

SENATE BILL REPORT

SB 5236

AS REPORTED BY COMMITTEE ON WAYS & MEANS, MARCH 11, 1991

Brief Description: Permitting HIV testing of accused sex offenders.

SPONSORS: Senators Bailey, Amondson, Metcalf, Nelson, Craswell, Anderson, Patterson, Rasmussen, McCaslin, Barr, Moore, Vognild, Cantu, Stratton, Oke and McDonald.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 5236 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; L. Kreidler, Madsen, Newhouse, and Rasmussen.

Staff: Richard Rodger (786-7461)

Hearing Dates: February 11, 1991; February 26, 1991

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5236 be substituted therefor, and the second substitute bill do pass.

Signed by Senators McDonald, Chairman; Craswell, Vice Chairman; Bailey, Bauer, Bluechel, Cantu, Gaspard, Hayner, Johnson, Matson, Metcalf, Owen, Saling, L. Smith, and Wojahn.

Staff: Cindi Holmstrom (786-7715)

Hearing Dates: March 8, 1991; March 11, 1991

BACKGROUND:

Any person who is convicted of a sexual offense under Chapter 9A.44 RCW is required to submit to pretest counseling, HIV antibody testing, and post-test counseling. Access to the offender's HIV test results are generally restricted. Law enforcement officers, fire fighters, and health care providers who were exposed to the offender's bodily fluids may receive notification of the test results.

Any person may petition the court for release of the offender's test results. However, the court may only grant access to the records for good cause. In determining good cause, the court must balance the public interest and the need for disclosure against the injury to the patient (offender), to the physician-patient relationship, and to the treatment services. It has been suggested that all victims of sexual

offenses should have a statutory right to obtain the offender's test results.

SUMMARY:

All persons who are charged with the commission of a sexual offense under Chapter 9A.44 RCW shall be tested for the HIV antibody. The court shall, at the time of the alleged offender's first appearance, order the testing to be conducted. The local health department shall, as soon as possible after the entry of the court order, conduct or cause to be conducted the HIV testing.

Any person named as a victim of a sexual offense under Chapter 9A.44 RCW may be notified of the HIV antibody test results of the alleged offender. The person's legal representative for health care decisions is also authorized to receive the test results.

EFFECT OF PROPOSED SUBSTITUTE:

Victims of any criminal offense who were substantially exposed to bodily fluids may receive the results of tests conducted on alleged or convicted offenders.

The mandatory testing is modified to require testing of any person convicted of a criminal offense where the victim was substantially exposed to the offender's bodily fluids and there is a possible risk of infection.

Mandatory testing for persons convicted of indecent exposure, promoting prostitution, and permitting prostitution is eliminated. Testing will occur for persons who are convicted of offenses of prostitution and patronizing a prostitute. The original time frame for mandatory testing is restored.

The Department of Health is directed to specify a schedule for interval HIV testing.

A procedure is established for a victim to request HIV testing of an accused or convicted person. The court will order the tests upon a finding that, in the course of the offense, the victim was exposed to the bodily fluids of the accused, and there is a substantial risk of exposure to the infection.

EFFECT OF PROPOSED SECOND SUBSTITUTE:

Language is added which makes the act contingent upon funding is the Omnibus Appropriations Act.

Appropriation: none

Revenue: none

Fiscal Note: requested

TESTIMONY FOR (Law & Justice):

Current law doesn't adequately balance the competing interests of victims and offenders. Too much time is allowed to elapse if testing is conducted after sentencing. Presently victims are not informed of negative test results. Interval testing should also be provided for in the statute. Testing should only be done when requested by the victim.

TESTIMONY AGAINST (Law & Justice):

This bill is bad public policy because it assumes that a person who is charged with the offense is guilty. The testing of offenders does nothing to assist the victims in determining whether they are affected. Testing the victim is the best method of determining whether transmission has occurred. All victims should be provided free testing, counselling, and therapy.

TESTIFIED (Law & Justice): Seth Dawson, Snohomish County Prosecuting Attorney (pro); Susie Tracy, WSMA (pro); Ian McGowan, NW Aids Foundation (pro); Bea Kelleigh, Seattle-King Co. Dept. of Health (pro); Joan Gaumer, Privacy Fund (con); Jerry Sheehan, ACLU (con)

TESTIMONY FOR (Ways & Means):

This bill appropriately supports the victim's right for counseling and testing.

TESTIMONY AGAINST (Ways & Means): None

TESTIFIED (Ways & Means): Mimi Fields, M.D., Dept. of Health