

HOUSE BILL REPORT

H 1099

As Reported By House Committee On:

Law & Justice

Title: An act relating to human immunodeficiency virus testing for persons arrested for prostitution and patronizing a prostitute.

Brief Description: Requiring HIV testing for persons arrested for being involved with prostitution.

Sponsors: Representatives Scott, Appelwick, Padden, Campbell, Sherstad and Benton.

Brief History:

Committee Activity:

Law & Justice: 2/1/95, 2/10/95 [DP].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 11 members: Representatives Padden, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Campbell; Carrell; Lambert; McMahan; Morris; Robertson; Sheahan and Veloria.

Minority Report: Do not pass. Signed by 6 members: Representatives Appelwick, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Chappell; Cody; Smith and Thibaudeau.

Staff: Edie Adams (786-7180).

Background: The public health chapter of the Revised Code of Washington covering sexually transmitted diseases provides that local health departments may investigate, examine, and counsel persons reasonably believed to be infected with or to have been exposed to a sexually transmitted disease, including the human immunodeficiency virus (HIV).

No person may be required to undergo HIV testing without the person's consent except in a few circumstances. These circumstances include persons convicted of a sexual offense, persons convicted of a drug offense associated with the use of a hypodermic needle, and persons convicted of prostitution or offenses relating to prostitution.

All mandatory drug tests for persons convicted of a specified offense must occur soon after sentencing upon an order of the sentencing judge. All tests are to be performed by the local health department and must include both pretest and posttest counseling.

The results of an HIV test required by the chapter may not be disclosed, except in limited circumstances, to protect the privacy of the tested person. Anyone who obtains the test results under one of the exceptions may not disclose the results to anyone else, with certain limited exceptions. A violation of the confidentiality restriction is a gross misdemeanor.

Summary of Bill: Any person arrested for prostitution or patronizing a prostitute shall submit to a test, approved by the state board of health, to detect exposure to the human immunodeficiency virus. The person shall pay \$100 for the cost of the test if the person is convicted of the charge of prostitution or patronizing a prostitute.

The results of the test shall be transmitted to the arresting law enforcement agency. The agency shall inform the court of the test results if the results are negative. If the results are positive, the agency must mail the results, return receipt requested, to the person arrested and place the returned receipt in the agency's file or, if the person is in custody, personally deliver the results to the person and place an affidavit of service in the agency's file.

A person arrested for prostitution or patronizing a prostitute must appear before the court 45 days after arraignment, unless the court has been notified by the arresting law enforcement agency that the results of the test were negative or the person has notified the court in writing that he or she has received the test results.

At the reappearance, the court shall ask the person whether the person has received the results of the test. If the person answers that the person has received the test results, the court shall note the answer in the court records. If the person answers that the person has not received the test results, the court shall order the results delivered to the person and direct that an affidavit of service be placed in the agency's file. The court may cause a bench warrant to be issued for any person who does not reappear as ordered.

A person is guilty of assault in the second degree if that person violates the offense of prostitution or patronizing a prostitute after testing positive in a test approved by the state board of health after exposure to the HIV virus and receiving notice of that fact.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Persons who engage in prostitution or are patrons of prostitutes are high risk groups for HIV. The activity engaged in by prostitutes and patrons poses substantial health risks to undercover law enforcement officers and other members of the public and increases the spread of HIV.

Testimony Against: Current Washington law already provides that any person convicted of an offense relating to prostitution must submit to a mandatory HIV test. This bill has serious constitutional problems because it requires an invasive search in situations where there is no probable cause to conduct a search. Probable cause to arrest for prostitution does not give rise to probable cause to test for HIV. The bill will allow a person's test result, which is very sensitive and private information, to float around in police agency files without any requirements for confidentiality. The bill is bad medicine for fighting HIV and could cause discrimination against those who test positive. It doesn't provide any means of doing what is most important--changing the behavior of those who are infected with HIV. The bill does not provide for HIV prevention education or notice to partners of the tested person of positive test results. The bill does not name the agency responsible for performing the test, and it is unlikely that local law enforcement agencies would have the staff, training, or wherewithal to perform this kind of testing.

Testified: Mike Patrick, Washington State Council of Police Officers (pro); Wally Friesen, Everett Police Department (pro); John Wiesman, Region V Aids Net and Seattle-King County Health Department (con); Sheila Stickel, Privacy Fund (con); Ian MacGowan (con); and Jerry Sheehan, American Civil Liberties Union (con).