

HOUSE BILL REPORT

HB 1605

As Reported By House Committee On:

Criminal Justice & Corrections

Title: An act relating to disclosure of information concerning diseases.

Brief Description: Providing for disclosure of information concerning the disease status of offenders.

Sponsors: Representatives Radcliff, Ballasiotes, Quall, Dunn and Sullivan.

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/11/97, 2/25/97 [DPS].

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Ballasiotes, Chairman; Benson, Vice Chairman; Koster, Vice Chairman; O'Brien, Assistant Ranking Minority Member; Blalock; Cairnes; Delvin; Dickerson; Hickel; Mitchell; Robertson and Sullivan.

Staff: Pat Shelledy (786-7149).

Background: HIV testing generally involves laboratory examination of blood specimens for presence of the human immunodeficiency virus or antigens.

Requests for tests of another person: Law enforcement officers, fire fighters, health care providers or other persons who have been substantially exposed to a person's bodily fluids may request that a local public health official require the other person to submit to an HIV test. The results of that test may be released to the exposed person.

Specific rules apply to obtaining the HIV test results of offenders.

1. HIV testing of offenders. 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 (DOC) 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.
2. Universal precautions. Federal and state laws 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 blood-borne 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, are gross misdemeanors.

The DOC's health care providers must make the sexually transmitted disease status of an inmate available to a superintendent as necessary— for disease control and for protection of staff, offenders, and the public. The information may also be given to transporting officers and receiving facilities. Local public health officers may make the sexually transmitted disease status of a jail inmate available to a jail administrator under similar circumstances.

The superintendent or administrator may disclose the 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 reasons for having the testing performed are compelling, the testing is narrowly tailored to meet those reasons, and disclosure is limited.

Summary of Substitute Bill: Statement of intent and finding. The Legislature finds that the health and safety of jail and corrections staff are often placed in jeopardy while they work. The Legislature intends to notify a staff person of the HIV status of an inmate if a staff person has been substantially exposed to an inmate's bodily fluids and the HIV test of the inmate is mandatory. The Legislature does not intend to

discourage voluntary testing for HIV, mandate disclosure of test results voluntarily obtained, or discourage use of universal precautions.

Requests for tests: Jail staff persons and corrections staff persons are added to the list of workers who may ask a local public health officer to perform a test on another person if the corrections or jail staff person is substantially exposed to the inmate's bodily fluids.

Disclosure of results of mandatory tests: Local public health officers, in addition to the DOC health staff, must make the sexually transmitted disease status of an offender available to a DOC superintendent. Similar rules apply to availability of tests to jail administrators. The results must be disclosed immediately to a staff person who has been substantially exposed to the bodily fluids of the offender. Disclosure must be accompanied by appropriate counseling, including information regarding follow-up testing. Disclosure must also include information about restrictions on disseminating the information further and the penalties that may be imposed on the staff member for violating those restrictions. The superintendent or administrator must also disclose whether the offender had any other communicable disease when the staff person was exposed to the offender's bodily fluids.

Disclosure of results of voluntary tests: Results from voluntary testing must be made available to a DOC or jail superintendent or administrator, without current law's limitation that the information is necessary— for disease control or protection of individual safety. However, the superintendents and jail administrators may use the information only for disease prevention and control.

Results of voluntary testing may not be made available to individual staff members unless the staff person has been substantially exposed to the offender's bodily fluids, in which case the staff person may request that the offender be tested. The superintendent or administrator may provide the staff member with information about how to obtain the offender's test results.

Rule-making: The Department of Health and the DOC are to adopt rules implementing these changes. They are also to report to the Legislature by January 1, 1998, regarding (1) relevant changes in rules, policies, and procedures; and (2) the number and circumstances under which the sexually transmitted or communicable disease status of an inmate is told to a staff person.

Protocols: The department and jail administrators must develop policies and procedures for distribution of communicable disease prevention protocols.

Substitute Bill Compared to Original Bill: Information about test results will go to health care administrators or infection control coordinators rather than superintendents or jail administrators. Disclosure to exposed staff members must be done according

to standards adopted for employees who are exposed to blood-borne pathogens as part of their jobs. Current law is clarified to provide that only mandatory test results are to be automatically released. A provision is added that if an offender resists testing after a staff person has been exposed to the offender's bodily fluids, a petition filed by the local health official to force testing must be heard within 72 hours.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill allows corrections' staff timely access to the HIV status and other disease status of offenders but only when the staff person is substantially exposed to the offender's bodily fluids and when the offender has been subjected to mandatory testing. This version continues to support the use of universal precautions by staff and does not discourage voluntary testing by offenders.

Testimony Against: This version does not go far enough. Staff want advance notice about the HIV status of all offenders, not just those who have been subject to mandatory testing. Employees do not use the information to harass the offender, but only for their own security.

Testified: Representative Renee Radcilff, prime sponsor (pro); Dr. Maxine Hayes, Department of Health (concerns, pro concept); Beth Anderson, Department of Corrections; Eugene St. John, Washington Public Employees Association (con); and Lilla K. Johnseine (con).