

HOUSE BILL No. 1325

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2; IC 16-41; IC 34-30-2-81; IC 34-46-2-10; IC 35-45-21-3; IC 35-52-16.

Synopsis: Transmission of communicable diseases. Amends the information that the state department of health must provide to a pregnant woman concerning the human immunodeficiency virus (HIV). Amends the definition of "high risk activity". Repeals the definition of "person at risk" and "serious and present danger to the health of others". Adds a definition of "practical means to prevent transmission". Removes the duty of a person with a dangerous communicable disease to warn a person at risk of the carrier's disease status. Provides that a person may not intentionally transmit a communicable disease to another person. Repeals provisions concerning: (1) reporting persons posing a serious and present danger to others; (2) the requirement of a physician to notify the patient of the patient's duty to warn persons at risk; (3) health officers' investigations of carriers and a carrier's notification of the carrier's disease status to a person at risk; (4) the criminal penalty for a person who sells or donates semen containing antibodies for HIV; and (5) the criminal penalty for violating requirements under certain duty to warn laws. Amends the penalty for intentionally transmitting a communicable disease. Requires that an information or indictment alleging certain violations be filed under seal in accordance with rules adopted by the Indiana supreme court. Requires a court to close any proceeding in which there is a possibility that identifying information of the defendant will be disclosed, and prohibits every person present during a closed proceeding from disclosing identifying information of the defendant until the conclusion of the trial.

Effective: July 1, 2019.

Clere, Brown T, Shackelford, Cook

January 14, 2019, read first time and referred to Committee on Public Health.



First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1325

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-275 IS REPEALED [EFFECTIVE JULY
2 1, 2019]. Sec. 275: (a) "Person at risk", for purposes of IC 16-41-7-4,
3 has the meaning set forth in IC 16-41-7-4(a).

4 (b) "Person at risk", for purposes of IC 16-41-7-1 and IC 16-41-7-3,
5 has the meaning set forth in IC 16-41-7-1(c).

6 SECTION 2. IC 16-18-2-288.1 IS ADDED TO THE INDIANA
7 CODE AS NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2019]: Sec. 288.1. "Practical means to prevent
9 transmission", for purposes of IC 16-41-7-1, has the meaning set
10 forth in IC 16-41-7-1.

11 SECTION 3. IC 16-18-2-328 IS REPEALED [EFFECTIVE JULY
12 1, 2019]. Sec. 328: "Serious and present danger to the health of others",
13 for purposes of IC 16-41-7 and IC 16-41-9; has the meaning set forth
14 in IC 16-41-7-2.

15 SECTION 4. IC 16-41-2-5 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. A person who
17 reports information as required by this chapter does not satisfy the



1 duties that exist under IC 16-41-7-3 or other laws to provide
 2 notification to persons identified as being at significant risk of being
 3 infected by the individual who is the subject of the report.

4 SECTION 5. IC 16-41-6-11 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 11. (a) The state
 6 department shall adopt rules under IC 4-22-2 that include procedures:

7 (1) to inform the woman of the test results under this chapter,
 8 whether they are positive or negative;

9 (2) for explaining the side effects of any treatment for HIV if the
 10 test results under this chapter are positive; and

11 (3) to establish a process for a woman who tests positive under
 12 this chapter to appeal the woman's status on a waiting list on a
 13 treatment program for which the woman is eligible. The rule
 14 must:

15 (A) include a requirement that the state department make a
 16 determination in the process described in this subdivision not
 17 later than seventy-two (72) hours after the state department
 18 receives all the requested medical information; and

19 (B) set forth the necessary medical information that must be
 20 provided to the state department and reviewed by the state
 21 department in the process described in this subdivision.

22 (b) The state department shall maintain rules under IC 4-22-2 that
 23 set forth standards to provide to women who are pregnant, before
 24 delivery, at delivery, and after delivery, information concerning HIV.
 25 The rules must include:

26 (1) an explanation of the nature of AIDS and HIV;

27 (2) information concerning discrimination and legal protections;

28 ~~(3) information concerning the duty to notify persons at risk as~~
 29 ~~described in IC 16-41-7-1;~~

30 ~~(4)~~ (3) information about risk behaviors for HIV transmission;

31 ~~(5)~~ (4) information about the risk of transmission through breast
 32 feeding;

33 ~~(6)~~ (5) notification that if the woman chooses not to be tested for
 34 HIV before delivery, at delivery the child will be tested subject to
 35 section 4 of this chapter;

36 ~~(7)~~ (6) procedures for obtaining informed, written consent for
 37 testing under this chapter;

38 ~~(8)~~ (7) procedures for post-test counseling by a health care
 39 provider when the test results are communicated to the woman,
 40 whether the results are positive or negative;

41 ~~(9)~~ (8) procedures for referral for physical and emotional services
 42 if the test results are positive;



(10) (9) procedures for explaining the importance of immediate entry into medical care if the test results are positive; and
 (11) (10) procedures for explaining that giving birth by cesarean section may the use of antiretroviral drugs and other medical interventions lessen the likelihood of passing on HIV to the child during childbirth. especially when done in combination with medications; if the test results are positive.

SECTION 6. IC 16-41-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) This section applies to the following dangerous communicable diseases:

(1) Acquired immune deficiency syndrome (AIDS);

(2) (1) Human immunodeficiency virus (HIV).

(3) (2) Hepatitis B.

(b) As used in this section, "high risk activity" means sexual or needle sharing contact that has been demonstrated epidemiologically, to transmit as determined by the federal Centers for Disease Control and Prevention or other comparable epidemiological evidence, to bear a significant risk of transmitting a dangerous communicable disease described in subsection (a).

(c) As used in this section, "person at risk" means:

(1) past and present sexual or needle sharing partners who may have engaged in high risk activity; or

(2) sexual or needle sharing partners before engaging in high risk activity;

with the carrier of a dangerous communicable disease described in subsection (a).

(d) Carriers who know of their status as a carrier of a dangerous communicable disease described in subsection (a) have a duty to warn or cause to be warned by a third party a person at risk of the following:

(1) The carrier's disease status.

(2) The need to seek health care such as counseling and testing.

(c) As used in this section, "practical means to prevent transmission" means any method, device, behavior, or activity demonstrated scientifically to measurably limit, reduce, or eliminate the risk of transmission of a communicable disease, including the use of a prophylactic device or adherence to an appropriate medical treatment regimen for the communicable disease as determined by a physician.

(d) An individual may not intentionally transmit a communicable disease described in subsection (a) to another person. An individual commits intentionally transmitting a communicable disease if the following conditions are met:



(1) The individual knows that the individual has a communicable disease described in subsection (a).

(2) The individual acts with the specific intent to transmit that communicable disease to another person.

(3) The individual engages in a high risk activity with the other person.

(4) The individual transmits the communicable disease to the other person.

(5) The person was unaware that the individual had a communicable disease.

(e) An individual does not act with the specific intent required in subsection (d)(2) if the individual takes, or attempts to take, practical means to prevent transmission. However, the failure by an individual to use practical means to prevent transmission alone is not sufficient to prove the intent required under subsection (d)(2).

(f) A person does not violate subsection (d) for any of the following reasons:

(1) Becoming pregnant while having a communicable disease.

(2) Acquiring a communicable disease while pregnant.

(3) Continuing a pregnancy while having a communicable disease.

(4) Declining treatment for a communicable disease while pregnant.

SECTION 7. IC 16-41-7-2 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 2: (a) A carrier is a "serious and present danger to the health of others" under the following conditions:

(1) The carrier engages repeatedly in a behavior that has been demonstrated epidemiologically (as defined by rules adopted by the state department under IC 4-22-2) to transmit a dangerous communicable disease or that indicates a careless disregard for the transmission of the disease to others.

(2) The carrier's past behavior or statements indicate an imminent danger that the carrier will engage in behavior that transmits a dangerous communicable disease to others.

(3) The carrier has failed or refused to carry out the carrier's duty to warn under section 1 of this chapter.

(b) A person who has reasonable cause to believe that a person:

(1) is a serious and present danger to the health of others as described in subsection (a);

(2) has engaged in noncompliant behavior; or



(3) is suspected of being a person at risk (as described in section 1
 2 † of this chapter);
 3 may report that information to a health officer:

(c) A person who makes a report under subsection (b) in good faith
 5 is not subject to liability in a civil, an administrative, a disciplinary, or
 6 a criminal action:

(d) A person who knowingly or recklessly makes a false report
 8 under subsection (b) is civilly liable for actual damages suffered by a
 9 person reported on and for punitive damages:

SECTION 8. IC 16-41-7-3 IS REPEALED [EFFECTIVE JULY 1,
 11 2019]. Sec. 3: (a) A licensed physician who diagnoses, treats, or
 12 counsels a patient with a dangerous communicable disease shall inform
 13 the patient of the patient's duty under section † of this chapter:

(b) A physician described in subsection (a) may notify the
 15 following:

(1) A health officer if the physician has reasonable cause to
 17 believe that a patient:

(A) is a serious and present danger to the health of others as
 19 described in section 2(a) of this chapter;

(B) has engaged in noncompliant behavior; or

(C) is suspected of being a person at risk (as defined in section
 22 † of this chapter):

(2) A person at risk (as defined in section † of this chapter) or a
 24 person legally responsible for the patient if the physician:

(A) has medical verification that the patient is a carrier;

(B) knows the identity of the person at risk;

(C) has a reasonable belief of a significant risk of harm to the
 28 identified person at risk;

(D) has reason to believe the identified person at risk has not
 30 been informed and will not be informed of the risk by the
 31 patient or another person; and

(E) has made reasonable efforts to inform the carrier of the
 33 physician's intent to make or cause the state department of
 34 health to make a disclosure to the person at risk:

(c) A physician who notifies a person at risk under this section shall
 36 do the following:

(1) Identify the dangerous communicable disease:

(2) Inform the person of available health care measures such as
 39 counseling and testing:

(d) A physician who in good faith provides notification under this
 41 section is not subject to liability in a civil, an administrative, a
 42 disciplinary, or a criminal action:



(e) A patient's privilege with respect to a physician under IC 34-46-3-1 is waived regarding:

- (1) notification under subsection (b); and
- (2) information provided about a patient's noncompliant behavior in an investigation or action under this chapter; IC 16-41-2; IC 16-41-3; IC 16-41-5; IC 16-41-6; IC 16-41-8; IC 16-41-9; IC 16-41-13; IC 16-41-14; and IC 16-41-16.

(f) A physician's immunity from liability under subsection (d) applies only to the provision of information reasonably calculated to protect an identified person who is at epidemiological risk of infection.

(g) A physician who notifies a person under this section is also required to satisfy the reporting requirements under IC 16-41-2-2 through IC 16-41-2-8.

SECTION 9. IC 16-41-7-4 IS REPEALED [EFFECTIVE JULY 1, 2019]. Sec. 4: (a) As used in this section, "person at risk" means an individual who in the best judgment of a licensed physician:

- (1) has engaged in high risk activity (as defined in section 1 of this chapter); or
- (2) is in imminent danger of engaging in high risk activity (as defined in section 1 of this chapter).

(b) If a health officer is notified in writing by a physician under section 3(b)(1)(A) of this chapter of a patient:

- (1) for whom the physician has medical verification that the patient is a carrier; and
- (2) who, in the best judgment of the physician, is a serious and present danger to the health of others;

the health officer shall make an investigation of the carrier as authorized in IC 16-41-5-2 to determine whether the environmental conditions surrounding the carrier or the conduct of the carrier requires the intervention by the health officer or designated health official to prevent the spread of disease to others.

(c) If the state department is requested in writing by a physician who has complied with the requirements of section 3(b)(2) of this chapter to notify a person at risk, the state department shall notify the person at risk unless, in the opinion of the state department, the person at risk:

- (1) has already been notified;
- (2) will be notified; or
- (3) will otherwise be made aware that the person is a person at risk.

(d) The state department shall establish a confidential registry of all persons submitting written requests under subsection (c):



(e) The state department shall adopt rules under IC 4-22-2 to implement this section. Local health officers may submit advisory guidelines to the state department to implement this chapter; IC 16-41-1, IC 16-41-3, IC 16-41-5, IC 16-41-8, or IC 16-41-9. The state department shall fully consider such advisory guidelines before adopting a rule under IC 4-22-2-29 implementing this chapter; IC 16-41-1, IC 16-41-3, IC 16-41-5, IC 16-41-8, or IC 16-41-9.

SECTION 10. IC 16-41-7-5, AS AMENDED BY P.L.158-2013, SECTION 240, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 5. (a) Except as provided in IC 35-45-21-3, A person who recklessly violates or fails to comply with this chapter commits a Class B misdemeanor.

(b) Each day a violation continues constitutes a separate offense.

(b) An information or indictment alleging a violation of this chapter shall be filed under seal in accordance with rules adopted by the supreme court. All records related to a proceeding described in this section shall be sealed:

(1) permanently, if the defendant is not convicted of the offense; or

(2) until the court enters a judgment of conviction, if the defendant is convicted of the offense.

(c) Unless the defendant objects, the court shall close any proceeding in which there is a possibility that identifying information (as defined in IC 35-43-5-1) of the defendant will be disclosed and prohibit every person present during a closed proceeding from disclosing identifying information of the defendant until the conclusion of the trial.

(d) Confidentiality of the medical information of the complainant and the individual accused shall be maintained as required by IC 16-41-8-1.

SECTION 11. IC 16-41-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) A carrier who:

(1) poses a serious and present danger to the health of others;

(2) has been voluntarily admitted to a hospital or other facility for the treatment of tuberculosis or another dangerous communicable disease; and

(3) who leaves the facility without authorized leave or against medical advice or who fails to return from authorized leave;

shall be reported to a health officer by the facility not more than twenty-four (24) hours after discovery of the carrier's absence.

(b) If a health officer fails or refuses to institute or complete necessary legal measures to prevent a health threat (as defined in



1 ~~IC 16-41-7-2) by the carrier; the case shall be referred to a designated~~
 2 ~~health official for appropriate action under this article.~~

3 SECTION 12. IC 16-41-12-15, AS AMENDED BY P.L.168-2014,
 4 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 5 JULY 1, 2019]: Sec. 15. (a) A blood center shall require a blood donor
 6 to provide to the blood center the following information:

7 (1) Name.

8 (2) Address.

9 (3) Date of birth.

10 (4) The blood donor's Social Security number, if the blood donor
 11 is receiving monetary compensation for the donation.

12 (b) A blood center shall report the name and address of a blood
 13 donor to the state department when a confirmatory test of the blood
 14 donor's blood confirms the presence of antibodies to the human
 15 immunodeficiency virus (HIV).

16 (c) A blood center shall provide to a blood donor information to
 17 enable the blood donor to give informed consent to the procedures
 18 required by this chapter or IC 16-36. The information required by this
 19 subsection must be in the following form:

20 NOTICE

21 (1) This blood center performs a screening test for the human
 22 immunodeficiency virus (HIV) on every donor's blood.

23 (2) This blood center reports to the state department of health the
 24 name and address of a blood donor when a confirmatory test of
 25 the blood donor's blood confirms the presence of antibodies to the
 26 human immunodeficiency virus (HIV).

27 ~~(3) A person who recklessly, knowingly, or intentionally donates~~
 28 ~~(excluding self-donations for stem cell transplantation; other~~
 29 ~~autologous donations; or donations not intended by the blood~~
 30 ~~center for distribution or use); sells; or transfers blood that~~
 31 ~~contains antibodies for the human immunodeficiency virus (HIV)~~
 32 ~~commits transferring contaminated blood; a Level 5 felony. The~~
 33 ~~offense is a Level 4 felony if the offense results in the~~
 34 ~~transmission of the virus to another person.~~

35 SECTION 13. IC 16-41-14-7 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) Except as
 37 provided in subsection (b), a practitioner may not use a donation of
 38 semen until the following conditions are met:

39 (1) The specimen has been frozen and quarantined for at least one
 40 hundred eighty (180) days.

41 (2) The donor is retested after one hundred eighty (180) days for
 42 the HIV antibody.



(b) If the recipient indicates that the donor is in a mutually monogamous relationship with the recipient, the practitioner:

(1) shall perform the HIV test required under this chapter for the donor at least annually as long as artificial insemination procedures are continuing; and

(2) may not perform artificial insemination unless ~~the tests for HIV antibody performed under this chapter produce negative results.~~ **safer conception practices are used and the practices are endorsed by the federal Centers for Disease Control and Prevention or other generally accepted experts.**

SECTION 14. IC 16-41-14-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. (a) **Except as provided in subsection (b),** a practitioner shall dispose of a donation of semen after a confirmatory test indicates the presence of the HIV antibody. The disposal must be made according to the rules concerning the disposal of infectious waste.

(b) Subsection (a) does not apply if a donation of semen that indicates the presence of the HIV antibody is used according to safer conception practices and the practices are endorsed by the federal Centers for Disease Control and Prevention or other generally accepted experts.

SECTION 15. IC 16-41-14-13, AS AMENDED BY P.L.158-2013, SECTION 244, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. A practitioner shall provide information to a semen donor to enable the semen donor to give informed consent to the procedures required by this chapter. The information required by this section must be in the following form:

NOTICE

(1) This facility performs a screening test for the human immunodeficiency virus (HIV) on every donor's blood.

(2) This facility reports to the state department of health the name and address of a semen donor or recipient when a confirmatory test of the semen donor's blood or the recipient's blood confirms the presence of antibodies to the human immunodeficiency virus (HIV).

~~(3) A person who, for the purpose of artificial insemination, recklessly, knowingly, or intentionally donates, sells, or transfers semen that contains antibodies for the human immunodeficiency virus (HIV) commits transferring contaminated semen, a Level 5 felony. The offense is a Level 4 felony if the offense results in the transmission of the virus to another person.~~



1 SECTION 16. IC 16-41-14-17 IS REPEALED [EFFECTIVE JULY
2 1, 2019]. Sec. 17: (a) This section does not apply to a person who
3 transfers for research purposes semen that contains antibodies for the
4 human immunodeficiency virus (HIV):

5 (b) A person who, for the purpose of artificial insemination;
6 recklessly, knowingly, or intentionally donates, sells, or transfers semen
7 that contains antibodies for the human immunodeficiency virus (HIV)
8 commits transferring contaminated semen, a Level 5 felony. The
9 offense is a Level 4 felony if the offense results in the transmission of
10 the virus to another person:

11 SECTION 17. IC 34-30-2-81 IS REPEALED [EFFECTIVE JULY
12 1, 2019]. Sec. 81: (a) IC 16-41-7-2 (Concerning the good faith
13 reporting to a health officer of an individual thought to present a
14 serious and present danger to the health of others; to have engaged in
15 noncompliant behavior; or to be at risk of carrying a dangerous
16 communicable disease):

17 (b) IC 16-41-7-3 (Concerning a physician who provides notification
18 to certain individuals regarding a patient's dangerous communicable
19 disease):

20 SECTION 18. IC 34-46-2-10 IS REPEALED [EFFECTIVE JULY
21 1, 2019]. Sec. 10: IC 16-41-7-3 (Concerning warning by physician of
22 dangerous communicable disease):

23 SECTION 19. IC 35-45-21-3 IS REPEALED [EFFECTIVE JULY
24 1, 2019]. Sec. 3: (a) A person who recklessly violates or fails to comply
25 with IC 16-41-7 commits a Class B misdemeanor:

26 (b) A person who knowingly or intentionally violates or fails to
27 comply with IC 16-41-7-1 commits a Level 6 felony:

28 (c) Each day a violation described in this section continues
29 constitutes a separate offense:

30 SECTION 20. IC 35-52-16-51 IS REPEALED [EFFECTIVE JULY
31 1, 2019]. Sec. 51: IC 16-41-12-15 defines a crime concerning
32 communicable diseases:

33 SECTION 21. IC 35-52-16-55 IS REPEALED [EFFECTIVE JULY
34 1, 2019]. Sec. 55: IC 16-41-14-13 defines a crime concerning
35 communicable diseases:

36 SECTION 22. IC 35-52-16-58 IS REPEALED [EFFECTIVE JULY
37 1, 2019]. Sec. 58: IC 16-41-14-17 defines a crime concerning
38 communicable diseases:

