

SENATE BILL REPORT

SB 5172

As Reported By Senate Committee On:
Human Services & Corrections, February 16, 1999

Title: An act relating to HIV testing of offenders and arrested and detained persons.

Brief Description: Changing provisions relating to HIV testing of offenders and arrested or detained persons.

Sponsors: Senators Zarelli, Goings, Oke, Stevens and Rasmussen.

Brief History:

Committee Activity: Human Services & Corrections: 1/26/99, 2/16/99 [DPS].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5172 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Long, Patterson, Sheahan, Stevens and Zarelli.

Staff: Fara Daun (786-7459)

Background: Law enforcement officers, state and local corrections staff, fire fighters, health care providers and persons in certain other occupations are at a greater risk of a substantial exposure to HIV and other infectious diseases in the course of their employment than are most employees.

Summary of Substitute Bill: Upon consent or a court order, the public health official must order HIV, Hepatitis B, and Hepatitis C testing as well as pretest and posttest counseling for all offenders, arrested persons, and detainees who substantially expose designated employees to their bodily fluids. This provision applies only to exposures that occur after the effective date of the act.

The person exposed to the bodily fluids may seek consent for testing from the offender, arrestee, or detainee. Consent includes the consent for the public health official to disclose the results of the test to the exposed person. If the person does not consent to a test, the exposed person may seek a court order for the test. When a court orders testing under this act, the order must include a statement that a negative HIV test result should not be construed as a finding that there are not HIV antibodies present.

Testing must be conducted within 48 hours of exposure, not including Saturdays, Sundays, and holidays. Where the exposed person does not know of the exposure or is unable to seek consent or a court order during the first 48 hours, the time is 48 hours from the time in which the person can reasonably seek consent or a court order.

If the public health official refuses to order the test, the person who experienced the substantial exposure may petition the superior court for a hearing to determine whether the order should issue.

Consent of persons tested under this act is not required and offenders, arrestees, and detainees tested because they have exposed a designated employee are exempt from the notice and hearing provisions. In addition, persons subject to mandatory testing due to their conviction for a sex offense, prostitution offense, prostitution-related offense, or drug offense are not subject to certain notice and hearing requirements.

When a jail administrator determines that actual or threatened behavior presents a possible risk to the staff, public, or others and has consulted with and received written recommendations from the local public health official, the jail administrators may order HIV testing and pretest and posttest counseling for jail detainees. The jail administrator must define "possible risk" after consultation with the board.

Substitute Bill Compared to Original Bill: The substitute requires that testing offenders, arrestees, or detainees who substantially expose a designated employee will be done pursuant to consent or a court order. Testing is expanded to include Hepatitis C. A court order must contain a cautionary statement regarding negative HIV test results. Consent for testing includes consent to disclosure of the result to the exposed person.

The substitute excludes weekends and holidays from the 48-hour time limits.

Appropriation: None.

Fiscal Note: Requested on January 15, 1999.

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

Testimony For: This is an important protection for our public servants who daily face the danger of exposure to HIV and Hepatitis. Knowledge of a positive test result will provide public servants the opportunity to take precautions and begin to address the possibility of infection at the earliest possible time. We must do all we can to protect the people we ask to protect society. The due process provisions in the substitute strengthen the legislation. Hepatitis C is the most dangerous form of hepatitis and should be tested if any hepatitis is tested.

Testimony Against: The bill does not provide jail staff with any additional safety protection and will weaken the model jail health safety provisions the Legislature instituted. Concern exists because the public health official is removed from the process by which jail administrators order a test. Medical decisions should be made by medical, not administrative personnel.

Testified: Senator Joseph Zarelli (sponsor); Steven Johnson, NW AIDS Foundation (con); Jeff Showpen, GACHA (con); Susie Tracy, WSMA, Schering Plough (neutral).