

Senate Study Bill 3196 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOGG)

A BILL FOR

1 An Act relating to the criminal transmission of a contagious
2 or infectious disease, providing penalties, and including
3 effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. **709D.1 Title.**

2 This chapter shall be known and may be cited as the
3 *"Contagious or Infectious Disease Transmission Act"*.

4 Sec. 2. NEW SECTION. **709D.2 Definitions.**

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. *"Contagious or infectious disease"* means hepatitis in any
8 form, meningococcal disease, AIDS or HIV as defined in section
9 141A.1, or tuberculosis.

10 2. *"Exposes"* means engaging in conduct that poses a
11 substantial risk of transmission.

12 3. *"Practical means to prevent transmission"* means
13 substantial good faith compliance with a treatment regimen
14 prescribed by the person's health care provider, if applicable,
15 and with behavioral recommendations of the person's health care
16 provider or public health officials, which may include but are
17 not limited to the use of a medically indicated respiratory
18 mask or a prophylactic device, to measurably limit the risk of
19 transmission of the contagious or infectious disease.

20 Sec. 3. NEW SECTION. **709D.3 Criminal transmission of a**
21 **contagious or infectious disease.**

22 1. A person commits a class "B" felony when the person
23 knows the person is infected with a contagious or infectious
24 disease and exposes an uninfected person to the contagious or
25 infectious disease with the intent that the uninfected person
26 contract the contagious or infectious disease, and the conduct
27 results in the uninfected person becoming infected with the
28 contagious or infectious disease.

29 2. A person commits a class "D" felony when the person
30 knows the person is infected with a contagious or infectious
31 disease and exposes an uninfected person to the contagious or
32 infectious disease with the intent that the uninfected person
33 contract the contagious or infectious disease, but the conduct
34 does not result in the uninfected person becoming infected with
35 the contagious or infectious disease.

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1 3. A person commits a class "D" felony when the person
 2 knows the person is infected with a contagious or infectious
 3 disease and exposes an uninfected person to the contagious
 4 or infectious disease acting with a reckless disregard as to
 5 whether the uninfected person contracts the contagious or
 6 infectious disease, and the conduct results in the uninfected
 7 person becoming infected with the contagious or infectious
 8 disease.

9 4. A person commits a serious misdemeanor when the person
 10 knows the person is infected with a contagious or infectious
 11 disease and exposes an uninfected person to the contagious
 12 or infectious disease acting with a reckless disregard as to
 13 whether the uninfected person contracts the contagious or
 14 infectious disease, but the conduct does not result in the
 15 uninfected person becoming infected with the contagious or
 16 infectious disease.

17 5. The act of becoming pregnant while infected with a
 18 contagious or infectious disease, continuing a pregnancy while
 19 infected with a contagious or infectious disease, or declining
 20 treatment for a contagious or infectious disease during
 21 pregnancy shall not constitute a crime under this chapter.

22 6. Evidence that a person knows the person is infected with
 23 a contagious or infectious disease and has engaged in conduct
 24 that exposes others to the contagious or infectious disease,
 25 regardless of the frequency of the conduct, is insufficient
 26 on its own to prove the intent to transmit the contagious or
 27 infectious disease.

28 7. A person does not act with the intent required pursuant
 29 to subsection 1 or 2, or with the reckless disregard required
 30 pursuant to subsection 3 or 4, if the person takes practical
 31 means to prevent transmission, or if the person informs
 32 the uninfected person that the person has a contagious
 33 or infectious disease and offers to take practical means
 34 to prevent transmission but that offer is rejected by the
 35 uninfected person subsequently exposed to the infectious or

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1 contagious disease.

2 8. It is an affirmative defense to a charge under this
3 section if the person exposed to the contagious or infectious
4 disease knew that the infected person was infected with the
5 contagious or infectious disease at the time of the exposure
6 and consented to exposure with that knowledge.

7 Sec. 4. NEW SECTION. 709D.4 Additional remedies.

8 This chapter shall not be construed to preclude the use of
9 any other civil or criminal remedy available relating to the
10 transmission of a contagious or infectious disease.

11 Sec. 5. Section 141A.9, subsection 2, paragraph i, Code
12 2014, is amended to read as follows:

13 *i.* Pursuant to sections 915.42 and 915.43, to a convicted or
14 alleged sexual assault offender; the physician or other health
15 care provider who orders the test of a convicted or alleged
16 offender; the victim; the parent, guardian, or custodian of the
17 victim if the victim is a minor; the physician of the victim
18 if requested by the victim; the victim counselor or person
19 requested by the victim to provide counseling regarding the
20 HIV-related test and results; the victim's spouse; persons
21 with whom the victim has engaged in vaginal, anal, or oral
22 intercourse subsequent to the sexual assault; members of the
23 victim's family within the third degree of consanguinity; and
24 the county attorney who ~~may use the results as evidence in the~~
25 ~~prosecution of sexual assault under chapter 915, subchapter V,~~
26 ~~or prosecution of the offense of criminal transmission of HIV~~
27 ~~under chapter 709C filed the petition for HIV-related testing~~
28 under section 915.42. For the purposes of this paragraph,
29 "*victim*" means victim as defined in section 915.40.

30 Sec. 6. Section 692A.101, subsection 1, paragraph a,
31 subparagraph (9), Code 2014, is amended by striking the
32 subparagraph.

33 Sec. 7. Section 692A.102, subsection 1, paragraph c,
34 subparagraph (23), Code 2014, is amended by striking the
35 subparagraph.

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1 Sec. 8. Section 915.43, subsections 4 and 5, Code 2014, are
2 amended to read as follows:

3 4. Results of a test performed under this subchapter,
4 except as provided in subsection 13, shall be disclosed only
5 to the physician or other practitioner who orders the test of
6 the convicted or alleged offender; the convicted or alleged
7 offender; the victim; the victim counselor or person requested
8 by the victim to provide counseling regarding the HIV-related
9 test and results; the physician of the victim if requested by
10 the victim; the parent, guardian, or custodian of the victim,
11 if the victim is a minor; and the county attorney who filed
12 the petition for HIV-related testing under this chapter, ~~who
13 may use the results to file charges of criminal transmission
14 of HIV under chapter 709C.~~ Results of a test performed under
15 this subchapter shall not be disclosed to any other person
16 without the written informed consent of the convicted or
17 alleged offender. A person to whom the results of a test
18 have been disclosed under this subchapter is subject to the
19 confidentiality provisions of section 141A.9, and shall not
20 disclose the results to another person except as authorized by
21 section 141A.9, subsection 2, paragraph "i".

22 5. If testing is ordered under this subchapter, the court
23 shall also order periodic testing of the convicted offender
24 during the period of incarceration, probation, or parole or of
25 the alleged offender during a period of six months following
26 the initial test if the physician or other practitioner who
27 ordered the initial test of the convicted or alleged offender
28 certifies that, based upon prevailing scientific opinion
29 regarding the maximum period during which the results of an
30 HIV-related test may be negative for a person after being
31 HIV-infected, additional testing is necessary to determine
32 whether the convicted or alleged offender was HIV-infected
33 at the time the sexual assault or alleged sexual assault was
34 perpetrated. The results of the test conducted pursuant to
35 this subsection shall be released only to the physician or

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1 other practitioner who orders the test of the convicted or
 2 alleged offender, the convicted or alleged offender, the victim
 3 counselor or person requested by the victim to provide the
 4 counseling regarding the HIV-related test and results who shall
 5 disclose the results to the petitioner, the physician of the
 6 victim, if requested by the victim, and the county attorney
 7 who ~~may use the results as evidence in the prosecution of the~~
 8 ~~sexual assault or in the prosecution of the offense of criminal~~
 9 ~~transmission of HIV under chapter 709C~~ filed the petition for
 10 HIV-related testing under section 915.42.

11 Sec. 9. REPEAL. Chapter 709C, Code 2014, is repealed.

12 Sec. 10. SEX OFFENDER REGISTRY — EXPUNGEMENT OF RECORD.

13 1. The division of criminal investigation in the department
 14 of public safety shall expunge the registration of a registrant
 15 who was required to register on the state’s sex offender
 16 registry pursuant to chapter 692A, Code 2014, on the basis of
 17 having been convicted of the aggravated offense of criminal
 18 transmission of human immunodeficiency virus in violation
 19 of section 709C.1, subsection 1, paragraph “a”, Code 2014,
 20 provided the registrant has been convicted of no other offense
 21 requiring registration.

22 2. The department of public safety shall also remove the
 23 relevant information of such a person specified in subsection
 24 1 from the sex offender registry internet site provided
 25 the person has been convicted of no other offense requiring
 26 registration. Upon removal of the relevant information
 27 from the sex offender registry internet site, the relevant
 28 information of the person shall no longer be displayed on
 29 the sex offender registry internet site unless the person is
 30 convicted of another offense that requires registration.

31 Sec. 11. EFFECTIVE DATE. This Act, being deemed of
 32 immediate importance, takes effect upon enactment.

33 EXPLANATION

34 **The inclusion of this explanation does not constitute agreement with**
 35 **the explanation’s substance by the members of the general assembly.**

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1 This bill creates the "Contagious or Infectious Disease
2 Transmission Act" and establishes crimes relating to the
3 transmission of a contagious or infectious disease.

4 The bill provides that a person commits a class "B" felony
5 when the person knows the person is infected with a contagious
6 or infectious disease and exposes an uninfected person to
7 the contagious or infectious disease with the intent that
8 the uninfected person contract the contagious or infectious
9 disease, and the conduct results in the uninfected person
10 becoming infected with the contagious or infectious disease. A
11 class "B" felony is punishable by confinement for no more than
12 25 years.

13 A person commits a class "D" felony when the person knows
14 that the person has a contagious or infectious disease and
15 exposes an uninfected person to the contagious or infectious
16 disease with the intent that the uninfected person contract
17 the contagious or infectious disease, but the conduct does
18 not result in the uninfected person becoming infected with
19 the contagious or infectious disease. A class "D" felony is
20 punishable by confinement for no more than five years and a
21 fine of at least \$750 but no more than \$7,500.

22 A person commits a class "D" felony when the person knows the
23 person is infected with a contagious or infectious disease and
24 exposes an uninfected person to the contagious or infectious
25 disease acting with a reckless disregard as to whether the
26 uninfected person contracts the contagious or infectious
27 disease, and the conduct results in the uninfected person
28 becoming infected with the contagious or infectious disease. A
29 class "D" felony is punishable by confinement for no more than
30 five years and a fine of at least \$750 but no more than \$7,500.

31 A person commits a serious misdemeanor when the person
32 knows the person is infected with a contagious or infectious
33 disease and exposes an uninfected person to the contagious
34 or infectious disease acting with a reckless disregard as
35 to whether the uninfected person contracts the contagious

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1 or infectious disease, but the contact does not result in
2 the uninfected person being infected with the contagious or
3 infectious disease.

4 The bill provides that becoming pregnant while infected with
5 a contagious or infectious disease, continuing a pregnancy
6 while infected with a contagious or infectious disease, or
7 declining treatment for a contagious or infectious disease
8 during pregnancy does not constitute a crime under the bill.
9 The bill also specifies that evidence that a person knows the
10 person is infected with a contagious or infectious disease and
11 has engaged in conduct that exposes others to the contagious or
12 infectious disease, regardless of the frequency of the conduct,
13 is insufficient on its own to prove the intent to transmit
14 the contagious or infectious disease. Additionally, the bill
15 specifies that a person does not act with the intent or the
16 reckless disregard required to commit the crimes specified
17 under the bill if the person takes practical means to prevent
18 transmission, or if the person informs the uninfected person of
19 the person's contagious or infectious disease status and offers
20 to take practical means to prevent transmission but that offer
21 is rejected by the uninfected person subsequently exposed to
22 the infectious or contagious disease. Under the bill, it is an
23 affirmative defense to a charge under the bill if the person
24 exposed to the contagious or infectious disease knew that the
25 infected person was infected with the contagious or infectious
26 disease at the time of the exposure and consented to exposure
27 with that knowledge.

28 The bill provides that the new Code chapter is not to
29 be construed to preclude other civil or criminal remedies
30 available relating to the transmission of a contagious or
31 infectious disease.

32 The bill also repeals the provision establishing the knowing
33 transmission of the human immunodeficiency virus (HIV) as
34 a crime under Code section 709C.1. Under current Code, a
35 person commits criminal transmission of HIV if the person,

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1 knowing that the person's human immunodeficiency virus status
2 is positive, engages in intimate contact with another person;
3 transfers, donates, or provides the person's blood, tissue,
4 semen, organs, or other potentially infectious bodily fluids
5 for transfusion, transplantation, insemination, or other
6 administration to another person; or dispenses, delivers,
7 exchanges, sells, or in any other way transfers to another
8 person any nonsterile intravenous or intramuscular drug
9 paraphernalia previously used by the person infected with the
10 human immunodeficiency virus. Under current law, criminal
11 transmission of the human immunodeficiency virus is a class "B"
12 felony, which is punishable by confinement for no more than 25
13 years. The bill also makes conforming amendments throughout
14 the Code to eliminate references to the repealed Code section.
15 The bill directs the division of criminal investigation to
16 expunge the registration of a registrant who was required to
17 register on the state's sex offender registry on the basis of
18 having been convicted of the aggravated offense of criminal
19 transmission of human immunodeficiency virus, and directs the
20 department of public safety to remove the relevant information
21 of such person from the sex offender registry internet site,
22 provided the registrant has been convicted of no other offense
23 requiring registration.
24 The bill takes effect upon enactment.