

Senate File 2086 - Introduced

SENATE FILE 2086

BY McCOY and SODDERS

A BILL FOR

1 An Act relating to the criminal transmission of a contagious or
2 infectious disease, and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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, but does not include conduct
12 posing a low or negligible risk of transmission, consistent
13 with guidance issued by the centers for disease control and
14 prevention of the United States department of health and human
15 services.

16 3. *Practical means to prevent transmission* means
17 substantial compliance with a treatment regimen prescribed
18 by a health care provider that measurably limits the risk
19 of transmission of the contagious or infectious disease,
20 substantial compliance with behavioral recommendations of
21 the infected person's health care provider or public health
22 officials to measurably limit the risk of transmission of the
23 contagious or infectious disease, or other methods generally
24 accepted by the medical profession to measurably limit the risk
25 of transmission of the contagious or infectious disease, such
26 as use of a medically indicated respiratory mask or use of a
27 prophylactic device.

28 Sec. 3. NEW SECTION. 709D.3 Intentional transmission of a
29 contagious or infectious disease.

30 1. A person commits a class "C" felony when the person
31 knows the person is infected with a contagious or infectious
32 disease and exposes an uninfected person to the contagious or
33 infectious disease with the intent that the uninfected person
34 contract the contagious or infectious disease, and the conduct
35 results in the uninfected person becoming infected with the

1 contagious or infectious disease.

2 2. A person commits a class "D" felony when the person
3 knows the person is infected with a contagious or infectious
4 disease and exposes an uninfected person to the contagious or
5 infectious disease with the intent that the uninfected person
6 contract the contagious or infectious disease, but the conduct
7 does not result in the uninfected person becoming infected with
8 the contagious or infectious disease.

9 3. A person commits an aggravated misdemeanor when the
10 person knows the person is infected with a contagious or
11 infectious disease and exposes an uninfected person to the
12 contagious or infectious disease acting with a reckless
13 disregard as to whether the uninfected person contracts the
14 contagious or infectious disease, and the conduct results in
15 the uninfected person becoming infected with the contagious or
16 infectious disease.

17 4. 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 5. 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 6. 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, 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

1 contagious disease.

2 7. 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. Section 141A.9, subsection 2, paragraph i, Code
8 2014, is amended to read as follows:

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

26 Sec. 5. Section 692A.101, subsection 1, paragraph a,
27 subparagraph (9), Code 2014, is amended by striking the
28 subparagraph.

29 Sec. 6. Section 692A.102, subsection 1, paragraph c,
30 subparagraph (23), Code 2014, is amended by striking the
31 subparagraph.

32 Sec. 7. Section 915.43, subsections 4 and 5, Code 2014, are
33 amended to read as follows:

34 4. Results of a test performed under this subchapter,
35 except as provided in subsection 13, shall be disclosed only

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

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

1 disclose the results to the petitioner, the physician of the
2 victim, if requested by the victim, and the county attorney
3 who may use the results as evidence in the prosecution of the
4 sexual assault or in the prosecution of the offense of criminal
5 transmission of HIV under chapter 709C filed the petition for
6 HIV-related testing under section 915.42.

7 Sec. 8. REPEAL. Chapter 709C, Code 2014, is repealed.

8 EXPLANATION

9 The inclusion of this explanation does not constitute agreement with
10 the explanation's substance by the members of the general assembly.

11 This bill creates the "Contagious or Infectious Disease
12 Transmission Act" and establishes crimes relating to the
13 intentional or reckless transmission of a contagious or
14 infectious disease.

15 The bill provides that a person commits a class "C" felony
16 when the person knows the person is infected with a contagious
17 or infectious disease and exposes an uninfected person to
18 the contagious or infectious disease with the intent that
19 the uninfected person contract the contagious or infectious
20 disease, and the conduct results in the uninfected person
21 becoming infected with the contagious or infectious disease.
22 A class "C" felony is punishable by confinement for no more
23 than 10 years and a fine of at least \$1,000 but not more than
24 \$10,000.

25 A person commits a class "D" felony when the person knows
26 that the person has a contagious or infectious disease and
27 exposes an uninfected person to the contagious or infectious
28 disease with the intent that the uninfected person contract
29 the contagious or infectious disease, but the conduct does
30 not result in the uninfected person becoming infected with
31 the contagious or infectious disease. A class "D" felony is
32 punishable by confinement for no more than five years and a
33 fine of at least \$750 but not more than \$7,500.

34 A person commits an aggravated misdemeanor when the person
35 knows the person is infected with a contagious or infectious

1 disease and exposes an uninfected person to the contagious
2 or infectious disease acting with a reckless disregard as
3 to whether the uninfected person contracts the contagious
4 or infectious disease, and the conduct results in the
5 uninfected person becoming infected with the contagious or
6 infectious disease. An aggravated misdemeanor is punishable by
7 confinement for no more than two years and a fine of at least
8 \$625 but not more than \$6,250.

9 The bill provides that becoming pregnant while infected with
10 a contagious or infectious disease, continuing a pregnancy
11 while infected with a contagious or infectious disease, or
12 declining treatment for a contagious or infectious disease
13 during pregnancy does not constitute a crime under the bill.

14 The bill also specifies that evidence that a person knows the
15 person is infected with a contagious or infectious disease and
16 has engaged in conduct that exposes others to the contagious or
17 infectious disease, regardless of the frequency of the conduct,
18 is insufficient on its own to prove the intent to transmit
19 the contagious or infectious disease. Additionally, the bill
20 specifies that a person does not act with the intent or the
21 reckless disregard required to commit the crimes specified
22 under the bill if the person takes practical means to prevent
23 transmission, or if the person informs the uninfected person of
24 the person's contagious or infectious disease status and offers
25 to take practical means to prevent transmission but that offer
26 is rejected by the uninfected person subsequently exposed to
27 the infectious or contagious disease. Under the bill, it is an
28 affirmative defense to a charge under the bill if the person
29 exposed to the contagious or infectious disease knew that the
30 infected person was infected with the contagious or infectious
31 disease at the time of the exposure and consented to exposure
32 with that knowledge.

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

1 person commits criminal transmission of HIV if the person,
2 knowing that the person's human immunodeficiency virus status
3 is positive, engages in intimate contact with another person;
4 transfers, donates, or provides the person's blood, tissue,
5 semen, organs, or other potentially infectious bodily fluids
6 for transfusion, transplantation, insemination, or other
7 administration to another person; or dispenses, delivers,
8 exchanges, sells, or in any other way transfers to another
9 person any nonsterile intravenous or intramuscular drug
10 paraphernalia previously used by the person infected with the
11 human immunodeficiency virus. Under current law, criminal
12 transmission of the human immunodeficiency virus is a class "B"
13 felony, which is punishable by confinement for no more than 25
14 years. The bill also makes conforming amendments throughout
15 the Code to eliminate references to the repealed Code section.