2023 HOUSE HUMAN SERVICES

HB 1281

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Pioneer Room, State Capitol

HB 1281
1/17/2023

Relating to willfully transferring body fluid containing the human immunodeficiency virus.

Chairman Weisz called the meeting to order at 9:12 AM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. All present.

Discussion Topics:

- Reducing cases and risk of HIV
- Testing for HIV
- Needle exchange programs
- HIV criminalization laws
- HIV information
- At-risk individuals
- Other sexually transmitted diseases

Rep. Dobervich introduced HB 1281, with supportive testimony (#13721).

Lindsey VanderBusch, Director of the Sexually Transmitted and Bloodborne Diseases Unit for the North Dakota Department of Health and Human Services, offered testimony in support of bill (#13671).

Avish Nagpal, Leader of Department of Infectious Diseases at Sanford Health, offered testimony in support of bill (#13758).

Mark Strand, Professor at the College of Health Professions, North Dakota State University, offered testimony in support of bill (#13687).

Additional written testimony:

Doug Sharbono, North Dakota citizen (#13422).

Kara Gloe, mental health therapist from the Canopy Medical Clinic (#13748).

Chairman Weisz adjourned the meeting at 9:44 AM.

Phillip Jacobs, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Pioneer Room, State Capitol

HB 1281
2/1/2023

Relating to willfully transferring body fluid containing the human immunodeficiency virus.

Chairman Weisz called the meeting to order at 2:50 PM

Chairman Robin Weisz, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich present. Vice Chairman Matthew Ruby not present.

Discussion Topics:

- Committee action

Representative Porter moved a DO NOT PASS on HB 1281.

Seconded by Representative Prichard.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	Y
Representative Matthew Ruby	AB
Representative Karen A. Anderson	Y
Representative Mike Beltz	N
Representative Jayme Davis	N
Representative Gretchen Dobervich	N
Representative Clayton Fegley	Y
Representative Kathy Frelich	Y
Representative Dawson Holle	Y
Representative Dwight Kiefert	Y
Representative Carrie McLeod	Y
Representative Todd Porter	Y
Representative Brandon Prichard	Y
Representative Karen M. Rohr	Y

Motion carries 10-3-1.

Carried by Representative Porter.

Chairman Weisz adjourned the meeting at 2:56 PM

Phillip Jacobs, Committee Clerk By: Leah Kuball

REPORT OF STANDING COMMITTEE

HB 1281: Human Services Committee (Rep. Weisz, Chairman) recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1281 was placed on the Eleventh order on the calendar.

TESTIMONY

HB 1281

Do Not Pass Testimony
of Doug Sharbono, citizen of North Dakota
on HB1281
in the Sixty-eighth Legislative Assembly of North Dakota

Dear Chairman Weisz and members of the House Human Services Committee,

I am writing as a citizen and believe HB1281 is unneeded legislation that will have undesirable consequences. I ask for a Do Not Pass on HB1281.

HB1281 decriminalizes the unwanted transfer of the HIV virus from one person to another. Current law is consistent with that established in other states around the country, and these laws have been upheld in court.
HIV Transmission, Is it a Crime? | Journal of Ethics | American Medical Association (ama-assn.org)
HB1281 is reckless legislation. It does not contemplate the various scenarios in society that require teeth behind the law. As an example, should it not be more egregious for an inmate who has HIV to assault a correctional officer with bodily fluids than another who doesn't have HIV? Absolutely. For protection of the heroes of law enforcement, current law should stay in place.

Please give HB1281 a Do Not Pass.

Thank you,

Douglas B. Sharbono

Doug Sharbono
1708 9th St S
Fargo, ND 58103

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House Bill 1281
House Human Services Committee
January 17, 2023, 9:15 a.m.

Good morning, Chairman Weisz and members of the House Human Services Committee. My name is Lindsey VanderBusch, and I am the Director of the Sexually Transmitted and Bloodborne Diseases Unit for the North Dakota Department of Health and Human Services (Department). I am here today to provide testimony in support of House Bill 1281.

In the early 1980s, HIV emerged as an epidemic in the United States. By 1984, the first case of HIV/AIDS in North Dakota was reported to the Department of Health. During that decade, nearly 100,000 people were known to be infected nationally and the mortality rate was overwhelming; over 50% of people infected died within one year of diagnosis and 75% after five years.

Today, over 35 years later, the picture of the epidemic has drastically shifted. The development of diagnostics, treatment and prevention tools has advanced. Screening tests can be done in minutes with a single drop of blood. Antiretroviral medications used to treat HIV can also be used in HIV negative people to prevent infection; you may also know this by the term, HIV PrEP. Also, people with HIV infection who receive prompt and appropriate treatment can reduce the level of virus that is found in their blood to undetected levels. In 2021, the Centers for Disease Control and Prevention (CDC) affirmed that when individuals have achieved and sustained viral suppression, there is no risk of transmission through sexual contact to an HIV negative person. While still being studied, the risk through injection drug use is also thought to be significantly reduced.[1] The current and modern treatment used for people who have HIV has transformed this infection from being untreatable with an almost certainty of death to a chronic, treatable disease in which people live full and productive lives.

What remains, however, are laws that while enacted with good intentions do not reflect the current state of the HIV epidemic. What was once seen as a mechanism to encourage people to inform new sex or needle-sharing partners of the potential risk for transmission is now acting as a deterrent for at-risk people – keeping them from seeking testing and understanding their HIV status.

[1] Mermin J., Salvant Valentine S., McCray E. (2021). HIV Criminalization laws and ending the US HIV epidemic. TheLancet,8(1), E4-E6. Retrieved from https://doi.org/10.1016/S2352-3018(20)30333-7

Studies have shown that most HIV transmission takes place during sex between two consenting adults, where neither partner is aware that one of them is living with HIV.[2] HIV infected individuals who know their status are significantly less likely to engage in sexual behaviors that may risk HIV transmission to a partner compared with HIV infected individuals who remain unaware they are infected.[3]

There may be situations when individuals knowingly and intentionally try to infect others with HIV. These circumstances of intentional transmission are rare and could be handled by other criminal statutes such as reckless endangerment or attempted murder, etc.

The current state of risk reduction options for HIV negative persons and HIV treatment effectively eliminates the risk of transmission sexually for those virally suppressed. Furthermore, those not infected but at risk now have the opportunity to receive HIV PrEP. Promotion of and advocacy for these resources is an effective way to achieve HIV elimination in North Dakota and in the nation.

This concludes my testimony and I urge the committee to support house bill 1281. Thank you and I would be happy to take questions.

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[2] Marks, G et al. Estimating sexual transmission of HIV from persons aware and unaware that they are infected with the virus in the USA. AIDS 20(10):1447-50, 2006.

[3] Marks G et al. Meta-analysis of high-risk sexual behavior in persons aware and unaware they are infected with HIV in the United States. JAIDS, 39(4):446-53, 2005.

I am hereby testifying in support of 2023 HB 1281, to repeal section 12.1-20-17 from the North Dakota Century Code, relating to willfully transferring body fluid containing the human immunodeficiency virus as punishable as a Class A felony.

The reasons I am in support of this bill are as follows:

1. Scientific and social understandings of HIV/AIDS are substantially improved since 1993, when this statute was put into law.

- In 1993, antiretroviral therapies such as zidovudine were expensive, and neither well understood, nor widely available. In 2023, these drugs can be made available to all patients in need.
- In 1993, AIDS was a fatal condition, in 2023 it is a chronic disease that can be managed with medication and a person can live a relatively normal life.
- If a person is adherent to their HIV medications and able to achieve an undetectable viral load, they will not transmit HIV to their sex partner. It will also reduce, but not eliminate, the risk of HIV transmission through needle sharing or other drug injection equipment.
- Programs such as the Ryan White Program provide free care for all HIV positive persons who are eligible. As of December 31, 2021, of the 520 estimated persons living with HIV in North Dakota, 292 (56%) were enrolled in the ND Ryan White program. This should continue to be upscaled to all eligible individuals.

2. Criminalization of HIV transmission does not result in reduced transmission of HIV at the population level.

- There is no evidence that HIV criminalization deters persons from transmitting HIV by having fewer sex partners or disclosing their status more frequently, and none have found effects of sufficient magnitude to reduce HIV prevalence at a population level.
- HIV criminalization gives the false impression that the state is punishing bad people who are responsible for wantonly spreading HIV virus to others. This is an illusion because HIV exposure or transmission is seldom the result of malicious intent.
- Criminalizing HIV transmission does not reduce infractions.
- If an individual intentionally transmits HIV to a victim, there is nothing preventing that person from being otherwise charged with aggravated assault, reckless endangerment, aggravated sexual assault, or attempted murder, as is done in Canada.

3. Criminalization of HIV transmission further stigmatizes people with HIV.

- These laws increase HIV stigma, because possession of the virus is tantamount to possessing a weapon in one's body.
- Such laws are more a mechanism to stigmatize, intimidate, and isolate individuals with HIV than they are a mechanism to prevent HIV transmission at the population level, and person's positive for HIV are more frequently vulnerable individuals to begin with, based on race, sexual orientation, and poverty.
- Such laws are seldom enforced, so they hang like the Sword of Damocles over people living with HIV.
- All persons should be treated with empathy and kindness, regardless of the reason they contracted a disease.

In summary, I support North Dakota working to decrease the number of people with HIV and reducing HIV transmission so as to reduce the incidence of HIV in North Dakota. This will happen by focusing on testing, prevention efforts, and treatment. And this will be more easily accomplished when patients with HIV do not fear they are potentially criminals. Therefore I support HB 1281, to repeal section 12.1-20-17 from the North Dakota Century Code, to no longer treat individuals willfully transferring body fluid containing the human immunodeficiency virus as a Class A felony

References:

Bernard EJ, Symington A, Beaumont S. Punishing vulnerability through HIV criminalization. Am J Public Health. 2022;112(S4):S395–S397. DOI: https://doi.org/10.2105/AJPH.2022.306713

Lazzarini, Zita; Galletly, Carol L.; Mykhalovskiy, Eric; Harsono, Dini; O'Keefe, Elaine; Singer, Merrill; Levine, Robert J. Am J Public Health. Criminalization of HIV Transmission and Exposure: Research and Policy Agenda". American Journal of Public Health. 2013;103 (8): 1350–1353. doi:10.2105/AJPH.2013.301267

Mermin J., Salvant Valentine S., McCray E. (2021). HIV Criminalization laws and ending the US HIV epidemic. The Lancet,8(1), E4-E6. Retrieved from https://doi.org/10.1016/S2352-3018(20)30333-7

Centers for Disease Control and Prevention. Protecting Others. https://www.cdc.gov/hiv/basics/livingwithhiv/protecting-others.html

Centers for Disease Control and Prevention. HIV and STD Criminalization Laws. https://www.cdc.gov/hiv/policies/law/states/exposure.html

2021 North Dakota HIV, STI, TB & Viral Hepatitis Epidemiologic Profile, September 2022. https://www.hhs.nd.gov/sites/www/files/documents/EpiProfile.pdf

HB 1281 Repeal section 12.1-20-17 of the North Dakota Century Code, relating to willfully transferring body fluid containing the human immunodeficiency virus.
Testimony of Gretchen Dobervich
January 17, 2023

Good morning, Chairperson and Members of the House Human Services Committee. For the record, my name is Representative Gretchen Dobervich, I represent District 11 in Fargo. I come before you this morning in support of a bill to further reduce the transmission of HIV in North Dakota.

The first case of AIDS was diagnosed in the United States in 1981. In the late 1980's and early 1990's state legislatures enacted laws to protect citizens from the transmission of HIV, the virus that if untreated leads to AIDS. Since that time there have been dramatic advances in knowledge about HIV and AIDS and HIV diagnosis, prevention, and treatment.

These medical advances include antiviral medications which can reduce the virus to an undetectable load with near impossible transmission. Prevention such as PrEP (pre-exposure prophylaxis), a medication, which can prevent the risk of transmitting HIV through sexual activity by 99%, and by 74% through infected needles; and PEP (post-exposure prophylaxis), a medication which can be taken up to 72 hours after exposure to HIV to prevent infection.

Even with laws and effective prevention and treatment options, if a person does not know they have HIV, they unknowingly place others at risk. Currently in the United States one in six people with HIV do not know they have the virus. The further reduction of HIV transmissions starts with testing.

The North Dakota Department of Health and Human Services reported 76 new cases of HIV in North Dakota in 2020 and a 58% decrease in the number of people getting tested. There were 3,200 HIV tests in ND in 2020. The HIV new infection rate in North Dakota has been declining since 2017. That said, if testing is also decreasing, there is a strong possibility that there are undiagnosed cases of HIV, which increases the public's risk.

As the Opioid Epidemic rages on, so does the increased risk of contracting HIV through shared needles, syringes, and other drug injection equipment. The HIV virus can survive 42 days in a used syringe. Sharing syringes is the second most common modality of transmitting HIV. North Dakota has six needle exchange programs. In the first six months of 2019, 418 individuals utilized the services. Of those individuals, 124 received HIV tests on request and a total of 72,266 used syringes were collected and safely destroyed.

HIV testing is readily available through public health, primary care providers, needle exchange programs and home tests. Despite availability, a major barrier to persons seeking testing are laws which criminalize HIV. This is evidenced in a 2014 report from the United States Justice Department entitled *Best Practices Guide to Reform HIV-Specific Criminal Laws to Align with Scientifically Supported Factors.* This guide cites judicial research indicating laws criminalizing

HIV decrease the likelihood an individual will be tested and seek treatment to manage HIV, creating a greater public health threat.

Currently, under North Dakota Century Code 12.1-20-17, knowingly transmitting the HIV virus to another person is a sex crime and Class A Felony. While this section of code was appropriate in the 1980s and 1990s when little was known about HIV and AIDS and its intent was to protect the public, it is time to update the law to reflect increased knowledge, medical advances in treatment and prevention and remove barriers to HIV testing to protect the public.

If North Dakota Century Code 12.1-20-17 is repealed, penalties for willful transfer of HIV would be addressed in North Dakota Century Code 23-07-21 which addresses other sexually transmitted infections and potentially fatal infectious diseases.

I ask the ND House Human Services Committee to favorably consider updating our state's legal response to HIV to appropriately reflect medical advances in HIV treatment and prevention and best practices recommended by the US Justice Department. HB 1281 will reduce the public's risk of contracting the virus by increasing the likelihood a person will get tested and treated. Please vote Do Pass on HB 1281.

Chairperson and Members of the House Judiciary Committee, that concludes my testimony and I stand for questions.

HB 1281

Good morning Chair Weisz and members of the Human Services committee,

My name is Kara Gloe. I am a mental health therapist licensed in both North Dakota and Minnesota. I work at Canopy Medical Clinic. Among the primary populations of people I serve, are folks living with HIV/AIDS in North Dakota. As such, I am here today to talk about the important implications a bill like this could have on the mental health of people living with HIV/AIDS and the potential ripple effect it could have on public health overall.

The law, as it currently stands, is inherently discriminatory and helps codify the stigma faced by people living with HIV/AIDS. Beyond the logistics of how one could ever prove who transmitted what to whom, the same kinds of laws do not exist for herpes, hepatitis, or other STIs for which there is no cure. Further, considering there has never been a single charge or conviction under this law, it is a solution to a problem North Dakota does not have and never has. Frankly, it does more harm than good.

In my time serving people living with HIV/AIDS, I have yet to see a client who has not, on some level, discussed the difficulties the stigma of having HIV/AIDS has had on their lives. For many people, the idea that someone could discover their status without their consent is a fear that runs on a near constant loop in the back of their minds. Some folks can manage this fear and live highly productive lives. In these cases, the stigma is only minimally limiting, but still limiting. However, for so many, it is or has been the reason they are isolated, stuck in unhealthy relationships, suffer from substance use disorder, etc. For so many, it is a major contributing factor to their depression, anxiety and/or has caused or contributed to their trauma. It is the reason they stopped attending church or have lost their community. It feels like a deep dark secret they carry around on their backs, because they have experienced shame, shunning, and rejection when they have attempted the type of vulnerability it takes to share this part of themselves with others. They worry about their jobs – whether to disclose, when to disclose and to whom. Will they be fired? Will they be forced to quit due to mistreatment? They worry about housing. Will they be evicted? They worry about how they will be treated in medical settings. Can they really trust medical professionals to protect their confidentiality? Will they be treated with dignity and respect? Unfortunately, for most of my clients they cannot depend on a consistent answer to any of these questions. I have heard absolutely devastating stories about how the ignorance of others plagues my clients, either as thousands of tiny little paper cuts or as full frontal emotional and psychological assaults.

While medical advances take us farther and farther away from the AIDS epidemic of the 80s, beliefs, education, and awareness lag far behind. I doubt I have to tell anyone on the Human Services committee that mental healthcare is healthcare. When people have access to the resources they need to heal their trauma and to develop coping skills for thriving, instead of just surviving, everyone benefits. Removing barriers to good mental health is an investment in public health. HIV is no longer considered a terminal illness, but rather a manageable long-term disease not unlike diabetes. Today, in this moment, you have an opportunity to help reduce stigma for people living with HIV/AIDS in North Dakota. You have the ability to lighten their load. As someone who works with people living with HIV/AIDS in one-on-one settings and via a peer support program, which includes group support, I can tell you these folks deserve to thrive. They are valuable contributors to their families and communities, and they absolutely deserve equal treatment under the law. Today, in this moment, you have the opportunity to send the message that the State of North Dakota agrees.

I hope my clients, all people living with HIV/AIDS in North Dakota, and I can count on your support to decriminalize HIV, so these folks have one less barrier to living a long healthy productive life full of the joy and happiness we all deserve.

Dear Members of the House,

Thank you for this opportunity to advocate on behalf of my patients, my colleagues and the citizens of our great state of North Dakota. It is my privilege to testify in support of 2023 HB 1281.

During the early years of HIV epidemic, public fear of HIV combined with now withdrawn requirements of the federal aid programs led many states to pass laws that established criminal penalties for people living with HIV. These were specifically directed at various actions or non-actions by people living with HIV like failing to disclose infection status, for exposing others to the disease, and for transmitting the disease intentionally or unintentionally.

Our understanding of HIV infection and the tools available to treat and prevent the same have improved significantly since those early times of the epidemic to the point where HIV is now a chronic disease that is easily managed by medications that are either administered as a single pill taken by mouth on a daily basis or an injectable medication taken once a month or every other month.

The progress has been so phenomenal over the last 3 decades that eliminating HIV through various strategies is now an achievable goal within our lifetimes.

This progress has been made possible due to multiple specific developments:

1. Treatment as prevention (TasP): We now have enough evidence to say that a person living with HIV and on treatment with an undetectable viral load cannot transmit HIV to another person, a phenomenon known popularly as U = U (Undetectable = Untransmissible). This strategy is endorsed by all the organizations working towards advancing HIV care including CDC, UNAIDS, WHO and PEPFAR.
2. Availability of pre and post exposure prophylaxis known as PrEP and PEP respectively. This strategy involves taking very well tolerated and effective medications prior to or after exposure to HIV. Multiple scientific studies including randomized controlled trials have demonstrated safety and efficacy of these medications.
3. Availability of other methods to reduce the risk of HIV transmission including use of condoms and male circumcision.
4. Improved understanding of which bodily fluids are able to transmit or not transmit HIV and which kind of exposure carries higher risk of transmission. For example, some state laws criminalize biting or spitting by HIV-positive persons, even though saliva, unless visibly bloody, is not considered to be a transmission risk.

Currently, most states continue to have laws which criminalize behavior of HIV positive people. Fortunately, many of these states have started revisiting these laws based on our current understating of HIV infection transmission. It is important that we urgently reconsider our ND laws that criminalize behavior of people living with HIV. These outdated laws are based on the belief that transmission of the disease is a death sentence rather than an easily managed long term disease in this day and age. Therefore, many of these laws are extraordinarily harsh in nature and carry penalties that are usually reserved for most serious of crimes. Some of the potential collateral consequences of these laws, regardless of whether HIV transmission has occurred or not, are:

1. Placement of an individual on sex offender registry even if the sexual relationship was consensual.
2. Denial of retirement pay for military service.
3. Denial of commission for military service and inability to reside in public housing.
4. Temporary or permanent suspension of a license by state professional licensing board.
5. Denial of a firearm license.
6. Denial of a liquor license.
7. Denial of student loans and scholarship.

It is now time to make sure that our policies towards HIV are consistent with that of other sexually transmitted or communicable diseases, such as Tuberculosis, Hepatitis B, Hepatitis C, Hepatitis A, Chlamydia, Gonorrhea, or Syphilis.

There remains a role for legal redress when an individual seeks to defraud another individual concerning their health status. However, pathways for such legal redress already exist in most states. Redundant and outdated policies focused on one disease promote stigma and prejudice. This in turn reduces access to testing as patients are unwilling to get tested if they know that they will be subjected to criminal laws.

It is time to ensure that our policies reflect our current understanding of any disease process and are created with the intent of spreading awareness and reducing barriers to care whether it is preventive or treatment oriented in nature. Thank you for your time and attention.