

# SENATE BILL REPORT

## ESHB 1551

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As Passed Senate, March 3, 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:** Passed House: 2/12/20, 57-40.

**Committee Activity:** Health & Long Term Care: 2/21/20, 2/24/20 [DP, w/oRec, DNP].

**Floor Activity:**

Passed Senate: 3/03/20, 26-23.

### Brief Summary of Engrossed First 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.

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### SENATE COMMITTEE ON HEALTH & LONG TERM CARE

**Majority Report:** Do pass.

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*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.*

Signed by Senators Cleveland, Chair; Randall, Vice Chair; Dhingra, Frockt, Keiser and Van De Wege.

**Minority Report:** That it be referred without recommendation.

Signed by Senator O'Ban, Ranking Member.

**Minority Report:** Do not pass.

Signed by Senators Becker, Muzzall and Rivers.

**Staff:** Greg Attanasio (786-7410)

**Background:** Governor's Proclamation to End Acquired Immune Deficiency Syndrome in Washington. On December 1, 2014, the Governor issued a Proclamation to End AIDS in Washington, setting a goal of reducing new 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. The 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, HIV.

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. Orders or restrictive measures directed to persons with a sexually transmitted disease shall 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 their 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, the officer 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 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 endangering 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, they may appear at a judicial hearing on the enforceability of the

order, to be held in superior court. They may have an attorney appear on their 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 must 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.

Mandatory Human Immunodeficiency Virus Testing and Counseling. 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 Board of Health (BOH) 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 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 they have 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 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.

DOC 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. DOC must establish a procedure to document the possible risk which is the basis for the HIV testing.

Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome Training and Education. The Department of Health (DOH) and the various boards and commissions for the health professions must adopt rules requiring AIDS education and training for all credentialed health professionals, and other individuals who work in a state licensed or certified health care facilities. The Office of the Superintendent of Public Instruction (OSPI) must adopt rules requiring appropriate education and training to be included in continuing education requirements for employees on preventing, transmitting, and treating 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 treating, transmitting, and preventing AIDS.

Testing for Insurance Purposes. An insurer 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 placing a person at risk for HIV, 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 post-test counseling is required if an HIV test is positive or indeterminate, post-test counseling occurs every time there is a positive or indeterminate test, 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 positive or indeterminate test results will not be sent directly to the applicant.

**Summary of Engrossed First Substitute Bill: Definitions and Terminology.** Blood-borne pathogen means a pathogenic microorganism present in human blood and can cause disease in humans, and includes Hepatitis B, Hepatitis C, HIV, and any other pathogen identified by BOH in rule. The definition of HIV-related condition is removed. Throughout the control and treatment of sexually transmitted diseases 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.

Public Health Investigations and Orders. A state or local health officer may conduct an investigation when:

- the health officer has reason to believe a person in the health officer's jurisdiction has a sexually transmitted disease and is engaging in specified behavior endangering 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. If the health officer determines the allegations are true and the person continues to endanger the public's health, the health officer must document measures taken to protect the public's health, including efforts to obtain the person's cooperation.

If these measures fail, the health officer may require 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 they 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 their behalf at the public's expense, if necessary.

A person who violates or fails to comply with a health order is guilty of a gross misdemeanor.

Transmission of Sexually Transmitted Diseases. It is illegal for a person who knows they have 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 they are infected and has been informed the disease may be communicated through intercourse, to have sexual intercourse unless the person has been informed about the sexually transmitted disease is repealed.

Testing for Insurance Purposes. An insurer 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 they 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 the test results will be sent directly to the applicant.

Mandatory Blood-Borne Pathogen Testing and Counseling. Provisions requiring mandatory testing of all persons convicted of certain sexual offenses, prostitution, and certain drug related offenses if associated with the use of hypodermic needles are removed.

A law enforcement officer, firefighter, health care provider, health care facility staff person, DOC staff person, jail staff person, or person employed in other categories of employment determined by BOH to be at risk of exposure presenting a possible risk of transmission of a blood-borne pathogen, who has experienced exposure to another person's bodily fluids in the course of their employment, may request a state or local health officer to order blood-borne pathogen testing for the person whose bodily fluids the employee 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 exposure presents a possible risk of transmitting a blood-borne pathogen.

The chief medical officer or 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.

Blood-borne Pathogen Training and Education. OSPI, in consultation with DOH, must 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.

Minor Consent for Treatment of to Avoid Human Immunodeficiency Virus Infection. 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.

Rulemaking. BOH 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 endangering 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 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 presenting a possible risk of transmission of a blood-borne pathogen; and
- 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 AIDS counseling is provided to the patient;
- establishing approval requirements for a standard serological test for syphilis;
- rule-making authority for DOH and 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 BOH 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 they are infected and has been informed the disease may be communicated through intercourse, to have sexual intercourse unless the person has been informed about the sexually transmitted disease;
- requires 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 importance of sexual abstinence, sexual fidelity, and avoidance of substance abuse in controlling disease;
- requires material directed to children in kindergarten through twelfth grade providing education regarding sexually transmitted diseases, 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;
- requiring local health departments make available voluntary testing and counseling services for HIV to all persons arrested for prostitution or certain drug offenses; and
- requiring BOH to adopt rules establishing minimum standards for pre-test counseling, HIV testing, post-test counseling, and AIDS counseling.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: HIV medication advancement requires an update to statutes that were written when HIV was a death sentence. The bill expands tools for health officers to manage public health risks. The criminal law change is appropriate change given treatment advancements and intentional spreading is still a crime. The bill provides health officers more flexibility to manage dangerous behaviors through additional powers in health orders. Inclusive language will eliminate HIV exceptionalism.

CON: HIV is an incurable disease and can reemerge indefinitely. No statistics support the claim that an individual on suppression therapy cannot transmit HIV.

OTHER: Evidence shows no association between HIV transmission rates and criminal laws. There is strong evidence the changes to the law would decrease HIV related stigma.

**Persons Testifying:** PRO: John Wiesman, Secretary Department of Health; Nigel Turner, Washington State Association of Local Public Health Officials; Dale Briese, citizen; Kelly Jardine, citizen; Lauren Fanning, Washington HIV Justice Alliance; Nicole Macri, Representative.

CON: Mary Steele-Klein, citizen.

OTHER: Cait Lang-Perez, State Board of Health.

**Persons Signed In To Testify But Not Testifying:** No one.