

# SENATE BILL REPORT

## SHB 1605

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As Reported By Senate Committee On:  
Human Services & Services, April 3, 1997

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

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

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

**Brief History:**

**Committee Activity:** Human Services & Corrections: 3/25/97, 4/3/97 [DPA].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass as amended.

Signed by Senators Long, Chair; Zarelli, Vice Chair; Franklin, Hargrove, Schow and Stevens.

**Staff:** Kyle Thiessen (786-7754)

**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. *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.

*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.

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 Amended Bill:** Any correctional officer or jail staff who has been substantially exposed to an offender's or detained person's bodily fluids may request that the person be tested and must be given the results of the person's mandatory HIV or hepatitis B test. The test must occur within 48 hours and the disclosure to the exposed person must occur within 72 hours if possible.

Persons subject to mandatory HIV testing are also tested for hepatitis B if there is a substantial exposure. The list of persons subject to mandatory testing is expanded to include persons who have subjected a facility or health care staff person to substantial exposure to bodily fluids.

The procedure for notice and judicial review of HIV testing ordered by state or local public health officers is removed for offenders, detained persons, and arrested persons.

Local jail administrators are no longer required to obtain the approval of the local public health officer before ordering HIV testing when the administrator determines that actual or threatened behavior presents a possible risk to the staff, the public, or other persons. Local jail administrators must be given the mandatory test results of persons detained in their facilities.

The confidentiality of an offender's sexually transmitted disease status must be maintained by persons receiving test information, and unauthorized disclosure or improper use of the information is punishable both in disciplinary actions and as a gross misdemeanor. The

disclosures authorized in this bill are not intended to replace universal precautions, which are reaffirmed by the Legislature as an effective method of protection against communicable diseases.

Both DOC superintendents and administrators and local jail administrators are directed to implement policies and procedures for the uniform distribution of communicable disease prevention protocols to all staff who, in the course of their regularly assigned job responsibilities, may come into close physical proximity with affected offenders.

The requirements and limitations of the protocols are specified. They must identify the offender and include any special precautions to be taken with the offender in order to reduce the risk of transmission of the communicable disease. The protocols may not identify the offender's particular communicable disease.

DOC is required to test offenders for the presence of tuberculosis in the infectious stage. The tuberculosis status of offenders and detainees is to be disclosed to DOC facility superintendents and administrators. The information may be used only as provided in the communicable disease prevention protocols.

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

**Amended Bill Compared to Substitute Bill:** The striking amendment removes the statutory hearing procedure for offenders, detainees and arrested persons who create a substantial exposure, in order to speed up the testing and disclosure process. The blood test must occur within 48 hours instead of a hearing within 72 hours if the offender refuses to voluntarily take the test. The striking amendment does not specifically require that testing and disclosure procedures provided in the Washington Administrative Code be followed.

The striking amendment provides more authority for local jail administrators to order testing of offenders and detainees when there is a concern for health or safety. Information is disclosed to the facility or jail administrator rather than the health care administrator or infection control officer for the facility or jail.

Additional information relating to tuberculosis is made available to DOC and jail administrators and additional testing for tuberculosis is required in DOC.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** This bill provides timely access to HIV information when there is a substantial exposure to an offender's bodily fluids. It does not undermine universal precautions. Use of procedures specified in the Washington Administrative Code is an important protection.

**Testimony Against:** None.

**Testified:** PRO: Maxine Hayes, Department of Health; Lauri Kraemer, Seattle-King County Department of Public Health; Steve Johnson, WWAF; Art Wallenstein, King County Jail; Beth Anderson, Department of Corrections.