

SENATE BILL REPORT

ESSB 6285

As Passed Senate, February 13, 1996

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: Human Services & Corrections: 1/25/96, 2/1/96 [DPS].
Passed Senate, 2/13/96, 41-8.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6285 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Franklin, Vice Chair; Long, Moyer, Prentice, Schow, Strannigan and Zarelli.

Staff: Andrea McNamara (786-7483)

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 certain drug offenses. 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 jail administrators to order HIV testing when an inmate's actual or threatened behavior presents a possible risk to staff, the general public, or other persons.

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: Department of Corrections (DOC) health care providers and local public health officers are required to disclose the sexually transmitted disease status of DOC offenders to the superintendent or administrator of the facility. Local public health officers must also disclose the sexually transmitted disease status of jail inmates or detainees to jail administrators. These disclosures are not intended to take the place of universal precautions which are reaffirmed by the Legislature as the most effective method of protection against communicable diseases.

Information given to prison and jail administrators is to be utilized only for disease prevention and control, and for protection of the safety and security of the staff, offenders, detainees, and the public.

The confidentiality of an offender's sexually transmitted disease status must be maintained except under specified circumstances: (1) any staff who requests an offender be tested after an incident resulting in substantial exposure must be given the results of the offender's test if the test is mandated under the requirements of current law; (2) the results of any mandatory, court-ordered test must be disclosed to all prison and jail staff who, in the course of their regularly assigned job responsibilities, come within close proximity to the offender.

The mandatory disclosure of test results only applies to court-ordered testing and not to voluntary testing.

Unauthorized disclosure or improper use of the information is punishable both in disciplinary actions and as a gross misdemeanor.

The Department of Health and DOC are each required to adopt rules for implementation. They are both required to report back 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 19, 1996.

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

Testimony For (original bill): Correctional officers want and need the information to protect themselves against dangerous situations. Universal precautions are not always practical nor are they sufficient protection in prisons and jails where inmates are often intentionally trying to expose staff. Even staff who have been substantially exposed are not being informed of the results of an offender's mandatory test. More sharing of information will result in better trust and teamwork among staff and inmates.

Testimony Against (original bill): Universal precautions are the best way to protect against exposure, and both prison and jail staff receive annual training in universal precautions. No cases of occupational exposure for correctional officers have ever been documented in the United States. Disclosure of information must be based on a need to know from a scientific, public health perspective, not on the grounds of fear. This bill would create a false sense of security among staff which may actually increase their risks. It may also discourage

voluntary testing by inmates. Compromising confidentiality of this information may expose the state and counties to liability.

Testified: Senator Joseph Zarelli, prime sponsor; Eugene St. John, Cathy Walde, Clan Jacobs, Washington Public Employees Union (pro); Mariella Cummings, Department of Health (con); Beth Anderson, Department of Corrections (con); John McCroskey, Lewis County Sheriff (pro); Steven Johnson, Northwest AIDS Foundation (con); Jutta Riediger, Safety and Health Alliance (con); Jerry Sheehan, American Civil Liberties Union (con).

House Amendment(s): The striking amendment limits the circumstances under which the Senate version would require the HIV status of offenders or detainees to be disclosed to prison and jail staff. Disclosure of mandatory HIV test results may only be disclosed to prison and jail staff if they have been substantially exposed to the bodily fluids of the offender or detained person. The amendment removes the requirement that the sexually transmitted disease status of offenders and detainees must be disclosed to all prison and jail staff who, in the course of their regularly assigned job duties, may come into close physical proximity to affected offenders or detainees.