

# HOUSE BILL REPORT

## ESB 5282

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### As Passed House - Amended:

February 27, 2020

**Title:** An act relating to informed consent for pelvic exams.

**Brief Description:** Requiring informed consent for pelvic exams.

**Sponsors:** Senators Liias, Cleveland, Darneille, Short, Kuderer, Walsh, Brown, Randall, Dhingra, Rolfes, Billig, Das, Hunt, Keiser and Pedersen.

### Brief History:

#### Committee Activity:

Health Care & Wellness: 2/12/20, 2/21/20 [DPA].

#### Floor Activity:

Passed House - Amended: 2/27/20, 98-0.

### Brief Summary of Engrossed Bill (As Amended by House)

- Requires health care providers to obtain informed consent before performing a pelvic exam on an anesthetized patient.

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## HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** Do pass as amended. Signed by 14 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Chambers, Chopp, Davis, DeBolt, Harris, Maycumber, Riccelli, Robinson, Stonier, Thai and Tharinger.

**Staff:** Kim Weidenaar (786-7120).

### Background:

#### Informed Consent.

A health care provider must obtain informed consent from a patient or the patient's representative before performing medical treatment. Informed consent is the process by which the treating health care provider discloses information to a patient or the patient's

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representative so that the patient may make a voluntary choice to accept or refuse treatment. Informed consent generally includes a discussion of the following elements:

- the nature of the decision or procedure proposed by the provider;
- reasonable alternatives to the proposed intervention;
- the relevant risks, benefits, and uncertainties related to each alternative;
- assessment of patient understanding; and
- the acceptance of the intervention by the patient.

#### Uniform Disciplinary Act.

The Uniform Disciplinary Act (UDA) is a standardized set of procedures for enforcing laws concerning licensure and misconduct of licensed health care professionals. The UDA includes the list of acts that constitute unprofessional conduct. All licensed health care professionals are subject to the UDA.

#### **Summary of Amended Bill:**

A licensed health care provider may not perform or authorize a student practicing under the provider's authority to perform a pelvic examination on a patient who is anesthetized or unconscious unless:

- the patient or the patient's representative provides informed consent;
- the examination is necessary for diagnostic or treatment purposes; or
- sexual assault is suspected, then evidence may be collected if the patient is not capable of informed consent due to a longer-term medical condition, or if evidence will be lost.

A provider who violates this act is subject to discipline pursuant to the UDA.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

#### **Staff Summary of Public Testimony:**

(In support) The sponsor of the bill was contacted on social media by a member of the public who said that in Washington it is not illegal for a medical provider to perform a pelvic exam on women without their consent if they are under anesthesia. The sponsor assumed that like many things on social media, it was wrong. However, staff confirmed that it is indeed not illegal to undertake this type of examination. It is important that women have control, particularly with an exam as invasive as a pelvic exam. A number of states have taken this action to make sure it is clear that it is prohibited. While the medical centers in Washington assure that this is not happening, it still makes sense to put this commonsense protection into law. A member of House staff shared their story of being an assault survivor and that it is so important to protect these women.

One tiny change being worked on will apply to instances when there is suspected sexual assault and the victim is unconscious. The groups are working to incorporate the best practices of sexual assault protocols to perhaps collect samples and then get consent once the woman has regained consciousness. A court order is not adequate in this circumstance, so there is work being done to create another approach.

It is unethical and a violation of privacy to perform an examination on a person without their knowledge or consent, especially a pelvic exam. Most women would feel violated if they knew this was happening. These exams are of no benefit to the women under anesthesia; they are strictly for the practice of the medical students. This practice presents the patient as a tool and not as a human being.

(Opposed) None.

(Other) There is some work being done on how to handle the limited circumstance of a sexual assault exam when an individual is unconscious. In this limited context, there may be a need to have a search warrant or some other process to gather the evidence. Others have expressed that it is very important for a victim to have a choice about the evidence collection, and so there may need to be language allowing for the evidence collection and then after the fact the individual can provide consent. There is an interest to make sure that for the limited purpose of gathering the evidence, the language is right so a medical provider is not forced to face discipline or provide an exam except in these very limited circumstances.

**Persons Testifying:** (In support) Senator Liias, prime sponsor; and Melissa Johnson, Washington State Nurses Association.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.