

HOUSE BILL NO. 563
INTRODUCED BY W. JONES

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING FOR EXPANDED TESTING OF BODILY FLUIDS FOR INFECTIOUS DISEASES TO PROTECT THE PUBLIC HEALTH; REQUIRING TESTING OF CERTAIN CRIMINAL SUSPECTS; REQUIRING REPORTING OF TEST RESULTS TO VICTIMS OF CRIME; REQUIRING COMPENSATION FOR THE COSTS OF TESTING FOR VICTIMS OF CERTAIN CRIMES; EXPANDING THE PROTECTIONS OF TITLE 50, CHAPTER 16, PART 7, MCA, TO PEOPLE WHO PROVIDE VOLUNTARY EMERGENCY ASSISTANCE; PROVIDING AN APPROPRIATION TO PAY FOR THE COSTS OF TESTING VICTIMS OF CERTAIN CRIMES; AMENDING SECTIONS 44-5-303, 46-24-201, 50-16-701, 50-16-702, 50-16-703, 50-16-704, 50-16-1007, AND 53-9-128, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Requiring testing of certain criminal suspects for infectious diseases.

(1) Because the transmittal of infectious diseases through bodily fluids poses a health hazard to individuals and to the public health, the legislature finds that a compelling state interest exists in testing a person for the presence of infectious diseases if the person is suspected of a crime that may have caused exposure of another person to an infectious disease.

(2) An arrest of a person for sexual assault under 45-5-502 or sexual intercourse without consent under 45-5-503 constitutes probable cause for the issuance of a search warrant to test the person for infectious diseases that may be transmitted through bodily fluids.

(3) Unless the victim requests otherwise, a law enforcement agency arresting a person for a crime described in subsection (2) shall seek a search warrant for testing the person's blood for the presence of infectious disease if, during the commission of the crime, the victim suffered an exposure to bodily fluids that may result in an exposure to infectious disease. The testing must be conducted as soon as possible after the arrest by a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business.

(4) Tests conducted pursuant to this section must include but not be limited to testing for hepatitis B, hepatitis C, herpes simplex, human papilloma virus, and sexually transmitted diseases as defined in 50-18-101.

(5) A person whose test indicates the presence of human immunodeficiency virus must receive posttest

counseling from a qualified health professional.

(6) For purposes of this section, "exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the suspect and the person or in another manner as defined by department of public health and human services rule.

Section 2. Section 44-5-303, MCA, is amended to read:

"44-5-303. Dissemination of confidential criminal justice information -- procedure for dissemination through court. (1) Except as provided in subsections (2) through (4), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. Permissible dissemination of confidential criminal justice information under this subsection includes receiving investigative information from and sharing investigative information with a fire service agency or fire marshal concerning the criminal investigation of a fire.

(2) (a) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor. Information gathered pursuant to [section 1] must be made available to the victim and, if the test is positive, must be shared with the department of public health and human services.

(b) A victim who receives confidential criminal justice information pursuant to this subsection (2) may share the information with the person's licensed health care provider.

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

(4) The county attorney or the county attorney's designee is authorized to receive confidential criminal justice information for the purpose of cooperating with local fetal, infant, and child mortality review teams. The county attorney or the county attorney's designee may, in that person's discretion, disclose information determined necessary to the goals of the review team. The review team and the county attorney or the designee shall maintain the confidentiality of the information.

(5) (a) If a prosecutor receives a written request for release of confidential criminal justice information relating to a criminal investigation that has been terminated by declination of prosecution or relating to a criminal prosecution that has been completed by entry of judgment, dismissal, or acquittal, the prosecutor may file a

declaratory judgment action with the district court pursuant to the provisions of the Uniform Declaratory Judgments Act, Title 27, chapter 8, for release of the information. The prosecutor shall:

(i) file the action in the name of the city or county that the prosecutor represents and describe the city's or county's interest;

(ii) list as defendants anyone known to the prosecutor who has requested the confidential criminal justice information and anyone affected by release of the information;

(iii) request that the prosecutor be allowed to deposit the investigative file and any edited version of the file with the court pursuant to the provisions of Title 27, chapter 8;

(iv) request the court to:

(A) conduct an in camera review of the confidential criminal justice information to determine whether the demands of individual privacy do not clearly exceed the merits of public disclosure; and

(B) order the release to the requesting party defendant of whatever portion of the investigative information or edited version of the information the court determines appropriate.

(b) In making an order authorizing the release of information under subsection (5)(a), the court shall make a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure and authorize, upon payment of reasonable reproduction costs, the release of appropriate portions of the edited or complete confidential criminal justice information to persons who request the information.

(c) In an action filed for the court-ordered release of confidential criminal justice information under subsection (5)(a), the parties shall bear their respective costs and attorney fees.

(6) The procedures set forth in subsection (5) are not an exclusive remedy. A person or organization may file any action for dissemination of information that the person or organization considers appropriate and permissible."

Section 3. Section 46-24-201, MCA, is amended to read:

"46-24-201. Services to victims of crime. (1) Law enforcement personnel shall ensure that a victim of a crime receives emergency social and medical services as soon as possible and that the victim is given written notice, in the form supplied by the attorney general, of the following:

(a) the availability of crime victim compensation;

(b) access by the victim and the defendant to information about the case, including access to information about the results of any tests conducted pursuant to [section 1];

(c) the role of the victim in the criminal justice process, including what the victim can expect from the

system, as well as what the system expects from the victim; and

(d) stages in the criminal justice process of significance to a crime victim and the manner in which information about the stages may be obtained.

(2) In addition to the information supplied under subsection (1), law enforcement personnel shall provide the victim with written information on community-based victim treatment programs, including medical, housing, counseling, and emergency services available in the community.

(3) As soon as possible, law enforcement personnel shall give to the victim the following information:

(a) the name, office address, and telephone number of a law enforcement officer assigned to investigate the case; and

(b) the prosecuting attorney's name, office address, and telephone number.

(4) As soon as possible after the victim reports the crime, law enforcement personnel shall inform the victim of the victim's right to be compensated for testing for infectious diseases transmitted by bodily fluids if:

(a) the person was a victim of sexual assault under 45-5-502 or sexual intercourse without consent under 45-5-503; and

(b) an exposure, as defined in 50-16-701, to bodily fluids occurred during commission of the crime.

(5) A victim tested pursuant to subsection (4) must receive compensation from the crime victims compensation and assistance program for the costs of the tests and any necessary posttest counseling related to an infectious disease if the costs are not covered by private or publicly funded insurance or other available sources."

Section 4. Section 50-16-701, MCA, is amended to read:

"50-16-701. Definitions. As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying an emergency services provider of exposure.

(4) "Emergency services organization" means a public or private organization that provides emergency services to the public.

(5) "Emergency services provider" means a person employed by or acting as a volunteer with an

emergency services organization, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(6) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

(7) "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

(8) "Infectious disease" means human immunodeficiency virus infection, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and any other disease capable of being transmitted through an exposure that has been designated by department rule.

(9) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this part and by rule.

(10) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(11) "Voluntary emergency assistance" means assistance provided by a person other than an emergency services provider who in good faith renders emergency care or assistance at the scene of a crime, accident, or emergency."

Section 5. Section 50-16-702, MCA, is amended to read:

"50-16-702. Notification of exposure to infectious disease -- report of exposure to disease. (1) (a)

If an emergency services provider acting in an official capacity attends a patient prior to or during transport or assists in transporting a patient to a health care facility and the emergency services provider has had an exposure, the emergency services provider may request the designated officer to submit the form required by department rule to the health care facility on the emergency services provider's behalf. The form must be provided for in rules adopted by the department and must include the emergency services provider's name and other information required by the department, including a description of the exposure. The designated officer shall submit the completed form to the health care facility receiving the patient as soon as possible after the request for submission by the emergency services provider. Submission of the form to the health care facility is an indication that the emergency services provider was exposed and a verification that the designated officer and the emergency services provider believe that the emergency services provider was exposed.

(b) If the exposure described on the form occurred in a manner that may allow infection by HIV, as

defined in 50-16-1003, by a mode of transmission recognized by the centers for disease control and prevention, then submission of the form to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10).

(c) Upon receipt of the report of exposure from a designated officer, the health care facility shall notify the designated officer in writing whether or not a determination has been made that the patient has or does not have an infectious disease. If a determination has been made and the patient has been found:

(i) to have an infectious disease, the information required by 50-16-703 must be provided by the health care facility;

(ii) to not have an infectious disease, the date on which the patient was transported to the health care facility must be provided by the health care facility.

(2) If a health care facility receiving a patient determines that the patient has an airborne infectious disease, the health care facility shall, within 48 hours after the determination was made, notify the designated officer and the department of that fact. The notice to the department must include the name of the emergency services organization that transported the patient to the health care facility. The department shall, within 24 hours after receiving the notice, notify the designated officer of the emergency services provider who transported the patient.

(3) A designated officer who receives the notification from a health care facility required by 50-16-703(2) or by subsection (1)(c) of this section shall immediately provide the information contained in the notification to the emergency services provider for whom the report of exposure was filed or who was exposed to a patient with an airborne infectious disease.

(4) A person providing voluntary emergency assistance may request a notification from the person designated by a health care facility to take reports of unprotected exposures if, within 48 hours of providing the voluntary emergency assistance, the person providing voluntary emergency assistance:

(a) contacts the health care facility that attended to the patient whom the person assisted; and

(b) provides information to the person designated to take reports of unprotected exposures that establishes the likelihood that an exposure occurred during the time that the voluntary emergency assistance was provided."

Section 6. Section 50-16-703, MCA, is amended to read:

"50-16-703. Notification of precautions after exposure to infectious disease. (1) After a patient is transported to a health care facility and if a physician determines that the transported patient has an infectious

disease, the physician shall inform the infectious disease control officer of the health care facility of the determination within 24 hours after the determination is made.

(2) If it is determined that the infectious disease is airborne or a report of exposure was filed concerning the patient under 50-16-702, the health care facility shall provide the notification required by subsection (3) orally within 48 hours after the time of diagnosis and in writing within 72 hours after diagnosis to the designated officer of each emergency services organization known to the health care facility to have provided emergency services to the patient prior to or during transportation to the health care facility.

(3) The notification must state the disease to which the emergency services provider or a person providing voluntary emergency assistance was exposed, the appropriate medical precautions and treatment that the exposed person needs to take, the date on which the patient was transported to the health care facility, and the time that the patient arrived at the facility."

Section 7. Section 50-16-704, MCA, is amended to read:

"50-16-704. Confidentiality -- penalty for violation -- immunity from liability. (1) The name of the person diagnosed as having an infectious disease may not be released to anyone, including the ~~emergency services provider~~ person who was exposed, nor may the name of the ~~emergency services provider~~ person who was exposed be released to anyone other than the ~~emergency services provider~~ person, except as required by this part, by department rule concerning reporting of communicable disease, or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than \$500 or more than \$10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, a physician, or the designated officer of an emergency services provider's organization may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact an exposed person of exposure are unsuccessful."

Section 8. Section 50-16-1007, MCA, is amended to read:

"50-16-1007. Testing -- counseling -- informed consent -- penalty. (1) An HIV-related test may be ordered only by a health care provider and only after receiving the informed consent of:

(a) the subject of the test;

- (b) the subject's legal guardian;
- (c) the subject's next of kin or significant other if:
 - (i) the subject is unconscious or otherwise mentally incapacitated;
 - (ii) there is no legal guardian;
 - (iii) there are medical indications of an HIV-related condition; and
 - (iv) the test is advisable in order to determine the proper course of treatment of the subject; or
- (d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital

records to act on the subject's behalf if:

- (i) the subject is in a hospital; and
- (ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

(2) When a health care provider orders an HIV-related test, the health care provider also certifies that informed consent has been received prior to ordering an HIV-related test.

(3) Before the subject of the test gives informed consent, the health care provider ordering the test or the health care provider's designee shall give pretest counseling to:

- (a) the subject;
- (b) the subject's legal guardian;
- (c) the subject's next of kin or significant other if:
 - (i) the subject is unconscious or otherwise mentally incapacitated; and
 - (ii) there is no guardian; or
- (d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital

records to act on the subject's behalf if:

- (i) the subject is in the hospital; and
- (ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

(4) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform each person who wishes to be tested that anonymous testing is available at one of the counseling-testing sites established by the department, or elsewhere.

(5) The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, after giving informed consent, a health care provider to receive the results of an HIV-related test. The designated health care provider shall inform the subject or the subject's representative of the results in person.

(6) At the time that the subject of a test or the subject's representative is given the test results, the health

care provider or the health care provider's designee shall give the subject or the subject's representative posttest counseling.

(7) If a test is performed as part of an application for insurance, the insurance company shall obtain the informed consent in writing and ensure that:

(a) negative results can be obtained by the subject or the subject's representative upon request; and

(b) positive results are returned to the health care provider designated by the subject or the subject's representative.

(8) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(9) Subsections (1) through (6) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to ~~assure~~ ensure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;

(c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;

(ii) there are medical indications of an HIV-related condition;

(iii) the test is advisable in order to determine the proper course of treatment of the subject; and

(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within a reasonable time after the test is determined to be advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with the exception that the pretest and posttest counseling must still be given.

(10) (a) If an agent or employee of a health care facility, a health care provider with privileges at the health care facility, or a person providing emergency services or voluntary emergency assistance who is described in 50-16-702 has been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized by the centers for disease control of the United States public health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek informed consent in accordance with guidelines of the centers for disease control for an HIV-related test of the patient. If informed consent cannot be obtained, the health care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may, without the consent of the patient,

conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of the results and provide the patient with posttest counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

(b) For the purposes of this subsection (10), "informed consent" means an agreement that is freely executed, either orally or in writing, by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the subject's next of kin; or significant other; or a person designated by the subject in hospital records to act on the subject's behalf.

(11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of \$1,000 or imprisonment for up to 6 months, or both."

Section 9. Section 53-9-128, MCA, is amended to read:

"53-9-128. Compensation benefits. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages ~~due to~~ because of injury as a result of criminally injurious conduct. During the time the claimant seeks weekly benefits, the claimant, as a result of the injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 2/3% of the wages received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period. Weekly compensation payments may not be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments must be paid from the date the wage loss began. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and other treatment approved by the office for the injuries suffered ~~due to~~ because of criminally injurious conduct. Unless expressly requested by the claimant, benefits may not be paid under this subsection until the claimant has been fully compensated for total wage loss benefits as provided in subsection (1) or (7). Subject to available funds, reimbursable expenses include payment to a victim of sexual assault or sexual intercourse without consent for testing for infectious disease and for any necessary posttest counseling related to an infectious disease, as required pursuant to 46-24-201.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 2/3% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments must be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) must be paid to the spouse for the benefit of the spouse and other dependents unless the office determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) must cease to be paid to the spouse but must continue to be paid to the other dependents as long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding \$3,500, must be paid if all other collateral sources have properly paid expenses but have not covered all expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death because of injuries suffered ~~due to~~ because of an act of criminally injurious conduct may not exceed \$25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of the injury has no reasonable prospect of being regularly employed in the normal labor market and who was employable but was not employed at the time of the injury may in the discretion of the office be awarded weekly compensation benefits in an amount determined by the office not to exceed \$100 ~~per~~ a week. Weekly compensation payments must continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market. The claimant must be awarded benefits as provided in subsection (2).

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the office be awarded, in a gross single amount payable to all dependents, a sum not to exceed \$100 ~~per~~ a week, which is payable in the manner and for the period provided by subsection (3)(b) or for a shorter period as determined by the office. The claimant must be awarded benefits as provided in subsection (4).

(8) Except for benefits paid under subsections (3), (5), and (7)(b) or other benefits paid when the victim is killed as a result of criminally injurious conduct, amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister of a

victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is a victim of criminally injurious conduct involving a sexual offense and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of that criminally injurious conduct.

(c) Total payments made under subsections (9)(a) and (9)(b) may not exceed \$2,000 or 12 consecutive months of treatment for each person, whichever occurs first."

NEW SECTION. Section 10. Report to legislature. The department of justice shall report to the legislature, as provided in 5-11-210, the following information:

(1) the number of reports of sexual assault and sexual intercourse without consent filed with Montana law enforcement agencies each year;

(2) the number of victims of sexual assault and sexual intercourse without consent who annually seek reimbursement from the office of victim services; and

(3) the amount of claims paid annually by the office of victim services to victims of sexual assault and sexual intercourse without consent.

NEW SECTION. Section 11. Appropriation. (1) There is appropriated from the state general fund to the department of justice \$100,000 in each year of the biennium beginning July 1, 2007.

(2) The appropriation must be used to pay for the costs of testing and any necessary posttest counseling for victims of sexual assault and sexual intercourse without consent who may have suffered exposure to infectious disease, pursuant to 46-24-201.

NEW SECTION. Section 12. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 46, chapter 5, and the provisions of Title 46, chapter 5, apply to [section 1].

(2) [Section 10] is intended to be codified as an integral part of Title 53, chapter 9, part 1, and the provisions of Title 53, chapter 9, part 1, apply to [section 10].

NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 2007.

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