

1999 SENATE JUDICIARY

SB 2253

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2253

Senate Judiciary Committee

Conference Committee

Hearing Date January 25, 1999

Tape Number	Side A	Side B	Meter #
1	x		5605 - end
1		x	0 - 751
1-26-99 2	x		1390 - 1410
Committee Clerk Signature <i>Jackie Tolman</i>			

Minutes:

SB2253 relates to confidentiality of human immunodeficiency virus infection test results and relating to reports of human immunodeficiency virus infection.

SENATOR STENEHJEM opened the hearing on SB2253 at 10:00 A.M.

All were present.

SENATOR WATNE testified in support of SB2253. Testimony attached.

MARCY COMNY FISHER, Department of Corrections, testified in support of SB2253. We need precautions taken when there is HIV involved.

RUTH VOGEL, North Dakota Health Department, testified in support of SB2253. Testimony attached.

KEN SORENSON, Attorney General's office, testified in support of SB2253. Amendments will provide that report will go to facility administrator. We will make the scope of people as limited

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Senate Judiciary Committee
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as possible. Administrators will have actual physical control of the report. Amendments attached.

SENATOR STENEHJEM CLOSED the hearing on SB2253.

Discussion.

SENATOR WATNE made a motion on the AMENDMENTS, SENATOR LYSON seconded.

Motion passed.

SENATOR WATNE made a motion for DO PASS AS AMENDED, SENATOR NELSON seconded. Motion passed.

SENATOR WATNE will carry the bill.

6 - 0 - 0

PROPOSED AMENDMENTS TO SENATE BILL 2253

Page 1, line 17, overstrike “an official designated”

Page 1, overstrike line 18 and insert immediately thereafter “to the facility administrator or the facility administrator’s designee. Further release of information on any individual known to have human immunodeficiency virus infection may only be provided to medical personnel providing direct care to the individual.”

Page 2, line 8, replace “of the department” with “of the facility having physical custody of the test subject”

Page 2, line 10, after “chapter 12-44.1,” insert “to”

Renumber accordingly

Date: 1-25-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2253

Senate Judiciary Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass AS Amended

Motion Made By Watne Seconded By Nelson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
SenatorCarolyn Nelson	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Watne

REPORT OF STANDING COMMITTEE

SB 2253: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2253 was placed on the Sixth order on the calendar.

Page 1, line 17, overstrike "an official designated"

Page 1, line 18, overstrike "by the respective facility to receive reports of significant infectious diseases within" and after the second "facility" insert "administrator or the facility administrator's designee. Further release of information on any individual known to have human immunodeficiency virus infection may only be provided to medical personnel providing direct care to the individual"

Page 2, line 8, replace "department" with "facility having physical custody of the test subject"

Page 2, line 10, after the underscored comma insert "to"

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2253

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2253

House Judiciary Committee

Conference Committee

Hearing Date :March 3, 1999

Tape Number	Side A	Side B	Meter #
1	X		5
Committee Clerk Signature <i>Alan Gindberg</i>			

Minutes:

SEN. WATNE Presented written testimony, a copy of which is attached.

MARCIE CONMY-FISHER (Stutsman Co. Jail) I am the administrator mentioned in Sen. Watne's testimony. This bill is important for the administration of a jail. The administrator should know who has tested positive for communicable disease, but the staff need not know. (If they knew they would treat that inmate differently than the others. Inmates are all tested within 14 days of admittance. The results go to a doctor designated to receive it and he tells the nurse and the inmate receives counseling.

TOM HENNING (Stark Co. Jail) We need to have someone in jail know if there is a chance of infection. We had an incident where the prisoner bit and scratched a guard. We later found out this prisoner had a form of hepatitis. By getting this information quickly we were able to handle the situation.

Page 2

House Judiciary Committee

Bill/Resolution Number 2253

Hearing Date : March 3, 1999

PAM VUKELIC Presented written testimony, a copy of which is enclosed.

COMMITTEE ACTION : March 9, 1999

REP. FAIRFIELD moved to amend the bill as in amendment 0202. Rep. Koppelman seconded and the motion passed on a unanimous voice vote.

REP. MARAGOS moved that the committee recommend that the bill DO PASS AS AMENDED. Rep. Delmore seconded and the motion passed on a roll call vote with 12 ayes, 0 nays and 3 absent. Rep. Fairfield was assigned to carry the bill.

VJR
3/9/99

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2253 3/10/99 JUD.

Page 1, line 3, after "23-07-02.1" insert "and subsection 2 of section 23-07-07.5"

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2253 3/10/99

Page 2, after line 14, insert:

"SECTION 3. AMENDMENT. Subsection 2 of section 23-07-07.5 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The results of any positive or reactive test must be reported to the state department of health in the manner prescribed by the department and to the individual tested. Subsection 1 does not require the testing of an individual before sentencing or the testing of an individual held in a jail or correctional facility awaiting transfer to the state penitentiary."

Renumber accordingly

Date: 3/9
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2253

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass
as amended

Motion Made By Maragos Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN		
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER			REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN		
REP. HAWKEN	✓				

Total Yes 12 No 0

Absent 3

Floor Assignment Fairfield

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2253, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2253 was placed on the Sixth order on the calendar.

Page 1, line 3, after "23-07-02.1" insert "and subsection 2 of section 23-07-07.5"

Page 2, after line 14, insert:

"SECTION 3. AMENDMENT. Subsection 2 of section 23-07-07.5 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The results of any positive or reactive test must be reported to the state department of health in the manner prescribed by the department and to the individual tested. Subsection 1 does not require the testing of an individual before sentencing or the testing of an individual held in a jail or correctional facility awaiting transfer to the state penitentiary."

Renumber accordingly

1999 TESTIMONY

SB 2253



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

COMMITTEES:
Judiciary, Vice Chairman
Political Subdivisions

Senator Darlene Watne
District 5
520 28th Avenue SW
Minot, ND 58701

Chairman Stenehjem and Members of the Senate Judiciary:

Senate Bill 2253 deals with who should have information regarding a prisoner who has HIV infection. It is my understanding that only a doctor can know at the present time and he can tell a nurse, but the administration in a jail, who deals with the prisoner daily, does not know they are dealing with an HIV infected prisoner. It only seems logical that someone in the jail in administration should know if there is a possible problem. I especially view this as important in view of our "sliming" bill and testimony we heard of incidents in the jails that put our law enforcement personnel in jeopardy of contracting this dreaded disease.

That is generally what this bill is about, how far that confidentiality should extend.

This bill affects two sections of our laws - - and I have attached copies of those two sections herewith.

This bill comes about through a request of Marcie Conmy-Fisher, who is with the Stutsman County Correctional Center in Jamestown. She is here today and will be sharing with you an experience that brought about the request for this legislation.

Other law enforcement entities have looked over the draft of this bill and say it is sorely needed, and I believe they will be visiting with you here today telling you their perspective based on their experiences.

Since the draft of this bill, the Health Department has voiced some concerns and they will be proposing an amendment that seems very logical to me at first glance. So, you will hear their testimony, too.

I urge a DO PASS with possible amendment on Senate Bill 2253 to give added protection to law enforcement from possible contact with the dreaded HIV infection. Thank you.

Respectfully,

Darlene Watne
Senator, Fifth District

*8019 N.D. Code § 23-07-02.1

**WEST'S NORTH DAKOTA CODE
TITLE 23. HEALTH AND SAFETY
CHAPTER 23-07. REPORTABLE
DISEASES**

*Current through the 1997 Regular Session of the
55th Legislative Assembly (1997)*

**§ 23-07-02.1. Reports of human
immunodeficiency virus infection--
Penalty**

Every attending physician treating an individual known by the physician to have a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, shall make a report on that individual to the state department of health. All persons, other than an attending physician, treating an individual known to have human immunodeficiency virus infection in a hospital, clinic, sanitarium, penal institution, or

other private or public institution shall make a report on that individual to an official designated by the respective facility to receive reports of significant infectious diseases within the facility. The designated official shall, if satisfied that the report is valid, make a report to the department on each individual having a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, unless the diagnosed individual's attending physician has made such a report. The reports required under this section must contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or designated official making the report. Failure by a facility to designate an official to whom reports must be made is an infraction. Any person who in good faith complies with this section is immune from civil and criminal liability for any action taken in compliance with this section.

Amended by l. 1993, c. 243, § 2, eff. Aug. 1, 1995.

Search this disc for cases citing this section.

*8082 N.D. Code § 23-07.5-05

**WEST'S NORTH DAKOTA CODE
TITLE 23. HEALTH AND SAFETY
CHAPTER 23-07.5. HUMAN
IMMUNODEFICIENCY VIRUS
TESTING**

*Current through the 1997 Regular Session of the
55th Legislative Assembly (1997)*

§ 23-07.5-05. Confidentiality of test results

1. Except as provided in this section, the results of a test for the presence of an antibody to the human immunodeficiency virus may be disclosed only to the following persons:

- a. The subject of the test, in the case of a minor the parent or legal guardian or custodian of the subject of the test, in the case of an incapacitated person the legal guardian of the subject of the test. In the event the subject of a test is placed in a foster home, or is to be adopted, the parent, legal guardian or custodian, as the case may be, may disclose the results of the test to the foster parents or potential adoptive parents.
- b. The test subject's health care provider, including those instances in which a health care provider provides emergency care to the subject.
- c. An agent or employee of the test subject's health care provider under subdivision b who provides patient care or handles or processes specimens of body fluids or tissues.
- d. A blood bank, blood center, or plasma center that subjects a person to a test under subsection 2 of section 23-07.5-02 for any of the following purposes:
 - (1) Determining the medical acceptability of blood or plasma secured from the test subject.
 - (2) Notifying the test subject of the test results.

(3) Investigating human immunodeficiency virus infections in blood or plasma.

e. A health care provider who procures, processes, distributes, or uses a human body part donated for a purpose specified under chapter 23-06.2 for the purpose of assuring medical acceptability of the gift for the purpose intended.

f. The state health officer or the state health officer's designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.

g. An embalmer licensed under chapter 43-10.

h. A health care facility staff committee or accreditation or health care services review organization for the purposes of conducting program monitoring and evaluation and health care services reviews.

i. A person who conducts research, for the purpose of research, if the researcher:

(1) Is affiliated with the test subject's health care provider under subdivision c;

*8083 (2) Has obtained permission to perform the research from an institutional review board; and

(3) Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose for which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

j. A person who receives test results under section 23-07.7-02.

2. The results of a test may be disclosed under a lawful order of a court of record.

3. The individual who is tested may authorize disclosure to any person.

Search this disc for cases citing this section.

Testimony
On

SB 2253, Relating to Confidentiality of HIV Test Results and
Reporting of HIV Infection

Before the
Senate Judiciary Committee

By
Ruth Vogel, North Dakota Department of Health

January 25, 1999

Good morning Chairman Stenehjem and members of the Committee. My name is Ruth Vogel; I am the HIV/AIDS Program Manager for the North Dakota Department of Health. I am here to offer support to SB 2253 generally and to offer some minor amendments. I have met with Marcy Conmy Fisher, president of the North Dakota Peace Officers Association and sponsor of the bill, and have obtained her approval for the amendments.

The purpose of my amendments is to more narrowly define the recipient of HIV test results in correctional facilities to be the facility administrator and to permit further disclosure of that information by the facility administrator only to persons who are responsible for the medical care of individuals in those facilities.

I would be happy to answer any questions you might have.

SENATE BILL NO. 2253

Legislative Assembly
of North Dakota

Introduced by

Senators Watne, Lyson

A BILL for an Act to create and enact a new subdivision to subsection 1 of section 23-07.5-05 of the North Dakota Century Code, relating to confidentiality of human immunodeficiency virus infection test results; and to amend and reenact section 23-07-02.1 of the North Dakota Century Code, relating to reports of human immunodeficiency virus infection.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-07-02.1. Reports of human immunodeficiency virus infection - Penalty. Every attending physician treating an individual known by the physician to have a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, shall make a report on that individual to the state department of health. ~~All persons, other than an attending physician,~~ A person treating an individual known to have human immunodeficiency virus infection in a hospital, a clinic, a sanitarium or other private or public institution shall make a report on that individual to an official designated by the respective facility to receive reports of significant infectious diseases within the facility. A person treating an individual known to have human immunodeficiency virus infection in the physical custody of the department of corrections and rehabilitation, a regional or local correctional facility or juvenile detention center, or the North Dakota youth correctional center shall make a report on that individual to the facility administrator. Further release of information on any individual known to have human immunodeficiency virus infection shall be limited to medical personnel providing direct care to the individual. The designated official or facility administrator shall, if satisfied that

the report is valid, make a report to the department on each individual having a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, unless the diagnosed individual's attending physician has made such a report. The reports required under this section must contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or designated official making the report. Failure by a facility to designate an official to whom reports must be made is an infraction. Any person who in good faith complies with this section is immune from civil and criminal liability for any action taken in compliance with this section.

SECTION 2. A new subdivision to subsection 1 of section 23-07.5-05 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

If the test subject is in the physical custody of the department of corrections and rehabilitation, to the ~~director of the department~~ facility administrator. If the test subject is a resident of the North Dakota youth correctional center, to the superintendent. If the test subject is in a correctional facility as defined in chapter 12-44.1, to the correctional facility administrator.



NORTH DAKOTA SENATE



Senator Darlene Watne
District 5
520 28th Avenue SW
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STATE CAPITOL
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BISMARCK, ND 58505-0360

COMMITTEES:
Judiciary, Vice Chairman
Political Subdivisions

Chairman DeKrey and Members of the House Judiciary Committee:

Senate Bill 2253 comes about because of an incident, and there have been many like it across our state, where there was an altercation in a jail with a very unruly and agitated prisoner, and blood or body fluids were present on others afterwards. Following the incident, the nurse who attended the prisoner inquired of the jail administrator if all precautions were taken against HIV - - for example, did all the jailers wear rubber gloves at the time? They all had except the administrator of the jail, who had been involved in subduing the prisoner. The nurse knew that the prisoner was HIV positive, but no one on staff at the jail knew because of our confidentiality laws. Our laws presently say that only a doctor can know if there is an HIV prisoner, and he can tell a nurse, but the administration in a jail - - who deal with the prisoner daily - - cannot know. I especially view this bill as important in view of our "sliming" bill being proposed.

This bill gets to the heart of the problem requiring that only the jail administrator will know when they have an HIV positive prisoner so proper precautions are always taken and emergency measures can take place quickly when needed. This is a bill hoping to further protect our dedicated law enforcement officers from possible infection with the HIV virus. The jail personnel are the ones in daily contact with the prisoner.

The amendment to this bill was at the request of the Health Department to further protect the confidentiality of information. The amendment specifies the information will be given only to the administrator of the jail or the administrator's designee and further information on that individual may only be provided to medical personnel providing direct care to the HIV infected individual. With that amendment, Health Department officials and law enforcement personnel are all in agreement that this is good and needed legislation.

I urge a "do pass" on Senate Bill 2253 and appreciate your time and attention.

Respectfully,

Darlene Watne
Senator, Fifth District

Testimony

on

**SB 2253, Relating to Confidentiality of HIV Test Results and
Reporting of HIV Infection**

before the

House Judiciary Committee

by

Pam Vukelic, North Dakota Department of Health

March 3, 1999

Good morning, Chairman DeKrey and members of the Committee. My name is Pam Vukelic; I am Division Director for the Division of Disease Control, North Dakota Department of Health. The state HIV/AIDS Program is in the Division of Disease Control. I am here to offer testimony in support of SB 2253.

Marcy Conmy Fisher, President of the North Dakota Peace Officers' Association and sponsor of the bill, discussed the concerns of the law enforcement community with me. The bill draft before you incorporates minor revisions requested by the health department. With those revisions, the department supports SB 2253.

I would be happy to take any questions you might have.