

# SENATE BILL REPORT

## SB 5352

---

As Reported By Senate Committee On:  
Law & Justice, February 19, 1997

**Title:** An act relating to sexual battery.

**Brief Description:** Treating certain sex offenders with medroxyprogesterone acetate.

**Sponsors:** Senators Benton and Hargrove.

**Brief History:**

**Committee Activity:** Law & Justice: 2/3/97, 2/19/97 [DPS-WM, DNPS].

---

### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5352 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Roach, Chair; Fairley, Goings, Hargrove, Long, Stevens and Zarelli.

**Minority Report:** Do not pass substitute.

Signed by Senator Kline.

**Staff:** Mychal Schwartz (786-7444)

**Background:** Depo-Provera, or medroxyprogesterone acetate, is a drug that, when administered to men, acts on the brain to inhibit hormones that stimulate the testicles to produce testosterone. Decreasing testosterone levels lowers the men's sex drive and eventually causes their testicles to shrink. The effects of the drug wear off if the treatment is stopped. In women, medroxyprogesterone acetate acts as a contraceptive. Though not used in a penal context, several European countries have studied the use of the drug on sexual offenders, finding that its use has decreased the rate of recidivism for male offenders.

In September 1996, California became the first state to adopt legislation involving the use of this drug. The law requires, as a condition of parole, the administration of medroxyprogesterone acetate to persons convicted as repeat child molesters. Judges are also given the discretion to order the treatment for first time child molesters as a condition of their parole as well. The administration of medroxyprogesterone acetate is to begin one week prior to the parolees release from confinement and is to continue until it is deemed no longer necessary. Defendants may choose to be surgically castrated as an alternative to undergoing the chemical therapy.

Although Washington does not have any laws specifically addressing this issue, there is a 1909 statute which provides for the sentencing option of "prevention of procreation" for persons adjudged guilty of carnal abuse, rape, or adjudged to be habitual criminals. The only Washington case challenging this statute is *State v. Feilen*. The *Feilen* case, decided

in 1912, held that a life sentence and the order of a vasectomy was not cruel and unusual punishment for a person convicted of statutory rape.

In a 1985 South Carolina case, a judge sentenced three rapists to 30 years in prison, but gave them the option of a suspended sentence if they agreed to be surgically castrated. Two of the defendants appealed the sentence as being cruel and unusual punishment. The third defendant requested the court to proceed with the sentencing option of castration. The other defendants then dropped their appeal and requested the castration to be performed. The South Carolina Supreme Court ruled that castration was a form of mutilation and therefore, cruel and unusual punishment under their state constitution.

**Summary of Substitute Bill:** A defendant who is convicted of rape in the first degree, rape in the second degree, rape of a child in the first degree or a second conviction for child molestation in the first degree, and who is not determined to be a persistent offender, must be sentenced to treatment, including the administration of Medroxyprogesterone acetate, to reduce the likelihood of reoffense upon release.

At least 30 days prior to the offender's release, a hearing is held to determine whether imposition of the treatment regimen, including the administration of Medroxyprogesterone acetate. The offender is afforded full due process rights at the hearing including the right to counsel, the right to offer witnesses and experts, and the right to cross examine any witnesses who testify for the state.

If the court determines by a preponderance of the evidence that the treatment regimen, including the administration of medroxyprogesterone acetate, would reduce the likelihood of the offender reoffending, it shall impose the treatment to begin prior to the offender's release from custody. The treatment may be ordered for as long as the court feels is necessary. If the court determines that the treatment regimen is not necessary, imposition is suspended, but may be reimposed if the court subsequently determines that the treatment would be helpful.

Imposition of and successful use of the treatment regimen shall in no way reduce the time in confinement an offender would otherwise serve in custody.

An offender may seek termination of the treatment regimen, but must show by clear and convincing evidence that the criteria for maintaining the treatment program no longer exist and that the treatment program is no longer necessary.

Failure to maintain treatment as ordered is a level V, class B felony.

**Substitute Bill Compared to Original Bill:** By making the treatment regimen a condition of release, the substitute bill is substantially different in scope and application than the original bill. The substitute bill also clarifies the intent of the original bill as well. The original bill required that all persons convicted of rape in the first degree, rape in the second degree, and rape of a child in the first degree be treated with medroxyprogesterone acetate, but did not specify when the treatment was to begin or the procedure to determine whether all such offenders would actually be required to have the medroxyprogesterone acetate treatment.

**Appropriation:** None.

**Fiscal Note:** Requested on January 29, 1997.

**Effective Date:** The bill contains an emergency clause and takes effect on July 1, 1997.

**Testimony For:** European studies have shown that use of medroxyprogesterone acetate on sex offenders has reduced the rate of recidivism dramatically. If these offenders are going to be released back into the community, the public needs whatever protections it can be given. This is not castration because the effects of medroxyprogesterone acetate treatment are reversible.

**Testimony Against:** This bill gives the public a false sense of security. The majority of these crimes are crimes of violence, not sex crimes. Medroxyprogesterone acetate has not been shown to be effective on persons who are not taking it voluntarily. Offenders must want help for the drug to be effective. Medroxyprogesterone acetate has not been approved by the Food and Drug Administration for this purpose, and therefore, the offender's informed consent would be required prior to the treatment. The bill would have no effect on women offenders.

**Testified:** PRO: Senator Don Benton; Marie Morrison; CON: Debra Ruggles, Washington Coalition of Sexual Assault Programs; Maureen Saylor, Washington Association for the Treatment of Sex Offenders; Ruben Cedeño, Department of Corrections; John Ostlund, Washington Defender's Association; Dr. Ronald Fleck, Washington State Penitentiary Chief Medical Officer.