2019 ASSEMBLY BILL 744

January 16, 2020 – Introduced by Representatives JAMES, SUMMERFIELD, DITTRICH, FELZKOWSKI, KRUG, KULP, MAGNAFICI, OLDENBURG, QUINN, SUBECK, TITTL, TUSLER, BOWEN and WICHGERS, cosponsored by Senators BERNIER, JACQUE, NASS, OLSEN and WANGGAARD. Referred to Committee on Criminal Justice and Public Safety.

1   AN ACT *to amend* 968.38 (2m) (intro.), 968.38 (2m) (a) and 968.38 (5) (intro.) of

2   the statutes; **relating to:** throwing or expelling a bodily substance at a public

3   safety worker or prosecutor.

Analysis by the Legislative Reference Bureau

Under current law, if a prisoner throws or expels blood, semen, vomit, saliva, urine, feces, or other bodily substance at or toward an officer or other person in the prison or facility, a court may order the prisoner to undergo testing for communicable diseases if there is probable cause to believe that there was potential for transmitting a communicable disease to the victim. This bill allows a court to require such testing for any criminal defendant who throws or expels blood, semen, vomit, saliva, urine, feces, or other bodily substance at or toward a public safety worker or a prosecutor.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4   SECTION 1. 968.38 (2m) (intro.) of the statutes is amended to read:

5   968.38 **(2m)** (intro.) In a criminal action under s. 941.375 (2) or 946.43 (2m),

6   the district attorney shall apply to the circuit court for his or her county for an order

1 requiring the defendant to submit to a test or a series of tests administered by a

2 health care professional to detect the presence of communicable diseases and to

3 disclose the results of the test or tests as specified in sub. (5) (a) to (c), if all of the

4 following apply:

5 SECTION 2. 968.38 (2m) (a) of the statutes is amended to read:

6 968.38 **(2m)** (a) The district attorney has probable cause to believe that the act

7 or alleged act of the defendant that constitutes a violation of s. 941.375 (2) or 946.43

8 (2m) carried a potential for transmitting a communicable disease to the victim or

9 alleged victim and involved the defendant's blood, semen, vomit, saliva, urine or

10 feces or other bodily substance of the defendant.

11 SECTION 3. 968.38 (5) (intro.) of the statutes is amended to read:

12 968.38 **(5)** (intro.) The court shall set a time for a hearing on the matter under

13 sub. (2m) during the preliminary examination, if sub. (3) (a) applies; after the

14 defendant is bound over for trial and before a verdict is rendered, if sub. (3) (b)

15 applies; after conviction or a finding of not guilty by reason of mental disease or

16 defect, if sub. (3) (c) applies; or, subject to s. 971.13 (4), after the determination that

17 the defendant is not competent, if sub. (3) (d) applies. The court shall give the district

18 attorney and the defendant notice of the hearing at least 72 hours prior to the

19 hearing. The defendant may have counsel at the hearing, and counsel may examine

20 and cross-examine witnesses. If the court finds probable cause to believe that the

21 act or alleged act of the defendant that constitutes a violation of s. 941.375 (2) or

22 946.43 (2m) carried a potential for transmitting a communicable disease to the

23 victim or alleged victim and involved the defendant's blood, semen, vomit, saliva,

24 urine or feces or other bodily substance of the defendant, the court shall order the

25 defendant to submit to a test or a series of tests administered by a health care

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1   professional to detect the presence of any communicable disease that was potentially

2   transmitted by the act or alleged act of the defendant. The court shall require the

3   health care professional who performs the test to disclose the test results to the

4   defendant. The court shall require the health care professional who performs the

5   test to refrain from making the test results part of the defendant's permanent

6   medical record and to disclose the results of the test to any of the following:

7   **(END)**