

HOUSE BILL REPORT

SB 6580

As Passed House:
February 27, 2018

Title: An act relating to human immunodeficiency virus (HIV) testing.

Brief Description: Concerning human immunodeficiency virus (HIV) testing.

Sponsors: Senator Rolfes.

Brief History:

Committee Activity:

Health Care & Wellness: 2/15/18, 2/16/18 [DP].

Floor Activity:

Passed House: 2/27/18, 96-2.

Brief Summary of Bill

- Repeals a specific prohibition against human immunodeficiency virus (HIV) testing without consent and a list of exceptions to that prohibition.
- Repeals the requirement that clinicians employ "opt-out" HIV screening for patients age 15 through 65 years and for all pregnant women.
- Repeals the prohibition against health care providers using the fact that a person has declined an HIV screening as a basis for denying services or treatment other than the HIV screening.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 13 members: Representatives Cody, Chair; Macri, Vice Chair; Graves, Assistant Ranking Minority Member; Clibborn, DeBolt, Harris, Jinkins, Maycumber, Riccelli, Robinson, Slatter, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Caldier.

Staff: Nate Hickner (786-7290) and Chris Blake (786-7392).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

State Authority to Conduct Involuntary Human Immunodeficiency Virus Tests.

The Washington State Constitution provides that no person shall be disturbed in his private affairs without "authority of law." Washington courts have determined that involuntary tests of bodily fluids, such as those involved in human immunodeficiency virus (HIV) testing, constitute an intrusion into private affairs. "Authority of law" to conduct an involuntary test of bodily fluids may be satisfied by a valid warrant, a recognized exception to the warrant requirement, a constitutional statute, or a court rule.

Consent, Informed Consent, and Medical Malpractice.

A health care provider must obtain consent from a patient or his or her representative before performing medical treatment. Additionally, a health care provider may be held liable for injuries caused by a health care provider's failure to obtain the patient's informed consent prior to performing a medical treatment. In order to establish informed consent, the health care provider must inform the patient of all material facts relating to the treatment. The Washington Supreme Court has held that "treatment" encompasses all aspects of patient care, including the health care provider's resolve to do nothing about particular medical abnormalities present in the patient. The extent of what facts are "material" and must be disclosed depends on the circumstances, but generally includes the risks of a course of treatment and the feasible alternatives to the proposed treatment, including nontreatment.

Prohibition on HIV Testing Without Consent.

In addition to the constitutional restrictions on the state's authority to conduct involuntary HIV tests and the consent requirements for healthcare providers, HIV testing on a person without the person's consent is specifically prohibited except in a limited number of enumerated circumstances. These exceptions include circumstances involving persons who are not competent to make health care decisions, persons involved in certain infection prevalence (seroprevalence) studies, persons receiving worker's compensation benefits, persons convicted of certain crimes, and incarcerated persons.

United States Preventive Services Task Force and Recommendations.

Federal law and regulations require group and individual health plans to provide coverage without a cost-sharing requirement for certain recommended preventive services, including evidence-based items or services that have a rating of Grade A or B in the current recommendations of the United States Preventive Services Task Force (USPSTF).

The USPSTF recommends that adolescents and adults ages 15 to 65 and all pregnant women should be screened for HIV infection. These recommendations each have a USPSTF rating of Grade A, meaning that the USPSTF has determined there is high certainty that the net benefit is substantial. The USPSTF also recommends that the HIV infection screening be performed on an "opt-out" basis, meaning that the HIV testing will be performed unless the patient declines.

Washington law requires clinicians to screen for HIV infection consistent with the USPSTF recommendations. Screening is voluntary and may be undertaken only after the patient or the patient's authorized representative has been told that HIV screening is planned and that HIV screening will be performed unless the patient declines.

If a health care provider notifies a patient that an HIV screening will be performed unless the patient declines, and the patient or patient's authorized representative declines the HIV screening, the health care provider may not use the fact that the person declined an HIV screening as a basis for denying services or treatment, other than an HIV screening, to the person.

Summary of Bill:

The Legislature finds that advances in HIV treatment have been made, that if a person's virus is undetectable he or she is unable to transmit the virus, and that any and all barriers to HIV testing must be removed.

The specific prohibition on HIV testing without consent is repealed, as is a list of exceptions to the prohibition, including exceptions authorizing HIV testing for the purpose of seroprevalence studies and for determinations relating to workers compensation benefits.

The requirement that clinicians employ "opt-out" HIV infection screening procedures consistent with the USPSTF recommendations for patients age 15 through 65 years and all pregnant women is repealed, as is the provision specifying that HIV screening is voluntary and may be undertaken only after the patient has been told that HIV screening will be performed. Lastly, the prohibition against health care providers using the fact that a person declined an HIV screening as a basis for denying services or treatment is repealed.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Many of the laws relating to HIV were written in the 1980s when there was a different stigma associated with HIV/acquired immune deficiency syndrome (AIDS) and a strong desire to protect people's privacy. Today, the medical situation is completely different than it was then. Medical privacy laws, such as the Health Insurance Portability and Accountability Act (HIPAA), are stronger, and when HIV is detected early, it can be treated—very young children can even be cured. This changes the way the medical community should be responding to HIV testing.

This bill would modernize laws related to HIV, specifically those relating to testing requirements. Today, the law requires exceptional, specific consent for HIV testing, and also specific opt-out for HIV testing. Many medical systems interpret these laws to require documentation of special consent to undergo HIV testing. This is at odds with the Centers for Disease Control recommendations that the same general consent for medical tests be used for HIV tests. This bill does not impact the expectation of informed consent nor does it impact the ability of individuals to refuse an HIV test. What it does do is remove the last

barrier to HIV testing which is so vitally important to identify those living with HIV so they can be linked to the care they need.

The 2016 bill establishing opt-out was a baby step toward modernizing Washington laws. Prior to the 2016 bill, everybody had to opt-in to HIV testing. This bill would take the next step and make it so that going forward, HIV testing is just like every other test.

This bill is extremely important, as it makes early detection of HIV possible. This is a step toward ending AIDS in Washington.

(Opposed) None.

Persons Testifying: Senator Rolfes, prime sponsor; Mary Jones; Carey Morris, Lifelong AIDS Alliance; and Claudia Catastini, Department of Health.

Persons Signed In To Testify But Not Testifying: None.