

# HOUSE BILL REPORT

## ESSB 5086

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*As Reported By House Committee on:  
Health Care*

**Title:** An act relating to counseling and testing for HIV diseases of persons charged with criminal offenses.

**Brief Description:** Providing for HIV testing without consent for certain persons.

**Sponsor(s):** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Amondson, Snyder, Bailey, Wojahn, Hayner, McMullen, Anderson, L. Kreidler, McDonald, Vognild, Newhouse, Craswell, Johnson, Owen, L. Smith, Oke, Conner, Rasmussen, Bauer, Moore, Stratton, McCaslin, Barr, Matson, Roach, Thorsness, Metcalf, Sellar, Nelson, Sutherland and West).

**Brief History:**

Reported by House Committee on:  
Health Care, April 4, 1991, DPA.

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**HOUSE COMMITTEE ON  
HEALTH CARE**

**Majority Report:** *Do pass as amended.* Signed by 10 members: Representatives Braddock, Chair; Day, Vice Chair; Moyer, Ranking Minority Member; Casada, Assistant Ranking Minority Member; Cantwell; Edmondson; Franklin; Morris; Paris; and Sprenkle.

**Staff:** Bill Hagens (786-7131).

**Background:** Current Washington law requires pre-test counseling, HIV testing and post-test counseling of convicted sex offenders, convicted prostitutes and those convicted of crimes relating to prostitution, and convicted drug offenders where hypodermic needles were involved. In addition, the law provides a mechanism for law enforcement officers, fire fighters, health care providers and others who may be exposed to body fluids in the course of their employment to learn the HIV status of persons whose body fluids they have been exposed to. However, current law provides no mechanism for crime victims to determine the HIV status of their alleged attackers.

**Summary of Amended Bill:** The prosecuting attorney must notify a victim of charged criminal offenses where body fluids were exposed of his or her right to receive HIV counseling and testing and their right to know the HIV status of the alleged offender.

A prosecuting attorney may request HIV testing, and, if such request is made, the health officer must perform the test. If the victim requests information on the HIV status of the alleged offender, the prosecuting attorney must seek the appropriate court order based on affidavits which may be submitted by the victim, the alleged offender, the public health officer, or the prosecuting attorney. Once the order is granted, the public health officer must perform HIV counseling and testing with the alleged offender.

If the victim of a charged criminal offense is a minor, the victim's parent or legal guardian shall have all of the rights and remedies of a victim to receive HIV counseling, testing and HIV status information on an alleged offender.

The results of HIV testing performed on alleged offenders at the request of victims may not be used in any criminal proceeding as evidence of either guilt or innocence.

If a "good samaritan," as defined by law, is substantially exposed to another person's body fluids, he or she may request HIV testing and counseling of that person. If the person refuses, the local health officer may seek a court order. The local health officer must perform the test, if the person consents or if the court orders the test.

All HIV testing required under Chapter 70.24 RCW is re-defined to include subsequent tests at such intervals the State Board of Health determines sufficient to detect HIV infection.

HIV testing and counseling requirements for convicted sex offenders, prostitution law violators and certain drug law offenders are broadened to include those convicted of comparable local ordinances, and narrowed to include only those offenses involving substantial exposure to body fluids. HIV test results on these persons will be available to victims.

The Department of Health is required to collect related data.

**Amended Bill Compared to Engrossed Substitute Bill:** The authority to request testing and counseling is given to the prosecuting attorney instead of the victim. The Department of Health is required to collect related data.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** This legislation is needed to increase victims' piece of mind and to assist in slowing the spread of HIV infection. Adequate privacy and constitutional protections are contained in the bill. A specific provision precludes the use of HIV test results on alleged offenders being used against them in legal proceedings. In addition, the provisions which call for interval HIV testing, mandatory testing for violation of local ordinances involving sex offenses, prostitution and certain drug offenses and other provisions are needed refinements to existing HIV testing policy.

**Testimony Against:** HIV testing of certain alleged offenders constitutes a search for which probable cause usually does not exist. Therefore, the provision for court ordered testing of certain alleged offenders is unconstitutional. Central to the victim's piece of mind should be whether or not they have been infected with HIV, not whether or not the alleged offender is HIV positive. Therefore, mandatory testing of alleged offenders is unnecessary. Mandatory testing promotes fear of HIV, and drives HIV infected persons away from needed health care.

**Witnesses:** Susie Tracy, Washington State Medical Association (pro); Nancy Campbell, NW AIDS Foundation (con); Senator Amondson (pro); Jessy Johnston (con); Steve Glancy, AIDSWATCH (con); Dr. Bill Lafferty, Department of Health; Stephanie Allen (pro); Joan Gaumer, Privacy Fund (con); Jerry Sheehan, American Civil Liberties Union (con); Dr. Peter Shalit (con); Helen Harlow and Terri Amrhem, Tennis Shoe Brigade (pro); Ardythe Fleener, Tacoma Health Department (con w/o funding); and Audrey Haberman, Seattle Rape Relief (con).