

HOUSE BILL REPORT

HB 2158

As Reported By House Committee On:
Law & Justice

Title: An act relating to crimes.

Brief Description: Revising provisions relating to felonies and homicides.

Sponsors: Representatives Benton, Pelesky, Koster, Goldsmith, McMahan, Huff, Buck, Hargrove, Pennington, Thompson and Stevens.

Brief History:

Committee Activity:

Law & Justice: 1/12/96, 2/2/96 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Campbell; Carrell; Lambert; McMahan; Robertson; Smith and Sterk.

Minority Report: Do not pass. Signed by 7 members: Representatives Dellwo, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Chappell; Cody; Morris; Murray and Veloria.

Staff: Edie Adams (786-7180).

Background: Under current law a person is guilty of assault in the second degree if the person, with intent to inflict bodily harm, administers to or causes to be taken by another, or exposes or transmits to another, the human immunodeficiency virus (HIV-related assault). Assault in the second degree is a class B felony.

Assault in the first degree is a class A felony and requires a showing that the defendant intended to inflict great bodily harm.

The criminal code provides various statute of limitations periods in which the prosecution of a crime must take place. The general statute of limitations for felony crimes is three years. There are several exceptions to this general time period. For example, there is no statute of limitations for the crimes of murder, homicide by

abuse, and arson if a death occurs, and there is a 10-year statute of limitations for the crime of arson if no death occurs and for certain sex offenses. The statute of limitations for assault crimes is three years.

Because of the nature of the human immunodeficiency virus, the victim of an HIV-related assault may not know that he or she has been assaulted for many years. This presents a potential bar to prosecution for HIV-related assault.

Current law defines "homicide" as the killing of a human by another, with death occurring within three years and a day. This definition of homicide may prevent the prosecution of persons for murder or manslaughter for administering, exposing, or transmitting the human immunodeficiency virus because persons infected with the human immunodeficiency virus may not become sick with AIDS for many years.

State law provides a privilege with respect to communications between a physician and patient. With limited exceptions, a physician may not be compelled to disclose any information acquired in treating a patient, unless the patient consents to the disclosure.

State law also provides limitations on the disclosure of medical records. A health care provider may not disclose health care information about a patient to any other person without the patient's consent. There are limited exceptions to this general rule. Two of those exceptions are (1) disclosure to law enforcement authorities to the extent authorized by law; and (2) pursuant to compulsory process, as long as the patient is notified at least 14 days prior to the disclosure so that the patient may seek a protective order to prevent disclosure.

The public health chapter of the Revised Code of Washington covering sexually transmitted diseases provides confidentiality requirements relating to records of the testing and treatment of persons for sexually transmitted diseases, including the human immunodeficiency virus. This chapter provides that no person may disclose or be compelled to disclose the identity of any person tested or treated for the human immunodeficiency virus except as authorized by the chapter. The chapter does not specifically authorize the disclosure of human immunodeficiency virus testing or the test results to law enforcement officials.

The public health chapter dealing with sexually transmitted diseases allows public health officers to order testing, treatment, counseling, and other restrictive measures with respect to persons who are believed to be infected with a sexually transmitted disease and engaging in behavior that presents an imminent danger to the public health.

Summary of Substitute Bill: The elements of the crimes of HIV-related assault are changed and the crimes are reclassified as first-degree assault.

A person is guilty of HIV-related assault in the first degree if (1) the person, with intent to inflict great bodily harm, administers to or causes to be taken by another the human immunodeficiency virus; or (2) the person, with knowledge that he or she has tested positive for the human immunodeficiency virus, recklessly exposes or transmits to another person the human immunodeficiency virus.

The definition of "homicide" is amended. Homicide is the killing of another person with death occurring at any time.

The crime of assault in the first degree by administering, exposing, or transmitting to another the human immunodeficiency virus may be prosecuted at any time after the commission of the crime.

A public health officer must inform the local law enforcement agency of all information relating to sexually transmitted disease testing, diagnosis, or treatment concerning a person who is engaging in behavior presenting an imminent danger to the public, if the public health officer has exhausted on one occasion all public health procedures available, and the person continues to engage in behavior that presents an imminent danger to the public health. In addition, the public health officer must provide the local law enforcement agency with the identities of all persons who have been exposed to that person under circumstances that provide an opportunity for the transmission of a sexually transmitted disease, if those persons agree to the disclosure.

Technical changes are made.

Substitute Bill Compared to Original Bill: The original bill contained a second definition of homicide resulting from the transmission of HIV with death occurring at any time. The original bill provided that homicide caused by the transmission of HIV may be prosecuted at any time. With respect to medical records, the original bill simply provided that no health care provider or medical records privilege may prevent issuance of a warrant for medical records or prevent use of medical records in any subsequent criminal proceeding.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Law enforcement officers are currently faced with substantial obstacles in prosecuting persons who are knowingly exposing or transmitting HIV. The current definition of homicide prevents prosecution for murder because most people who have HIV do not die for many years. The statute of limitations for the

prosecution of HIV-related assault is too short because people may not know for many years that they were exposed to HIV. Current law does not allow law enforcement to get information and medical records from the public health department concerning persons who have committed an HIV assault.

Testimony Against: The fear this bill will create will increase, not prevent, the spread of AIDS. It is already a crime to transmit HIV, and this bill makes an extreme change in the law. People will be less likely to come forward and be tested if they know that their medical information and test results will not be confidential. AIDS is an incredible stigma, and it is extremely important that strict confidentiality rules apply.

Testified: Michael Slyter and Mitchel Lackey, Camas Police Department (pro); Tom McBride, Washington Association of Prosecuting Attorneys (pro); Tom Milne, Southwest Washington Health District (con); Carol Sterling, Privacy Fund (con); Kelly Scott, Northwest AIDS Foundation (con); and Maxine Hayes (con).