



Positive Justice Project

TALKING POINTS ON NEBRASKA LEGISLATIVE BILL 226 ASSAULT OF A PUBLIC SAFETY OFFICER WITH BODILY FLUIDS

Legislative Bill 226 would:

- Make it a Class I misdemeanor to strike any public safety officer with any bodily fluid or even to “expel” any body fluid “in the direction of a public safety officer.”
- Make it a Class IIIA felony for those who **know** they are infected with HIV, Hepatitis B or Hepatitis C (or knows that the “source of the bodily fluid” is infected). The penalty for a Class IIIA felony is a maximum five years imprisonment and/or ten thousand dollar fine.
- Sec. 2(5) **requires** a judge, when the prosecutor shows that it is likely that a public safety officer has been hit with bodily fluids and is able to identify the “probable source” of the fluids, to grant a court order or search warrant for medical test results and medical records. This section **also explicitly authorizes involuntary testing** for HIV, Hepatitis B and Hepatitis C.
- “Bodily fluid” is defined as including, but not being limited to, any quantity of “human blood, urine, saliva, mucus, vomitus, seminal fluid, or feces.”
- The proposed bill also targets juveniles, and includes an extremely broad definition of “public safety officer”.

So, for example:

- ▶ **If an HIV+ person gets sick and vomits in the direction of a medical officer in a prison infirmary, that person could be subjected to up to FIVE additional years in prison.**
- ▶ **If someone sneezes in the direction of a police officer at a traffic stop, a judge MUST grant a court order for their medical records and they may be subjected to involuntary HIV and Hepatitis testing if the police officer decides to press the issue.**
- ▶ **An inmate who spits or vomits in the direction of a corrections officer, even without hitting or intending to hit the officer, can be charged with a felony.**
- ▶ **An adolescent in a juvenile detention facility who spits while being restrained by a corrections officer, or while arguing with a guidance counselor, could wind up serving 5 years in an adult prison facility.**



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Three Important Points Against Legislative Bill 226

In addition to using language so broad that it could lead to absurd results such as those above, here are three major problems with the proposed law:

1) The proposed language in Sec. 2(3) is contrary to science.

- None of the actions criminalized in this bill pose a real risk of HIV transmission. Spitting while HIV+ poses NO risk of HIV transmission.
- The Centers for Disease Control has unequivocally stated that spitting CANNOT transmit HIV. Other “body fluids” identified in the bill- including mucus, feces, urine, and vomit, absolutely CANNOT transmit HIV.¹

2) HIV- specific prosecutions discriminate and increase stigma against people with HIV.

- Charges for HIV exposure are accompanied by disclosure of HIV+ person’s identity to community, and often the world, through press coverage.
- Severe sentences perpetuate misconceptions that HIV+ people are highly infectious, toxic, and dangerous.
- Laws are applied selectively, targeting those who are already socially and economically marginalized.
- HIV criminalization directly undermines government commitments and goals for the diagnosis and prevention of HIV- it only punishes you if you have been tested and know you are HIV+.

3) Codifying the breach of doctor /patient confidentiality in Sec. 2(5) is extremely serious, and should not be undertaken with no public health benefit.

- It is EXTREMELY important for public and individual health for HIV+ people to get tested, get on treatment, and stay on treatment.² This all hinges on having a good relationship with their doctor or health care provider.
- Forcing doctors and health care providers to reveal private health information, or even testify about it, has a negative impact on patient trust of the health care system and willingness to remain engaged in HIV care.
- The plain language in Sec. 2(5) would force ANY person charged under this statute to be tested for the identified viruses, or force the opening of their medical records for previous testing results.

In Summary:

- Leg. Bill 226 ignores the fact that HIV cannot be transmitted through spit, urine, vomit, or mucus.
- Leg. Bill 226 punishes the decision to get tested for HIV.
- Leg. Bill 226 will not keep public safety officers safer, but it will reinforce misinformation and stigma about HIV.

¹ Ctr. for Disease Control & Prevention, HIV Transmission, Can HIV be transmitted by being spit on by an HIV infected person?, (March 25, 2010) <http://www.cdc.gov/hiv/resources/qa/transmission.htm>

² Individuals on anti-retroviral treatment have decreased amounts of the virus in their blood and other body fluids. Decreased viral loads means decreased infectiousness.