

HOUSE BILL REPORT

HB 1343

*As Reported By House Committee on:
Judiciary*

Title: An act relating to HIV testing of alleged sex offenders.

Brief Description: Permitting HIV testing of accused sex offenders.

Sponsor(s): Representatives Sprenkle, Braddock, Riley, R. Meyers, Dorn, Fuhrman, D. Sommers, Wynne, Edmondson, Chandler, Vance, Van Luven, Wood, Moyer, Miller, Brumsickle, Bowman, Paris, Casada, Ballard, Broback, G. Fisher, Ludwig, Inslee, R. Johnson, Orr, Sheldon, Forner, Silver, Jacobsen and R. King.

Brief History:

Reported by House Committee on:
Judiciary, March 6, 1991, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1343 be substituted therefor, and the substitute bill do pass.* Signed by 17 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; Locke; R. Meyers; Mielke; H. Myers; Scott; D. Sommers; Tate; and Vance.

Minority Report: *Do not pass.* Signed by 2 members: Representatives Riley and Wineberry.

Staff: Pat Shelledy (786-7149).

Background: Convicted sex offenders must submit to HIV testing by local health department personnel. The sentencing judge must order the testing, and the test must be conducted as soon as possible after sentencing.

In general, the results of HIV tests are confidential. Several exceptions exist to the general rule. Examples include the following: state and local public health officers conducting investigations of people who may be infected with HIV and may be engaging in conduct that may

endanger the public may obtain the results of the court ordered HIV testing. In addition, health officials may disclose the results and the identity of the infected person to another person who may have been exposed to the virus by his or her contact with the HIV infected person. In addition, a person may show good cause and obtain the test results under court ordered safeguards against further disclosure.

Anyone who obtains the test results under one of the exceptions may not disclose the results to anyone else, with certain exceptions. Violation of the confidentiality restriction is a gross misdemeanor.

"Sex offenses" for purposes of the act include sex offenses that involve sexual contact with the victim, and those that do not involve any physical contact with the victim, such as a burglary committed with sexual motivation when the victim is not home.

A very recent state Supreme Court decision invalidated the compelled HIV testing of a convicted sex offender. The court declared the need for a compelling state interest to justify the imposition of the test. Expert testimony showed that the results of the test had little value in determining the defendant's HIV status at the time of the offense. This diminished usefulness of the test led the court to conclude the imposition of the test was an unjustified intrusion on the defendant's constitutional right of privacy.

Summary of Substitute Bill: A person who is named as a victim of a charged criminal offense and who requests that the accused be tested pursuant to a procedure where the court determines whether the victim may be at risk for acquiring HIV as a result of the criminal act may obtain the results of the test of the accused. A person who is named as a victim of an offender who is convicted of a sex offense, prostitution, or drug offense if applicable, may also obtain the test results. If the victim of a charged or convicted criminal offense is a minor, the victim's parents or legal guardian have the right to act on behalf of the minor. If the victim is a minor, the prosecutor has the right to petition the court to test the offender if the prosecutor believes the test is in the best interests of the minor.

The Board of Health must determine what subsequent tests at what intervals are necessary to detect HIV infection. The purposes of the testing and disclosure are to benefit the victim of a crime which involved substantial exposure to another's bodily fluids, creating the risk of transmission of HIV, by informing the victim whether the defendant is

infected with the AIDS virus, to protect the health of victims and the accused, and to protect the public's health.

All persons who are convicted of the following offenses where the offense involved substantial exposure of bodily fluids presenting a possible risk of HIV infection, must submit to pretest counseling, HIV testing, and post test counseling to be performed by a public health officer: (a) sexual offenses; (b) prostitution; and (c) drug offenses when the drug offense involved hypodermic needles. The pretest counseling, HIV testing, and post test counseling must be conducted as soon as possible after sentencing.

The victim of a charged criminal offense may request, at any time, that the defendant submit to HIV testing. The prosecuting attorney must advise the victim, in writing, of the right to request the testing. To assist the victim in making the decision, the prosecutor must refer the victim to a local health officer or other health care provider, who must make testing and counseling available to the victim to help the victim decide whether to request that the defendant be tested. Upon request of the victim that the offender be tested, the prosecutor must petition the court for an order requiring the defendant to submit to testing. The court must order the test if the court finds, by a preponderance of the evidence, that the victim was substantially exposed to the defendant's bodily fluids, presenting a possible risk of HIV infection. The board must define "substantial exposure" and "exposure presenting possible risk." The court must base its decision upon affidavits submitted by the victim, the defendant, the public health officer, or the prosecuting attorney. If the order is granted, the prosecuting attorney must advise the health officer of the location of the defendant. The officer must notify the prosecutor when the initial testing has been completed. The public health officer must notify the victim and the accused of the test results. The results of the test may not be used in any criminal proceeding as evidence of guilt or innocence or for sentencing upon conviction of the charges.

The board must adopt rules by October 1, 1991, that specify a schedule for testing at sufficient intervals to detect HIV infection.

Substitute Bill Compared to Original Bill: The original bill requires all persons charged with sex offenses to submit to HIV testing. It allows a person named as a victim in a charged sex offense to obtain the test results.

Fiscal Note: Requested February 15, 1991.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: Original Bill: The test results may help a victim of a sex offense make better decisions about important medical choices, such as decisions about a pregnancy. The bill may reduce the extreme level of anxiety experienced by victims.

Testimony Against: Original Bill: The information gained from a test may be mostly useless. There is a significant delay between exposure to HIV and a positive test result, so that an accused person may show a false negative. If there is delay between the alleged offense and the test, the accused person may show positive as the result of acquiring HIV after the offense. Reducing the victim's anxiety is better promoted by having the victim tested. There is great potential for abuse of information obtained through testing.

Witnesses: Original Bill: Mimi Fields, Department of Health (supports concept, but expressed concerns); Nancy Campbell, Northwest Aids Foundation (supports concept, but expressed concerns); Bea Kelleigh, Seattle-King County Department of Public Health (supports concept, but expressed concerns); Susie Tracy, Washington State Medical Association (in favor); Dawn Larsen, Washington Coalition of Sexual Assault Programs (supports concept); Jerry Sheehan, American Civil Liberties Union (opposes); Audrey Haberman, Seattle Rape Relief (opposes); Seth Dawson, Washington Association of Prosecuting Attorneys (in favor); Joan Gaumer, The Privacy Fund (opposes); and Candice Rondeau, ACT-UP/Seattle (opposes).