

# SENATE BILL REPORT

## SB 5454

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As Reported by Senate Committee On:  
Human Services & Corrections, February 20, 2013

**Title:** An act relating to testing of infants placed in out-of-home care under chapter 13.34 RCW whose human immunodeficiency virus is unknown

**Brief Description:** Concerning the testing of infants placed in out-of-home care whose human immunodeficiency virus is unknown.

**Sponsors:** Senators Rolfes, Cleveland, Kohl-Welles and Kline.

**Brief History:**

**Committee Activity:** Human Services & Corrections: 2/12/13, 2/20/13 [DP-WM, DNP].

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### SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

**Majority Report:** Do pass and be referred to Committee on Ways & Means.  
Signed by Senators Carrell, Chair; Pearson, Vice Chair; Baumgartner and Padden.

**Minority Report:** Do not pass.  
Signed by Senator Darneille, Ranking Member.

**Staff:** Joan Miller (786-7784)

**Background:** In 2004, the Legislature required the Department of Social and Health Services (DSHS) to inform out-of-home care providers if the child placed in their care is infected with a blood-borne pathogen. All out-of-home care providers must receive training related to blood-borne pathogens, including prevention, transmission, infection control, treatment, testing, and confidentiality. For infants younger than one year of age who are being or have been placed in out-of-home care, the Department of Health has recommended that specific blood-borne pathogen testing be limited to human immunodeficiency virus (HIV).

**Summary of Bill:** When an infant younger than one year of age is placed in out-of-home care, DSHS or another supervising agency must request that the infant's treating physician test the infant for HIV if the birth mother's HIV status is known to be positive or if DSHS has information that the mother is at high risk of HIV infection. DSHS or another supervising agency will follow the treating physician's recommendations on follow-up testing and treatment for an infant who tests positive for HIV.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Prior to requesting an HIV test, DSHS or another supervising agency must ask for the parent's consent to test the infant. If a parent objects to the test for any reason, including but not limited to a conflict with religious practices, DSHS or other supervising agency must, at the earliest opportunity, request the court to order such testing.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony:** PRO: A baby born last June was so addicted to opiates in utero that she remained in the hospital for three months as she went through withdrawals. DSHS did not know the HIV status of the baby. After the baby was placed in Mary Jones's care, Mary took her to a pediatrician who recommended that the baby be tested for HIV. But because the baby was a foster child, a court order was required. Four months later, Mary was still waiting for a court order. This situation was problematic because when a baby contracts HIV from the mother, treatment must begin within 12 hours of birth for the best possible outcome. This child deserved the best possible medical care. Mary risked her life taking care of a child who had MRSA and whose HIV status was unknown. DSHS has a disregard for foster parents who need this information for their own safety. Babies are adopted who are HIV positive, and the families do not know. The National American Academy of Pediatrics has standards and protocols related to children under one year of age who are in foster care. This legislation is consistent with those protocols. It is challenging to balance the role of DSHS with the role of the medical community. This bill requires DSHS to ask for the mother's consent, and if she doesn't consent, DSHS must make its case before the court to determine whether testing is appropriate. The transmission from a child to an adult is a rare event, but we need to advocate for the children and their health care. The biggest limitation over time is that we have developed treatments to prevent mothers from transmitting to their infant, which has been very effective, but we need early identification and treatment of infants at risk. We should support the testing of children whose mothers' HIV status is unknown. This bill is narrowly defined, despite DSHS's concerns. The rationale for including only infants is because we know that infants can be treated and that treatment can be successful. The class of infant is also narrowly defined; testing is limited to those babies where the status of the mother is known or it is unknown and the mother presents risk factors. We need some protocol in place. I understand the privacy issues surrounding HIV/AIDS, but this is a case where the baby that is in state care outweighs the privacy needs of the mother.

OTHER: DSHS questions the reason for solely testing infants under the age of one in foster care. DSHS is also concerned with the requirement for a court order to allow testing if the parent objects. This would impact DSHS's workload related to additional hearings.

**Persons Testifying:** PRO: Senator Rolfes, prime sponsor; Mary Jones, citizen; Laurie Lippold, American Academy of Pediatrics - WA chapter; Scott Lindquist, Kitsap Public Health District.

OTHER: Randy Hart, DSHS Children's Administration.