

HOUSE BILL REPORT

HB 2107

As Reported by House Committee On:
Public Safety

Title: An act relating to eliminating the disparate treatment of HIV in the criminal justice system.

Brief Description: Eliminating the disparate treatment of HIV in the criminal justice system.

Sponsors: Representatives Moeller, Harris, Cody, Appleton, Morrell, Jinkins, Lytton, Green, Blake, Sawyer, Dunshee, Riccelli, Senn, Moscoso, Roberts, Liias, Van De Wege, Ryu, Ormsby, Bergquist, Walkinshaw and Freeman.

Brief History:

Committee Activity:

Public Safety: 1/14/14, 2/5/14 [DPS].

Brief Summary of Substitute Bill

- Amends the statutory definition of Assault in the first degree to remove the specific mention of human immunodeficiency virus (HIV).
- Defines destructive or noxious substance, within the Assault 1 statute, to include any blood-borne pathogen, the normal course of which if untreated is death or great bodily injury or harm, except if there is no substantial risk of transmission at time of exposure.
- Removes the specific exclusion of HIV from the gross misdemeanor, Sexual Intercourse without Notification, so that any sexually transmitted disease can form the basis for criminal liability under the statute.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Roberts, Vice Chair; Klippert, Ranking Minority Member; Holy, Hope, Ross and Takko.

Minority Report: Without recommendation. Signed by 2 members: Representatives Appleton and Moscoso.

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.

Staff: Sarah Koster (786-7303).

Background:

Assault in the First Degree.

A person is guilty of Assault in the first degree if he or she, with intent to inflict great bodily harm: (a) assaults another with a firearm or deadly weapon or by any force or means likely to produce great bodily harm or death; (b) administers, exposes or transmits to or causes to be taken by another, poison, the human immunodeficiency virus (HIV) or any other destructive or noxious substance; or (c) assaults another and inflicts great bodily harm.

Assault in the first degree is a class A felony.

Blood-borne Pathogen.

The term "blood-borne pathogen" is defined in WAC 246-140-010 to mean "pathogenic microorganisms that are present in human blood and can cause diseases in humans including: arboviral infections; babesiosis; brucellosis; Creutzfeldt-Jakob disease; hepatitis B virus (HBV); hepatitis C virus (HCV); HIV; human T-lymphotrophic virus Type I; leptospirosis; malaria; relapsing fever; syphilis; [and] viral hemorrhagic fever."

Sexual Intercourse Unlawful Without Notification.

It is a gross misdemeanor for a person who, knowing that he or she is infected with a sexually transmitted disease, except HIV, has sexual intercourse without notifying his or her partner of the presence of the disease.

Summary of Substitute Bill:

This bill removes the specific inclusion of HIV in the statutory definition of Assault in the first degree and the specific exclusion of HIV from the statutory definition of Sexual Intercourse Unlawful Without Notification.

For Assault in the first degree, the bill creates a definition of "destructive or noxious substance" to include any blood-borne pathogen the normal course of which if untreated is death or great bodily injury or harm, if there was a substantial risk of transmission at the time of exposure.

A court may not find substantial risk of transmission if the defendant:

1. is in substantial compliance with a treatment regimen prescribed by the infected person's health care provider that measurably limits the risk of transmission of the blood-borne pathogen;
2. is in substantial compliance with behavioral recommendations of the infected person's health care provider or a public health official to measurably limit to risk of transmission of the blood-borne pathogen; or
3. utilizes other methods generally accepted by the medical profession to measurably limit the risk of transmission of the blood-borne pathogen, such as the use of a prophylactic device.

A person is guilty of Assault in the first degree if, with intent to inflict great bodily harm, he or she administers, exposes, or transmits to or caused to be taken by another, poison or any other destructive or noxious substance with intent to inflict great bodily harm.

A person is guilty of Sexual Intercourse Without Notification if, knowing that he or she is infected with any sexually transmitted disease, he or she has sexual intercourse without notifying his or her partner of the presence of the disease.

Substitute Bill Compared to Original Bill:

The substitute bill eliminates liability under the Assault 1 statute if there is no substantial risk of transmission at the time of exposure and describes conditions in which no substantial risk of transmission can be found.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute 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) This bill is about fairness. Being sick is not a crime and should not be treated as such. In the first wave of the Acquired Immune Deficiency Syndrome (AIDS) scare, Washington added AIDS to the criminal statute, unfairly stigmatizing those who were suffering from the illness. There is no other communicable disease in this state which is treated like this. This will not allow someone who deliberately infects their partner to escape consequences. This bill is about treating everyone the same but removing HIV from Washington's assault statute. Language should be added to take into consideration what we know about the likelihood that exposure will result in transmission of the disease and the steps that infected individuals can take to prevent transmission.

People need to have trust in public health systems so they will get tested. People who are under the impression that they will be subject to criminal penalties for having a blood-borne disease may be less likely to get tested. It's not a crime to be HIV-positive and have sexual relations. Assault 1 is a crime of specific intent, which is what you try to do to someone else. To be guilty, a defendant must have tried to kill or cause permanent impairment. There is no reason to break out HIV from other deadly diseases. This is not a substantive change to the statute, but reduces the stigma that this disease is different from the bubonic plague or another disease. The viral load can be reduced to the level that the transmission risk drops straight down. If a defendant believes that because of treatment, he or she can't transmit the disease, he or she did not have the specific intent to commit this offense. The opposition is about wanting to do something more, but that is controversial. This bill makes sense and can be passed.

(Opposed) There is a presidential advisory resolution that punishments for nondisclosure of HIV or AIDS are out of proportion to the harm inflicted or intended, and reinforces the fear and stigma of HIV. These laws discourage HIV testing, which is the only thing known to change preventative behavior in the future. People with HIV should not be singled out for treatment. The expansion of Assault 1 to include blood-borne disease expands the number of people singled out, to those living with any number of communicable diseases.

This bill does not address public health concerns, it does not reduce stigma or increase testing, or encourage getting care, and does not incorporate current knowledge about transmission. The ultimate goal of the prevention community and the American Civil Liberties Union is decriminalization of HIV in all cases. This bill takes us backwards from that goal: HIV will still be chargeable as a felony and allows for misdemeanor liability as well. The definition of destructive or noxious substance is not clear about what diseases could be included; this is a significant expansion of Assault 1.

There is particular concern about the prison context. Transmission need not actually occur. Even exposure which is unlikely to result in transmission is included. This could be spitting or biting. The intent to cause great bodily injury does not necessarily limit charges; a 2006 case described HIV as a "necessarily deadly disease."

Persons Testifying: (In support) Representative Moeller, prime sponsor; Maria Gurogen, Department of Health; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) Ace Robinson, LifeLong AIDS Alliance; and Shankar Narayan, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.