

SENATE BILL REPORT

SB 5086

AS REPORTED BY COMMITTEE ON HEALTH & LONG-TERM CARE,
FEBRUARY 21, 1991

Brief Description: Permitting counseling and testing for HIV diseases of charged criminal offenders.

SPONSORS: 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.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5086 be substituted therefor, and the substitute bill do pass.

Signed by Senators West, Chairman; L. Smith, Vice Chairman; Amondson, Johnson, L. Kreidler, and Wojahn.

Staff: Don Sloma (786-7414)

Hearing Dates: January 31, 1991; February 21, 1991

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:

A victim of a charged criminal offense who has experienced substantial exposure to a charged criminal offender's body fluids during the course of an alleged criminal offense may request and receive the results of an HIV test of that person. The state or local health officer must perform the test if they find that the exposure was substantial as defined by the state Board of Health.

The person subject to a mandatory HIV test order under these circumstances has the right to refuse the order. If this occurs, the health officer may petition the court for compliance.

Testing must occur as soon as possible after the accused's first court appearance following the filing of charges and unless acquittal or unless charges are dropped. Testing must occur at intervals sufficient to detect HIV infection, as determined by the state Board of Health.

A victim of a charged criminal offense where body fluids were alleged to have been exchanged must be given notice of his or her rights to request an HIV test of charged criminal offenders.

EFFECT OF PROPOSED SUBSTITUTE:

Provisions in the original bill governing notification of victims, the roles of prosecutors, public health officers, and defendants are modified as follows:

The prosecuting attorney must notify victims of charged criminal offenses where body fluids were exposed of their right to receive HIV counseling and testing and their right to know the HIV status of the alleged offender.

If the victim requests HIV testing, 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 experiences a substantial exposure to another person's body fluids, they 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.

Appropriation: none

Revenue: none

Fiscal Note: available

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.

TESTIFIED: Robert Wood, Seattle King County Dept. Public Health (pro); Helen Harlow, Tennis Shoe Brigade (pro); Seth Dawson, Snohomish County Prosecuting Attorney (pro); Jerry Sheehan, ACLU