

# HOUSE BILL ANALYSIS

## E2SSB 5306

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**Title:** An act relating to disclosure of offenders' HIV and other communicable disease test results to department of corrections and jail staff.

**Brief Description:** Allowing for the testing of offenders for HIV and other communicable diseases.

**Sponsors:** Senators Zarelli, Hargrove, Long, Stevens, Benton, Schow and Roach.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

**Staff:** Pat Shelledy (786-7149)

**Background:** Certain offenders are required to submit to mandatory HIV testing as soon as possible after sentencing. Those subject to mandatory testing include offenders convicted of sex offenses, prostitution, and drug offenses involving use of hypodermic needles. Many other offenders volunteer for HIV testing as the result of education and prevention programs conducted in jails and prisons.

Current law also allows Department of Corrections (DOC) officials, and local jail administrators with the approval of the local public health officer, to order HIV testing when an inmate's actual or threatened behavior presents a possible risk to staff, the public, or other persons. In addition, a test may be ordered when a member of the staff has experienced a substantial exposure to bodily fluids. The person being tested must be given notice and a hearing procedure is specified.

Test results must then be given to the offender and the administrator of the facility. Prison superintendents and jail administrators are authorized to disclose the results only as they deem necessary to protect the safety and security of the staff, offenders, and the public, including transporting officers and receiving facilities. Unauthorized disclosure is prohibited.

**Summary:** Any correctional officer or jail staff who has been substantially exposed to an offender's or detained person's bodily fluids may request that the person be tested and must be given the results of the person's mandatory HIV or hepatitis B test. The test must occur within 48 hours and the disclosure to the exposed person must occur within 72 hours if possible.

Persons subject to mandatory HIV testing are also tested for hepatitis B if there is a substantial exposure. The list of persons subject to mandatory testing is expanded to include persons who have subjected a facility or health care staff person to substantial exposure to bodily fluids.

The procedure for notice and judicial review of HIV testing ordered by state or local public health officers is removed for offenders, detained persons, and arrested persons.

Local jail administrators are no longer required to obtain the approval of the local public health officer before ordering HIV testing when the administrator determines that actual or threatened behavior presents a possible risk to the staff, the public, or other persons. Local jail administrators must be given the mandatory test results of persons detained in their facilities.

The confidentiality of an offender's sexually transmitted disease status must be maintained by persons receiving test information, and unauthorized disclosure or improper use of the information is punishable both in disciplinary actions and as a gross misdemeanor. The disclosures authorized in this bill are not intended to replace universal precautions, which are reaffirmed by the Legislature as an effective method of protection against communicable diseases.

Both the DOC superintendents and administrators and local jail administrators are directed to implement policies and procedures for the uniform distribution of communicable disease prevention protocols to all staff who, in the course of their regularly assigned job responsibilities, may come into close physical proximity with affected offenders.

The requirements and limitations of the protocols are specified. They must identify the offender and include any special precautions to be taken with the offender in order to reduce the risk of transmission of the communicable disease. The protocols may not identify the offender's particular communicable disease.

The DOC is required to test offenders for the presence of tuberculosis in the infectious stage. The tuberculosis status of offenders and detainees is to be disclosed to the DOC facility superintendents and administrators. The information may be used only as provided in the communicable disease prevention protocols.

The Department of Health and the DOC are each required to adopt rules for implementation. They are both required to report to the Legislature on changes in rules, policies, and procedures adopted in response to this act, and to collect information on the number and circumstances of disclosures made as a result of the changes contained in the act.

**Require the Exercise of Rule- Making Powers:** No.

**Fiscal Note:** Requested on March 25, 1997.

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