

HOUSE BILL REPORT

SHB 2151

As Passed Legislature

Title: An act relating to disclosure of HIV test results to victims of sex offenses.

Brief Description: Requiring that victims of felony sex offenses be given notice of HIV test results, whether the results are positive or negative.

Sponsors: By House Committee on Health Care (originally sponsored by Representatives L. Johnson, Ballasiotes, Dellwo, Chappell, Cothorn, Conway, Thibaudeau, Talcott, Wood, Heavey, Sheldon, Van Luven, Campbell, Brough, Dorn, Lemmon, Long, Dyer, Kessler, Holm, Wineberry, Basich, Romero, Springer, Hansen, H. Myers, Leonard and Foreman).

Brief History:

Reported by House Committee on:
Health Care, February 3, 1994, DPS;
Passed House, February 9, 1994, 97-0;
Passed Legislature.

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Dellwo, Chair; L. Johnson, Vice Chair; Ballasiotes, Assistant Ranking Minority Member; Appelwick; Backlund; Conway; Cooke; Flemming; R. Johnson; Lemmon; Lisk; Mastin; Morris and Veloria.

Minority Report: Do not pass. Signed by 1 member: Representative Thibaudeau.

Staff: Bill Hagens (786-7131).

Background: RCW 70.24. 105 (2) states:

"No person may disclose or be compelled to disclose the identity of any person upon whom an HIV antibody test is performed, or the results of such a test, nor may the result of a test for any other sexually transmitted disease when it is positive be disclosed."

However, section (2)(g) of that statute grants an exemption to:

"Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary."

RCW 70.24.105(2)(g) is used as the basis for the release of positive HIV test results to victims of sexual offenses.

The proponents of this measure feel that the law does not clearly authorize the reporting of negative results.

In a related issue, the Department of Community Development was notified by the U.S. Bureau of Justice that Washington State's HIV statute is out of compliance with the Federal Anti-Drug Abuse Funding requirements because it does not include a clear provision for the reporting of all HIV test results to victims. Noncompliance could result in an annual 10 percent reduction of a \$8 million federal grant.

Summary of Bill: Upon request of the victim, disclosure of test results under this section to victims of sexual offenses shall be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. Such disclosure shall be accompanied by appropriate counseling, including information regarding follow-up testing.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: If a victim is told nothing about the offender's test outcome, he or she tends to wonder - in anguish - if a test was ever performed, if the test result was positive but for some reason that fact was not communicated, or if for any other reason the statute was not applied as the Legislature intended. HB 2151 clarified the victim's right to know the offender's negative, as well as positive, test result. Because of recent federal legislation, Washington will lose over \$700,000 a year in federal funding for drug enforcement, treatment and education purposes if the provisions of HB 2151 are not enacted.

Testimony Against: Notification of test results can result in a false sense of security because test results can be in error.

Witnesses: Meg VanSchoorl, Department of Community Development; Seth Dawson, Snohomish County Prosecuting Attorney and Washington Association of Prosecuting Attorneys (pro); Donna Deleno, Washington Coalition of Sexual Assault Programs (pro); Jerry Sheehan, American Civil Liberties Union (con); Tim Schellberg, Sheriffs and Police Chiefs (pro); and Tim Erickson, Washington State Patrol (pro).