriate wound care the first step is to try to determine whether the source of the exposure is truly HIV positive. This is not always possible. Secondly, it is imperative that the police officer be educated about the true risks of infection. Many non-medical personnel assume that the risk is much higher than it really is. Thirdly, the police officer must be informed of the need to retest for at least six months and possibly nine months in order to ensure that the officer has not been infected. Steps must be taken to prevent potential infection of the officer's sexual partner(s) for at least six months. Lastly, the question of post-exposure prophylaxis must be discussed. There is increasing evidence that prophylaxis with antiviral drugs may be helpful in reducing the risk of seroconversion after percutaneous exposure. These are discussed elsewhere in the Encyclopedia. In addition, the area of prophylaxis is under intense research scrutiny so that current references must be consulted to assure the most appropriate approach.

There are numerous case reports of occupationally acquired hepatitis among law enforcement personnel. The quantitative risk is not dramatically high when compared to other occupations. Nevertheless it is a real risk and must be seen as a possible occupational disease. The preventive approach to HIV infection that was outlined above applies equally well to the blood-borne disease hepatitis B. Given the fact that hepatitis B is so much more contagious than AIDS, and more likely to cause disease or death in the short term, this disease ought to be an even more compelling reason for following universal precautions.

There is an effective vaccine against hepatitis B. All police officers regardless of whether they are involved in forensics or general-duty policing, should be vaccinated against hepatitis B. Other conditions, including hepatitis C, tuberculosis and airborne pathogens, may also be encountered by police officers.

***Testimony in Support of***

**House Bill No. 1410**

***By the Fargo Police Department***

Re: A proposed amendment to Subsection 6 of section 23-07.5-02 of the North Dakota Century Code, relating to blood tests on exposure to the human immunodeficiency virus.

Presenters – Officer Grant Benjamin  
Officer Richard Griffin

Four times since May, 2004 officers of the Fargo Police Department have suffered a significant exposure to the blood or body fluids of a suspect in the course of their duties. In two of those incidents, the source person was an intravenous drug user.

Presently, state statute allows for testing of the source person if they consent, if blood is drawn for another reason, or after a hearing in District Court, if they refuse consent and blood is not drawn for other reasons.

House Bill 1410 attempts to correct problems we see with the present statute: the ability to test the source person if they do not consent, the time it takes to get a court ruling ordering testing and the penalties for revealing the name of the source person.

Testing of the source person

When a significant exposure occurs and the source person does not consent to testing, the law allows District Court up to three days to hold a hearing from the time of filing the request. If the exposure occurs on the weekend, that time can be longer, up to five days.

Treatment for an exposure must begin immediately, within 24 to 48 hours to be effective.

Besides the anguish of being exposed to a potential fatal disease, the treatment can have unpleasant side effects.

HB 1410 provides public safety officers a method to have the source person tested within a few hours. Officers would be able to get a court order, signed by a judge, to compel testing of the source person. Testing for Hepatitis would now be included, as well as for HIV. Reasonable safeguards are included to protect the source person.

#### Disclosure of the source person

Presently there are significant civil and criminal penalties for revealing the name of a source person tested under the statute. This does not allow law enforcement and public safety workers to warn co-workers about persons who have a contagious disease that are known to be violent, may resist arrest, or may carry sharps, such as needles used to inject drugs. Law enforcement and other public safety professionals often cannot avoid dealing with such persons.

HB 1410 allows public safety personnel an exception to the penalties for disclosure if such disclosure is to protect co-workers who come in contact with such persons. It does not protect public safety personnel from malicious disclosure of the name or test results of a source person.

#### Summary

Law enforcement and Public Safety personnel often come in contact with persons who have communicable diseases. HB 1410 allows them to protect themselves by providing the means to test a source person in the event of a significant exposure. It also allows Public Safety personnel the chance to warn co-workers about persons who carry such a disease, so that they can take necessary precautions to protect themselves from exposure. It also provides reasonable protections to the source person.

*Testimony of an exposure incident by Officer Richard Griffin.*

**Testimony**

**House Bill 1410**

**Senate Human Services Committee**

**Monday, March 7, 2005; 9 a.m.**

**North Dakota Department of Health**

Good morning, Chairman Lee and members of the Senate Human Services Committee. My name is Kirby Kruger, and I am acting director of the Division of Disease Control for the North Dakota Department of Health. I am here today support of House Bill 1410.

Two other bills – Senate Bill 2252 and Senate Bill 2259 – also propose amendments to N.D.C.C. 23-07.5-01. The North Dakota Department of Health worked with Rep. Porter on House Bill 1410, which revises 23-07.5-01 to include appropriate testing not only for human immunodeficiency virus (HIV) but also for other blood-borne pathogens such as hepatitis B and C. The revisions included in House Bill 1410 address the concerns highlighted in both Senate Bill 2252 and 2259.

This concludes my testimony. I am happy to answer any questions you may have.

**2005 Engrossed House Bill No. 1410**  
**Testimony before the Senate Human Services Committee**  
**Presented by: Jodi Bjornson, General Counsel**  
**Workforce Safety and Insurance**  
**March 7, 2005**

Good morning, Madam Chairman and Members of the Committee:

My name is Jodi Bjornson and I am General Counsel for Workforce Safety and Insurance (WSI). I am here to offer amendments to Engrossed HB 1410. This bill came to WSI's attention after it was amended in the House of Representatives. In its current form, the bill creates issues with workers' compensation statutes found in Title 65 of the North Dakota Century Code.

WSI's main concern centers on the repeal of Chapter 23-07.3 in Section Six of the bill. This Chapter is referenced within workers' compensation statutes in three places. Specifically, this chapter is referenced in section 65-01-02(10)(b)(1) which sets forth WSI's authority to pay for preventative treatment (testing) for certain exposures to infectious disease sustained by specified emergency, medical, and health care workers. Chapter 23-07.3 is also referenced in sections 65-01-15 and 65-01-15.1, which relate to coverage for exposures to infectious disease for firefighters and law enforcement officers.

Our proposed amendments are intended to only address the issues created with the repeal of Chapter 23-07.3. We want to ensure the coverage provided under current workers' compensation law is not compromised, and remains consistent with the provisions of this bill. Instead of referencing Chapter 23-07.3 in the above-mentioned provisions of workers' compensation law, the proposed amendments provide for reference to the new definitional provisions found in section 23-07.5-01, as set forth in section One of this bill. Although there are differences in the terminology used, we have crafted the amendments so workers' compensation coverage remains as consistent and appropriate as possible.

Finally, the proposed amendments clarify where the obligation lies for the payment of any exposure testing. Subsection Seven found on page eight of the bill specifies that the exposed individual is responsible for payment unless the exposure occurs at work, which then obligates the employer to pay the cost of testing. WSI's proposed amendment clarifies that WSI will pay for testing for exposures sustained by those workers for whom testing is covered under workers' compensation law. This change is intended to benefit the employer and exposed individual in these circumstances.

On behalf of WSI, I request your favorable consideration of these amendments. I would be happy to answer any questions at this time.