

HOUSE BILL REPORT

ESHB 1551

As Passed House:
February 12, 2020

Title: An act relating to modernizing the control of certain communicable diseases.

Brief Description: Modernizing the control of certain communicable diseases.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Stonier, Fey, Appleton and Pollet; by request of Department of Health).

Brief History:

Committee Activity:

Health Care & Wellness: 2/8/19, 2/19/19 [DPS].

Floor Activity:

Passed House: 2/12/20, 57-40.

Brief Summary of Engrossed Substitute Bill

- Repeals statutes related to counseling for human immunodeficiency virus (HIV) testing, the Office of AIDS, and requirements that agencies establish rules requiring acquired immune deficiency syndrome (AIDS) training for certain professions and employees.
- Updates language and changes references in the control and treatment of sexually transmitted diseases chapter.
- Allows a minor of 14 years of age or older to give consent to treatment to avoid HIV infection without a parent or guardian's consent.
- Consolidates and expands rulemaking authority for the State Board of Health relating to control of sexually transmitted diseases.
- Modifies crimes related to transmission of HIV and repeals prohibitions on an individual who has a sexually transmitted disease, other than HIV, from having sexual intercourse if the partner is unaware of the disease.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cody, Chair; Macri, Vice Chair; Davis, Jinkins, Riccelli, Robinson, Stonier, Thai and Tharinger.

Minority Report: Do not pass. Signed by 6 members: Representatives Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers, DeBolt, Harris and Maycumber.

Staff: Kim Weidenaar (786-7120).

Background:

Governor's Proclamation to End AIDS in Washington.

On December 1, 2014, Governor Inslee issued a Proclamation to End AIDS (Proclamation) in Washington, setting a goal of reducing new human immunodeficiency virus (HIV) diagnoses by 50 percent, by 2020. The Proclamation tasked the HIV Planning Steering Group, the statewide HIV treatment and prevention planning body, with overseeing a task force to put forward a set of recommendations on how the state can achieve its goals. One of the End AIDS Steering Team 2016 Report recommendations included modernizing Washington HIV exposure and transmission laws to reflect current science and reduce HIV-related stigma.

Transmission of Sexually Transmitted Diseases.

A person is guilty of HIV-related assault in the first degree if the person, with intent to inflict great bodily harm, administers, exposes, or transmits to or causes to be taken by another, the human immunodeficiency virus. A person who has a sexually transmitted disease, other than HIV, is prohibited from having sexual intercourse if the person knows he or she is infected and has been informed that the disease may be communicated through intercourse, unless the partner has been informed about the sexually transmitted disease.

Minor's Consent to Treatment.

A minor 14 years of age or older who may have come in contact with any sexually transmitted disease or suspected sexually transmitted disease may give consent for medical care related to the diagnosis or treatment of a sexually transmitted disease.

Public Health Orders.

State and local public health officers may examine and counsel persons reasonably believed to be infected with or to have been exposed to a sexually transmitted disease. Public health orders or restrictive measures directed to persons with a sexually transmitted disease must be used as the last resort when other measures to protect the public health have failed, including reasonable efforts to obtain the voluntary cooperation of the person who may be subject to such an order.

When the state or local public health officer within his or her respective jurisdiction knows, or has reason to believe, that a person has a sexually transmitted disease and is engaging in specified conduct that endangers the public health, he or she must conduct an investigation to evaluate the specific facts alleged, if any, and the reliability and credibility of the information. If the officer is satisfied that the allegations are true, the officer may:

- order the person to submit to a medical examination or testing, seek counseling, or obtain medical treatment, within a period of time determined by the public health officer, not to exceed 14 days; or
- order a person to immediately cease and desist from specified conduct which endangers the health of others by imposing such restrictions upon the person as are necessary to prevent the specified conduct that endangers the health.

Any restriction must be in writing and include the person's name, the initial time period, not to exceed three months, during which the order shall remain effective, the terms of the restrictions, and any other conditions necessary to protect the public health. Restrictions shall be imposed in the least-restrictive manner necessary to protect the public health.

If the person contests the order, he or she may appear at a judicial hearing on the enforceability of the order, to be held in superior court. He or she may have an attorney appear on his or her behalf in the hearing at public expense, if necessary. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order. Any hearing conducted pursuant to this section shall be closed and confidential unless a public hearing is requested by the person who is the subject of the order, in which case the hearing will be conducted in open court.

HIV/AIDS Training and Education.

The Department of Health (DOH) and the various boards and commissions for the health professions must adopt rules requiring acquired immune deficiency syndrome (AIDS) education and training for all credentialed health professionals, and other individuals who work in a state licensed or certified health care facilities. The Superintendent of Public Instruction must adopt rules that require appropriate education and training to be included in the continuing education requirement for employees on the prevention, transmission, and treatment of AIDS. The Washington Personnel Resources Board and each unit of local government must determine whether any employees have a substantial likelihood of exposure in the course of their employment to HIV, and if so, adopt rules requiring appropriate training and education for those employees on the prevention, transmission, and treatment of AIDS. The statutorily created Office on AIDS, which resides in the DOH, is the repository and clearinghouse for all education and training material related to the treatment, transmission, and prevention of AIDS. The DOH is responsible for establishing criteria for and distributing funds and grants to support services for people who have HIV and may authorize the use of appropriate materials in the prevention or control of HIV infection.

Testing for Insurance Purposes.

For purposes of insurance, an insurer who is requesting an insured, a subscriber, or a potential insured or subscriber provide the results of an HIV test for underwriting purposes as a condition for obtaining or renewing coverage must:

- provide written information to the individual to be tested which explains what an HIV test is, behaviors that place a person at risk for HIV, that the purpose of the testing is to determine eligibility for coverage, the potential risks of HIV testing, and where to obtain HIV pretest counseling;
- obtain informed consent for the testing, which includes an explanation of the confidential treatment of the test results; and

- establish procedures to inform an applicant that post-test counseling is required if an HIV test is positive or indeterminate, that post-test counseling occurs every time there is a positive or indeterminate test, that the applicant may designate a health care provider or agency to who the insurer will provide test results indicative of infection with a blood-borne pathogen and that positive or indeterminate test results will not be sent directly to the applicant.

Mandatory Testing and Counseling for Certain Offenses.

Local health departments must conduct pre-test counseling, HIV testing, and post-test counseling of all persons convicted of certain sexual offenses, prostitution, and certain drug related offenses if associated with the use of hypodermic needles. The testing must be conducted as soon as possible after sentencing.

A law enforcement officer, firefighter, health care provider, health care facility staff person, Department of Corrections' (DOC) staff person, jail staff person, or other categories of employment determined by the State Board of Health to be at risk of substantial exposure to HIV, who has experienced a substantial exposure to another person's bodily fluids in the course of his or her employment, may request a state or local public health officer to order pre-test counseling, HIV testing, and post-test counseling, as well as testing for other blood-borne pathogens, for the person whose bodily fluids he or she has been exposed to. If the state or local public health officer refuses to order counseling and testing, the person who made the request may petition the superior court for a hearing to determine whether an order shall be issued.

The person who is subject to the officer's order to receive counseling and testing must be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order. If the person who is subject to the order refuses to comply, the state or local public health officer may petition the superior court for a hearing.

Jail administrators, with approval of a local public health officer, may order pre-test counseling, HIV testing, and post-test counseling for all persons detained in the jail if the local public health officer determines that actual or threatened behavior presents a possible risk to staff, the general public, or other persons. The administrator must establish a procedure to document the possible risk which is the basis for the HIV testing.

Department of Corrections facility administrators may order pre-test counseling, HIV testing, and post-test counseling for inmates if the Secretary of Corrections determines that actual or threatened behavior presents a possible risk to the staff, general public, or other inmates. The DOC must establish a procedure to document the possible risk which is the basis for the HIV testing.

Summary of Engrossed Substitute Bill:

Health Orders.

A health order is defined as a written directive issued by a state or local health officer that requires the recipient to take specific action to remove, reduce, control or prevent a risk to public health. A state or local health officer may conduct an investigation when:

- the health officer has reason to believe that a person in the health officer's jurisdiction has a sexually transmitted disease and is engaging in specified behavior that endangers the public health; and
- the basis for the investigation is the health officer's direct medical knowledge or reliable testimony of another who is in a position to have direct knowledge of the person's behavior.

During the investigation, the health officer must evaluate the allegations and the reliability or credibility of persons who provided the information related to the behaviors alleged to endanger the public's health. Health officers must document measures taken to protect the public's health, including efforts to obtain the person's cooperation, if the allegations are true and the person constitutes to endanger the public's health.

If attempts to get the person's voluntary cooperation fails to protect the public health, the health officer may issue a health order requiring the person to submit to a medical examination or testing, receive counseling, or receive medical treatment; or immediately cease and desist from specified behavior that endangers the public health by imposing restrictions necessary to prevent the behavior.

If the order requires a person to receive medical treatment, the health officer must provide the person with at least one additional appropriate option to choose from in the health order. The restriction must be in writing and state the name of the person, the initial term period the order is effective, the terms of the restrictions, and other conditions. Restrictions must be imposed in the least-restrictive manner necessary. The effective period must be reasonably related to the purpose of the restrictions, up to a maximum of 12 months. The health officer must provide the person subject to the order with prompt written notice, personally and confidentially. The notice must inform the person that the person may file an appeal.

The health officer may apply to the superior court for a court order requiring a person to comply with the health order if the person fails to comply with the health order. At a hearing held regarding the order, the person subject to the order may have an attorney appear on his or her behalf at the public's expense, if necessary.

A person who violates or fails to comply with an issued health order is guilty of a gross misdemeanor punishable by confinement until the order has been complied with or terminated. In lieu of confinement, the court may place the person on probation upon the condition that the person comply with the order for the time period of the order. If the person is placed on probation and subsequently violates or fails to comply, the court must revoke the probation and reinstate the original sentence of confinement.

Transmission of Sexually Transmitted Diseases.

It is illegal for a person who knows that he or she has human immunodeficiency virus (HIV) to have sexual intercourse if:

- the person has been counseled by a health care provider or public health professional regarding the risk of transmitting the disease to others;
- the partner exposed to the disease did not know that the person had HIV; and
- the person intended to transmit HIV to the partner.

It is a defense to prosecution if HIV was not transmitted to the partner or if the person took or attempted to take practical means to prevent transmission of the disease. Violation of this provision is a misdemeanor, unless the person misrepresented the person's infection status to the partner, in which case violation is a gross misdemeanor. Violation of this provision does not require registration on the sex offender registry, unless the partner is a child or vulnerable adult victim.

The HIV-related Assault in the first degree crime is limited to situations in which a person transmits HIV to a child or vulnerable adult.

The prohibition on a person who has a sexually transmitted disease, except HIV, when the person knows he or she is infected and has been informed that the disease may be communicated through intercourse, to have sexual intercourse unless the person has been informed about the sexually transmitted disease is repealed.

Minor Consent for Treatment of Sexually Transmitted Disease.

A minor of 14 years of age or older may give consent to treatment to avoid HIV infection without a parent or guardian's consent.

Definitions and Terminology.

Blood-borne pathogen means a pathogenic microorganism that is present in human blood and can cause disease in humans, and includes Hepatitis B, Hepatitis C, HIV, and any other pathogen identified by the State Board of Health (Board) in rule. The definition of "HIV-related condition" is removed. Throughout the chapter references to "AIDS" or "HIV" are changed to "sexually transmitted disease" or "blood-borne pathogen." References to state and local "public health officer" are changed to state and local "health officer." References to "functionally disabled persons" are changes to "persons with functional disabilities."

Testing for Insurance Purposes.

For purposes of insurance, insurers who are requesting an insured, a subscriber, or a potential insured or subscriber provide the results of a blood-borne pathogen test for underwriting purposes as a condition for obtaining or renewing coverage must:

- provide written information to the individual to be tested which explains which blood-borne pathogen test is being administered and the purpose of the testing,
- obtain informed consent for the testing, which includes an explanation of the confidential treatment of the test results; and
- establish procedures to inform an applicant that the applicant may designate a health care provider or agency to who the insurer will provide test results indicative of infection with a blood-borne pathogen and that the test results will be sent directly to the applicant.

Mandatory Testing and Counseling for Certain Offenses.

A law enforcement officer, firefighter, health care provider, health care facility staff person, Department of Corrections' (DOC) staff person, jail staff person, or person employed in other categories of employment determined by the Board to be at risk of exposure that presents a possible risk of transmission of a blood-borne pathogen, who has experienced an exposure to another person's bodily fluids in the course of his or her employment, may request a state or local health officer to order blood-borne pathogen testing, for the person whose bodily fluids

he or she has been exposed to. If the state or local public health officer refuses to order testing, the person who made the request may petition the superior court for a hearing to determine whether an order shall be issued.

The person who is subject to the officer's order to receive testing must be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order. If the person who is subject to the order refuses to comply, the state or local public health officer may petition the superior court for a hearing.

Jail administrators, with approval of a local public health officer, may order blood-borne pathogen testing for a person detained in the jail if the local health officer determines the detainee's behavior exposed the staff, the general public, or other persons, and that exposure presents a possible risk of transmitting a blood-borne pathogen.

The Chief Medical Officer of the DOC may order blood-borne pathogen testing for an inmate if the Chief Medical Officer determines the inmate's behavior exposed the staff, general, public, or other inmates, and the exposure presents a possible risk of transmitting a blood-borne pathogen.

Provisions related to counseling or requiring persons convicted of certain crimes to be tested are removed.

HIV Training and Education.

The Superintendent of Public Instruction, in consultation with the Department of Health (DOH) develop the educational and training materials necessary for the appropriate education and training to be included in the continuing education requirement for employees on the prevention, transmission, and treatment of blood-borne pathogens.

Rulemaking.

The Board is authorized to adopt rules:

- establishing reporting requirements for sexually transmitted disease;
- establishing procedures for investigations into persons believed to be infected with or exposed to a sexually transmitted disease;
- specifying behaviors that endanger the public health for purposes of a public health order;
- defining specimens that may be obtained and tests that may be administered for investigations of sexually transmitted diseases and blood-borne pathogens;
- determining the categories of employment that are at risk of substantial exposure to a blood-borne pathogen for purposes of allowing specific individuals who have been exposed to another person's bodily fluids in the course of employment to request a public health officer order blood-borne pathogen testing for the person whose bodily fluid the employee was exposed to;
- defining what constitutes exposure that presents a possible risk of transmission of a blood-borne pathogen; and
- that are necessary to implement and enforce the chapter.

Repealed Statutes.

Statutes related to the following are repealed:

- requiring health care providers treating pregnant women or individuals seeking treatment for a sexually transmitted disease to ensure acquired immune deficiency syndrome (AIDS) counseling is provided to the patient;
- establishing approval requirements for a standard serological test for syphilis;
- rule-making authority for the DOH and the DOC to adopt rules related to testing for HIV of individuals in the custody of jails or incarcerated and the disclosure of HIV tests;
- authority for the Board to establish reporting requirements for sexually transmitted diseases by rule;
- prohibition for a person who has a sexually transmitted disease, except HIV, when the person knows he or she is infected and has been informed that the disease may be communicated through intercourse, to have sexual intercourse unless the person has been informed about the sexually transmitted disease;
- requirements that information directed to the public and providing education about any sexually transmitted disease paid for in whole or in part by public money must emphasize the important of sexual abstinence, sexual fidelity, and avoidance of substance abuse in controlling disease;
- requirements that material directed to children in kindergarten through twelfth grade providing education regarding sexually transmitted diseases that is paid in whole or in part by public money must emphasize the importance of sexual abstinence outside lawful marriage and avoidance of substance abuse in controlling disease;
- creation of the Office on AIDS and the AIDS Advisory Committee;
- requirements related to training and education for the prevention, transmission, and treatment of AIDS for health care professionals, school employees, licensed health care facility workers, and government employees with substantial likelihood of exposure to HIV;
- definitions related to AIDS and HIV for purposes of counseling and testing for HIV and AIDS;
- requirements that local health departments make available voluntary testing and counseling services for HIV to all persons arrested for prostitution or certain drug offenses; and
- requirements that the Board adopt rules establishing minimum standards for pre-test counseling, HIV testing, post-test counseling, and AIDS counseling.

Appropriation: None.

Fiscal Note: Available.

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) People are now living long, healthy lives with human immunodeficiency virus (HIV). When these laws were originally enacted 30 years ago there was not a lot of science about HIV and a lot of unknowns. Human immunodeficiency virus is not the same disease it was 30 years ago. This chapter is old, obsolete, and needs to be changed. One of the recommendations of the End AIDS Initiative was to update these laws. Washington is trying

to end the acquired immune deficiency syndrome (AIDS) epidemic and laws like these are holding us back. The law should reflect current science. We need to change how we think about HIV and AIDS to reduce stigma.

For the vast majority of people with HIV it is treated in outpatient clinics and with once-a-day medications. People living with HIV now have nearly normal life expectancies. These advancements are amazing, but our laws have not caught up. Not changing these laws make the job of public health that much harder and continues the stigma. Criminalizing people with a disease state is not a banner we can support. We will end HIV through treatment not by threatening people with prison. Undetectable means untransmittable. Some provisions do not go far enough, but this bill does many good things and will help end HIV in Washington.

The bill revises statutes related to public health orders that were a weak and ineffectual means to deal with public health issues. This bill gives local health officers authority to issue orders by providing additional flexibility and procedure, and extending the timeline the orders are effective.

(Opposed) This body has a few questions in front of it, including a philosophical question about whether an individual act can ever rise to the level where a felony charge is appropriate. There are very few cases where this felony assault statute for transmitting HIV has been applied. That is because this law sets a very high standard, and the net is very narrow. Only when individuals have intent to inflict great bodily harm can they be charged with this crime. This bill lowers the penalty, but widens the net to include situations that otherwise would not have been covered. This bill creates an inequality. The penalty for someone who steals a candy bar is guilty of the same gross misdemeanor as someone who transmits HIV by misrepresenting their HIV status. In those extreme cases where someone knows the dangers of transmitting HIV and intends to transmit HIV, there should be a higher penalty.

Persons Testifying: (In support) Representative Jinkins, prime sponsor; Jaime Bodden, Washington Association of Local Public Health Officials; Scott Bertani, Lifelong AIDS Alliance; Lauren Fannaning, Washington HIV Justice Alliance; Mathew Golden, Public Health Seattle and King County; Beth Crutsinger-Perry, Department of Health; Paul Feldman; and Tony Radovich.

(Opposed) Russel Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.