

SENATE BILL REPORT

E2SSB 5306

As Passed Senate, March 17, 1997

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: Senate Committee on Ways & Means (originally sponsored by Senators Zarelli, Hargrove, Long, Stevens, Benton, Schow and Roach).

Brief History:

Committee Activity: Human Services & Corrections: 1/29/97, 2/25/97 [DPS-WM].
Ways & Means: 3/7/97, 3/10/97 [DP2S].
Passed Senate, 3/17/97, 41-7.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5306 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Long, Chair; Zarelli, Vice Chair; Franklin, Hargrove, Schow and Stevens.

Staff: Kyle Thiessen (786-7754)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5306 be substituted therefor, and the second substitute bill do pass.

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

Staff: Bryon Moore (786-7726)

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.

In fiscal year 1995, approximately 1,000 DOC inmates were tested for HIV. Of those, 1.4 percent received positive results. More than two-thirds of the tests were requested by offenders, 17 percent were requested by DOC health care providers, and 15.3 percent were the result of court orders.

Summary of Bill: 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 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.

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 DOC facility superintendents and administrators. The information may be used only as provided in the communicable disease prevention protocols.

The Department of Health and 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.

Appropriation: None.

Fiscal Note: Requested on January 23, 1997.

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

Testimony For: Universal precautions do not assure safety in hostile environment of prisons and jails. Exposures happen without warning and it is impossible work in a jail or prison with gloves and masks on all day. Correctional and jail workers would honor the confidentiality requirement. Officers who are exposed must wait months to find out if they are in danger.

Testimony Against: Universal precautions protect against all communicable diseases. Practices similar to those in the bill were used in the past and didn't work. Additional education would be more effective.

Testified: Senator Joseph Zarelli, prime sponsor (pro); Jim Blodgett, DOC; Eugene St. John, WPEA (pro); Maxine Hays, M.D. Dept. of health (con); Lauri Kraemer, RN, CIC, Seattle King Co. Health, Jail Health Services (con); Beth Anderson, DOC; Richard Bishop, Clark County Sheriff's Office (pro); Arthur Utterback, Clark Co. Sheriff (pro); Nikki Costa, Clark County Sheriff (pro); Joseph Gray, Director, Statewide Programs for People of Color (con); Art Wallenstein, King County Jail (con).