



Our mission is to end discrimination based on sexual orientation and gender identity, and to ensure the dignity, safety, and legal equality of all Kansans.

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Testimony in opposition to Substitute for HB 2183
Senate Committee on Public Health and Welfare
March 14, 2013

Greetings Madame Chair and members of the committee. Thank you for the opportunity to speak to you today as an opponent to Substitute for HB 2183.

As originally introduced, HB2183 would have changed current statute, which now requires a probable cause warrant to draw blood for an HIV test if an emergency or health care worker is exposed to bodily fluids. Had HB2183 been enacted as introduced, it would have replaced the probable cause requirement with an “implied consent” standard to testing in emergency situations. That bill was amended with the substitute bill before you today. I’d like to note that, although Sub for HB2183 has indeed passed the House, until today there have been no hearings or public input on the current version of the bill.

Sub for HB 2183 makes drastic changes in public policy regarding persons exposed to or infected with HIV or suffering from AIDS. The most significant change is to K.S.A. 65-128(b), which exempts those with HIV from quarantine. The proposed changes would remove that exemption, and would also remove some of the employment protections put in place by current statute.

These statutes are designed to protect the public from dangerous diseases, such as tuberculosis, that are spread through casual contact. While HIV is indeed a dangerous disease, the past 30 years of experience proves that it is most definitely not spread through casual contact. Subjecting those infected by, or even exposed to, HIV with the threat of quarantine is reminiscent of the 1980s, when there was less understanding among the public of just how difficult it is to become infected.

Sub for HB2183’s definition of “occupational exposure to blood or other potentially infectious materials” is very broad and could encompass just about anyone who interacts with the public – since something “might” happen anywhere. Other states allow testing without consent only if the exposure to blood or fluid presents a significant risk of HIV transmission. We believe this is a much better standard.

This bill also has no guidance about what the rules protecting employees should look like. On the occupational exposure front, there are a number of minimum safeguards we believe should be included. There should be restrictions making clear that any personal medical information revealed through testing to protect employees must be kept confidential, and there should be clear penalties for breaching confidentiality. There should be requirements that the information learned cannot be used for any other purpose. There should also be provision to ensure that the person tested is counseled about the test results.

Since HIV is not spread through casual contact, there can be no justifiable reason to remove the quarantine exemptions from current law. Other statutes already make it a severity level 7, person felony, to intentionally expose a person, through sex, needle-sharing, and blood or organ donations, to HIV or other life-threatening diseases.

Attached to this statement is a flowchart that was provided by officials with KDHE. The chart, “Public Health Event (Non-Tuberculosis)” shows that a local public health official has the power to quarantine or otherwise isolate persons who have a communicable disease. Our concern is that this process is totally unbridled - there is no guidance about when the isolation/quarantine powers can be used.

Other states that have laws that allow for the quarantine of HIV victims have been abused. Mississippi, for example, has used its quarantine power to essentially imprison people with HIV. It is used as a way to bully and control people living with HIV, and this is not something we want to see happening here in Kansas.

In conversations with officials from KDHE, they have made clear that their goal with this legislation is to remove the specific exemptions for HIV for two general reasons. The first is for administrative convenience – it is their goal to regulate HIV the same as all other infectious diseases. The second is to remove, in their words, the “stigma” created by singling out HIV in statute.

Our statutes create many distinctions in law meant to protect the vulnerable. Crimes involving domestic violence, for example, are treated differently than similar offenses because of the nature of the offender/victim relationship. Sentencing, access to protective orders, and access to counseling and other forms of support are part of our domestic violence statutes. In other words, battery is battery, unless it’s battery related to domestic violence. Even though there is certainly a social stigma for both offenders and victims in domestic violence situations, it is not the existence of those laws that “stigmatize” domestic violence; rather, our statutes say “this is different from other forms of violence, and must be treated differently.”

Removing the HIV-specific language from current statute does nothing to address societal attitudes towards people living with HIV and AIDS. The reason HIV is treated separately in current law is a *response* to that stigma; it is not the *cause* of that stigmatization.

That stigma comes instead from a false impression among many in the public that HIV/AIDS is a disease directly related to the sexual orientation of its victims. Those impressions are often cited to excuse discrimination based on actual or perceived sexual orientation. Anti-LGBT discrimination is legal in Kansas; people may be fired, evicted, or denied services merely because of their sexual orientation.

We expect our public officials to be evenhanded in how they deal with all Kansans, not just those with whom they agree. Sadly, that is often not the case. Just last year, a public school teacher told his high school students that being gay was no different from being a murderer. Two years ago, the partner of a disabled veteran – a Marine – was denied head-of-household tax filing status by a local IRS agent because, in her belief, the Kansas constitution banned same-sex relationships of any kind. Four years ago, the then-president of the Kansas County and District Attorneys Association told a group of adult college students that contrary to rulings from the United States Supreme Court, “being homosexual” was still “a crime” in Kansas.

The law as currently written works to protect liberty of ill Kansans while at the same time protecting the public from dangerous diseases. Passage of this act will do little to nothing to improve public health or safety, but instead will put the individual rights of people infected or exposed to HIV from the arbitrary acts of public officials. Administrative convenience of regulators and public health officials is not sufficient reason to remove specific and necessary protections people currently count on.

We are not opposed to improving public safety, and protecting the safety of our first responders and health care workers. We just think this bill is not the best way to accomplish the goals of the proponents. There is no public health emergency being addressed by this bill, and we believe that working with KDHE, we can come up with language that will satisfy their concerns as well as ours. I urge the committee to either reject this bill, or give the parties sufficient time to find solutions that meet the needs of all Kansans.

Thank you for your time and attention. I am happy to stand for questions.

Public Health Event (Non-Tuberculosis)

Public Health Event
(Outbreak or Illness)

Local Health Officer (LHO)
Encompasses Secretary of Kansas
Department of Health and Environment

LHO Involved
Advises Patient/Court/
KDHE of Eval/Q//
Treatment

Voluntary
Compliance by
Patient

LHO Issues/Serves
Order and Advises of
Rights

Order to Go and
Remain in
Isolation

Order to Go and
Remain in
Quarantine

Order to Seek
Evaluation and
Treatment

LEO Executes Order
- Takes to Place of
Isolation/Quarantine

Waiver of Rights

Request for
Hearing

Proper Service/
Notice?

Consolidate?

Appoint
Competent
Physician to
Examine and
Report?

Appoint
Attorney?

Set Hearing
Date/Time/
Method

Hear Case

Reasonable &
Medically
Necessary?

Uphold LHO's
Order

NECESSARY FINDINGS

1. Is Isolated/Quarantined/Treated/Examined Person or Group
2. Factual Findings Warranting Q/IE
3. In Writing Given to Individual/Group Unless Impractical Then Best Possible Other Means

Duration - Not Longer
Than 30 Days

Appeal Through K.S.A.
60-1501 et. seq.

Yes

No

No

Grant Petition for
Relief

Suffer From/Exposed To
Contagious/Infectious Disease?
K.A.R. 28-1-2