

FINAL BILL REPORT

SHB 1605

C 345 L 97

Synopsis as Enacted

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

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Radcliff, Ballasiotes, Quall, Dunn and Sullivan).

House Committee on Criminal Justice & Corrections
Senate Committee on Human Services & Corrections

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

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.

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. If the person refuses, the public health officer may petition the court for a hearing.

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.

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 may 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.

HIV testing of offenders also occurs when voluntarily requested by the offender.

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 may 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: 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 care staff, must make the sexually transmitted disease status of an offender available to the DOC health care administrator or infection control coordinator of the facility in which the offender is housed. Similar rules apply to availability of tests to jail health care administrators. The results of a mandatory test must be disclosed immediately to a staff person who has been substantially exposed to the offender's bodily fluids. Disclosure must be accompanied by appropriate counseling. 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 staff person must also be informed if the offender had any other known communicable disease when the staff person was exposed to the offender's bodily fluids.

Disclosure of results of voluntary tests. 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. If a public health official refuses to order the offender to be tested, the exposed person may petition the court directly. The hearing on a petition must be heard within 72 hours.

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.

Guidelines. The department and jail administrators must develop policies and procedures for distribution of communicable disease prevention guidelines.

Votes on Final Passage:

House 94 3
Senate 43 2 (Senate amended)
House (House refused to concur)
Senate 38 0 (Senate amended)
House 95 3 (House concurred)

Effective: July 27, 1997