

SENATE BILL REPORT

SB 5476

AS REPORTED BY COMMITTEE ON WAYS & MEANS, MARCH 4, 1993

Brief Description: Providing for HIV testing of juvenile sex offenders.

SPONSORS: Senators Talmadge, A. Smith, Quigley, Moyer, M. Rasmussen and Oke

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5476 be substituted therefor, and the substitute bill do pass.

Signed by Senators A. Smith, Chairman; Quigley, Vice Chairman; Hargrove, McCaslin, Nelson, and Spanel.

Staff: Lidia Mori (786-7755)

Hearing Dates: February 11, 1993; February 23, 1993

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5476 as recommended by Committee on Law & Justice be substituted therefor and the substitute bill do pass.

Signed by Senators Rinehart, Chairman; Spanel, Vice Chairman; Bauer, Cantu, Gaspard, Hargrove, Hochstatter, Jesernig, McDonald, Snyder, Sutherland, Talmadge, and West.

Staff: Cindi Holmstrom (786-7715)

Hearing Dates: March 4, 1993

BACKGROUND:

The 101st Congress enacted a provision in 1990, referred to as Section 1804, which requires each state to enact and enforce statutes which must meet specific standards and provide for the testing of certain convicted sex offenders for the human immunodeficiency virus if the state is to continue to receive its full Formula Grant Program award. Ten percent of a state's formula grant will be withheld if the state fails to place in effect the elements of the HIV testing standards created by Congress. The penalty provision begins in federal fiscal year 1994.

Section 1804 requires that any person convicted under state law must be tested for HIV, including juveniles found to have committed a criminal sexual act. The Attorney General of Washington has issued an opinion stating that current provisions in RCW 70.24.340 do not apply to juveniles found to have committed sexual offenses.

SUMMARY:

The HIV test results of a person convicted of a sexual offense or found by a juvenile court to have committed a sexual offense may be disclosed to the victim of the offense or to the victim's guardian if the victim is under 14 years of age.

Local health departments are required to conduct pretest counseling, HIV testing, and posttest counseling of all persons found by a juvenile court to have committed a sexual offense under Chapter 9A.44 RCW.

EFFECT OF PROPOSED SUBSTITUTE:

The prosecuting attorney is required to inform victims of a sexual offense that they have a right to receive counseling and HIV testing.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR (Law & Justice):

The law governing the disclosure of HIV test results needs to be clarified because right now all the counties are handling it differently. It was the policy of the Legislature to allow a victim of a sexual offense to have access to the HIV test results of the person convicted of the sex crime. This bill will see to it that the victims of persons who are found by a juvenile court to have committed a sex offense can have access to the HIV test results.

TESTIMONY AGAINST (Law & Justice):

The best way for victims of sex offenses to protect themselves is to be tested for the HIV virus themselves. This bill encourages the victim to wait and rely on the test results of the offender. The federal legislation regarding this topic requires that each state have in place a statute requiring, at the request of the victim, testing for the presence of HIV in persons convicted of a sex offense. This bill requires the testing whether or not the victim requests it. This bill should be made contingent on the federal legislation being implemented.

TESTIFIED (Law & Justice): Senator Talmadge, prime sponsor (pro); Seth Dawson, Snohomish County Prosecuting Attorney (pro); Bill France, Snohomish County Prosecuting Attorney's office (pro); Donna Deleno, Washington Coalition of Sexual Assault Programs (Pro); Kelly Scott, Northwest AIDS Foundation (con); Rob Menaul, AIDS Services and Prevention Coalition (con); Dan Ryan, Privacy Fund Board (con); Jerry Sheehan, ACLU (con)

TESTIMONY FOR (Ways & Means):

In 1988, the Legislature adopted a policy that anyone convicted of a sex offense would be tested for HIV and victims would have access to the test results. Subsequently, however, a question arose with respect to juvenile convictions and the notification of victims. This issue has become even more pressing with the federal mandate. The funding threatened by the federal sanction is significant, \$800,000 per year. This bill will assure that the victims of convicted juvenile sex offenders have access to the HIV test results.

TESTIMONY AGAINST (Ways & Means): None

TESTIFIED (Ways & Means): Senator Talmadge, prime sponsor; Mike Redman, Washington Association of Prosecuting Attorneys (pro)