

HOUSE BILL REPORT

ESSB 6285

As Reported By House Committee On:
Corrections

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

Brief Description: Providing for disclosure of offenders' HIV test results to department of corrections and jail staff.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Zarelli, Roach, Schow, Long, McCaslin, Morton, Hochstatter, Swecker, Hargrove, Hale, Strannigan, Oke, Wood, Finkbeiner, Deccio, Johnson, A. Anderson, Cantu, Moyer and West).

Brief History:

Committee Activity:

Corrections: 2/16/96, 2/21/96 [DP].

HOUSE COMMITTEE ON CORRECTIONS

Majority Report: Do pass. Signed by 7 members: Representatives Ballasiotes, Chairman; Blanton, Vice Chairman; Sherstad, Vice Chairman; Koster; Radcliff; Schoesler and D. Sommers.

Minority Report: Without recommendation. Signed by 4 members: Representatives Quall, Ranking Minority Member; Tokuda, Assistant Ranking Minority Member; Cole and Dickerson.

Staff: Rick Neidhardt (786-7841).

Background:

1. HIV testing of offenders. HIV testing generally involves laboratory examination of blood specimens for presence of the human immunodeficiency virus or antigens. Criminal offenders are tested for the HIV virus under various circumstances. Some of the testing is done pursuant to statutory mandate; other testing is done based on the offender's voluntary request.

a. Mandatory testing: Mandatory HIV testing of offenders occurs under two circumstances. First, testing is required upon the conviction of certain offenses, including sex offenses and prostitution offenses. Second, testing can be required if an inmate's actual or threatened behavior shows a possible risk to staff, public, or others. The "possible risk" determination is made by the Department of Corrections with respect to state prison inmates, and by local public health officers with respect to jail detainees.

b. Voluntary testing: HIV testing of offenders also occurs when voluntarily requested by the offender. Within the Department of Corrections (DOC), two-thirds of the HIV testing is voluntary.

2. Universal precautions. Federal and state law require the use of "universal precautions" whenever an employee has exposure to blood or potentially infectious materials. "Universal precautions" is an approach to infection control that calls for all human blood and certain human body fluids to be treated as if they are infectious for bloodborne pathogens, including HIV.

3. Disclosure of offenders' HIV test results. State law provides that HIV test results may not be disclosed absent specific statutory authorization. Unauthorized disclosure is prohibited and can lead to disciplinary action or other penalties prescribed by law. Violations of the laws regarding HIV testing, including the provisions limiting disclosure, can be punished as gross misdemeanors.

A statute specifically addresses disclosure of test results for DOC offenders and jail detainees. These results are to be given to a superintendent or administrator as necessary for disease control and for protection of staff, offenders, and public. The information may also be given to transporting officers and receiving facilities. The superintendent or administrator may pass on information only as necessary for the purposes of disease control and protection of others. These provisions apply equally to voluntary and mandatory testing.

The Washington State Supreme Court has held that the current law regarding HIV testing of offenders and the dissemination of those results do not violate an offender's constitutional right to privacy. The basis for the court's holding was that the state's interests in having the testing performed are compelling, the testing is narrowly tailored to meet these interests, and disclosure is limited.

In fiscal year 1995, approximately 1,000 HIV tests were performed on DOC inmates, and 1.4 percent of these had a positive result.

Summary of Bill:

Statement of intent: The bill's stated intent is to broaden the scope of disclosure of offenders' HIV test results, but only for results of mandatory tests.

Disclosure of results of mandatory tests: The results of an offender's mandatory HIV test must be given to a DOC (or jail) superintendent or administrator. The results must also be given to all DOC (or jail) staff who may come within close physical proximity of the offender during the regular course of their duties. Whenever the test is required due to the offender's behavior in prison, and a DOC (or jail) staff person requests the results after having been substantially exposed to the offender's body fluids, then the test results must be given to that staff person.

Disclosure of results of voluntary tests: Despite the bill's stated intent of not mandating disclosure for voluntary tests, it appears that such a change has been made. It appears that the results from voluntary testing are to be given to a DOC (or jail) superintendent or administrator, without the current law's limitation that the information be necessary for disease control or protection of individual safety.

Disclosure to transporting officers and receiving facilities: The results of HIV tests must also be given to DOC (or jail) transporting officers as well as to receiving facilities. Despite the bill's stated intent, it appears that this requirement applies to all tests, not just those mandatorily conducted.

Universal precautions: The use of universal precautions by DOC and jail staff is to continue. The results of HIV tests are given to staff as supplemental information for staff to use as part of their universal precautions with all offenders and detainees.

Penalties: Clarification is provided that violation of the disclosure limitations is a gross misdemeanor. An individual receiving an offender's HIV test results is to use that information only for disease prevention or control and for protection of staff, offenders, detainees, and the public. Use for any other purpose, including harassment or discrimination, and any other unauthorized disclosure of the test results, may result in disciplinary action, conviction of a gross misdemeanor, or other penalties of law.

Rule-making: The Department of Health and DOC are to adopt rules implementing these changes. They are also to report to the Legislature by January 1, 1997, regarding (1) relevant changes in rules, policies, and procedures; and (2) the number and circumstances of the disclosure of mandatory HIV test results under this bill.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The bill's intent is to address the disclosure of mandatory, but not voluntary, HIV testing of offenders. Results of mandatory testing are not currently being shared with correctional staff. The staff who are at risk for contracting the disease should know the results. Administrators are not at risk, yet they know. Firefighters and health care providers get to know; so should correctional staff. Incidents have occurred where correctional staff who have been substantially exposed have had to wait months before learning offender test results. Sometimes jail staff have not been able to see the results at all. If staff know the HIV status of an offender they have been substantially exposed to, they know whether to take the necessary precautions in the rest of their life. Not knowing puts a person who has been substantially exposed through a living hell. Altercations between staff and inmates occur all the time; there is no time to prepare yourself.

Testimony Against: No cases have been reported showing any correctional officers have gotten a positive HIV test result due to exposure on the job. The bill reflects the fears of staff, but it is not necessary. The only solution is for staff to use universal precautions in dealing with everybody. In an occupational setting, knowing test results is not good. Once you start using higher precautions with one person, you relax with other people, and this can get you killed. Many people who haven't been tested are infected. Anybody can be HIV-positive or have other communicable diseases. All offenders should be treated as if they are infected. Hepatitis can be a greater concern than HIV, yet people focus on HIV. Education about universal precautions is key to protecting staff. Money is needed for staff to get the necessary education and protective materials. This bill will allow people to relax, which will kill them. Knowing an offender's test results, and even knowing your own test results, does not tell you whether you are infected, for a dormancy period exists between the time of infection and the time when test results show positive. DOC does mandatory "universal precautions" training for new staff and then annually. If an offender's HIV status is known, then staff will naturally treat different offenders differently, leaving staff vulnerable to infection and the department open to lawsuit. The bill's "close proximity" language should be redefined and other language clarified.

Testified: Senator Joseph Zarelli, prime sponsor; John Peppert, Department of Health (con); Jutta Riediger, Safety & Health Alliance, Inc. (con); Johna Eppenstein, Thurston County Sheriff's Office (con); Eugene St. John, Washington Public Employees Association (pro); Debra Palmer, relief officer from the Department of Corrections (pro); Alice Earls, correctional officer from the Department of Corrections (pro); Christy Slaton, King County Police Union (pro, with concerns); Bill Shippers, transport officer from the Department of Corrections (no position stated); Elizabeth Anderson, Department of Corrections, Health Service Administrator (con); Ian McGowan, Northwest Aids Foundation (con); and Terry Kohl, Washington Defenders Association (with comments).