

SENATE BILL REPORT

ESSB 5044

As Passed Senate, March 17, 1997

Title: An act relating to crimes.

Brief Description: Revising AIDS-related crimes.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Benton and Oke).

Brief History:

Committee Activity: Law & Justice: 1/30/97, 3/4/97 [DPS-WM, DNPS].

Ways & Means: 3/7/97, 3/10/97 [DPS (LAW)].

Passed Senate, 3/17/97, 44-4.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5044 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Roach, Chair; Goings, Hargrove, Long, McCaslin, Stevens and Zarelli.

Minority Report: Do not pass substitute.

Signed by Senators Fairley and Kline.

Staff: Mychal Schwartz (786-7444)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5044 as recommended by Committee on Law & Justice be substituted therefor, and the substitute bill do pass.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Bauer, Fraser, Hochstatter, Long, McDonald, Roach, Rossi, Schow, Snyder, Swecker, Winsley and Zarelli.

Staff: Bryon Moore (786-7726)

Background: Under current law a person is guilty of assault in the second degree if, with intent to inflict bodily harm, the person administers to or causes to be taken by another, or exposes or transmits to another, the human immunodeficiency virus (HIV-related assault). Assault in the second degree is a class B felony.

Assault in the first degree is a class A felony and requires a showing that the defendant intended to inflict great bodily harm.

The criminal code provides various statutes of limitations in which prosecution for crimes must take place. The general statute of limitations for felony crimes is three years. There are several exceptions to this general time period. For example, there are no statutes of limitations for the crimes of murder, homicide by abuse, or arson if a death occurs. Similarly, there is a 10-year statute of limitations for the crime of arson if no death occurs and for certain sex offenses. The statute of limitations for assault crimes is three years.

Because of the nature of the human immunodeficiency virus, the victim of an HIV-related assault may not know that he or she has been assaulted for many years. This presents a potential bar to prosecution for HIV-related assault.

Current law defines "homicide" as the killing of a human by another, with death occurring within three years and a day. This definition of homicide may prevent the prosecution of persons for murder or manslaughter for administering, exposing, or transmitting the human immunodeficiency virus because persons infected with the human immunodeficiency virus may not become sick with AIDS for many years.

State law provides a privilege with respect to communications between a physician and patient. With limited exceptions, a physician may not be compelled to disclose any information acquired in treating a patient, unless the patient consents to the disclosure.

State law also provides limitations on the disclosure of medical records. A health care provider may not disclose health care information about a patient to any other person without the patient's consent. There are limited exceptions to this general rule. Two of those exception are (1) disclosure to law enforcement authorities to the extent authorized by law; and (2) pursuant to compulsory process, as long as the patient is notified at least 14 days prior to the disclosure so that the patient may seek a protective order to prevent disclosure.

The public health chapter of the Revised Code of Washington covering sexually transmitted diseases provides confidentiality requirements relating to records of the testing and treatment of persons for sexually transmitted diseases, including the human immunodeficiency virus. This chapter provides that no person may disclose or be compelled to disclose the identity of any person tested or treated for the human immunodeficiency virus except as authorized by the chapter. The chapter does not specifically authorize the disclosure of human immunodeficiency virus testing or the test results to law enforcement officials.

The public health chapter dealing with sexually transmitted diseases allows public health officers to order testing, treatment, counseling, and other restrictive measures with respect to persons who are believed to be infected with a sexually transmitted disease and engaging in behavior that presents an imminent danger to the public health.

Summary of Bill: The elements of the crimes of HIV-related assault are changed and the crimes are reclassified as first-degree assault.

A person is guilty of HIV-related assault in the first degree if the person, with intent to inflict great bodily harm, administers, exposes, or transmits to or causes to be taken by another, the human immunodeficiency virus.

The definition of "homicide" is amended. Homicide is the killing of another person with death occurring at any time.

The crime of assault in the first degree by administering, exposing, or transmitting to another the human immunodeficiency virus may be prosecuted at any time after the commission of the crime.

A public health officer must inform the local law enforcement agency of all information relating to sexually transmitted disease testing, diagnosis, or treatment concerning a person who is engaging in behavior presenting an imminent danger to the public, if the public health officer has exhausted on one occasion all public health procedures available, and the person continues to engage in behavior that presents an imminent danger to the public health. In addition, the public health officer must provide the local law enforcement agency with the identities of all persons who have been exposed to that person under circumstances that provide an opportunity for the transmission of a sexually transmitted disease, if those persons agree to the disclosure.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: Current law allows serial murderers to avoid full justice because the law is not designed for "delayed murder" as occurs when a person intentionally spreads the human immunodeficiency virus. The law promotes the public interest. By the very nature of criminal investigation into these crimes, the police run into problems of confidentiality. This law is needed to open the door of confidentiality in cases of public safety. Disclosure is still the last resort to be used after all other processes have been attempted.

Testimony Against: The bill goes too far. Public health officers should not be given the right to turn over medical records to the police. This legislation will cause persons to be hesitant to get treatment or even to get tested for the human immunodeficiency virus if disclosure was a possibility. People will no longer cooperate with the health department if their records may be turned over the prosecutor's office.

Testified: PRO: Senator Don Benton, prime sponsor; Detective Mitchell Lackey, Camas Police Department; Tom McBride, Washington Association of Prosecuting Attorneys; CON: Kelly Scott; Christine St. Clair.